



Governor
Douglas Ducey

**ARIZONA BOARD OF OSTEOPATHIC
EXAMINERS IN MEDICINE AND SURGERY**

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Board Members
Douglas Cunningham, D.O., Pres
Jerry G. Landau, J.D., V.P.
Gary Erbstoesser, D.O.
Jonathan Maitem, D.O.
Martin Reiss, D.O.
Christopher Spiekerman, D.O.
Jeffrey H. Burg

Executive Director
Justin Bohall

**DRAFT MINUTES FOR MEETING OF THE ARIZONA BOARD OF
OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**

Held on Saturday, October 19, 2019

**At: Office of the Arizona Board of Osteopathic Examiners
1740 W Adams St • Phoenix, Arizona Board Room A**

1. CALL TO ORDER

Board President Cunningham called the meeting to order at 8:07 a.m.

2. ROLL CALL AND REVIEW OF AGENDA

| | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|----------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Present: | X | X | X | | X | X | X |
| Absent: | | | | X | | | |

Dr. Spiekerman was not present at the start of the meeting during roll call, but joined the meeting at 12:45 pm and remained for the deration.

3. CALL TO THE PUBLIC

President Cunningham read aloud the Board’s mission statement: “The mission of the Board is to protect the public by setting educational and training standards for licensure, and by reviewing complaints made against osteopathic physicians, interns, and residents to ensure that their conduct meets the standards of the profession, as defined in law (A.R.S. § 32-1854).”

A. President Cunningham welcomed the medical students from Arizona College of Osteopathic Medicine at Midwestern University, A.T. Still University Kirksville College of Osteopathic Medicine and A.T. Still University School of Osteopathic Medicine in Arizona.

B. No individuals addressed the Board during the Call to the Public portion of the meeting.

4. REVIEW, CONSIDERATION AND APPROVAL OF MINUTES

A. September 14, 2019 Open Session

MOTION: Dr. Reiss moved to approve the September 14, 2019 Open Session.

SECOND: Dr. Erbstoesser

VOTE: 4-yay, 0-nay, 0-abstain, 1-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 4 | X | X | X | | X | | |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 1 | | | | | | | X |
| Absent: | 2 | | | | X | | X | |

B. September 14, 2019 Executive Session

MOTION: Dr. Reiss moved to approve the September 14, 2019 Executive Session.

SECOND: Dr. Erbstoesser

VOTE: 4-yay, 0-nay, 0-abstain, 1-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 4 | X | X | X | | X | | |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 1 | | | | | | | X |
| Absent: | 2 | | | | X | | X | |

5. REVIEW, DISCUSSION, AND ACTION ON CASE REVIEWS OF ALLEGATIONS OF UNPROFESSIONAL CONDUCT A.R.S. § 32-1855 (D).

A. DO-19-0006A, Marcin Allen Borsand, DO, LIC. #2261

Attorney Christine Cassetta was present on behalf of Dr. Borsand during the Board's consideration of this matter. Mr. Landau spoke in favor of proceeding to Investigative Hearing in this case, stating that he was concerned about the operation of the clinic and the physician's role in the clinic.

Ms. Cassetta informed the Board that the Department of Health Services looked into the matter and an inspection was performed that was deemed satisfactory with no resulting adverse action.

MOTION: Dr. Reiss moved for the Board to proceed to Investigative Hearing.

SECOND: Dr. Erbstoesser

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

B. DO-19-0042A, Rosemary Fadool, DO, LIC. #3674

Dr. Fadool was present during the Board’s consideration of this case. President Cunningham commented that it is not commonly known that a physician is required to notify the patient in writing in the event that the patient’s request to change their medical record is denied. President Cunningham spoke in favor of dismissing the case, stating that the medical record is a legal binding document, and that the record appears to reflect what the physician felt should be noted in the chart. Mr. Landau commented that the medical records may be amended but cannot be changed. He observed that the complainant claimed that three letters were sent to the physician with no response received.

Dr. Fadool informed the Board that her Office Manager called the patient after each letter was received and recognized that this information was not documented in the patient’s chart. Dr. Fadool stated that the patient was asked to submit in writing the information she wished to have added to the chart, which she stated was never done. Dr. Fadool pointed out that the patient referenced one of the phone calls in one of the letters to her office, and reported that her office was in constant contact with the patient during that time period, both telephonically and in person. Dr. Fadool explained to the Board her office protocols relating to how patient concerns and requests are addressed.

Dr. Reiss proposed dismissing the case. Dr. Erbstoesser stated that the documented history is based on the findings of the patient encounter. Mr. Landau agreed with Dr. Erbstoesser’s comments and stated that the physician was correct in not fulfilling the patient’s request to change the medical record.

MOTION: Dr. Reiss moved for dismissal.
SECOND: Dr. Erbstoesser
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |

| | | | | | | | | |
|---------|---|--|--|--|---|--|---|--|
| Absent: | 2 | | | | X | | X | |
|---------|---|--|--|--|---|--|---|--|

C. DO-18-0140A, Joaquin Bermudez, DO, LIC. #005512

Dr. Bermudez was present during the Board’s consideration of this case. The Board discussed whether the matter should proceed to Investigative Hearing. Mr. Landau commented that he did not feel as though the physician answered the concerns identified in the complaint. Drs. Reiss and Erbstoesser stated that there did not appear to be unprofessional conduct on the part of Dr. Bermudez based on their review of the case.

Dr. Bermudez explained that there were multiple components to the patient’s treatment plan and that he was involved in the medication component. He stated that the patient was seen monthly unless the patient refused to appear for a visit. Mr. Landau spoke in favor of proceeding to hearing to discuss the matter further.

MOTION: Mr. Landau moved for the Board to proceed to Investigative Hearing.

SECOND: Mr. Burg

VOTE: 2-yay, 3-nay, 0-abstain, 0-recuse, 2-absent.

MOTION FAILED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 2 | | X | | | | | X |
| Nay: | 3 | X | | X | | X | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

MOTION: Dr. Reiss moved for dismissal.

