

MINUTES
BOARD OF OSTEOPATHIC MEDICINE
Nova Southeastern University
Morris Auditorium
3301 College Avenue
Ft. Lauderdale, FL 33314

February 23-24, 2007

Friday, February 23, 2007

CALL TO ORDER

The meeting was called to order by Dr. Fedor, Chairperson, at 4:20pm. Dr. Fedor provided an opening statement. Those present for all or part of the meeting included the following:

MEMBERS PRESENT:

Robert Fedor, DO, Chair
Richard Rodriguez, DO, Vice Chair
James Andriole, DO
Ronald Burns, DO
Robert McCann, DO
Nadine Swan – Consumer Member

COURT REPORTER:

Official Reporting
954-467-8204

BOARD STAFF PRESENT:

Pamela King, Executive Director
Betty Bates, Regulatory Specialist II

BOARD COUNSEL:

M. Catherine Lannon, Esq.

DEPARTMENT OF HEALTH:

Blake Hunter, Esq

OTHERS PRESENT:

Raymond Pomm, MD - PRN

Please note that the meeting minutes reflect the actual order of the agenda items as discussed and may differ from the agenda outline.

PRESENTATION OF AWARDS

Tab 2 - Presentation of Board Chairman's Recognition Award

Dr. Fedor recognized Dr. Hand for his outstanding contributions as a volunteer in public health and all the work he has done for the citizens of the state of Florida.

Dr. Rodriguez recognized Dr. James for his outstanding contributions as an educator of Osteopathic Physicians in the state of Florida.

Tab 3 - Board Member Service Award

Dr. Fedor presented Drs. Hand and Moran with Service Awards on behalf of the Governor and Secretary of Health.

GENERAL BUSINESS

No Tab - Anthony Silvagni, D.O., Dean, NSUCOM, welcomed the board to the NSU campus and acknowledged the great public service of the board.

REVIEW AND APPROVAL OF MINUTES

Tab 1 – Minutes from November 17-18, 2006 Board Meeting

Action Taken: Dr. Andriole moved to APPROVE the minutes with the following corrections:

- Page 3, Tab 3 – change “potential” to “potentially”

Dr. Burns seconded the motion, which passed unanimously.

BOARD CHAIRMAN’S REPORT – Robert Fedor, DO

Tab 4 – AAOE Overview

Dr. Fedor advised the Board that he and Dr. Andriole had attended the American Association of Osteopathic Examiners meeting in January. He noted that Dr. Andriole was elected Vice-President of the organization. Dr. Andriole added that the organization was continuing discussion with the Federation of State Medical Boards regarding issues dealing with the two medical examinations now in use – one for allopathic physicians and one for osteopathic physicians.

Tab 5 – FSMB Update

Dr. Fedor noted that staff, Dr. Andriole, and he would be attending the next Federation of State Medical Board Meeting in San Francisco in May. He also advised that he was running for the Nominating Committee for the Federation.

BOARD COUNSEL REPORT – M. Catherine Lannon, Esquire

Ms. Lannon advised the board that Dr. Zebranek was appealing the Board’s decision to not hear his request for reconsideration of the voluntary relinquishment of his licensure. She noted that she would be representing the board in this case and would keep them apprised.

Tab 6 - Rules Report

Ms. Lannon noted that the following rule changes had been adopted and were in effect:

64B15-9.006 – Probable Cause Determination - effective November 14, 2006 –

The rule was amended to add the requirement of having a physician assistant on the probable cause panel when hearing a case involving a physician assistant per statutory change.

64B15-13.001 – Continuing Education for Biennial Renewal - effective January 29, 2007 –

Amended the continuing education rule to remove the requirement for HIV/AIDS continuing education for each renewal period.

64B15-14.005 – Standards for the Use of Controlled Substances for Pain - effective November 14,

2006 – Amended to include the use of osteopathic manipulative treatment as a viable method for the treatment of pain.

64B15-19.002 – Violations and Penalties – changes effective November 14 and 27, 2006 -

This language was modified to conform to changes in the statutes regarding medical malpractice and standard of care for in section (26) and to expand the range of penalty for violation of an order of the department or board in section (46) of the rule.

