FLORIDA | Board of Osteopathic Medicine

May 14, 2021



DRAFT MEETING MINUTES

Board of Osteopathic Medicine Video/Telephone Conference Meeting Meet-Me-Number (888) 585-9008 Participation Code 432-162-565 May 14, 2021 9 a.m.

The meeting was called to order by Dr. Sandra Schwemmer, Chair, at approximately 9:18 a.m.

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

MEMBERS PRESENT:

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

MEMBERS ABSENT

Valerie Jackson, Consumer Member

PROSECUTION SERVICES ATTORNEYS:

Sarah Corrigan, Assistant General Counsel Cynthia Nash-Early, Assistant General Counsel Michael Williams, Assistant General Counsel Chad Dunn, Assistant General Counsel Major Thompson, Assistant General Counsel

COURT REPORTER:

For the Record Reporting (850) 222-5491 Liz Rotruck

OTHERS PRESENT:

None

BOARD STAFF PRESENT:

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

BOARD COUNSEL

Donna McNulty, Board Counsel Cassandra Fullove, Paralegal

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.

DISCIPLINARY CASES: SETTLEMENT AGREEMENT

TAB 1: SA-01 John Scott Ferguson, D.O., 2018-06282

Respondent was present. Attorney Ted Copeland appeared on behalf of Respondent.

Ms. Jackson was recused due to participation on the Probable Cause Panel.

Cynthia Nash-Early represented the Department and presented the case to the Board. Allegations of the Administrative Complaint, violation of Section 459.015(1)(x), Florida Statutes (2013-2016), by providing services below the standard of care in his treatment of Patient M.L.; and violation of Section 459.015(1)(o), Florida Statutes, (2013-2016) failing to create or keep adequate medical records.

Settlement Agreement: Letter of concern; five thousand (\$5,000.00) dollar fine to be paid within thirty (30) days of the filing of the Final Order; reimbursement of costs not to exceed the amount of four thousand one hundred sixty-two dollars and forty-two cents (\$4162.42) to be paid within thirty (30) days of the filing of the Final Order; Respondent shall complete the following continuing medical education (CME): a board approved medical records course within one (1) year from the date the Final Order is filed; and five (5) continuing medical education (CME) hours in risk management within one (1) year of the filing of the Final Order, Respondent shall obtain prior board approval for the course.

Respondent's attorney made a statement, which was followed by the Respondent and his attorney responding to inquiries from the board.

After discussion:

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

Discussion ensued wherein the continuing education requirements were discussed and a verbal agreement was met with the following changes: substitute language to say "FMA medical records course or other board approved medical records course" and to substitute five hours of risk management to say "five hours risk management in laser hair removal."

Dr. Mendez subsequently withdrew her motion and Dr. Hayden withdrew the second.

Dr. Rose, then submitted a motion to reject the settlement agreement and replace it with a counter-offer incorporating all terms and conditions of the current agreement, including the oral change regarding FMA medical records with the exception of five hours of CME in the standard of care in general laser therapy in which at least one hour is in the standard of care of laser hair removal to be taken within one year of the date the Final Order, seconded by Dr. Bellingar. Motion passed.

The counteroffer was verbally accepted on the record.

The current costs are three thousand five hundred fifty-seven dollars and eighty-five cents (\$3557.85).

TAB 2: SA-02 Gordon Johnson Crozier, D.O., 2017-07957

Respondent was present. Attorney David Spicer appeared on behalf of Respondent.

Dr. Hayden was recused due to participation on the Probable Cause Panel.

Cynthia Nash-Early represented the Department and presented the case to the Board. Allegations of the Administrative Complaint, violation of Section 459.015(1)(x), Florida Statutes (2015-2016), by providing

services below the prevailing standard of care in his treatment of Patient S.L.; and violation of Section 459.015(1)(q), Florida Statutes, by exercising influence over a patient for financial gain.

