



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.
Mary Ann Picardo, D.O.
Michael P. Ward, D.O.
Jerry G. Landau, J.D.
Vas Sabeeh, D.O.

Executive Director
Elaine LeTarte

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

Saturday, July 30, 2011

BOARD MEMBERS PRESENT:

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

STAFF / OTHERS PRESENT:

Elaine LeTarte, Executive Director
Barbara Meyers, Deputy Director
Barbara Prah, D.O., Medical Consultant
John O'Hair-Schattenberg, Investigator
Camila Alarcon, Assistant Attorney General / Licensing Enforcement
Beverly Alfson, Licensing/Business Manager
Kathy Fowkes, Administrative Secretary
Haley Westra (Ottmar & Associates), Certified Court Reporter

**OTHERS AVAILABLE
TELEPHONICALLY:**

Christopher Munns, Assistant Attorney General / Solicitor General Division

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 seven Board Members were present, establishing quorum for the meeting. The Executive Director reviewed the agenda, noting the items which had been added since the draft agenda was circulated to the Board with their materials.

3. PRESIDENT'S REPORT AND CALL TO THE PUBLIC

A. Dr. Steingard welcomed the Medical Students from the Arizona College of Osteopathic Medicine at Midwestern University, and the Kirksville College of Osteopathic Medicine.

B. Dr Steingard explained the Board's custom to ask members of the public to speak when the agenda item of interest to the person is called, and stated that if someone wanted to address the Board on an issue not on the agenda, that person would 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

Minutes of the May 21, 2011 Open Session

MOTION: Dr. Picardo moved to accept the minutes. Dr. Cunningham seconded.

VOICE VOTE: Motion passed 7-0.

Minutes of the May 21, 2011 Executive Session

MOTION: Mr. Fiegen moved to accept the minutes. Dr. Picardo seconded.

VOICE VOTE: Motion passed 7-0.

5. REVIEW, CONSIDERATION AND ACTION ON ADMINISTRATIVE HEARINGS PURSUANT TO A.R.S. 32-1855 (F) ONLY / AND MATTERS HEARD AT OFFICE OF ADMINISTRATIVE HEARINGS

- A. Erol LeBlanc, DO DO-09-0115A License No. 3452
(OAH No. 10A-DO-09-1115-OST)
- B. Erol LeBlanc, DO DO-09-0117A License No. 3452
(OAH No. 10A-DO-09-1115-OST)

Camila Alarcon, Asst Attorney General, Licensing and Enforcement Section, represented the State of Arizona, and asked the Board to adopt the Administrative Law Judge’s Recommendation in these compiled cases. Dr. LeBlanc was not present, nor was he represented by legal counsel.

MOTION: Mr. Landau moved to accept the Administrative Law Judge’s Findings of Facts. Mr. Fiegen 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 to accept the Administrative Law Judge’s Conclusions of Law. Mr. Fiegen 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 to accept the Administrative Law Judge’s recommended order for **REVOCATION** of license no. 3452 issued to Erol LeBlanc, D.O. Mr. Fiegen 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 Executive Director noted, for the record, that the Order would not be effective until 35 days after it is mailed to allow for an appeal. If a motion for rehearing was filed within those 35 days, the effective date of the Order would be stayed pending the Board’s decision on that motion for rehearing.

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

Case Reviews

A. Donald Morgan, DO Case No. DO-10-0047A License No. 3398

Dr. Morgan was not present. The Medical Consultant reviewed the case.

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

VOICE VOTE: Motion passed 7-0.

Reviews of Executive Director Dismissals:

A. Kelli M. Ward, DO Case No. DO-11-0031A License No. 3425

Dr. Michael Ward had earlier recused himself from this case; he left the room. The complainant was not present.

MOTION: Mr. Fiegen moved for **DISMISSAL**, affirming the Executive Director’s dismissal. Dr. Cunningham seconded.

VOICE VOTE: Motion passed 6-0-1.

Case Review and Consideration of Summary Suspension pursuant to A.R.S. § 32-1855 (C) and § 41-1064 (C)

A. Michael Shing, DO Case No. DO-11-0093A License No. 005367

This matter was taken out of the Order of the Agenda; it was considered when the Board heard the Investigative Hearing in Case DO-11-0061.