The following Physician Assistant Rules were discussed by the Board:

64B15-6.0035 – Physician Assistant Licensure Renewal and Reactivation

Ms. Lannon advised that the Council was recommending that this rule be amended to require 50 of the 100 CME hours for renewal to be Category I CME hours. She also noted that there was an additional change to this rule that provided for the reactivation of a retired status license as required by the statute that passed in 2006.

Action Taken: After discussion, Dr. Rodriguez moved to APPROVE the language as presented for noticing and if no hearing is requested adoption. The motion was seconded by Dr. Burns and carried unanimously.

64B15-6.013 – Fees Regarding Physician Assistants

Ms. Lannon advised that the Council was recommending that this rule be amended as part of the retired status licensure requirement in statute.

Action Taken: After discussion, Dr. Andriole moved to APPROVE the language as presented for noticing and if no hearing is requested adoption. The motion was seconded by Dr. Rodriguez and carried unanimously.

64B15-6.015 – Disclosure of Licensure Status

Ms. Lannon advised that the Council was recommending that this rule be developed to conform with the new statutory requirement that healthcare practitioners identify how they are licensed to patients. The rule clarifies how a P.A. would provide this information to patients.

Action Taken: After discussion, Dr. Burns moved to APPROVE the language as presented for noticing and if no hearing is requested adoption. The motion was seconded by Dr. Andriole and carried unanimously.

The following Anesthesiologist Rules were discussed by the Board:

64B15-7.007 – Anesthesiologist Assistant Licensure Renewal and Reactivation

Ms. Lannon advised that the Committee was recommending that this language be amended to conform to the statutory changes related to the required CME for licensure renewal.

Action Taken: After discussion, Dr. Andriole moved to APPROVE the language as presented for noticing and if no hearing is requested adoption. The motion was seconded by Dr. Rodriguez and carried unanimously.

64B15-7.003 – Application for Licensure and Licensure Requirements for Anesthesiologist Assistants

Ms. Lannon advised that the Committee was recommending that this language be amended for clarity of the licensure process.

Action Taken: After discussion, Dr. Rodriguez moved to APPROVE the language as presented for noticing and if no hearing is requested adoption. The motion was seconded by Dr. Burns and carried unanimously.

64B15-7.012 – Probation Variables

Ms. Lannon advised that the Committee was recommended that the Board support the amendments to this language.

Action Taken: After discussion, Dr. Andriole moved to APPROVE the language as presented for noticing and if no hearing is requested adoption. The motion was seconded by Dr. Burns and carried unanimously.

64B15-7.013 – Disclosure of Licensure Status

Ms. Lannon advised that the Committee was recommending that this rule be developed to conform with the new statutory requirement that healthcare practitioners identify how they are licensed to patients. The rule clarifies how an A.A. would provide this information to patients.

Action Taken: After discussion, Dr. Burns moved to APPROVE the language as presented for noticing and if no hearing is requested adoption. The motion was seconded by Dr. Andriole and carried unanimously.

Discussion of Rule 64B15-14.011 – Qualifications for Physicians who Treat Sex Offenders

John T. Baily, D.O., past president of the Florida Psychiatric Society provided rule language for the board to consider regarding the legislative mandate for implementing a rule related to the treatment of sex offenders.

Morton Morris, D.O., J.D., representing the Florida Osteopathic Medical Association noted their support of the Florida Psychiatric Societies request.

After much discussion by the board, this item was tabled until the Saturday meeting of the board to allow the board members time to consider the proposal.

Action Taken: TABLED until after Tab 46

Discussion of Rule 64B15-19.009 – Submission of Malpractice Record

After discussion, this tab was tabled until a copy of the most recent proposed language could be obtained for the boards review and discussion.

Action Taken: TABLED until after Tab 11 later in the meeting

COUNCIL ON PHYSICIAN ASSISTANTS REPORT – Richard Rodriguez, DO

Dr. Rodriguez reviewed the action taken by the Council.

ANESTHESIOLOGY ASSISTANTS COMMITTEE REPORT – Richard Rodriguez, DO

Dr. Rodriguez reviewed the action taken by the Council.