Settlement Agreement: Letter of concern; fifteen thousand (\$15,000.00) dollar fine to be paid within thirty (30) days of the filing of the Final Order; reimbursement of costs not to exceed the amount of five thousand nine hundred fifty-one dollars and fifty-nine cents (\$5951.59) to be paid within thirty (30) days of the filing of the Final Order; Respondent shall complete continuing medical education (CME) to include: five (5) hours CME in ethics within one year of the filing of the Final Order and five (5) hours CME in risk management within one (1) year of the filing of the Final Order.

Respondent's attorney made a statement.

After discussion:

Both parties agreed to orally amend the settlement agreement to state that for the CME required in paragraphs four and five of the stipulated disposition, the ethics course shall include the topic of exercising influence over the patient for financial gain and the risk management course shall include the topic of the approved use of non-FDA approved medication or therapies in patient care, and the courses shall be preapproved by the Board chair

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

The current costs are four thousand seven hundred ninety-one dollars and one cent (\$4791.01).

TAB 3: SA -03 Anthony Ngo, D.O., 2016-30428

Respondent was present. Attorney Mark McLaughlin appeared on behalf of Respondent.

Dr. Rose was recused due to participation on the Probable Cause Panel.

Sarah Corrigan represented the Department and presented the case to the Board. Allegations of the Administrative Complaint, violation of Section 459.015(1)(x), Florida Statutes (2020), by committing medical malpractice as defined in Section 456.50, Florida Statutes.

Settlement Agreement: Letter of concern; five thousand (\$5000.00) dollar fine to be paid within thirty (30) days of the filing of the Final Order; reimbursement of costs not to exceed the amount of four thousand eight hundred sixty-eight dollars and eighty-five cents (\$4868.85) to be paid within thirty (30) days of the filing of the Final Order; Respondent shall complete the following continuing medical education: five (5) hours CME in risk management within one (1) year of the filing of the Final Order and five (5) CME hours in urology including discussions of prostate cancer.

Attorney made a statement.

After discussion:

Motion: by Dr. Hayden, seconded by Dr. Bellingar, to accept the settlement agreement. Motion approved.

The current costs are three thousand three hundred fifty-nine dollars and forty-five cents (\$3359.45).

INFORMAL HEARING

TAB 4: IH-01 Tara Nicole Dennis, D.O., 2020-26316

Respondent was present. Attorney Bernard Cassidy appeared on behalf of Respondent

Dr. Hayden was recused due to participation on the Probable Cause Panel.

Sarah Corrigan represented the Department and presented the case to the Board. Allegations of Administrative Complaint, violation of Section 456.072(1)(c), Florida Statutes; by being convicted or found guilty of, or entering 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, a licensee's profession; and violation of Section 456.072(1)(kk), Florida Statutes; 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 Department filed an Administrative Complaint against the Respondent on January 14, 2021. The Department served an Administrative Complaint on Respondent via certified mail. The Respondent timely submitted an election of rights to the Department requesting a hearing not involving disputed issues of material fact. Pursuant to the Respondent's election, the matter is being presented to the board as an informal hearing.

The department offered the investigative file, a copy of which was previously furnished to the Board, into evidence to establish a prima facia case for the violation alleged in the administrative complaint and asked that it be admitted into evidence.

Motion: by Dr. Rose, seconded by Dr. Bellingar, to accept the investigative file into evidence. Motion carried.

Motion: by Dr. Rose, to adopt the allegations of fact in the Administrative Complaint as the findings of fact of the board, seconded by Dr. Bellingar. Motion passed unanimously.

Ms. McNulty provided statement that anyone appearing today has an obligation to be truthful.

Respondent's counsel and Respondent presented a statement and responded to inquiries from the board.

Board counsel noted that the board cannot waive a statute. Additionally, she provided guidance as it relates to Section 456.0635, Florida Statutes, which was not an issue before the board at the instant meeting. It was noted that the matters before the board at the instant meeting were the convictions and the Medicaid program termination.

