

# FLORIDA | Board of Osteopathic Medicine

November 17, 2017 Meeting



**DRAFT MEETING MINUTES**  
**Board of Osteopathic Medicine**  
**General Business Meeting**  
**November 17, 2017**  
**9:00 a.m.**

**Crowne Plaza Jacksonville Airport**  
14670 Duval Road  
Jacksonville, Florida  
(904) 741-4404

The meeting was called to order by Dr. Michelle Mendez, Chair, at approximately 9:00 a.m.

Those present for all or part of the meeting included the following:

**MEMBERS PRESENT:**

Michelle R. Mendez, DO, Chair  
Joel B. Rose, DO  
Anna Hayden, DO  
Sandra Schwemmer, DO, Vice-Chair  
Bridget Bellinger, DO

**MEMBERS ABSENT:**

Alicia Janson, Consumer Member  
Valerie Jackson, Consumer Member

**COURT REPORTER:**

Precision Court Reporting  
904-421-2031

**OTHERS PRESENT:**

Matthew Witters, Prosecuting Attorney  
Brad Dalton

**BOARD STAFF PRESENT:**

Kama Monroe, Executive Director  
Carol Taylor, Program Administrator  
Christa Peace, RSIII

**BOARD COUNSEL**

Donna McNulty, Board Counsel

*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 & 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:**

**Settlement Agreements**

**TAB 1 – SA 1 – TABLED-** Andrew Michael Basile, D.O. – Settlement Agreement Case No. 2012-03761  
*PCP: Moran/Hayden*

This matter was tabled.

**TAB 2 – SA 2 – TABLED-** Andrew Michael Basile, D.O. – Settlement Agreement Case No. 2012-16916  
*PCP: Moran/Hayden*

This matter was tabled.

**TAB 3 – SA 3 - TABLED-** Andrew Michael Basile, D.O. – Settlement Agreement Case No. 2013-03200  
*PCP: Moran/Hayden*

This matter was tabled.

**TAB 4 – SA 4 –** Steve James Svabek, D.O. – Settlement Agreement Case No 2014-08404  
*PCP: Moran/ Hayden*

Respondent was present. Respondent was represented by counsel, Bruce Lamb, Esquire, who was present.

Dr. 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)(bb), FS (2013), by performing or attempting to perform health care services on the wrong patient, a wrong site procedure, a wrong procedure or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient diagnosis, or medical condition, by performing surgery on Patient W.C.'s C5-C6 vertebrae when he should have performed surgery on Patient W.C.'s C4-C5 vertebrae.

The terms of the Settlement Agreement are: appearance; reprimand; fine in the amount of ten thousand (\$10,000.00) dollars payable within thirty (30) days from the filing of the final order, reimbursement of costs for the investigation and prosecution of this case, payable within thirty (30) days of filing of final order (current costs are one thousand nine hundred ninety-nine dollars and seventy-five cents [\$1,999.75]); Respondent shall complete the eight (8) hour course "Quality Medical Record Keeping for Health Care Professionals," sponsored by the Florida Medical Association, or a board approved equivalent, within twelve (12) months of the filing of the final order; Respondent shall complete ten (10) hours of Continuing Osteopathic Medical Education in "Risk Management", sponsored by the Florida Medical Association within twelve (12) months of the filing of the final order, Respondent shall obtain approval from the board chair prior to completion of hours; During the next six (6) months following the filing of the Final Order Respondent shall present a one (1) hour lecture/seminar on Quality Record Keeping and Risk Management, the lecture shall be presented to medical staff at an approved medical facility, prior to presenting the lecture, Respondent shall submit a written plan to the board chair for approval; Respondent's current practice shall be reviewed by an independent certified/licensed risk manager within sixty(60) days of the filing of the Final Order in this matter.

After discussion:

Motion: by Dr. Schwemmer, seconded by Dr. Rose, to accept the revised settlement agreement.

Motion withdrawn by Dr. Schwemmer.