LEGISLATIVE UPDATE

Ms. King reviewed the current legislation being considered by the legislature. She specifically noted the following:

HB 543 – Immunization Services

This bill includes immunization services in schedule of minimum benefits for HMO's participating in state group insurance programs; requires Enterprise Florida, Inc. to conduct an outreach campaign to encourage pharmacy companies to provide vaccines in state; redefines "practice of the profession of pharmacy" to include the administration of vaccines to adults by a pharmacists.

Action Taken: After much discussion, Dr. McCann moved to OPPOSE this bill; based on concern that treatment for complications related to immunizations would not be readily available, diagnosis of complications would be prohibited based on lack of patient historical information and diagnostic ability, inability to readily control vaccinations for at risk patients, and concern with an increase in the problems with vaccine distribution. The motion was seconded by Dr. Burns and carried unanimously.

SB 556 – Advanced Registered Nurse Practitioners (SPCC)

This bill would allow ARNPs to prescribe controlled substances under certain circumstances.

Action Taken: After much discussion, Dr. McCann moved to OPPOSE this bill based on public health and drug diversion concerns. The motion was seconded by Dr. Andriole and carried unanimously.

SB 648 – Birth-Related Neurological Association

This bill was a recommendation from the Board. It would have added representatives to the NICA board of directors from the Boards of Osteopathic Medicine and Medicine. Ms. King noted that it had been withdrawn prior to introduction.

No Action Taken

SB 650 – Osteopathic Physicians/Licensure

This language is a compilation of several recommendations from the Board. It revises the licensure language to combine the endorsement and examination provisions into one general licensure category; gives the board the ability to deny licensure based on an unsatisfactory report from a training program; provides immunity for DME's when providing certain information to the board ; amends the physician-in-training registration requirements to require registration prior to beginning their training program; removes the criminal provisions for "inadvertent" violations of hiring unlicensed practitioners.

Ms. King noted that the companion bill in the House would be coming out soon and that there may be some changes related to the immunity for the DME's in order to get the other portions of the bill passed.

No Action Taken

SB 692 - Physician Assistants/Prescriptions

This bill amends the allopathic practice act (Chapter 458) to allow physician assistants to dispense medications to patients.

Action Taken: After much discussion, Dr. McCann moved to OPPOSE the language based on the lack of reference to osteopathic physicians and based on concerns that the language did not specifically reference the requirements for dispensing practitioners be met by physician assistants under this provision.

HB 805 – Physicians/Osteopathic Physicians

This bill amends the osteopathic physician advertising provision by specifying the entities that can certify physicians as board certified in certain specialty areas.

Action Taken: After much discussion, Dr. Andriole moved to OPPOSE the language based on the lack of flexibility it allowed for new specialty boards that meet certain standards. The motion was seconded by Dr. McCann and carried unanimously.

BOARD COUNSEL REPORT (Cont.)

Discussion of Rule 64B15-19.009 – Submission of Malpractice Record

Morton Morris, D.O., J.D. expressed concerns with requiring physicians to obtain electronic versions of medical malpractice cases for the board to consider under the 3 strike law provisions.

Action Taken: After much discussion, Dr. McCann moved to approve the rule language as initially approved with the requirement of submission to the Department electronic versions of the malpractice cases. The motion was seconded by Dr. Rodriguez and carried unanimously.

GENERAL BUSINESS / CORRESPONDENCE

Tab 12 - Discussion Re: Osteopathic Expert Witness Applicants

After discussion the following expert witness applications were approved by appropriate motion and unanimous vote:

- Anthony Davis, D.O.
- Trent Davis, D.O.
- Stuart Strikowsky, D.O.
- John Maceluch, D.O.

Tab 13 – Informational: Correspondence to FOMA re: Code of Ethics

Dr. Fedor noted that per the last meeting of the board, he sent a letter to FOMA requesting that they consider revising their code of ethics to include some of the newer advances in medicine. He advised that he had since had many telephone conversations with the Executive Director, President, and Counsel for FOMA regarding this matter.

Morton Morris, FOMA General Counsel added that FOMA would be looking at their code of ethics.

No Action Taken

Tab 14 - PRN Reports

Informational only.

