

FLORIDA | Board of Osteopathic Medicine

August 13, 2021



DRAFT MEETING MINUTES
Board of Osteopathic Medicine
Video/Telephone Conference Meeting
Meet-Me-Number 1(866) 899-4679
Participation Code 618-262-429
August 13, 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
Michelle R. Mendez, DO, Vice-Chair
Tiffany Sizemore, DO
Jorge Gadea, DO.
William Kirsh, DO
Valerie Jackson, Consumer Member

BOARD STAFF PRESENT:

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

MEMBERS ABSENT

NONE

BOARD COUNSEL

Donna McNulty, Board Counsel
Cassandra Fullove, Paralegal

PROSECUTION SERVICES ATTORNEYS:

Sarah Corrigan, Assistant General Counsel

COURT REPORTER:

For the Record Reporting
(850) 222-5491

OTHERS PRESENT:

None

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.

TAB 1: BOARD CHAIR REPORT – Sandra Schwemmer, D.O.

Board chair, Sandra Schwemmer, began the meeting by honoring the board members who recently completed their service after serving the board diligently over many years. She recited the language appearing on the years of service awards each individual past member will be receiving and further noted that the service of

Bridget Bellingar, Anna Hayden, and Joel Rose has been invaluable to the citizens of the state of Florida and to the profession.

The board chair then introduced the new board members in attendance. She provided a summary of Tiffany Sizemore and William Kirsh's background and allowed them both time to address the board.

Dr. Schwemmer appointed Dr. Mendez as the vice-chair of the board until formal elections. Dr. Mendez accepted, noting it would be her honor to serve.

DISCIPLINARY CASES: SETTLEMENT AGREEMENT

TAB 2: SA-01 Jaclyn Tolentino, D.O., 2018-08971

Respondent was present. Attorney Chris Lyon appeared on behalf of Respondent.

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

Board counsel, Donna McNulty reminded individuals appearing before the board that, although they were not being sworn in, they still had an obligation to be truthful.

Sarah Corrigan represented the Department and presented the case to the Board. Allegations of the Administrative Complaint, violation of Section 459.015(1)(ee), Florida Statutes (2017), by signing blank prescription forms.

Settlement Agreement: Letter of concern; five thousand (\$5,000.00) dollar administrative fine to be paid within one hundred eighty (180) days of the filing of the Final Order; reimbursement of costs not to exceed the amount of five thousand four hundred sixty-three dollars and forty-three cents (\$5463.43) to be paid within one hundred eighty (180) days of the filing of the Final Order; Respondent shall complete the following continuing medical education (CME): one three hour CME course in Laws and Rules within one (1) year from the date the Final Order is filed; and one three hour (CME) course 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. Kirsh, to reject the settlement agreement and present a counteroffer. Motion carried.

Discussion ensued wherein the appropriateness of the continuing education requirements were discussed.

Dr. Sizemore, then submitted a motion to offer a counteroffer incorporating all terms and conditions of the current agreement, except for the risk management requirement. The counteroffer replaces the risk management continuing medical education requirement with a two (2) hour medical records course, which can be fulfilled online, to be taken within one year of the date the Final Order. The medical records continuing medical education course shall be approved by the board chair prior to completing the course. Motion passed.

The Respondent was given seven days to accept or reject the counteroffer.

The current costs are four thousand three hundred fourteen dollars and sixty cents (\$4314.60).

TAB 3: SA-02 Robert Guirguis, D.O., 2016-09047

This item was withdrawn from the agenda.

TAB 4: SA -03 Craig Adam Silver, D.O., 2017-11613

This item was withdrawn from the agenda.

INFORMAL HEARING

TAB 5: IH-01 Danuta B. Fabisiak, D.O., 2015-19554

Respondent was not present. Attorney Bruce Lamb appeared on behalf of Respondent

Sarah Corrigan represented the Department and presented the case to the Board. Allegations of Administrative Complaint, violation of Section 459.015(1)(o), Florida Statutes, 2009-2014; for failure to keep medical records that justify the course of treatment.