Following discussion:

Motion: by Dr. Rose, that the Respondent violated Florida Statutes as charged in the Administrative Complaint, seconded by Dr. Bellingar. Motion passed unanimously.

Motion: by Dr. Rose, seconded by Dr. Bellingar, to impose the following penalty:

Reprimand; Fine in the amount of six thousand dollars (\$6,000.00) to be paid prior to reinstatement of license; Suspension for three (3) years from the date of the Final Order and until such time as she appears before the board and demonstrates her ability to practice with reasonable skill and safety, said demonstration shall include an evaluation by the Professionals Resource Network (PRN); submission of documentation reflecting she is current on all CME requirements; and she must demonstrate that she has taken and successfully passed the COMVEX examination prior to reinstatement. The Board reserved jurisdiction to impose any additional terms and conditions including probation if necessary. Motion passed unanimously.

The prosecuting attorney noted Respondent's license is delinquent as of 2020; therefore, in 2022 she will not be able to renew.

Motion: by Dr. Rose, seconded by Dr. Bellingar to approve Petitioner's Motion for Costs and to impose costs in the amount of two hundred nineteen dollars and seventy cents (\$219.70) to be paid prior to reinstatement of Respondent's license. Motion carried.

TAB 5: Robert Fetchero, D.O., 2019-40239

John Schwab, Esq. submitted a request to appear before the board as a qualified representative on behalf of the Respondent. Mr. Schwab represented the Respondent in Pennsylvania but does not hold a license to practice law in the state of Florida.

Motion: by Dr. Bellinger, seconded by Dr. Rose, to allow Mr. Schwab to appear as qualified representative in this matter. Motion carried.

Respondent was not present. John Schwab appeared as qualified representative on behalf of Respondent.

Dr. Rose was recused due to participation on the Probable Cause Panel.

Major Thompson represented the Department and presented the case to the Board. Allegations of Administrative Complaint, violation of Section 459.015(1)(b), Florida Statutes, (2019); by having license acted upon by the state of Pennsylvania

The Department filed an Administrative Complaint against the Respondent on January 15, 2021. The Department served an Administrative Complaint on Respondent via certified mail. The Respondent timely submitted an election of rights to the Department requesting a hearing not involving disputed issues of material fact. Pursuant to the Respondent's election, the matter is being presented to the board as an informal hearing.

The department offered the investigative file, a copy of which was previously furnished to the Board, into evidence to establish a prima facia case for the violation alleged in the administrative complaint and asked that it be admitted into evidence.

Motion: by Dr. Bellingar, seconded by Dr. Rose, to accept the investigative file into evidence. Motion carried.

Motion: by Dr. Rose, to adopt the allegations of fact in the Administrative Complaint as the findings of fact of the board, seconded by Dr. Bellingar. Motion passed unanimously.

Respondent's counsel presented a statement. Both Respondent and Respondent's counsel responded to inquiries from the Board.

Following discussion:

Motion: by Dr. Rose, that the Respondent violated Florida Statutes as charged in the Administrative Complaint, seconded by Dr. Bellingar. Motion passed unanimously.

Motion: by Dr. Bellingar, seconded by Dr. Rose, to impose the following penalty:

Letter of Concern and a fine in the amount of two thousand five hundred dollars (\$2500.00) to be paid within thirty (30) days of the filing of the Final Order. Motion passed unanimously.

Motion: by Dr. Bellingar, seconded by Dr. Rose to approve Petitioner's Motion for Costs and to impose costs in the amount of thirty-four dollars and sixty cents (\$34.60) to be paid within thirty (30) days of the filing of the Final Order. Motion carried.

RECOMMENDED ORDERS

TAB 8: RO-01 Richard Van Buskirk, D.O., 2018-23723 and 203808

Respondent was not present. Attorney Kathryn Hood, Esq. appeared on behalf of Respondent.

Dr. Rose was recused due to participation on the Probable Cause Panel.

