



**ARIZONA BOARD OF OSTEOPATHIC
EXAMINERS IN MEDICINE AND SURGERY**
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Board Members
Jerry G. Landau, J.D., Pres.
Gary A. Erbstoesser, D.O., V.P.
Douglas L. Cunningham, D.O.
Jonathan Maitem, D.O.
Jeffrey H. Burg, AIF
Dawn K. Walker, D.O.
Ken S. Ota, D.O.

Executive Director
Justin Bohall

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

Held on Saturday, June 27, 2020

1. CALL TO ORDER

Mr. Landau called the meeting to order at 8:33 a.m.

Mr. Landau thanked the Board members and staff for facilitating today’s proceedings, and 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).”

2. ROLL CALL AND REVIEW OF AGENDA

	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Present:	X	X	X	X	X	X	X
Absent:							

Dr. Erbstoesser was excused from the meeting at 11:55 am and did not return for the duration of the meeting.

3. REVIEW, CONSIDERATION AND APPROVAL OF MINUTES

A. May 30, 2020 Open Session Minutes

MOTION: Dr. Erbstoesser moved for the Board to approve the May 30, 2020 Open Session Minutes.

SECOND: Dr. Cunningham

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

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	6	X	X	X		X	X	X
Nay:	0							
Abstain/ Recuse:	1				X			
Absent:	0							

B. May 30, 2020 Executive Session Minutes

MOTION: Dr. Erbstoesser moved for the Board to approve the May 30, 2020 Executive Session Minutes.

SECOND: Dr. Cunningham

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

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	6	X	X	X		X	X	X
Nay:	0							
Abstain/ Recuse:	1				X			
Absent:	0							

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

A. DO-19-0035A, Amanda Lee Winter DO, LIC. #005433

Dr. Winter participated in the virtual meeting with attorney Libby Peterson. Ms. Peterson stated that she represented Dr. Winter in the malpractice matter and requested the Board dismiss the case. She explained Dr. Winter's involvement in the underlying patient care, stated that the allegations were unsubstantiated and that they had incredibly supportive experts prepared to testify in this case on the physician's behalf. However, Ms. Peterson stated that the matter was settled as a business decision, for a small payment amount. Ms. Peterson requested the Board dismiss the investigation.

Mr. Landau did not find that the matter warranted further review by the Board. Dr. Maitem agreed, and stated that the physician appeared to provide proper care and evaluation in this case.

MOTION: Dr. Maitem moved for dismissal.

SECOND: Dr. Ota

VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	7	X	X	X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	0							

B. DO-19-0112A, Francisco Jaume DO, LIC. #4007

Dr. Jaume participated in the virtual meeting with attorney David Cohen. Dr. Jaume, a board-certified orthopedic surgeon, stated that he believed he provided the patient in this case with the best treatment based on his training. He explained that he saw the patient on multiple occasions and reviewed the x-rays which demonstrated that he repaired the fracture. He stated that the screws subsequently migrated into the joint space, but could not be removed until the fracture was healed.

Dr. Maitem spoke in support of proceeding to Investigative Hearing given the patient’s complaint and the Medical Consultant’s findings of a potential deviation from the standard of care.

**MOTION: Dr. Maitem moved for the Board to proceed to Investigative Hearing in this matter.
SECOND: Dr. Cunningham**

The Board discussed referring the case to the Arizona Regulatory Board of Physician Assistants for review, noting Board staff’s report that the matter had not yet been referred. Mr. Landau spoke in support of the motion and stated that proceeding to Investigative Hearing would also provide the complainant an opportunity to appear before the Board.

**VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.**

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	7	X	X	X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	0							

Mr. Landau directed Board staff to refer the case to the Arizona Regulatory Board of Physician Assistants, and informed the parties that the matter would be scheduled for the Board’s August 2020 meeting.

C. DO-20-0011A, James Imre Piko DO, LIC. #006177

Dr. Piko participated in the virtual meeting during the Board’s consideration of this case. He stated that he is a fellowship-trained musculoskeletal radiologist, and practices onsite at clinics as well as teleradiology. Dr. Piko stated that his interpretation of the patient’s x-ray did not identify a fracture, which was identified on a subsequent x-ray obtained one month later elsewhere. Dr. Piko commented that in retrospect, he believed the x-ray was not the most optimal and most likely showed a fracture, but was fairly subtle. Dr. Piko stated that other experts who reviewed the case have found that he practiced within the standard of care in treating this patient and that his recommendations were appropriate.