The Respondent was served an Administrative Complaint. Respondent subsequently filed an election of rights requesting a formal hearing. The Department referred the matter to the Division of Administrative Hearings (DOAH). The Department then filed a Motion Requesting an Order Deeming Matters Admitted and Relinquishing Jurisdiction. The Administrative Law Judge (ALJ) subsequently dismissed the matter and referred it for 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 facie case for the violation alleged in the administrative complaint and asked that it be admitted into evidence.

Motion: by Dr. Kirsh, seconded by Dr. Mendez, to accept the investigative file into evidence, including the Order Granting Petitioner's Motion, Deeming Matters Admitted. Motion carried.

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

Respondent's counsel addressed the board.

Following discussion:

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

Motion: by Dr. Kirsh, seconded by Dr. Mendez, to impose the penalty as recommended by the Department, which was:

Reprimand, administrative fine in the amount of five thousand (\$5,000.00) dollars and continuing medical education (CME) to include a medical records course and a course in risk management.

Discussion ensued, following which:

Motion: by Dr. Schwemmer, Letter of concern; Administrative Fine in the amount of two thousand five hundred (\$2500) dollars to be paid within sixty (60) days from the date of the Final Order, two hour continuing medical records course which can be completed online to be completed within one year from the filing of the Final Order. The deviation from the disciplinary guidelines was justified due to the fact Respondent had no prior discipline; unique circumstances of the case; there was no pecuniary gain; there was only one patient involved; there are no penalties for any other violations; and there is no danger to the

public. Motion was seconded by Dr. Sizemore. Motion carried.

Motion: by Dr. Kirsh, seconded by Dr. Mendez to approve Petitioner's Motion for Costs and to impose costs in the amount of seven thousand one hundred fifty-seven dollars and ninety-four cents (\$7157.94). Motion carried.

Motion: by Dr. Schwemmer, seconded by Dr. Sizemore, for costs to be paid within sixty (60) days from the filing of the Final Order. Motion carried.

TAB 6: 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. Kirsh, seconded by Dr. Mendez, to allow PSU to continue prosecuting cases one year and older. Motion passed.

PROBATION AND COMPLIANCE

RENEWED PETITION FOR TERMINATION OF LICENSURE CONDITION

TAB 7: Ty Reso Anderson, D.O., License number #OS14603

Licensee was present. Attorney Alan Grossman appeared as counsel for the licensee. Licensee's monitor appeared in support of licensee and PRN representative Dr. Jacobs appeared to provide information.

Discussion ensued which included updates on the licensee's patient load, discussion of PRN contract and how it affects the ability to increase the patient load, as well as, Medicare participation and how it affects the licensee's ability to increase patient load. Discussion also included PRN monitoring status and history, and concerns regarding stress management. The licensee noted that his recovery and moving forward from the past was all built into his life.

After lengthy discussion:

Motion: by Dr. Mendez, to remove the license long PRN monitoring contract from the licensure conditions, seconded by Ms. Jackson. Dr. Schwemmer opposed. Motion carried.

MODIFICATION OF FINAL ORDER

LIFTING OF OFFICE SURGERY REGISTRATION PRACTICE RESTRICTION

TAB 8: John Cho, D.O.; License number OS8298

Licensee was present. Licensee was not represented by counsel.

Licensee summarized his request. Attorney Chad Dunn for the Department addressed the board stating the Final Order was the result of a settlement agreement entered into by the parties, it was presented to the board, the board offered a counter-offer, the licensee entered into the agreement willingly, he was aware of the life-long review and agreed to it, and there has been no change in circumstances. Mr. Dunn stated the Department objected to the licensee's request because the licensee entered into the counter-offer agreement included in the Final Order voluntarily.

Board counsel, Donna McNulty agreed with the Department and noted that there would need to be a significant change in circumstances to grant the request.

After discussion.

Motion: by Dr. Schwemmer to deny the petition, seconded by Dr. Mendez. Dr. Sizemore opposed the motion. Motion carried.

TOLL PROBATION AND EXTENSION OF TIME TO SECURE INDIRECT MONITOR

TAB 9: Vincent Joseph Mamone, D.O.; License Number OS6401
Licensee was present. Licensee was represented by counsel, Alan Grossman.

Attorney Grossman provided a summary.

After discussion.

Motion: by Dr. Mendez to approve the monitor, seconded by Dr. Sizemore. Motion carried.