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

Motion: by Dr. Rose, seconded by Dr. Schwemmer, to offer a counter-offer.

Counter-offer: All the terms of the proposed settlement agreement and the following. A year following the Final Order, Respondent shall appear before the board to provide the changes made to his practice as a result of the risk management. Submit credentials of the proposed risk manager for approval by the board chair along with the Indiana Risk Manager requirements for the state of Indiana, be sure that there is not an omission of Florida requirements. 60 days from approval of risk manager.

### **DETERMINATION OF WAIVERS**

**TAB 5 – DOW 1** - Raymond Failer, D.O. – Determination of Waiver Case No. 2015-31734  
*PCP: Moran/Hayden*

The Determination of Waiver and Final Order by Hearing Not Involving Disputed Issues of Material Facts was continued.

### **VOLUNTARY RELINQUISHMENTS**

**TAB 6 – VR 1** – Mark G. Kantzler, D.O. – Voluntary Relinquishment Case No. 2013-10663  
*PCP: Andriole/Mendez*

Respondent was not present.

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

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

Motion: by Dr. Bellingar; seconded by Dr. Rose, to accept the Voluntary Relinquishment. Motion carried.

### **INFORMALS**

**TAB 7 – INF 1-** Raymond Failer, D.O. – Informal Hearing Case No. 2016-19223  
*PCP: Andriole/Janson*

Dr. Failer was present and was sworn in. Dr. Failer was not represented by counsel.

PSU attorney presented the facts of the case. Respondent failed to comply with the Final Order issued in case numbers 2007-10901 and 2013-02191. Respondent failed to timely submit the quarterly reports as required by the Final Order as condition of his probation of license. The probation of Respondent's license required that quarterly reports be submitted by May 24, 2016, by both Respondent and his monitor. Respondent and his monitor failed to submit the quarterly reports by May 24, 2016. Respondent violated Section 456.072(1)(q), Florida Statutes, by violating a lawful order of the Department or the Board.

Motion: by Dr. Hayden, seconded by, Dr. Rose, that the Respondent was properly served. Motion carried.

Motion: by Dr. Hayden, seconded by, Dr. Rose, to accept the Investigative Report as presented.  
Motion carried.

Motion: by Dr. Hayden, seconded by, Dr. Bellingar, to accept the findings of fact as presented. Motion carried.

Respondent presented his statement.

After discussion:

Motion: by Dr. Schwemmer, seconded by, Dr. Rose, to accept the conclusions of law. Motion carried.

PSU attorney read the disciplinary guidelines, for the offense in this matter, to the board.

Motion: by Dr. Rose, seconded by, Dr. Schwemmer, to Reprimand the Respondent's license; to impose a five thousand (\$5,000) dollar fine to be paid within a year of the Final Order in this matter; suspension of the Respondent's license until in full compliance with the Final Order, and the board reserves jurisdiction to impose additional terms and conditions as appropriate upon reinstatement.  
Motion carried.

Motion: by Dr. Mendez, seconded by, Dr. Hayden, to impose costs in the amount of forty-six dollars and forty-six cents (\$46.46) to be paid within one year of the Final Order in this matter.

**TAB 8 – INF 2-** Raymond Failer, D.O. – Informal Hearing Case No. 2017-01924  
*PCP: Moran/Mendez*

Dr. Failer was present and was sworn in. Dr. Failer was not represented by counsel.

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

Vice-Chair, Dr. Schwemmer presided over this case.

PSU attorney presented the facts of the case. The Board of Osteopathic Medicine issued a Final Order in case number 2013-02191. The Final Order in case number 2013-02191 required the Respondent to pay a fine in the amount of fifty-five thousand (55,000.00) dollars within twelve (12) months from the date of the filing of the Final Order. On September 15, 2016, the Board of Osteopathic Medicine entered an Order extending Respondent's time to pay and denying the remaining request to modify orders, which granted the Respondent a six-month extension of time to pay the fine. Respondent failed to comply by failing to pay a fine of fifty-five thousand (55,000.00) dollars within eighteen months from the date of the filing of the Final Order or within six months of the Order granting an extension. Respondent violated Section 456.072(1)(q), Florida Statutes, by violating a lawful order of the Department or the Board.