Tab 15 - Discussion Re: Retreat Agenda

The board members outlined several items that they wanted to include on the retreat agenda for discussion or presentation. These items included:

- A presentation by NICA
- Discussion of regulation for pain management settings; including the under treatment of pain – with input from AHCA, DEA, Pain Management Physicians
- Discussion of Telemedicine Licensure – with input from FSMB & Dept of Health – Children Medical Services
- Discussion of Electronic Medical Records and parameters for recouping costs for providing records to patients in an electronic format
- Discussion of Appropriate Supervision by Physicians of “Physician Extenders”

LICENSURE LIST

No Tab – Decorative Wall Certificates

Dr. Fedor brought up the issue of allowing physicians to purchase wall certificates. Ms. King advised that the statute had been changed to prohibit the expense of creating a decorative wall certificate. Ms. Lannon confirmed the change in statute.

Tab 16 - Ratification of Approval of Licenses Issued 10/19/06-1/19/07

Action Taken: Dr. Andriole moved to APPROVE the list as presented. Dr. Burns seconded the motion, which passed unanimously.

VOLUNTARY RELINQUISHMENT OF LICENSURE

Tab 17 - Licensees Seeking Relinquishment with no Pending Discipline

Action Taken: Dr. Andriole moved to APPROVE the list as presented. Dr. Burns seconded the motion, which passed unanimously.

EXECUTIVE DIRECTORS REPORT – Pamela King

No Tab – Board Annual Report

Ms. King provided an overview of the board's activity for the 2006 calendar year. She highlighted the increased communication and disciplinary efforts.

Tab 7 – Board's Long Range Plan

Ms. King provided an update on the board's long range plan noting several accomplishments, including the completion of the Osteopathic Educational DVD for physicians, and the brochure for consumers.

Tab 8 – Limited Telemedicine License - Ms. King noted that telemedicine was an issue that is increasing concern. The board looked at this issue through a joint task force in 2000. After discussion, the consensus of the board was to discuss this issue further at the board retreat in May.

NEW BUSINESS

No Tab – Probable Cause Panel Members – Dr. Andriole suggested that the Chair may want to consider allowing all members of the board to rotate on the probable cause panel in order to give all members the experience of working with these cases and not overtaxing just a few members.

ADJOURNED @ 7:30 pm

Saturday, February 24, 2007

CALL TO ORDER

9:00 am

CONDITIONAL LICENSURE REVIEW

Tab 18 & 19 - Melvyn Bishow, D.O. – Monthly Report Review & Petition for Early Termination of Probation

The licensee was present and represented by Jason Winn, Esquire.

Action Taken: After interviewing the licensee, Dr. Rodriguez moved to DENY the request for early termination of probation. The motion was seconded by Dr. McCann and carried unanimously.

PROBATION REVIEW

Tab 20 - Michael Berkland, D.O. – Completion of Probationary Terms

The probationer was present and represented by Patrece Cashwell, Esq. The Medical Examiners Office was represented by Andrea Minyard, M.D.

After much discussion, Dr. Rodriguez moved to maintain the restriction on Dr. Berkland's license and require him to complete the reports to the satisfaction of the Medical Examiners Office 4 weeks prior to the next board meeting. The motion died for lack of a second.

Dr. Minyard advised the board that she was willing to complete the reports herself, if she could obtain all of the documentation back from Dr. Berkland. She noted the importance of closure to the families of the deceased and that there were many pending court cases in need of this information.

Action Taken: After additional discussion, Dr. McCann moved to lift the stay on the six month suspension due to non-compliance with the Final Order of the board. The motion was seconded by Ms. Swan and carried unanimously.

Tab 21 - Julie Schindler, D.O. – Appearance Prior to Termination of Probation

The probationer was present. Dr. Raymond Pomm was present and represented the Practitioners Resource Network.

Action Taken: After much discussion, Dr. Burns moved to APPROVE Dr. Schindler's appearance and termination of probation for this case. The motion was seconded by Dr. Andriole and carried unanimously.

DISCIPLINARY CASES

Tab 37 - Lawrence Shapiro, D.O. – Settlement Agreement – DOH Case #2004-05412

The respondent was present and represented by Richard G. Chosid, Esq.

Mr. Hunter presented the case that included allegations of violating section 459.015(1)(pp) – 2003 – violating a rule of the board by failing to maintain appropriate records for a patient.

Action Taken: After much discussion, Dr. Burns moved to ADOPT the settlement agreement as presented. The motion was seconded by Dr. McCann and carried unanimously.

