

FLORIDA | Board *of* Osteopathic Medicine

Meeting Minutes
November 18, 2016
9:00 a.m.

Renaissance Hotel
6677 Sea Harbour Drive
Orlando, Florida 32821
(407) 248-7309



Bridget Bellingar, DO
Chair

Michelle Mendez, DO
Vice-Chair

Kama Monroe
Executive Director

Friday, November 18, 2016

**PLEASE TURN OFF OR PLACE YOUR CELL PHONE ON VIBRATE DURING THE MEETING
THANK YOU.**

Participants in this public meeting should be aware that these proceedings are being recorded and that an audio file of the meeting will be posted to the Board's website.

Meeting will be called to order at 9:00 a.m., or soon thereafter.

CALL TO ORDER: Bridget Bellinger, DO, Chair

The meeting was called to order by Dr. Bridget Bellinger, Chair, at 9:00 a.m. Those present for all or part of the meeting included the following:

ROLL CALL: Amber Greene, Regulatory Supervisor

PLEDGE OF ALLEGIANCE & PLEDGE OF OSTEOPATHIC COMMITMENT:

I pledge to: Provide compassionate, quality care to my patients; Partner with them to promote health; Display integrity and professionalism throughout my career; Advance the philosophy, practice and science of osteopathic medicine; Continue life-long learning; Support my profession with loyalty in action, word and deed; and Live each day as an example of what an osteopathic physician should be.

DISCIPLINARY CASES:

Tab 1 – Robert John Meek, D.O. – Settlement Agreement Case No. 2014-05789
PCP: Moran/Hayden

Respondent was present and sworn in. Respondent was not represented by counsel.

Dr. Anna Hayden was recused due to participation on the probable cause panel.

Matthew Witters represented the Department and presented the case to the Board. Allegations of the Administrative Complaint: violation of section 456.072(1)(kk), FS (2013), by being terminated from the state Medicaid program pursuant to s. 409.913, any other state Medicaid program, or the federal medicare program, unless eligibility to participate in the program from which the practitioner was terminated has been restored.

The terms of the Orally Amended Settlement Agreement are: appearance; letter of concern; fine in the amount of \$1000.00 payable within 135 days from the filing of final order; reimbursement of costs, respondent agrees to pay the Department for any and all costs incurred in the investigation and prosecution of this case. The current cost are \$403.44 .The costs are payable within 135 days of filing of final order.

Motion: by Dr. Rose, seconded by Dr. Mendez, to accept the orally amended settlement agreement. Motion carried.

Tab 2 – Andrew Aron Seltzer, D.O. – Settlement Agreement Case No. 2014-08399
PCP: Moran/Jansen

Respondent was present and sworn in. Respondent was represented by counsel, Chris Lyon, Esq.

Ms. Jansen was recused due to participation on the probable cause panel.

Mr. Witters represented the Department and presented the case to the Board. Allegations of the Administrative Complaint: Count one-violation of section 456.072(1)(bb), FS (2013), by performing or attempting to perform health care services on the wrong patient, a wrong site procedure, wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition. Count two-violation of section 459.015(1)(s), FS (2013), by performing professional services which have not been duly authorized by the patient or client or his or her legal representative except as provided in s. 743.064, s.766.103, or s.768.13.

The terms of the Settlement Agreement are: appearance; letter of concern; fine in the amount of \$5000.00 payable within 30 days from the filing of final order; reimbursement of costs, respondent agrees to pay the Department for any and all costs incurred in the investigation and prosecution of this case. The current cost are \$2,462.73 .The costs are payable within 30 days of filing of final order.

Tab 3 – David Hicks D.O. – Settlement Agreement Case No. 2014-17074 continued until next meeting

Tab 4 – Barry Jack Kaplan, D.O. – Settlement Agreement Case No.2014-06053
PCP: Moran/Hayden & Moran/Jansen

Respondent was present and sworn in. Respondent was represented by counsel, Josh Bloom, Esq.

Dr. Hayden and Ms. Jansen were recused due to participation on the probable cause panel.

