



DRAFT MEETING MINUTES
Board of Osteopathic Medicine
General Business Meeting
November 14, 2014
9:00 a.m.

Tampa Marriott Westshore
1001 N Westshore Blvd
Tampa, FL 33607
(813) 287-2555

Call to Order:

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

MEMBERS PRESENT:

Joel Rose, DO, Chair
Anna Hayden, DO, Vice Chair
Ronald Burns, DO
Bridget Bellingar, DO
Michelle Mendez, DO
Valerie Jackson, Consumer Member
Alicja Janson, Consumer Member

MEMBERS ABSENT:

None

STAFF PRESENT:

Christy Robinson, Executive Director
Donna McNulty, Esq., Board Counsel
Alexandra Alday, Program Operations Administrator
Marci Poston, Regulatory Specialist II
Candace Rochester, Esq., DOH Prosecutor
Yolonda Green, Esq., DOH Prosecutor
Jodi-Ann Livingstone, Esq., DOH Prosecutor
Daniel Hernandez, Esq., DOH Prosecutor
Sondra Nelson, Compliance Officer

OTHERS PRESENT:

Penny Zeigler, MD, PRN

COURT REPORTER:

American Court Reporting
407-896-1813

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

DISCIPLINARY CASES

1 – David Simon, DO – Recommended Order – Case #2012-00680

Dr. Simon was not present and represented by David Spicer, Esq. Ms. Green represented the Department and presented the case to the Board.

Ms. McNulty advised the Recommended Order was before the Board for final action and explained the process for reviewing the Recommended Order. She further instructed the board not to consider the proffered portion of the Respondent nor Ms. Bush's deposition when deliberating this matter.

Ms. Green presented the case to the Board for final action in consideration of the DOAH recommended order. The department filed a two count administrative complaint alleging in:

- Count I violation of section 459.015(1)(pp), by violating 459.0141, F.S.
- Count II violation of section 459.015(1)(l), F.S.

Ms. Green advised the Division of Administrative Hearings (DOAH) recommended the Board of Osteopathic Medicine enter a final order finding Respondent guilty of the offenses charged in the administrative complaint.

Action Taken: Dr. Hayden moved to accept the Findings of Fact in the Recommended Order. Motion seconded by Dr. Hayden, which passed unanimously.

Action Taken: Dr. Burns moved to accept the Conclusions of Law in the Recommended Order. Motion seconded by Dr. Rose, which passed unanimously.

Petitioner's Exceptions to Penalty and Motion to Increase Penalty:

The Department recommended the board deviate from the recommended order and impose the following penalty:

- Suspension of license for two years
- Permanent restriction from seeing female patients
- \$10,000 fine

Action Taken: A motion was made by Dr. Hayden to reject the exceptions as the Administrative Law Judge considered the issues mentioned by the Petitioner when recommending the penalty. Dr. Burns seconded the motion, which passed unanimously.

Action Taken: Dr. Bellinger moved to impose the following penalty:

- \$10,000 fine to be paid within six (6) months of the filed Final Order
- Probation for 2 years with the following terms:
 - Indirect Monitoring with quarterly reports
 - Required appearance with monitor at first meeting after starting probation and the meeting prior to termination of probation, or as requested by the board
 - Monitor reviews 25% of female patients

- Respondent maintain a log of female patient contact and name of chaperone
- Chaperone, approved by Board, for entire time Respondent is in the presence of female patients
- Multiple chaperones allowed
- PRN evaluation to be completed within six (6) months of the filed Final Order

Dr. Burns seconded the motion, which passed unanimously.

Additional Action Taken: Dr. Rose moved to deny approval of Dr. Scanlon as Respondent's monitor. Dr. Hayden seconded the motion, which passed unanimously.

Additional Action Taken: After discussion, Dr. Rose moved to bifurcate costs and retain jurisdiction to assess costs at a later time. Dr. Mendez seconded the motion, which passed unanimously.

PRESENTATION OF BOARD CHAIRMAN'S AWARDS

Dr. Rose presented the Board Chairman's award to Anthony Ottaviani, DO.

