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Mr. Marton asked the Board to accept the proof of competency submitted by the physician in lieu of a PACE evaluation. He explained that PACE informed him that they did not have osteopathic providers or proctologists available to do an assessment, and that PACE was shut down and not scheduling evaluations. Mr. Marton stated that Dr. Shacket was peer-reviewed by a surgeon who observed his last colonoscopy performed and provided a favorable report. He reiterated that Dr. Shacket has elected to no longer perform colonoscopies in his practice going forward. Board staff reported that PACE reopened to in-person evaluations in August of 2020.

Vice-President Maitem stated that he was not satisfied with the information submitted, that he supported the request for a PACE evaluation and would be willing to consider a practice restriction. Mr. Marton stated that the physician has a clean record with this Board and disagreed with a practice restriction due to the impact it would have on his practice and insurance contracts. Mr. Landau pointed out that Dr. Shacket has prior history with this Board, including a Decree of Censure that was issued in June of 2017. Mr. Marton clarified that Dr. Shacket has no prior history with the Board relating to his proctology practice. President Erbstoesser commented that Dr. Shacket should not practice colonoscopies going forward. Mr. Landau spoke against an informal agreement for the physician to no longer perform colonoscopies as suggested by the licensee and counsel. He suggested that the parties work with Board staff to contact PACE and determine whether they can accommodate the Board's request for evaluation in this matter.

**MOTION: Mr. Landau moved for the Board to deny the request to substitute the simulator for the PACE evaluation and to request that the parties work with Board staff to contact PACE and determine whether they have the ability to assess the physician's colonoscopy skills. If not, the matter shall return to the Board for further consideration.**

**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		

Vice-President Maitem clarified that the journal article discussed in this matter was not a proven study but rather a case review and statement.

**D. 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 reported that staff and the AAG worked with Dr. Myers and her counsel to create a Consent Agreement that would allow the physician to return to practice and resolve the underlying complaint. A proposed Consent Agreement was negotiated and included an Administrative Warning, Practice Restriction limiting the weekly work hours to 25 under direct supervision of a Board-approved preceptor, and completion of CME in ethics and boundaries. The requirement to complete the SPEX was stayed and is contingent upon the preceptor's finding of any deficiencies, and the imposition of a \$1,000 Civil Penalty was also stayed as long as the physician complies with all terms of the Order.

Mr. Landau spoke against accepting the proposed Consent Agreement and stated that two years of monitoring was not sufficient and questioned whether the SPEX exam should be required in order for the physician to re-enter practice. Dr. Cunningham stated that he agreed with Mr. Landau's comments and pointed out that Dr. Myers has been out of active practice for almost a decade. He stated that not assessing the physician's fund of knowledge and placing her on probation for only two years is unacceptable, and proposed that the probation run for a minimum of five years and that the CME requirement be increased and focus on the physician's area of practice. Dr. Cunningham spoke against accepting the proposed Consent Agreement in its current form. Executive Director Bohall reported that Dr. Myers has complied with CME requirements for licensure maintenance. Dr. Cunningham suggested the physician complete a mini residency.

Ms. Thompson reported that they researched whether a mini residency existed that was available to the physician. She stated that several facilities were contacted, but they were unable to find a mini residency in psychiatry that is readily available. Ms. Thompson proposed the preceptorship in lieu of the mini residency which she stated would operate in a similar fashion. She stated that she recalled from the Board's prior discussion on this case that some Board members may have felt that a SPEX exam was not appropriate in that it is not an exam that focused specifically on the practice of psychiatry. Mr. Landau commented that osteopathic physicians need to have a wide ranging fund of knowledge, which is covered by the SPEX examination. Mr. Landau proposed increasing the duration of probation with preceptorship from two years to five years and striking the provision that the physician would be eligible for early termination after one year.