Dr. Schwemmer provided a statement regarding Recommended Orders; including identification of what type document/case was being heard, identification of the board members present, identification of the recused board member, confirmation that all participating board members had read the complete record, and identification of the parties present for the Department and the Respondent.

Dr Schwemmer announced the controlling statutes for the proceeding, the purpose of the proceeding, the fact that no new evidence would be accepted, and informed Board members what actions the board was allowed to take.

A Recommended Order was issued in this matter. No exceptions were filed.

Respondent disputed the Administrative Complaint and requested a formal hearing. On December 9 and 10, 2020, the Department referred the matter to the Division of Administrative Hearings (DOAH). A Recommended Order was issued on February 24, 2021, in this matter. The Administrative Law Judge (ALJ) found that the Respondent was not guilty of any of the alleged violations.

Kathryn Hood, Esq. presented a brief opening statement.

Motion: by Dr. Hayden to accept the findings of fact of the ALJ as the findings of fact of the board, seconded by Dr. Mendez. Motion carried.

Motion: by Dr. Hayden to adopt the conclusions of law of the ALJ as the conclusions of law of the board, seconded by Dr. Mendez. Motion carried.

Motion: by Dr. Hayden to adopt the recommended penalty of the ALJ to close and dismiss the case, seconded by Dr. Mendez.

Following discussion, Motion carried.

VOLUNTARY RELINQUISHMENT

TAB 6: Jacob Matthew McClean, D.O., 2019-26585 (AG) Withdrawn

This matter was withdrawn from the agenda by the Prosecuting Services Unit.

TAB 7: Andrew Scott Kees, D.O., 2020-33312 (MS)

Motion: by Dr. Hayden to accept the voluntary relinquishment, seconded by Dr. Rose. Motion carried.

TAB 9: PROSECUTION SERVICES REPORT- Sarah Corrigan, Esq.

Sarah Corrigan presented the prosecution services report (PSU). Ms. Corrigan requested the board consider allowing PSU to continue to prosecute cases that are a year and older.

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

REVIEW AND APPROVAL OF MINUTES

TAB 10: April 12, 2021, Meeting Minutes

TAB 11: February 26, 2021, Meeting Minutes

Tabs 10 and 11 were heard together.

Motion: by Dr. Rose, seconded by Dr. Bellingar, to accept the April 12, 2021 and the February 26, 2021, meeting minutes with the verbal amendment to remove Nancy Murphy's name from the attendance section.

Motion carried.

APPLICANTS

APPLICANTS FOR FULL LICENSURE

TAB 12: Benedicta Olamode Udeagbala, D.O., File #17483

Applicant was not present. Applicant was not represented by counsel.

Following discussion,

Motion: by Dr. Rose, to accept the application, seconded by Dr. Hayden. Motion carried.

TAB 13: Louis N. Radden, D.O., File #16915

Applicant was present. Applicant was not represented by counsel.

Following discussion,

Motion: by Dr. Hayden, to accept the application, seconded by Dr. Rose. Motion carried.

TAB 14: Cobra Chamblee, D.O., File #17794

Applicant was present. Applicant was not represented by counsel.

After discussion:

Motion: by Dr. Rose, to approve the application, Dr. Hayden seconded the motion. Motion carried.

TAB 15: Neha Amin, D.O., File #17379

Applicant was present. Applicant was not represented by counsel.

After discussion:

Motion: by Dr. Hayden, seconded by Dr. Rose, to approve the application

TAB 16: Donna Jensen, D.O., File#17651

Applicant was present. Applicant was represented by attorney, Rickey Strong.

After discussion:

Motion: by Dr. Hayden, to accept the application, seconded by Dr. Mendez. Motion carried.

TAB 17: Gregory Ahem Thompson, D.O., File #17611

Applicant was not present. Applicant was not represented by counsel.

After discussion:

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

TAB 18: Joseph Mark Ciszewski, D.O., File #17746

Applicant was present. Applicant was not represented by counsel.

