



Governor
Douglas A. Ducey

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

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Board Members

Douglas Cunningham, D.O., Pres.
Jerry G. Landau, J.D., V.P.
Gary A. Erbstoesser, D.O.
Jonathan A. Maitem, D.O.
Martin Reiss, D.O.
Christopher Spiekerman, D.O.

Interim Executive Director

Rachel Shepherd

DRAFT MINUTES OF THE PUBLIC BOARD MEETING OF THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

Saturday, February 24, 2018

BOARD MEMBERS PRESENT:

Douglas Cunningham, D.O. President
Jerry G. Landau, J.D., Vice-President
Gary A. Erbstoesser, DO
Martin Reiss, D.O.
Christopher Spiekerman, D.O.

BOARD MEMBERS ABSENT:

Jonathan A. Maitem, D.O.

STAFF / OTHERS PRESENT:

Rachel Shepherd, Interim Executive Director/ Investigations
Manager
Barbara Prah, D.O., Medical Consultant
John O'Hair-Schattenberg, Investigator
Jenny Webb, Licensing Administrator
Jeanne Galvin, Assistant Attorney General
Robin Jasper, CVR, Ottmar & Associates (a.m.)
Cindy Bachman, RPR, Ottmar & Associates (p.m.)

1. CALL TO ORDER

Dr. Douglas Cunningham, Board President, called the meeting to order at 8:19 a.m.

2. ROLL CALL AND REVIEW OF AGENDA

The Interim Executive Director took the Roll. Five (5) board members were present, establishing quorum for the meeting.

3. CALL TO THE PUBLIC

- A. Dr. Cunningham welcomed the Medical Students from Arizona College of Osteopathic Medicine at Midwestern University, A.T. Still University Kirksville College of Osteopathic Medicine and A.T. Still University School of Osteopathic Medicine in Arizona.
- B. The Board's custom is to ask members of the public to speak when the agenda item of interest to the person is called. Members of the public who wanted to address the Board on an issue not on the agenda were invited to speak prior to the adjournment.

Dr. Cunningham read the Board's mission statement: "The mission of the Board is to protect the public by setting educational and training standards for licensure, and by reviewing complaints made against osteopathic physicians, interns, and residents to ensure that their conduct meets the standards of the profession, as defined in law (A.R.S. § 32-1854)."

4. REVIEW, CONSIDERATION AND APPROVAL OF MINUTES

A. November 18, 2017 Open Session

MOTION: Dr. Reiss moved to approve the minutes. Dr. Erbstoesser seconded.

VOICE VOTE: Motion carried unanimously with Dr Spiekerman recused and Dr. Maitem absent.

B. November 18, 2017 Executive Session

MOTION: Dr. Reiss moved to approve the minutes. Dr. Erbstoesser seconded.

VOICE VOTE: Motion carried unanimously with Dr. Spiekerman recused and Dr. Maitem absent.

C. January 23, 2018 Teleconference

MOTION: Dr. Reiss moved to approve the minutes. Dr. Erbstoesser seconded.

VOICE VOTE: Motion carried unanimously with Dr. Maitem absent.

5. REVIEW, DISCUSSION, AND ACTION ON CASE REVIEWS OF ALLEGATIONS OF UNPROFESSIONAL CONDUCT A.R.S. § 32-1855 (D).

A. Brian Page, DO DO-16-0266A License No. 3416

The Respondent was present with attorney. The Board discussed the case. After discussion and consideration, the Board determined to proceed to an Investigative Hearing.

MOTION: Dr. Spiekerman moved to Investigative Hearing. Mr. Landau seconded.

VOICE VOTE: The motion carried unanimously.

B. Walter Uyesugi, DO DO-16-0244A License No. 5013

The Respondent was not present. The Board discussed the case. After discussion and consideration, the Board determined there was no statutory violation.

MOTION: Dr. Reiss moved for dismissal. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

C. Michael Sheehy, DO DO-17-0225A License No. 4241

The Respondent was not present. The Complainant was present and made a statement. The complainant stated that she was sent to the ER for an I&D of an abscess. She was overmedicated and quit breathing. Diagnostic studies of the abscess were not done at the ER and a second I&D was done 16 days later as an outpatient.

