

DRAFT MINUTES
BOARD OF OSTEOPATHIC MEDICINE
May 11, 2012

Doubletree Tampa Airport Westshore
4500 West Cypress Street
Tampa, FL 33607
(813) 879-4800

Friday, May 11, 2012

The meeting was called to order by Dr. Burns, Chair, at 8:05 am. Those present for all or part of the meeting included the following:

MEMBERS PRESENT:

Ronald Burns, D.O., Chair
Joel Rose, D.O.
Anna Hayden, D.O.
James St Louis, D.O.

STAFF PRESENT:

Anthony Jusevitch, Executive Director
Christy Robinson, Program Operations Administrator
Betty Bates, Regulatory Specialist II
Donna McNulty, Esq. – Board Counsel
Michael Lawrence, Esq. – DOH Prosecutor

MEMBERS ABSENT:

Rina Malan, Vice Chair, Consumer
Member (excused)
Bridget Bellingar, DO (excused)

OTHERS PRESENT:

Judy Rivenbark, MD, PRN

COURT REPORTER:

Please note that the meeting minutes reflect the actual order that agenda items were discussed during the meeting and may differ from the agenda outline.

PLEDGE OF ALLEGIANCE AND PLEDGE OF OSTEOPATHIC COMMITMENT

PROSECUTION SERVICES REPORT

Mr. Lawrence provided an overview of the current caseload statistics.

GENERAL BUSINESS / CORRESPONDENCE

Tab 30 – Correspondence from Florida Society of Anesthesiologists, Inc.

There was no representative from the Florida Society of Anesthesiologists, Inc. present. Ms. McNulty provided an overview of the concerns expressed in the correspondence. No action was taken on this item.

Tab 31 – Correspondence from FSMB RE: Coalition to Address Medical Licensure

Dr. Burns provided comments on this issue. Additional discussion of this item can be found under the Board Chair report in the minutes.

REVIEW AND APPROVAL OF MINUTES

Tab 1 - Minutes from February 17-18, 2012 Board Meeting

Action Taken: Dr. Hayden moved to approve the minutes as presented. Dr. St. Louis seconded the motion, which passed unanimously.

Tab 2 - Minutes from March 26, 2012 Conference Call Meeting

Action Taken: Dr. Hayden moved to approve the minutes as presented. Dr. St. Louis seconded the motion, which passed unanimously.

PROBATION AND COMPLIANCE REVIEW

Tab 3 – Regan Burke, D.O. – Required Appearance

Dr. Burke was present without counsel. Dr. Rivenbark with PRN was present.

Action Taken: Dr. Rose moved to approve the appearance and continue with the current payment and appearance plan. Dr. Hayden seconded the motion, which passed unanimously.

Tab 24 – Joe Morgan, D.O. – Request for Modification of Final Order and Appearance with Monitor

Dr. Morgan was present with his monitor, Dr. Varidin. Dr. Morgan also submitted his practice plan for review and approval.

Action Taken: Dr. Hayden moved to approve the practice plan. Dr. St. Louis seconded the motion, which passed unanimously.

Action Taken: Dr. St. Louis moved to approve the monitor. Dr. Rose seconded the motion, which passed unanimously.

The Board discussed Dr. Morgan's petition for modification of the final order which would allow him to prescribe certain hormone drugs. After discussion, Dr. Burns moved to deny the petition for modification of final order. Dr. Rose seconded the motion. Dr. Morgan asked the Board to consider allowing him to withdraw the petition rather than denying it. Dr. Burns then withdrew his motion.

Action Taken: Dr. St. Louis moved to allow the withdrawal of the petition. Dr. Rose seconded the motion, which passed unanimously.

Tab 25 – Mark Kantzler, D.O. – Appearance for Termination of Probation

Dr. Kantzler was present without counsel. Dr. Rivenbark with PRN was present.

Action Taken: Dr. Rose moved to accept the appearance and termination of probation. Dr. Hayden seconded the motion, which passed unanimously.

DISCIPLINARY CASES

Tab 4 – Paul Arnold, D.O. – DOH Case #2007-18951 – Settlement Agreement

Allegations of Complaint:

Dr. Arnold was present and represented by Bruce Stanley, Esq. Mr. Lawrence represented the Department and presented the case to the Board.