Dr. Erbstoesser questioned whether the subsequent x-ray showed findings of callous formation, noting that there would typically be some evidence of bone reaction one month after the first x-ray in a patient with a fracture. Dr. Piko confirmed that there were no findings of callous formation on the subsequent x-ray, and stated that this was an elderly patient with a non-union fracture. In response to further questioning by Dr. Erbstoesser, Dr. Piko explained that he obtained three different views, and that the best visualization appeared to be the lateral view, which is the view that was used to identify the fracture on the subsequent film. He reiterated that in hindsight, the film was suboptimal and the fracture was subtle.

Dr. Maitem questioned the physician as to whether he believed that the exam was adequate for the case at hand. Dr. Piko stated that while he believed the x-ray was not optimal, the overall exam was adequate. Dr. Maitem also questioned the degree of osteopenia in this patient, to which the licensee replied he believed the patient’s osteopenia was intermediate. Dr. Maitem found that an Investigative Hearing was not warranted and spoke in favor of dismissal.

MOTION: Dr. Maitem moved for dismissal.

SECOND: Dr. Erbstoesser

VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	7	X	X	X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	0							

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

A. DO-19-0133A, Jack Wolfson DO, LIC. #3761

The following case was taken out of order in the agenda. Dr. Wolfson participated in the virtual meeting during the Board’s consideration of this matter. Board staff summarized that complainant MG alleged that Dr. Wolfson required him to make a cash payment of \$2,800 for his services and that the visit was interrupted by staff multiple times causing the physician to leave the room and ultimately not returning.

Dr. Wolfson reported that he is a board-certified cardiologist practicing in a solo integrative cardiology practice. He explained that he spent over ninety minutes with the patient during their visit, and that this is supported by other staff in the office as well as chart notes. He stated the patient interacted with staff afterwards, and returned the following day for blood work. Dr. Wolfson stated he believed this was a case of buyer’s remorse, and reported that the matter was dismissed in small claims court. Dr. Wolfson informed the Board that he refunded the patient a total of \$1,500 as a measure of good faith and to move on. In response to questioning by Board members, Dr. Wolfson expanded on the services he provides and what is included in the \$2,800 fee. He stated that he believed the interaction with the patient was positive and regrets not being able to work with him going forward.

Mr. Landau stated that it appeared this entire case was permeated by a sales pitch and not a medical consultation. In response to Dr. Erbstoesser’s line of questioning, Dr. Wolfson confirmed that some of the nutrients sold have his private label and are manufactured specifically for him. He also confirmed that the lab work was not included in the \$2,800 and cost extra for the patient if not covered by insurance. The Board noted that a number of the tests ordered are not typically covered by insurance, causing the patient to pay more money out of pocket. Mr. Burg questioned the licensee regarding how he communicates the pricing to patients. Dr. Wolfson stated that he previously had the pricing listed on his website, but had it removed around six months ago so that patients would call the office to engage in a dialogue regarding what services are covered. Dr. Wolfson commented that he felt \$2,800 for a life-saving hard health makeover is money well spent.

Dr. Cunningham stated his concerns regarding the high cost for services that may not have been delivered in this case. Dr. Cunningham added that he is not comfortable with physicians dispensing supplements in the office due to financial gain. Dr. Cunningham also noted that this was the second instance with which Dr. Wolfson has had to appear before the Board due to a patient complaint within a short period of time. Dr. Cunningham stated that he did not believe this was a case of buyer’s remorse, given the lengths the complainant has gone to in order to recover funds, and stated that he would like to hear form the complainant. The Board noted that Dr. Wolfson currently resides in Colorado, and presents to his Arizona office for 4-5 days on a monthly basis. In response to further questioning by the Board, Dr. Wolfson stated that he communicates to patients the services provided and fees involved, and that in hindsight, he would have made further attempts to reach the patient and engage in a dialogue with him.

Board members discussed the consent form included in the file that was partially blank and did not include any patient initials or date. The Board also noted that there was no physical examination documented in the patient’s chart for the visit in question. Dr. Wolfson stated that he did not see an issue with making a profit in his practice, and that he uses evidence-based supplements to help

patients get off pharmaceuticals. Dr. Wolfson stated that making money in medicine is not unique to his practice, and that he feels he provides a tremendous level of care to thousands of patients who speak highly and glowingly of his care and continue to see him. Dr. Maitem stated that the absence of a physical examination is a violation of statute, that the consent form appeared dubious, and that the fees seemed high. However, Dr. Maitem stated that the pricing may not rise to the level of a violation as it is a personal choice of the patient to pay such an amount for the services offered by the physician. Mr. Landau agreed with Dr. Maitem's comments regarding whether the fees were excessive, and stated that his concerns centered on whether the fees were adequately communicated to the patient in this case.