SECOND: Mr. Burg

VOTE: 3-yay, 2-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 3 | X | | X | | X | | |
| Nay: | 2 | | X | | | | | X |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

6. REVIEW, DISCUSSION AND ACTION ON INVESTIGATIVE HEARINGS PURSUANT TO A.R.S. § 32-1855 (E).

A. DO-18-0098A, Robert Ian Marouk, DO, LIC. #3583

Dr. Marouk was present with counsel, Mr. Bob Milligan. Board staff summarized that the Board received notification of a malpractice case alleging improper performance of liposuction resulting in permanent discoloration and disfigurement of the inner thigh. The case was reviewed by a board-certified plastic surgeon who identified deviations from the standard of care. Specifically, the Medical Consultant (MC) found that the physician proceeded to perform liposuction of the trunk and thighs with fat grafting to the buttocks with no documentation of a discussion relating to procedures being performed in those areas. The MC also found that liposuction performed in the left thigh was done improperly and resulted in permanent disfigurement. Additionally, the MC found that the liposuction was performed too superficially, and that the physician subjected the patient to a year-long course of unnecessary and futile treatment.

Dr. Marouk stated that he is confident he did not cause any error in performing the liposuction procedure on patient JC’s legs. He reported that he has performed over 1,500 of these procedures in the exact same way using the same instruments. Dr. Marouk explained that because the hypertrophic scarring occurred outside of the area of liposuction, this would indicate that it was not a procedural issue that caused the problem. He also pointed out that complications generally appear within the first three weeks after the procedure, and that it was not until JC’s six-month follow up appointment that the scarring was noted.

The Board noted that the MC also identified documentation concerns relating to the brief consultation notes and no discussion relating to the additional procedures performed. Dr. Marouk explained that JC had been a patient of his for several years and that he had performed multiple procedures for her in the past. He assured the Board that he discussed the procedures with the patient prior to taking her to the operating room and explained that when his staff prepared her chart for the Board’s review, they discovered that at least two of his dictations were not transcribed into the patient’s medical record. Dr. Erbstoesser suggested that the physician revisit his office’s recordkeeping practices and consider converting to an electronic medical record. President Cunningham expressed concern regarding the lack of documentation this case and stated that it is imperative for the records to be 100% accurate for the safety of the public, noting that it would be difficult for a physician to assume the patient’s care if the chart is not complete.

In response to Mr. Landau’s questioning, Dr. Marouk stated that the liposuction he performed for this patient was not done too superficially and that he is aware of the potential for such cases to disrupt the vasculature of the subdermis. He reiterated that the patient’s scarring appeared to be outside of the areas of liposuction and that it was noted six months post-procedure. Board staff informed the Board that the file did contain signed consent forms for the procedures performed by Dr. Marouk.

MOTION: President Cunningham moved for the Board to enter into Executive Session to receive legal advice pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: Mr. Landau

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

The Board entered into Executive Session at 9:18 a.m.
 The Board returned to Open Session at 9:29 a.m.
 No legal action was taken by the Board during Executive Session.

Mr. Landau stated he found that the alleged violation of A.R.S. § 32-1854(6) was sustained in this case.

MOTION: Mr. Landau for a finding of unprofessional conduct in violation of A.R.S. § 32-1854(6).
SECOND: President Cunningham
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

Mr. Landau noted that Dr. Marouk’s prior Board history included Censure and Letter of Concern in 2016. He stated that this matter rises to the level of probation in order for the Board to monitor the physician’s practice. President Cunningham agreed and stated that the physician should appear on a quarterly basis to follow up with the Board, and require quarterly updates from the physician’s psychiatrist.

MOTION: Mr. Landau moved for the Board to place the physician on two years’ probation with terms that include the requirement for the physician to continue with his medical care as previously discussed with the Board, including quarterly updates from the physician’s psychiatrist. Within thirty days, Dr. Marouk shall enroll in the PACE medical recordkeeping course, to be completed within six months. Dr. Marouk shall return to the Board by the February or March 2020 meeting for an update.
SECOND: Dr. Erbstoesser
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |

| | | | | | | | |
|---------|---|--|--|--|---|--|---|
| Absent: | 2 | | | | X | | X |
|---------|---|--|--|--|---|--|---|

B. DO-18-0014A, Roy Niels Skousen, DO, LIC. #2214

Dr. Skousen was present without legal counsel during the Board’s consideration of this matter.

MOTION: Mr. Landau moved for the Board to enter into Executive Session to review and discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

SECOND: President Cunningham

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

The Board entered into Executive Session at 9:41 a.m.

The Board returned to Open Session at 9:57 a.m.

No legal action was taken by the Board during Executive Session.

MOTION: President Cunningham moved for the Board to enter into Executive Session to receive legal advice pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: Mr. Landau

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

The Board entered into Executive Session at 9:57 a.m.

The Board returned to Open Session at 10:00 a.m.
 No legal action was taken by the Board during Executive Session.

President Cunningham stated that he hoped the physician continues to take the Board's suggestions per the Board's confidential session. Mr. Landau spoke in favor of dismissing the case, stating that although the physician was resistant at times, he ultimately complied with the Board's requests. Mr. Landau stated that he did not find a violation in this case and moved for dismissal.

MOTION: Mr. Landau moved for dismissal.
SECOND: Dr. Erbstoesser
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

C. DO 18-0152A, Jeffery Burl Bushman, DO, LIC. #2338
 This matter was considered in conjunction with Agenda Item No. 6.D.

D. DO 18-0158A, Jeffery Burl Bushman, DO, LIC. #2338
 The Board considered this matter in conjunction with Agenda Item No. 6.C.

Dr. Bushman was present without legal representation. Board staff summarized that the first case came to the Board's attention with allegations of overprescribing and that the second case involved a chart review of Dr. Bushman's patients. Board staff reported that multiple issues were raised in the charts reviewed by the Board, including no review of prior medical records, no controlled substance agreements in the charts, and inconsistent urine drug screens that were not addressed with continued prescribing of controlled substances. Five of the ten charts reviewed demonstrated that Dr. Bushman prescribed opioids in combination with benzodiazepines, and three cases showed signs of abuse or diversion. On April 18, 2019, the Board issued an order requiring the physician to undergo a prescribing evaluation at PACE. However, the physician completed the PACE prescribing course and the Board previously voted to accept this in lieu of the evaluation.

