

FLORIDA | Board of Osteopathic Medicine

November 16, 2018 Meeting



DRAFT MEETING MINUTES
Board of Osteopathic Medicine
General Business Meeting
November 16, 2018
9:00 a.m.

Rosen Plaza Hotel
9700 International Drive
Orlando, Florida 32819
(407) 996-9931

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

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

MEMBERS PRESENT:

Sandra Schwemmer, DO, Chair
Joel B. Rose, DO, Vice-Chair
Anna Hayden, DO
Bridget Bellinger, DO
Michelle R. Mendez, DO
Valerie Jackson, Consumer Member
Alicja Janson, Consumer Member

BOARD STAFF PRESENT:

Claudia Kemp, Executive Director Board of
Medicine for Kama Monroe
Carol Taylor, Program Administrator

COURT REPORTER:

C & N Reporters
Victoria Gomez
(407) 423-9900

BOARD COUNSEL

Donna McNulty, Board Counsel

OTHERS PRESENT:

Matthew Witters, Prosecuting Attorney
Ann Prescott, Prosecuting Attorney

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:
RECOMMENDED ORDERS**

TAB-1-RO-01- Raymond Failer, D.O. case #2018-07061 (ALP)
PCP: Moran/Hayden

Respondent was present. Respondent was represented by counsel, Mark Goldstein, Esquire.

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

Ann Prescott represented the Department and presented the case to the Board. On May 11, 2018, the Department filed an Administrative Complaint with the following allegation: violation of Section 459.015(1)(x)3, Florida Statutes (2014), by committing repeated medical malpractice as defined in Statute 456.50. On July 6, 2018, the Department referred this matter to the Division of Administrative Hearings (DOAH) for a formal hearing. A final formal hearing did not occur. A motion hearing was held on August 15, 2018. The Administrative Law Judge (ALJ) filed a Recommended Order wherein he recommended dismissal of the complaint on August 24, 2018.

Ms. McNulty informed the board that this case is procedurally different from the typical Recommended Orders presented to the Board. A Section 120.57 evidentiary hearing involving disputed issues of material fact did not take place at DOAH. The matter was before the ALJ as a motion hearing. The motion before the ALJ was a motion to dismiss from the Respondent. The Recommended Order before the board is a motion for dismissal. The ALJ recommends certain findings of fact. Ms. McNulty recommended that paragraph twelve under the conclusions of law be considered a recommended finding of fact. Paragraph twelve stated that the Respondent did not contest that he had been found to have committed three or four incidents of medical malpractice. Ms. McNulty requested the board entertain a motion to adopt the Findings of Fact in the Recommended Order, including paragraph twelve, because no party filed any exceptions to the findings of fact, including paragraph twelve.

Motion: by Dr. Rose, seconded by Dr. Mendez, to adopt the Findings of Fact in the Recommended Order, including paragraph twelve.
Motion carried.

Because there were no disputed issues of material fact, Ms. McNulty recommended the board refer the case back to the Department so that a proper Section 120.57(2) hearing not involving disputed issues of material fact can be conducted at the next board meeting. During the proceeding both parties may argue whether the facts constitute a violation of the applicable law, any other legal arguments the parties have been going back and forth on, and present mitigation, if any. Ms. McNulty also requested the parties be allowed to submit memos, pertaining to the pertinent law, if they so choose and be allowed to respond to each other's memos. The schedule can be worked out between the parties if the materials are provided to the board staff timely for placement on the next meeting.

Mr. Goldberg recommended the Board take comments before any votes be taken. Mr. Goldberg noted his belief that taking the first vote before hearing from his client was prejudicial. Mr. Goldberg provided the current posture of the case and stated his desire to inform the board why the board should adhere to the recommendation of the ALJ.

After further lengthy discussion, including comments from Mr. Goldberg, Mr. Witters, Ms. Prescott, and Ms. McNulty:

Motion: by Dr. Rose, seconded by Dr. Bellinger, to adjourn this case and refer it back to the Department to bring back as an Informal Hearing.
Motion carried

In response to an inquiry from Mr. Goldberg, Ms. McNulty explained that the board accepted the Findings of Fact, but because there are no disputed issues of material fact, the board stopped the proceeding and converted it to a Section 120.57(2) and bringing it back. Mr. Goldberg expressed his belief that there must be a motion on the ALJs Recommended Order.