Penalty: Letter of Concern, \$5,000 fine, \$3,500.36 in costs, completion of the FMA Medical Record Keeping Course.

Dr. Rodriguez Chaired Tab 36

Tab 36 - Mitchell Albert Wick, D.O. – Settlement Agreement – DOH Case #2002-17982, 2002-18181, 2002-18183, 2002-18184, 2002-18185, 2002-18186, 2002-18187, 2002-18188, 2002-18190, 2002-18201, 2002-18208, 2002-18209, 2002-18210, 2002-18212, 2002-18117, 2002-18227, 2002-18236, 2004-26407. See additional information after tab 47.

Dr. Fedor was recused based on knowledge outside of the record.

The respondent was present with Steve Ballinger, Esq., Weston, Florida.

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 459.015(1) (o) failing to keep legible medical records, (t) inappropriately prescribing of controlled substances, and (x) practicing below the standard of care.

Action Taken: After much discussion, Dr. Burns moved to REJECT the settlement agreement. The motion was seconded Ms. Swan and carried unanimously.

Action Taken: After additional discussion, Dr. Burns moved to offer a COUNTER STIPULATION to include all the requirements of the original settlement agreement with the addition of 100% evaluation of all medical records; completion of the UF CARES evaluation and compliance with all their recommendations; with the ability for the board to set forth additional penalties at the time of the completed UF CARES evaluation, which may include suspension if justified by the CARES program. The motion was seconded by Dr. McCann and carried unanimously.

The respondent was allowed time to determine whether he would accept the counter stipulation.

PROBATION REVIEW (cont.)

Tab 47 - Gary Blumberg, D.O. – Approval of Monitor

The probationer was present and represented by Bruce Lamb, Esq., Tampa, Florida. The probationer's proposed monitor Margaret Starr, D.O. was present.

Action Taken: After questioning the probationer and the proposed monitor Dr. Andriole moved to APPROVE the monitor and the appearance of the probationer. The motion was seconded by Dr. Burns and carried unanimously.

DISCIPLINARY CASES (Cont.)

Tab 36 - Mitchell Albert Wick, D.O. – Settlement Agreement

See additional information prior to tab 47.

All parties accepted the board's counter stipulation.

Penalty: Reprimand; \$15,000.00 fine; \$18,117.35 in costs; 100 hours of community service; completion of the UF CARES evaluation program; appearance before the board to determine additional penalty, which may include suspension if justified by the UF CARES program evaluation, but a minimum of probation for 7 years with the following conditions – supervision with 100% review of all medical records; restricted from prescribing controlled substances for 5 years – at such time that prescribing

privileges are reinstated triplicate prescription pads must be used indefinitely; and 24 hours of Continuing Medical Education – with subject areas to be set after the CARES evaluation is reviewed by the Board.

Tab 23- Robert Cone, D.O. – Informal – DOH Case #2001-09455

Dr. Andriole was recused due to participation on the probable cause panel.

The respondent was not present or represented by counsel.

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 456.072(1) (f) 2000 – having a license revoked, suspended, or otherwise acted against in another jurisdiction. Mr. Hunter noted that Dr. Cone was being charged under section 456 as he is licensed as an M.D. in California.

Ms. Lannon explained to the board that Dr. Cone had filed several motions that the board needed to consider.

The board considered a motion to dismiss the complaint in total.

Action Taken: After discussion, Dr. Burns moved to DENY the motion to dismiss the complaint. The motion was seconded by Dr. Rodriguez and carried unanimously.

The board considered a motion to reconsider the probable cause panel hearing.

Action Taken: After discussion, Dr. Burns moved to DENY the motion. The motion was seconded by Dr. Rodriguez and carried unanimously.

The board considered a motion requesting an Administrative Hearing.

Action Taken: After discussion, Dr. Rodriguez moved to DENY the request for an administrative hearing. Dr. Burns seconded the motion, which carried unanimously.

Action Taken: After additional discussion, Dr. Rodriguez moved to adopt the findings of fact in the case. The motion was seconded by Dr. Burns and was carried unanimously.

Action Taken: After additional discussion, Dr. Rodriguez moved to adopt the conclusions of law and the material provided into evidence in the case. The motion was seconded by Dr. Burns and was carried unanimously.

