



**ARIZONA BOARD OF OSTEOPATHIC
EXAMINERS IN MEDICINE AND SURGERY**
1740 WEST ADAMS SUITE 2410
PHOENIX, ARIZONA 85007
PH (480) 657-7703 | FX (480) 657-7715
www.azdo.gov | questions@azdo.gov

Board Members
Gary A. Erbstoesser, D.O., Pres.
Jonathan Maitem, D.O., V.P.
Douglas L. Cunningham, D.O.
Jerry G. Landau, J.D.
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, April 17, 2021

1. CALL TO ORDER

Board President Erbstoesser called the meeting to order at 8:39 a.m.

President Erbstoesser 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
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. March 6, 2021 Open Session

MOTION: Vice-President Maitem moved for the Board to approve the March 6, 2021 Open 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. March 6, 2021 Executive Session

MOTION: Vice-President Maitem moved for the Board to approve the March 6, 2021 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		

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, Felino Pascual, DO

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

Board staff reported that Dr. Pascual disclosed a 2014 malpractice settlement on his license application and that the Board considered this matter at its last meeting. Board staff summarized that the case involved an 83 year-old female patient who was seen in the ER with right upper quadrant pain and elevated white count. A radiologist reviewed a CT of the abdomen and pelvis and identified a subdiaphragmatic structure that was felt to be in the right upper quadrant and it was unclear whether it communicated with the colon. The following morning, Dr. Pascual was consulted by the surgeon on the case. He read an ultrasound of the upper right quadrant as showing a complex fluid collection in the right lung and he felt that the CT from the ER showed the fluid collection above the diaphragm. The chest CT scan was read by another radiologist who felt the fluid collection was in the right lower lung and also noted air fluid levels, there was concern for abscess with no evidence of connection to the colon and request was made to drain the abscess. Dr. Pascual drained the abscess, noted that there was return of a foul smelling fluid, and it was later found to be a loop of bowel that had been drained. The patient went on to develop sepsis and expired. Board staff's main concern involved Dr. Pascual's initial response to the investigation that did not provide any detail about the actual cause of death.

Dr. Pascual explained that he was consulted to evaluate the abscess that they believed was subdiaphragmatic. He stated that his initial impression was that the abscess was not subdiaphragmatic, but above the lung. He reported that they could not obtain a CT with contrast due to the patient's nausea and she could not tolerate oral contrast at the time. He pointed out that the consulting pulmonologist also concluded that the patient had a pulmonary abscess. Dr. Pascual stated that a drain was placed at the request of the pulmonary service and that the patient did well after placement, but later became septic and a repeat CT scan showed that the drain dislodged. The patient was then transferred to a different facility to explore the chest where she went into cardiac arrest during extubation and expired. Dr. Pascual reiterated that the health care team involved in this patient's care thought there was a pulmonary abscess and it was not clear whether it was communicating with the colon.

Mr. Landau spoke in favor of granting the license, and encouraged the physician to provide more detail when answering application questions in the future.

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

SECOND: Dr. Cunningham

President Erbstoesser questioned whether the patient had a PCP and how Dr. Pascual's practice has changed since this event. Dr. Pascual reported that the patient's son is a physician, but it was unclear if he was her PCP. He stated that they really thought this was a pulmonary abscess and that this was a rare case.

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-21-0030A, John Kalamaris, DO

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

Board staff reported that Dr. Kalamaris applied for licensure and disclosed three malpractice cases on his application. One case settled in 1997 and involved blood pressure medication and failure to obtain appropriate labs resulting in injury. A malpractice case settled in 2002 that involved allegations of surgical incisions made during breast augmentation were not made in the proper location. The third malpractice case occurred in 2015 and involved a patient diagnosed with H. pylori.

Dr. Kalamaris reported that he was not aware of the case from 1997 until seeing the NPDB report and that he did not recall the patient. He stated with regard to the 2002 breast augmentation case, he placed the incision .5 cm lower than the inframammary fold, as it is his usual practice, due to concerns regarding scar visibility. The patient returned three months later with complaints relating to the scar and he asked her to return in three more months to re-evaluate and discuss further, but the patient did not return. He reported that the 2015 case involved a long term patient who presented in February 2015 asking for lab work after attaining insurance coverage. He stated that the labs were done, medications were prescribed, and he advised the patient to discontinue simvastatin. Later

that month, the patient began having pains and presented to the ER where her labs and radiographic imaging were normal, with the exception of elevated enzymes. The patient's work-up in the hospital mentioned a differential diagnosis of rhabdomyolysis.