After discussion:

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

TAB 19: James Edward Hubbs, D.O., File #17675

Applicant was present. Applicant was not represented by counsel.

After discussion:

Motion: by Dr. Rose, to deny the application due to two prior actions in another jurisdiction regarding professional misconduct, which is in alignment with past determinations by the board.

Prior to the vote, Dr. Hubbs requested to withdraw his application.

Motion: by Dr. Hayden to accept withdrawal of the application, seconded by Dr. Rose. Motion carried.

TAB 20: Thomas Francis Morris, D.O., File #18061

Applicant was present. Applicant was not represented by counsel.

After discussion:

Motion: by Dr. Rose, to issue Notice of Intent to Approve License with the condition that prior to issuance of the license applicant take and pass the COMVEX within twelve months, seconded by Dr. Hayden. Motion carried.

APPLICANTS FOR OSTEOPATHIC MEDICINE RESIDENT REGISTRATIONS

TAB 21: Farah Leclercq, D.O., File #7240

This matter was pulled as it has been approved via board liaison through her delegation authority.

RATIFICATION OF LICENSURE

TAB 22: 1901 - Osteopathic Physician licenses issued 2.9.2021 through 4.19.2021 Motion: by Dr. Hayden, seconded by Dr. Rose, to ratify the 188 full licenses; numbers 17469-17656 inclusive issued 2.9.2021 through 4.19.2021. Motion carried.

TAB 23: 1902 - Osteopathic Resident Initial Registrations issued 2.9.2021 through 4.19.2021 Motion: by Dr. Hayden, seconded by Dr. Rose, to ratify the 34 resident registrations; numbers 7469-7478 inclusive issued 2.9.2021 through 4.19.2021. Motion carried.

GENERAL DISCUSSION

TAB 24: 1917 – Osteopathic Physician Expert Witness certificate issued 2.9.2021 through 4.19.2021 (this item is for informational purposes only, no action required)

There were three (3) expert witness certificates; numbers 129-131 inclusive issued 2.9.2021 through 4.19.2021. (this item was provided for informational purposes only, no action required)

TAB 25: 1902-Training License Re-Registrations issued 2.9.2021 through 4.19.2021 (this item is for informational purposes only, no action required)

There were twenty-five (25) physician in training re-registrations issued 2.9.2021 through 4.19.2021. (this item was for informational purposes only, no action required)

BOARD COUNSEL REPORT - Donna McNulty, Esq.

TAB 26: RULE REPORTS April 2021 Rules Report March 2021 Rules Report

The rules reports were included on the agenda for the board's information. The board had no questions.

EXECUTIVE DIRECTOR REPORT, Kama Monroe

TAB 27: Bills Filed For the 2021 Legislative Session

Ms. Monroe reviewed the list of bills filed for the 2021 legislative session, highlighting the bills that will require action by the board.

TAB 28: BOARD CHAIR REPORT – Sandra Schwemmer, D.O.

Board Chair, Dr. Schwemmer noted she had no formal report at this time. She did comment on a bill that was passed that extends the post-partum Medicaid coverage for pregnant women to a year instead of six months. Dr. Schwemmer added to let her know if there is something she can assist with.

TAB 29: JOINT COMMITTEE MEETING UPDATES - Joel Rose, D.O.

Boards of Medicine and Osteopathic Joint Surgical Care/Quality Assurance Committee
April 8, 2021 Joint Surgical Care/Quality Assurance Meeting

Dr. Rose was unable to attend the April 8th, meeting. Dr. Hayden and Dr. Schwemmer did attend the meeting. Dr. Schwemmer provided an update on the items the committee approved. She noted there was a lot of conversation, but very little documentation was provided for the state of Florida.

Motion: Dr. Hayden, to approve the American Association for Accreditation of Ambulatory Surgery Facilities and Joint Commission and to temporarily approve the Accreditation Association for Ambulatory Healthcare (AAAHC) through August in accordance with the action of the committee, seconded by Dr. Schwemmer. Motion carried.