Dr. Bushman informed the Board he is currently not practicing as he was terminated from his place of employment following the Board's April 2019 meeting. He stated that he no longer prescribes controlled substances and has no plans to do so in the future. Dr. Bushman explained that his office failed to submit the completed charts for the Board's chart review, and assured the Board that pain contracts did exist for the patients and that there were Prescription Monitoring Program (PMP) reports pulled for each patient. Dr. Bushman reported that he learned a lot from the prescribing course and that plans to refer pain management patients to specialists going forward. The Board discussed terminating the practice restriction to allow the physician to return to full practice.

MOTION: Mr. Burg moved for dismissal.

President Cunningham instructed the Board members to first consider whether there had been a violation of statute. Mr. Burg

withdrew his motion for dismissal.

MOTION: Mr. Landau moved for findings of unprofessional conduct in violation of A.R.S. § 32-1854(6) and (39) in both cases.

SECOND: Dr. Erbstoesser

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

The Board discussed whether this matter rises to the level of discipline and whether the prescribing restriction should remain in place. Mr. Landau stated that the violations in this case clearly rise to the level of disciplinary action with prescribing restriction. Dr. Reiss proposed issuing an Administrative Warning. Mr. Burg spoke in favor of a discipline sanction that would allow the physician to return to practice. President Cunningham stated that a prescribing restriction is appropriate for protecting the public, and stated that the physician should return in 12 months for an update.

MOTION: Mr. Landau moved for the Board to issue an Administrative Warning for both cases.

SECOND: Mr. Burg

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

MOTION: Mr. Landau moved for the Board to place the license on probation for a period of one year with terms to include a practice restriction prohibiting the physician from prescribing scheduled II-V controlled substances. After six months, the physician may request the Board terminate the probation.

SECOND: President Cunningham

**VOTE: 2-yay, 3-nay, 0-abstain, 0-recuse, 2-absent.
 MOTION FAILED.**

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 2 | X | X | | | | | |
| Nay: | 3 | | | X | | X | | X |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

The Board members discussed the prior motion, and considered issuing the disciplinary sanction without the prescribing restriction. The Board also discussed monitoring the physician’s prescribing practices during the probationary period.

MOTION: Mr. Landau moved for the Board to place the license on probation for two years with terms to include quarterly review of the PMP to monitor the physician’s prescribing. After six months, the physician may request probation termination.

SECOND: President Cunningham

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

E. DO-19-0018A, Alan John Schenne, DO, LIC. #007190

Dr. Schenne was present without counsel during the Board’s consideration of this case. Board staff summarized that the physician self-reported to the Board regarding action taken against him by the Iowa Medical Board. Specifically, Dr. Schenne entered into a disciplinary agreement with multiple stipulations and surrendered his Iowa medical license. The matter stemmed from the physician’s affair with a female employee who had been seen by him on various occasions as a patient.

Dr. Schenne explained that he was required to pay a \$5,000 Civil Penalty to the Iowa Board and to surrender his Iowa license. He stated that he knew what he did was wrong and felt that it was appropriate to relinquish his Iowa license at the time. Dr. Schenne informed the Board that he also previously held licensure in Washington and that he has no other prior Board history in any jurisdiction.

The Board discussed whether this matter rises to the level of discipline versus a non-disciplinary sanction. President Cunningham stated that based on his review of the case, he initially was concerned about the licensee and whether the Board should allow him to continue practicing in Arizona. However, he stated that the physician appeared to understand the gravity of the situation and admitted to the Iowa Board's findings. Dr. Reiss questioned the physician regarding information in the case in relation to an inappropriate text that he sent to a fellow nurse. Dr. Schenne clarified that he was working at a rural clinical at the time, and that he had texted the nurse something to the affect that she was having marital issues and he offered to help, but she took it in a way that he did not intend.

MOTION: Mr. Landau moved for findings of unprofessional conduct in violation of A.R.S. 32-1854(6) and (43) for engaging in sexual conduct with a patient or former patient within six months of medical consultation.

SECOND: Dr. Erbstoesser

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

MOTION: Mr. Landau moved for the Board to issue an Administrative Warning.

SECOND: Dr. Erbstoesser

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

F. DO-17-0001B, Catherine Kin Yan Ho, DO, LIC. #006189

Dr. Ho was present with legal counsel, Mr. Steve Myers. Board staff summarized that the case was reviewed by a board-certified bariatric surgeon who found that the physician deviated from the standard of care by performing hiatal hernia repairs

on patients that did not have such pathology documented.

Dr. Ho explained that over a quarter of hiatal hernias are missed, and stated that the medical literature supports surgeons performing aggressive assessment of the hiatus and proceeding with repair when hiatal hernia is seen. Mr. Myers informed the Board that all four surgeries involved in the case related to gastric sleeve procedures. He stated that peer evaluators indicated that after informed consent and research, patients typically elect gastric sleeve due to the lower risk of long-term complications. Mr. Myers addressed the findings of the Board’s reviewer, stating that hiatal hernias can be missed during endoscopy procedures, but may be seen thereafter during the gastric sleeve procedure as the surgeon has better visualization during surgery to determine whether a hiatal hernia repair is needed. He stated that there is not a preponderance of evidence in this case to support the allegations.

In response to President Cunningham’s questioning, Dr. Ho stated that the medical guidelines indicate that hiatal hernia should be looked for and should be repaired if seen. Dr. Reiss observed the Medical Consultant’s comments regarding the potential financial gain from performing the procedures. Mr. Myers stated that there was very little to gain in terms of billing. Dr. Ho stated that the reviewer’s insinuation was upsetting, and stated that the procedures were not performed for financial benefit. President Cunningham questioned whether the physician discussed with her patients the potential performance of hiatal hernia repair during the gastric sleeve procedure. Dr. Ho explained that she discusses this with her patients and that they are aware that if hiatal hernia is seen during the procedure, she will perform the repair at that time. Mr. Landau stated that the physician’s testimony satisfied his concerns in this case and spoke in favor of dismissal.