Mr. Landau observed that Dr. Kalamaris is licensed in Indiana, Michigan and Illinois, but that the application did not indicate when he obtained licensure in Michigan and Indiana. Dr. Kalamaris stated that he did not recall when he was issued licensure in those states and reported that both licenses are currently active. In response to President Erbstoesser's questioning, Dr. Kalamaris reported that he diagnosed the patient with H. pylori after an antibody blood test showed a level of 2.6. Dr. Cunningham pointed out that the standard of care is to perform a breath test as it has been found that blood tests are not as accurate. President Erbstoesser stated his concerns regarding initiating treatment with medication without a definitive diagnosis. Dr. Kalamaris stated that he felt the number was so high that it was important to start the patient on the medication.

Dr. Cunningham questioned whether the malpractice cases have been considered by the other states where Dr. Kalamaris holds licensure and whether a PACE or fund of knowledge evaluation was warranted. Dr. Cunningham observed that the applicant previously practiced emergency medicine and plastic cosmetic surgery, and is interested in family practice if granted licensure in Arizona. Mr. Landau proposed researching whether the other states have reviewed the malpractice cases. President Erbstoesser suggested also obtaining the physician's license applications from the other states as well as the patient's hospital records.

The Board tabled this matter to obtain additional information and informed the applicant that Board staff would be in touch with him. President Erbstoesser clarified that the issue of a PACE evaluation has been tabled as well and stated that the Board needed additional information before considering the application.

C. DO-21-0017A, Richard Rawson, DO

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

Board staff summarized that Dr. Rawson applied for licensure and it was noted during the application review that there was a year unaccounted for. In his response, Dr. Rawson indicated that he took the year off to work in the donor network to become a more competitive applicant for orthopedic residency. Dr. Rawson also disclosed a 2013 malpractice case that involved a 39 year-old female with abdominal pain and syncope who was seen in the ER. Dr. Rawson assumed this patient's care as incoming emergency room physician over night, he noted that an abdominal CT scan showed non-specific ileus and the patient had a UTI. The patient was discharged with antibiotics after the abdominal pain had improved and returned hours later with sepsis. Board staff further reported that Dr. Rawson currently works as an emergency room physician in California and owns a medical group.

Dr. Rawson explained that he took over the patient's case in the evening, that the patient's lipase appeared to have resulted when it actually had not, and that he missed the initial one. He reported that the patient had a syncope episode in the parking lot when she returned to the emergency room, labs and IV fluids were ordered, and the patient was admitted. The patient deteriorated the following afternoon, general surgery was consulted and she was taken to the operating room where she coded and sustained anoxic injury. Dr. Rawson reported that he has seen the patient a number of times in the emergency room since then and that she is doing remarkably well. Dr. Rawson further reported that he has since been named in three malpractice cases, two of which he was released and one is currently pending that involves his Physician Assistant.

Vice-President Maitem questioned the applicant as to what his plans are if granted licensure to practice in Arizona. Dr. Rawson reported that he previously worked with the Indian Health Services and that he planned to open health and wellness direct care services if granted licensure. In response to further questioning by Vice-President Maitem, Dr. Rawson explained that he took a leave of absence during medical school for one year to work with the Iowa Donor Network and then returned and completed training in

orthopedic surgery as well as emergency and family medicine. Vice-President Maitem commented that he too worked for the Donor Network during medical school and that he found it fulfilling and educational.

MOTION: Vice-President Maitem moved for the Board to grant an unrestricted license.

SECOND: Dr. Cunningham

Mr. Landau questioned the applicant regarding his certification and California license. Dr. Rawson reported that he planned to renew his California license and that he is in the process of renewing his board certification.

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		

D. DO-21-0015A, Kevin Gately, DO

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

Board staff summarized that Dr. Gately applied for an Arizona license and disclosed a malpractice case that occurred in 2016 and involved an abdominal CT scan performed on a patient with stage three esophageal cancer who recently underwent chemotherapy and radiation. Dr. Gately missed a small bowel perforation, and the patient was transferred to another facility, underwent surgical exploration with bowel resection and developed postoperative complications.

Dr. Gately explained that the patient presented to the emergency room with complaints of chest pain and fever with a recently placed feeding tube. He stated that the main concern at that time was chest pain and fever. Dr. Gately stated that the accusation in the case involved his failure to call the free air even though it was discussed. He stated that it was unclear what communications took place between the transferring physician and the tertiary center, and that there appeared to be a 22 hour delay that included the transfer and another CT scan. Dr. Gately added that they really felt the fungemia was from the patient's immunocompromised state.

