



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, November 23, 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 8:09 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 | |

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. October 19, 2019 Open Session

MOTION: Dr. Reiss moved to approve the October 19, 2019 Open Session.

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 | |

B. October 19, 2019 Executive Session

MOTION: Dr. Reiss moved to approve the October 19, 2019 Executive Session.

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 | |

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

A. DO-19-0146A, Brian Padraic McColgan, DO, LIC. #4538

Dr. McColgan was not present during the Board’s consideration of this matter. Dr. Erbstoesser observed that documentation errors were identified in this case relating to the description of the patient’s fracture. Dr. Erbstoesser stated that he did not find a violation of unprofessional conduct and spoke in favor of dismissal. Dr. Maitem stated based on his review of the case, he found that the final diagnosis was correct, and the follow-up care was appropriate. He noted the minor documentation concerns and stated that he found this case does not rise to the level of unprofessional conduct and spoke in support of dismissal.

MOTION: Dr. Erbstoesser moved for dismissal.

SECOND: Dr. Maitem

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 | |

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

A. DO-19-0025A, Michael Naples Lokale, DO, LIC. #005981

Dr. Lokale appeared before the Board without legal counsel. Board staff summarized that patient MM had hemochromatosis for 20 years with frequent monitoring of iron levels and therapeutic phlebotomy, and that he had sustained a brain injury and was more or less under the care of his wife who directed his medical care. During the course of treatment with Dr. Lokale, MM’s wife requested copies of his lab reports and found that Dr. Lokale had not checked iron levels for several months. After multiple attempts to reach the physician were unsuccessful, MM’s wife scheduled an appointment to discuss MM’s care and the lack of monitoring. According to MM’s wife, the physician was dismissive during the appointment and she reported that they presented to a new physician who found that MM’s iron levels were extremely high. Board staff pointed out that the chart included orders for therapeutic phlebotomy to be performed every three months. The Board’s Medical Consultant (MC) found that Dr. Lokale deviated from the standard of care in this case by failing to appropriately monitor hemochromatosis in that there were no phlebotomy studies performed and iron levels were not checked for several months. Board staff reported that Dr. Lokale placed the appropriate orders once the error was brought to his attention.

Dr. Lokale stated that he trained in the area of Family Medicine and has been in practice since 2012. He explained that MM established care with him in February of 2018 and that he was informed at that time that MM’s hemochromatosis was stable with routine labs done by his prior provider. Dr. Lokale stated that he initially wrote a standing order for CBC labs to be done every three months and admitted that he made an error in not including iron levels. He stated that he also ordered intermittent phlebotomy studies to be done every three months; however, he reported that he never received any notes from the infusion center where MM was to undergo phlebotomy, indicating that he had not complied with those orders. Dr. Lokale further explained that he did not become aware of the error until discussing MM’s care with the patient’s wife in October of 2018 when she raised concerns regarding the lack of monitoring of iron levels. He stated that there was a delay in receiving the messages left by MM’s wife through their phone and portal systems.

Dr. Lokale stated that he takes full responsibility for the oversight, and agreed that only ordering a routine CBC to monitor hemochromatosis was a clear deviation from the standard of care. He stated that he has grown as a physician and has learned a great deal from this experience, and that he has made changes to his practice. Specifically, Dr. Lokale reported that he no longer utilizes standing orders, has improved the phone system, provided his work email to his patients, and that he now utilizes hematology services to further assist him in monitoring patients with hemochromatosis. Board members questioned the physician regarding the communication concerns raised in this case. Dr. Erbstoesser stated that the physician had the opportunity to diffuse the situation when MM presented with his wife for the office visit in October 2018. Dr. Lokale reiterated that he has provided his work email to his patients to contact him with any concerns. President Cunningham agreed with Dr. Erbstoesser’s comments, and stated that the physician should have the flexibility of making himself available to patients telephonically and in-person.

MOTION: President Cunningham moved for the Board to issue a Non-Disciplinary Letter of Concern for failure to monitor hemochromatosis and failure to communicate.

SECOND: Dr. Maitem

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. Burg cautioned the physician regarding the utilization of his work email with his patients in terms of patient confidentiality and HIPAA-related concerns.

B. DO-19-0087A, Brian Wallace Zernich, DO, LIC. #3555

Dr. Zernich was present with Attorney Adam Anderson. Board staff summarized that the patient was on Eliquis for atrial fibrillation. Dr. Zernich performed revascularization of the left lower extremity in February of 2019. The procedure was complex and took four hours, twice the time than typical for this procedure. The patient received Heparin during the procedure, in addition to Aspirin and Lovenox, and was given clear instructions to follow should he suspect any additional bleeding. On the second morning, the patient developed groin pain and called the physician's answering service and a response was not received for four hours. The patient presented to the ER where he was found to have a pelvic and groin hematoma with hypotension. The patient expired before the ER staff could intervene or transfer the patient for further care. The MC had concerns regarding the inability to reach the physician in a timely manner, though it appeared the patient did not have a lot of bearing on that since he presented himself to the ER after attempting to reach someone through the answering service. Other concerns involved the fact that the patient's anticoagulant was restarted after the procedure.

Dr. Zernich pointed out that the MC did not find issues with his medical care, but rather, took issue with his availability after the procedure was performed. He explained that he performed the procedure on a Thursday and went on vacation the following day. He stated that the answering service attempted to reach the on-call Nurse Practitioner (NP) and failed to contact the backup on-call physician or Dr. Zernich himself when the NP failed to timely respond. He stated that the proper protocols were not followed by the answering service and that the NP did not respond until four hours later, though the patient had already presented himself to the ER within that time.