DETERMINATION OF WAIVER

TAB 2 – DOW -01- Dominic R. Riganotti, D.O., case #2017-01971 (PAC) 00666

PCP: Moran/Hayden

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

Matt Witters represented the Department and presented the case to the Board. Allegations of the Administrative Complaint: violation of Section 456.072(1)(c), Florida Statutes, by being convicted or found guilty of, or rendering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction, which relates to the practice of, or the ability to practice the licensee's profession. The Respondent was served the Administrative Complaint via certified mail on July 27, 2018. An election of rights was not received.

Motion: by Dr. Mendez, seconded by Dr. Rose, that the Respondent was properly served and waived his right to a formal hearing. Motion carried.

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

Motion: by Dr. Mendez, seconded by Dr. Bellingar, to adopt the findings of fact as set forth in the Administrative Complaint. Motion carried.

Motion: by Dr. Bellingar, seconded by Dr. Mendez, to adopt the conclusions of law set forth in the Administrative Complaint and find that this constitutes a violation of your practice act. Motion carried.

Motion: by Dr. Mendez, seconded by Dr. Bellingar, to impose revocation. Motion carried.

Clarification that the affidavit reflecting no election of rights or other formal pleading was received was issued by the Board of Osteopathic Medicine.

The Department withdrew the Motion for Costs.

Motion: by Dr. Bellingar, seconded by Dr. Mendez, that no costs will be assessed. Motion carried.

VOLUNTARY RELINQUISHMENT

TAB 3-VR-01- Florence E. Fruehan, D.O., case #2018-13516 (CS)

PCP: Moran/Hayden

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

Matt Witters on behalf of the Department requested the board accept the Respondent's voluntary relinquishment.

Motion: by Dr. Mendez, seconded by Dr. Bellingar, to accept the Respondent's voluntary relinquishment. Motion carried.

TAB 4 - PROSECUTION SERVICES REPORT

Mr. Witters presented the prosecution services report. Mr. Witters stated the total inventory is currently 95 cases, which is down eight from the last meeting. He further noted there was a productive probable cause panel meeting last month, adding that the outstanding 2011 case was resolved. Dr. Mendez went on record thanking Prosecution Services for resolving the 2011 case.

Mr. Witters asked the Board to consider allowing PSU to continue to prosecute cases that are a year and older.

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

Dr. Schwemmer commended Ms. Prescott on the continued reduction of the caseload.

TAB 5 – REVIEW AND APPROVAL OF MINUTES

August 30, 2018, Teleconference Board of Osteopathic Medicine Meeting Minutes

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

APPLICANTS

APPLICANTS FOR FULL LICENSURE

TAB 6 – Carey Kathleen Andreoiu, D.O., File #15511

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

TAB 7 – Margaret Marcinik, File #15456

Dr. Marcinik verbally waived, on the record, the ninety-day statutory requirement to act on the license.

Action Taken: After discussion, Dr. Rose moved to have the applicant obtain an evaluation from the Physician Resource Network (PRN) within six months and provide the evaluation to the board chair for review and determination whether the application can be granted or whether it needs to be presented to the full board. The Board delegates authority to the chair to review the PRN evaluation and make the determination. Dr. Mendez, seconded the motion. Motion carried.

TAB 8 – David A. Wassil, File #15579

Action Taken: After discussion, the case was tabled until later in the meeting to allow the applicant time to submit additional documentation.

TAB 9 – Melissa DeWolfe, File #15296

Action Taken: After discussion, Dr. Mendez moved to waive the applicant's appearance and grant the license. Dr. Bellingar, seconded the motion. Ms. Janson opposed the motion. Motion carried.

TAB 10 – Luisa Milevoj, File #15483

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

TAB 11 – Christopher Reza Partovi, File #15392

Action Taken: After discussion, Dr. Hayden moved to waive the applicant's appearance. Dr. Rose, seconded the motion. Motion carried.

Dr. Hayden moved to grant the license, Dr. Mendez, seconded the motion. Motion carried.