In response to Vice-President Maitem's questioning, Dr. Gately reported that CTs were obtained of the chest as well as the abdomen and pelvis. He stated that the free air was abdominal and he acknowledged that the conversation that took place after finding out that the free air was from the tube exchange was not documented in the chart. Vice-President Maitem stated that he had some concerns with the free air and the communications, but found that the presentation was somewhat subtle.

MOTION: Vice-President Maitem moved for the Board to grant an unrestricted license.

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		

E. DO-21-0016, Lorianne Avino, DO

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

Board staff summarized that Dr. Avino applied for licensure and disclosed a malpractice case that occurred in 2012 and settled in 2017 that alleged failure to diagnose temporal arteritis with headache and jaw pain that resulted in blindness in both eyes. The patient was referred by her PCP to the physician for consultation and Dr. Avino diagnosed the patient with central retinal artery occlusion. One month later, the patient was hospitalized and diagnosed with temporal arteritis. In her response to the complaint, Dr. Avino stated that she did perform a workup for the diagnosis of temporal arteritis, but did not go into detail or explain what was ordered or done in order to establish the diagnosis of central retinal artery occlusion.

Dr. Avino reported that the patient spoke little English and that she had no complaints of vision loss in either eye at the time of initial evaluation. Dr. Avino stated that the patient complained of double vision and a brain MRI was ordered that showed a stroke in the right optic nerve which was confirmed with the neuroradiologist and they pursued an embolic workup for her as cause for the stroke. Dr. Avino reported that the patient was referred to the ophthalmologist that same day who agreed that there were no signs or symptoms of temporal arteritis and recommended the patient discontinue the prednisone. Dr. Avino stated that the patient did not return for follow up and that she was not notified of the patient's loss of vision for two days.

In response to Dr. Ota's questions, Dr. Avino explained that the patient only complained of double vision when she was seen and that she had no complaints of headache. Dr. Avino informed the Board that she planned to provide teleradiology services if granted licensure.

MOTION: Vice-President Maitem moved for the Board to grant an unrestricted license.

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		

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

A. DO-20-0135A, Robert Lundell, DO

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

Board staff summarized that the patient's husband filed a complaint alleging failure to examine the patient and missing the diagnosis of metastatic breast cancer. The case involved a 69 year-old female seen on September 24, 2019 to become established. The patient had been seen twice before in the clinic by the PA since 2015. At the September 2019 visit, the patient complained of bilateral lower extremity edema for the past few weeks and denied any other symptoms. The review of systems did not mention that the physical exam showed edema of the lower extremities and no CBC was ordered. A mammogram and DEXA scan were ordered, but the patient did not follow through with these orders. The patient was informed on October 2nd of her abnormal lab findings and an ultrasound of the liver was ordered. Five days later, the patient returned with complaints of low back pain felt to be from lifting a wheelchair. Dr. Lundell examined the patient and ordered an x-ray of the lumbar spine, physical therapy and administered an injection of Toradol. The patient was taken to the emergency room on October 26th for shortness of breath and cough for two weeks. She was too weak to stand, bilateral pleural effusions and infiltrates were noted on chest x-ray and CT scan, and the patient was admitted with a history of weight loss of twenty pounds in the last few months with a decrease in appetite. The patient was diagnosed with metastatic breast cancer and diffuse pelvic metastases with a critical anemia and hemoglobin of 6.9. The patient later had an upper GI bleed and she expired on November 29th. The concern raised in this case involved the physician's physical examination that did not mention recent weight loss in the review of systems and there was no CBC done with the routine lab work.

Dr. Lundell explained that the case stemmed from a complaint filed by the patient's husband upon diagnosis of breast cancer following her visit to the emergency room and ultimately led to her demise. He stated that he had only seen the patient on two occasions, September 24th and October 7th, and that her only complaint at the time of the first visit was bilateral extremity edema. He stated that he believed he performed the appropriate examination to address the complaints for which she was being seen. Dr. Lundell stated that he ordered labs and imaging as well as a mammogram for her health maintenance, but she did not complete it. He reported that the patient had no known prior history of edema nor did she present with any symptoms relating to anemia. He recognized the Board's concerns that he did not order a CBC and as a result missed the metastatic breast cancer diagnosis and he pointed out that he did order a mammogram which is the principle means by which they would have diagnosed breast cancer. Dr. Lundell stated that he believed his care for this patient was reasonable and within the standard of care. He stated that the patient's breast cancer was very advanced and that completing the mammogram may not have made a difference in the ultimate outcome of this patient's case.

