



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.

**Executive Director**  
Amber Brake, JD, MHA, FACHE

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

Saturday, January 12, 2019

### BOARD MEMBERS PRESENT:

Douglas Cunningham, D.O. President  
Jerry G. Landau, J.D., Vice-President  
Jonathan A. Maitem, D.O.  
Martin Reiss, D.O.  
Gary A. Erbstoesser, D.O.

### ABSENT:

Christopher Spiekerman, D.O.

### STAFF / OTHERS PRESENT:

Amber Brake, JD, MHA, FACHE, Executive Director  
Barbara Prah, D.O., Medical Consultant  
John O'Hair-Schattenberg, Investigator  
Jenny Webb, Administrative Assistant  
Meaghan Maxwell, Administrative Assistant  
Jeanne Galvin, Assistant Attorney General  
Robin Jasper, CVR, Ottmar & Associates (a.m.)  
Debora Mitchell, RPR, Ottmar & Associates (p.m.)

### 1. CALL TO ORDER

Dr. Douglas Cunningham, Board President, called the meeting to order at 8:09 a.m.

### 2. ROLL CALL AND REVIEW OF AGENDA

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

### 3. CALL TO THE PUBLIC

Dr. Cunningham recited 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)."

- 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. If any member of the public who is not a respondent/licensee or applicant or complainant wishes to address the Board on a matter that appears on the agenda, you will be asked to speak during the Call to the Public. If you want to address the Board on an issue not on the agenda, you will also be asked to speak during the Call to the Public. All those wishing to speak should fill out a speaker form and give it to a staff member.

**4. REVIEW, CONSIDERATION AND APPROVAL OF MINUTES**

A. December 1, 2018 Open Session

**MOTION:** Dr. Maitem moved to approve the minutes. Dr. Erbstoesser seconded.  
**VOICE VOTE:** Motion carried unanimously.

B. August 11, 2018 Executive Session

**MOTION:** Dr. Maitem moved to approve the minutes with an amendment for Dr. Maitem's name spelled incorrectly. Dr. Erbstoesser seconded.  
**VOICE VOTE:** Motion carried unanimously.

C. September 15, 2018 Executive Session

**MOTION:** Dr. Maitem moved to approve the minutes with an amendment for Dr. Maitem's name spelled incorrectly. Dr. Erbstoesser seconded.  
**VOICE VOTE:** Motion carried unanimously.

D. October 20, 2018 Executive Session

Continued

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

A. Caren Lynn Borjeson, DO DO-18-0044A License No. 3117

Dr. Cunningham recused himself. Dr. Maitem stated that he has a working relationship with the Respondent but felt he could be objective.

The Respondent was present with attorney Paul Giancola. Complainants D.C. and L.C. were present with attorney Paul Friedman. All were sworn in by the court reporter. At the request of the Board, the Respondent stated her education and training. The Medical Consultant reviewed the Outside Medical Consultants review. The case was opened after receiving notice of a medical malpractice settlement which alleged negligent laparoscopic cholecystectomy and appendectomy with delayed diagnosis of bowel perforation with multiple surgeries, hospitalizations and a prolonged recovery.

The Respondent stated she recommended no surgical intervention when she initially saw the patient. Respondent asked the patient to consider dietary change and exercise. The patient returned six (6) months later requesting the surgery. Dr. Cammarata assisted the Respondent during surgery. Respondent showed a diagram of the surgical area and explained the procedure. The internist felt the patient was ready for discharge on Monday. The Respondent felt the patient should stay an extra day. The patient decompensated late Monday night. A CT scan showed a perforation of the duodenum. The Respondent showed a picture of the perforation with the NG tube coming out of the duodenum. The patient was taken back to surgery for an omental patch. The patient was sent back to the ICU. The patient was thought to have a cerebral bleed and was transferred to JCL North Mountain. The Respondent was not on staff so surgical care was performed by Valley Surgical. The Respondent obtained privileges at JCL. A repeat CT scan showed a leak. Respondent asked Valley Surgical to help her with the surgery. Respondent states Dr. Rodriguez asked if she would like him to be the primary surgeon and she agreed. The Respondent states Dr. Rodriguez waived the lap sponge count and she felt uncomfortable with this so she asked the scrub tech for a sponge count which was done. The Respondent waited for the X-ray and the radiologist read it as normal. After a second CT scan the patient returned to surgery to remove a sponge. Respondent followed up with patient during extended recovery.

The Respondent's attorney made a statement that the Respondent did everything within standards. Respondent has recently passed boards again.

The Respondent answered the Board’s questions.

L.C. made a statement, she would like the Board to look at the facts and get to the bottom of this. D.C. read a statement about Respondent being incompetent with a lack of knowledge of the procedure. His wife’s health was good before surgery. She had to relearn how to walk, speak and eat. D.C. does not want this to happen to anyone else. D.C. answered the Boards questions and stated that L.C. was in very much pain.