TAB 12 – William Rex Wiseman, D.O., File #15521

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

TAB 13 – Prasad Thottam, D.O., File #15481

Action Taken: After discussion, Dr. Rose moved to waive the applicant's appearance. Dr. Hayden, seconded the motion. Motion carried.

Dr. Hayden moved to grant the application, Dr. Mendez seconded the motion. Ms. Janson and Dr. Schwemmer opposed the motion. Motion carried.

AHCA EXEMPTION APPLICATION

TAB 14 – John Michael Kiel, D.O., OS15506

Action Taken: After discussion, Dr. Hayden moved to grant an exemption. Dr. Bellingar, seconded the motion. Motion carried.

TAB 8 – David A. Wassil, File #15579

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

RATIFICATION OF LICENSURE

TAB 15 - 1901 - Osteopathic Physician licenses issued 8.2.2018 through 10.31.2018

Motion: by Dr. Hayden, seconded by Dr. Bellingar, to ratify full license numbers 15532 through 15697, issued 8.2.2018 through 10.31.2018. Motion carried.

TAB 16 - 1902 - Osteopathic Resident Initial Registrations issued 8.2.2018 through 10.31.2018

Motion: by Dr. Hayden, seconded by Dr. Bellingar, to ratify resident registration numbers 6333 through 6344, issued 8.2.2018 through 10.31.2018. Motion carried.

GENERAL DISCUSSION

TAB 17 – 1917- Expert Witness Certificates issued 8.2.2018 through 10.31.2018

Expert Witness certificates issued 8.2.2018 through 10.31.2018

This item was placed on the agenda for informational purposes only. The board previously indicated a desire for this item to continue to be placed on agendas for informational purposes. No action required by the board.

BOARD CHAIR REPORT – Sandra Schwemmer, DO

TAB – 18 Chair Report

Dr. Schwemmer reported that since the last board meeting she has reviewed 15 applications for licensure.

She further reported that she recently attended the meeting in Washington D.C. Dr. Schwemmer stated the meeting was brought together based on a resolution brought to the Federation by the state of Pennsylvania. The resolution was to get the Federation to look at how artificial intelligence (AI) will potentially be integrated into healthcare, how what is there is being utilized, and then what rule the regulatory boards might have, with not only, utilizing AI, but with reviewing records of standards of care where AI and other aspects of deep learning and neural networking are included. Dr. Schwemmer noted that it was a good meeting and there was much useful information on artificial intelligence. She added, the Federation brought in legal experts, such as the FDA, as well as, several experts in the field who are writing some of the early manuscripts, as well as, books to try to identify where AI is being used. Additionally, there was a lot of panel discussion, including discussion regarding the definition of AI. Dr. Schwemmer stated there was a lot of discussion regarding how medical information is used today. Comments were made that the younger generation is using Google to search out conditions, while the older generation is still struggling with digital records. Dr. Schwemmer's take away included, the amount of medical information doubles every sixty days. When you look where all the information and data, as it is being retrieved is coming forward, it is very difficult to filter through it. The FDA is now using, data and computers teaching computers, programming them, how to search out information to pull out side effects of drugs that they need to get to the market quicker. The reality is that what research was done previously was probably that amount of paperwork, and now with electronic health records, there was some real discussion regarding the stress and strain health records are putting on physicians, as well as, what meaningful information are we getting from the health records. The consensus was the machines are there, they are gathering a tremendous amount of health information. Recently in London they asked patients if they would consent to their medical information being released. The majority of people who responded were ok with their medical information being disseminated if it was helpful to others. Lawyers compared AI to electronic checks. Dr. Schwemmer stated it was fascinating, but she left a little more confused than when she started. The human doctor/patient relationship is still the most trusted relationship in healthcare. The machines have to learn from humans, but we probably need to learn from the machines as it relates to data.

Dr. Schwemmer brought a list of the individual participants from the convention, which she provided to be disseminated to board members.

There was some discussion regarding moving the Board chair report to the beginning of the agenda as it is very detailed and useful.

BOARD COUNSEL REPORT - Donna McNulty, Esq.

TAB 19 - Rules Report

Ms McNulty noted there were three reports on the agenda. She further noted that the acute pain rule, 14.005 is in the works. It was noticed on November 8, 2018, in the FAR. Ms. McNulty instructed board members to let her know if they had any questions.