Mr. Landau questioned whether the physician typically ordered a CBC for regular health maintenance labs. Dr. Lundell stated that he orders labs that are pertinent to the patient's current condition or new complaints they may have. Dr. Cunningham stated that he believed the patient had advanced disease when she was seen by Dr. Lundell and that a CBC should have been ordered. He stated that this a routine test performed by primary care providers and is not expensive. Dr. Cunningham stated that the physical exam was reasonable and that the patient had some responsibility to follow through with the mammogram ordered by the physician. Dr. Lundell stated that he has learned from this experience and tries to review every situation and is always learning and willing to improve his practice in order to take better care of his patients. He reported that a CBC will be included in all future workups. Dr. Walker questioned whether the physician had safety measures in place in his clinic to ensure that patients are following through with the tests that are ordered and results obtained. Dr. Lundell reported that there is a mechanism in his clinic for staff to review all individuals who have not yet completed ordered tests.

Mr. Landau stated it appeared that the physician has learned from this case and has implemented changes in his practice. Dr. Cunningham noted that Dr. Lundell has no prior Board history and spoke in favor of dismissal.

MOTION: Dr. Cunningham moved for dismissal.

SECOND: Vice-President Maitern

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		

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

A. DO-18-0166A, Thomas Masters, DO

Dr. Masters and Attorney Jim Goodwin participated in the virtual meeting during the Board's consideration of this matter. Dr. Masters' Office Manager Jessica Haney also participated in the virtual meeting.

Board staff summarized that the Outside Medical Consultant ("OMC") who reviewed the case found that Dr. Masters fell below the standard of care with regard to the manner in which procedures were performed in that all injections used a 25 gauge 1.5 inch needle which would have been difficult if not impossible to carry out the described injections. The OMC felt that there was insufficient fluoroscopic imaging to support the documented procedures and the imaging provided appeared to show a single needle overlying the skin. The OMC noted that the standard practice would be to save images of all needles within each of the facet joints. The Board previously considered this matter and requested the physician be evaluated at PACE, which the physician did complete. PACE found that Dr. Masters showed significant deficiency in medical knowledge and documentation, found his performance to be unsatisfactory and had concerns regarding his ability to practice safely. Dr. Masters received a category four failure from PACE as a result of the evaluation.

Dr. Masters reported that he attended the PACE evaluation in December of 2020 and that he did not expect to pass the evaluation after his request to include an osteopathic physician on the committee was categorically denied by PACE. Dr. Masters stated that he did not believe PACE's report was a true reflection of him and his practice, and that he felt he did a better than adequate job on the patient portion of the evaluation. He also stated his concerns regarding the tone of the PACE report. President Erbstoesser recognized that the Board has approved PACE as an evaluator on a regular basis and has not experienced or noted any discrimination regardless of the physicians' background in allopathic versus osteopathic medicine.

Executive Director Bohall reported that he had been in discussions with Dr. Masters and his counsel regarding a possible resolution to this matter, and that the idea was proposed to limit Dr. Masters' license to administrative medicine after transitioning out of the leadership and ownership role of the clinic. He stated that PACE recommended the physician undergo a residency or extensive training course in prescribing and pain management. Mr. Goodwin stated that Dr. Masters has been licensed for a long time with no prior Board history. He stated his concerns regarding the PACE report as well as the different philosophies among the different health care professions including allopathic, osteopathic and naturopathic. He asked the Board to not discount the impact of a group of allopathic physicians evaluating an osteopathic physician can have on the coloring of their assessment. Mr. Goodwin pointed out that the genesis of the complaint was billing and did not involve patient care. He stated that Dr. Masters is willing to learn and grow, and to try and satisfy the Board that he is safe to practice. He stated Dr. Masters would like to continue to provide hands-on patient care with a transition period with reasonable time to move into an administrative medicine role. Mr. Landau stated that based on his experience on this Board, he has not seen any discriminatory conduct or different mindset from PACE regarding osteopathic providers versus allopathic providers. Mr. Landau pointed out that the OMC who reviewed the case was an osteopathic provider who found issues with Dr. Masters' care.

Ms. Haney reported that she manages both of Dr. Masters' clinic locations, one in Casa Grande and

one in Prescott. She stated that during the time she has worked with Dr. Masters, his practice has been assessed for Medicare participation and no issues were raised. Ms. Haney stated that injections are performed appropriately and that photographs are taken at each point of entry. She summarized that Dr. Masters has been assessed and evaluated at his practices and has since become Medicare and State certified, and that injections are performed appropriately. In response to President Erbstoesser's questions, Ms. Haney confirmed that they do utilize fluoroscopy, there is a C-arm at both locations, and that the physician has an MA and RN on staff at the Casa Grande location while he has one RN on staff at the Prescott location. She also reported that there are no x-ray technicians that work at either location.