Dr. Wolfson acknowledged that a physical examination was not documented in this case, and assured the Board that his staff has been made aware that the proper documentation must be signed prior to him interacting with patients. Mr. Landau reiterated his concerns regarding the incomplete consent form, failure to appropriately communicate the fees to the patient, failure to document a physical examination, and the concerted effort of staff to sell products including supplements and a book for which the physician receives a profit.

Dr. Erbstoesser stated he found that the issues identified in this case did not rise to the level of a statutory violation and spoke in support of issuing a Letter of Concern. Dr. Cunningham stated that he struggled with whether to issue a Letter of Concern versus an Administrative Warning. He stated that there were clear violations in this case, and stated his concerns regarding the physician's behavior. Dr. Cunningham stated that a fine was warranted, and he spoke in support of issuing an Administrative Warning to the licensee. Dr. Cunningham proposed including a requirement to complete CME in communication. He stated that the physician's availability once a month is problematic in that patient's experiencing problems could not possibly be seen right away by him. Dr. Cunningham recognized that the practice is a unique niche. He stated that this type of practice, however, is not a standard of care that he has seen within the osteopathic community. Dr. Cunningham spoke in support of finding that a violation occurred in this case.

Mr. Burg spoke in support of issuing a Letter of Concern for the issues with the incomplete consent documents, and lack of a physical examination in the chart. Mr. Burg stated that he did not find a violation relating to the fees charged by the physician. Mr. Landau stated that he agreed with Dr. Cunningham's comments.

MOTION: Dr. Erbstoesser moved for the Board to issue a Letter of Concern and Order for Non-Disciplinary CME for failure to adequately communicate with the patient as it relates to plan and cost, failure to have consent forms filled out appropriately, and failure to adequately document a physical exam. Within six months, Dr. Wolfson shall complete 20 hours of Board-approved CME in communication, in addition to the CME hours required for license renewal. SECOND: Mr. Burg

Mr. Landau spoke against the motion, and stated that he found the matter rises to the level of a statutory violation and believed that an Administrative Warning or Censure were warranted.

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

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	5		X		X	X	X	X
Nay:	2	X		X				
Abstain/ Recuse:	0							
Absent:	0							

Dr. Ghannam participated in the virtual meeting with attorney Jim Goodwin during the Board’s consideration of this matter. Dr. Ghannam reported that he has practiced for the past ten years as an anesthesiologist in the Phoenix area, and has worked in multiple trauma centers.

Board staff summarized that the case was reviewed by a board-certified anesthesiologist who observed that Dr. Ghannam was terminated from employment after he was found to be using single-use propofol vials and single use tubing on more than one patient at a time in an endoscopy unit at the hospital. The Medical Consultant noted that the risk of cross contamination was unlikely, and opined that the standard of care requires physicians to only use one vial per patient.

Dr. Ghannam clarified that he was not terminated by his employer, and reported that he resigned after his practice was limited by Banner pending investigation. He explained that this matter stemmed from his use of a single dose propofol bottle for two different patients and was reported by someone in the endoscopy suite he was using. Dr. Ghannam stated that he was approached and questioned by the Chief Medical Officer, and an investigation was initiated thereafter. Dr. Ghannam was asked to abstain from performing cases at any Banner facility, and he elected to submit his resignation at that time. Dr. Ghannam commented that there has been no patient harm as a result of this, and that he expected the likelihood of cross contamination to be extremely minimal at best. When asked why he used a single dose bottle for more than one patient, Dr. Ghannam stated that he did it so as to not waste the remainder of the bottle after only a small dose was used for a patient. He stated that he had no incentive or financial gain from this, and simply did not want to waste the medication.

The Board questioned the licensee regarding whether he was aware of the FDA guidelines that recommend single use, and whether it was a policy within the group. Dr. Ghannam stated that he has read the medical literature on this subject, and has learned from this experience. He added that a group policy for single use was never communicated to him, but that he was aware of the guidelines from reading medical literature. Dr. Ghannam also stated that this practice was typical during his postgraduate training, and that the concept of single use vials has been developed over the past ten years with more safeguards in place. Dr. Ghannam confirmed that he was terminated from the group in December of 2019. Mr. Goodwin assured the Board that Dr. Ghannam has learned from this, has stopped this type of practice, and will not have a similar occurrence going forward.

Dr. Ghannam reported that he has not regained his privileges at Banner, and that he did not appear before any committee. Dr. Cunningham spoke in support of issuing a Letter of Concern for deviating from the standard of care.