Motion: by Dr. Hayden, seconded by, Dr. Rose, that the Respondent was properly served and has requested an Informal Hearing. Motion carried.

Motion: by Dr. Hayden, seconded by, Dr. Rose, to accept the Investigative Report as presented.  
Motion carried.

Motion: by Dr. Hayden, seconded by, Dr. Rose, to accept the findings of fact as presented. Motion carried.

Respondent presented his statement.

After discussion:

Motion: by Dr. Hayden, seconded by, Dr. Bellingar, to accept the conclusions of law. Motion carried.

Motion: by Dr. Hayden, seconded by Dr. Rose, to impose a Reprimand; five thousand (\$5000.00) dollar fine payable within one year, license suspended until the Respondent pays the fine in full or the board approves a payment plan, the board reserves jurisdiction to impose terms and conditions as appropriate at the time of reinstatement.

Motion: by Dr. Bellingar, seconded by Dr. Rose, to impose costs in the amount of ninety-one dollars and fifty-five cents (\$91.55) to be payable within one year of the Final Order. Motion carried

## **PROSECUTION SERVICES REPORT**

### **Tab 9 – October 2017 Report**

Mr. Witters presented the prosecution services report.

The report reflected the number of open cases has increased by approximately 27 cases. Twenty-eight new cases have been received since the last Board meeting. Mr. Witters specified, for the board, the status of the year and older cases listed on the report. Mr. Witters asked the Board to consider allowing PSU to continue to prosecute those cases.

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

Following approval of the motion, Mr. Witters fielded questions from the board chair regarding various matters. There was a request that follow up updates on cases previously presented to the Board, wherein counteroffers were not accepted, be provided as part of the PSU report.

## **REVIEW AND APPROVAL OF MINUTES**

### **Tab 10 – October 23, 2017 General Business Conference Call Meeting Minutes**

Motion: by Dr. Hayden, seconded by Dr. Bellingar, to accept the minutes. Motion carried.

## **PROBATION AND COMPLIANCE**

### **REQUEST FOR FORMAL APPROVAL OF ALTERNATE MONITOR**

#### **TAB 11 - Andrew Guidry, DO – File #7068**

Dr. Guidry was present and was sworn in. Dr. Guidry was not represented by counsel. Dr. Guidry's alternate proposed monitor Erika Johnson, D.O. was present and was sworn in.

After discussion:

Motion: by Dr. Rose, seconded by Dr. Schwemmer, to approve alternate monitor, Erika Johnson, D.O. Motion carried.

### **REQUEST FOR FORMAL APPROVAL OF MONITOR**

#### **TAB 12 – Debra Kay Roggow, DO – File #5118**

Dr. Roggow was present and was sworn in. Dr. Roggow was not represented by counsel. Dr. Roggow's proposed monitor Keith Susko, D.O. was present and was sworn in.

Motion: by Dr. Schwemmer, seconded by Dr. Bellingar, to approve monitor, Keith Susko, D.O.

Motion carried.

**TAB 13 – David Hicks, DO – File #3645**

This matter was continued.

**REQUEST FOR TERMINATION OF PROBATION**

**TAB 14 - Mark Leeds, D.O., File #6297**

Dr. Leeds was present and was sworn in. Dr. Leeds counsel was not present, nor was his proposed monitor.

After discussion:

Motion: by Dr. Hayden, seconded by Dr. Bellingar, to terminate probation of Dr. Leeds.

Motion carried.

**APPLICANTS**

**APPLICANTS FOR FULL LICENSURE**

**TAB 15 – Deepak Reddy, D.O., File #14133**

Applicant was present and sworn in.