The Board instructed staff to refer the matter to the Arizona Board of Nursing for review of the NP's involvement in this case. President Cunningham recognized that this was a difficult case that took twice as long as expected. He questioned the physician as to the circumstances in which he would require a patient to be observed overnight. Dr. Zernich stated that there are protocols in place with regard to discharging patients, and that they did keep the patient for four hours of observation post-procedure due to the risk of bleeding from the popliteal artery. He added that the delay in the procedure had to do with the complexity of the lesion and not due to blood loss. Dr. Maitem recognized that the NP practices under her own regulated license, and commented that the physician is ultimately responsible for his patient regardless of how the call system is set up. Dr. Maitem noted that the standard protocol is to discharge the patient if vitals are stable, and stated that he found it appropriate for the physician to restart the patient's

anticoagulation medication after the procedure. He stated that he could not fault the physician for his work in this case, and that he recognized it was a complicated case with a bad outcome.

Dr. Zernich reported that the NP is no longer employed at the practice, and that the phone protocol has been addressed. Dr. Reiss stated there appeared to be a breakdown in communication in this case between the different providers. Mr. Landau commented that the communication was an issue that initially started with the NP as well as a systemic problem within the clinic.

MOTION: Dr. Maitem moved for dismissal.

SECOND: Dr. Erbstoesser

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-17-0269A, DO-17-0268A, DO-19-0115A, Brian Samuel Page, DO, LIC. #3416

Dr. Page was present with Attorney Robert Milligan. AJ Saulnier appeared on behalf of Dr. Page and was questioned by the Board as a witness in these matters. He stated that his stance on all of this is that many medical practices are lacking in compliance in some fashion, that he had been employed by the physician as his Compliance Officer, and that he did not believe there were any violations that occurred at Dr. Page’s offices. Mr. Saulnier further stated that he was not aware of any Medical Assistants (MA) performing any duties to which they were not permitted.

Board staff summarized that the complainants in the cases are former CRNAs that worked for the physician in the past. One CRNA reported that he felt it was a very unsafe environment with a high volume to patients that created an extremely fast paced environment that included unqualified staff. Another CRNA complainant reported that she had never seen such a “shoddy” practice that allowed MAs to discard narcotics without supervision and were taking x-rays as well, and that the MAs did not have the knowledgebase for becoming ACLS certified. A chart review was conducted by a board-certified pain management specialist who identified deviations from the standard of care on the part of Dr. Page. Specifically, the Medical Consultant (MC) observed that Dr. Page may have directed unqualified staff to administer IV medications and insert IV catheters. The MC felt that Dr. Page may have allowed unqualified staff to monitor patients, handle controlled substance medications, take x-rays, and operate the C-arm. The MC found that Dr. Page utilized consent forms that lacked specificity to the procedure being performed, and failed to save fluoroscopy images of reasonable quality. Dr. Page failed to sign discharge orders and although the physician documented patient consent in some procedure notes, the usual consent forms were missing from numerous charts.

During the course of the Board’s investigation, Board staff interviewed individuals who had previously worked for Dr. Page, including physicians and office staff. Two physicians reported that they left the practice due to concerns that they had regarding patient care and safety. One physician reported several instances wherein Dr. Page would force patients to have procedures performed in order to continue their

pain medications. Both physicians were concerned about retribution from Dr. Page and stated that he was unethical. Two MAs that previously worked for Dr. Page indicated that there were no concerns identified while working in the practice, and a third MA felt that she was not properly trained and felt uncomfortable with many of her delegated tasks. Board staff also performed an onsite inspection and Dr. Page's Chief Financial Officer was interviewed as well as several other staff. Board staff observed that Dr. Page has ten office locations, nine of which are located in the Valley and one is located in Tucson. Several of the locations are surgical facilities. Board staff also observed that Dr. Page was previously sanctioned by the ARRA in 2016 and again in November of 2017 relating to the radiation logs. Dr. Page's offices were also audited by MICA and several recommendations were made as a result of that review.

MOTION: Dr. Reiss 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. Maitem

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

MOTION PASSED.

| | Vote | Dr. Cunningham | Mr. Landau | Dr. Erbsfoesser | 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 entered into Executive Session at 11:42 a.m.

The Board returned to Open Session at 11:54 a.m.

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

Dr. Page apologized to the Board for the way the communications had been handled between his office and the Board over the past three years. He reported that he implemented changes to his practice after understanding the Board's concerns, and that he has learned a lot through the MICA audit process as well as DEA inspections and the ARRA investigations. Dr. Page stated that he never knowing "cut corners," and that he is committed to quality and safety in his practice. He informed the Board that he works one less clinical day per week to focus on compliance issues, and that he meets with his Compliance Officer on a regular basis to discuss potential compliance issues. Dr. Page stated that he takes the Board's process very seriously and that he felt it has been a positive influence on him and his practice. Dr. Page admitted that he has made mistakes in that he could have done a better job in enforcing time-out procedures and should have hired x-ray technicians sooner than he did. Dr. Page reported that he has an excellent safety record in his over 20 years of practice and pointed out that he has no prior Board disciplinary history.

Mr. Milligan addressed the Board, stating that there has been no adverse patient event in connection with any of Dr. Page's patients, and pointed out that there had not been any complaints filed by his patients relating to the matters presented to the Board at today's meeting. Mr. Milligan noted that the complaints were filed by former employees of Dr. Page's practice, and stated that he does not believe that anyone could fairly judge an outcome based on anonymous complaints that he stated deprives the person accused of any ability to prepare a factual response. Mr. Milligan asked the Board to ignore the allegations from the anonymous complainants. He stated that the physician's actions since the problems were identified demonstrate that he is committed to doing the right thing. Mr. Milligan added that the Board should consider the progress that has been made and insight that has been expressed, and allow the physician the opportunity to continue practicing.