President Erbstoesser spoke in favor of increasing the duration of probation and stated that a SPEX exam should be in place for overall evaluation of the licensee's medical knowledge. Mr. Landau suggested allowing Ms. Thompson an opportunity to consult with her client regarding the Board's discussion and return to this matter later in today's proceedings. AAG Galvin clarified that the Board was considering modifying the proposed Consent Agreement for five year probation, stay of the Civil Penalty and requiring completion of the SPEX examination prior to the physician's return to practice.

The Board returned to this item and Ms. Thompson participated on behalf of the physician. She stated that after the Board met in January, they were charged with the task of finding a program in lieu of the SPEX examination and that she heard from the Board today that the SPEX exam was needed. Ms. Thompson reported that Dr. Myers is anxious to return to practice and that while she would agree to the SPEX exam, she would like to start her preceptorship program to help her get started. She stated Dr. Myers has requested that she be permitted to begin the preceptorship immediately for no more than 20 hours per week and be given 12 months to take the SPEX exam. Ms. Thompson confirmed that Dr. Myers agreed with the increase the duration of probation from two years to five.

**MOTION: Mr. Landau moved for the Board to modify the proposed Consent Agreement as follows: increase the duration of probation from two years to five years, remove provision that the respondent is eligible for early termination after one year, change the work week hours from 25 to 20.**

**SECOND: Vice-President 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 discussed modifying the Consent Agreement to change the work week hours from 25 to 20, and to require the physician successfully pass the SPEX exam within 12 months. President Erbstoesser asked counsel whether the physician would agree to the proposed modifications. Ms. Thompson stated that while there was some disappointment as they thought there was a plan in place, they understand the Board's concerns and the physician is willing to move forward with the SPEX exam. President Erbstoesser spoke in favor of the proposed modifications that include requiring the physician to successfully complete the SPEX exam within one year. The Board clarified that the SPEX exam is not a prerequisite to return to practice under the preceptorship, and that the physician will be restricted from practicing if she does not successfully pass the SPEX exam within twelve months and will have an additional twelve months to pass it to request termination of the practice restriction.

**MOTION: Mr. Landau moved for the Board to modify the proposed Consent Agreement by changing the number of work hours to no more than 20 per week and to require the physician to successfully pass the SPEX exam within 12 months. If the physician cannot pass the SPEX exam within 12 months, the physician shall be prohibited from practicing and shall have an additional 12 months to complete the SPEX exam and request termination of the practice restriction.**

**SECOND: Vice-President 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		

**MOTION: Mr. Landau moved for the Board to approve the proposed Consent Agreement as amended.**

**SECOND: Vice-President 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		

E. DO-17-0069A, Charles Welley, DO

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

Board staff summarized that the case regarded a patient for whom Dr. Welley failed to order a screening colonoscopy and later developed colon cancer. A chart review was performed that showed a number of deficiencies in Dr. Welley's preventative care as well as medical recordkeeping concerns. In November of 2019, Dr. Welley was placed on three year probation, was ordered to complete 50 CME hours in medical recordkeeping and was subject to a chart review of care provided after completion of the CME. Board staff reviewed the charts of ten patients for care rendered after the CME was completed, and there were some deficiencies noted relating to Dr. Welley's preventative care and recordkeeping.

Dr. Welley described for the Board the reasoning for the deficiencies in the patients reviewed, reported that he believed his recordkeeping improved since completing the CME and that he has also improved on evaluation of patients. President Erbstoesser emphasized the importance of obtaining reports/records from the patients' specialty providers in order to maintain a complete medical record and not solely relying on what the patient is reporting to him. Dr. Cunningham stated that it appeared the physician had learned from this experience and the additional education and spoke in favor of terminating the November 2019 probation. Dr. Welley stated that he has learned from this and will continue to make every effort to prevent a similar occurrence from taking place in the future.

**MOTION: Dr. Cunningham moved for the Board to terminate the probation.**

**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							
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1							

**9. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION RELATED TO PROPOSED OFFER OF SETTLEMENT**

A. DO-18-0101A, Griffin Cipolla, DO

Dr. Cunningham was recused from this matter.