Mr. Grossman withdrew his Motion for Extension of Time.

APPLICANTS

APPLICANTS FOR FULL LICENSURE

TAB 10: John Joseph Bamber, D.O., File #18069
Applicant was present. Applicant was not represented by counsel.

Following discussion,

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

TAB 11: Jimmy Wayne Brandon, D.O., File #18137
Applicant was present. Applicant was represented by attorney Alan Grossman.

Following discussion,

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

TAB 12: Theodore A. Bowles, D.O., File #18292
Applicant was not present. Applicant was not represented by counsel. Dr. Jacobs with PRN spoke on behalf of applicant.

Mr. Grossman provided a summary.

Following discussion,

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

TAB 13: Robert Daniel Colucci, D.O., File #17784
Applicant was present. Applicant was not represented by counsel.

Following discussion,

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

TAB 14: George Halko, D.O., File#17545
Applicant was present. Applicant was not represented by counsel.

After discussion:

Motion: by Dr. Mendez, to approve the application, Dr. Sizemore seconded the motion. Motion carried.

TAB 15: Timothy J. Eichenlaub, D.O., File #18206
Applicant was present. Applicant was not represented by counsel.

After discussion:

Motion: by Dr. Mendez, seconded by Dr. Kirsh, to approve the application

TAB 16: Felipe Orellana, D.O., File #18111
This matter was moved to the next meeting.

APPLICANTS FOR OSTEOPATHIC MEDICINE RESIDENT REGISTRATIONS

TAB 17: William Rogers, D.O., File #8326
Applicant was present. Applicant was not represented by counsel.

After discussion:

Motion: by Dr. Mendez, seconded by Dr. Sizemore, to approve the application.

REVIEW AND APPROVAL OF MINUTES

TAB 18: May 14, 2021, Board of Osteopathic Medicine Meeting Minutes
Motion: by Dr. Sizemore, seconded by Dr. Kirsh, to accept the May 14, 2021, meeting minutes.
Motion carried.

RATIFICATION OF LICENSURE

TAB 19: 1902 - Osteopathic Resident Initial Registrations issued 5.1.2021 through 7.26.2021
Motion: by Dr. Kirsh, seconded by Ms. Jackson, to ratify the 317 full licenses; numbers 17716-18033 inclusive issued 5.1.2021 through 7.26.2021. Motion carried.

TAB 20: 1902 - Osteopathic Resident Initial Registrations issued 2.9.2021 through 4.19.2021
Motion: by Dr. Sizemore, seconded by Ms. Jackson to ratify the 588 resident registrations; numbers 7487-8074 inclusive issued 2.9.2021 through 4.19.2021. Motion carried.

GENERAL DISCUSSION

TAB 21: 1917 – Osteopathic Physician Expert Witness certificates issued 5.1.2021 through 7.26.2021 (informational purposes only, no action required)
There were five (5) expert witness certificates; numbers 136-141 inclusive issued 5.1.2021 through 7.26.2021. (this item was provided for informational purposes only, no action required)

TAB 22: 1902-Training License Re-Registrations issued 5.1.2021 through 7.26.2021
(this item is for informational purposes only, no action required)
There were six hundred and twelve (612) physician in training re-registrations issued 5.1.2021 through 7.26.2021. (this item was for informational purposes only, no action required).

1902 – Initial and Re-Registration Registrations Issued December 1, 2020-July 26, 2021 (informational purposes only)

TAB 23: 1902- Osteopathic Resident Initial Registrations issued 12.1.20 through 7.26.21
(informational purposes only)

TAB 24: 1902- Physician in Training Re-Registrations issued 12.1.20 through 7.26.21
(informational purposes only, no action required)

BOARD COUNSEL REPORT - Donna McNulty, Esq.

TAB 25: RULE REPORTS

July 2021 Rules Report
June 2021 Rules Report
May 2021 Rules Report

Board counsel informed the board that the rules reports were just a snapshot of where the rules this board has voted on are in the process and instructed board members to ask if they have any questions.