2 - Joseph Miller, DO- Recommended Order- Case #2012-10809

Dr. Miller was present and represented by Anna G. Small, Esq. Ms. Rochester represented the Department and presented the case to the Board. Dr. Hayden was recused due to participation on the probable cause panel.

Ms. McNulty explained the Recommended Order was before the Board for final action and explained the process for reviewing the Recommended Order.

Ms. Rochester presented the case to the Board for final action in consideration of the DOAH recommended order. The department filed a two count administrative complaint alleging in:

- Count I violation of section 459.015(1)(l), F.S.
- Count II violation of section 459.015(1)(pp), F.S., by violating 456.072(1)(v), F.S.

Ms. Rochester advised the Division of Administrative Hearings (DOAH) recommended the Board of Osteopathic Medicine enter a final order finding Respondent violated the statutes and rules as alleged in the administrative complaint, revocation of Respondent's license, and an administrative fine in the amount of \$10,000.00.

Ms. McNulty, Board Counsel, reviewed each exception with the board. She further instructed the board not to consider the criminal history documentation of the Respondent that was not part of the DOAH record when deliberating this matter.

Respondent's Exceptions to the Findings of Fact:

Exception #1 – Improperly obtained evidence used during probable cause panel proceeding

Action Taken A motion was made by Dr. Burns to reject the exception based on the Department's Recommendation and not having substantive jurisdiction to review. Dr. Bellinger

seconded the motion, which passed unanimously.

Exception #2 – Department failed to conduct an adequate investigation

Action Taken: A motion was made by Dr. Burns to reject the exception based on the Department's recommendation. Dr. Bellinger seconded the motion, which passed unanimously.

Exception #3 – Department offered a Settlement Agreement, which was accepted by the Respondent and then improperly rescinded

Action Taken: A motion was made by Dr. Burns to reject the exception as both parties had the opportunity to withdraw from the Settlement Agreement. Dr. Bellinger seconded the motion, which passed unanimously

Exception #4 – Respondent did not have effective counsel

Action Taken: A motion was made by Dr. Burns to reject the exception based on the Department's recommendation. Dr. Bellinger seconded the motion, which passed unanimously.

Exception #5 – Respondent was unable to adequately mount a defense due to pending parallel criminal proceedings

Action Taken: A motion was made by Dr. Burns to reject the exception as the Department was willing to postpone the case until ongoing criminal history case was resolved, however Respondent wished to move forward with proceedings involving his Osteopathic Physician License. Dr. Bellinger seconded the motion, which passed unanimously.

Exception #6 – ALJ erred when he refused to admit the transcripts of T.S.'s depositions in the parallel criminal case

Action Taken: A motion was made by Dr. Burns to reject the exception as it is not within the Boards jurisdiction. Dr. Bellinger seconded the motion, which passed unanimously.

Exception #7 – Dr. Miller was not permitted to cross examine T.S.

Action Taken: A motion was made by Dr. Burns to reject the exception as it is not within the Boards jurisdiction. Dr. Mendez seconded the motion, which passed unanimously.

Exception #8 – ALJ ruled that the exclusionary rule does not apply in administrative proceedings

Action Taken: A motion was made by Dr. Burns to reject the exception as it is not within the Boards jurisdiction. Dr. Mendez seconded the motion, which passed unanimously.

The board then heard testimony from Anna G. Small, Esq., attorney for respondent.

Additional Action Taken: A motion was made by Dr. Burns to accept the Findings of Facts in the Recommended Order. The motion was seconded by Dr. Mendez, which passed unanimously.

Additional Action Taken: A motion was made by Dr. Bellinger to accept the Conclusions of

Law in the Recommended Order. The motion was seconded by Dr. Burns, which passed unanimously.

Consideration of Penalty:

Respondent moved for downward deviation of the penalty. Ms. Rochester advised the Board that this motion should have been filed along with the exceptions and is significantly late.

Action Taken: Dr. Burns moved to deny Respondent's written motion for downward deviation. The motion was seconded by Dr. Bellingar, which passed unanimously.