MOTION: Dr. Cunningham moved for the Board to issue a Letter of Concern for failing to dispose of propofol vials and for failing to use them only once as indicated by the FDA.

SECOND: Dr. Maitem

VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	7	X	X	X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	0							

C. DO-19-0190A, Darlene Lynette Jones DO, LIC. #006620

Dr. Jones participated in the virtual meeting during the Board’s consideration of this matter. Dr. Jones reported that she travels doing locum tenens work and is currently practicing in Maryland while residing in Virginia. She confirmed that her address on file with the Board was accurate and current. Dr. Jones stated that she did not receive correspondence regarding the Board’s investigation until she received her notice for today’s proceedings, and questioned the Board as to the alleged statutory

violations. The Board noted that the case involved disciplinary actions taken against the licensee in another jurisdiction. Mr. Landau proposed that the matter be continued to the Board's August 2020 meeting and instructed staff to re-notice the physician.

E. DO-18-0203B, Brett Everett Willden DO, LIC. #3586

Dr. Maitem stated that he knows Dr. Willden professionally, but that it would not affect his ability to adjudicate the case. Dr. Willden participated in the virtual meeting during the Board's consideration of this matter.

Board staff summarized that the Board received a complaint from the patient's husband who stated that there was a delay in referral of his wife to an otolaryngologist (ENT) specialist, resulting in a delay in diagnosis that they believe may have increased the patient's chances of survival from oral cancer. The patient was a 66 year-old female who was seen by the Nurse Practitioner (NP) for complaints of swollen tongue and white patches in the mouth. The patient reported severe pain in her mouth that interfered with her ability to eat. Patient non-compliance was noted with regard to prior recommendations made for the patient to quit smoking and follow-up on high blood pressure. The NP diagnosed the patient with candida and prescribed medication with recommendations for the patient to return for follow-up on her blood pressure. The patient returned to the office and reported improvement to the soreness in her mouth, but was still unable to eat solid food due to pain. The NP noted a red raised lesion in the mouth and started her on Keflex. The patient returned weeks later with no improvement, and reported difficulty sleeping at night due to pain. The NP also noted that the patient had unintentional weight loss in the last month. The patient was referred to an ENT specialist who noted a malignant tongue lesion in a patient with a tongue mass that had been there for months and an unintentional weight loss of 20 pounds.

Dr. Willden stated that he is board-certified in family practice, and that during the time of this case, he and Dr. Foy owned the walk-in clinic, which they sold and no longer own as of January 1, 2020. Dr. Willden explained that the patient was seen by the NP on three occasions in the clinic when she worked under their employment in 2017. Dr. Willden stated that he was not directly involved in the patient's care. Mr. Landau questioned the licensee regarding reviewing charts in the clinic or consult with the NP. Dr. Willden confirmed that they had an open-door policy and consulted with the NP regularly. Dr. Cunningham questioned the physician regarding his thoughts on the care provided by the NP in this case. Dr. Willden stated that in hindsight, there did not appear to be a delay on their end for scheduling the patient for follow up. He stated that this was a walk-in clinic, and the patient delayed following up with the clinic for three weeks. Dr. Willden also stated that it would have been great to refer the patient to an ENT specialist earlier on and would have liked to see the diagnosis made as quickly as possible, in retrospect. In response to further questioning by Dr. Cunningham, Dr. Willden stated that the patient had not been to the practice in five years, and that he believed the labs that were obtained were appropriate. Dr. Cunningham proposed referring the case to the Arizona Board of Nursing, and spoke in support of dismissing this case.

MOTION: Dr. Cunningham moved for dismissal.

SECOND: Dr. Erbstoesser

Mr. Landau instructed Board staff to refer the case to the Arizona Board of Nursing.

VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	7	X	X	X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	0							

E. DO-18-0203A, David Foy DO, LIC. #3834

Dr. Foy participated in the virtual meeting during the Board’s consideration of this matter. Board staff summarized that the Board received a complaint from the patient’s husband who stated that there was a delay in referral of his wife to an otolaryngologist (ENT) specialist, resulting in a delay in diagnosis that they believe may have increased the patient’s chances of survival from oral cancer. The patient was a 66 year-old female who was seen by the Nurse Practitioner (NP) for complaints of swollen tongue and white patches in the mouth. The patient reported severe pain in her mouth that interfered with her ability to eat. The NP diagnosed the patient with candida and prescribed medication with recommendations for the patient to return for follow-up on her blood pressure. The patient returned to the office and reported improvement to the soreness in her mouth, but was still unable to eat solid food due to pain. The NP noted a red raised lesion in the mouth and started her on Keflex. The patient returned weeks later with no improvement, and reported difficulty sleeping at night due to pain. The NP also noted that the patient had unintentional weight loss in the last month. The patient was referred to an ENT specialist who noted a malignant tongue lesion in a patient with a tongue mass that had been there for months and an unintentional weight loss of 20 pounds.

