



Governor  
Douglas Ducey

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

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

**Held on Saturday, March 6, 2021**

### **1. CALL TO ORDER**

Board President Erbstoesser called the meeting to order at 8:37 a.m.

President Erbstoesser recognized and 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**

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

### **3. CALL TO THE PUBLIC**

President Erbstoesser 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 Erbstoesser 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. November 14, 2020 Executive Session**

**MOTION: Dr. Cunningham moved for the Board to approve the November 14, 2020 Executive Session.**

**SECOND: Mr. Landau**

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

**MOTION PASSED.**

	VOTE	Dr. Erbstoesser	Dr. Maitem	Mr. Burg	Dr. Cunningham	Mr. Landau	Dr. Ota	Dr. Walker
Yay:	5	X			X	X	X	X
Nay:	0							
Abstain/ Recuse:	1		X					
Absent:	1			X				

B. January 9, 2021 Open Session

**MOTION:** Vice-President Maitem moved for the Board to approve the January 9, 2021 Open Session.

**SECOND:** Dr. Walker

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

**MOTION PASSED.**

	VOTE	Dr. Erbstoesser	Dr. Maitem	Mr. Burg	Dr.	Mr. Landau	Dr. Ota	Dr. Walker
Yay:	4	X	X			X		X
Nay:	0							
Abstain/ Recuse:	2				X		X	
Absent:	1			X				

C. January 9, 2021 Executive Session

**MOTION:** Vice-President Maitem moved for the Board to approve the January 9, 2021 Executive Session.

**SECOND:** Mr. Landau

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

**MOTION PASSED.**

	VOTE	Dr. Erbstoesser	Dr. Maitem	Mr. Burg	Dr. Cunningham	Mr. Landau	Dr. Ota	Dr. Walker
Yay:	4	X	X			X		X
Nay:	0							
Abstain/ Recuse:	2				X		X	
Absent:	1			X				

D. February 12, 2021 Special Meeting Open Session

**MOTION:** Vice-President Maitem moved for the Board to approve the February 12, 2021 Special Meeting Open Session.

**SECOND:** Dr. Walker

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

	VOTE	Dr. Erbstoesser	Dr. Maitem	Mr. Burg	Dr. Cunningham	Mr. Landau	Dr. Ota	Dr. Walker
Yay:	5	X	X			X	X	X
Nay:	0							
Abstain/ Recuse:	1				X			
Absent:	1			X				

E. February 12, 2021 Executive Session

**MOTION: Vice-President Maitem moved for the Board to approve the February 12, 2021 Executive Session.**

**SECOND: President Erbstoesser**

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

**MOTION PASSED.**

	VOTE	Dr. Erbstoesser	Dr. Maitem	Mr. Burg	Dr. Cunningham	Mr. Landau	Dr. Ota	Dr. Walker
Yay:	5	X	X			X	X	X
Nay:	0							
Abstain/ Recuse:	1				X			
Absent:	1			X				

**5. 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-21-0007A, Gene Pascual , DO

Dr. Pascual participated in the virtual meeting during the Board's consideration of this matter. He reported that he graduated in 1989 in Michigan where he also completed a radiology residency. Dr. Pascual informed the Board that he currently practices teleradiology and is located in Oklahoma.

Board staff summarized that Dr. Pascual applied for an Arizona license wherein he disclosed a 2014 malpractice settlement. During the course of the application review, Board staff discovered that Dr. Pascual had an additional malpractice settlement in 2006 as per the NPDB, which the physician did not disclose on his application. The 2014 case involved a patient death due to sepsis after undergoing an attempt to drain a pulmonary abscess performed by Dr. Pascual. Board staff reported that concerns were raised after reviewing Dr. Pascual's response in that he only mentioned draining a pulmonary abscess. According to the NPDB, Dr. Pascual was involved in another malpractice claim that settled in 2006 for allegations of failure to diagnose breast cancer.

Dr. Pascual stated that he did not make the diagnosis of pulmonary abscess in the 2014 case, and explained that he was consulted as the interventional radiologist to drain the abscess that was identified as subdiaphragmatic by the initial interpreting radiologist. He stated that the 2006 matter involved a patient who presented for routine screening mammogram, and that he was consulted as the initial interpreting radiologist.

