



Governor
Janice K. Brewer

**ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY**

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Board Members
Scott Steingard, D.O., Pres
Douglas Cunningham, D.O., V.P.
Jon B. Fiegen, J.D.
Jerry G. Landau, J.D.
Mary Ann Picardo, D.O.
Vas Sabeeh, D.O.
Michael P. Ward, D.O.

Executive Director
Jenna Jones

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

Saturday, July 21, 2012

BOARD MEMBERS PRESENT:

President Scott Steingard, D.O.
Vice President Douglas Cunningham, D.O.
Jon B. Fiegen, J.D.
Mary Ann Picardo, D.O.
Jerry G. Landau, J.D.
Michael P. Ward, D.O.
Vas Sabeeh, D.O.

STAFF / OTHERS PRESENT:

Jenna Jones, Executive Director
Barbara Meyers, Deputy Director
John O'Hair-Schattenberg, Investigator
Kathy Fowkes, Licensing Division
Sarah Selzer, Assistant Attorney General
Haley Westra, Certified Court Reporter, Ottmar & Associates

1. CALL TO ORDER

The Board President, Dr. Scott Steingard, called the meeting to order at 8:04 a.m.

2. ROLL CALL AND REVIEW OF AGENDA

The Executive Director took the roll. All Board Members were present, establishing quorum for the meeting. The Executive Director reviewed the agenda.

3. CALL TO THE PUBLIC

- A. Dr. Steingard welcomed the Medical Students from Arizona College of Osteopathic Medicine at Midwestern University, Kirksville College of Osteopathic Medicine, and School Osteopathic Medicine Arizona at A.T. Still University.
- 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. If you want to address the Board on an issue not on the agenda, you will be asked to speak prior to the adjournment. All people wishing to speak should fill out a speaker form and give it to a staff member.

4. REVIEW, CONSIDERATION AND APPROVAL OF MINUTES

May 19, 2012 Open Session Minutes

Dr. Steingard requested amendment to the minutes. Agenda item 6-J's vote count on page 9 should be amended to state "5-1".

MOTION: Dr. Picardo moved to approve the minutes as amended. Dr. Cunningham seconded.

VOICE VOTE: Motion passed 7-0.

May 19, 2012 Executive Session Minutes

MOTION: Mr. Fiagen moved to accept the minutes. Dr. Cunningham seconded.

VOICE VOTE: Motion passed 7-0.

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

Case Reviews

A. Stephen Hammett, DO Case No. DO-10-0057A License No. 4359

Dr. Hammett was not present. The Deputy Director reviewed the Medical Consultant's report.

MOTION: Dr. Ward moved for an Investigative Hearing. Dr. Cunningham seconded.

VOICE VOTE: Motion passed 7-0.

The Board instructed staff to obtain a pharmacy query and a 10-chart review to be completed prior to the investigative hearing.

Reviews of Executive Director Dismissals:

A. None

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

A. Gary Rostan, DO Case No. DO-11-0064A License No. 2948

Dr. Rostan was present with attorney Linda Boone and was sworn in by the court reporter. The Investigator reviewed the case. Dr. Rostan answered the Board's questions.

MOTION: Dr. Picardo moved for **DISMISSAL**. Dr. Cunningham seconded.

VOICE VOTE: Motion passed 7-0.

B. Charles Welly, DO Case No. DO-10-0010A License No. 2248

Dr. Welly was present and was sworn in by the court reporter. The Deputy Director reviewed the Medical Consultant's report. Dr. Welly answered the Board's questions.

MOTION: Dr. Cunningham moved for a **LETTER OF CONCERN** for poor documentation. Mr. Landau seconded.

ROLL CALL VOTE: Motion passed 5-2.

| | Vote | Dr. Steingard | Dr. Cunningham | Dr. Picardo | Mr. Fiegen | Dr. Ward | Mr. Landau | Dr. Sabeeh |
|----------------|------|---------------|----------------|-------------|------------|----------|------------|------------|
| YES | 5 | X | X | | X | X | X | |
| NO | 2 | | | X | | | | X |
| ABSTAIN/RECUSE | 0 | | | | | | | |
| ABSENT | 0 | | | | | | | |

C. Todd Lincoln, DO Case No. DO-11-0089A License No. 2445

Dr. Lincoln was present and was sworn in by the court reporter. The Investigator reviewed the case. Dr. Lincoln answered the Board's questions.

MOTION: Dr. Picardo moved for **DISMISSAL**. Dr. Cunningham seconded.