Mr. Witters represented the Department and presented the case to the Board. Allegations of the Administrative Complaint: Count one-violation of section 456.072(1)(q), FS (2011), by violating a lawful order of the department or the board, by failing to comply with a lawfully issued subpoena of the department. Count two- violation of section 459.015(1)(x), FS (2011), by committing

medical malpractice. Count three- violation of section 459.015(1)(o), FS (2011), as defined by Rule 64B15-15.004(1), FAC, by failing to keep legible medical records.

The terms of the Settlement Agreement are: Letter of Concern, Fine in the amount of \$ 5000.00 payable 45 days from filing of final order; Reimbursement of costs, respondent agrees to pay the Department for any and all costs incurred in the investigation and prosecution of this case. The current estimate is \$7,932.18 but the amount will increase after this case goes before the board. The costs are payable within 90 days of filing of final order. Respondent shall complete an 8 hour Quality Medical Record Keeping for Health care Professionals within 12 months of filing of final order. Respondent shall complete 5 hours in Risk Management within 1 year of filing of final order. Respondent shall not perform cosmetic surgery procedures involving any type of incision into the human body until respondent can demonstrate competency in cosmetic surgery.

Motion: by Dr. Rose, seconded by Dr. Mendez, to reject the settlement agreement. Motion carried.

Motion: by Dr. Rose, seconded by Dr. Schwemmer, to revoke the license. Motion carried.

Tab 5 — Trevor Levere Bailey, D.O. – Settlement Agreement Case No.2013-18803
PCP: Andriole/Bellingar

Respondent was present and sworn in. Respondent was represented by counsel, Chris Brown, Esq.

Dr. Bellingar was recused due to participation on the probable cause panel. Dr. Mendez chaired this portion of the meeting.

Mr. Witters represented the Department and presented the case to the Board. Allegations of the Administrative Complaint: Count one-violation of section 459.015(1)(x), FS (2012-2013), by committing medical malpractice by failing to practice medicine in accordance with the level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers. Count two-violation of section 459.015(1)(t), FS (2012-2013), when Respondent prescribed legend drugs, including controlled substances, other than in the course of his professional license. Count three-violation of section 459.015(1)(o), FS (2013-2014), by failing to keep legible medical records that justified the course of treatment of his patient(s).

The terms of the Orally Amended Settlement Agreement are: Reprimand, fine, CE, permanent practice restriction of not prescribing/ordering schedule I & II drugs, probation with set terms.

Motion: by Dr. Mendez, seconded by Dr. Schwemmer, to accept the orally amended settlement agreement. Motion carried. Dr. Hayden opposed.

Tab 6 – Chanun Dustin Park, D.O. – Settlement Agreement Case No.2015-08868
PCP: Andriole/Mendez

Respondent was present and sworn in. Respondent was represented by counsel, Gregory Chaires, Esq.

Dr. Mendez was recused due to participation on the probable cause panel.

Mr. Witters represented the Department and presented the case to the Board. Allegations of the Administrative Complaint: violation of section 459.015(1)(x), FS (2014), by committing medical malpractice as defined in section 456.50(1)(g), FS (2014), as the failure to practice medicine in accordance with the level of care, skill and treatment recognized in general law related to health care licensure.

The terms of the Settlement Agreement are: Fine in the amount of \$5000 payable within 30 days of filing of final order; reimbursement of costs in the amount of \$2544.36 , continuing education to include 2 hours of Prevention of Medication Errors and 4 hours of Anticoagulant Therapy to be completed within 1 year of filing of final order, appearance.

Motion: by Dr. Schwemmer, seconded by Dr. Hayden, to accept the settlement agreement. Motion carried.

Tab 7 – James R. Shelburne, D.O. – Informal – Case No.2015-07249
PCP: Andriole/Mendez

Respondent was not present. Respondent was not represented by counsel.

Dr. Mendez was recused due to participation on the probable cause panel.

Mr. Witters represented the Department and presented the case to the Board. Allegations of the Administrative Complaint: Count one - violation of section 456.072(1)(c), FS (2014), by being convicted or found guilty of or entering a plea of nolo contendere to, regardless of adjudication which is a crime in any jurisdiction which relates to the practice of, or ability to practice a licensee's profession.