MOTION: Mr. Landau moved for dismissal.
SECOND: Dr. Reiss
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

G. DO-19-0049A, David Bruce Mendelson, DO, LIC. #3728

Dr. Mendelson was present with counsel, Mr. Neil Alden. Board staff summarized that this matter came to the Board’s attention after a malpractice case was reported that involved the performance of surgery for vocal cord polyps. The case was reviewed by a board-certified otolaryngologist who opined that vocal cord polyps are typically treated conservatively prior to initiating therapy. The Medical Consultant (MC) found that Dr. Mendelson fell below the standard of care by failing to advise the patient to have speech therapy. The MC also commented that the procedure is not a standard of care practice of an otolaryngologist.

Dr. Mendelson reported that the patient had very large growths on her vocal cords with a significant history of smoking. He stated that he was trained thoroughly in the procedure performed and has performed hundreds over the years with no issues. Dr. Mendelson explained that in retrospect, he should have removed only one side at a time to reduce the risk of postoperative complications. He informed the Board that since this case, he has not utilized the bilateral approach, and that he has completed CME to gain further education in the practice of otolaryngology. Dr. Mendelson added that he believed the laceration was caused by the anesthesiologist who had difficulty intubating the patient.

Dr. Erbstoesser questioned why the physician proceeded to surgery without first performing a biopsy of the vocal cords and then proceed with conservative treatment. President Cunningham noted that the MC had concerns with the physician’s failure to refer the patient for speech therapy. Dr. Mendelson reported that the vocal cord polyps had a polypoid-type of appearance, and he explained that he did not believe speech therapy would be of benefit given the size of the growths and the patient’s history of smoking. Mr. Landau noted that this was a difficult case and spoke in favor of issuing a Letter of Concern for performing bilateral avulsion.

MOTION: Mr. Landau moved for the Board to issue a Letter of Concern for performing bilateral avulsion for vocal cord polyps.

SECOND: Dr. Reiss

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

H. DO-19-0074A, Basim Mozaffari-Nejad, DO, LIC. #006799

Dr. Mozaffari-Nejad was present with counsel, Mr. Mike Bradford. Attorney Joshua Turner appeared on behalf of patient JC, and JC’s husband was also present during the Board consideration of this matter. Board staff summarized that JC claimed that on January 23, 2019, while recovering from surgery performed by another physician, Dr. Mozaffari-Nejad entered the room and advised her that he was the hospitalist assigned to check on her. According to JC’s complaint, after a brief conversation, the physician placed his hands under her gown and proceeded to fondle her breasts with no explanation or further discussion.

Dr. Mozaffari-Nejad explained that on the evening in question, he was on duty as the nocturnist and was consulted to check in on JC as a postoperative consultation. He denied the patient’s allegations and stated that the patient was only partially alert during their encounter and appeared to be in and out of sleep. Mr. Turner addressed the Board on behalf of the patient. He stated that there have been several contradictions in the physician’s statements and pointed out that the physician did not have a chaperone accompany him during the patient encounter.

The Board discussed the alleged discrepancies relating to whether the physician examined the patient over or under her gown. Dr. Reiss noted that Dr. Mozaffari-Nejad has not had similar problems in the past. He stated that this was an elderly patient in a postoperative setting who was coming out of sedation which could have distorted her recollection of the encounter.

MOTION: Dr. Reiss moved for dismissal.

SECOND: Dr. Erbstoesser

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

I. DO-18-0164A, Steven Brian Wallach, DO, LIC. #2113

Dr. Wallach was present without counsel during the Board’s consideration of this case. Board staff summarized that the Board received a complaint from a psychiatrist regarding patient JM. The psychiatrist had requested billing records from Dr. Wallach’s office. According to the complaint, requests for records were submitted to Dr. Wallach’s office in May and June of 2018 with no responses received. Dr. Wallach indicated that he did not receive the records requests and that if the physician had concerns regarding the patient, he was happy to discuss them telephonically. Dr. Wallach also reported that he advised the physician that the patient’s voluminous chart was available for review at his office or could be borrowed for copying.

President Cunningham commented that in his experience of many years in primary care practice, he could not recall an instance in which a psychiatrist requested billing records for one of his patients. Dr. Reiss stated that psychiatrists typically request a summary of the patient’s care, and stated that he did not believe the psychiatrist was entitled to the patient’s billing information from Dr. Wallach’s office.

MOTION: Mr. Landau moved for dismissal.

SECOND: Dr. Erbstoesser

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

7. REVIEW, DISCUSSION AND ACTION ON INVESTIGATIVE HEARINGS PURSUANT TO A.R.S. §32-1855 (E).

A. DO-19-0033A, James P. Reed, DO, LIC. #2845

Dr. Reed was present with counsel, Mr. Flynn Carey. Board staff summarized that the complaint alleged the physician continued to prescribe medications for the patient’s depression and anxiety without seeing him in the office.

Dr. Reed stated that he felt he adequately addressed the patient’s problems and provided appropriate treatment. He stated that the patient was very familiar to him as he was the grandson of a close friend. He admitted that phone conversations with the patient and his mother were not documented in the chart and stated that he was deeply embarrassed by this oversight. Dr. Reed stated that he believes good charting is essential to good patient care, and informed the Board that he has taken additional steps to ensure that this oversight does not happen again. He also reported that he has since completed the PACE recordkeeping course. He added that he has been vigilant in ensuring that his patients’ needs are being met in his office and if not, they are referred elsewhere for further care.

Dr. Reiss noted that on one occasion, Dr. Reed called in a prescription for #60 Xanax for the patient without having him appear for a visit, and he questioned why the physician did not consider writing for a smaller amount until the patient could be seen in the office. Dr. Reed agreed with Dr. Reiss’ comments and stated that a prescription for less tablets would have been more appropriate. President Cunningham stated that it is important to establish boundaries with friends and family that may be seeking their care. Mr. Carey informed the Board that Dr. Reed has taken significant proactive steps to improve his documentation and procedures in his office. The Board considered issuing a Letter of Concern in this case for the finding of inadequate medical records.

MOTION: Dr. Reiss moved for the Board to issue a Letter of Concern for inadequate documentation.

SECOND: Dr. Spiekerman

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 6 | X | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 1 | | | | X | | | |

B. DO-19-0038A, Martin Alan Feldman, DO, LIC. #2104

Dr. Feldman was present with counsel, Mr. Paul Giancola. Board staff summarized that the Board received a complaint from the Department of Health Services regarding the physician’s issuance of medical marijuana certifications without reviewing the Prescription Monitoring Program (PMP) for the patient’s being certified.