ROLL CALL VOTE: Motion passed 6-1.

| | Vote | Dr. Steingard | Dr. Cunningham | Dr. Picardo | Mr. Fiegen | Dr. Ward | Mr. Landau | Dr. Sabeeh |
|----------------|------|---------------|----------------|-------------|------------|----------|------------|------------|
| YES | 6 | X | X | X | | X | X | X |
| NO | 1 | | | | X | | | |
| ABSTAIN/RECUSE | 0 | | | | | | | |
| ABSENT | 0 | | | | | | | |

D. Shawn Platt, DO Case No. DO-11-0165A License No. 3313

This case was continued at the Board's request.

E. James Beach, DO Case No. DO-10-0089A License No. 1438

This case was continued at the Respondent's request.

Agenda items 6F and 6G were heard together.

F. Ramon Morales, DO Case No. DO-11-0038A License No. 4391

G. Ramon Morales, DO Case No. DO-11-0174A License No. 4391

Dr. Morales was present with attorneys Dee Dee Holder and David Derickson and was sworn in by the court reporter.

The Board entered Executive Session at 9:50 a.m. for legal advice and returned to Open Session at 9:58 a.m.

The Investigator reviewed the cases. Dr. Morales addressed the Board and answered the Board's questions.

The Board entered Executive Session at 11:10 a.m. for legal advice and returned to Open Session at 11:19 a.m.

MOTION: Mr. Landau moved for a finding of **UNPROFESSIONAL CONDUCT:**

- in case DO-11-0038A for:
 - violation of A.R.S. §32-1854(38) for being charged with DUI
 - violation of A.R.S. §32-3208 for failing to report the DUI charge within 10 days
- in case DO-11-0174A for:
 - violation of A.R.S. 32-1854(6) for failing to complete numerous medical charts
 - violation of A.R.S. 32-1854(38) for knowingly accepting call within a short period of time after being arrested for driving under the influence of intoxicating liquor and driving with a blood alcohol content of .08 or above, and subsequently performing that procedure.

Dr. Cunningham seconded.

ROLL CALL VOTE: Motion passed 7-0.

| | Vote | Dr. Steingard | Dr. Cunningham | Dr. Picardo | Mr. Fiegen | Dr. Ward | Mr. Landau | Dr. Sabeeh |
|----------------|------|---------------|----------------|-------------|------------|----------|------------|------------|
| YES | 7 | X | X | X | X | X | X | X |
| NO | 0 | | | | | | | |
| ABSTAIN/RECUSE | 0 | | | | | | | |
| ABSENT | 0 | | | | | | | |

MOTION: Dr. Steingard moved for **FIVE (5) YEARS PROBATION** to include the following terms:

- **Establish ongoing care with primary care physician** approved by the Board including a physical examination to be scheduled within 14 days and completed within 45 days thereafter.
- **Psychiatric exam** by Board approved psychiatrist to be scheduled within 14 days and completed within 45 days thereafter.

Based on recommendation of psychiatrist:

- **ongoing treatment** based on the exam results
- **counseling** based on recommendation of psychiatrist
- **Substance abuse counseling**
- **Random alcohol and drug screens**
- Board approved **impaired physician program**
- Board approved **practice monitor** contracted within 30 days to perform:
 - **Chart reviews**
 - appropriate prospective **surgical management**
 - **medical records maintenance**
 - with **quarterly reports** to the Board
- All expenses related to the probation to be at the doctor's expense

Dr. Cunningham seconded.

ROLL CALL VOTE: Motion passed 7-0.

| | Vote | Dr. Steingard | Dr. Cunningham | Dr. Picardo | Mr. Fiegen | Dr. Ward | Mr. Landau | Dr. Sabeeh |
|----------------|------|---------------|----------------|-------------|------------|----------|------------|------------|
| YES | 7 | X | X | X | X | X | X | X |
| NO | 0 | | | | | | | |
| ABSTAIN/RECUSE | 0 | | | | | | | |
| ABSENT | 0 | | | | | | | |

H. Ramon Morales, DO Case No. DO-11-0179A License No. 4391

Dr. Morales was present with counsel and remained sworn in. The Investigator reviewed the case. Dr. Morales answered the Board’s questions.