In response to further questioning, Dr. Masters reported that he has taken various courses in pain management and is a registered diplomate with the American Academy of Pain Management. He stated that his practice did not involve opioid therapy and that many of his patients have presented to him after failing a number of other treatments for their chronic pain. He explained that the patient in this case had previously underwent epidurals, chiropractic care and lumbar surgery prior to presenting to his clinic for treatment of his chronic low back pain. Dr. Masters stated that he attempted a more global approach for the patient's multiple areas of pain syndrome and that he believed some sort of injection therapy was warranted. President Erbstoesser observed that an MRI showed a herniated disc at L5-S1 and stated that it appeared the physician missed this main component causing the patient's symptoms. He also questioned the physician regarding facet joint injections and the use of 1.5 inch needles to perform the injections. Dr. Masters explained that the patient was extremely thin and that he believed the size needle used was appropriate, and clarified that he did not use dye. President Erbstoesser stated his concerns regarding the inappropriate tests and injections used for this patient who ultimately required surgery.

Dr. Cunningham noted that the OMC opined that the needle size was inappropriate, and Dr. Cunningham stated he felt that the physician's comments were tangential in his testimony today and not specific. He stated that he found the physician's exam was poor, that he caused harm to the patient and stated concerns regarding the physician's ability to practice safely. Dr. Cunningham also recognized that the physician received a category four failure from PACE. Mr. Landau stated his concerns regarding the physician's practice of osteopathic medicine that seemed to focus more on manipulation and injection rather than the other areas of treatment of the entire body. President Erbstoesser stated that another issue in this case involved the physician himself mobilizing the C-arm during a sterile procedure without the assistance of a radiology technician.

Mr. Goodwin clarified that he was not implying that there is a lesser or different standard of care between allopathic and osteopathic providers, and stated that there is a different approach or philosophy held by each of those different entities that can sometimes affect the tone of the report. He stated that Dr. Masters would prefer to have ample time to find someone to come into his office and take over. Dr. Masters informed the Board that he is actively seeking associates in both locations and that he planned to move into an administrative medicine role thereafter and possibly retirement. Dr. Masters stated that he has been practicing pain management for fifteen years and has not had one bad outcome. Mr. Landau stated that his main concerns involved the physician's capabilities in diagnostic and invasive procedures, and stated that some protections needed to be put into place while allowing the physician to wind down his practice.

Dr. Cunningham reiterated his concerns regarding the physician's ability to practice safely and stated that he was not comfortable with Dr. Masters moving forward and continuing to do injections with incorrect needles in the wrong areas and completely missing diagnoses. Mr. Landau spoke in support of limiting the physician from practicing invasive medicine at this time while allowing him to discuss a possible settlement with the AAG and Executive Director. Dr. Cunningham agreed and stated that he was not comfortable allowing the physician to perform any invasive procedures going forward. The Board discussed issuing an Interim Order restricting the physician from practicing invasive medicine and allow the opportunity for the Executive Director and AAG to discuss with the physician and counsel to create a final Consent Agreement for transition to administrative medicine only.

Mr. Goodwin asked the Board to consider allowing the physician to voluntarily refrain from practicing interventional medicine until this matter is resolved in lieu of a formal Interim Practice Restriction. Mr. Landau spoke against Mr. Goodwin's proposal and stated that the action needs to be documented. Dr. Cunningham agreed with Mr. Landau's comments and reminded the Board that Dr. Masters failed the PACE evaluation.

MOTION: Dr. Cunningham moved for the Board to continue the investigative hearing to its

next meeting and issue an Interim Order for Practice Restriction prohibiting the physician from practicing invasive procedures and from prescribing controlled substances.

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 recessed for lunch from 12:15 p.m. to 12:48 p.m.

B. DO-19-0214A, Richard Nguyen, DO

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

Board staff summarized that a complaint was filed by the patient's father alleging concerns regarding the medications prescribed by Dr. Nguyen. The case involved a 27 year-old male patient who was first seen in October 2016 to become established. A pharmacy audit showed that Dr. Nguyen prescribed Xanax for the patient from October of 2016 to November of 2019 as well as a cough suppressant with codeine a number of times in 2019. The patient had also been prescribed Xanax, Oxycodone and Ativan by other providers and used 17 different pharmacies. The deviations from the standard of care identified in this case involved the fact that only two urinary drug screens were performed during the treatment period reviewed both of which were inconsistent in that they were positive for THC. The patient had a drug screen performed by another provider in January 2019 that showed the patient was not taking the medications prescribed and the office was also notified by an outside lab that the patient's drug screen was positive for heroin. Neither of these instances were documented in the physician's progress notes and he continued to prescribe controlled substances to the patient.