In response to Mr. Landau’s line of questioning, Dr. Page stated that MAs were permitted to start IV lines under physician supervision and confirmed that a physician was always present. Dr. Page explained that he did not authorize for MAs to push IV medications. Mr. Landau recognized the comments made regarding no patient complaints filed with the Board, and he commented that these matters involve violations of standards of care and regulatory rules, something that patients may not necessarily know are violations. Mr. Milligan agreed with Mr. Landau’s comment and stated that if things were as chaotic as claimed in the cases, there would be some adverse patient outcome or patient complaint. The Board questioned the physician regarding the frequency in which procedures are performed on an average basis. Dr. Page reported that he performs an average of 20-30 procedures daily, depending on the day.

President Cunningham questioned the physician regarding the modality with which narcotic medications were handled by staff in his offices. Dr. Page stated that their office policy has been to have two staff members (typically MAs) perform the pill count at the start of and end of day. He reported that he has adopted the policy of surgery centers that requires licensed CRNAs to be involved in all counting of opioids. In relation to the allegations that MAs were permitted to move the C-arm during x-rays, Dr. Page stated that he performs the procedures and operates the C-arm himself. He explained that the MAs were authorized to position the patients on the bed, which may have involved slight movement of the C-arm. He stated that he became aware that this was not permitted when he was audited and has since hired x-ray technicians to assist him in those procedures. Dr. Page also assured the Board that his Compliance Officer performs regular audits to ensure that the patients’ charts are in order. Dr. Reiss expressed concern with regard to the volume of procedures the physician reported he performs on a daily basis.

Mr. Landau questioned what initiated the MICA audit. Dr. Page indicated that because his practices locations involve in-office sedation, it was a standard audit required by MICA. The Board discussed the multiple allegations and issues identified in the cases, as well as the multiple attempts made by the physician to address the Board’s concerns. Mr. Landau commented that he felt the physician was cutting corners in his practice and that compliance was not a high priority until he got caught.

MOTION: Mr. Landau moved for findings of unprofessional conduct in case number DO-17-0268A in violation of A.R.S. § 32-1854(6) and (39).

SECOND: Dr. Maitem

Mr. Landau observed that Dr. Page directed unqualified staff to perform tasks that violated regulation, and also allowed unqualified staff to monitor patients and take x-rays. He stated that the consent forms were either incomplete or missing from the charts, and fluoroscopy images were not of sufficient quality. Additionally, Mr. Landau stated that Dr. Page’s documentation and procedure notes are lacking.

MOTION: Dr. Erbstoesser 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. 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 | |

The Board entered into Executive Session at 12:34 p.m.
 The Board returned to Open Session at 12:39 p.m.
 No legal action was taken by the Board during Executive Session.

President Cunningham commented that the Board is not comfortable with the manner in which the physician has been practicing in the past. The Board proceeded to a roll call vote regarding the motion on the floor for findings of unprofessional conduct.

**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 findings of unprofessional conduct in case number DO-17-0269A in violation of A.R.S. § 32-1854(6) and (39).
 SECOND: Dr. Maitem**

Mr. Landau observed that similar concerns were identified in this case as the previous matter in that the physician utilized unqualified staff, lacked complete and accurate consent forms, and lack documentation in the charts. Dr. Reiss reiterated his concerns regarding the frequency in which procedures are performed on a daily basis. Dr. Page clarified for the Board that other medical providers assist him in initial examination and follow up care of his patients.

**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 proposed referring the matters for license revocation. Dr. Page stated that he has spent an incredible amount of time and energy in making changes to his practice. Mr. Milligan pointed out that the volume of patients seen by the physician was not an issue raised in the cases. President Cunningham

stated that he remained concerned regarding how the physician continues to run his practice. He agreed that the matters should be referred for license revocation. Dr. Erbstoesser proposed placing the license on Probation to monitor the practice and ensure compliance with the reported improvements. Dr. Maitem also spoke in favor of license revocation and stated that he was not convinced that the appropriate changes have been made to the physician’s practice. Mr. Burg also spoke for license revocation and stated that he was not convinced that the patients are safe.

MOTION: Mr. Landau moved for the Board to refer case numbers DO-17-0268A and DO-17-0269A to the Office of Administrative Hearings for a Formal Hearing for license revocation and to impose investigative costs.

SECOND: Dr. Maitem

Mr. Milligan requested the Board to consider requiring the physician to employ a practice monitor to provide the Board with comfort that the physician’s efforts over the past three years have improved the practice and patients are safe.

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 proceeded to discuss case number DO-19-0115A which involved allegations of non-compliance with the Board’s Order to provide a complete list of employees within the prescribed timeframe. Mr. Milligan responded stating that their failure to provide a complete list was due to technical error. Board staff reported that the physician was ordered to provide the information by June 3rd, and that information was not received until June 12th and was incomplete. A revised list was received on June 14th in response to Board staff’s inquiry. Dr. Page’s prior legal counsel reported that the physician did submit the information to her office prior to the deadline, and that it was sent via email to the Board, but a technical error occurred causing a delay. Dr. Page reported to the Board that he provided the information requested by the Board to his then-counsel, and that he believes his prior attorney was not submitting the information timely to the Board, and as a result, he hired new legal representation. Dr. Page admitted that he should have taken a more active role in participating in the Board’s processes. The Board noted that staff had been attempting to retrieve the information from Dr. Page for months prior to the Board’s Order to comply with the requests made by staff. Board members discussed the statutory violation identified in this case, and considered whether to issue the physician a Letter of Concern versus an Administrative Warning for his failure to comply with the Board’s Order.

MOTION: Mr. Landau moved for a finding of unprofessional conduct in case number DO-19-0115A in violation of A.R.S. § 32-1854(25) for failure to comply with a Board Order.