The Respondent then made an oral motion for downward deviation of the penalty. Ms. Rochester asked the Board to consider the ALJ's findings of fact and the predatory nature of the offense.

Action Taken: Dr. Burns made a motion to accept the recommendations of the ALJ based on all testimony, of revocation and a fine in the amount of \$10,000. The motion was seconded by Ms. Jackson, which passed unanimously.

Action Taken: Dr. Bellingar accepted the Department's request to waive costs associated in this case. The motion was seconded by Dr. Burns, which passed unanimously.

Action Taken: Dr. Burns made a motion that the \$10,000 fine imposed be paid within 30 days of the filed final order. The motion was seconded by Dr. Bellingar, which passed unanimously.

3. Shawn Robert Michael Ramsey, DO- Settlement Agreement- Case #2012-14793

Allegations of Complaint: Count I: Section 459.015(1)(pp), F.S., by violating Rule 64B15-14.003(a)(b), F.A.C. Count II: Section 459.015(1)(0), F.S.

The Respondent was present with counsel, John Kenny, Esq. Ms. Livingstone represented the Department and presented the case to the Board. Dr. Mendez was recused from the case due to her participation on the probable cause panel.

Action Taken: After discussion, Dr. Hayden moved to reject the settlement agreement. Dr. Rose seconded the motion, which passed 6/0 with none opposing the motion.

Additional Action Taken: Dr. Hayden moved to propose a counter offer to the Settlement Agreement and include the terms of the previous Settlement Agreement with the following corrections:

- Quality Medical Record Keeping for Health Care Professionals course sponsored by the Florida Medical Association, or a Board-approved equivalent
- Practice Restriction – Prescribing of Schedule II Controlled Substances until demonstrates completion of Risk Management Assessment, complied with any recommendations and completion of CME courses required in this final order
 - Permitted to order Schedule II Controlled Substances in hospital and ambulatory surgery settings. For those patients, during the period of the practice restriction, Respondent may prescribe Schedule II Controlled Substances for postoperative analgesia.
 - All prescriptions must be reviewed by an indirect monitor approved by the Board to review such prescriptions.

- The indirect monitor is required to submit a letter that he or she has reviewed this Final Order and the Administrative Complaint and is familiar with the matter to be reviewed.

Ms. Jackson seconded the motion, which passed unanimously.

Additional Action Taken: Dr. Burns moved to assess costs in the amount of \$3548.00. Motion seconded by Dr. Bellingar, which passed unanimously.

4. Donald Edward Kennedy, DO- Settlement Agreement- Case #2012-04929

Allegations of Complaint: Count I: Section 459.015(1)(x), F.S. Count II: Section 459.015(1)(o), F.S.

The Respondent was present with counsel, Rick Buntz, Esq. Ms. Green represented the Department and presented the case to the Board. Dr. Mendez was recused from the case due to her participation on the probable cause panel.

Action Taken: After discussion, Dr. Rose moved to reject the settlement agreement. Dr. Burns seconded the motion, which passed unanimously.

Additional Action Taken: Dr. Rose moved to propose a counter offer to the Settlement Agreement and include the terms of the previous Settlement Agreement with the following additions:

Penalties Imposed:

- Five (5) live participatory CME hours in cardiac care including the following topics: a) managing patients with prior bypass surgery; b) current diagnostic testing for patients with abnormal stress tests; and c) medical management of coronary ischemia and heart failure within 1 year of filed Final Order
- Respondent shall submit a syllabus to the Chair for prior approval.

Motion seconded by Dr. Burns, which passed unanimously.

Respondent and the Petitioner accepted the Counter Settlement Agreement made by the Board, with costs in the amount of \$3,926.24 due within one (1) year of the filing of this Final Order.

5. Gregory Anthony Hayes, DO- Informal Hearing- Case #2012-04750

Allegations of Complaint: Count I: Section 456.072(1)(c), F.S. Count II: Section 456.072(1)(x), F.S.

The Respondent was not present nor represented by counsel. Ms. Livingstone represented the Department and presented the case to the Board. Dr. Hayden was recused from the case due to her participation on the probable cause panel.