Motion: by Dr. Bellingar, seconded by Dr. Rose to find that respondent was properly served and has requested an informal hearing. Motion carried.

Motion: by Dr. Hayden, seconded by Dr. Bellingar to accept the investigative report into evidence for the purposes of imposing a penalty. Motion carried.

Motion: by Dr. Hayden, seconded by Dr. Bellingar, to adopt the findings and facts as set forth in the Administrative Complaint. Motion carried.

Motion: by Dr. Hayden, seconded by Dr. Bellingar, to adopt the conclusions of law set forth in the Administrative Complaint and find that this constitutes a violation of the Pharmacy Practice Act. Motion carried.

Department Recommendations: Revocation

PSU withdrew cost motion.

Motion: by Dr. Hayden, seconded by Dr. Schwemmer to accept the recommendations of the Department. Motion carried.

Tab 8 – Richard A. Proctor, D.O. – Informal – Case No.2011-16767
PCP: Moran/Jansen

Respondent was present. Respondent was represented by counsel, William Furlow, Esq.

Ms. Jansen was recused due to participation on the probable cause panel.

Mr. Witters represented the Department and presented the case to the Board. Allegations of the Administrative Complaint: Count one – count one- violation of section of 459.015(1)(x), FS (2009-2011), count two- violation of section 459.015(1)(t), FS (2009-2011), Count three- Violation of section 459.015(1)(pp), FS (2009-2011) by Rule 64B15-14.005(3), FAC. Count four- violation of section 459.015(1)(o), FS (2009-2011).

Motion: by Dr. Hayden, seconded by Dr. Bellingar, to find that respondent was properly served and has requested an informal hearing. Motion carried.

Motion: by Dr. Hayden, seconded by Dr. Bellingar to accept the investigative report into evidence for the purposes of imposing a penalty. Motion carried.

Motion: by Dr. Hayden, seconded by Dr. Bellingar, to adopt the findings and facts as set forth in the Administrative Complaint. Motion carried.

Motion: by Dr. Hayden, seconded by Dr. Schwemmer, to adopt the conclusions of law set forth in the Administrative Complaint and find that this constitutes a violation of the Pharmacy Practice Act. Motion carried.

Department Recommendations: No recommendation from the Department, board will determine based off disciplinary guidelines.

After discussion the board determined revocation.

PSU withdrew cost motion.

Motion: by Dr. Schwemmer, seconded by Dr. Rose, to accept the revocation. Motion carried.

Tab 9 – Norman Dean Gramstad, D.O.–Voluntary Relinquishment – Case No.2015-31278
PCP: Waived

The Department suggests that the Board entertain a Motion Accepting the Voluntary Relinquishment executed by Respondent in resolution of this case.

Motion: by Dr. Schwemmer, seconded by Dr. Hayden, to accept Voluntary Relinquishment. Motion carried.

Tab 10 – Louis Reznick, D.O. - Voluntary Relinquishment – Case No.2015-10975
PCP: Waived

The Department suggests that the Board entertain a Motion Accepting the Voluntary Relinquishment executed by Respondent in resolution of this case.

Motion: by Dr. Hayden, seconded by Dr. Schwemmer to accept Voluntary Relinquishment. Motion carried.

PROSECUTION SERVICES REPORT

Tab 11 – October 2016 Report

Mr. Witters stated the inventory was 109 cases last time and is now down to 97cases.

Mr. Witters stated we currently have 50 cases that are 1 year or older and asked the Board to consider allowing to continue to prosecute those cases.

Motion: by Dr. Rose, seconded by Dr. Schwemmer, to allow PSU to continue prosecuting cases one year and older. Motion carried.

PROBATION AND COMPLIANCE REVIEW

Tab 12 - Scott Clulow – Termination of Probation

Respondent was present and sworn in. Respondent was represented by counsel, Ken Metzler, Esq.

Monitor, Dr. Amoah was present for this case.

Motion: by Dr. Hayden, seconded by Dr. Rose, to accept appearance and termination of probation. Motion carried.