Vice-President Maitem questioned the applicant regarding the 2014 case, and noted that the physician is board certified in diagnostic radiology and not interventional radiology. Dr. Pascual confirmed that he held privileges at the hospital to perform procedures and that he reviews the patient's chart when he is consulted on a case. He explained that the patient had vague abdominal pain, the general surgeon did not find an acute abdomen, he was then consulted and questioned whether the abscess was located in the chest and not the abdomen. Dr. Pascual stated that further work up ensued including a chest CT and additional imaging using contrast with a working diagnosis of pulmonary abscess. Vice-President Maitem stated that he was concerned with this case.

Mr. Landau questioned the application regarding the 2006 case. Dr. Pascual explained that the patient presented for routine annual mammogram screening which he stated was complicated due to bilateral breast prosthesis, and that he reviewed the images and found no significant findings at that time. Mr. Landau stated his concerns that the physician did not follow up with the referring physician regarding any issues with the films. Dr. Pascual stated that he believed the films were adequate for interpretation. Dr. Cunningham stated his concerns regarding the lack of culpability. He questioned the physician regarding what he has learned from the cases and whether his practice has changed since then. Dr. Pascual stated that the experience taught him to double and triple check each study rather than rely on his colleagues for information. He reported that the case was reviewed by the hospital and Medicare and it was determined that his actions were within his medical scope of practice. Dr. Cunningham suggested the physician fully disclose on future applications with more detail.

Vice-President Maitem spoke against granting the application and stated his concerns regarding his finding that the applicant was intentionally deceptive and had difficulty answering the Board members' questions. Mr. Landau commented that the physician's initial response appeared to downplay the circumstances and his involvement. He stated that the information discussed today should have been included in the license application. President Erbstoesser encouraged the physician to provide more detail on future licensing applications.

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

**SECOND: Dr. Walker**

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

**MOTION PASSED.**

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

The Board entered into Executive Session at 9:10 a.m.

The Board returned to Open Session at 9:28 a.m.

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

**MOTION: Vice-President Maitem moved for the Board to deny the license application based on A.R.S. § 32-1854 for submission of false application and unprofessional conduct.**

**SECOND: Dr. Ota**

The Board began a roll call vote wherein Dr. Ota and Walker voted in favor of the motion; however, upon Mr. Landau's vote, he requested the Board have an opportunity to discuss the motion further prior to a final vote. Therefore, the Board paused the roll call vote and proceeded

with further discussion. Dr. Cunningham stated he did not believe that the lack of detail in the applicant's disclosure rises to the level of license denial. He stated that there was clearly an error made with a poor outcome, recognized that the physician indicated his practice has since changed, and reiterated that he did not find this matter rises to the level of license denial. Mr. Landau agreed with Dr. Cunningham's comments, and stated that while there should have been more disclosure, he did not believe this matter rises to the level of license denial. He proposed tabling this matter to allow the physician an opportunity to submit full disclosure in writing to the Board based on today's discussion.

After further discussion by Board members, President Erbstoesser questioned Drs. Ota and Walker to confirm their vote on the current motion. Both Dr. Ota and Dr. Walker indicated that they would like to reconsider in light of the other Board members' comments. Dr. Ota withdrew his second; therefore, the motion failed for lack of a second.

**MOTION: Vice-President Maitem moved for the Board to continue this matter to obtain further information from the physician to supplement the license application.**

**SECOND: Mr. Landau**

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

**MOTION PASSED.**

	VOTE	Dr. Erbstoesser	Dr. Maitem	Mr. Burg	Dr. Cunningham	Mr. Landau	Dr. Ota	Dr. Walker
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-20-0063A, David Minor, DO

Complainant TB participated in the virtual meeting during the Board's consideration of this matter. Dr. Minor was not present.

Board staff confirmed that Dr. Minor was sent the appropriate notifications for today's meeting. The Board members expressed their appreciation for TB appearing for today's proceedings, and discussed continuing this matter to its next meeting due to the physician's absence. The Executive Director questioned whether the Board had the discretion to allow TB to speak about the case during the Call to the Public. The Board determined that TB's testimony will have bearing on the case and should be heard at the time that the matter is called for consideration, but that the proceeding could not be held today due to the physician's absence. The Board clarified that TB would have an opportunity to appear at the next meeting when the matter is rescheduled, and that the matter shall be referred to Formal Hearing if the licensee does not appear.