Dr. Burns moved to accept the agenda materials and investigative report as presented into the record as evidence. Dr. Bellingar seconded the motion, which passed unanimously. Dr. Burns moved to find that the respondent was properly served and waived their right to a formal hearing. Dr. Bellingar seconded the motion, which passed unanimously. Dr. Burns then moved to adopt the findings of fact as presented in the administrative complaint. Dr. Bellingar seconded the motion, which passed unanimously. Dr. Burns moved to adopt the conclusions of law as

presented in the administrative complaint and find that this constitutes a violation of the practice act. Dr. Bellingar seconded the motion, which passed unanimously.

Action Taken: After discussion, Dr. Bellingar moved to revoke the license. Dr. Burns seconded the motion, which passed unanimously. Dr. Bellingar moved to waive costs in this case. Dr. Burns seconded the motion, which passed unanimously.

PROSECUTION SERVICES REPORT

Ms. Green provided the Board with an overview of the current caseload statistics.

Action Taken: Dr. Burns moved to direct the Department to continue to prosecute the 69 cases over a year old. Dr. Mendez seconded the motion, which passed unanimously.

(break)

APPLICANTS FOR FULL LICENSURE

6. Neil Marshal Lewis-Levine, DO

Applicant was present without counsel. Applicant was sworn in by the court reporter.

Action Taken: After discussion, Dr. Hayden moved to grant the license unencumbered. Motion seconded by Dr. Mendez, which passed unanimously.

7. Sheryl Lavender, DO

Applicant was present without counsel. Applicant was sworn in by the court reporter.

Action Taken: After discussion, Dr. Burns moved to accept the applicant's verbal withdrawal of the application for licensure. Motion seconded by Dr. Rose, which passed unanimously.

8. Katherine Adams, DO

Applicant was not present nor represented by counsel. Dr. Ziegler, with PRN, was present.

Action Taken: After discussion, Dr. Rose moved to table this item to the February 13, 2015 full board meeting. Motion seconded by Dr. Mendez, which passed unanimously.

9. Blossom P. Joy, DO

Applicant was present without counsel. Applicant was sworn in by the court reporter.

Action Taken: After discussion, Dr. Rose moved to grant the license with the following conditions:

- Successfully pass the COMVEX within one (1) year of the date of filed Final Order

- Applicant must successfully complete and provide documentation to the Board of one hundred (100) hours of live participatory continuing medical education on the following topics within one (1) year:
 - 10 hours on preventative medicine;
 - 2 hours on prevention of medical errors;
 - 1 hour on Florida Laws and Rules;
 - 1 hour on professional and medical ethics;
 - 2 hours on domestic violence;
 - 1 hour on prescribing controlled substances;
 - 40 hours on general family or internal medicine;
 - 10 hours on nutrition; and
 - 33 hours of optional topics.
 - These 100 CME hours need to be pre-approved. The Board delegates authority to the Chair to approve the topics of the 100 CME hours.
- Motion seconded by Dr. Burns, which passed unanimously.

10. Lisa Requena, DO

Applicant was present without counsel. Applicant was sworn in by the court reporter.

Action Taken: After discussion, Dr. Rose moved to grant the license unencumbered. Motion seconded by Dr. Burns, which passed unanimously.

11. Brett Schlifka, DO

Applicant was present without counsel. Applicant was sworn in by the court reporter.

Action Taken: After discussion, Dr. Burns moved to grant the license unencumbered. Motion seconded by Dr. Hayden, which passed unanimously.

12. Jeffrey Piccirillo, DO

Applicant was present without counsel. Dr. Ziegler, with PRN, was also present. Applicant was sworn in by the court reporter.

Action Taken: After discussion, Dr. Hayden moved to accept the applicant's verbal withdrawal of the application for licensure. Motion seconded by Dr. Mendez, which passed unanimously.

31. Ty Anderson, DO

Applicant was present with counsel, William Furlow, Esq. Applicant was sworn in by the court reporter.