Action Taken: Dr. St. Louis moved to reject the Settlement Agreement as presented. Dr. Burns seconded the motion which carried unanimously. Dr. Rose moved to offer a counter Settlement Agreement. The motion died with no second.

Additional Action Taken: After additional discussion, Dr. St. Louis moved to vacate the previous rejection. Dr. Burns seconded the motion, which passed unanimously. Dr. Burns then moved to adopt the original settlement agreement with an amendment to clarify the records keeping course was the one offered by the FMA:

- Reprimand

- \$10,000.00 fine
- \$ 5750.00 in costs
- Completion of the “Prescribing controlled Drugs: Critical Issues and common pitfalls of Prescribing” course offered by the University of Florida
- Completion of the medical records course offered by the FMA

Dr. Hayden seconded the motion, which passed unanimously.

Tab 5 – Arthur Magrann, III, D.O. – DOH Case #2008-14078 & 2008-22239 - Settlement Agreement

Allegations of Complaint:

Dr. Magrann was present without counsel. Mr. Lawrence represented the Department and presented the case to the Board.

Action Taken: Dr. Rose moved to accept the Settlement Agreement as presented:

- Reprimand
- \$5000.00 fine
- \$6632.63 in costs

Dr. Hayden seconded the motion, which passed unanimously.

Tab 6 – Stewart B. Foreman, D.O. – DOH Case #2010-05220 - Settlement Agreement

Allegations of Complaint:

Dr. Foreman was present and represented by William Furlow, Esq. Mr. Lawrence represented the Department and presented the case to the Board.

Action Taken: After much discussion, Dr. Rose moved to reject the Settlement Agreement as presented. Dr. Burns seconded the motion which passed unanimously.

Additional Action Taken: Dr. Rose moved to offer a counter agreement of revocation. Dr. St. Louis seconded the motion, which passed unanimously.

The respondent was given seven days to accept or reject the counter offer.

Tab 7 - Erling Oksenholt, D.O. – DOH Case #2009-03853 – Settlement Agreement

Allegations of Complaint:

Dr. Oksenholt was not present or required to attend. Mr. Lawrence represented the Department and presented the case to the Board.

Action Taken: Dr. Hayden moved to accept the Settlement Agreement as presented:

- Letter of Concern
- \$750.00 fine
- \$1379.55 in costs
- Completion of 10 hours of continuing medical education, to include 2 hours in prevention of medical errors, 1 hour in Florida Laws & Rules and 1 hour in laws & rules regarding controlled substances

Dr. St. Louis seconded the motion, which passed unanimously.

Tab 8 Stewart Kopp, D.O. – DOH Case #2010-12511 – Settlement Agreement

This item was pulled from agenda due to lack of a quorum.

Tab 9 Glenn David Zimmet, D.O. – DOH Case #2010-13761 – Settlement Agreement

Allegations of Complaint:

Dr. Zimmet was present and represented by Patrick Telan, Esq. Mr. Lawrence represented the Department and presented the case to the Board.

Action Taken: Dr. St. Louis moved to approve the Settlement Agreement as presented:

- Reprimand
- \$5000.00 fine
- \$2627.06 in costs
- Completion of 6 hours of continuing medical education in risk management

Dr. Hayden seconded the motion, which passed unanimously.

Tab 10 Gary Blumberg, D.O. – DOH Case #2009-23127 – Settlement Agreement

This item was pulled from agenda due to lack of a quorum.

Tab 11 Sheryl Lavender, D.O. – DOH Case #2010-11056 – Settlement Agreement

This item was pulled from agenda due to lack of a quorum.

Tab 12 Andrew M. Guidry, D.O. – DOH Case #2009-16025 – Informal Hearing

This item was pulled from agenda.

Tab 13 – James P. Oakes, D.O. – DOH Case #2011-00257 – Motion for Determination of Waiver Following Hearing

This item was pulled from agenda due to lack of a quorum.

Tab 14 – Joseph Deluca, D.O. – DOH Case #2009-17637 – Motion for Determination of Waiver Following Hearing

Allegations of Complaint:

Dr. Deluca was not present or represented by counsel. Mr. Lawrence represented the Department and presented the case to the Board.