President Erbstoesser directed for Board staff to reschedule this matter for the Board's April 2021 meeting and to send the appropriate notifications to the parties.

### B. DO-19-0054A, Mark Sundell, DO

Dr. Sundell and Attorney David Klink participated in the virtual meeting during the Board's consideration of this matter.

Board staff summarized that this matter stemmed from a complaint from a pharmacist alleging that the physician was overprescribing. The Medical Consultant ("MC") identified deviations from the standard of care with regard to the index patient, and a chart review was conducted on random patients based on data reviewed on the Controlled Substance Prescription Monitoring Program

("CSPMP"). The MC reviewed the charts subpoenaed from the physician's office and found that not only did the physician fall below the standard of care in his treatment of the patients, there were concerns that the physician may be running a "pill mill." The MC noted multiple red flags with the patients' treatments and the Board ordered Dr. Sundell to undergo a PACE assessment. The summary of PACE's findings indicated concerns regarding Dr. Sundell's ability to safely practice medicine and found that he demonstrated significant flaws that have the potential to lead to patient harm. Overall, Dr. Sundell received a poor performance grade score that is not compatible with physician competency and safety to practice.

The Board recessed from 10:30 a.m. to 11:19 a.m. to resolve technological issues.

Dr. Sundell reported that he currently works for a pain management practice and that his practice consists mostly of blue collar workers and the underserved. He stated that patients are referred to his practice already on pain medications and that he attempts to reduce their pain medications to mandated levels while helping them maintain their lifestyle. The Board observed that Dr. Sundell trained in diagnostic radiology before transitioning to pain management. Dr. Sundell explained that he was offered the position at his current practice in 2013 after the hospital elected to end coverage from the radiology group for whom he previously worked. President Erbstoesser stated his concerns regarding the prescribing issue raised in this case in addition to the summary report from PACE. He also stated his concerns regarding the physician's ability to continue to prescribe opioids, and questioned what training the physician completed since transitioning to pain management. Dr. Sundell reported that he completed one year of training in the area of family practice before he completed his radiology training, and that he has attended opioid prescription courses as well as spending six months undergoing tutorship of his practice in Tucson.

Mr. Landau questioned the licensee regarding the concerns enumerated in the PACE report relating to the general practice of medicine. Dr. Sundell reported that his history and physical examinations are an hour long and that all patients referred to his practice are already taking pain medications for their diagnosis of chronic pain. He stated that he tries to reduce their dosages and refers them to the appropriate specialists. Mr. Klink stated that the PACE evaluation may not fully reflect the physician's ability and competency to practice, and that the data of the physician in the field is more constructive on the issue of his performance of history and physical examinations. Dr. Sundell reiterated that he makes the appropriate patient referrals when necessary. Vice-President Maitem commented that physicians are responsible for confirming the diagnosis in addition to utilizing the appropriate referrals and writing prescriptions.

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

**SECOND: Vice-President Maitem**

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

**MOTION PASSED.**

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

The Board entered into Executive Session at 11:37 a.m.

The Board returned to Open Session at 11:52 a.m.

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

Board staff confirmed that a pain management MC reviewed the 11 patients' charts obtained for quality of care review in this case. Board staff read aloud the summary from the MC's report wherein the MC indicated findings that Dr. Sundell radically fell below the standard of care in each of the 11 patients; blatantly disregarded evidence and guidance from the CDC, Arizona Medical Board, and Arizona Opioid Epidemic Act during an opioid epidemic; ignored red flags for each patient; and, recordkeeping concerns were raised in each patients' chart. Additionally, the MC commented that Dr. Sundell was not qualified to practice medicine or prescribe controlled substances and is a danger to the public. President Erbstoesser stated his concerns regarding Dr. Sundell's ability to continue practicing clinical medicine, and proposed a Consent Agreement that would allow the physician to only practice administrative medicine until completing further training. President Erbstoesser stated that Dr. Sundell should not be writing prescriptions.