Dr. Feldman informed the Board that he was not aware of the requirement to query the PMP prior to certifying patients for medical marijuana and reported that he has since discontinued issuing patient certifications altogether. Dr. Feldman stated that he notified his patients that they will require referral to a specialist for their pain management. He pointed out that he has no prior Board history and that he has been in practice for over 34 years. Dr. Feldman stated that he takes full responsibility for the mistake made in this situation, and explained that the missed step in the protocol was due to his ignorance to the law and was not based on a lack of good judgment. President Cunningham recognized Dr. Feldman’s long career in medicine with no Board history and encouraged him to continue certifying patients for medical marijuana as an alternative to opioids and to follow appropriate protocols while doing so.

MOTION: Dr. Erbstoesser moved for dismissal.
SECOND: Dr. Reiss

Mr. Landau spoke against the motion and stated that the physician violated statute and a Letter of Concern would be an appropriate resolution in this case.

VOTE: 4-yay, 2-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 4 | X | | X | | X | X | |
| Nay: | 2 | | X | | | | | X |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 1 | | | | X | | | |

C. DO-18-0101A, DO-18-0125A, DO-18-0138A, E. Griffin Cipolla, DO, LIC. #2811

President Cunningham was recused from this matter. Dr. Cipolla was present with counsel, Mr. Jay Fradkin. Board staff summarized that in the case of DO-18-0125A, patient CZ alleged that Dr. Cipolla made inappropriate comments to him and touched him inappropriately.

MOTION: Mr. Burg moved for the Board to enter into Executive Session to receive legal advice pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: Dr. Reiss

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 4 | X | | X | | X | X | |
| Nay: | 2 | | X | | | | | X |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 1 | | | | X | | | |

The Board entered into Executive Session at 2:39 p.m.

The Board returned to Open Session at 2:45 p.m.

No legal action was taken by the Board during Executive Session.

Mr. Fradkin pointed out that CZ has not appeared before the Board to testify regarding his complaint and that the Board has no sworn evidence that this singular event ever occurred. Dr. Cipolla reported that he saw CZ on one occasion when he presented for medical evaluation and HIV management. He stated that the appropriate physical exam was performed for a new HIV patient and that there were no signs that the patient was upset with his treatment. The Board noted that CZ was the boyfriend of a long-standing patient of Dr. Cipolla. The physician stated that the alleged misconduct did not occur and that he had become aware that his patient ended his relationship with CZ after being informed of the allegations made against Dr. Cipolla.

The Board questioned the physician regarding his thoughts as to why the complainant would make such a claim against the physician. Dr. Cipolla stated he believed the complaint was made because he wanted to wean CZ off of his Klonopin and switch him to a more appropriate regimen. Mr. Fradkin stated that there was no validity to this complaint and reiterated that the patient did not present to testify under oath before the Board. Mr. Fradkin requested the Board dismiss the complaint due to insufficient evidence.

Board members questioned the complainant's credibility in this case and discussed whether the allegations were substantiated. Dr. Reiss commented that this did not appear to be an isolated case and stated that he did not find that the complaint was without merit. Dr. Spiekerman stated that he struggled with this case in light of the Board's inability to question the complainant as to the allegations made in the complaint.

MOTION: Dr. Spiekerman moved for the Board to enter Executive Session to receive legal advice pursuant to A.R.S. § 38-431.03(A)(3).
SECOND: Dr. Reiss
VOTE: 5-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.
MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 1 | X | | | | | | |
| Absent: | 1 | | | | X | | | |

The Board entered into Executive Session at 3:12 p.m.
 The Board returned to Open Session at 3:18 p.m.
 No legal action was taken by the Board during Executive Session.

MOTION: Dr. Spiekerman moved for dismissal of case number DO-18-0125A.
SECOND: Dr. Erbstoesser
VOTE: 5-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.
MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 1 | X | | | | | | |
| Absent: | 1 | | | | X | | | |

Board staff summarized that in case DO-18-0138A, patient KT filed a complaint with the Board that included multiple allegations regarding office wait times, discrimination, and frequent rectal exams performed with use of an anal swab that caused extreme pain. The Board noted that KT was previously in a relationship with the physician, but that it occurred prior to the time that he presented for patient care.

Mr. Fradkin stated that the complaint initially alleged long office wait times and racial discrimination as well as issues with the physician's refusal to certify him for the medical marijuana program. He stated that Dr. Cipolla did not approve the medical marijuana certification for patient KT for appropriate reasons, and pointed out that the complaint did not initially contain allegations of sexual impropriety. Mr. Fradkin stated that the complainant proceeded to come up with a number of vague sexual accusations after hearing the complainant in case DO-18-0101A testify before the Board.

Dr. Cipolla explained that KT initially presented for patient care in August of 2012. He stated that he had a brief two-week relationship with KT prior to that time. He reported that KT has a chronic disease state and has been poorly compliant with his medical treatment regimen. In response to the Board's questioning, Dr. Cipolla stated that he had never made any advances to KT during the course of the physician-patient relationship. He explained that he sent photos of his genitalia to KT prior to him becoming a patient and that he had no contact with the complainant from the time they termination their brief relationship until he presented for medical care. Mr. Fradkin reiterated that the patient's allegations in this case were inflated after hearing the other patient testify. He stated that the evidence indicates that the testing was appropriate and that there is insufficient evidence to support anything other than dismissal.

Dr. Reiss stated that he found it hard to believe that patient after patient is not telling the truth in their statements to the Board regarding Dr. Cipolla. Mr. Burg questioned whether the physician felt that there was collusion among the patients filing complaints against him to the Board. Dr. Cipolla stated that these individuals are part of a community where they may know of each other or may have established some sort of connection after appearing before the Board and engaging in some form of dialogue. He stated it is common for this information to travel back to that community and spread further among those individuals.