Dr. St. Louis moved to accept the agenda materials and investigative report as presented into the record as evidence. Dr. Burns seconded the motion, which passed unanimously. Dr. Rose moved to find that the respondent was properly served and waived their rights to a hearing. Dr. Hayden seconded the motion, which passed unanimously. Dr. Burns moved to adopt the findings of fact as presented in the administrative complaint. Dr. Hayden seconded the motion, which passed unanimously. Dr. Rose moved to adopt the conclusions of law as presented in the Administrative Complaint. Dr. Hayden seconded the motion, which passed unanimously.

Action Taken: After discussion, Dr. Rose moved to revoke the license. Dr. St. Louis seconded the motion, which passed unanimously.

Additional Action Taken: Dr. Burns moved to assess costs in the amount of \$203.80. Dr. Rose seconded the motion, which passed unanimously.

Tab 15 – Gordon F. Bunker, D.O. – DOH Case #2009-23552 – Motion for Determination of Waiver Following Hearing

Allegations of Complaint:

Dr. Bunker was not present or represented by counsel. Mr. Lawrence represented the Department and presented the case to the Board.

Dr. Hayden moved to accept the agenda materials and investigative report as presented into the record as evidence. Dr. St. Louis seconded the motion, which passed unanimously. Dr. Hayden moved to find

that the respondent was properly served and waived their rights to a hearing. Dr. Rose seconded the motion, which passed unanimously. Dr. Hayden moved to adopt the findings of fact as presented in the administrative complaint. Dr. St. Louis seconded the motion, which passed unanimously. Dr. Hayden moved to adopt the conclusions of law as presented in the Administrative Complaint. Dr. St. Louis seconded the motion, which passed unanimously.

Action Taken: Dr. St. Louis moved to impose the following penalty:

- Suspension of licensure for 3 years with the Board reserving jurisdiction to impose probation terms at the time of reinstatement

Dr. Rose seconded the motion, which passed unanimously.

Additional Action Taken: Dr. Burns moved assess costs in the amount of \$1784.43 to be paid within 60 days from the final order. Dr. St. Louis seconded the motion, which passed unanimously.

Tab 16 – Christopher G. Wayne, D.O. – DOH Case #2010-13491 – Motion for Determination of Waiver Following Hearing

This item was pulled from the agenda.

Tab 17 – Gary L. Waterman, D.O. – DOH Case #2011-04575 – Motion for Determination of Waiver Following Hearing

This item was pulled from the agenda.

Tab 18 – Christine Rose Chico, D.O. – DOH Case #2001-13668 – Motion for Determination of Waiver Following Hearing

This item was pulled from the agenda due to lack of a quorum.

Tab 19 – Paul Glusman, D.O. – DOH Case #2011-18310, 2011-12346, 2011-00665 & 2010-22312 – Voluntary Relinquishment

Allegations of Complaint:

Dr. Glusman was not present or represented by counsel. Mr. Lawrence represented the Department and presented the case to the Board.

Action Taken: Dr. St. Louis moved to accept the voluntary relinquishment as presented. Dr. Rose seconded the motion, which passed unanimously.

Tab 20 – Judith E. Kline, D.O. – DOH Case #2008-08495 – Voluntary Relinquishment

Allegations of Complaint:

Dr. Kline was not present but was represented by Roy Glass, Esq. Mr. Lawrence represented the Department and presented the case to the Board.

Action Taken: Dr. Rose moved to accept the voluntary relinquishment as presented. Dr. St. Louis seconded the motion, which passed unanimously.

MISCELLANEOUS DISCIPLINARY MATTERS

Tab 26 – Lionel Bison, D.O. - DOH Case #2010-08628 - Motion to Vacate Final Order

Dr. Bison was not present or required to appear. Mr. Lawrence summarized the case and advised the Department should not have filed the complaint against the respondent. He asked the Board to vacate the previous Final Order.

Action Taken: Dr. Burns moved to vacate the Final Order. Dr. Rose seconded the motion, which passed unanimously.

Additional Action Taken: Dr. Burns moved to dismiss the administrative complaint. Dr. Hayden seconded the motion, which passed unanimously.

LICENSURE APPEARANCES

Tab 21 – Dana Sean Vitale, D.O.

Dr. Vitale was present without counsel. Dr. Vitale was required to appear to discuss his application and general court martial.

Action Taken: After discussion, Dr. Burns moved to approve the application for licensure. Dr. St. Louis seconded the motion, which passed unanimously.