**Action Taken:** After discussion, Dr. Hayden moved to grant the license unencumbered. Dr. Rose, seconded the motion. Motion carried.

**TAB 16 - John Joseph Kemerer, D.O., File #13217**

Applicant was present and sworn in.

**Action Taken:** After discussion, Dr. Hayden moved to grant the license unencumbered. Dr. Bellingar seconded the motion. Motion carried.

**TAB 17 - Ty Anderson, D.O., File #14603**

Applicant was present and sworn in. Dr. Fana appeared with applicant and was sworn in.

Board counsel provided background information for the board.

**Action Taken:** After discussion, Dr. Schwemmer moved to issue a notice of intent to approve the application with the following conditions: Applicant must enter into and be compliant with a licensure long PRN contract prior to licensure; complete any remaining CME requirements from previous Notice of Intent to Approve within a year of this notice (if CME's already taken, he can provide documentation to compliance); permanent practice restriction from owning or operating a pain management clinic as described by Section 893; applicant is prohibited from supervising any Physician Assistants; license will be on three years of probation, one direct, two indirect; monitor shall appear after six months of direct supervision and after one year of direct supervision and at the end of indirect supervision prior to termination of supervision Dr. Hayden, seconded the motion. Motion carried.

Motion: by Dr. Rose, seconded by Schwemmer, to approve Dr. Fana as applicant's monitor once licensed. Motion carried.

**TAB 18 - Samuel Edelman, DO, File #14707**

Applicant was present and sworn in.

**Action Taken:** After discussion, Dr. Schwemmer, moved to grant the license with the condition of passing the COMVEX within twelve months, Dr. Hayden, seconded the motion. Dr. Mendez opposed the requirement. Motion carried.

**TAB 19 - Robert Abbate, DO, File #14217**

Applicant was present and sworn in. Applicant was represented by counsel.

**Action Taken:** After discussion, Dr. Hayden, moved to grant the license unencumbered. Dr. Schwemmer, seconded the motion. Motion carried.

**APPLICANTS FOR WITHDRAWAL OF APPLICATION**

**TAB 20- Megan Ferri, D.O., File # 5884**

Applicant was not present.

**Action Taken:** After discussion, Dr. Hayden, moved to accept the applicant's withdrawal of application. Dr. Schwemmer, seconded the motion. Motion carried.

**RATIFICATION OF LICENSURE**

**TAB 21 - Ratification of Full Licenses Issued 8/1/2017-10/31/2017**

Motion: by Dr. Hayden, seconded by Dr. Bellingar, to accept the ratification of full licenses issued 8/1/2017 through 10/31/2017. Motion carried.

**TAB 22 - Ratification of Osteopathic Resident Registration 8/1/2017-10/31/2017**

Motion: by Dr. Hayden, seconded by Dr. Bellingar, to accept the ratification of full licenses issued 8/1/2017 through 10/31/2017. Motion carried.

**TAB 23 - BOARD CHAIRMAN REPORT – Michelle Mendez, DO**

The Board chair provided an update regarding the November 3, 2017, Multi-Board Workgroup on Controlled Substances. She noted that all professions who provide pain treatment were invited to send a representative to the meeting. There was a total of twelve boards in attendance. The chair stated the intent of the workgroup was to have all the boards who have licensed healthcare providers to weigh in on an approach to the opioid epidemic in Florida in a multidiscipline manner.

The chair noted that the significant senate bill addressed from the meeting was Senate bill 8. Senate bill 8 is an existing bill which would update statute. The chair noted significant proposed changes to the bill, which are included in the version on the agenda. The first change noted was on page six of the proposed bill, which included an addition of the definition of acute pain. The next change was on page 11, which included was the standards of practice for the treatment for acute pain. She further noted the most concern and the most misunderstood change was paragraph 5, section a. The chair asked if the board would be willing to submit a letter in support of the current version of the bill.