The Board discussed the case. After discussion and consideration, the Board determined to proceed to an Investigative Hearing.

MOTION: Dr. Reiss moved to Investigative Hearing. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

D. Justin Garrison, DO DO-17-0169A License No. 006511

The Respondent's attorney was present on behalf of respondent. The Board discussed the case. After discussion and consideration, the Board determined there was no statutory violation.

MOTION: Dr. Reiss moved for dismissal. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried 4-1 with Mr. Landau voting nay.

E. Michael Orris, DO DO-17-0047A License No. 4275

The Respondent was present with attorney. The Board discussed the case. Respondent made a statement. After discussion and consideration, the Board determined there was no statutory violation.

MOTION: Mr. Landau moved for Dismissal. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

After deliberations Dr. Robert Schulte addressed the Board as part of the Call to the Public.

Dr. Schulte stated that he has worked with Bariatric patients from the surgical and research and psychiatric sides. He asserts that in his opinion, the review of Orris/WLIAZ by the DO Board was delayed due to a shortage of non-conflicted consultants. Dr. Schulte stated that the group of which Dr. Orris is a partner (WLIAZ) performed over 1,000 unnecessary procedures and surgeries. Additionally, Dr. Schulte expressed his concerns about the operations of WLIAZ. Dr. Schulte noted that he would provide a copy of his statement to the Board.

The Board recessed for a short break at 8:54 a.m. and returned to Open Session at 9:04 a.m.

Dr. Anthony Galitsky addressed the Board as part of the Call to the Public.

Dr. Galitsky stated that he had worked for Dr. Orris for 5 ½ years.

Dr. Galitsky expressed his concerns as to why the procedure was done in a surgery center on a high risk patient, diagnosed with cirrhosis. He indicated that the surgery center was not able to provide support to this patient. Dr. Galitsky stated that a procedure should not be done laparoscopically on a patient if you suspect cirrhosis. This is not a surgery center case. Dr. Galitsky stated that Dr. Orris' surgery center performs many uncoupling surgeries just for financial gain.

6. REVIEW, DISCUSSION AND ACTION ON INVESTIGATIVE HEARINGS PURSUANT TO A.R.S. § 32-1855 (E).

A. Westin Childs, DO Case No. DO-17-0087A License No. 006795

The Respondent was not present. This case was continued.

B. Kenneth Paige, DO Case No. DO-17-0143A License No. 3169

The Respondent was present with attorney and was sworn in by the court reporter. At the request of the Board, the Respondent stated his education and training. The Medical Consultant reviewed the case. After discussion and consideration, the Board determined there was no statutory violation.

MOTION: Dr. Reiss moved for dismissal. Dr. Cunningham seconded.

VOICE VOTE: The motion carried unanimously.

C. Charles Welly, DO Case No. DO-17-0069 License No. 2248

The Respondent was present and was sworn in by the court reporter. At the request of the Board, the Respondent stated his education and training. The Medical Consultant provided a summary of the case. The complaint was the result of alleged failure to order screening colonoscopy with subsequent delayed diagnosis colon cancer; terminal.

Respondent reported that courses were taken for opioid use from previous investigative case.

Board is concerned that he is looking at symptom base versus whole person. Physical and rectal exams should be done on patients.

MOTION: Mr. Landau moved to conduct chart reviews on six (6) patients. The chart reviews will be conducted on 3 female and 3 male patients seen by Dr. Welly from February 24, 2018 forward. The case will be scheduled for the June Board meeting for review. The Board directed staff to refer the current chart review to the Physician Assistants Board. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

D. Charles Clinch, DO Case No. DO-17-0117A License No. 1901

The Respondent was present with attorney Michael Tim and was sworn in by the court reporter. At the request of the Board, the Respondent stated his education and training. The Medical Consultant reviewed the outside medical consultant's review. The complaint alleged failure to offer progesterone therapy to mother with history of pre-term delivery with subsequent pre-term birth and brain injury.

The Board discussed the case with the Respondent.

MOTION: Dr. Reiss moved for dismissal. Dr. Spiekerman seconded.

VOICE VOTE: Motion carried unanimously.