Motion: Dr. Hayden, to ratify the Joint Surgical Care/Quality Assurance actions and reports, Dr. Mendez seconded. Motion carried.

Council on Physician Assistants Committee

April 8, 2021 Physician Assistant Meeting

Dr. Rose provided an update on the meeting and noted the minutes are included for review.

At this time, acknowledgments were issued.

Dr. Rose acknowledged Dr. Schwemmer was elected to the board of directors for the Federation of State Medical Boards (FSMB). Dr. Rose additionally thanked Dr. Hayden for her service during her time with the federation. He then shared a thank you note to the board which was received from Nancy Murphy for the award she received last November.

Dr. Schwemmer acknowledged and thanked Dr. Hayden and then noted that Dr. Terkonda is now chair elect of the Federation which results in two Floridians on the board.

Rule 64B15-6.011, F.A.C.

Essentially the previous version of the disciplinary guidelines had triggered a couple of concerns by JAPC, the rule is being amended to address JAPC's concerns.

Motion: by Dr. Hayden to approve the updated guidelines in Rule 64B15-6.011, F.A.C., Dr. Rose seconded. 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 the 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. Schwemmer, 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.

Motion: by Dr. Rose, seconded by Dr. Hayden, to not add a sunset provision to this rule as the rule is required by statute to protect the health, safety, and welfare of the citizens of Florida. Motion carried.

Joint Rule Committee

March 29, 2021 Joint Rules Committee Meeting

Dr. Rose provided a summary of the joint committee meeting with the Board of Pharmacy and Board of Medicine, noting the discussion that occurred with an application for test and treat by Walgreens. Dr. Mendez provided further details regarding the application discussed. The committee provided a recommendation to be presented to the Board of Pharmacy.

Motion: Dr. Rose to accept the report along with the meeting minutes from the Board of Pharmacy, seconded by Dr. Mendez second. Motion carried.

LIAISON REPORTS

TAB 30: BUDGET LIAISON REPORT - Anna Hayden, DO

Dr. Hayden noted that the budget report was attached for the board's review. The Executive Director informed the board that the next time the board meets the board will see a sweep has been conducted.

Motion: Dr. Hayden to ratify the revenue reports, Dr. Rose seconded. Motion carried.

TAB 31: HEALTHY WEIGHT LIAISON REPORT – Bridget Bellingar, DO

Dr. Bellingar was not present at this time.

TAB 32: LEGISLATIVE REPORT – Joel Rose, DO

Dr. Rose noted nothing to report at this time, noting Ms. Monroe will update the board regarding items affecting the board, and Ms. McNulty will advise the board of actions that need to be taken.

Dr. Schwemmer requested a summary of bills approved for the next meeting.

TAB 33: UNLICENSED ACTIVITY LIAISON REPORT – Sandra Schwemmer, DO There was no report at this time.

TAB 34: OLD BUSINESS

There was no old business.

TAB 35: NEW BUSINESS

Dr. Rose expressed concern as a result of the court reporter's tardiness to the instant meeting. Discussion ensued which resulted in a process change.

Dr. Rose further requested continuing medical education (CME) providers be invited to the August board meeting to participate and provide feedback as how CMEs have progressed with virtual CMEs. Some of the requested input includes any problems the providers have experienced. He noted the Board may wish to

extend the cme via distance learning option for another biennium. Board counsel noted the rule should be noticed to allow interested parties to participate.

Dr. Hayden inquired whether there is a time set for the long-range planning meeting. She suggested some items she would like to see included. Board members noted participating in the survey. Dr. Schwemmer added that in a future meeting we may need to invite Dr. Simons to provide an overview of things to watch for and to provide state's best practices.

There was a brief discussion regarding in-person meetings.

Adjourn: Motion: by Dr. Hayden, seconded by Dr. Rose, to adjourn. Motion carried.

Meeting adjourned at 1:16 p.m.