Attorney Jay Fradkin participated in the virtual meeting on behalf of Dr. Cipolla during the Board's consideration of this matter.

AAG Galvin reported that the Board previously issued a Decree of Censure and Probation in December of 2019 to resolve this matter. Thereafter, the physician filed a timely appeal seeking judicial review. The Judge issued a decision in January of 2021 remanding the matter back to the Board after finding that the Board's Findings of Fact were not specific enough to serve as the basis for the Board's decision. The Board subsequently voted not to appeal the decision and authorized the AAG to enter into settlement negotiations with the parties, resulting in the agreement for a Letter of Concern.

Mr. Fradkin stated that they worked with Board staff and the AAG and created mutually satisfactory language to include in the Letter of Concern. AAG Galvin reported that based on her discussions with counsel, it appeared the physician continues to utilize a chaperone in his practice and intends to maintain this practice as part of his routine despite not being addressed in the Letter of Concern. The

Board discussed the proposed language of the Letter of Concern and noted that it would remain a part of the public record for five years. The Board also recognized that Dr. Cipolla has completed CME in ethics and boundaries. Mr. Landau spoke against the Letter of Concern in its current form and suggested rewording the language to make it more direct. President Erbstoesser noted that the parties worked hard on the proposal and he spoke in support of accepting the Letter of Concern as proposed.

**MOTION: Mr. Landau moved for the Board to accept the Letter of Concern as final resolution in this matter and instructed the AAG to work with counsel to reword the language in the first paragraph to outline the Board’s concerns in a more direct way.**

**SECOND: Vice-President 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 instructed the Executive Director to write a letter of explanation that the prior findings were prematurely posted to the Board’s website and that the matter has since been resolved with a non-disciplinary Letter of Concern.

**10. 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.

**11. REVIEW, CONSIDERATION AND ACTION ON REPORTS FROM EXECUTIVE DIRECTOR.**

**A. Report from Board Members**

Mr. Landau reported that the FSMB will be holding its annual meeting virtually, and that the upcoming meeting would be his last as Treasurer. The Board thanked Mr. Landau for his service and stated that he did an outstanding job. Mr. Landau thanked the Board for its support and encouraged Board members to inform the Executive Director of any interest in participating in any of the FSMB’s committees.

**B. Legislative Update**

1. HB2454, SB1278, HB2433, SB1271, SB1001, SB1017, HB2067, HB2266, HB2267, HB2084, HB2128, SB1149 and HB2319

The Board observed that HB2454 regarding telehealth services is awaiting final vote in the Senate and if passed, would require the Board to modify its database to add a registry. Executive Director Bohall updated the Board regarding SB1278 involved an advertising campaign relating to preceptorships available in Arizona and that the Agency is currently working with the Arizona Medical Board. The Board also observed that HB2433 had a strike everything amendment that changed the context of the bill, and that HB2084 relating to DUI and marijuana impairment has not had much movement.

**C. Report on Director Dismissed Complaints**

D. Executive Director Report

1. Financial Report

Executive Director Bohall reported that the Agency is on track with its budget.

2. Current Events that Affect the Board

Executive Director Bohall reported that the Board's next meeting will be held in June of 2021 and that the July 2021 meeting was canceled. Board members discussed their availability for the June 2021 meeting and considered possibly rescheduling that meeting for June 19, 2021.

3. Licensing and Investigations Update

Executive Director Bohall reported that the Agency has so far received 390 license applications for the current fiscal year, and that staff is averaging three days to process an application. The Agency has received a total of 130 postgraduate training applications and has issued a total of 123 emergency licenses. He reported that there are currently a total of 206 complaints and that the average time frame for issuing a final action is three days.

**12. ADJOURNMENT**

**MOTION: Dr. Cunningham moved to adjourn.**

**SECOND: Vice-President 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's meeting adjourned at 6:14 p.m.

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Justin Bohall, Executive Director