

Minutes
BOARD OF OSTEOPATHIC MEDICINE
February 6-7, 2009

**Marriott Tampa Airport
Tampa International Airport
Tampa, FL 33607
(813) 879-5151**

Friday, February 6, 2009

The meeting was called to order by Dr. McCann, Chair, at 4:00 pm. Those present for all or part of the meeting included the following:

MEMBERS PRESENT:

Robert McCann, D.O., Chair
Ronald Burns, D.O., Vice Chair
Allan R. Escher, D.O.
Joel Rose, D.O.
James S. St. Louis, D.O.
Tom Najjar, Consumer Member
Rina A. Palladino - Consumer Member

MEMBERS ABSENT:

COURT REPORTER:

Dempster / Berryhill & Associates
727-725-9157

BOARD STAFF PRESENT:

Kaye Howerton, Executive Director
Christy Robinson, Program Administrator

BOARD COUNSEL:

Donna McNulty, Esquire (Friday only)
Deborah Loucks, Esquire

DEPARTMENT OF HEALTH:

Kathryn Price, Esquire
Karin Byrne, Esquire

APPROVAL OF NEW EXECUTIVE DIRECTOR

Tab 1 - Review and Approval of CV for Ms. Kaye Howerton, Executive Director

Ms. Howerton introduced herself to the members and provided a brief overview of her experience.

Action Taken: After discussion, Dr. Burns moved to approve Ms. Howerton as the Board's new Executive Director. Dr. St. Louis seconded the motion, which passed unanimously.

REVIEW AND APPROVAL OF MINUTES

Tab 22 - Minutes from November 14-15, 2008 Board Meeting

Action Taken: A motion was made and seconded to approve the minutes with corrections. The motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT- Kaye Howerton

Tab 2 - Annual Delegation of Authority to Board Staff

Ms. Howerton explained to the Board that the Department requires that any Board delegations to staff be reaffirmed annually.

Action Taken: Dr. Burns moved to approve the delegation to the Executive Director to sign all orders of the Board and allow staff to issue licenses to applicants that have no issues. Dr. St. Louis seconded the motion, which passed unanimously.

Tab 3 - Correspondence from Larry Dixon, Executive Director, Alabama Board of Medical Examiners

Ms. Howerton provided the Board with an overview of correspondence that was received from the Executive Director of the Alabama Board of Medical Examiners. The correspondence requested support for a proposal to be submitted to the FSMB that would require anyone running for office of the FSMB be a current member of a State Medical Board.

Action Taken: After much discussion, Dr. Burns moved to not support the proposed resolution. Dr. Rose seconded the motion, which passed unanimously. The FSMB voting delegate for the Board was directed to vote in opposition of this resolution at the upcoming annual meeting.

BOARD CHAIRMAN'S REPORT – Robert McCann, DO

No Tab – AAOE Annual Meeting Update

Dr. McCann advised the members that he recently attended the AAOE meeting in New Orleans. He indicated that there was discussion concerning the acceptance of the USMLE and COMLEX-USA examinations as valid and equivalent for their respective purposes.

Action Taken: After discussion, Mr. Najjar moved to support the resolution finding that the USMLE and COMLEX-USA examinations were equivalent for their respective purposes. Dr. Burns seconded the motion, which passed unanimously.

COUNCIL ON PHYSICIAN ASSISTANTS REPORT – Ronald Burns, DO

Tab 4 - December 4, 2008 Meeting Minutes

Dr. Burns provided the Board with an overview of the actions taken at the December 4, 2008 meeting.

ANESTHESIOLOGIST ASSISTANT COMMITTEE REPORT – Ronald Burns, DO

Tab 5 - December 17, 2008 Meeting Minutes

Dr. Burns provided the Board with an overview of the actions taken at the December 17, 2008 meeting.