Tab 13 - Amy Seinfeld - Termination of Probation

Respondent was present and sworn in. Respondent was not represented by counsel.

Motion: by Dr. Hayden, seconded by, Dr. Schwemmer to accept appearance and termination of probation. Motion carried.

Tab 14 – Glenn Charles - Termination of Probation

Respondent was present and sworn in. Respondent was represented by counsel, Gregory Chaires, Esq.

Monitor, Bruce Wishnov was present for this case.

Motion: by Dr. Hayden, seconded by Dr. Rose to accept appearance and termination of probation. Motion carried.

Tab 15 - David Simon - Termination of Probation

Respondent was present and sworn in. Respondent was represented by counsel, David Spicer, Esq.

Dr. Penny Ziegler and Monitor, Jose Ojea were present for this case.

Motion: by Dr. Hayden, seconded by Dr. Mendez to accept appearance and termination of probation. Motion carried.

Tab 16 - Marks Leeds – Formal Approval of Monitor

Respondent was present and sworn in. Respondent was represented by counsel, Josh Bloom, Esq.

Monitor, Paul Glassman was present for this case.

Motion: by Dr. Hayden, Seconded by Dr. Schwemmer, to accept formal approval of monitor. Motion carried.

Tab 17 – Louis Kovacs – Formal Approval of Monitor

Respondent was present and sworn in. Respondent was not represented by counsel. Monitor, Joseph O’Lear was present for this case.

Motion: by Dr. Hayden, seconded by Dr. Mendez, to accept formal approval of monitor. Motion carried.

Tab 18 – Erik Schabert – Continuance for Formal Approval of Monitor

Respondent was present and sworn in. Respondent was represented by counsel, Gregory Chaires, Esq.

Monitor, Bruce Branin was present for this case.

Motion: by Dr. Hayden, seconded by Dr. Schwemmer, to accept formal approval of monitor. Motion carried.

Tab 19 – Arthur Magrann – Lifting of Permanent Practice Restriction

Respondent was present and sworn in. Respondent was not represented by counsel.

Motion: by Dr. Rose, seconded by Ms. Jansen., to reject the modification of final order, lifting practice restriction. Motion carried.

Tab 20 – Vincent Scolaro – CE Modification of Final Order

Respondent was present and sworn in. Respondent was not represented by counsel.

Dr. Penny Zeigler was present for this case.

Motion: by Dr. Mendez, to deny request for CE modification of final order based on CE courses submitted not being equivalent to the ones listed in Final Order. Motion carried.

REVIEW AND APPROVAL OF MINUTES

Tab 21 – August 26, 2016 General Business Meeting Minutes

Motion: by Dr. Hayden, seconded by Dr. Schwemmer, to approve meeting minutes. Motion carried.

RATIFICATION OF LICENSURE

Tab 22 - Ratification of Full Licenses Issued 07/29/2016– 10/26/2016

Tab 23 - Ratification of Training Licenses Issued 07/29/2016– 10/26/2016

Motion: by, Dr. Schwemmer, seconded by Dr. Rose, to approve ratification of Full Licenses issued. Motion carried.

Motion: by Dr. Hayden, seconded by Dr. Rose, to approve ratification of Training Licenses issued. Motion carried.

BOARD CHAIRMAN REPORT – Bridget Bellingar, DO

Tab 24 – Responsibilities of FSMB Board of Directors

Dr. Bellingar provided the board members with an overview of the Annual Chair/Vice Chair meeting and the Healthiest Weight meeting that was held in Tallahassee, Florida in September. During the discussion ULA came up and board members would like a ULA liaison to attend a future meeting.

Tab 37 - Draft Report on Team-Based Regulation

The board members were asked by the FSMB to review the draft report on team based regulation. The FSMB was looking for comments for the workgroup to review. After discussion it was determined the letter requesting comment was vague. The board members requested the Executive Director, Kama Monroe to submit a letter to the FSMB for more specifics and clarification on what the FSMB Board of Directors are looking for.

BOARD COUNSEL REPORT - Donna McNulty, Esq.