Mr. Landau observed that the three complaints were filed with the Board over a period of just over two months. Dr. Cipolla stated that his office also received two anonymous threatening phone calls, and that it appears as though someone has a vendetta against him. Mr. Landau commented that it is also plausible that three individuals filed complaints because these three individuals believe that the physician abused them or did something in his role as a physician that was not appropriate. Mr. Burg commented that there was very little credibility in the claim of any type of racism in this case and that he was concerned regarding the boundary issues that continue to be raised. Mr. Landau stated that he found KT was somewhat credible and that he did not agree with the physician's claim of a conspiracy theory against him. Mr. Landau added that there were boundary violations in this case as well as inappropriate conduct that is not in line with the community standards.

MOTION: Dr. Spiekerman moved for the Board to enter into Executive Session to receive legal advice pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: Dr. Erbstoesser

**VOTE: 5-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.
 MOTION PASSED.**

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 1 | X | | | | | | |
| Absent: | 1 | | | | X | | | |

The Board entered into Executive Session at 4:15 p.m.
 The Board returned to Open Session at 4:21 p.m.
 No legal action was taken by the Board during Executive Session.

**MOTION: Dr. Spiekerman moved for dismissal of case number DO-18-0138A.
 SECOND: Mr. Burg
 VOTE: 3-yay, 2-nay, 0-abstain, 1-recuse, 1-absent.
 MOTION PASSED.**

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 3 | | | X | | | X | X |
| Nay: | 2 | | X | | | X | | |
| Abstain/ Recuse: | 1 | X | | | | | | |
| Absent: | 1 | | | | X | | | |

Following the Board's discussion and consideration of cases DO-18-0125A and DO-18-0138A, the Board entered into the sanctions phase of the Investigative Hearing relating to case DO-18-0101A.

Mr. Fradkin stated that in this case, there is very little evidence to support anything more than a non-disciplinary Letter of Concern. The Board discussed probationary terms including the requirement to have a chaperone present during particular examinations and requiring the physician to complete the PACE boundaries course within six months.

MOTION: Dr. Spiekerman moved for the Board to issue a Decree of Censure with Five Years' Probation. Dr. Cipolla shall have a chaperone present when seeing female patients for breast, genital or rectal exams; and, Dr. Cipolla shall have a chaperone present when seeing male patients for any exams below the belt. The chaperone may be a male or female scribe employed by the physician and shall maintain a log to be submitted to the Board on a quarterly basis.

Within six months, the physician shall complete the PACE boundaries course. The CME hours shall be in addition to the hours required for license renewal.

SECOND: Mr. Burg

VOTE: 5-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 1 | X | | | | | | |
| Absent: | 1 | | | | X | | | |

8. CONSIDERATION AND ACTION ON COMPLIANCE WITH TERMS OF BOARD ORDERS AND REQUESTS TO MODIFY OR TERMINATE ORDERS, PURSUANT TO A.R.S. §32-1855 (E) AND (I).

A. DO-17-0066A, Kevin Michael McKeown, DO, LIC. #005863

Dr. McKeown was present during the Board’s consideration of this matter. Board staff reported that the Board had requested the physician appear for an update to see how he was doing. Dr. McKeown stated that he is in the process of opening a second clinic location and that things are going well. He stated that he planned to apply to take his board examinations once his probation is satisfied and his charge is reduced to a misdemeanor.

Dr. Reiss stated that the physician looked well, and Dr. McKeown reported that he is keeping active by playing more sports. The Board suggested that the physician participate in counseling to deal with matters in his personal life. President Cunningham requested that the physician return in April of 2020 for an update, after the physician has received the results of his board certification exams.

9. REVIEW, CONSIDERATION, AND ACTION ON APPLICATIONS FOR LICENSURE PURSUANT TO A.R.S. § 32-1822; PERMITS PURSUANT TO A.R.S. § 32-1829; AND RENEWALS OF LICENSES PURSUANT TO A.R.S. § 32-1825 (C-D) AND A.A.C. R4-22- 207.

A. DO-19-0174A, Patrick Brian O’Hayre II, DO, LIC. #N/A

Dr. O’Hayre was present with counsel, Mr. Pat McGroder. Board staff summarized that the physician disclosed on his license application two prior DUI charges that occurred in Colorado. During the application review process, staff became aware of two additional charges from 1998 and 2006 involving assault and public intoxication, respectively. These two charges were not disclosed by the applicant.

Dr. O’Hayre explained that in late 2015, he entered into the Colorado Board’s Physician Health Program (PHP) after completing in patient and intensive outpatient treatment. Dr. O’Hayre stated that he remained sober for 11 months, but relapsed after the death of a relative around the same time that a close friend of his lost his battle with cancer. He stated he self-disclosed to the Colorado PHP and entered 90 days treatment, which he successfully completed in January of 2016. Dr. O’Hayre stated he resumed his monitoring through the Colorado PHP and was approved to return to work. After learning of the Colorado Board’s monitoring agreement, the Arkansas Board suspended Dr. O’Hayre’s medical license based on the Colorado proceedings, and have since rescinded the suspension. In May of 2017, Dr. O’Hayre was sanctioned by the Colorado Board in the form of five years’ probation to continue aftercare monitoring.

President Cunningham questioned the physician regarding his plans if Arizona licensure is obtained. Dr. O’Hayre explained that he practices teleradiology out of Colorado. In response to Dr. Reiss’ line of questioning, Dr. O’Hayre reported that he has been sober for three years, attends AA meetings, sees a counselor regularly, and meets with the PHP psychiatrist on a quarterly basis. Mr. McGroder informed the Board that the physician’s providers and colleagues have written letters of support regarding Dr. O’Hayre’s progress in recovery. Dr. O’Hayre further reported that he holds licensure in New Mexico, Oklahoma and Pennsylvania in addition to Colorado, and that the Pennsylvania and Oklahoma boards took reciprocal action requiring him to comply with the Colorado Board’s Order.

Mr. Landau observed that the physician failed to report the two prior arrests on his application. Dr. O’Hayre apologized for the oversight and stated that because those incidents occurred more than ten years prior, he was under the impression that they were not on his record.

MOTION: Mr. Burg moved for the Board to grant an unrestricted license.

SECOND: Dr. Erbstoesser

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

B. DO-19-0171A, Timothy Phuc Nguyen, DO, LIC. #N/A

Dr. Nguyen was present during the Board’s consideration of this matter. Executive Director Bohall summarized that Dr. Nguyen disclosed on his license application academic probation in 2016 and that he chose to withdrawal from the program. The Board noted that Dr. Nguyen successfully completed a new program in 2018-2019.