MOTION: Mr. Landau moved for a finding of **UNPROFESSIONAL CONDUCT** for violation of A.R.S. §32-1854(6), A.R.S. §32-1854 (42), and A.R.S. §32-1854(39) for making sexual advances to a patient, for engaging in verbal and electronic conduct of a sexual nature with a patient, and continuing to have a physician/patient relationship subsequent to engaging in verbal and electronic conduct of a sexual nature. Dr. Ward seconded.

ROLL CALL VOTE: Motion passed 7-0.

| | Vote | Dr. Steingard | Dr. Cunningham | Dr. Picardo | Mr. Fiegen | Dr. Ward | Mr. Landau | Dr. Sabeeh |
|----------------|------|---------------|----------------|-------------|------------|----------|------------|------------|
| YES | 7 | X | X | X | X | X | X | X |
| NO | 0 | | | | | | | |
| ABSTAIN/RECUSE | 0 | | | | | | | |
| ABSENT | 0 | | | | | | | |

MOTION: Mr. Landau moved for a **DECREE OF CENSURE** and **FIVE (5) YEARS PROBATION** to run concurrently with the term of probation imposed in case numbers DO-11-0038A and DO-11-0174A, probation terms to include:

- 20 hours CME for boundary issues as approved by the Executive Director to be completed within 6 months,
- the requirement of a chaperone for examination of all female patients, and
- maintenance of a chaperone log to be co-signed.

Dr. Cunningham seconded.

ROLL CALL VOTE: Motion passed 7-0.

| | Vote | Dr. Steingard | Dr. Cunningham | Dr. Picardo | Mr. Fiegen | Dr. Ward | Mr. Landau | Dr. Sabeeh |
|----------------|------|---------------|----------------|-------------|------------|----------|------------|------------|
| YES | 7 | X | X | X | X | X | X | X |
| NO | 0 | | | | | | | |
| ABSTAIN/RECUSE | 0 | | | | | | | |
| ABSENT | 0 | | | | | | | |

The Board recessed for lunch at 12:25 p.m. and returned to Open Session at 1:10 p.m.

- I. Philip Bain, DO Case No. DO-11-0106A License No. 2302

Dr. Bain was present with attorney Randy Yavitz and was sworn in by the court reporter. The Deputy Director reviewed the case. Dr. Bain answered the Board’s questions. The Complainant was present and was sworn in. The Complainant addressed the Board and answered the Board’s questions. The Board discussed the case.

The Board entered Executive Session at 1:57 p.m. for legal advice and returned to Open Session at 2:04 p.m.

The Board recessed for a short break at 2:04 p.m. and returned to Open Session at 2:12 p.m.

The Board entered Executive Session at 2:12 p.m. for legal advice and returned to Open Session at 2:15 p.m.

Mr. Yavitz addressed the Board.

The Board discussed the findings of fact.

The Board entered Executive Session at 2:46 p.m. for legal advice and returned to Open Session at 2:51 p.m.

MOTION: Dr. Steingard moved for a finding of **UNPROFESSIONAL CONDUCT** for violation of:

- A.R.S. §32-1854(6) in that Dr. Bain engaged in the practice of medicine in a manner that harmed and may harm a patient and fell below the community standard of professionally explaining the results of the mammogram to the patient by his visual and verbal actions based on exhibits and testimony presented to the Board concerning the mammogram, and
- A.R.S. §32-1854(38) in that Dr. Bain engaged in conduct or practice that may reasonably be expected to endanger a patient's health by the conduct referenced in violation of A.R.S. §32-1854(6).

Mr. Landau seconded.

MOTION: Mr. Landau moved for a **DECREE OF CENSURE** and **FIVE (5) YEARS PROBATION** to include:

- 20 hours of Continuing Medical Education in the area of boundary issues to be approved by the Executive Director and completed within 6 months at the doctor’s expense
- Require a chaperone in the room during any consultation with a female patient at the doctor’s expense.

Dr. Picardo seconded.

ROLL CALL VOTE: Motion passed 7-0.

| | Vote | Dr. Steingard | Dr. Cunningham | Dr. Picardo | Mr. Fiegen | Dr. Ward | Mr. Landau | Dr. Sabeeh |
|----------------|------|---------------|----------------|-------------|------------|----------|------------|------------|
| YES | 7 | X | X | X | X | X | X | X |
| NO | 0 | | | | | | | |
| ABSTAIN/RECUSE | 0 | | | | | | | |
| ABSENT | 0 | | | | | | | |

The Board answered questions from the visiting medical students and Dr. Steingard dismissed them at 3:33 p.m.