GENERAL BUSINESS / CORRESPONDENCE

Tab 23 - FSMB Memorandum Re: Maintenance of Licensure

The Board discussed many concerns with the concept proposed including:

- There should be more workshops and stakeholder involvement before a final recommendation is made
- There may be some commonalities among member states but overall states should be empowered to impose their own requirements as the basic needs may differ from one state to the next
- There was a concern with moving toward basic testing modules as they could be intrusive into a physician's practice
- Specialty Boards appeared to be better suited for dealing with certification or maintenance of licensure

There was no action taken on this issue.

Tab 24 - FSMB Call for Resolutions

Dr. McCann indicated that he believed the AAOE was doing a sufficient job in representing the osteopathic medicine profession at applicable meetings. The Board took no action on this issue.

Tab 25 - FSMB Memorandum Re: Election of Treasurer

Dr. McCann explained that this item was informational and reminded the members that James Andriole, DO was on the slate to run for the FSMB's Board of Directors at the annual meeting.

Action Taken: After discussion, Dr. Burns moved to direct the voting delegate to vote fore Dr. Andriole in the elections. Dr. Escher seconded the motion, which passed unanimously.

Tab 26 - December 2008 Probationer Compliance Report

Informational only.

Tab 27 - NICA Memorandum Re: Meeting on February 13, 2009

Ms. Robinson explained that NICA had begun providing the Board with their meeting information based on a past request by the Board in the event that anyone was interested in attending.

NEW BUSINESS

No Tab – Review of 64B15-6.003, 64B8-30.003, 64B8-1.007, F.A.C. and Proposed Changes to Application for Licensure as a Physician Assistant

Dr. Burns updated the Board on the changes that were recently made to the Physician Assistant Licensure Application and asked that the Board approve the changes.

Action Taken: After discussion, Dr. Burns moved to approve the changes to application, adopt the changes proposed to rules 64B15-6.003, 64B8-30.003, 64B8-1.007, F.A.C. and find that no SERC was needed. Dr. Rose seconded the motion, which passed unanimously.

No Tab – Discussion Regarding Expungement of Records

Dr. Rose asked Ms. McNulty for clarification of the requirement to disclose criminal history that was previously expunged as part of the licensure application. Ms. McNulty indicated that she was not certain of the current opinion of the AG's office and recommend that the Board ask Ms. Loucks on Saturday.

No Tab – Legislative Discussion RE: HB 249 Relating to Physician Assistants

The Board discussed the proposed legislation that would remove the requirement for a physician to review and co-sign charts of physician assistants and delete certain physician supervisory requirements pertaining to prescribing and dispensing. It was noted that there was also a companion bill in the Senate.

Action Taken: After discussion Dr. Rose moved to support HB 249 and the Senate companion bill. Dr. Burns seconded the motion, which passed unanimously.

No Tab – Review of 64B15-7.003, 64B8-1.007, 64B8-31.003, F.A.C. and Proposed Changes to Application for Licensure as an Anesthesiology Assistant

Dr. Burns updated the Board on the changes that were recently made to the Anesthesiology Assistant Licensure Application and asked that the Board approve the changes.

Action Taken: After discussion, Dr. Burns moved to approve the changes to application, adopt the changes proposed to rules 64B15-7.003, 64B8-1.007, 64B8-31.003, F.A.C. and find that no SERC was needed. Dr. Rose seconded the motion, which passed unanimously.

No Tab – Review and Approval of Licensees wishing to Voluntarily Relinquish their License with no Pending Discipline

Action Taken: Dr. Rose moved to approve the list as presented. Ms. Palladino seconded the motion, which passed unanimously.

No Tab – Retroactive Approval of Licenses issued from 10/20/2008 – 1/31/2008

Action Taken: Dr. Burns moved to approve the list as presented. Ms. Palladino seconded the motion, which passed unanimously.

Recessed at 5:00pm

Saturday, February 7, 2009
9:00am

RULES REPORT AND DISCUSSION – Deborah Loucks, Esquire

Tab 6 - Discussion Re: Physician Assistant Application for Licensure

This item was acted on by the Board during Friday's portion of the meeting.