E. David Jensen, DO Case No. DO-17-0048A License No. 005379

The Respondent was present and was sworn in by the court reporter. The Medical Consultant reviewed the case. At the request of the Board, the Respondent stated his education and training. The complaint alleged that Respondent did not provide patients with results of tests and performed unauthorized genetic testing.

The Board discussed the case with the Respondent.

MOTION: Dr. Reiss moved for Dismissal. Dr. Spiekerman seconded.

VOICE VOTE: Motion carried unanimously.

F. Nizar Olabi, DO Case No. DO-16-0262A License No. 005414

The Respondent was present with legal consultant Molly Holdan and was sworn in by the court reporter. At the request of the Board, the Respondent stated his education and training. The Medical Consultant reviewed the outside medical consultant's review. The complaint alleged failure to monitor both the mother and the fetus during labor & delivery and failure to perform C-section in a timely manner.

The Board discussed the case with the Respondent.

MOTION: Dr. Spiekerman moved for Dismissal. Dr. Erbstoesser seconded.

VOICE VOTE: Motion carried unanimously.

7. AGENDA ITEMS IN THIS SHADED BLOCK ARE SCHEDULED TO BE CALLED AFTER THE SPECIFIED TIME. ALL OTHER AGENDA ITEMS MAY BE CALLED AT ANY TIME DURING THE MEETING.

A. Teresa Borchers, DO Case No. DO-15-0213A/14-0279 License No. 3681

Case to be continued.

B. Marc Grant, DO Case No. DO-17-0085A License No. 1609

The Respondent was present and was sworn in by the court reporter. At the request of the Board, the Respondent stated his education and training. The Medical Consultant reviewed the outside medical consultant's (Pain Management Specialist) review. The Medical Consultant requested another review by an Addiction Specialist. She provided a summary of that review. The complaint came from a Pharmacist regarding prescribing practices.

Respondent stated he did not receive the Addiction Specialist's medical report, sent on February 5, 2018.

Dr. Cunningham recommended tabling the matter until the March Board meeting. Respondent can respond, in written form, to the Board after his review of the Addiction Consultant's review.

C. Ayad Agha, DO Case No. DO-16-0108A License No. 4341

The Respondent was present with attorney Russ Skelton and was sworn in by the court reporter. At the request of the Board, the Respondent stated his education and training. The Medical Consultant provided a summary of the outside medical consultant's review. The complaint alleged failure to correctly place stent in leg resulting in a hematoma.

The Board discussed the case with the Respondent.

MOTION: Dr. Reiss moved for Dismissal. Dr. Spiekerman seconded.

ROLL CALL VOTE: Motion carried 3-2-1.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Maitem	Dr. Reiss		Dr. Spiekerman
YES	3		X			X		X
NO	2	X		X				
ABSTAIN/RECUSE								
ABSENT	1				X			

D. Gerald Harris, DO Case No. DO-17-0054A License No. 4027

The Respondent was present and was sworn in by the court reporter. At the request of the Board, the Respondent stated his education and training. The Medical Consultant reviewed the outside medical consultant's review. The complaint came from a medical insurance company and alleged Respondent provided false information to them and prescribed Suboxone and Fentanyl for long periods of time together.

The Board discussed the case with the Respondent. Expert witness Dr. Tony Decker made a statement.

MOTION: Dr. Reiss moved for Dismissal. Dr. Spiekerman seconded.

VOICE VOTE: Motion carried unanimously.

E. Chetan Patel, DO Case No. DO-17-0184A License No. 4214

The Respondent was present with attorney Steve Myers and was sworn in by the court reporter. At the request of the Board, the Respondent stated his education and training. The complaint alleged privileges suspended by North Valley Surgery Center due to possible diversion.

Dr. Reiss moved to enter Executive Session to obtain legal advice. Dr. Cunningham seconded. The Board entered Executive Session at 3:46 p.m. and returned to Open Session at 3:56 p.m.

The Board reviewed the proposed Consent Agreement with Respondents attorney, Steve Myers, and made specific changes.

MOTION: Mr. Landau moved to approve the proposed Consent Agreement as amended. Dr. Spiekerman seconded.