Dr. Shing was present. The Medical Consultant reviewed the case. Dr. Shing answered the Board's questions and agreed to enter into an agreement to restrict his prescribing authority pending the outcome of this investigation. The Board tabled the matter while the Interim Order was prepared.

The Board recessed to Executive Session at 11:54 a.m. for legal advice and returned to Open Session at 12:03 p.m.

MOTION: Dr. Ward moved to accept the Interim Consent Agreement to restrict Dr. Shing's prescribing of all controlled substance prescription medications and medical marijuana with the exception of testosterone, and requiring him to complete 30 hours of CME in pain management. 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							

Dr. Shing and the Executive Director signed the Interim Order, making it effective immediately.

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

A. John Charochak, DO Case No. DO-09-0013A License No. 2333

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

MOTION: Dr. Picardo moved for **DISMISSAL**. Mr. Fiegen 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							

B. David Korn, DO Case No. DO-09-0202A License No. 3393

Dr. Korn was present, and represented by legal counsel, Mr. Kraig Marton. Dr. Korn was sworn in by the court reporter. At Dr. Korn's and Mr. Marton's request, the Board continued this case.

C. David Korn, DO Case No. DO-10-0118A License No. 3393

Dr. Korn was present, and represented by legal counsel Mr. Kraig Marton. Dr. Korn remained sworn in. The Executive Director reviewed the case. Dr. Korn answered the Board's questions. Mr. Marton also addressed the Board.

The Board recessed to Executive Session at 10:16 a.m. for legal advice and returned to Open Session at 10:22 a.m.

The Board asked staff to obtain medical records from all treating physicians, and to provide Dr. Korn with a list of pain management specialists for an independent evaluation to be completed within the next three months. The Board continued this case until the records and evaluation can be reviewed.

D. Ronald Bitza, DO Case No. DO-10-0042A License No. 1370

Dr. Steingard recused himself from this case, and left the room. Dr. Cunningham presided over this part of the meeting.

Dr. Bitza was present and was sworn in by the court reporter. Dr. Bitza answered the Board's questions. The complainant was also present and was sworn in by the court reporter. The complainant addressed the Board.

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

ROLL CALL VOTE: Motion passed 6-0-1.

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

The Board recessed for a break at 9:27 a.m. and returned to Open Session at 9:35 a.m.

E. Tracy (Barnett) West, DO Case No. DO-09-0051A License No. 4236

Dr. West was present and was sworn in by the court reporter. The Medical Consultant reviewed the case. Dr. West answered the Board's questions.

The Board recessed to Executive Session at 9:45 a.m. for legal advice and returned to Open Session at 9:50 a.m.

MOTION: Dr. Ward moved for **DISMISSAL**. 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							

F. Gaylon Crawford, DO Case No. DO-09-0119A License No. 2923

Dr. Crawford was present, and represented legal counsel, Mr. Gordon Lewis. Dr. Crawford was sworn in by the court reporter. The Medical Consultant reviewed the case. Dr. Crawford answered the Board's questions.

MOTION: Dr. Ward 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							

The Board recessed for lunch at 12:25 p.m. and returned to Open Session at 1:13 p.m.

G. Michael Shing, DO Case No. DO-11-0061A License No. 005367

Dr. Shing was present and sworn in. The Board continued this Investigative Hearing, and considered Case DO-11-0093A. Later in the afternoon, after Dr. Shing had signed the Interim Order in that case, the Board returned to this hearing.

The Medical Consultant reviewed the case and a 15-chart review of pain management patients. Dr. Shing answered the Board's questions. The Board directed staff to draft an interim order for a P.A.C.E. evaluation of his practice habits and management of his family practice patients, to be registered within 90 days, and at Respondent's expense. The Board continued this case until the evaluation could be obtained and reviewed.

H. Brian Rizzo, DO Case No. DO-10-0049A License No. 3597

Dr. Rizzo was present and represented by legal counsel, Mr. Richard Delo. Dr. Rizzo was sworn in by the court reporter. The Medical Consultant reviewed the case, and the Board discussed the report of the ordered evaluation. Dr. Rizzo and Mr. Delo answered the Board's questions.

MOTION: Dr. Picardo moved for **DISMISSAL**. Dr. Ward 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							

I. Barry Berger, DO Case No. DO-10-0101A License No. 3994

At Dr. Berger's request, this case was continued.