Dr. Friedman requests the Board to review the deposition of the radiologist.

Mr. Landau moved to enter Executive Session for legal advice. Dr. Maitem seconded. The Board entered Executive Session at 9:37 a.m. and returned to Open Session at 9:50 a.m.

Dr. Friedman made a final statement and thanked the Board for hearing this case. He feels the Respondent did not respond to the patient in a timely manner. Dr. Friedman referred to information in the deposition documents.

Mr. Giancola made a final statement. This case came to the Board as a malpractice case. The Respondent elected to settle the case.

The Board had a discussion.

**MOTION:** Mr. Landau moved for violation of ARS 32-1854(6)(38) for failure to recognize subsequent to surgery the decompensating nature of the patient and Respondent did not take appropriate action to treat the patient’s complications post surgically. Dr. Erbstoesser seconded.

**AMENDMENT:** Mr. Landau changed appropriate action to timely intervention. Dr. Erbstoesser approved.

**ROLL CALL VOTE:** The motion carried 3-1.

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

**MOTION:** Mr. Landau moved for a disciplinary administrative warning. Dr. Maitem seconded.

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

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Maitem	Dr. Reiss	Dr. Spiekerman
YES	4		X	X	X	X	
NO	0						
ABSTAIN/RECUSE	1	X					
ABSENT	1						X

**MOTION:** Mr. Landau moved for a non-disciplinary Letter of Concern for failing to recognize a retained lap sponge. Dr. Maitem seconded.

**VOICE VOTE:** The motion carried unanimously.

The Board recessed for a break at 10:41 a.m. and returned to Open Session at 10:49 a.m.

B. Mary Darin Janikowski, DO DO-17-0191A License No. 2596

The Respondent was not present but her attorney, D’Arcy Downs-Vollbracht was present to represent her and was sworn in by the court reporter. The Investigator reviewed the case. The complaint alleged failure to query the CSPMP before certifying patients for the medical marijuana program.

The attorney stated the Respondent worked at a group practice with five (5) physicians. The group utilized one (1) registration to query the PMP. The practice manager did not understand that each physician is required to have their own log in.

The Respondent’s practice with the group was pain management and she was unfamiliar with medical marijuana as a general rule as to the Federal Government and VA do not acknowledge it the same way. The Respondent voluntarily took a PACE course in California, the weekend of October 18, 2017 on prescribing and record keeping.

Respondent has stopped actively practicing medicine on April 1, 2018 due to her illness. If she goes back into practice she will not practice pain management and will not prescribe medical marijuana.

Dr. Maitem moved to enter Executive Session for legal advice. Dr. Reiss seconded. The Board entered Executive Session at 11:07 a.m. and returned to Open Session at 11:13 a.m.

Dr. Maitem moved to enter Executive Session for medical information. Mr. Landau seconded. The Board entered Executive Session at 11:14 a.m. and returned to Open Session at 11:21 a.m.

**MOTION:** Mr. Landau moved for violation of ARS 32-1854(35)(39) state rule applicable to the practice of medicine, specifically certifying patients for medical marijuana where there was a lack of the necessary examination and where the information provided showed medical marijuana patients should not be certified with inconsistencies for drug screens and prescribing benzodiazepines and opioids concurrently to patients and for failure to check the CSPMP. Dr. Maitem seconded.

**VOICE VOTE:** The motion carried unanimously.

**MOTION:** Mr. Landau moved for a practice restriction to prohibit certifying patients for medical marijuana and further, Respondent may return to the Board to ask the restriction be lifted and undergo a fitness for duty examination as approved by the Executive Director.

**ROLL CALL VOTE:** The 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	0						
ABSTAIN/RECUSE	0						
ABSENT	1						X

C. Rex Dale Cooley, DO DO-18-0026A License No. 3733

The Respondent was present with attorney Tony Langan 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. The complaint alleged failure to diagnose left leg compartment syndrome with subsequent partial left foot amputation.

Respondent made a statement that the patient fell at home but waited 3 days before going to see him. During the exam the patient had full knee movement without pain. Respondent stated the patient did not have compartment syndrome when initially seen by him.

During the patient’s hospital stay of three (3) days, he was up and walking. He was then transferred to rehab. Respondent was asked to re-evaluate the patient after he was re-admitted to acute care. Another general surgeon was consulted to see the patient and took him to surgery where the patient developed an infection later. The general surgeon took over the case.

**MOTION:** Dr. Maitem moved for dismissal. Dr. Erbstoesser seconded.

**VOICE VOTE:** The motion carried unanimously.

The Board recessed for a break at 12:04 p.m. and returned to Open Session at 12:06 p.m.