A urine drug screen performed by the hospital at the time of the patient's overdose in July 2019 was inconsistent and positive for morphine and THC. This was not mentioned in the patient's medical record and Dr. Nguyen continued to prescribe Xanax to the patient. Review of the Controlled Substance Prescription Monitoring Program ("CSPMP") was not documented in the patient's record and Dr. Nguyen continued to prescribe controlled substances to the patient despite being prescribed controlled substances by other providers at the same time. He also prescribed Xanax despite knowing that the patient was on methadone, prescribed promethazine with codeine at rather large quantities, and prescribed Xanax even though the patient was under the care of a psychiatrist who previously refused to prescribe Xanax to the patient. There was no indication that Dr. Nguyen consulted with the psychiatrist when he initiated the Xanax prescription. The Medical Consultant ("MC") who reviewed the case identified multiple deviations from the standard of care including continued prescribing for the patient despite inconsistent drug screens, signs of drug abuse or diversion, having been notified by a pharmacy in April of 2019 that they were uncomfortable with the patient's multiple prescriptions, and a July 2019 overdose that resulted in hospitalization.

Dr. Nguyen reported that since this case occurred, he has made several important changes to his practice, including referring the majority of chronic pain patients on opioids to the pain management specialist within the medical group. He reported that did query the CSPMP at each patient visit and now includes the reports in the patients' charts. Dr. Nguyen stated that the patient never overdosed on the medications that he prescribed and informed the Board that he proactively completed the CPEP CME course regarding prescribing controlled drugs and received 22.75 CME credit hours. He stated that their expert reviewer found he met the standard of care in his treatment of this patient and

asked the Board to dismiss the case.

Vice-President Maitem stated that the care fell below the standard of care whether or not the patient overdosed on the medications prescribed in that there was still a complicated factor of dangerous medications being prescribed. He proposed the Board perform a chart review to determine whether there is a prescribing trend versus an isolated issue. The Board recognized the physician's remedial action by completing CPEP's prescribing course. President Erbstoesser stated his concerns regarding the prescribing and failure to recognize the multiple red flags for diversion. Dr. Cunningham stated his concerns regarding the physician's general practice and questioned his general fund of knowledge. The Board discussed conducting a chart review of five patients prior to the complaint and five patients treated after changes were made to the physician's practice. The Board also considered requiring the physician to be evaluated. Regarding his prescribing and fund of knowledge regarding prescribing of opioids.

Mr. King pointed out that the psychiatrist began the patient on the benzodiazepine medication despite knowing that he was a methadone patient. He stated that a board certified family medicine physician is competent by education, training and experience to prescribe Xanax to a patient for anxiety. He stated that they understood the Board's concerns regarding the cough suppressant with codeine and assured the Board that the prescriptions were warranted for this patient.

MOTION: Dr. Cunningham moved for the Board to perform a chart review of five charts prior to the complaint and five after the changes were made to the physician's practice, issue an Interim Order for the physician to complete the PACE prescribing course and return this matter to the Board at its September 2021 meeting.

SECOND: Vice-President Maitem

Dr. Cunningham stated that the issues raised in this case involve the physician's judgement and stated that he questioned whether the physician discharges patients for non-compliance. Mr. Landau spoke in favor of the motion and stated that more information was needed prior to making a decision on this case.

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-20-0063A, David Minor, DO

President Erbstoesser was recused from this matter. Dr. Minor and Complainant TB participated in the virtual meeting during the Board's consideration of this item.

Board staff summarized that TB had a consultation with Dr. Minor on February 28, 2020 and that during the visit, the physician allegedly engaged in a conversation with TB regarding racially sensitive issues. TB reported that she felt very uncomfortable and was offended by the physician's comments. Dr. Minor responded to the complaint stating that he believed the patient was completely engaged in their discussion and did not deny the topic of conversation. TB reported in her complaint that she felt Dr. Minor's comments during the consultation were rude, racist and unprofessional.

Dr. Minor stated that he has been practicing in Arizona for 30+ years and that he has never had a problem with any patient from any race or creed. He stated that he did not understand why TB was fully engaged in the conversation with him if she had a problem with the topic of discussion. Dr. Minor

reiterated that he was confused as to the purpose of the complaint and that he has had no issues in his office. TB reported that she presented to Dr. Minor's office for medical related reasons and not a history lesson. She stated that she felt Dr. Minor was unprofessional and that she believed a physician's office should be a safe place. She also informed the Board that she contacted Dr. Minor's supervisor who told her that the physician was placed on probation as a result of the encounter.