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

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

The Board recessed to Executive Session for legal advice at 2:12 p.m., and returned to Open Session at 2:19 p.m.

MOTION: Due to Respondent's failure to report a DUI in a timeframe required by Statute, failure to complete a court ordered evaluation and treatment program, and being convicted of extreme DUI, Dr. Ward moved for five-year **PROBATION** for unprofessional conduct (A.R.S. §32:1854(35) & (38)); Order to include the standard after-care monitoring program, to include refraining from alcohol, obtaining a single board-approved primary care physician, and notifying the Board of any controlled substance prescriptions. In addition, the Order shall require Respondent to comply with all current civil and criminal court-ordered evaluations and treatments, resolve any outstanding warrant(s) by 5 p.m. on Monday, August 1st, 2011 and report to the Board staff regarding the resolution outcome no later than 5 pm August 2, 2011. 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							

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. John Prieve, DO Case No. 3776 License No. 3855

Dr. Prieve was present. The Deputy Director reported that Dr. Prieve’s five year probation with Dr. Sucher’s program would be complete in August and, except for length of time, he had fulfilled all terms of the Board’s probation. The Deputy Director explained that for procedural reasons, Dr. Sucher’s five-year monitoring contracts often concluded just prior to the Board’s five-year agreements concluding.

MOTION: Mr. Landau moved to terminate the probation effective August 8, 2011. Dr. Cunningham seconded.

VOICE VOTE: Motion passed 7-0.

B. Sholom Gootzeit, DO Case No. DO-10-0105A License No. 005463

Dr. Gootzeit was present, and represented by legal counsel, Mr. Steve Myers. The Executive Director reviewed the case and stated that Dr. Gootzeit had fulfilled all the terms of re-entry agreement.

MOTION: Dr. Cunningham moved to terminate the agreement. 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							

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. R4-22-109.

A. Michelle D'Almeida, DO Case No. DO-11-0081A Applicant No. 005620

Dr. D'Almeida was present. The Executive Director reviewed her report of Dr. D'Almeida's application for licensure. The Board requested Dr. D'Almeida provide them with copies of CMEs completed in the last two years, a list of professional associations to which she belonged during the last two years, and a statement regarding her health issues and current health status from her treating specialist. In addition, the Board requested Dr. D'Almeida to respond to comments on one of the medical employment verification forms. This case was continued until the requested information is obtained.

The Board recessed for a short break at 3:54 p.m. and returned to Open Session at 4:03 p.m.

B. Deborah Marietta-Nunez, DO Case No. DO-11-0082A Applicant No. 005636

Dr. Marietta-Nunez was not present. The Board continued this case until the next meeting, to allow Dr. Marietta-Nunez another opportunity to appear.

10. POLICY AND PROCEDURE REPORTS: For consideration and possible action

President's report: Dr. Steingard reported that the Federal Trade Commission (FTC) had recently heard a case brought against a state dental board by non-licensees which argued that the dental board's requirement that only licensees could do teeth whitening was restraint of trade. The FTC found that it was. Dr. Steingard also noted that Senator Thomas Udall, New Mexico, had filed a bill for national licensure of physicians. In his capacity as a member of the Board of Directors of the Federation of State Medical Boards (FSMB), Dr. Steingard will be visiting the United States Medical Licensing Examiners and the Colorado Board of Medicine. He is also one of the FMSB's nominees for a seat on the Education Council for Foreign Medical Graduates (ECFMG).

A. Policy on acceptance of Federation Credential Verification Service (FCVS) packets

The Executive Director reported on the ongoing discussion with Federation of State Medical Board regarding the Board's use of the FSMB's FCVS packets, specifically the issue of the apparent conflict between FMSB's copyright claim and Arizona's public records laws. The FSMB has told both the Executive Director and Dr Steingard that they will work on this to the Board's satisfaction.

12. ADJOURNMENT

Dr. Ward moved that the meeting be adjourned. Dr. Cunningham seconded. The motion passed, 7-0 and Dr. Steingard adjourned the meeting at 4:45 p.m.

The following agenda items were not called:

11. REPORTS FROM EXECUTIVE DIRECTOR, ASST ATTORNEY GENERAL, BOARD MEMBERS

- A. Report on ED Dismissed Complaints
- B. July Staff Report
- C. Asst AG / Board member reports