7. 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. Ronald Bitza, DO Case No. 4027 License No. 1370

Dr. Bitza was present. The Executive Director reviewed his request for early termination of his probation. Dr. Bitza addressed the Board.

MOTION: Dr. Cunningham moved for early termination of probation. Dr. Picardo seconded.

VOICE VOTE: The motion passed 7-0.

B. Lynn Sweet, DO Case No. DO-10-0001A License No. 3246

Dr. Sweet was not present. The Board reviewed and discussed Dr. Sweet’s letter to the Board.

MOTION: Dr. Ward moved to deny Dr. Sweet’s request based on A.R.S. §32-1822(G). Dr. Cunningham seconded.

VOICE VOTE: Motion passed 7-0.

C. Philo Rogers, DO Case No. DO-09-0154A License No. 2809
 and DO-10-0069A

Dr. Rogers was not present. Staff was directed to open an investigation and obtain a pharmacy query.

D. Kenneth Pettit, DO DO-10-0158A License No. 3344

Dr. Pettit was present with counsel Pete Fisher. Mr. Fisher addressed the Board.

MOTION: Dr. Ward moved to amend his May 19, 2012 motion and the May 19, 2012 minutes to read:

“**MOTION:** Dr. Ward moved for non-disciplinary **CONTINUING MEDICAL EDUCATION** in the amount of 10 hours split equally between chronic pain management and issues dealing with difficult or manipulative patients to be approved by the Executive Director and to be completed in six months. Mr. Landau seconded.

VOICE VOTE: Motion passed 7-0”

Mr. Landau seconded.

VOICE VOTE: Motion passed 7-0.

E. Lucinda Michel, DO DO-10-0012A License No. 4314

Dr. Michel was not present.

MOTION: Dr. Ward moved for staff to open an investigation for possible noncompliance with a Board Order, to offer a Consent Agreement for Practice Restriction to Respondent pending the investigation and set an Investigative Hearing for the next meeting. If the Consent Agreement is not accepted the Board would hold a special meeting for a possible Summary Suspension. Dr. Picardo seconded.

VOICE VOTE: Motion passed 7-0.

8. 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. R4-22-109.

A Kevin Hubbard, DO Case No. DO-12-0064A Applicant No. 005913

Dr. Hubbard was present. The Executive Director reviewed the application. Dr. Hubbard answered the Board's questions.

MOTION: Dr. Ward moved to grant Dr. Hubbard a license. Dr. Picardo seconded.

VOICE VOTE: Motion passed 7-0.

B. Kevin McKeown, DO Case No. DO-12-0074A Applicant No. 005863

Dr. Ward recused himself from this case.

Dr. McKeown was present. The Executive Director reviewed the application. Dr. McKeown answered the Board's questions.

MOTION: Dr. Picardo moved to grant Dr. McKeown a license. Dr. Cunningham seconded.

VOICE VOTE: Motion passed 6-0.

9. REPORTS FROM EXECUTIVE DIRECTOR, BOARD MEMBERS, and ASST ATTORNEY GENERAL

A. Report on ED Dismissed Complaints
Ms. Jones reported she has dismissed 19 cases since the last board meeting.

B. President & Board Member reports
Dr. Steingard reported that Dr. Cunningham and Ms. Jones were working on coordinating the Pain Management Guidelines Committee to meet in September. There is also a need to address the Prescription Abuse epidemic and he would like to arrange an interdisciplinary conference to address the concerns and raise awareness of the problem.

Dr. Steingard reported that the AAOE will be meeting here in Phoenix, January 6-8, 2013, for a summit and he invited the Board to be involved or attend, if possible. He also reported that next week the Federation is meeting to address the CAI. CAI is a measurement system that some groups have used to rate the various state medical boards. There will be discussion on its use, evaluation and/ or revision. The following week there will be a meeting regarding the Four Corners Telehealth Consortium. He will report more on these matters at the September meeting.

- C. Proposed Rules package regarding fees
Ms. Jones reported that the rules package to put all fees into rule has been opened and is moving forward. This rule package was necessary due to the new statutory language passed in the recent legislative session. She based the fee amounts on the amounts currently charged that were approved at the January 2012 meeting.

- D. Board may review, discuss and take action on protocol of investigations involving Board members.
Mr. Landau discussed that he had concerns about the Board reviewing a complaint against a Board member. Staff is currently referring these cases out to an outside medical consultant, when appropriate or needed, and will continue to do so. No action was taken.

10. ADJOURNMENT

The Board adjourned at 5:20 p.m.