ROLL CALL VOTE: Motion carried 5-1.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Maitem	Dr. Reiss		Dr. Spiekerman
YES	5	X	X	X		X		X
NO								
ABSTAIN/RECUSE								
ABSENT	1				X			

8. **CONSIDERATION AND ACTION ON COMPLIANCE WITH TERMS OF BOARD ORDERS AND REQUESTS TO MODIFY OR TERMINATE ORDERS, PURSUANT TO A.R.S. §32-1855 (E) AND (I).**

A. Sean Sackett, DO Case No. DO-16-0200A License No. 3872

Per Order dated 04/10/2017 – Respondent shall appear before the Board for an update and to review and discuss the assessment report.

Respondent was present. The Medical Consultant stated summary and review of charts and had no concerns with the chart audit and found the Respondent in compliance with his Board Order. The Medical Consultant reviewed the CPEP findings.

The Board discussed the case with the Respondent.

MOTION: Dr. Reiss moved to have prescribing privileges lifted, complete 30 hours of disciplinary CME in Opioid prescribing. Board will complete a ten (10) patient chart review after Respondent's DEA certificate is restored. Respondent is to return to the August meeting. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

9. **REVIEW, CONSIDERATION, AND ACTION ON APPLICATIONS FOR LICENSURE PURSUANT TO A.R.S. § 32-1822; PERMITS PURSUANT TO A.R.S. § 32-1829; AND RENEWALS OF LICENSES PURSUANT TO A.R.S. § 32-1825 (C-D) AND A.A.C. R4-22-207.**

- A. Andres Abreu DO-17-0276A License No. n/a
The Applicant was present. The Interim Executive Director reviewed the license application. The Respondent answered the Board's questions relating to his affirmative responses on his application and malpractice settlement in 2013.
MOTION: Dr. Spiekerman moved to approve the license application. Dr. Erbstoesser seconded.
VOICE VOTE: The motion carried unanimously.
- B. Anne Zender-Princeton DO-17-0300A License No. n/a
The Applicant was present. The Interim Executive Director reviewed the application. The Applicant did not disclose yes answers under the professional conduct portion of the application. The Applicant answered the Board's questions.
Dr. Reiss moved to enter Executive Session to review the applicant's medical history. Mr. Landau seconded at 11:03 a.m. and returned to Open Session at 11:15 a.m.
MOTION: Dr. Reiss moved to approve the license application. Dr. Spiekerman seconded.
VOICE VOTE: The motion carried unanimously.
- C. Karen Worzel DO-17-0277A License No. n/a
The Applicant was present. The Interim Executive Director reviewed the application. The Applicant did not disclose yes answers under the professional conduct portion of the application. The Applicant answered the Board's questions.
MOTION: Dr. Erbstoesser moved to approve the license application. Dr. Spiekerman seconded.
VOICE VOTE: The motion carried unanimously.
- D. Mark Lynn Davis DO-18-0022A License No. n/a
The Applicant was present. The Interim Executive Director reviewed the application. The Applicant had two yes answers under the professional conduct portion of the application. The Respondent answered the Board's questions.
MOTION: Dr. Spiekerman moved to approve the license application. Dr. Erbstoesser seconded.
VOICE VOTE: The motion carried unanimously.
- E. Matthew David Walvick DO-17-0274A License No. n/a
The Applicant was present. The Interim Executive Director reviewed the application. The Applicant did not disclose a yes answer for a DUI case. The Applicant answered the Board's questions.
MOTION: Dr. Reiss moved to approve the license application. Dr. Erbstoesser seconded.
VOICE VOTE: The motion carried unanimously.

The Board completed Agenda Item 14, then recessed for lunch at 11:52 a.m. and returned to Open Session at 1:00 p.m. with Item 10-A.

10. REVIEW, DISCUSSION AND ACTION ON REHEARING OR REVIEW PURSUANT TO A.A.C. R4-22-108. – 1 p.m.

A. David Minor, DO DO-15-0266A License No. 2321

The Respondent was present with attorney Steve Myers and was sworn in by the court reporter. At the request of the Board, the Respondent stated his education and training. The Medical Consultant summarized the case.

Respondent has attended a PACE course in prescribing and has a new understanding of utilizing the Pharmacy Board website. The Respondent requested to practice medicine with an unrestricted license.