RULE DISCUSSION

TAB 20 - Rules 64B15-22.001, 64B15-22.002, and 64B15-22.003 JAPC letter and response from Board Counsel

Ms. McNulty informed the board that she received a letter from the Joint Administrative Procedures Committee (JAPC). She informed the board that JAPC is reviewing rules from different boards, basically regarding residents. The original JAPC letter from October and Ms. McNulty's response were included in the agenda. Ms. McNulty stated that the board reviewed the rule a couple of years ago under the comprehensive review. She added she has not received any additional information from JAPC.

TAB 21-Annual Regulatory Plan

Action Taken: Motion by Dr. Mendez to ratify the Annual Regulatory Plan, seconded by Dr. Rose. Motion carried.

TAB 32- RULE 64B15-13.001(1)(a) and (3)(a) Rule 64B15-13.001(1)(a) Rule 64B15-13.001(3)(a) Summary

Ms. Taylor informed the board that questions arose following the rule change. She noted that there were licensees who had completed the two individual courses, Florida Laws and Rules, and Medical Ethics prior to the rule change. The question arose whether the courses completed would count towards the continuing education requirement or would the licensees have to take the new combined course. Ms. Taylor further informed the board that a question also arose regarding the content of the new course. Ms. Taylor informed the board that CE Broker had been advised it was one course covering both subjects and anyone who took the individual courses prior to the rule change would receive credit for the requirement as long as they took both individual courses. Questions remained regarding whether a licensee can continue to take the two individual courses in lieu of the one course. Ms. Taylor related to the board an issue where a licensee has indicated he can no longer find the two individual courses he needs to take to meet reactivation requirements.

Ms. Taylor informed the board that this item was just for clarification, should the board believe any clarification is needed.

Mr. Winn from the Florida Osteopathic Medical Association (FOMA) addressed the board concerning an issue he recently experienced. He stated that when a party attempts to insert a course on CE Broker for the Florida Laws, Rules and Medical Ethics, CE Broker will not allow it. CE Broker only has the entry option for the Florida Laws & Rules and another entry option for Medical Ethics. Mr. Winn stated the course provided was given as Florida Laws, Rules and Medical Ethics. He added the course was uploaded, rejected and then subsequently accepted following re-upload. Mr. Winn noted that CE Broker needs to allow the Florida Laws, Rules, and Medical Ethics courses to be uploaded prior to the course being offered. It appears CE Broker is allowing the separate courses, but not the combo course to be input prior to the course being offered. Ms. Taylor was instructed to follow up with CE Broker and provide the board an update at the next board meeting.

Regarding the issue Ms. Taylor identified with the licensee attempting to reactivate his license, it was determined he should take the combined course twice.

The board then addressed the inquiry regarding whether the required course had to be AOA, or could it be taken to meet the general course requirements. Review of the rule reflected the rule must be taken as a live participatory course. After discussion the board determined the rule could be taken to meet General or AOA requirements, if the course was taken as a live participatory course.

Dr. Mendez stated that the board has is never going to turn away someone for taking too many CEs.

The discussion then turned to the inquiry regarding the definition of live participatory. After much discussion and a reading of the content of both Rule 64B15-13.001(1)(a) and (3)(a), the board determined the rule was clear. It was noted that (3)(a) allows for completion by distance learning; therefore, common sense would reason that live participatory noted in (1)(a) is "in person."

During this section Mr. Winn also provided an update regarding the ACGME issue. Mr. Winn noted that Steve Winn is working on the issue. He added that he has the sponsors available and is working on the bill to make the changes. A meeting is scheduled. The board thanked him for the update.

TAB 22 – Applications rules and forms

Ms. Kemp noted that the revised applications for each application were included in the agenda materials. She noted there was a summary of the changes included for each application. Ms. Kemp stated the changes were the same for each application except for one; DH MQA 1249 includes changing a typo. Ms. Kemp stated the DEA questions were added on the application because of HB21 and the requirement that anyone licensed, registered with the DEA, and approved to prescribe controlled substances are required to take the required two hour continuing education course. The Department has never collected the information previously. The information would be obtained which will allow CE Broker to input the requirement on registered applicants' transcripts.