In response to the MC's summary having been read into the record, Mr. Klink stated that he found the MC's report as hypercritical of Dr. Sundell's practice, and stated that comparing a rural provider to a metropolitan double board certified pain management specialist was unfair. He stated that they disagreed with quantifying Dr. Sundell's practice as a "pill mill," that the tone of the MC's report was concerning, and that there were reasonable explanations for many of the findings. Mr. Klink stated that Dr. Sundell heard the Board's concerns and was willing to undergo additional remediation. He stated that Dr. Sundell's practice would have been brought to the Board's attention much sooner in this process if it were as bad as described in the MC's report.

President Erbstoesser clarified that the standard of care applies to suburbia the same as rural areas, and that practicing in a rural location does not give a physician the right to prescribe excessive amounts of medications. Mr. Klink responded that the report would have been different if it were authored by a rural family practice physician. President Erbstoesser further clarified that the case was reviewed by a pain management specialist as Dr. Sundell has been practicing as a pain management specialist. Mr. Landau stated that he did not find the physician was running a "pill mill," and that he believed the physician just did not know better. Mr. Landau agreed with the suggestion for a Consent Agreement that would limit the physician to practicing only administrative medicine with the requirement to complete the course recommended by PACE if the physician wanted to return to practicing clinical medicine.

Dr. Cunningham stated his concerns regarding the lack of training in pain management and suggested that the physician be required to complete a family practice residency if he wanted to return to practicing clinical medicine. Dr. Cunningham agreed with Mr. Landau's comments that this was not a "pill mill," and he proposed that the parties work with the Executive Director and staff to create a Consent Agreement for the licensee to practice only administrative medicine. The Board briefly attended to other agenda items to allow Dr. Sundell and his counsel to discuss whether the physician was willing to enter into such a Consent Agreement with the Board.

The Board returned to this matter and heard from Mr. Klink. He stated that completing a family practice residency would be difficult for Dr. Sundell to do at this point in his career, and that they were agreeable to working with Board staff to create a Consent Agreement and return to the Board

in April 2021. Mr. Landau stated that it is incumbent on the physician to demonstrate to the Board that he is competent in order to return to practicing clinical medicine.

**MOTION: Mr. Landau moved for the Board to continue this matter and direct staff to work with the parties to create a Consent Agreement to restrict the physician's practice to administrative medicine and include a three year probationary period with requirements to demonstrate his competency including, but not limited to, the recommendation from PACE prior to returning to the practice of clinical medicine.**

**SECOND: Dr. Cunningham**

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

**MOTION PASSED.**

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

**C. DO-20-0033A, Keith Winder, DO**

Executive Director Bohall informed the Board that Dr. Winder contacted staff and has requested to surrender his license as he does not plan to practice in Arizona.

**MOTION: Vice-President Maitem moved for the Board to continue this matter to its April 2021 meeting and direct the Executive Director and AAG to work with the licensee to draft a Consent Agreement for Surrender of Licensure.**

**SECOND: Dr. Cunningham**

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

**MOTION PASSED.**

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

**D. DO-20-0075A, Girolamo Arpino, DO**

Dr. Arpino was not present during the Board's consideration of this matter. The Board considered tabling this matter to its next meeting, and directed staff to inform the licensee that in the event he does not appear for the investigative hearing, the matter shall be referred to Formal Hearing.

**MOTION: Mr. Landau moved for the Board to continue this matter to its April 2021 meeting. If he fails to appear at that time, the matter shall be referred to the Office of Administrative Hearings for a Formal Hearing.**

**SECOND: Vice-President Maitem**

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

**MOTION PASSED.**



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

E. DO-19-0062A, Christopher Quinn, DO

Dr. Quinn participated in the virtual meeting during the Board's consideration of this matter.