RULE DISCUSSION

TAB 26: Rule 64B15-14.0131, F.A.C. no action needed
Joint Surgical Care/Quality Assurance Committee Materials from past meetings were included on the agenda for informational purposes)

TAB 27: Rule 64B15-14.0076, F.A.C.- Requirement for Osteopathic
Physician Office Surgery Registration; Inspection or Accreditation

Board counsel, Donna McNulty informed the board that at the April Joint Surgical Care/Quality Assurance Committee meeting, during review of rules a discrepancy was discovered, which was corrected and approved at the June meeting. A draft was then placed on the agenda for review by the Osteopathic board. The draft also includes a slight modification requested by the Florida Medical Association (FMA). The draft was approved by the Board of Medicine. Board counsel requested the board approve the language with the oral amendment as found on Bates 7130.

Motion: by Dr. Mendez to approve the proposed rule language for Rule 64B15-14.0076, Florida Administrative Code, as modified by the Board of Medicine as found on Bates page number 7131, Dr. Sizemore seconded.

The matter was opened for public comment. Having none, the board voted, and the motion carried.

Motion: by Dr. Mendez, seconded by Dr. Schwemmer, 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. Mendez, seconded by Dr. Schwemmer, 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. Mendez, seconded by Dr. Kirsh, that a sunset provision is not needed. Motion carried.

Motion: by Dr. Schwemmer, seconded by Dr. Mendez, 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.

TAB 28: Rule 64B15-14.0077, F.A.C.- Approval of Osteopathic Physician
Office Accrediting Organizations

Motion: by Dr. Mendez, seconded by Dr. Sizemore, to approve the minutes from the Joint Committee, the joint committee approved AAAHC as an approved accrediting body. Motion carried.

Following discussion:

Motion: by Dr. Kirsh, seconded by Ms. Jackson, to approve the draft rule language for Rule 64B15-14.0077, Florida Administrative Code. Motion carried.

There was no Public Comment.

Motion: by Dr. Mendez, seconded by Dr. Schwemmer, 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. Mendez, seconded by Dr. Sizemore, 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. Mendez, seconded by Dr. Schwemmer, 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.

TAB 29: Rule 64B15-19.002, F.A.C.- Disciplinary Guidelines

Board counsel stated that there were two bills passed during the last legislative session which requires rules, thus disciplinary guidelines must be added.

Motion: by Dr. Schwemmer, seconded by Dr. Mendez, to approve the draft language for Rule 64B15-19.002, Florida Administrative Code. Motion carried.

There was Public Comment from Jason Winn, representative for the Florida Osteopathic Medical Association (FOMA). Mr. Winn noted that FOMA supported the motion as made.

Motion: by Dr. Mendez, seconded by Dr. Schwemmer, 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. Mendez, seconded by Dr. Schwemmer, 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. Mendez, seconded by Dr. Schwemmer, 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.

WITHDRAWN TAB 30: Rule 64B15-6.003, F.A.C.- Physician Assistant Licensure – Board of Osteopathic Medicine

This matter was withdrawn from the agenda.

WITHDRAWN TAB 31: Rule 64B8-30.003, F.A.C.- Physician Assistant Licensure- Board of Medicine

This matter was withdrawn from the agenda.

WITHDRAWN TAB 32: Rule 64B15-6.011, F.A.C.- Disciplinary Guidelines PA

This matter was withdrawn from the agenda.

TAB 33: Rule 64B15-12.0031, F.A.C.- Registration as a Dispensing Physician: Delegation of Dispensing to Prescribing Physician Assistant

Board counsel informed the board that subsection four of rule needs to be modified because the form previously used is now outdated.

Motion: by Dr. Mendez, seconded by Dr. Kirsh, to approve the draft language for Rule 64B15-12.0031, Florida Administrative Code. Motion carried.

There was no Public Comment.

Motion: by Dr. Mendez, seconded by Dr. Schwemmer, 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. Mendez, seconded by Dr. Schwemmer, 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. Mendez, seconded by Dr. Schwemmer, 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.

TAB 34: Rule 64B15-7.010, F.A.C. (Disciplinary Guidelines AA)

Motion: by Dr. Mendez, seconded by Ms. Jackson, to accept current changes as published. There was no Public Comment. Motion carried.