Ms. Kemp addressed the issue that each state controls the DEA registration in each state. It is a federal registration. After discussion, the board determined that the number is not needed. They determined that all that is needed on the application is a question inquiring whether you have a DEA registration, yes or no. Ms. Kemp informed the board that she would work with Ms. Monroe and Ms. Monroe will bring back revised language in February.

Ms. Kemp then identified the other change on the applications, which was the addition of the health history questions created by the health history workgroup. After discussion, the board determined to wait until a later date to act. Ms. Taylor will forward the links to the board members for the workgroup audios. Material will be added to the next agenda.

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

TAB 23 – Four Year Licensure Renewals

Ms. Kemp informed the board that the Department is preparing a legislative package which would provide boards that are fiscally sound the option to move to four-year renewals. To be able to provide the option to the boards, the statute would need to be revised to remove the word biennial. This matter was placed on the agenda to ascertain the board's wishes regarding revising the statute to ensure the option is available should the board desire to consider a change in renewal periods. After discussion, the board determined that at this date and time it is not able to support a change.

TAB 24 - JOINT COMMITTEE MEETING UPDATES - Joel Rose, DO

- a. Council on Physician Assistants Report (October meeting was cancelled, nothing to report)
- b. Anesthesiology Assistants Committee Report (No meeting since the board's last meeting, there will be a meeting in December, no report at this time)
- c. Joint Committee on Controlled Substances (September 21, 2018, meeting)
- d. Joint Health History Workgroup Meeting (September 14, 2018, meeting)
- e. Boards of Medicine and Osteopathic Medicine's Physician Certification Pattern Review Panel – October 16, 2018 meeting cancelled; November 16, 2018 meeting, there will be a November 27, 2018, teleconference.

TAB 25 - BUDGET LIAISON REPORT – Anna Hayden, DO

Budget Report attached

The total cash sweep was 11 million dollars. The report reflects the board budget is healthy overall.

TAB 26 - UNLICENSED ACTIVITY LIAISON REPORT – Sandra Schwemmer, DO

There have been no meetings. There is nothing to report.

TAB 27 - HEALTHY WEIGHT LIAISON REPORT – Bridget Bellingar, DO

There have been no meetings. There is nothing to report.

TAB 28- OLD BUSINESS

None

NEW BUSINESS

TAB 29- Meeting Summary on International Association of Medical Regulatory Authorities (IAMRA)

Dr. Hayden provided a summary of the meeting of the International Association of Medical Regulatory Authorities (IAMRA). Dr. Hayden attended the meeting and noted that Artificial Intelligence was also discussed at the meeting. She provided information regarding the keynote speaker, events taking place in the United Kingdom to reduce suicide, and a case in the United Kingdom. She noted their system in terms of the opioid issue. Dr. Hayden noted it was an informative meeting.

TAB 30- Election of Officers

Motion: by Dr. Schwemmer, seconded by Dr. Hayden, to nominate Dr. Rose as chair. Motion carried. Dr. Rose will assume the position effective January 1, 2019.

Motion: by Ms. Jackson, seconded by Dr. Rose, to nominate Dr. Bellingar as vice-chair. Motion carried.

TAB 31- Morton Morris Award

Dr. Schwemmer nominated Kirin C. Patel for the award. Ms. Janson nominated Paul Seltzer for the award.

Both nominators provided qualifications for the nominees. After discussion, it was determined that the Morton Morris Award will be presented to Dr. Seltzer and Dr. Patel will be presented the board chair award.

Motion: by Dr. Hayden, seconded by Dr. Mendez, to present Dr. Seltzer with the Morton Morris Award. Motion carried.

Board liaisons will remain the same for 2019.

Ms. Taylor provided the chair/vice-chair 2019 meeting date to the chair elect and the vice-chair elect.

Motion: by Dr. Hayden, seconded by Dr. Mendez for the scholarship to attend the AAOE meeting as the Florida delegate in January to go to Dr. Rose. Motion carried.

ADJOURN

Motion: by Dr. Hayden, seconded by Dr. Rose, to adjourn the meeting. Meeting adjourned at 1:03 pm.

Next Meeting: February 21, 2019 Weston, Florida

DRAFT