Board staff summarized that this matter stemmed from action taken against Dr. Quinn in 2019 by the Michigan Board for dispensing injectable medications without any type of examination, often times by non-licensed staff when the physician was not present in the office. The Michigan Board sanctioned Dr. Quinn in the form of a reprimand, requirement to complete CME, and assessment of a fine. As a result of the Michigan Board's sanction, Dr. Quinn received a Letter of Concern from the Florida Board and was reprimanded by the North Carolina Board. The Medical Consultant ("MC") found that Dr. Quinn dispensed medications from his weight loss clinic, including patient self-injectable Vitamin D, for unknown reasons without an examination, laboratory evaluation or appropriate follow up with the idea that this would facilitate weight loss. The MC stated that not only was this below the standard of care, but also unethical, misleading and potentially harmful to patients. The MC also found that Dr. Quinn permitted non-licensed staff to administer and dispense medications while not present in the office, and that the physician's use of injectable Vitamin D to promote weight loss is an unacceptable practice.

The Board previously considered this matter at its January 9, 2021 meeting and requested additional information relating to the Michigan Board's action. Board staff reported that in November of 2016, the police department in Michigan were notified that a clinic was dispensing medications without examination and an undercover agent was able to purchase Vitamin D without an examination. In October of 2017, Dr. Quinn was interviewed by Michigan Board staff and admitted that the medications were not locked and had been dispensed by staff.

Dr. Quinn stated that he presented his position at the prior meeting and provided all of the information requested.

**MOTION: Vice-President Maitem 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. Landau**

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

**MOTION PASSED.**

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

The Board entered into Executive Session at 12:22 p.m.

The Board returned to Open Session at 12:30 p.m.

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

Mr. Landau clarified that it is a violation of the Medical Practice Act to have been disciplined by another jurisdiction.

**MOTION: Mr. Landau moved for the Board to find a violation of A.R.S. § 32-1854(18).**

**SECOND: Vice-President Maitem**

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

**MOTION PASSED.**

	VOTE	Dr. Erbstoesser	Dr. Maitem	Mr. Burg	Dr.	Mr. Landau	Dr. Ota	Dr. Walker
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 for action taken by Michigan, Florida and North Carolina.**

**SECOND: Dr. Cunningham**

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

**MOTION PASSED.**

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

## 7. CONSIDERATION AND ACTION ON PROPOSED CONSENT AGREEMENTS,

## COMPLIANCE WITH TERMS OF BOARD ORDERS, AND REQUESTS TO MODIFY OR TERMINATE ORDERS

### A. DO-12-0107A, Betsy Myers, DO

Dr. Myers and Attorney Michele Thompson participated in the virtual meeting during the Board's consideration of this matter.

Executive Director Bohall informed the Board that staff has worked with the licensee and counsel to draft a Consent Agreement that would allow the physician to return to practice.

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

**SECOND: Vice-President Maitem**

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

**MOTION PASSED.**

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

The Board entered into Executive Session at 9:39 a.m.

The Board returned to Open Session at 9:55 a.m.

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

The Board discussed agendaizing this matter for its next meeting to allow the Board an opportunity to review the proposed Consent Agreement.

**MOTION: Mr. Landau moved for the Board to table this matter until its April 2021 meeting to allow the Board an opportunity to review the proposed Consent Agreement.**

**SECOND: Vice-President Maitem**

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

**MOTION PASSED.**

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

B. DO-18-0155A, Joseph Thompson, DO

Dr. Thompson participated in the virtual meeting during the Board's consideration of this matter. He asked the Board to consider modifying or terminating his Probation.

Board staff summarized that Dr. Thompson entered into a Stipulated Rehabilitation Agreement ("SRA") in October of 2018 for a period of two years. In 2019, Dr. Thompson had positive EtG and THC testing and reported that he believed the positive THC test was due to second-hand smoke from his roommate. In May of 2019, the Board implemented the requirement for Dr. Thompson to undergo quarterly hair analysis. In October of 2019, Dr. Thompson had a positive EtG test, was placed on Practice Restriction and required to undergo an evaluation. Dr. Thompson appeared before the Board in November of 2019 and was placed on non-confidential Probation for five years, effective December 13, 2019. At that time, Dr. Thompson was restricted to working no more than forty hours per week, and was required to begin treatment with an addiction or substance abuse therapist and psychiatrist. In April of 2020, Dr. Thompson's work hours were increased by the Board due to the pandemic. The following month, Dr. Thompson informed Board staff that he was having difficulty testing in his area. Board staff reported that Dr. Thompson had a diluted urine drug screen in October of 2020 that was a concern, and that he has been trying to comply with the terms of his monitoring, but has had difficulty to get the testing done due to his location. Board staff did not support Probation termination at this time.