Motion: by Dr. Mendez, seconded by Dr. Schwemmer, 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. Mendez, seconded by Ms. Jackson, 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. Mendez, seconded by Dr. Schwemmer, 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.

TAB 35: Annual Regulatory Plan (ARP)

Board counsel summarized the annual regulatory plan and submitted it for review by the board with the modification of deleting the PA licensure rule from page four.

Motion: by Dr. Mendez, seconded by Ms. Jackson, to approve the annual regulatory plan, with the removal of the PA licensure rule from page four. There was no Public Comment. Motion carried.

Permission was granted to the board counsel to affix an electronic signature to the plan for expedition purposes.

TAB 36: EXECUTIVE DIRECTOR REPORT - Kama Monroe, J.D., Executive Director

Bills Filed For the 2021 Legislative Session

Executive Director, Kama Monroe, noted the document is on the board website as a slider. She further indicated that the board had already talked about the parent's bill of rights. She then noted that the opioid pamphlet can now be provided electronically.

Ms Monroe requested the board ratify Dr. Mendez's appointment as vice-chair.

Motion: by Ms. Jackson, seconded by Dr. Schwemmer to ratify Dr. Mendez's appointment as vice-chair. Motion carried.

TAB 37: JOINT COMMITTEE MEETING UPDATES

Boards of Medicine and Osteopathic Medicine Joint Surgical Care/Quality Assurance Committee

June 3, 2021 Joint Surgical Care/Quality Assurance Meeting

Drs Schwemmer and Mendez attended the meeting. An update was provided informing the board members the minutes were in the board materials, that committee members reviewed applications and approved them, that the August 5, meeting was cancelled, and that the Board of Medicine was attempting to reschedule.

Council on Physician Assistants Committee

June 3, 2021 Physician Assistant Meeting

Council on Physician Assistants Committee Meeting Materials
(for informational purposes)

The materials placed on agenda for informational purposes.

Rules/Legislative Committee Meeting

There was no update.

Boards of Pharmacy, Medicine & Osteopathic Medicine Joint Rule Committee

July 27, 2021 Joint Rules Committee Meeting

Dr. Mendez provided an update to the board.

Anesthesiology Assistant Committee

There was no update.

LIAISON REPORTS

TAB 38: BUDGET LIAISON REPORT – Vacant

There was no report. Dr. Kirsh volunteered to be liaison

TAB 39: LEGISLATIVE REPORT

There was no report. Dr. Mendez volunteered to be liaison

TAB 40: UNLICENSED ACTIVITY LIAISON REPORT – Sandra Schwemmer, DO

Dr. Schwemmer informed the board that the broad use and abuse taskforce has been able to identify some inappropriate or over billing of Medicaid during the pandemic. She added that some entities have had their NPI numbers stolen. She indicated that the board will probably see something in the future and indicated a hope to have the Unlicensed Activity Unit (ULA) do a presentation in November and maybe get the AG on the taskforce.

OLD BUSINESS

TAB 41: Discussion of Rule 64B15-13.001: How CMEs have progressed with virtual CMEs

Board members discussed the pros and cons of virtual continuing medical education (CMEs) hours. Some of the opinions included the opinion that it is overly positive to allow licensees to attend seminars without a live presentation; another was disturbed that a licensee was completing their hours while performing clinic, another was concerned that the board is making it easy for people to not get the training that it is the board's intent that they obtain. Some opined there were both positive and negatives; like live hours are

positive because there is more participation, but a licensee has more opportunities for better learning courses through virtual courses. It was noted that virtual hours are a good opportunity, they expand the opportunities. There was also the opinion that today everything is virtual; therefore, the board needs to look at that; there are new systems and techniques.

After further discussion it was determined the item would be placed on the November agenda and in the interim Dr. Schwemmer would work with board counsel to have a draft for the November meeting to start the conversation.

TAB 42: NEW BUSINESS

ADDENDUM:

TAB 43: Updated Notification Letters

This item contained documents related to agenda items reviewed earlier in the meeting.

TAB 44: Crystal Coleman

This item was withdrawn.

ADJOURN: The meeting adjourned at 1:45 p.m.

Next Meeting: November 5, 2021

Holiday Inn Tallahassee East Capital-Universities

Tallahassee, Florida