The board chair further noted that there is a requirement deep within the bill that before a controlled substance can be prescribed in the state of Florida, that the prescriber would be required to review the PDMP. The intent is that a person who is HIPAA compliant could access the patient's history to avoid the need for the prescriber to interrupt his/her work to personally review the PDMP. The chair provided detail regarding possible issues with insurance companies and EMRs which might require a thirty day supply of the medication. Further she noted the fact that dentists actually prescribe more opioids than any other groups. She noted that the dentists are going to look to the Boards of Medicine and Osteopathic Medicine

to make changes in their rules to require continuing education. It was noted that the Board of Osteopathic Medicine is ahead of other professions in their requirements for education regarding the prescribing of opioids. Dr. Rose brought up the need for patient education. The chair noted that there was discussion regarding how the Department could provide better education. There are currently fifteen states that have a three-day supply limit for opioids. After discussion, the chair noted that the letter of support would be to indicate that Senate Bill 8 best represents the board's goals regarding this matter.

The summary of the November 3, 2017, Multidisciplinary Board Fact Finding Work Group Controlled Substances meeting was provided with the board materials and are part of the public book.

Motion, by Dr. Bellingar to approve writing a letter to the legislature supporting Senate bill 8 moving forward. Dr. Schwemmer seconded the motion. Motion carried.

The Board Chair also provided an update on the JCMM committee meetings and the panel review. Dr. Rose noted the Federation newsletter contained information regarding California actions. The next meeting will be November 30, 2017. Mr. Winn from FOMA requested the Department be notified that the term "prescribe" is inappropriate to be used.

Motion: by Dr. Rose, seconded by Dr. Mendez, that the term "prescribe" be removed from the Board of Osteopathic Medicine website. Motion carried.

#### **BOARD COUNSEL REPORT - Donna McNulty, Esq.**

##### **TAB 24 – Rule Report October 2017**

Ms. McNulty presented the October and November rules reports.

JCMM has written a six-page document that will move on.

##### **TAB 25 – Notice of Voluntary Dismissal**

The lawsuit John Morgan filed against the Board has been dropped. He can always re-file, but at this point it has been dropped.

#### **RULE DISCUSSION – Donna McNulty, Esq.**

##### **TAB 26 – 64B15-14.007**

Before the board to ensure that the board has all the materials. Board of Medicine has moved forward with this matter. Board chair noted that the Board of Osteopathic Medicine does not have to duplicate the actions of the Board of Medicine. Dr. Rose noted a concern regarding the verbiage a "complete work up." He proposed specific language for the term "complete work up." Dr. Rose suggested the verbiage, "For all AS2 patients above the age of 50, the surgeon must obtain an evaluation consisting of a patient history and physical pertinent to the condition or conditions for surgery and an assessment of the patient's medical conditions by labs, consultations, imaging studies, when needed to optimize the patient's medical status."

After discussion, it was determined to table this matter until the February meeting. The board requested board staff reach out to different parties to have them appear at the February meeting and provide testimony.

Motion: by Dr. Rose, seconded by Dr. Schwemmer, to table this matter until the February meeting.

##### **TAB 27 - Tab 64B15-13.001**

Rule 64B15-13.001(3)(f)

64B15-13.001 Misdiagnosed Conditions



456.013(7) Florida Statutes; Medical Errors

Board chair noted that this would go to the February meeting; however, the materials were placed on the agenda to begin the discussion. Dr. Rose provided the background for the information provided.

Discussion ensued regarding possible responses.

Dr. Rose noted that there are not many instances of osteopathic physicians missing the conditions.