The Board noted that Dr. Foy saw the patient in 2011 and admonished her to discontinue smoking and to start following up on her high blood pressure, to which the patient was non-compliant. Dr. Foy reported that he has practiced family medicine for the past twenty years, and recently sold his practice. Dr. Foy informed the Board that he had no direct involvement in the case, and that based on his own thorough review, he found that the NP’s care was appropriate.

MOTION: Dr. Maitem moved for dismissal.

SECOND: Dr. Ota

VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	7	X	X	X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	0							

F. DO-19-0054A, Mark Anton Sundell DO, LIC. #3290

Dr. Sundell did not participate in the virtual meeting during the Board’s consideration of this matter. The Board considered referring the matter to the Office of Administrative Hearings, and discussed whether a PACE evaluation was warranted prior to proceeding to Formal Hearing.

MOTION: Mr. Landau moved for the Board to issue an Interim Order requiring the licensee

to undergo a PACE evaluation for opioid prescribing.

Dr. Cunningham questioned whether a practice restriction was warranted, given the concerns relating to the physician’s prescribing abilities. Mr. Landau withdrew his motion.

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

SECOND: Mr. Burg

VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	7	X	X	X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	0							

The Board entered into Executive Session at 11:02 a.m.

The Board returned to Open Session at 11:26 a.m.

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

MOTION: Mr. Landau moved for the Board to issue an Interim Order requiring a PACE evaluation of pain management and opioid prescribing. Dr. Sundell shall schedule the appointment no later than July 15, 2020, and the evaluation shall be completed by September 30, 2020. Board staff shall conduct a chart review of at least five charts of the physician’s pain management patients. This case shall be scheduled for Investigative Hearing on November 14, 2020.

SECOND: Dr. Cunningham

VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	7	X	X	X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	0							

G. DO-19-0116A, Mitchell Elliot Edelstein DO, LIC. #2070

The Board continued this item to its August 15, 2020 meeting.

H. DO-19-0131A, Richard Melvin Gladding DO, LIC. #1894

Dr. Erbstoesser was excused from the meeting at the time that this item was introduced. Dr. Gladding participated in the virtual meeting during the Board’s consideration of this matter. Dr. Gladding reported that he practiced interventional cardiology for around 38 years and is currently retired.

Board staff summarized that the case was reviewed by a board-certified cardiologist who felt that the

patient required further evaluation based on changes identified on transthoracic echocardiographic studies from 2017 and 2018. The Medical Consultant (MC) noted that the appropriate evaluation would have been transesophageal echocardiogram (TEE), despite absence of clinical symptoms. The Board noted that Dr. Gladding had been following this patient since 2012, and was monitoring her mitral valve prolapse.

Dr. Gladding explained that he was very familiar with this patient as he had known her for some time and believed they had a good working relationship. He stated that given the information he was presented with at the time, he felt it was appropriate to proceed with a conservative approach, and that follow up studies were in line with what he had viewed and recommended. Dr. Gladding stated he felt that a TEE was not necessary at that time. Dr. Cunningham questioned the physician regarding why he felt a conservative approach was more reasonable in this case. Dr. Gladding stated that the patient initially appeared satisfied with his care until she requested and received a copy of her medical records. The patient left the practice thereafter and was seen by a new cardiologist several months later complaining of a completely different set of symptoms. Dr. Gladding reiterated that he did not feel that a TEE was necessary at the time and that subsequent testing supported his impressions. Dr. Gladding assured the Board that had the patient returned with a new symptoms pattern, he would have obtained a TEE at that time.

MOTION: Dr. Cunningham moved for dismissal.

SECOND: Dr. Ota

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

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	6	X		X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1		X					

I. DO-20-0012A, Carmen Felicia Alfonso DO, LIC. #3004

The following case was taken out of order in the agenda. Dr. Alfonso participated in the virtual meeting during the Board’s consideration of this matter. She stated that she has been in practice for over thirty years, the last ten or twelve in administrative medicine. She reported that she provides pro bono services to the Police Department, and runs a search and rescue for dogs in Flagstaff and the Grand Canyon areas. Dr. Alfonso informed the Board that she contracts with multiple health plans and reviews cases for quality of care as well as fraud and abuse.