Tab 25 – October 2016 Rules Report

Tab 34 – November 2016 Rules Report

Board Counsel, Donna McNulty presented the October and November rules report to the board. The board members had no questions regarding the reports.

RULE DISCUSSION – Donna McNulty, Esq.

Tab 26 - Rule 64B15-12.003 Applications for Licensure

Tab 27 - Rule 64B15-12.005 Limited Licensure

Tab 28 - Rule 64B15-12.010 Temporary Certificate to Practice in an Area of Critical Need

Tab 29 - Rule 64B15-12.011 Temporary Certificate for Active Duty Military and Veterans Practicing in Areas of Critical Need

At the request of board counsel, tabs 26, 27, 28 and 29 were combined for the rule discussion.

Ms. McNulty stated the following rules, Rule 64B15-12.003 Applications for Licensure, Rule 64B15-12.005 Limited Licensure, Rule 64B15-12.010 Temporary Certificate to Practice in an Area of Critical Need and Rule 64B15-12.011 Temporary Certificate for Active Duty Military and Veterans Practicing in Areas of Critical Need are before the board to address the JAPC concerns. Ms. McNulty advised the board of JAPC concerns and the modifications that were made to all four of the applications.

Motion: by Dr. Rose, seconded by Dr. Hayden, to approve modifications. Motion carried.

Motion: by Dr. Hayden, seconded by Dr. Schwemmer, that the proposed changes will not adverse impact on small business and proposed changes would not directly or indirectly increase regulatory costs to any entity including government in excess of \$200,000.00 in aggregate in Florida within one year after the implementation of the rule. Motion carried.

Tab 30 - Rule 64B15-19.0065 Notice of Noncompliance/Minor Violations

Board counsel stated that during the August 26, 2016 board meeting, the board had proposed language for a new rule. JAPC responded and had some concerns, primarily with section (2)(b)(3). Ms. McNulty suggested deleting rule reference, 64B16-28.108, FAC. She asked if the board would be okay with that.

Motion by, Dr. Rose, seconded by Dr. Hayden to remove rule reference. Motion carried.

JAPC suggested in 2(a) the board references 14.001(2)(k). She suggested leaving the rule as

drafted because if for some reason the subparts change then you have to go back and amend rule, it's clear what it is and would leave as is.

Ms. McNulty stated another JAPC concern was related to 2(b)(7) JAPC suggested it would helpful to refer 459.025 FS in subparagraph, 2(b)(7) states failure to submit to notice to board when a physician enters into a formal supervisory relationship or standing orders with an EMT or PMD licensed pursuant to section 401.27, FS or when a physician enters into an established protocol with an ARNP, as set forth in section 464.012,FS.,this language is directly from statute so doesn't add anything to add statutory reference. Ms. McNulty would like to amend proposed rule language and deleting subsection 2(b)(3).

Motion by, Dr. Rose, seconded by Dr. Schwemmer, to allow counsel to amend proposed rule language and delete subsection 2(b)(3).. Motion carried.

Motion: by Dr. Hayden, seconded by Dr. Schwemmer, that the proposed changes will not adverse impact on small business and proposed changes would not directly or indirectly increase regulatory costs to any entity including government in excess of \$200,000.00 in aggregate in Florida within one year after the implementation of the rule. Motion carried.

Ms. McNulty will do a proposed Notice of Change and respond to JAPC.

Tab 31 - Rule 64B15-14.0081 Standards for Telemedicine Practice

Ms. McNulty provided the board with Board of Medicine's rule and Osteopathic Medicine's rule, they are identical.

This item will be tabled for further review to allow us to reach out to Board of Medicine to see if there any workshops scheduled.

If a joint telemedicine subcommittee is created, Dr. Hayden, Dr. Rose and Dr. Schwemmer would be interested in being on the subcommittee.