Mr. Landau questioned why this topic would come up during a patient visit. Dr. Minor stated that he talks to his patients about any and all issues that may be affecting their lives. Dr. Ota questioned the physician as to whether he has completed any leadership training or any training that may have involved emotional intelligence. Dr. Minor reported that he completed a course in boundaries around seven years ago. He stated that the encounter with TB was a give and take conversation and that he did not understand why TB filed the complaint when she was engaging in the conversation with him. Mr. Landau pointed out that it may have been easier for the patient to smile and nod rather than engage in a confrontation with the physician.

Dr. Cunningham stated that there appeared to be a disconnect between the parties, and emphasized the importance of good communication with patients as well as boundaries and emotional intelligence especially during current times. Dr. Cunningham stated that he could see how the patient was uncomfortable, that some of the physician's statements today have made him feel uncomfortable and that further education is warranted in this matter. Mr. Landau stated that the main areas of concern in this case include emotional intelligence, patient communication and boundaries, and implicit bias.

MOTION: Mr. Landau moved for the Board to issue a Letter of Concern for lack of communication and understanding of the patient, and issue a Non-Disciplinary CME Order to complete 40 hours in the areas of emotional intelligence, patient boundaries, patient communication, and implicit bias, subject to Board staff approval. The CME hours shall be in addition to the hours required for license renewal and shall be completed by September 1, 2021.

SECOND: Dr. Walker

VOTE: 5-yay, 0-nay, 0-abstain, 1-recuse, 1-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:	0							
Abstain/ Recuse:	1		X					
Absent:	1					X		

The Board thanked TB for appearing and Dr. Minor apologized to her. TB pointed out comments made by the licensee during today's proceedings. Board members recognized the comments made and clarified that for this reason, further education was warranted and issued in the form of a non-disciplinary order.

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

Dr. Arpino and Attorney Bryan Bailey participated in the virtual meeting during the Board's consideration of this matter.

Board staff summarized that the Medical Consultant ("MC") who reviewed the case found that Dr. Arpino fell below the standard of care in his supervision of a Physician Assistant ("PA") for a case that involved patient death. Dr. Arpino reported that he supervised PAs as part of his employment duties for the medical group. He informed the Board that he and this particular PA worked in the same office, that he was always available to her and that they spoke daily about patients. Dr. Arpino stated that his only involvement in this patient's care was serving as the Supervising Physician ("SP") for the PA and clarified that he was not the patient's treating provider and never saw the patient.

Mr. Bailey stated that his review of the MC's report did not show any suggestion that Dr. Arpino fell below the standard of care in this case. He stated that there was no evidence or opinion to support that conclusion and stated his concerns regarding the MC's comment that the SP was responsible for the care as well as all acts or omissions provided by the PA. Mr. Bailey stated that there is no evidence to support that the physician inappropriately directed, collaborate or supervised the PA in this case.

Dr. Arpino confirmed that he had a Delegation Agreement in place at the time and Board staff confirmed that a copy of the Delegation Agreement was included in the Board's investigative file. In response to Vice-President Maitem's questioning, Dr. Arpino reported that he meets with the PA daily and reviews around 10-20% of patient charts. President Erbstoesser recognized that this was a complex patient with multiple health conditions and questioned whether there was any streamlining for these types of patients to be seen by the physician directly rather than a physician extender. Dr. Arpino explained that the patients are scheduled through the answering service who decides who the patient will see. He clarified that the patient in this case was scheduled as a pulmonary follow up and pointed out that the patient had a primary care provider outside of the practice.

Dr. Cunningham stated that there were clearly errors that occurred in this case and questioned how the physician addressed these concerns with the PA. Dr. Arpino reported that the PA saw the patient in March 2019 and that he became aware of the case in 2020, by which time the PA had already moved to another state. Dr. Cunningham questioned whether there was a system in place at the practice that promotes further education and whether the Arizona Regulatory Board of PAs has reviewed the case. Dr. Arpino stated that he was not aware if the PA Board had reviewed the case, and that he would expect the PA to know from her schooling the importance of proper management of patients on Coumadin. Board staff reported that the case was referred to the PA Board and that it was ultimately dismissed. Dr. Cunningham spoke in favor of dismissing the case.

Mr. Landau stated his concerns regarding what he believed was a passive supervisory role over the PA on the part of Dr. Arpino. He stated that statute is specific to the role and responsibilities of an SP, and pointed out that PAs do not have the ability to practice independently. Dr. Arpino stated that he thought he had a very good rapport with the PA. Vice-President Maitem questioned whether Dr. Arpino's EMR had the ability to flag patient files for a particular provider or a particular level of care. Dr. Arpino reported that he would be looking into this feature to possibly implement in his practice.