President Erbstoesser stated that it was too early into the licensee's Probation to terminate at this time. He proposed the Board staff and the licensee engage with the hospital to assist the physician with the required drug testing. Dr. Thompson described for the Board the progress that he has made since the case was initiated. He stated he has been participating in monitoring for 2.5 years and that his providers both feel he has reached a chronic stable state of sobriety and are pleased with his progress. Dr. Cunningham recalled the arduous and tortuous path with this licensee and stated that his recovery has been successful given the safeguards put in place through monitoring. Dr. Cunningham stated that he believed the physician was too early in his monitoring for the Probation to be terminated at this time, and encouraged the physician to return in six months for a progress update. Board staff reported that the hospital has not responded to their inquiry for assistance with urine drug screens, and that further attempts will be made to assist the physician in facilitating the drug screens.

Dr. Thompson informed the Board that he has been attempting to coordinate with the hospital more frequent drug testing in order to comply with the Board's Order. President Erbstoesser encouraged the licensee to continue with his recovery efforts, congratulated him on his progress, and instructed him to return in six months for a progress update.

C. DO-17-0069A, Charles Welly, DO

Dr. Welly participated in the virtual meeting during the Board's consideration of this matter; however, his participation was limited due to technical difficulties with his connection.

Board staff summarized that the case was initiated in March 2017 after the Board received notification of a malpractice case that involved failure to order screening colonoscopy with subsequent delay in diagnosis of colon cancer. A chart review was conducted, the matter was considered by the Board, and an additional chart review was performed. Dr. Welly subsequently underwent a PACE evaluation per the Board's Interim Order, and the results of the evaluation noted significant deficiencies. In November of 2019, Dr. Welly was placed on Probation for three years, was required to complete 50 hours of CME and was subject to further chart reviews of patients treated after completion of the CME. Board staff conducted a chart review after Dr. Welly's completion of the CME and multiple deviations were identified. Board staff asked the Board for guidance regarding how to proceed and what further remedial action was needed based on the information gathered in this matter.

The Board discussed continuing this matter to its next meeting due to Dr. Welly's technological difficulties during today's proceedings. The Board proceeded to consider other agenda items while Dr. Welly attempted to resolve his computer issues with Board staff's assistance. However, Dr. Welly was not able to fully participate in today's meeting and the Board elected to continue this matter to its next meeting and emphasized the importance for the physician to participate in the Board's consideration of this item. President Erbstoesser directed staff to work with Dr. Welly and reset this item for a future board meeting.

D. DO-15-0289A, Michael Shell, DO

Dr. Shell and Attorney Scott King participated in the virtual meeting during the Board's consideration of this matter.

Board staff summarized that Dr. Shell was disciplined by the Colorado Board in December of 2015 for overprescribing opioids to four patients, two of which involved overdose deaths. Dr. Shell was placed on five years' probation that included restrictions from engaging in private practice and prescribing controlled substances, and required completion of clinical assessment skills and medical recordkeeping course. In December of 2017, Dr. Shell completed the CPEP course and was interviewed by the Arizona Board in January of 2016. At that time, the Board placed the physician on three years' probation. Board staff reported that the CSPMP was queried on a quarterly basis and confirmed that the physician has not prescribed controlled substances during the course of his probation.

Mr. King reported that Dr. Shell has successfully completed the CPEP educational interventional program and all other terms of his probation in Colorado. He asked the Board to consider terminating the probation. Dr. Shell reported that he was doing well and that he completed all requirements. He also informed the Board that his Colorado license is currently active and that he was recently granted a DEA license in Colorado. In response to Vice-President Maitem's questioning, Dr. Shell reported that he does not practice in any other state, and that since the time of the initial case, he has had one malpractice claim filed against him that was dismissed. Dr. Cunningham questioned the physician regarding what has changed in his prescribing and practice. Dr. Shell reported that the experience was life changing, and that stated he learned from this experience and tries to follow all state and federal guidelines regarding opioid prescribing. He stated that patients are monitored through frequent drug screens and PMP review at each visit.