Tab 28 - February 2009 Rules Report

Ms. Loucks updated the Board on the status of the following rules and requested action where necessary:

64B15-6.011- Disciplinary Guidelines

No action needed.

64B15-6.01051- Citation Authority

No action needed.

64B15-6.0038- Formulary

No action needed.

64B15-7.005- Anesthesiologist Assistant Protocols and Performance

Action Taken: Dr. Burns moved to approve the SERC as presented. Dr. Rose seconded the motion, which passed unanimously.

64B15-12.003 – Applications for Licensure

Ms. Robinson explained that additional corrections had been made to the application based on recommendations from the ADA. She also noted that there were some technical changes made as well.

Dr. McCann asked Ms. Loucks about the opinion of the AG's office with respect to applicants disclosing expunged criminal charges on their licensure application. Ms. Loucks advised the members that it was her opinion that expunged criminal convictions must be disclosed by healthcare applicants and that only the following were exempt from disclosure of expunged records: lawyers, teachers and law enforcement officers. The Board then heard testimony from Jon Pellett, Esq. indicating that it was his understating that healthcare applicants did not need to report expunged charges on their applications.

It was further clarified that this exemption only applied to offenses that occurred in Florida.

Dr. Rose requested that Ms. Loucks obtain clarification and provide an official opinion in writing regarding this issue from the Attorney General's office for the Board's review at their next meeting.

Action Taken: After discussion, Dr. Burns moved to approve the changes to the application and rule as proposed and to find that no SERC was needed. Dr. Rose seconded the motion, which passed unanimously.

64B15-13.001 – Continuing Education for Biennial Renewal

Ms. Loucks noted that the language provided in the rules report was not accurate and referred the Board to the language in the November minutes for review.

Action Taken: After discussion, Mr. Najjar moved to approve the language as outlines in the minutes with the following corrections and to find that no SERC was needed:

- (6)- correction of the words "volunteer" and "in"

Dr. Rose seconded the motion, which passed unanimously.

64B15-14.007- Standard of Care for Office Surgery

Ms. Loucks advised the members that JAPC was concerned that the Board previously found that no SERC was needed for the changes proposed to this rule.

Action Taken: After discussion, Dr. Escher moved to approve the language with the following correction and find that no SERC was needed:

- (2)(c) – remove the reference to the name of the doctor that provided medical clearance

Dr. St. Louis seconded the motion, which passed unanimously.

64B15-12.003 – Applications for Licensure – Revisit

Ms. Loucks advised the members that she believed that JAPC would have a concern with the applicant affidavit on the signature page of the application. She asked that the Board consider revising the application to state “Statement of Applicant” and make the language similar to that in the PA application.

Action Taken: After discussion, Dr. Burns moved to make the changes to the affidavit as recommend by Ms. Loucks. Dr. Rose seconded the motion, which passed unanimously.

64B15-14.0076 – Requirement for Osteopathic Physician Office Registration: Inspection or Accreditation

Action Taken: Ms. Palladino moved to approve the language as presented and find that no SERC was needed. Dr. Burns seconded the motion, which passed unanimously.

64B15-14.0055 – Pain Management Facilities

It was the consensus of the Board to notice the rule for a Rules Workshop to be held at the next meeting and direct staff to obtain feedback from stakeholders such as FOMA and the Board’s Interested Parties list.

64B15-19.002 – Violations and Penalties

Action Taken: A motion was made and seconded to approve the SERC as presented. The motion passed unanimously.

PROBATION REVIEW

Tab 7 - Joan Bernstein, PA - Request for Extension and/or Approval of Continuing Education and Community Service Plan

Ms. Bernstein was present and represented by Jon Pellett, Esquire. Mr. Pellett explained to the members that Ms. Bernstein was requesting that the Board consider approving one of the courses previously reviewed by the Board Chair to complete the remaining 2 hours of ethics in order to comply with the Final Order.

Action Taken: After much discussion, Dr. Rose moved to approve the PROBE course offered by CPEP upon proof of completion for the remaining ethics requirement. Dr. Burns seconded the motion, which passed unanimously.