Action Taken: After discussion, Dr. Hayden moved to grant the license with the following conditions:

- Successfully pass the COMVEX to demonstrate competency to practice within one (1) year of filed Final Order
- Direct Probation for four (4) years to begin after passing COMVEX
 - Board Chair delegated authority to temporarily approve monitor
 - Monitor may be DO or MD in same or similar specialty, located within 20 miles, quarterly reports, and review 25% of the applicant's medical records.

- After two (2) years, applicant may petition Board to move to indirect supervision
- Applicant must appear at first meeting after license is reinstated and then twice annually during the first and second year of probation, annually during third and fourth year of probation, and at any other time as requested by the Board.
- Permanent practice restriction - cannot own, operate or practice in a pain management clinic as defined in 459.0137, F.S.
- Practice Restriction - shall not prescribe, administer, dispense, mix or order Schedule II controlled substances, as defined by Chapter 893, Florida Statutes; however, after one year of direct probation, he may petition to lift this restriction.
- May not supervise a Physician Assistant.
- Licensure long PRN contract and follow all recommendations.
- Completion of 150 live CME hours, 40 of which must be completed prior to issuance of license to include the mandatory hours for licensure renewal. The remaining hours must be completed within one (1) year of filed Final Order:
 - 28 hour ACOFP comprehensive review course
 - or 20 hours in courses sponsored by AAO and 8 hours of osteopathic principles and practices
 - 2 hours on prevention of medical errors;
 - 2 hours on domestic violence;
 - 1 hour on Florida Laws and Rules;
 - 1 hour on professional and medical records;
 - 1 hour on prescribing controlled substances;
 - 115 hours of optional topics.

Motion seconded by Dr. Mendez, which passed unanimously.

(lunch break)

PROBATION AND COMPLIANCE REVIEW

13. Amy Seinfeld, DO – Required Appearance for Approval of Monitor

Dr. Seinfeld was present without counsel, Vanessa Reynolds, Esq. and with monitor Richard M. Rosen, DO.

Action Taken: Dr. Burns moved to approve Dr. Rosen as the primary monitor. Dr. Mendez seconded the motion, which passed unanimously.

14. Scott Clulow, DO – Required Appearance for Approval of Monitor

Dr. Clulow was present with counsel Troy Crofts, Esq. and with monitor Daniel Amoah, MD.

Action Taken: Dr. Hayden moved to approve Dr. Amoah as the primary monitor. Dr. Bellinger seconded the motion, which passed unanimously.

15. Vincent Scolaro, DO – Request for Extension and/or Payment Plan

Dr. Scolaro was present without counsel of record, Kenneth Skinner, Esq. Dr. Ziegler, with PRN, was also present.

Action Taken: Dr. Bellingar moved to approve the monitor and respondent reports and to grant an extension of payment and a payment plan of \$200 monthly payments for one year to pay the remaining balance afterwards, providing Respondent's financial situation has improved. Dr. Mendez seconded the motion, which passed unanimously.

16. Michelle Snyder, DO – Request for Early Termination of Probation

Dr. Snyder was present without counsel of record, Robert Saint, Esq. and without monitor William Wells, MD.

Dr. Kevin Webster, Executive Director of Pinellas County Osteopathic Medical Society, and Dr. Bruce Brink, Jr., FACOFP, Chief of Staff at Gibson General Hospital, addressed the Board on behalf of licensee.

Action Taken: Dr. Hayden moved to table to next regularly scheduled Board meeting. Motion seconded by Dr. Bellingar, which passed unanimously.

PETITIONS

17. Stephen Montaldi, DO- Petition to Vacate Final Order

This item was pulled from the agenda.

REVIEW AND APPROVAL OF MINUTES

18. Review and Approval of August 22, 2014 Meeting Minutes

Action Taken: Dr. Hayden moved to approve the minutes. Motion seconded by Ms. Jackson, which passed unanimously.

GENERAL BUSINESS AND CORRESPONDENCE

27. NBOME Meeting Update – Anna Hayden, DO

Informational.

28. Board Chairs and Vice Chairs Meeting Update – Joel Rose, DO and Anna Hayden, DO

Dr. Rose reported a summary to the Board of topics discussed at this meeting.