**MOTION: Mr. Landau moved for the Board to grant the request to terminate Probation.**

**SECOND: Vice-President Maitem**

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

**MOTION PASSED.**

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

## **8. 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 participating in the virtual meeting and discussed current issues surrounding the practice of osteopathic medicine.

## **9. REVIEW, DISCUSSION AND ACTION ON THE FOLLOWING MISC. ITEMS**

- A. Report and Policy from the Committee on Compliance and Confidential Program for Treatment and Rehabilitation of Impaired Physicians

President Erbstoesser recognized and thanked the Committee and staff for their hard work and efforts.

Executive Director Bohall reported that this proposed policy focused on the eligibility to participate in the confidential program. Dr. Prah reported that the Committee was tasked with determining whether the Board should change parameters/qualifications of the confidential monitoring program. She stated that several probationers and their counsel have noted that there are several issues with public probation including inability to sit for certifying board exams as well as loss of hospital privileges, insurance plan membership and malpractice insurance. Dr. Prah reported that the Committee's proposed policy was based on policies from PHP and the FSMB, and that the Committee recommended revising and expanding the Board's policy to ensure that physicians experiencing impairment are appropriately treated and rehabilitated in order to

safely re-enter practice. The Committee felt that the course of treatment and monitoring for rehabilitation should be under the purview of the health professional or PHP. The Committee found that reducing the stigma associated with illness and impairment is essential for ensuring physicians feel comfortable seeking treatment in order to practice safely or re-enter practice after a period of treatment or rehabilitation.

Dr. Prah reported that PHP currently has 16 participants, 7 of which are non-confidential due to relapse or the licensees did not qualify for the confidential program initially. She stated that staff investigated several other states' PHPs that have extensive expertise education, outreach, and long term monitoring of physicians recovering from mental health conditions and substance abuse disorders. Dr. Prah reported that the Arizona Medical Board ("AMB") uses Gateway and Community Bridges as their PHP providers and does not conduct any in-house monitoring. Dr. Prah further reported on the PHPs from other states. Mr. Landau thanked the Committee for their hard work and stated his appreciation for the Committee's recommendations. He proposed rewording recommendation #3 of the proposal to clarify that physicians eligible for the confidential program are automatically offered entry with certain exceptions that require Board review to determine their eligibility. Dr. Cunningham stated his support for the proposed policy, and he thanked the Committee and staff for their hard work.

**MOTION: Mr. Landau moved for the Board to adopt the Policy proposed by the Committee on Compliance and Confidential Program for Treatment and Rehabilitation of Impaired Physicians.**  
**SECOND: Dr. Cunningham**

Mr. Landau stated that he supported the Board's approval of the concept of the proposed policy, and recommended modifying the language as he previously mentioned. The Board observed that the policy would allow physicians to enter into the confidential monitoring program even if they did not self-report to the Board, and discussed whether the individuals that are currently participating in PHP through non-confidential monitoring would qualify to transition to confidential monitoring in light of the new policy. The Board determined that non-confidential PHP participants shall be transitioned to confidential monitoring with the exception of individuals that were placed in non-confidential monitoring due to violating confidential monitoring.

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

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

**B. Proposed Policy on Physician Impairment as it relates to Arizona Proposition 207**

Executive Director Bohall reported that the Committee determined that marijuana use should be approached and viewed as an impairment. The Committee recommended that an individual participating in the monitoring program should refrain from marijuana use the same as alcohol abstinence, and that there be a threshold to determine impairment consistent with the California and Colorado Boards' policies on cannabis use.

Mr. Landau requested additional research relating to prohibiting the use of marijuana, and stated that there is no consensus in the scientific community with regard to what constitutes impairment. Mr. Landau stated that he could not support the recommendation at this time. The Board noted that Arizona has not adopted impairment parameters for marijuana use in matters involving DUIs, and that the FSMB has not adopted any policies related to this topic. Mr. Landau instructed staff to contact the Director of the Crime Lab at DPS to inquire as to their experts' findings on this topic. The Board recognized that marijuana remains in an individual's system for a different period of time compared to alcohol, questioned what constituted impairment and what should occur after a positive test is noted.