Mr. Pellett withdrew the request regarding the community service for the record.

Tab 8 - Joseph Deluca, DO- Appearance with Monitor

Dr. Deluca was present without counsel. Dr. Deluca's proposed monitor was not present. Dr. Deluca indicated that his monitor was aware of the required appearance but was unable to attend on such short notice.

Action Taken: After much discussion, Dr. Burns moved to provisionally approve the monitor with the condition that Dr. Deluca and the monitor be present at the next meeting and that the monitor must submit an updated CV reflecting her pain management certificate. Dr. Escher seconded the motion, which passed unanimously.

After additional discussion, the Board directed the Compliance Monitor to contact Dr. Deluca's monitor with the dates of any required appearances.

Dr. Deluca asked that the Board consider modifying his Final Order to allow for a payment plan and extend the time in which to repay his required fines and costs. Ms. Price indicated that the Department was opposed to the verbal request and recommended that he submit the request in writing to allow the Department adequate time to review the request.

Additional Action Taken: After additional discussion, Dr. Burns moved to accept the appearance. Dr. Rose seconded the motion, which passed unanimously.

Additional Action Taken: Dr. Burns moved to deny the verbal request for an extension. Dr. Rose seconded the motion, which passed unanimously.

Tab 9 - Gregory B. Fox, DO – Request for Extension of Time to Pay Fine and Costs

Dr. Fox was present without counsel. It was noted for the Board that Dr. Fox's license was currently on Null and Void status due to non-renewal.

Action Taken: After discussion, Dr. Rose moved to approve the request for a 6 month extension to repay the fines and costs associated in this case and to retain jurisdiction due to the Null and Void license. Ms. Palladino seconded the motion, which passed unanimously.

Tab 10 - Alex Wargo, DO- Appearance with Monitor

Dr. Wargo was present with his monitor Ervin Barr, DO and Dr. Pomm from PRN. The Board interviewed Dr. Wargo, his monitor and Dr. Pomm.

Action Taken: After discussion, Dr. Burns moved to approve the appearance. Dr. Rose seconded the motion, which passed unanimously. Dr. Burns then moved to approve the monitor. Dr. Rose seconded the motion, which passed unanimously.

Tab 11 - Saleem Sharar, PA - Request for Early Termination of Suspension

Mr. Sharar was present without counsel. Mr. Sharar indicated that he was requesting early reinstatement of his license as provided for in the Final Order. He noted for the record that he believed he had completed all of the required continuing education and had paid approximately \$2000 to date of his fines and costs.

Action Taken: Dr. Rose moved to reinstate the license as of June 21, 2009 and that he must repay all fines and costs prior to termination of probation. The motion failed with no second.

Additional Action Taken: After additional discussion, Dr. Rose moved to approve the request for early termination and to reinstate the license to probation status. Ms. Palladino seconded the motion, which passed with Dr. McCann opposed.

Additional Action Taken: Dr. Rose then moved to require that a sum of \$5000 be paid prior to 12/31/2009 but allow the additional balance to be paid prior to termination of probation via equal quarterly installments. Dr. Burns seconded the motion, which passed with Dr. McCann opposed.

CONDITIONAL LICENSURE REVIEW

Tab 12 - Douglas Moreland, DO

Dr. Moreland was present without counsel. Dr. Pomm was present and proved the Board with an update on Dr. Moreland's compliance and ability to practice.

Action Taken: After much discussion, Dr. Rose moved to grant the license with the following condition:

- Shall only practice in the UF Addiction Medicine Fellowship program for a year
- Must notify the Department in writing to lift his voluntary withdrawal from practice
- Must comply with his PRN contract and any PRN recommendation

Dr. Burns seconded the motion, which passed unanimously.

NEW DISCIPLINARY CASES

Tab 13 - David Lichtinger, DO- Settlement Agreement – Case #2007-28232

Allegations of Complaint: 459.015(1) (pp)

The respondent was present without counsel. Mr. Najjar was recused due to his participation on the probable cause panel. Ms. Price represented the department and presented the case to the Board.