D. Andrew Jay Colman, DO DO-18-0087A License No. 1839

Continued

E. Victor Kissil, DO DO-18-0148A License No. 3735

Continued

F. Narinder Kaur Brar, DO DO-18-0017A License No. 4368

Continued

G. John Nicholas Gietzen, DO DO-17-0201A License No. 4158

The Respondent was not present. Amber Brake, Executive Director, stated the attorney had informed the Board that the Respondent will not be participating in the Investigative Hearing and is requesting a formal hearing.

**MOTION:** Mr. Landau moved the case to Formal Hearing for adjudication. Dr. Maitem seconded.

**ROLL CALL VOTE:** The motion carried 5-0.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Maitem	Dr. Reiss	Dr. Spiekerman
YES	5	X	X	X	X	X	
NO	0						
ABSTAIN/RECUSE	0						
ABSENT	1						X

H. Kevin Andrew Kline, DO DO-17-0077A License No. 006727

The Respondent was not present.

**MOTION:** Mr. Landau moved the case to Formal Hearing for adjudication. Dr. Reiss seconded.

**ROLL CALL VOTE:** The motion carried 5-0.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Maitem	Dr. Reiss	Dr. Spiekerman
YES	5	X	X	X	X	X	
NO	0						
ABSTAIN/RECUSE	0						
ABSENT	1						X

I. David Lavon Payne, DO DO-17-0292A License No. 1640

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 case.

The Board asked the Respondent if he completed the evaluations from the Board Order dated October 20, 2018. The Respondent stated he has not.

The Respondent is required to complete the Board Order and return to the March 16, 2019 meeting. Respondent may contact the Executive Director for a list of neuropsychologists.

**MOTION:** Dr. Cunningham moved for a forty-five (45) day extension from the date of the board meeting. Dr. Maitem seconded.

**VOICE VOTE:** The motion carried unanimously.

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

1. ED & Financial Report

Ms. Brake provided the Board with an update.

2. FSMB Annual Meeting

Scheduled for April 25-27, 2019

**MOTION:** Mr. Landau moved for three (3) Board members to attend. Dr. Cunningham seconded.

**VOICE VOTE:** The motion carried unanimously.

3. Operational Update

Ms. Brake provided the Board with an update.

4. Imposter Proposed Legislation

The Executive Director reviewed the information regarding primary source versus secondary source.

5. Legislative Update SB 1029 Data Waiver

There was a change that occurred in the proposal and the Executive Director is requesting the Board for approval to work with Lisa Viallarrol about the change in the bill.

6. FSMB Artificial Intelligence Summit presentations

The Board reviewed the presentation

**Cases will be called after 1:00 p.m.**

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

J. Jamison Mark Foster, DO DO-17-0106A License No. 006198

Continued

K. Brian Scott Rizzo, DO DO-18-0103A License No. 3597

The Respondent was present with attorney Paul Giancola and was sworn in by the court reporter. Dr. Maitem stated he has a working relationship with the Respondent but feels he could remain objective. 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 charging for a service not rendered, FMLA paperwork delay and dropping her as a patient after seeking a second opinion.

Respondent stated he did not drop the patient from the office. He is not sure why the patient said he did. Respondent states the patient has severe anxiety. The back office manager communicated with the patient for appointments. Respondent was concerned with the patient's case and told the manager to "get her in".

During the initial appointment Respondent wanted to open up her ear to see why there was fluid in it. He did a CT scan. He did enter into the computer that she needed a tube in her ear. The patient decided against surgery and the Respondent failed to change the computer for the billing charge.

The Respondent answered the Board's questions.

The Board is concerned that the Respondent did not communicate well with the patient.

**MOTION:** Mr. Landau moved for dismissal. Dr. Maitem seconded.

**VOICE VOTE:** The motion carried unanimously.

L. Michael David Goodman, DO DO-17-0247B License No. 3786

Continued

M. Mark Brian Grant, DO DO-17-0085A License No. 1609

The Respondent was present with office manager Faith and both were 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. The Respondent returns for follow up of his CPEP evaluation and neuropsychological evaluation.

The Board asked the Respondent why he would prescribe benzodiazepines and opioids together yet he always explained the danger of benzodiazepines and opioids to his patients.

Respondent stated some of his patients needed both. He had discussions with his patients on how to take them. Most of his patients are elderly and have anxiety and sleep issues. Respondent stated he gave low doses of both medications. He works with them the best he can.

The Board read his opening statement.

Respondent states CPEP could not have assessed him correctly with only one (1) face to face with him for one (1) hour. This is not enough time in his view. CPEP did not ask specific questions relating to his practice according to the Respondent.

Dr. Reiss moved to enter Executive Session for legal advice. Dr. Maitem seconded. The Board entered Executive Session at 1:52 p.m. and returned to Open Session at 2:04 p.m.

The Respondent answered the Board's questions.