Board staff summarized that the complainant in this case is a licensed pharmacist in Texas. The complainant alleged that on December 27, 2019, he received a verbal prescription called in from Dr. Alfonso for Augmentin with one refill and Promethazine with Codeine. The pharmacist was concerned regarding the potential for the medication to interact with the patient’s other medications if filled according to the physician’s order. The pharmacist changed the prescription to another cough syrup that would not interact with the patient’s other medications and reported that Dr. Alfonso demanded that he fill the prescription as ordered. The pharmacist advised that he would not fill the prescription. The pharmacist alleged that the physician was practicing outside the scope of her practice in that she is an OB/GYN calling in a prescription for cough syrup and would not cooperate to avoid a drug interaction. The Board noted that the patient was Dr. Alfonso’s 76 year-old aunt, and that the physician only maintain cellphone notes. The patient ultimately used a supply of cough syrup she had on hand from another physician’s previous prescription.

Mr. Landau questioned the physician regarding the issues relating to medical records. Dr. Alfonso stated that in hindsight, she would have kept more paper records. She stated that when she calls in prescriptions for individuals very familiar to her and sees regularly, she does not keep meticulous

records as she did when she was actively practicing. Dr. Alfonso explained that her aunt could not get in to see her physician, and she wanted to take care of the situation personally. She pointed out that she was visiting her aunt in Texas for a two week period and monitored her during that time. Dr. Alfonso stated that she wrote salient points in her cellphone as she had done in the past as her personal reminder.

Mr. Landau stated his concerns regarding the physician’s failure to maintain adequate patient records in this case for her and the patient’s protection as well as for the purposes of continuity of patient care. In response to Dr. Cunningham’s questioning, Dr. Alfonso reported that she is not licensed to practice in Texas and that she holds licensure in seventeen different states. Dr. Cunningham questioned why the prescription could not be changed to another cough syrup to avoid a medication interaction. Dr. Cunningham stated that the licensee could have been more of a colleague to the pharmacist and been more cooperative, and that he found this case involved more issues in addition to the medical records concerns. The Board noted that a physician’s aunt is not considered immediate family and discussed the definition of a medical record pursuant to A.R.S. § 32-1800(3).

Dr. Erbstoesser cautioned the physician to be mindful of the patient’s history and behavior, as he observed that the patient had a history of early refills and potential for medication addiction. Dr. Alfonso pointed out that she has been in practice for over thirty years with no prior Board history. She stated that the pharmacist’s claims were not true in that she never made any demands, and she added that she is experienced in treating an upper respiratory infection.

MOTION: Dr. Cunningham moved for the Board to issue a Letter of Concern for failure to maintain proper medical records.

SECOND: Dr. Walker

Mr. Landau spoke in support of the motion and stated his concerns regarding the physician’s statement that she has maintain cellphone records for a number of patients.

VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	7	X	X	X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	0							

6. 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-18-0076A, DO-17-0229A, Joseph Stephen Machuzak DO, LIC. #3753

Dr. Machuzak did not participate in the virtual meeting during the Board’s consideration of this matter. Board staff summarized that on July 11, 2018, the Board ordered the physician to complete 10 hours of Board-approved CME in the areas of personal boundaries and medical ethics within six months. Board staff communicated with the licensee on multiple occasions after the six-month deadline had passed, and Dr. Machuzak reported that he had difficulty complying due to financial constraints. Dr. Machuzak was initially granted an extension to complete the CME by October 2019. Board staff followed up with the licensee in November of 2019, at which time Dr. Machuzak reported his inability to afford the courses. He assured that the CME would be completed in the next two months. In December 2019, Board staff informed the physician that the matter would be considered by the Board in January of 2020. Dr. Machuzak did not appear at the Board’s January 2020 meeting.

Mr. Landau observed that case number DO-17-0229A resulted in the requirement for the physician to complete the Board-ordered CME, and that case number DO-18-0076A had not yet been resolved. The Board considered instructing staff to initiate a new investigation based on the physician’s failure to comply with a Board Order, as well as referring case number DO-18-0076A to the Office of Administrative Hearings.

MOTION: Mr. Landau moved for the Board to proceed to Formal Hearing in case number DO-18-0076A and refer the matter to the Office of Administrative Hearings.

SECOND: Dr. Maitem

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

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	6	X		X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1		X					

Mr. Landau instructed Board staff to initiate an investigation regarding Dr. Machuzak’s failure to comply with a Board Order.