Tab 27 – Jason Castro, D.O.

Dr. Castro was present without counsel. Dr. Rivenbark from PRN was present. Dr. Castro was required to appear to discuss his application, termination from a training program, criminal history and participation in PRN.

Action Taken: After discussion, Dr. Burns moved to approve the application for licensure. Dr. St. Louis seconded the motion, which passed unanimously.

Tab 28 – Sameea Husain, D.O.

Dr. Husain was present without counsel. Dr. Husain was asked to appear to discuss her application, criminal history and participation in a treatment program. Dr. Rivenbark was asked to provide comments. After discussion, Dr. Husain agreed to waive the 90 day requirement for action on her application.

Action Taken: Dr. Hayden moved to require a PRN evaluation and compliance with all recommendations of the evaluation; and delegate authority to the Chair to review the PRN evaluation and either approve the issuance of the license or require an appearance. Dr. St. Louis seconded the motion, which passed unanimously.

Tab 29 – Edward Kirsch, D.O.

Dr. Kirsch was present without counsel. Dr. Kirsch was asked to appear to discuss his application, criminal history, disciplinary action and participation in a treatment program. Dr. Rivenbark was asked to provide comments. After discussion, Dr. Kirsch agreed to waive the 90 day requirement for action on his application.

Action Taken: Dr. Burns moved to require a PRN evaluation and compliance with all recommendations of the evaluation; and delegate authority to the Chair to review the PRN evaluation and either approve the issuance of the license or require an appearance. Dr. Hayden seconded the motion, which passed unanimously.

TRAINING APPLICATION APPEARANCES

Tab 22 – Trevor Butner, D.O.

Dr. Butner was present without counsel. Dr. Butner was required to appear before the Board to discuss his application, suspension from medical school and criminal history. Dr. Rivenbark indicated that Dr. Butner had recently signed a PRN contract.

Action Taken: Dr. St. Louis moved to approve the application for a training license. Dr. Rose seconded the motion, which passed unanimously.

No Tab – Tzvi Doron, D.O.

Dr. Doron was present without counsel. Dr. Doron was required to appear to discuss his application and affirmative answer to a health history question. After discussion, Dr. Doron agreed to waive the 90 day requirement for action on his application.

Action Taken: Dr. Rose moved to require a PRN evaluation and compliance with all recommendations of the evaluation; and delegate authority to the Chair to review the PRN evaluation and either approve the issuance of the license or require an appearance. Dr. Hayden seconded the motion, which passed unanimously.

REQUEST TO WITHDRAW APPLICATION

Tab 23 – John Lange, D.O.

This item was pulled from the agenda.

PRESENTATION OF AWARDS

Dr. Hayden presented awards to Jim Andriole, DO, PCP Chair and Dr. St. Louis for their dedication and work on the Board/Probable Cause Panel. The awards were originally presented during Dr. Hayden's last meeting as Chair but the recipients were not present during that meeting.

BOARD CHAIR REPORT – Ronald Burns, DO

Dr. Burns thanked FOMA for providing the Board with a booth during the annual convention.

Dr. Burns also thanked the staff and other members for all of their hard work.

There was discussion about the FSMB annual meeting, specifically about the possibility of national licensure legislation. Dr. Andriole, FSMB Treasurer, indicated the FSMB was opposed to the creation of a national license and would continue to monitor this issue nationally.

GENERAL BUSINESS - continued

Tab 31 - Correspondence from FSMB Re: Coalition to Address Medical Licensure

Tab 32 - Report on American Telemedicine Association Congressional Briefing on State Medical Licensure Reform

Tabs 31 and 32 were discussed during the Board Chair's report (above).

Tab 33 - FSMB Annual Meeting Overview

Informational

Tab 34 - 2013 Meeting Dates/Location Discussion

It was the consensus of the Board to have their 2013 meetings all day Friday on the following dates/locations:

- Friday, February 8, 2013 in Tampa
- Friday, May 17, 2013 in Orlando
- Friday, August 23, 2013 in West Palm Beach or Ft Lauderdale area
- Friday, November 15, 2013 in Tampa or Orlando

BOARD COUNSEL REPORT AND RULES REVIEW / DISCUSSION – Donna McNulty, Esq.