RATIFICATION OF LICENSURE

19. Ratification of Licenses Issued 08/13/2014 – 10/20/2014

Action Taken: Dr. Hayden moved to approve the list as presented. Dr. Burns seconded the motion, which passed unanimously.

20. Ratification of Training Licenses Issued 5/13/2014 – 10/20/2014

Action Taken: Dr. Burns moved to approve the list as presented. Dr. Hayden seconded the motion, which passed unanimously.

REVIEW OF EXPERT WITNESSES

21. Review of Expert Witnesses for the 2014-2015 Fiscal Year

Board requests to see all expert witnesses used by the Department on an annual basis and would like to encourage the Department's Prosecution Services Unit to be mindful of the expert witnesses they use.

BOARD CHAIRMAN REPORT – Joel Rose, DO

Dr. Rose reported that he reviewed approximately 25 applications during the last quarter.

Dr. Rose was invited to attend the AAOE Summit in conjunction with AOA Osteopathic Medicinal Education Leadership Conference in Los Angeles, CA on January 9-10, 2015.

Action Taken: Dr. Hayden moved to approve Dr. Rose's travel costs associated with the summit. Motion seconded by Dr. Burns, which passed unanimously.

BOARD COUNSEL REPORT AND RULE DISCUSSION - Donna McNulty, Esq.

22. Rules Report

Informational item

23. 64B15-6.003- Physician Assistant Licensure

Action Taken: Dr. Hayden moved to approve the language as presented and proceed with rulemaking. Dr. Mendez 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, no SERC was needed and legislative ratification was not required. Dr. Mendez seconded the motion, which passed unanimously. Dr. Burns moved to approve the SERC form as presented. Dr. Hayden seconded the motion, which passed unanimously.

29. 64B15-14.0081 – Standards for Telemedicine Practice

Action Taken: Dr. Burns moved to leave the language as is. Dr. Mendez seconded the motion, which passed unanimously.

Dr. Rose indicated that a physical exam can be conducted via telemedicine such that you have the appropriate equipment to allow you to get the same information and you have appropriate personnel on the other end if palpation or other things need to get done and they are providing you that information.

30. 64B15-7.005 – Anesthesiologist Assistant Protocols and Performance

Action Taken: Dr. Burns moved to approve the language as presented and proceed with rulemaking. Dr. Hayden seconded the motion, which passed unanimously.

Action on SERC Questions: Dr. Hayden 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, no SERC was needed and legislative ratification was not required. Dr. Mendez seconded the motion, which passed unanimously. Dr. Burns moved to approve the SERC form as presented. Dr. Hayden seconded the motion, which passed unanimously.

EXECUTIVE DIRECTOR REPORT – Christy Robinson

Ms. Robinson introduced Ms. Alday as the Program Operations Administrator for the Board office.

Ms. Robinson proposed that the Board address the ability for licensees to use webinars towards their CME renewal requirements as the Board office has received multiple inquiries regarding this. Board staff will place this topic as well as supporting documentation on the next scheduled board meeting for discussion.

JOINT COMMITTEE MEETING UPDATES

24. Office Surgery Joint Committee Meeting Update- October 9, 2014 Meeting

Informational item.

COUNCIL ON PHYSICIAN ASSISTANT'S REPORT - Ronald Burns, DO

25. June 5, 2014 PA Council Meeting Minutes

Informational item.

ANESTHESIOLOGY ASSISTANTS COMMITTEE REPORT - Ronald Burns, DO

No report.

BUDGET LIAISON REPORT – Valerie Jackson

26. Expenditures by Function for Period Ending 6/30/2014

Informational Item

PHARMACISTS FORMULARY COMMITTEE REPORT - Joel Rose, DO

No report.

UNLICENSED ACTIVITY LIAISON REPORT - Vacant

No report.

HEALTHY WEIGHT LIAISON REPORT – Bridget Bellingar, DO

No report.

OLD BUSINESS

None.

NEW BUSINESS

None.

There being no further business the meeting adjourned at 4:29pm.