B. DO-19-0213A, Thomas Zachary Emel DO, LIC. #007877

The following case was taken out of order in the agenda. Dr. Emel participated in the virtual meeting during the Board’s consideration of this matter. He reported that things were going very well for him, and that his last day of residency was the following Thursday. He stated that while the work hour restriction of 40 hours has been working for him, he asked the Board to consider terminating the work hour restriction entirely in order for him to sit for his board exams.

Dr. Cunningham stated that he was pleased to see how well the physician was doing, and spoke in support of modifying the Board’s Order by terminating the work hour restriction. Mr. Landau agreed and stated that the physician has earned it.

MOTION: Dr. Cunningham moved for the Board to modify the Order by terminating the work hour restrictions.

SECOND: Dr. Maitem

VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	7	X	X	X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	0							

7. 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-20-0019A, Adam Edward Hansen, LIC. #N/A

The following case was taken out of order in the agenda. Dr. Hansen participated in the virtual meeting during the Board’s consideration of this matter. Board staff summarized that Dr. Hansen applied for licensure on December 3, 2019, and provided affirmative answers to a questions on the application, including the confidential questionnaire portion. Dr. Hansen was arrested in Glendale, Arizona in 2011 for obstruction of governmental operations, and the confidential question involved issues that occurred during postgraduate training in Mississippi.

MOTION: Mr. Landau moved for the Board to enter into Executive Session to discuss confidential health information and to obtain legal advice pursuant to A.R.S. §§ 38-431.03(A)(2) and (3).

SECOND: Dr. Maitem

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

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	6	X		X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1		X					

The Board entered into Executive Session at 12:23 p.m.

The Board returned to Open Session at 12:56 p.m.

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

MOTION: Mr. Landau moved for the Board to grant licensure in accordance with the discussion held in Executive Session.

SECOND: Dr. Cunningham

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

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	6	X		X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1		X					

B. DO-20-0098A, Michael Joseph Carchedi, LIC. #N/A

Dr. Carchedi participated in the virtual meeting with attorney Kyler Ovard during the Board's consideration of this matter. Mr. Ovard confirmed that he was not licensed in Arizona, and was available to clarify the Utah charges. Dr. Carchedi reported that he had been practicing outpatient internal medicine at the army hospital in Colorado Springs.

Board staff summarized that Dr. Carchedi applied for a postgraduate training permit on April 21, 2020, and meets the education and examination requirements for the permit. Dr. Carchedi disclosed a March 2010 arrest from an incident that occurred in Utah. On March 3, 2020 while on a ski trip with family in Utah, Dr. Carchedi attended a dinner at a restaurant where he stayed for drinks and live music with a few of his family members. Dr. Carchedi was forcibly escorted from the bar after getting into a disagreement with an employee, was arrested and formally charged with disorderly conduct, failure to leave a bar, public intoxication, and interference with an arresting officer. According to the police report, Dr. Carchedi was asked to leave the establishment after employees observed displays of disordering conduct, resisted a bar employee who attempted to escort him after being asked to leave, resulting in the physician being detained on the sidewalk while waiting for the authorities to arrive. An employee sustained minor injuries, an officer received injury to his knees and a torn uniform, and the Board noted that the brother and sister would potentially be charged in the incident as well.

Mr. Ovard summarized that the case was resolved on June 24, 2020 and that the physician pled guilty to failure to leave the bar while the other three counts of disorderly conduct, public intoxication, and interference with an arresting officer were dismissed. Mr. Ovard stated that the physician is required to pay a fine of \$585 to the Court and expects to have the case dismissed after six months of not having any other encounters with law enforcement. Dr. Carchedi stated that the Utah incident was out of character and pointed out that he has had no other offenses prior to this one event. He explained that he had around 4-5 beers that evening, and that there is video evidence of the incident demonstrating that the encounter was initially non-violent and escalated by the staff. In response to Mr. Landau's questioning, Dr. Carchedi stated that he drinks alcohol in social settings, and that on average, he consumes one or two beers three times a week. Mr. Landau expressed his concerns regarding alcohol consumption and how it may affect the physician's ability to practice medicine safely. Dr. Carchedi stated that he does not drink at work and that this is supported by other physicians that have never seen him impaired.

Dr. Maitem stated that based on his review of the information, the encounter appeared to involve more than a minor scuffle given the injuries sustained. In response to Dr. Maitem's questioning regarding his plans, Dr. Carchedi reported that he planned to attend a fellowship at the University of Arizona Banner Health in pulmonary critical care that begins July 1, 2020. Dr. Cunningham stated his concerns regarding the physician's unprofessional behavior, particularly for a member of the United States Air Force. Dr. Cunningham commented that the physician appeared to be guarded in his answers. Dr. Carchedi stated that he did have too much to drink that night and was under the influence of alcohol. He explained that he was being restrained and held down by the bouncer staff, and that it was a natural response for him to try to not be held down by people unfamiliar to him.