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 | |

MOTION: Mr. Landau moved for the Board to issue an Administrative Warning in case number DO-19-0115A for failure to comply with a Board Order.

SECOND: Dr. Maitem

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 19-0099A, DO-19-0106A, DO-19-0101A, Fatima Hasan Khan, DO, LIC. #007642

Dr. Khan participated telephonically during the Board’s consideration of this matter and reported that she is currently on medical leave. Board staff summarized that Dr. Khan purchased Pablo Verde Clinic from a medical doctor. Board case number DO-19-0099A involved patient SS who indicated that he had a scheduled appointment at the Clinic for his monthly injections. He was informed that the appointment was cancelled, and he ultimately agreed to pick up his medical records to continue care with another provider. However, when SS presented to the Clinic to obtain his records, it appeared that the office had closed permanently. SS reported that he did not receive his medical records in time for his appointment with his new provider and as a result was not able to obtain his monthly injection.

Case number DO-19-0101A involved patient JC who had been attempting to retrieve his medical records from the Clinic for his new primary care provider without success. JC’s wife was also a patient of the Clinic and has not been successful in her attempts to obtain her records, and is the patient involved in Board case number DO-19-0106A. In response to the complaints, Dr. Khan explained that the seller of the Clinic did not provide accurate financial and other information relating to him and the practice, and that she later filed bankruptcy due to significant financial crisis. Dr. Khan reported that she hired a documentation management service to provide the patients with their medical records for a fee of \$25.00.

Dr. Khan explained that she took on a large volume of patients after purchasing the Clinic from the medical doctor. She stated that the document management company was attempting to provide the patients their medical records timely. With regard to the three patients identified in the Board’s

investigations, Dr. Khan stated that she contacted the documentation management services and confirmed that the records requests were fulfilled. Board staff informed the Board that patient JC and his wife have reported that they still had not received their records. Dr. Khan stated that given the circumstances she was facing, she did her best to try and cover all her bases for patients to receive their medical records. Dr. Khan reiterated that the documentation management service confirmed that the records have been sent to the patients.

MOTION: Dr. Reiss moved for dismissal.

SECOND: Dr. Maitem

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-19-0080A, Thomas Clarence Scherich, DO, LIC. #3153

Dr. Scherich was present without legal counsel during the Board's consideration of this case. Respondent's wife was present as a witness on Dr. Scherich's behalf.

MOTION: President Cunningham moved for the Board to enter into Executive Session for confidential information pursuant to A.R.S. § 38-431-03(A)(2).

SECOND: Dr. Maitem

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 entered into Executive Session at 1:45 p.m.

The Board returned to Open Session at 2:34 p.m.

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

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: 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 entered into Executive Session at 2:19 p.m.

The Board returned to Executive Session for Medical Information at 2:30 p.m.

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

MOTION: President Cunningham moved for dismissal without prejudice with the understanding that Dr. Scherich's license is due to expire at the end of December 2019, that he will not practice osteopathic medicine in the interim, and that he has no plans to renew his license thereafter.

SECOND: Mr. Burg

Mr. Landau proposed that the Board table the matter until the physician's license expires, and to reconsider the case at the Board's January 2020 meeting.

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 | |

F. DO-19-0038B, James J. Kao, DO, LIC. #005448

Dr. Kao was present with Attorney Stephen Myers. Board staff summarized that the Board received notification from the Department of Health Services stating that Dr. Kao issued medical marijuana certifications for 74 patients without querying the Controlled Substance Prescription Monitoring Program (CSPMP) database as required by Arizona Administrative Code. Dr. Kao responded to the Board's investigation admitting that his CSPMP queries were delinquent and explained that he had difficulty logging into the database soon after becoming a new user to the program. Dr. Kao reported that he has since discontinued issuing medical marijuana certifications.

Dr. Kao apologized to the Board and the osteopathic community, and stated that he takes full responsibility for the issues identified in this case. Dr. Kao stated that he was not familiar with the CSPMP database as he does not prescribe controlled substances to his patients, and stated that he sought the advice of other physicians and signed up for credentials to utilize the database. He reported that all patients have been retroactively reviewed on both California and Arizona databases, and that only one patient required further review as it appeared that the patient was also on narcotics. Dr. Kao added that the majority of the patients identified in this case were seen at his California office and already had a recommendation for medical marijuana in either one or both states. He stated that these patients were seeking medical marijuana certification to avoid using narcotics and prescription medications.

Mr. Myers stated that it is mitigating that the physician has no prior Board discipline and that there has been no suggestion that the certifications were not medically indicated for the patients. Mr. Myers stated that Dr. Kao did perform complete history and physical exams on these middle-aged patients and that most had been previously certified for medical marijuana by other physicians. Mr. Myers assured the Board that Dr. Kao clearly understands the importance of accessing and reviewing the CSPMP information prior to certifying patients for medical marijuana. He further reported that Dr. Kao has registered for the PACE prescribing course scheduled for January 2020. In light of these mitigating circumstances, Mr. Myers requested the Board issue a Non-Disciplinary Letter of Concern.

The Board observed that Dr. Kao practices in the field of ophthalmology and questioned the physician as to what caused him to begin issuing medical marijuana certifications. Dr. Kao explained that he researched the benefits of medical marijuana after his brother was diagnosed with cancer and as a result, he changed his stance against medical marijuana. He stated that medical marijuana can be used for pain relating to optic neuritis in patients with MS, pain relating to ocular migraines, as well as patients diagnosed with glaucoma. President Cunningham commented that he was not aware of migraines being an approved diagnosis to certify patients for medical marijuana. Mr. Landau questioned the physician as to why he did not consider discontinuing the medical marijuana certifications until his issues with logging into the CSPMP database were resolved. Dr. Kao admitted that he made a mistake in not doing so. Dr. Maitem commented that just because the substance is or herb/plant-based does not mean that it is safe. He stated that medical marijuana is currently classified as a controlled substance and that CSPMP database review is required when issuing certifications. President Cunningham expressed concerns regarding Dr. Kao's judgment in this case and the fact that a board-certified ophthalmologist was issuing medical marijuana certifications while ignoring the requirements pursuant to statute.