Tab 35 – 64B15-13.003 – Proof of Completion of Continuing Medical Education Hours

Action Taken: Dr. St. Louis moved to approve the proposed language and proceed with rulemaking as appropriate. Dr. Hayden seconded the motion, which passed unanimously.

Action on SERC Questions: Dr. Burns moved the proposed changes would not directly or indirectly increase regulatory costs to any entity in excess of \$200,000 in the aggregate within one year after implementation and no SERC was needed. Dr. Hayden seconded the motion, which passed unanimously. Dr. Burns moved that the rule would not require legislative ratification. Dr. Hayden seconded the motion, which passed unanimously.

Tab 37 – 64B15-19.008 – Mediation

Action Taken: There was a motion to approve the language and proceed with rulemaking as appropriate. The motion was seconded and passed unanimously.

Action on SERC Questions: Dr. Burns moved the proposed changes would not directly or indirectly increase regulatory costs to any entity in excess of \$200,000 in the aggregate within one year after implementation and no SERC was needed. Dr. Hayden seconded the motion, which passed unanimously. Dr. Burns moved that the rule would not require legislative ratification. Dr. Hayden seconded the motion, which passed unanimously.

Tab 36 – 64B15-19.007 – Citations

Action Taken: Dr. Rose moved to approve the language with the following amendments and proceed with rulemaking as appropriate:

- (3)(d) – change the fine to \$75.00
- (3)(d) - delete “and shall be required to take one additional hour of continuing education for each hour not completed or completed late”
- (3)(d) – add clarification that the hours taken cannot count toward the current biennium
- (5) - delete

Dr. Burns seconded the motion, which passed unanimously.

Action on SERC Questions: Dr. Burns moved the proposed changes would not directly or indirectly increase regulatory costs to any entity in excess of \$200,000 in the aggregate within one year after implementation and no SERC was needed. Dr. Hayden seconded the motion, which passed unanimously. Dr. Burns moved that the rule would not require legislative ratification. Dr. Rose seconded the motion, which passed unanimously.

No Tab – Annual Regulatory Plan for 2012-2013 Fiscal Year

Action Taken: There was a motion to approve the annual regulatory plan. Dr. Hayden seconded the motion, which passed unanimously.

EXECUTIVE DIRECTOR REPORT –Anthony Jusevitch

No Tab - Legislative Update

Mr. Jusevitch provided an overview of recent legislation of interest.

No Tab - 5 Most Misdiagnosed Cases for Preceding Biennium (64B15-13)

There was discussion about the most common failed diagnoses of/misdiagnosed conditions.

Action Taken: After much discussion, Dr. Burns moved to approve the following 5 conditions/cases and proceed with rulemaking as appropriate:

1. Inappropriate opioid prescribing to patients of undiagnosed psychiatric conditions, addiction and/or diversion.
2. Failure / delay in diagnosing cancer.
3. Wrong site / patient surgery
4. Surgical complications / errors
5. Failure to accurately diagnose cardiac and abdominal conditions

Dr. Hayden seconded the motion, which passed unanimously.

Action on SERC Questions: Dr. Burns moved the proposed changes would not directly or indirectly increase regulatory costs to any entity in excess of \$200,000 in the aggregate within one year after implementation and no SERC was needed. Dr. Hayden seconded the motion, which passed unanimously. Dr. Burns moved that the rule would not require legislative ratification. Dr. Hayden seconded the motion, which passed unanimously.

The Board also asked staff to reach out to known providers of the prevention of medical errors course to advise of the pending changes and ask that they provide examples of these types of cases during the course.

COUNCIL ON PHYSICIAN ASSISTANTS REPORT – Ronald Burns, DO

No report.

ANESTHESIOLOGY ASSISTANTS COMMITTEE REPORT – Ronald Burns, DO

No report.

BUDGET LIAISON REPORT – Rina Malan

No report.

PHARMACISTS FORMULARY COMMITTEE REPORT – Joel Rose, DO

No report.

UNLICENSED ACTIVITY LIAISON REPORT – James St. Louis, DO

No report.

OLD BUSINESS

NEW BUSINESS

Dr. Hayden indicated she represented the Board at the funeral of the Ronald Kaufman, DO. Staff was asked to send a letter to Dr. Kaufman's wife expressing condolences on behalf of the Board and staff.

There being no further business the meeting adjourned at 2:00.