Board discussed the case with attorney and Respondent.

MOTION: Mr. Landau moved to affirm the findings of fact and conclusions of law issued and the aggravating factor issued on March 8, 2017. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

MOTION: Mr. Landau also moved for a decree of censure to be issued, the reason set forth in the findings of fact and conclusions of law. Respondent will be placed on probation for a period of four (4) years effective April 7, 2017. Terms of probation: 1) Provide the Board with the semi-annual PMP report card beginning with the next PMP report card being issued. 2) A ten (10) patient chart review conducted in six (6) months then yearly, unless otherwise ordered by the Board. Dr. Spiekerman seconded.

ROLL CALL VOTE: The motion carried 4-1-1.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Maitem	Dr. Reiss	Dr. Spiekerman
YES	4	X		X		X	X
NO							
ABSTAIN/RECUSE	1		X				
ABSENT	1				X		

11. REVIEW, DISCUSSION AND ACTION ON REQUEST TO DISMISS CASE.

A. Semone Barrie Rochlin, DO DO-17-0244A License No. 4462

The Respondent's attorney, Steve Myers, was present on behalf of the Respondent. Mr. Myers requested a dismissal of the complaint as the doctrine of res judicata prohibits the complainants second complaint because it is based on the same set of circumstances as her original complaint which was adjudicated.

The Board discussed the matter.

MOTION: Mr. Landau moved to dismiss the complaint. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

12. REVIEW, DISCUSSION AND ACTION ON THE FOLLOWING MISC ITEMS.

- A. Review, Discussion and Action with Possible Referral to Law Enforcement Agency Relating to Allegations of Unauthorized Practice of Medicine.
Henry B. Ojenivi Complaint

Board had a discussion. Mr. Landau stated that the Board has no jurisdiction.

MOTION: Mr. Landau moved to send back to the Acupuncture Board. Dr. Erbstoesser seconded.

VOICE VOTE: The motion carried unanimously.

- B. Review, Discussion and Action on a Renewal Affirmative Response.
Renewal Affirmative Response by Richard Arriviello, D.O. License No. 007019

The Interim Executive Director reported that the matter disclosed on Richard Arriviello, D.O. license renewal was previously reviewed as a pending malpractice case disclosed on his initial license application that had recently settled. This was brought before the Board to determine if the Board required further action.

The Board briefly discussed the matter and took no action.

- C. Review, Discussion and Action on Request for Extension of Time to Comply with CME Requirement.
Request for CME Extension Stefanie Allison, D.O. License No. 007134

MOTION: Mr. Landau motioned to approve CME Extension. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

- D. Review, Discussion and Action on Request for Retired Status.

1. John Winter, D.O. License No. 1712
2. Michael Coleman, D.O. License No. 2570

The Board considered these requests together.

MOTION: Dr. Spiekerman motioned to grant for Retired Status. Mr. Landau seconded.

VOICE VOTE: The motion carried unanimously.

13. QUESTION AND ANSWER SESSION BETWEEN THE MEDICAL STUDENTS AND MEMBERS OF THE BOARD AND DISCUSSION RELATING TO ISSUES SURROUNDING THE PRACTICE OF OSTEOPATHIC MEDICINE.

The Board asked the medical students what they had learned and answered the medical students questions.

14. REVIEW, CONSIDERATION AND ACTION ON REPORTS FROM INTERIM EXECUTIVE DIRECTOR, BOARD MEMBERS, and ASST ATTORNEY GENERAL

- A. Report on Interim Executive Director Dismissed Complaints
The Interim Executive Director provided a summary of dismissed, resolved and unresolved complaints.

- B. President & Board Member reports
No reports were made.

C. Interim Executive Director Report

1. Financial Report
Ms. Shepherd was unable to provide a financial update.
2. Current Events that Affect the Board
The interim Executive Director informed the Board of the Federation State Medical Boards Conference.
3. Legislation update
Mr. Landau provided a legislation update.
4. Discussion, Consideration of Draft Rules and Possible Adoption as Proposed Rules

MOTION: Mr. Landau moved to adopt draft rules as proposed rules. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

15. ADJOURNMENT

The meeting adjourned at 4:38 p.m.

DRAFT