MOTION: Dr. Maitem moved for the Board to issue a Non-Disciplinary Letter of Concern and Order for Non-Disciplinary CME for failure to query the CSPMP database prior to issuing medical marijuana certifications. Dr. Kao shall enroll in the PACE prescribing course by January 2, 2020, and the CME hours shall be in addition to the hours required for license renewal.

SECOND: Dr. Erbstoesser

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 | |

7. 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-19-0024A, DO-19-0055A, DO-19-0081A, DO-19-0082A, DO-19-0138A, DO-19-0153A, DO-19-0158A, DO-19-0167A, DO-19-0168A, DO-18-0046A, DO-18-0053A, DO-18-0069A, DO-18-0083A, DO-18-0038A, DO-18-0188A, DO-18-0199A, DO-18-0200A, - Mark L. Griswold, DO, LIC. #2799

The Board took the above referenced case out of order on the agenda.

Dr. Griswold was present with legal counsel, Dr. Steve Perlmutter. Board staff summarized that on June 15, 2019, the Board convened to address the physician's potential non-compliance relating to the above referenced cases. The Board at that time ordered the physician to complete a PACE evaluation by October 15, 2019, and required the physician to provide a response to any pending complaints to which he had not yet responded. Dr. Griswold made a down payment for the PACE evaluation, but the evaluation has not been scheduled or completed as of today's meeting. Additionally, the physician failed to comply with the Board's Order to respond to the pending complaints and patients have paid for their records to be transferred and either have not received a response or their records after the physician closed his practice.

Dr. Perlmutter addressed the Board stating that the physician has made a good faith effort to comply with the Board's instructions. He explained that due to some unforeseen circumstances beyond Dr. Griswold's control, he has not been entirely successful in doing so. Dr. Perlmutter reported that Dr. Griswold has ceased practicing and has not completed the PACE evaluation. He stated that Dr. Griswold has been waiting about a month for PACE to schedule him for the evaluation after submitting the required documentation and paying the down payment. Dr. Perlmutter informed the Board that according to PACE's last email correspondence dated November 20th, PACE was in the process of arranging the assessment. He stated that Dr. Griswold did not complete the assessment previously as he could not afford the associated costs. Dr. Perlmutter requested the Board take no action in this case until the assessment can be completed and the Board has had an opportunity to review the results as the physician has acted in good faith.

Mr. Landau expressed concern regarding the volume of complaints relating to Dr. Griswold and today's proceedings. He noted that the cases involved allegations of failure to comply with the Board's orders, receiving money for services not rendered, and failure to recognize and diagnose complications. Mr. Landau questioned whether the Board should allow the physician to continue practicing medicine and proposed revoking the license based on the evidence presented to the Board. President Cunningham stated that the Board has been more than generous in its attempts to work with the physician thus far. He stated he did not believe that the physician was practicing medicine safely and that revocation of licensure/surrender was warranted.

Dr. Perlmutter readdressed the Board and requested that the physician's license remain restricted pending the PACE evaluation as the physician has already paid the \$8,000 down payment that is not refundable. He stated that there are no grounds for license revocation. President Cunningham stated that excluding the failure to comply with Board orders and respond to complaints, there are grounds for license revocation based on the quality of care concerns raised in the cases. Dr. Reiss stated that it appeared that the physician believed the Board's decision would be based solely on the outcome of the PACE evaluation, and explained that the Board bases its decisions on all of the information provided for consideration.

MOTION: Dr. Maitem 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: 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 entered into Executive Session at 8:26 a.m.
The Board returned to Open Session at 8:40 a.m.
No legal action was taken by the Board during Executive Session.

Dr. Perlmutter requested the Board consider restricting Dr. Griswold’s clinical practice and not revoke his license. Patient DO was present and addressed the Board regarding her case, DO-19-0055A. DO reported that she has been dealing with Dr. Griswold for over a year, most of which she claimed had been avoidance on his part. DO explained that she scheduled surgery with Dr. Griswold that was cancelled multiple times and was sold lenses for which she was not an eligible candidate. She informed the Board that Dr. Griswold did write her a check that has not been able to cash as it would not tender and that she just wanted her money back.

The Board entered into deliberations and addressed the statutory violations identified in each individual case agendized for today’s meeting.

MOTION: Mr. Landau moved for findings of unprofessional conduct in case DO-18-0046A in violation of A.R.S. § 32-1854(6) and (39).
SECOND: Dr. Maitem

Mr. Landau observed that Dr. Griswold failed to document the difficulties encountered during surgery, there was misplacement of the IOL, as well as the initial failure to recognize and timely address surgical complications.

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 findings of unprofessional conduct in case DO-18-0053A in

**violation of A.R.S. § 32-1854(6) and (39).
SECOND: Dr. Maitem**

Mr. Landau observed that Dr. Griswold performed cataract surgery in November of 2017 with complication of IOL position and dislocation that required the physician to return the patient to surgery and there were continued vision issues. The physician thereafter recommended that the patient return for follow up in six months. Additionally, Dr. Griswold failed to document the surgical complications and as a result of the treatment, the patient suffered retinal damage. The Board also noted that Dr. Griswold did not timely refer the patient to a retinal specialist for further care and failed to diagnose retinal detachment for several weeks.