MOTION: Dr. Cunningham moved for dismissal.

SECOND: Vice-President Maitem

VOTE: 5-yay, 1-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:	5		X	X	X		X	X
Nay:	1	X						
Abstain/ Recuse:	0							
Absent:	1					X		

E. DO-20-0101A, Jason Wolff, DO

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

MOTION: Mr. Landau moved for the Board to enter into Executive Session to discussion confidential health 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	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 3:10 p.m.

The Board returned to open Session at 4:19 p.m.

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

Mr. Landau found that based on what has been presented to the Board, the physician has engaged in unprofessional conduct in this matter.

MOTION: Mr. Landau moved for the Board to find violations of A.R.S. § 32-1854(4), (6), (19), (22) and (39).

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		

MOTION: Mr. Landau moved for the Board to dismiss the allegations relating to violations of A.R.S. § 32-1854(3) and (29).

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		

MOTION: Mr. Landau moved for the Board to issue a Decree of Censure.

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		

MOTION: Mr. Landau moved for the Board to proceed as discussed 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		

F. DO-19-0054A, Mark Sundell, DO

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

Executive Director Bohall reported that the Board previously considered this matter, reviewed the unsatisfactory PACE results and discussed allowing the physician to practice administrative medicine only. The Board observed that Dr. Sundell was offered and signed a Consent Agreement prohibiting him from direct patient care and from treating patients in clinical settings including prescribing medications, and limits his license to administrative medicine only. The Executive Director reported that a mechanism was built into the Consent Agreement that outlined requirements for the physician if he wished to return the license to full status.

MOTION: Dr. Cunningham moved for the Board to accept the proposed Consent Agreement in this matter.

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		

G. DO-20-0033A, Keith Winder, DO

Dr. Winder had been present on the video conference, but had to leave for a family matter prior to the Board's consideration of this case. The Board elected to table this matter to its next meeting.

8. CONSIDERATION AND ACTION ON PROPOSED CONSENT AGREEMENTS, COMPLIANCE WITH TERMS OF BOARD ORDERS, AND REQUESTS TO MODIFY OR TERMINATE ORDERS

A. DO-17-0246A, Matthew Merrill, DO

Dr. Merrill and Attorney Vinney Lichvar participated in the virtual meeting during the Board's consideration of this matter.

Executive Director Bohall reported that Dr. Merrill has submitted a request for termination.

MOTION: Vice-President 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 4:27 p.m.

The Board returned to Open Session at 4:37 p.m.

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

MOTION: Dr. Cunningham moved for the Board to proceed as discussed in Executive Session.

SECOND: Mr. Landau

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							

Recuse:								
Absent:	0					X		

B. DO-14-0307A, DO-18-0098A, DO-20-0036A, Robert I. Marouk, DO

Dr. Marouk and Attorney Robert Milligan participated in the virtual meeting during the Board's consideration of this matter.

MOTION: Vice-President 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. 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 entered into Executive Session at 4:39 p.m.

The Board returned to Open Session at 5:08 p.m.

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

MOTION: Mr. Landau moved for the Board to modify the March 17, 2020 Board Order by amending paragraph 22 to state that the physician may practice direct patient care medicine to a limit of 25 hours per week.

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		

C. DO-19-0150A, Rick Shacket, DO

Dr. Shacket and Attorney Kraig Marton participated in the virtual meeting during the Board's consideration of this matter.

Mr. Marton reported that due to the concerns that have been raised, Dr. Shacket has elected to no longer perform colonoscopy and has not done so in nine months. He asked the Board to consider the information they submitted in lieu of requiring a PACE evaluation and resolve this matter with a Letter of Concern.

Board staff summarized that the Board previously heard this case at its May 2020 meeting and requested the physician to complete a PACE evaluation with regard to his colonoscopy skills. The patient in this case was found to have a tear of the mesentery in the transverse colon that caused a hematoma after undergoing colonoscopy performed by Dr. Shacket. The OMC opined that this was a result of excessive looping of the scope during colonoscopy and found that the physician failed to straighten out the scope resulting in the mesenteric tear. Dr. Shacket performed a peer-observed colonoscopy, completed a simulator program and wrote a journal article on mesenteric tears that was published and felt that this would satisfy the Board's requirements. Board staff reported that they contacted PACE and were informed that while they do not have a proctologist on staff, they were confident that they could provide an adequate assessment focusing on the physician's colonoscopy skills.

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 Maitern

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

MOTION PASSED.

	VOTE	Mr. Landau	Dr. Erbstoesser	Dr. Cunningham	Dr. Maitern	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.

Justin Bohall, Executive Director