Dr. Nguyen reported that he struggled with learning the new system during the first couple months of his internal medicine residency. He explained that he was under the impression that he was on track to graduate, and that when he met with the Program Director to discuss graduation, he was informed that the program was extended three additional months due to poor performance. Dr. Nguyen stated that during those three months, the goals were not entirely clear and he felt he was being treated unfairly, and ultimately withdrew from the program. He further reported that he later enrolled in a family medicine program and wishes to further his medical education and continue in the field of medicine.

MOTION: President Cunningham moved for the Board to grant an unrestricted license.

SECOND: Dr. Spiekerman

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 6 | X | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 1 | | | | X | | | |

C. DO-19-0200A, Eduard Shnaydman, DO, LIC. #N/A

Dr. Shnaydman was present during the Board’s consideration of this matter. Board staff summarized that the physician disclosed on his license application that there are currently two pending malpractice claims against him.

Dr. Shnaydman explained that one claim involved patient EL who he saw and ordered a chest x-ray that revealed bilateral lung infiltrates for which the patient was treated. EL was seen two weeks later and an x-ray was repeated with no changes in the findings. A CT scan was performed thereafter that was read as multifocal pneumonia for which the patient was treated. EL returned three weeks later for a repeat x-ray with the same findings as the two prior films, and she was referred to pulmonology. The pulmonologist was concerned regarding possible TB in a breastfeeding female, bronchoscopy was subsequently performed, and the patient was later diagnosed with lung cancer. The Board noted that the events in this case occurred over the course of three and half months and that the physician appropriately obtained a CT scan.

In the second malpractice claim, the physician explained that the patient had been seeing him for five years for his annual check-up. Dr. Shnaydman stated that the patient’s lab results were not delivered to his office after his last check-up, which were ultimately found to have positive findings. Eight months later, the patient underwent colonoscopy where acute bowel obstruction was identified, and the patient was ultimately diagnosed with colon cancer. Dr. Shnaydman stated that he believed his Medical Assistant may have failed to set aside his copy of the patient’s lab orders and did not log them in violation of their office policy.

MOTION: President Cunningham moved for the Board to grant an unrestricted license.

SECOND: Dr. Erbstoesser

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 6 | X | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 1 | | | | X | | | |

D. DO-19-0202A, Stanlyn Christine Powers, DO, LIC. #N/A

Dr. Powers was present during the Board’s consideration of this matter. Executive Director Bohall summarized that the physician provided an affirmative response to an application question regarding unprofessional conduct. Specifically, Dr. Powers disclosed a malpractice settlement that was paid on her behalf in January of 2016 for failure to diagnose acute appendicitis.

Dr. Powers explained that she has worked at a large teaching hospital for the past seventeen years and that the underlying patient care case involved a trusted senior resident. Dr. Powers reported that the patient’s CT scan was reported as negative and that she felt better and was discharged. Dr. Powers later discovered that the patient had an additional CT scan that showed positive findings, and stated that there were multiple failures on all levels in this case. She reported that she currently works with Indian Health Services.

MOTION: President Cunningham moved for the Board to grant an unrestricted license.

SECOND: Dr. Spiekerman

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 6 | X | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 1 | | | | X | | | |

E. DO-19-0203A, Gary Chi-Hung Chan, DO, LIC. #N/A

Dr. Chan was present during the Board’s consideration of his application. Executive Director Bohall summarized that Dr. Chan provided an affirmative answer to an application question, disclosing that he was placed on probation and held back from moving forward as he did not meet milestones for patient care skills.

Dr. Chan reported that he has improved significant since the prior incident. He explained that he may have stretched himself too thin and was being too ambitious at the time as he was also working on research at the time. Dr. Chan further explained that he had difficulty adjusting to the VA system and that to rectify the concerns, he met with a senior fellow who helped introduce him to the system while he put his research on hold.

Board members recognized that the VA system may be difficult to navigate, and that the physician was working in the capacity of a medical resident as well as a medical researcher. Dr. Chan stated that both roles are difficult and do not correlate. Dr. Chan informed the Board that his attending authored support letters for the Board’s review, demonstrating that he has improved academically.

MOTION: President Cunningham moved for the Board to grant an unrestricted license.

SECOND: Mr. Burg

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 6 | X | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 1 | | | | X | | | |

F. DO-19-0208A, Matthew Jonathan Vargas, DO, LIC. #N/A

Dr. Vargas was present during the Board’s consideration of this matter. Executive Director Bohall summarized that Dr. Vargas applied for Arizona licensure and disclosed on his application post-graduate training probation for performing procedures unsupervised. The Board noted that Dr. Vargas’ academic probation was completed and that he successfully completed the program with no additional concerns.

Dr. Vargas stated that when he began his residency program, he was required to sign a pamphlet of rules and stated that there was a misunderstanding on his part regarding the residency rules. Dr. Vargas reported that during his third year, he participated in both obstetrics and pediatrics. He explained that one evening while on-call for the obstetrical floor, he performed a procedure that he had been approved to perform in his pediatrics program, but was not authorized to do without his obstetrical attending physician’s consent. He stated that he attempted to contact his attending that night, both via phone call and text with no response, and elected to proceed with the procedure.

MOTION: President Cunningham moved for the Board to grant an unrestricted license.

SECOND: Dr. Reiss

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 6 | X | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 1 | | | | X | | | |

10. REVIEW, DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION RELATING TO PROPOSED CONSENT AGREEMENT.

A. DO-17-0201A, John Nicholas Gietzen, DO, LIC. #4158

Dr. Gietzen was not present during the Board’s consideration of this matter. Executive Director Bohall summarized that the

physician elected to not appear before the Board on two occasions and preferred that the matter be heard at the Office of Administrative Hearings (OAH). The matter was thereafter referred to OAH for a Formal Hearing. Subsequently, Dr. Gietzen’s counsel contacted staff requesting the Board to consider rescinding its referral and accept the proposal of a non-disciplinary warning and completion of the PACE prescribing course.

The Board discussed the options of proceeding to Formal Hearing, returning the matter to the Board for Investigative Hearing, or accepting the proposed resolution.