**MOTION: Mr. Landau moved for the Board to table this matter to obtain additional information and return to the Board at a future meeting.**

**SECOND: Vice-President Maitem**

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

**MOTION PASSED.**

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

**C. Recommendation to engage in outside contracting for management and administration of the Board's Confidential Substance Abuse Rehabilitation Program.**

Executive Director Bohall reported that staff recommended the Board consider moving the administration of the confidential and substance abuse compliance programs to a third party monitor that could offer multiple programs. He stated that this would separate the Board from PHP to allow the Board to focus on regulation and public safety while PHP can focus on rehabilitation and helping physicians return to practice. Executive Director reported that there would be no fiscal impact if the Board were to adopt this recommendation and that the licensees would have different options for monitoring. AAG Galvin clarified that there were no procurement issues as the Board was not contracting with the entities.

**MOTION: Mr. Landau moved to approve to engage in outside contracting for management and administration of the Board's Confidential Substance Abuse Rehabilitation Program.**

**SECOND: Dr. Cunningham**

Board staff clarified that by approving this request, physicians would have different options for monitoring, and would also have the ability to offer an alternative provider for monitoring subject to Board approval.

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

**MOTION PASSED.**

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

**D. Policy on Approval Process for Alternative Providers of the Substance Use Rehabilitation Treatment Program**

Executive Director Bohall reported that this policy would allow an individual to request approval of an alternative provider for monitoring, and outlines what would be acceptable for that program to be approved. Mr. Landau stated that the first and fourth bullet points of the proposal were vague and needed clarification. President Erbstoesser thanked AAG Galvin for developing this process and bringing this matter to the Board's attention.

**MOTION: Mr. Landau moved for the Board to adopt the Policy on Approval Process for Alternative Providers of the Substance Use Rehabilitation Treatment Program.**

**SECOND: Vice-President Maitem**

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

**MOTION PASSED.**

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

- E. Review of Proposed Rule Changes to R4-22-102, R4-22-106, R4-22-202, R4-22-207, R4-22-302, and R4-22-304

Executive Director Bohall reported that the Board has been granted exemption from the current rule moratorium and that the proposed rule changes included rewording to align with statutory changes, reduction in licensing fees, and a section that was added to allow for MCs to receive CME credits for conducting case reviews. Once approved by the Board, the proposed rule changes would be submitted to the Governor's Regulatory Review Council ("GRRRC") for preliminary review prior to proceeding with the formal rule making process.

**MOTION: Dr. Walker moved for the Board to open a docket and adopt the proposed rule changes as the notice of proposed rulemaking after a courtesy review by GRRRC.**

**SECOND: Vice-President Maitem**

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

**MOTION PASSED.**



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

## 10. REVIEW, CONSIDERATION AND ACTION ON REPORTS FROM EXECUTIVE DIRECTOR.

### A. Report from Board Members

Mr. Landau reported that the FSMB meeting will be held in April 2021. He also reported that he will provide a legislative update at the Board's April 2021 meeting.

### B. Report on Director Dismissed Complaints

Executive Director Bohall reported that there have been no dismissed complaints this month.

### C. Executive Director Report

#### 1. Financial Report

Executive Director Bohall reported that the Agency has received 89% of its estimated appropriation and is on point for spending appropriation with 68% paid out for this year.

#### 2. Current Events that Affect the Board

#### 3. Licensing and Investigations Update

Executive Director Bohall reported that there are a total of 161 pending cases: 17 are awaiting initial investigation, 66 are in the investigative phase, 61 are currently being reviewed, 11 were scheduled for today's meeting, and 6 are currently pending at the Office of Administrative Hearings.

Executive Director Bohall reported that the Board has received a total of 319 license applications so far for Fiscal Year 2021, that it takes an average of 21 days to process an application with 20 days on the deficient time for the applicant to provide the requested documentation. He stated that the Board's staff has issued 119 emergency temporary licenses and processed 563 postgraduate training applications. Executive Director Bohall added that there has been a 20% increase in licensing applications over the past year.

The Board's next meeting will be held on April 17, 2021.

## 11. ADJOURNMENT

**MOTION:** Vice-President Maitem moved for the Board to adjourn.

**SECOND:** Dr. Cunningham

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

**MOTION PASSED.**

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

The Board's meeting adjourned at 3:19 p.m.

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Justin Bohall, Executive Director