**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 findings of unprofessional conduct in case DO-18-0069A in violation of A.R.S. § 32-1854(6) and (39).
SECOND: Dr. Maitem**

Mr. Landau observed that Dr. Griswold failed to document complete and accurate information in the patient’s chart, and failed to recognize complications that required additional care.

**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 findings of unprofessional conduct in case DO-18-0083A in violation of A.R.S. § 32-1854(6) and (39).

Mr. Landau reviewed the file and recognized that there were no issues related to the surgical procedure

performed by Dr. Griswold in this case. Mr. Landau withdrew his motion.

MOTION: Mr. Landau moved for findings of unprofessional conduct in case DO-18-0038A in violation of A.R.S. § 32-1854(6) and (39).

SECOND: Dr. Maitem

Mr. Landau observed that Dr. Griswold failed to take the appropriate aggressive action in this case resulting in injury to the patient’s optic nerve. Mr. Landau stated that the findings in this case speak to the overall concern that the physician failed to identify and timely address complications from surgery.

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 findings of unprofessional conduct in case DO-18-0188A in violation of A.R.S. § 32-1854(6) and (39).

SECOND: Dr. Erbstoesser

Mr. Landau observed that the patient in this case experienced postoperative complications. After a number of postoperative visits, the physician referred the patient to a retinal specialist. Mr. Landau stated that the physician failed to recognize the complications from surgery and the patient was left without a lens in the left eye for a period of time.

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 findings of unprofessional conduct in case DO-18-0199A in violation of A.R.S. § 32-1854(6) and (39).

SECOND: Dr. Maitem

Mr. Landau observed that this case involved a clear lack of documentation and failure to recognize and address complications from eye surgery.

**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 findings of unprofessional conduct in case DO-18-0200A in violation of A.R.S. § 32-1854(6) and (39).

SECOND: Dr. Maitem

Mr. Landau observed that this case involved a lack of documentation of post-surgical complications and failure to recognize and address complications from eye surgery. The Board noted that Dr. Griswold provided various treatments for this patient without success and failed to resolve the situation.

**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 | |

Dr. Perlmutter pointed out that he was not representing Dr. Griswold on a number of the cases agendized for today's proceedings, and requested the Board to confirm whether the proper notification was made to the attorney representing the physician on those matters. Board members indicated that there did not appear to be any notices of other legal representation in the case materials.

MOTION: Mr. Landau moved for dismissal of case number DO-18-0083A.

SECOND: Dr. Maitem

**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 discussed the physician's request to restrict his license until the PACE assessment can be completed and reviewed versus referring the matter to the Office of Administrative Hearings (OAH) for a Formal Hearing to revoke the license. Mr. Landau noted that the physician collected fees for surgeries that he was not able to perform, and stated that he did not feel that the physician did so intentionally. Mr. Landau stated that in light of the quality of care concerns raised in the cases, revocation of licensure is warranted. He stated that the physician shall be offered the opportunity to surrender his license in lieu of formal license revocation.

MOTION: Mr. Landau moved for the Board to refer case numbers DO-18-0046A, DO-18-0053A, DO-18-0069A, DO-18-0038A, DO-18-0188A, DO-18-0199A, DO-18-0200A to OAH for Formal Hearing for license revocation. The physician shall be offered the opportunity to surrender his license in lieu of revocation. If the license is not surrendered by December 15, 2019, the matter shall proceed to OAH for license revocation.

SECOND: Dr. Maitem

The Board noted that Dr. Griswold's license is due to expire at the end of 2019. Dr. Reiss stated that the Board could not allow the physician to continue practicing based on the overwhelming evidence presented for consideration. President Cunningham stated he found it egregious that the physician accepted payment for surgery that he knew he could not perform.

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 Board to enter into Executive Session to receive legal advice pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: Dr. Maitem

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 entered into Executive Session at 9:34 a.m.
 The Board returned to Open Session at 9:51 a.m.
 No legal action was taken by the Board during Executive Session.

MOTION: Mr. Landau moved for the Board to refer case numbers DO-19-0055A, DO-19-0138A, DO-19-0153A, and DO-19-0167A to OAH for Formal Hearing for license revocation in conjunction with the cases referred to OAH per the Board’s prior motion. The physician shall be offered the opportunity to surrender his license in lieu of revocation. If the license is not surrendered by December 15, 2019, the matter shall proceed to OAH for license revocation.

SECOND: Dr. Maitem

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 Board to refer case number DO-19-0082A to OAH for Formal Hearing for license revocation in conjunction with the cases referred to OAH per the Board’s prior motions. The physician shall be offered the opportunity to surrender his license in lieu of revocation. If the license is not surrendered by December 15, 2019, the matter shall proceed to OAH for license revocation.

SECOND: Dr. Maitem

The Board noted that this case involved the physician’s failure to comply with the Board’s Order.

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 Board staff to take the appropriate investigatory action in case numbers DO-19-0158A, DO-19-0168A, DO-19-0024A, and DO-19-0081A.

SECOND: Dr. Maitem

The Board recognized that the investigation process has not been completed for these cases, and that the cases involve similar allegations to the other cases presented to the Board.

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-17-0189A, Joseph John Ring, DO, LIC. #4529

Dr. Ring was present without counsel during the Board's consideration of this matter. Board staff summarized that Dr. Ring initially appeared before the Board due to prescribing concerns. In May of 2019, Dr. Ring was placed on Probation for three years with terms and conditions that include the prohibition from certifying patients for medical marijuana, and the requirement to obtain a preceptor to send quarterly reports to the Board for one year and then semi-annually thereafter. Board staff received two reports from the preceptor, the most recent indicated that Dr. Ring had completed an extensive EKG course to which he received CME credits. The preceptor had reviewed random records involving controlled substance prescribing and no deficiencies have been identified.