Mr. Landau stated his concerns regarding the physician's struggle with multiple people of authority in this case, and questioned whether there was a greater problem that involved alcohol abuse that could affect the physician's ability to safely practice medicine. Dr. Carchedi stated that he has

received very positive performance reviews through the military for his four years, and that he understood the Board’s concerns regarding professionalism and patient safety. Dr. Cunningham expressed further concern that the physician did not appear remorseful, and the Board elected to proceed in Executive Session to discuss confidential health information and obtain legal advice.

MOTION: Dr. Maitem moved for the Board to enter into Executive Session to discuss confidential health information and to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(2) and (3).

SECOND: Dr. Cunningham

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

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	6	X		X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1		X					

The Board entered into Executive Session at 1:33 p.m.

The Board returned to Open Session at 1:53 p.m.

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

MOTION: Mr. Landau moved for the Board to grant the permit in accordance with the Board’s discussion in Executive Session.

SECOND: Dr. Maitem

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

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	6	X		X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1		X					

C. DO-20-0070A, Roland Raouf Haj, LIC. #N/A

The following case was taken out of order in the agenda. Dr. Haj participated in the virtual meeting during the Board’s consideration of this matter. He stated that he recently graduated from surgical residency and has accepted a general surgeon position in Sierra Vista.

Board staff summarized that Dr. Haj applied for a license on March 24, 2020, and that he meets the education and examination requirements for Arizona licensure. Dr. Haj disclosed on his application a DUI arrest that occurred in California in 2015. On May 8, 2015, Dr. Haj was arrested and charged with a DUI after being pulled over by police. He had a blood alcohol content of .11 at the time of his arrest. Dr. Haj reported that he complied with the orders of the Court, including group alcohol counseling and education, and the case was ultimately dismissed on May 30, 2019.

Dr. Haj stated that the incident was a one-time occurrence of poor choice in judgement. He explained that he has made a lot of changes in his life since that time, including starting a family and completing residency training. Dr. Haj stated that he made a mistake that he regrets, and that it was uncharacteristic of him at the time. In response to Dr. Cunningham’s questioning, Dr. Haj reported that he does not have any significant medical history, and that he only consumed alcohol a couple times a month at most. He also stated that he had no family history of alcohol use or substance abuse. Dr. Cunningham expressed concern regarding the field of surgery and the stressors that result from the work involved, and questioned the physician regarding how he destresses. Dr. Haj stated that he meditates, increased exercising, and derives a lot of joy from being a father and spending time with family.

MOTION: Dr. Cunningham moved for the Board to grant a full unrestricted license.

SECOND: Dr. Maitem

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

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	6	X		X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1		X					

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

The following items was taken out of order in the agenda.

A. Report on Director Dismissed Complaints

Executive Director Bohall reported that no complaints were dismissed since the Board’s last meeting.

B. Executive Director Report

1. Financial Report

Executive Director Bohall reported that the fiscal year has ended, and that the Agency used approximately 97% of its appropriation.

2. Current Events that Affect the Board

Executive Director Bohall did not have any items to report on this topic.

3. Licensing and Investigations Update

Executive Director Bohall reported a 20% increase in license application compared to the prior year. He stated that staff is working hard to process applications timely, and stated that the timeframes for completion achieved prior to the COVID crisis continue to be maintained. Executive Director Bohall stated that staff has processed a total of 523 PGT applications in the last sixty days.

Executive Director Bohall further reported that the Agency continues to maintain the number of cases as in the past, and complimented staff for their diligence in conducting the Board’s investigations timely and appropriately.

The Board’s next meeting is scheduled for August 15, 2020.

4. Legislative Update

Mr. Landau stated that there have been discussions regarding whether the Legislature will hold a special session in August and/or November.

5. Update of COVID-19 Temporary Licensing Process under A.R.S. § 32-3124

Executive Director Bohall reported that nearly 60 temporary licenses have been issued under this statute.

9. ADJOURNMENT

MOTION: Dr. Maitem moved for adjournment.

SECOND: Dr. Walker

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

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitem	Mr. Burg	Dr. Walker	Dr. Ota
Yay:	6	X		X	X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1		X					

The Board's meeting adjourned at 1:55 p.m.

Justin Bohall, Executive Director