Tab 32 - Rule 64B15-6.011 Disciplinary Guidelines

Tab 33 - Rule 64B15-6.01051 Citation Authority

Motion: by Dr. Rose, seconded by Dr. Hayden, to open Rule 64B15-6.011 Disciplinary Guidelines and Rule 64B15-6.01051 Citation Authority for development. Motion carried

Motion: by Dr. Hayden, seconded by Dr. Schwemmer, that the proposed changes will not adverse impact on small business and proposed changes would not directly or indirectly increase regulatory costs to any entity including government in excess of \$200,000.00 in aggregate in Florida within one year after the implementation of the rule. Motion carried.

GENERAL DISCUSSION

Tab 39 – Ratification of Annual Regulatory Plan

Motion: by Dr. Hayden, seconded by Dr. Rose, to approve ratification of annual regulatory plan. Motion carried.

ELECTION OF OFFICERS

Tab 40- Chair and Vice-Chair Elections

The board nominated Dr. Sandra Schwemmer to serve as Vice-Chair. Dr. Schwemmer accepted the duty of vice-chair.

Motion: by Dr. Hayden, seconded by Ms. Janson to nominate Sandra Schwemmer, D.O. as Vice Chair. Motion carried.

The board nominated Dr. Michelle Mendez to serve as Board Chair. Dr. Mendez accepted the duty of Board Chair.

Motion: by Dr. Hayden, seconded by Dr. Rose, to nominate Michelle Mendez, D.O. as Board Chair. Motion carried.

EXECUTIVE DIRECTOR REPORT – Kama Monroe, J.D., Executive Director

Tab 34 – Administrators in Medicine meeting update

Ms. Monroe thanked the board for allowing her to go to the AIM annual meeting.

Tab 38 – Delegation of Authority to Accept Service of Process

"The Board of _____ (Board) delegates authority to the Executive Director to accept service on behalf of the Board (not individual Board members)."

Motion by Dr. Hayden, seconded by Dr. Mendez, to allow Executive Director, Kama Monroe, to accept service on behalf of the Board. Motion carried.

JOINT COMMITTEE MEETING UPDATES - Joel Rose, DO

COUNCIL ON PHYSICIAN ASSISTANT'S REPORT – Joel Rose, DO

Tab 35 – Minutes from 11/3/16 meeting

Tab 36 - Roll Call from 11/3/16 meeting

Tab 37 – Summary from 11/3/16 meeting

No updates at this time.

ANESTHESIOLOGY ASSISTANTS COMMITTEE REPORT – Joel Rose, DO

PHARMACY CONTROLLED SUBSTANCES STANDARDS COMM. REPORT – Michelle Mendez, DO

This item will be deleted from future agendas.

BUDGET LIAISON REPORT – Anna Hayden, DO

None at this time.

UNLICENSED ACTIVITY LIAISON REPORT – Sandra Schwemmer, DO

None at this time.

HEALTHY WEIGHT LIAISON REPORT – Bridget Bellinger, DO

None at this time.

OLD BUSINESS

Dr. Hayden would like a representative from FSMB to attend an upcoming board meeting. Board members would like them to do a small presentation.

Dr. Hayden advised Ms. Janson there is a public member scholarship for the meeting in Texas in August. Dr. Menendez and Dr. Schwemmer will attend as well as Dr. Rose.

Dr. Hayden also suggested the board write a letter congratulating Dr. Childry on his recent position. The board would like to have him speak at a FOMA meeting.

NEW BUSINESS

Tab 41 – Morton Morris Award

Ms. Greene provided the board members with the criteria for nominees as well as the previous winners. After discussion, the board nominated Dr. Ronald Burns for the award. The board would like this award presented during the February FOMA meeting.

Dr. Rose brought up for discussion 456.0635 regarding the law change last year which doesn't allow doctors to renew licenses that had a felony and took away ability for board to grant licenses based on that. The Department supported this change. Dr. Rose would like for Ms. Monroe to invite someone from the Department that was in support of the changes to explain the rationale behind this and if they would be in support of modifications. Dr. Rose would also like Bruce Lamb to attend and address this issue.

Dr. Hayden recognized Dr. Bellinger for all her work as board chair.

ADJOURN - Motion to ADJOURN at 2:12 pm.

Next Meeting: February 24, 2017
Location: Ft. Lauderdale
9:00 a.m.