Dr. Ring reported that things are going much better. He stated that during this process, he attended a seminar that addressed physician burnout and helped him realize how he got here. Dr. Ring stated that he sold his practice and is currently employed with a hospital. The Board discussed inviting the physician to appear before the Board for an update in one year.

C. DO-17-0069A, Charles Walter Welly, DO, LIC. #2248

Dr. Welly was present without counsel during the Board’s consideration of his compliance with the terms of his Interim Order. Board staff summarized that Dr. Welly initially appeared before the Board due to concerns regarding prescribing and patient care. He was required to attend a PACE evaluation, which he completed in June 2019. The report from PACE indicated that Dr. Welly’s performance was satisfactory overall, and identified concerns relating to medical recordkeeping and the thoroughness and technical performance of physical exams. PACE recommended that Dr. Welly complete a medical recordkeeping CME course and employ a practice monitor to perform chart reviews to work with the physician in correcting any deficiencies identified and ensure that he is practicing safely. PACE also recommended that the physician obtain double the amount of CME credits required for license renewal for the next two years, and that he work on improving his performance of history and physical exam skills.

Dr. Welly stated that he felt he was doing better, but that he had not received a copy of the results of his PACE evaluation. He stated he did receive a certificate of successful completion from PACE. The Board discussed incorporating the recommendations made by PACE into the Board’s Order. Mr. Landau suggested that as an alternative to the practice monitor, require the physician to undergo a chart review performed by Board staff six months after completion of the CME course. The Board also discussed PACE’s recommendation for the physician to improve his history and physical exam skills by reviewing the web-based resource, “A Practical Guide to Clinal Medicine,” and to have this requirement completed within three months, undergo a chart review, and then return to appear before the Board at a future meeting.

MOTION: Mr. Landau moved for findings of unprofessional conduct in violation of A.R.S. § 32-1854(6), (21), and (34) based on the findings in the Interim Order, and incorporate the findings of the PACE evaluation.

SECOND: Dr. Maitem

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 Board to issue Three Year Probation with terms that include the requirement to complete a medical recordkeeping CME course by May 1, 2020. The physician shall complete at least 50 CME credits annually for a period of two years, and read the Practical Guide to Clinical Medicine by March 1, 2020 and certify in writing to the Board that this requirement has been satisfied. The physician shall be subject to chart reviews and shall return to appear before the Board at its September 2020 meeting.

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-18-0155A, DO-19-0220A, Joseph Christopher Thompson, DO, LIC. #007732

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

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

SECOND: Mr. Landau

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 entered into Executive Session at 3:38 p.m.

The Board returned to Open Session at 4:08 p.m.

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

MOTION: President Cunningham moved for the Board to lift the Practice Restriction.

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 | |

MOTION: President Cunningham moved for a Consent Agreement for Five Year Probation for monitoring. The physician shall schedule an appointment with a specialist as outlined by the Board in Executive Session with terms as set forth in Executive Session. The physician shall return to appear before the Board at its April 2020 meeting.

SECOND: Dr. Maitem

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-15-0232A, William W. Willis, DO, LIC. #4742

Dr. Willis was not present during the Board’s consideration of this case. Board staff reported that Dr. Willis has failed to comply with the Board’s Order and that Board staff’s recent attempts to contact the physician have been unsuccessful. The Board was informed that Dr. Willis emailed Board staff requesting to surrender his license and that when staff attempted to facilitate an agreement for surrender of licensure, they were not able to reach the physician thereafter.

MOTION: Mr. Landau moved for the Board lift the stay of license revocation in this case.

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 | |

F. DO-14-0206A, DO-14-0221A, Carl Edward Ferguson, DO, LIC. #2244

Dr. Ferguson was not present during the Board’s consideration of this matter. Board staff summarized that in October of 2015, Dr. Ferguson’s license was placed on Probation for three years, with terms and conditions that include a restriction from prescribing and recommending medical marijuana, and the physician was required to undergo a comprehensive evaluation by PACE or CPEP. In June of 2017, Dr. Ferguson attended a PACE evaluation and a practice monitor was recommended in addition to further training in opioid prescribing. In March of 2019, the Board granted the physician’s request to terminate the Probation and lift the restrictions. The Board also instructed its staff to perform a chart review regarding the physician’s prescribing and the Medical Consultant did not identify any deviations from the standard of care, but did recommend that the physician consider printing a copy of the patients’ CSPMP reports into their charts. The Board instructed staff to send the physician correspondence to make him aware of the recommendations.

8. 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-19-0230A, John S. Dennis, DO, LIC. #N/A

Dr. Dennis was present without counsel during the Board’s consideration of this case. Board staff summarized that Dr. Dennis applied for Arizona licensure and disclosed two malpractice cases on the application. The first occurred in 1993 and the physician was not directly involved in the patient’s care, but was included in the malpractice settlement as it affected his department. The second case settled in 1999 and involved a patient who underwent biopsy of a right lung mass, was diagnosed with lung cancer, and underwent right upper lobectomy.

Dr. Dennis explained that the first case involved a Siamese twin with multiple congenital problems who had not received prenatal care. He stated that the case alleged that the hospital did not properly monitor the patient and everyone involved elected to settle the matter. Dr. Dennis stated that the second case involved the incidental finding of lung cancer on a shoulder x-ray. He informed the Board that if granted licensure in Arizona, he plans to provide coverage at the cancer hospital located in the Valley relating to the reading of PET scans, CT scans, and possibly on-site coverage.