Action Taken: After discussion, Dr. Rose moved to approve the Settlement Agreement as presented:

- Letter of Concern
- \$4000.00 Fine
- \$1583.87 in Costs
- Must register with the Department if he performs and Level II or III procedures in the future

The motion was seconded and passed unanimously.

Tab 14 - Larry Shapiro, DO – Motion for Determination of Waiver – Case #2008-00429

Allegations of Complaint:

The respondent was not present or represented by counsel. Ms. Price represented the department and presented the case to the Board.

Mr. Najjar moved to adopt the agenda materials as evidence. Dr. Escher seconded the motion which passed unanimously. Dr. Rose moved to find that the respondent was properly served and waived their right to a hearing. Dr. St. Louis seconded the motion, which passed unanimously. Ms Palladino moved to adopt the findings of fact and conclusions of law in the case. Dr. St. Louis seconded the motion, which passed unanimously.

Action Taken: After discussion, Dr. Rose moved to impose the following penalty:

- \$250.00 Fine
- \$523.49 in Costs

Dr. St. Louis seconded the motion, which passed unanimously.

Ms. Loucks was directed to send the Final Order to the address of record as well as the respondent's address in Missouri.

Tab 15 - William S. Holton, PA – Voluntary Relinquishment – Case #2007-21739

Allegations of Complaint:

The respondent was not present or represented by counsel. Dr. McCann was recused from this case due to his participation on the probable cause panel. Ms. Price represented the department and presented the case to the Board.

Action Taken: After discussion, Dr. Rose moved to accept the voluntary relinquishment of licensure. Ms. Palladino seconded the motion, which passed unanimously.

Tab 16 - Theodore Green, DO – Voluntary Relinquishment – Case #2008-07469

Allegations of Complaint:

The respondent was not present or represented by counsel. Mr. Najjar was recused from this case due to his participation on the probable cause panel. Ms. Price represented the department and presented the case to the Board.

Action Taken: After discussion, Dr. Burns moved to accept the voluntary relinquishment of licensure. Dr. St. Louis seconded the motion, which passed unanimously.

MISC. DISCIPLINARY MATTERS

Tab 17 - William Dotzman, DO – Request to Rescind Final Order

Dr. Dotzman was present without counsel. Dr. Pomm was present but advised the Board that Dr. Dotzman had not been a participant in PRN for the past 5 years. Dr. Dotzman indicated that he was requesting the Board to rescind their Final Order so that the New Jersey Board would reinstate his license to practice.

Action Taken: After much discussion, Dr. Rose moved to deny the request. Dr. St. Louis seconded the motion, which passed unanimously.

LICENSURE APPEARANCES

Tab 18 - Michelle Ardois, DO

Dr. Ardois was present without counsel. Dr. Ardois was asked to appear before the Board to discuss her leave of absence during training.

Action Taken: After the Board interviewed the applicant, Dr. Rose moved to approve the application for licensure. Dr. St. Louis seconded the motion, which passed unanimously.

Tab 19 - Moya Martin, DO

Dr. Martin was present without counsel. Dr. Martin was asked to appear before the Board to discuss the cease and desist agreement that was issued to her by the department for allegedly practicing osteopathic medicine without a license. There was much discussion regarding concern with the applicant's ability to practice safely based on completion of only a one year rotating surgical internship. The Board indicated that they would like to see completion of a residency program or other means of proof of competency prior to licensure. Dr. Martin asked the Board if they would allow her to withdraw her application.

Action Taken: After much discussion, Ms. Palladino moved to allow the applicant to withdraw her application. Dr. St. Louis seconded the motion, which passed unanimously.

Tab 20 - Michael Tieff, DO

Dr. Tieff was present without counsel. Dr. Tieff was asked to appear before the Board to discuss his malpractice, discipline in another state and failure to disclose his New Jersey license on his application. Dr. Tieff indicated that he had not practice medicine since June 2006.