Suggestions for the five most misdiagnosed conditions were:

1. Inappropriate prescribing of controlled substances
2. Failure to monitor the safety of prescribed medications
3. Retain foreign objects in surgery and wrong site/patient surgery
4. Failure to timely diagnose sepsis
5. (Dr. Hayden will work with Board counsel for the fifth item)

**TAB 28 - 64B15.15.004**

64B15-15.004 Written Records; Minimum Content; Retention  
64B8-9.003 Standards for Adequacy of Medical Records

It is to clarify language so that it comports with Section 459.015(1)(o) and that the rule justifies the course of treatment for the patient. Board counsel informed the board that there was a potential rule challenge against the board. The purpose of the change is to ensure the rule supports what the statute requires.

Motion: by Dr. Hayden, seconded by Dr. Bellingar, to approve Rule 64B15-15.004, written records; minimum content, retention, as drafted. Motion carried.

Motion: by Dr. Hayden, seconded by Dr. Rose, that the proposed changes will not make an 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. No SERC is needed and no legislative ratification is needed. Motion carried.

Motion: by Dr. Hayden, seconded by Dr. Hayden, to find that a violation of this rule or any part of this rule would not be considered a minor violation. Motion carried.

**TAB 29 - Annual Report Plan**  
ARP 2017-2018

Motion: by Dr. Bellingar, seconded by Dr. Hayden, to approve the plan.

**TAB 30 - GENERAL DISCUSSION**

A Letter of Support for Dr. Hayden's FSMB Candidacy

Motion: by Dr. Rose, seconded by Dr. Bellingar, that a strong letter of recommendation be provided for Dr. Hayden.

Dr. Mendez will work with board staff on the letter.

Morton Morris Award

Dr. Rose nominated Dr. Andriole for the award.

Motion: by Dr. Rose, seconded by Dr. Hayden, to award Dr. Andriole with the Morton Morris Award.

The 2016 and the 2017 awards will be presented at the 2018 FOMA meeting in February.

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

**TAB 31 - Election of Officers**

Motion: by Dr. Mendez, seconded by Dr. Rose, for Dr. Schwemmer to serve as Chairman.

Motion: by Dr. Bellingar, seconded by Dr. Hayden, for Dr. Rose to serve as Vice-Chairman.

Motion: by Dr. Rose, seconded by Dr. Mendez, for the term will begin January 1, 2018.  
Dr. Bellingar is excused for remainder of meeting.

Delegation of Authority

Motion: by Dr. Hayden, seconded by Dr. Rose, to approve the delegation of authority with the noted changes. Motion carried.

Delegation of authority will be signed by current chair. A copy of the delegation will be presented in February for the elected chair to review and if acceptable sign.

**TAB 31 - JOINT COMMITTEE MEETING UPDATES - Joel Rose, DO**

Dr. Rose provided a brief update regarding the PA meetings.

**TAB 32 - COUNCIL ON PHYSICIAN ASSISTANT'S REPORT – Joel Rose, DO**

Physician's Assistant Summary  
Physician's Assistant Roll Call  
Physician's Assistant Minutes

**TAB 33 - ANESTHESIOLOGY ASSISTANTS COMMITTEE REPORT-Joel Rose, DO**

There was no report.  
Board counsel noted that there might be a meeting in February.

**TAB 34 - BUDGET LIAISON REPORT – Anna Hayden, DO**

Budget Report  
Report was provided for review. One item of interest was that a small amount of money was moved due to the legislature sweeping.

**TAB 35 - UNLICENSED ACTIVITY LIAISON REPORT – Sandra Schwemmer, DO**

Dr. Schwemmer will remain as liaison.

**TAB 36 - HEALTHY WEIGHT LIAISON REPORT – Bridget Bellingar, DO**

Nothing significant to report.

**TAB 37 - OLD BUSINESS**

None

**TAB 38 - NEW BUSINESS**

Motion: by Dr. Rose, seconded by Mendez, that a compliance officer be in attendance for all meetings where there are cases which involve compliance. Motion carried.

Dr. Rose commended Dr. Schwemmer for her recent award from the ACLEP, the Willoughby Award.

**ADJOURN: 3:38 p.m.**

**Next Meeting: February 22, 2018**  
**Weston, Florida**

DRAFT