Dr. Cunningham moved to enter Executive Session for medical information. Dr. Maitem seconded. The Board entered Executive Session at 2:15 p.m. and returned to Open Session at 2:19 p.m.

**MOTION:** Mr. Landau moved for violation of A.R.S. 32-1854 (5)(6)(21)(36)(38) and find based on the following information, adopt in the motion the proposed standard of care that is in the medical consultant report, December 6, 2017 page 12-13, in a number of cases reviewed urine drug screens were inconsistent but Respondent continued to prescribe controlled substances. Patients were referred to specialists but that information was not in the patient medical charts. Respondent prescribed opioids and benzodiazepines at the same time but he warned patients about potential dangers. Pharmacy audits were not included in the medical records. Medical records were incomplete. Per the CPEP report and the outside medical consultant's report. Dr. Cunningham seconded.

**ROLL CALL VOTE:** The motion carried 5-0

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Maitem	Dr. Reiss	Dr. Spiekerman
YES	5	X	X	X	X	X	
NO	0						
ABSTAIN/RECUSE	0						
ABSENT	1						X

**AMENDMENT:** Mr. Landau changed violation of ARS 32-1854(38) to (39). Dr. Cunningham approved.

**MOTION:** Mr. Landau moved for an emergency action and for the safety of the public to summarily suspend Respondents license and refer the case to a formal hearing. Dr. Maitem seconded.

**ROLL CALL VOTE:** The 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	0						
ABSTAIN/RECUSE	0						
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. Brian Joseph Coates, DO DO-18-0172A License No. 005837

The Respondent was present to update the Board. Respondent is to come back in 6 months for an update.

**MOTION:** Mr. Landau moved to enter into a consent agreement. Dr. Cunningham seconded.

**ROLL CALL VOTE:** The motion carried.

B. Kathleen Ann Cahoon, DO DO-18-0106A License No. 4279

The Respondent was not present. Respondent did not sign the proposed Board Order dated October 4, 2018.

**MOTION:** Mr. Landau moved to send case to formal hearing for failure to comply with the Board Order issued on October 4, 2018. Dr. Maitem seconded.

**ROLL CALL VOTE:** The motion carried 5-0.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Maitem	Dr. Reiss	Dr. Spiekerman
YES	5	X	X	X	X	X	
NO	0						
ABSTAIN/RECUSE	0						
ABSENT	1						X

C. E. Griffin Cipolla, DO DO-18-0101A License No. 2811

Continued (As merged with Case DO-18-0125)

**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. Amy Elizabeth Daliman, DO DO-18-0116A License No. 007538

The Respondent was present to update the Board.

**10. REVIEW, CONSIDERATION AND POSSIBLE ACTION DISCUSSION, relating to case DO-15-0153, and the State's Motion to deem.**

A. Rose M Gonzalez-Weaver, DO DO-15-0153A License No. 2685

The Respondent was not present. John Tellier was present telephonically for the AAG. Jeanne Galvin was present on behalf of the State of Arizona.

**MOTION:** Dr. Cunningham moved to grant the State to deem the allegations admitted. Dr. Reiss seconded

**VOICE VOTE:** The motion carried unanimously.

**MOTION:** Dr. Reiss moved to adopt the Finding of Fact and Conclusions of law in the complaint dated July 3, 2018. Dr. Cunningham seconded.

**ROLL CALL VOTE:** The motion carried 5-0.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Maitem	Dr. Reiss	Dr. Spiekerman
YES	5	X	X	X	X	X	
NO	0						
ABSTAIN/RECUSE	0						
ABSENT	1						X

**MOTION:** Dr. Cunningham moved to adopt the Conclusions of law in the complaint dated July 3, 2018. Dr. Reiss seconded.

**ROLL CALL VOTE:** The motion carried 5-0.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Maitem	Dr. Reiss	Dr. Spiekerman
YES	5	X	X	X	X	X	
NO	0						
ABSTAIN/RECUSE	0						
ABSENT	1						X

**MOTION:** Dr. Cunningham moved for revocation of license. Dr. Reiss seconded.

**ROLL CALL VOTE:** The motion carried 5-0.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Maitem	Dr. Reiss	Dr. Spiekerman
YES	5	X	X	X	X	X	
NO	0						
ABSTAIN/RECUSE	0						
ABSENT	1						X

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

**12. ELECTION OF OFFICERS PURSUANT TO A.R.S. § 32-1802(B).**

A. President

**MOTION:** Mr. Landau nominated Dr. Cunningham for President of the Board. Dr. Reiss seconded.

**VOICE VOTE:** The motion carried unanimously.

B. Vice-President

**MOTION:** Dr. Cunningham nominated Mr. Landau for Vice-President of the Board. Dr. Maitem seconded.  
**VOICE VOTE:** The motion carried unanimously.

**13. ADJOURNMENT**

The Board adjourned at 3:21 p.m.

DRAFT