Action Taken: After much discussion, Dr. Rose moved to conditionally approve the applicant pending receipt of the following:

- Completion of a general board certification review course in radiology that has a test component at the end
- Completion of the NSU (or other similar course) Clinical Competency course
- Completion of a Florida Laws and Rules course in Florida
- All courses must be pre-approved by the Board Chair
- All courses must be completed within 1 year of the Final Order

Mr. Najjar seconded the motion, which passed unanimously.

PHYSICIAN IN TRAINING APPEARANCES

Tab 21 - Phyllis Anderson-Wright, DO

Dr. Anderson-Wright was present without counsel. The applicant was required to appear to discuss the disciplinary action taken against her New Jersey license.

Action Taken: After the Board interviewed the applicant, Dr. Rose moved to approve the application for a physician in training license. Dr. St. Louis seconded the motion, which passed unanimously.

PROBATION REVIEW – continued

Tab 30 - Regan Burke, DO- Request for Extension of Time to Comply with Final Order

Dr. Burke was not present but was represented by Michael D'Lugo Esq. Mr. D'Lugo explained to the Board that because of financial hardship his client has not been able to comply with the terms of his Final Order.

Action Taken: After much discussion, Dr. Rose moved to deny the request for extension. Dr. St. Louis seconded the motion, which passed unanimously.

Tab 31 - Barry Kaplan, DO- First Probationary Appearance and Request to Change Practice Plan

Dr. Kaplan was present and represented by Kathryn Kasprzak, Esquire. Dr. Kaplan's monitor Dr. Choix was also present. In addition to making his first required appearance, Dr. Kaplan was requesting that the Board consider approving a change his practice plan to allow him to perform CO2 and YAG lasers. There was much discussion regarding the types of lasers and their many uses.

Action Taken: After much discussion, Dr. Rose moved to approve the appearance and monitor. Dr. Burns seconded the motion, which passed unanimously.

Additional Action Taken: After additional discussion, Dr. Rose moved to approve the change to practice plan pending receipt of the first quarterly report from the monitor, which the Board Chair has the authority to temporarily approve. Mr. Najjar seconded the motion, which passed unanimously.

BOARD COUNSEL'S REPORT - continued

Tab 29 - Additional Rules and Forms for Discussion

Ms. Loucks asked the Board to act on the following rules and application changes:

64B15-12.005 - Limited Licensure

Action Taken: Dr. Burns moved to approve the rule changes as presented, approve the application changes recommended by staff and find that no SERC was needed. Ms. Palladino seconded the motion, which passed unanimously.

64B15-22.004 - Mandatory Registration of Unlicensed Physicians and Physician in Training Application

Action Taken: Dr. Rose moved to approve the rule changes as presented, approve the application changes recommended by staff and find that no SERC was needed. Dr. St. Louis seconded the motion, which passed unanimously.

64B15-12.009 - Osteopathic Faculty Certificate

Action Taken: Dr. Burns moved to approve the rule changes as presented, approve the application changes recommended by staff and find that no SERC was needed. Rose seconded the motion, which passed unanimously.

ELECTION OF 2009 OFFICERS

No Tab – Dr. McCann read a letter into the record as parting Chair. He advised the members that he would be running for State Representative and did not aspire to run for Board Chair a second year.

Dr. McCann asked if there was any member who was interested in running for the Board Chair position. Dr. Burns and Dr. Escher indicated that they were both interested. Dr. McCann announced that the elections would be held via ballot. Ms. Howerton counted the ballots and announced that the new Chair would be Dr. Escher. The ballots did not contain members' names or signatures.

Dr. McCann asked which members were interested in serving as the Vice Chair. Both Dr. Rose and Ms. Palladino indicated that they were interested. Dr. McCann asked the members to cast their votes via ballot. Ms. Howerton counted the ballots and announced that the new Vice Chair would be Dr. Rose. The ballots did not contain members' names or signatures.

There being no further business, the meeting adjourned at 2:45pm.