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

SECOND: Dr. Maitem

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-19-0240A, Robert Michael Sprague, DO, LIC. #N/A

Dr. Sprague was present during the Board’s consideration of this matter. Board staff summarized that Dr. Sprague applied for Arizona licensure and failed to disclose a 2004 charge for vandalism. Dr. Sprague’s response to the investigation stated that the incident occurred when he was in high school and that he was the designated driver for three friends that he picked up from a party. The three friends had vandalized an individual’s property and they were all picked up by the authorities. As a result of the case, he and the three others were instructed to attend diversion counseling and pay for the damage. Dr. Sprague had indicated that he did not disclose the prior charge as it did not show on his record when he enlisted in the United States Marine Core and he was reportedly instructed to not offer the information in the future as the record was sealed.

Dr. Sprague addressed the Board and stated that he apologized for not making better choices. He stated that the diversion counseling was useful and that it made him believe in second chances. He reported that he learned that it is better to take responsibility for a problem and try to find a solution. Mr. Landau stated that it is unclear whether convictions that have been set aside are required to be disclosed on the application, and that it is not specifically addressed in statute. The Board questioned Dr. Sprague regarding his plans are for seeking Arizona licensure. Dr. Sprague reported that he is a second-year resident in Kingman, Arizona, and that his plans are to continue his medical training.

MOTION: Dr. Maitem moved for the Board to grant an unrestricted license.

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 | |

9. REVIEW, DISCUSSION, CONSIDERATION AND POSSIBLE ACTION RELATING TO THE STATE’S MOTION TO RESCIND REFERRAL TO FORMAL HEARING AND CONSIDERATION OF THE PROPOSED CONSENT AGREEMENT.

A. DO-18-0007A, DO-18-0018A, Jack Jessen Hawks, DO, LIC. #4049

The Board took the above referenced case out of order on the agenda.

AAG Jeanne Galvin and AAG Mary D. Williams were present on behalf of the State. AAG Michael Raine was present for independent legal advice. Dr. Hawks was present with Attorney Kamilla Alarcon. AAG Williams requested the Board consider the State’s motion to rescind referring the cases to the Office of Administrative Hearings (OAH) for a Formal Hearing. She stated that the physician has signed the proposed Consent Agreement for the Board’s consideration. Ms. Alarcon stated that she and her client had no objection to the State’s motion to rescind the cases.

MOTION: Mr. Landau moved for the Board to rescind its referral of the cases to OAH for Formal Hearing.

SECOND: Dr. Maitem

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 | |

Ms. Alarcon stated that the proposed Consent Agreement has been signed by the physician and that they believe it addresses the allegations and the Board’s concerns. She stated the physician has agreed to the Stayed Revocation and Five Year Probation with terms and conditions that include the requirement to have a female chaperone present in the exam room and has found a CME course to attend for 33 credits, offered by PBI.

Dr. Maitem stated that there were concerns raised regarding the physician’s behavior outside of the exam room. Mr. Landau noted that there were also issues with the physician’s prescribing as well. Dr. Reiss stated he found that the proposed Consent Agreement addresses the Board’s concerns and protects the public. He stated that the physician could be rehabilitated by having a chaperone present in the exam room and overseeing his behavior. Dr. Reiss suggested that the Board monitor this physician for an extensive period of time. AAG Galvin reported that Dr. Hawks underwent psychosexual evaluation and there was no underlying pathology identified, but a chaperone was advised. The Board noted that the proposed Consent Agreement included psychotherapy as a condition of the Probation. AAG Williams explained that the chaperone requirement and stay of the revocation go beyond the Five Year Probation, and that in the event that the physician violates any terms of the Board’s Order, the Board will have the ability at that time to lift the stay and revoke the license.

President Cunningham proposed extending the Probation for longer than five years as proposed in the signed agreement. He also suggested that the physician return 90 days after implementing the requirements ordered by the Board and provide an update on his practice. President Cunningham stated

that a case of this magnitude warrants eight years of probationary terms and monitoring of the physician's practice. Dr. Reiss agreed that the Probation should be in place for an extended period of time. Mr. Landau stated that there were grounds to revoke the physician's license, and stated that if the Board is permitting the physician to continue practicing, a Decree of Censure should be included in the Consent Agreement as well as imposing of the investigative costs, and that the Probation terms should be in place for seven years. Mr. Landau also suggested that the Board require mandatory reporting by the chaperone with logs for the first year for chart comparison. Dr. Reiss stated that the Probation should include a term that requires the physician to notify his current and future employers.

MOTION: Mr. Landau moved for the Board to accept the proposed Consent Agreement signed by the physician on November 17, 2019 with the following modifications: the term of probation is extended from 5 years to 7, the physician shall provide chaperone logs to the Board on a quarterly basis, the Board's Medical Consultant shall conduct random chart reviews based on the chaperone logs and shall interview chaperones at her discretion, the physician shall be responsible for all in investigative costs within 30 days after invoice, and the physician shall provide a copy of the Board's Order to current and all future employers. If the physician does not enter into the agreement by December 2, 2019, the matter shall be referred to OAH for Formal Hearing to revoke the 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 | |

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

A. Policy regarding Consent Agreements, Board Orders and Reimbursement for the Cost of an Investigation or an Investigative Hearing

Executive Director Bohall informed the Board that the Agency is in the process of working with the Attorney General's Office to draft a policy regarding consent agreements and to provide information relating to the imposition of investigative costs.

11. 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.

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

A. Report on Executive Director Dismissed Complaints

Executive Director Bohall reported that four cases were dismissed by the Committee and that seven cases were dismissed by the Executive Director 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 reported that the Agency is well within its budget, and that the staff continues to push through renewal applications.

The Board will hold its annual elections of Board Officers at its next meeting that will be held on January 11, 2020.

13. ADJOURNMENT

MOTION: President Cunningham moved for adjournment.

SECOND: Mr. Maitem

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 4:42 p.m.

Justin Bohall, Executive Director