MOTION: Mr. Landau moved for the Board to reject the proposed consent agreement.

SECOND: President Cunningham

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 6 | X | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 1 | | | | X | | | |

MOTION: Mr. Landau moved for the matter to proceed to OAH for a Formal Hearing.

MOTION: Mr. Landau moved for the Board to enter into Executive Session to receive legal advice pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: President Cunningham

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 6 | X | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 1 | | | | X | | | |

Mr. Landau withdrew his prior motion for the Board to proceed to Formal Hearing.

MOTION: Mr. Landau moved for the Board to rescind its referral to Formal Hearing and proceed to Investigative Hearing before the Board, and instructed staff to deny any motions to continue.

SECOND: Mr. Burg

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 6 | X | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 1 | | | | X | | | |

B. DO-18-0101A, DO-18-0125A, DO-18-0138A, E. Griffin Cipolla, DO, LIC. #2811

President Cunningham was recused from this case. Dr. Cipolla was present with counsel, Mr. Jay Fradkin. Board members noted that the Board previously voted to find unprofessional conduct in violation of A.R.S. § 32-1854(6) and (39) in case DO-18-0101A, and that it has been agendized for consideration of the settlement proposed by the physician and counsel, or to proceed to the sanctions phase of the Investigative Hearing. The Board recognized that findings of unprofessional conduct had not yet been sustained by the Board in cases DO-18-0125A and DO-18-0138A, and that the matters were agendized for consideration of the proposed settlement or to proceed to the Investigative Hearing.

Mr. Fradkin stated that he worked with the Executive Director and AAG to come to the proposed settlement agreement that he believes would resolve all three cases. He explained that the settlement included two years' probation with terms to include a chaperone requirement. Mr. Fradkin stated that the proposed settlement addresses all potential concerns raised in the three cases.

Dr. Reis spoke against the proposed settlement and stated that it did not appear to address the magnitude of the problems identified. Mr. Burg stated that the proposed settlement is consistent with cases that do not rise to this level and felt that the proposal was not an appropriate resolution for the cases. Dr. Spiekerman agreed with the Board members' comments, and Dr. Erbstoesser stated that the proposed two years of probation was not enough time to monitor the physician's behavior. Mr. Landau agreed with Dr. Reiss' comments, and stated that he did not believe the proposal covers the magnitude of the allegations and is not in the best interest of the public.

MOTION: Mr. Burg moved for the Board to reject the settlement proposal.

SECOND: Dr. Reiss

Mr. Fradkin stated that it was inappropriate for the Board to determine the physician's guilt based on the sworn testimony of the two gentlemen that were inconsistent with the complaint. He stated that there have been no convictions or findings of guilt against the physician and that there are significant credibility issues relating to the complainants. The Board clarified that findings of unprofessional conduct were only made under case DO-18-0101A, and that all three cases were agendized for Investigative Hearing for further discussion and possible sanction.

VOTE: 5-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 1 | X | | | | | | |
| Absent: | 1 | | | | X | | | |

The Board proceeded to the Investigative Hearing as referenced under Agenda Item No. 7.C.

11. REVIEW, DISCUSSION AND ACTION ON THE FOLLOWING MISC ITEMS.

A. DO-18-0098A, Robert Ian Marouk, DO, LIC. #3583

Dr. Marouk was present with counsel, Mr. Bob Milligan. Executive Director Bohall summarized that Dr. Marouk failed to appear before the Board on two previous occasions and the matter was referred to the Office of Administrative Hearings for a Formal Hearing. He stated that the physician’s counsel has requested the Board to consider rescinding its referral to Formal Hearing and proceed with an Investigative Hearing before the Board.

Mr. Milligan asked the Board to consider its remediation mission. He stated that Dr. Marouk has taken definitive steps to remediate the Board’s concerns and is committed to continuing along that path.

MOTION: Mr. Landau moved for the Board to enter into Executive Session to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

SECOND: Mr. Burg

VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

The Board entered into Executive Session at 8:31 a.m.

The Board returned to Open Session at 8:55 a.m.

No legal action was taken by the Board during Executive Session.

MOTION: Mr. Landau moved for the Board to rescind its referral to Formal Hearing and proceed with Investigative Hearing before the Board.
SECOND: Dr. Reiss
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 5 | X | X | X | | X | | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 2 | | | | X | | X | |

The Board proceeded to the Investigative Hearing as referenced under Agenda Item No. 6.A.

12. QUESTION AND ANSWER SESSION BETWEEN THE MEDICAL STUDENTS AND MEMBERS OF THE BOARD AND DISCUSSION RELATING TO ISSUES SURROUNDING THE PRACTICE OF OSTEOPATHIC MEDICINE.

The Board met the medical students in attendance and discussed current issues surrounding the practice of Osteopathic Medicine.

13. REVIEW, CONSIDERATION AND ACTION ON REPORTS FROM EXECUTIVE DIRECTOR.

A. Report on Executive Director Dismissed Complaints

Executive Director Bohall reported that 13 cases were dismissed after review by the Investigator or Medical Consultant.

B. Executive Director Report

1. Financial Report
2. Current Events that Affect the Board
3. Licensing and Investigations Update

Executive Director Bohall informed the Board that he anticipates the Agency to be under its spending appropriation for the remainder of the year. He reported that the licensing staff is currently spending an average of 60 days to process a license application, with 13 days of staff time spent on processing the application and the remaining time spent waiting for responses from applicants. Executive Director Bohall stated that the average time to issue final Board Orders takes an average of three days following the Board's meetings.

The Board's next Regular Session Meeting is scheduled for Saturday, November 23, 2019.

14. ADJOURNMENT

MOTION: Dr. Reiss moved for adjournment.
SECOND: Dr. Erbstoesser
VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbstoesser | Dr. Maitem | Dr. Reiss | Dr. Spiekerman | Mr. Burg |
|---------------------|------|----------------|------------|-----------------|------------|-----------|----------------|----------|
| Yay: | 6 | X | X | X | | X | X | X |
| Nay: | 0 | | | | | | | |
| Abstain/ Recuse: | 0 | | | | | | | |
| Absent: | 1 | | | | X | | | |

The Board's meeting adjourned at 4:57 p.m.

Justin Bohall, Executive Director

DRAFT