Action Taken: After further discussion, Dr. Burns moved to adopt the department's recommended penalty. The motion was seconded by Dr. Rodriguez and carried unanimously.

Penalty Imposed: Letter of concern; \$397.94 in costs; suspension of licensure until appears before the board to demonstrate the ability to practice with skill and safety to include the completion of the UF CARES program.

Tab 24 Glenn Charles, D.O. – Settlement Agreement – DOH Case #2006-27591

The respondent was present without counsel.

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 459.015(1) (b) having a license revoked, suspended, or otherwise acted against in another jurisdiction.

Action Taken: After discussion, Dr. Burns moved to ADOPT the settlement agreement as presented by the parties. The motion was seconded by Dr. Andriole and carried unanimously.

Penalty Imposed: Letter of concern; \$1000.00 fine; 806.71 in costs; completion of the FOMA Florida Laws & Rules Course.

Tab 25 - Sally J. Medina, P.A. – Settlement Agreement – DOH Case #2006-14482

Ms. Swan was recused due to participation on the probable cause panel.

The respondent was present without counsel.

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 459.015(1) (o) practicing beyond the scope allowed by law, (cc) violation of the laws and rules of the board by prescribing a controlled substance, (o) failing to maintain appropriate medical records, and (x) practicing below the standard of care and safety for a physician assistant.

Action Taken: After discussion, Dr. McCann moved to REJECT the settlement agreement. The motion was seconded by Dr. Andriole and carried unanimously.

Action Taken: After further discussion, Dr. Burns moved to offer a COUNTER STIPULATION to include all the requirements in the originally proposed settlement agreement with the addition of a 5 hour Florida Laws and Rules course on prescribing from a physician assistant school and a one-hour lecture to her peers on appropriate prescribing. The motion was seconded by Dr. Andriole and carried with Dr. McCann opposed.

Both parties accepted the terms of the offer for the record.

Penalty Imposed: Reprimand; \$10,000 fine; \$7,990.31 in costs; 100 hours of community service; 12 months suspension – six months stayed; 3 years probation; 5 hours of continuing education in Florida Laws and Rules in prescribing at a physician assistant school; 1 hour lecture to peers on appropriate prescribing.

PROBATION REVIEW (cont.)

Tab 22 – Harold Bafitis, D.O. – Appearance with Monitor

The probationer was present and represented by Jason Winn, Esquire of Tallahassee, Florida. The probationer's proposed monitor Paul Seltzer, D.O. was present.

Action Taken: After questioning the probationer and the proposed monitor Dr. Andriole moved to APPROVE the monitor and the appearance of the probationer. The motion was seconded by Dr. Burns and carried unanimously.

DISCIPLINARY CASES (Cont.)

Tab 26 - Joseph Deluca, D.O. – Settlement Agreement – DOH Case #2006-10191

Dr. Andriole was recused due to participation on the probable cause panel.

The respondent was not present but was represented by Edwin Bayo, Esq., Tallahassee, Florida.

Mr. Bayo noted for the record that his client contacted him to let him know that he was ill and could not travel. He asked the board to either consider continuing the case or allowing him to act on his client's behalf. The board agreed to proceed with the case.

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 456.072(1) (r) impeding an investigation of the department and 459.015(1)(pp) practicing on a delinquent license.

Action Taken: After discussion, Dr. Burns moved to ADOPT the settlement agreement presented by the parties in this case. The motion was seconded by Dr. Rodriguez and carried unanimously.

Penalty Imposed: Letter of concern; \$2,500 fine; \$2,000 in costs; University of South Florida Distressed Physician Course; payment of all dispensing practitioner renewal fees; and dismissal of count 2 (section 459.015(1)(pp), F.S.) of the administrative complaint.

Tab 27 - Robert S. Smith, D.O. – Settlement Agreement – DOH Case #2005-50869, 2005-50207, 2005-53284, 2005-50035

Mr. Hunter advised that Dr. Smith had recently passed away. He noted that it was his opinion that the board no longer had jurisdiction over any outstanding cases.

Action Taken: Dr. Rodriguez moved to close all pending cases against Dr. Smith due to his death. The motion was seconded by Dr. Burns and carried unanimously.

Tab 28 - Dale E. Fahie, D.O. – Settlement Agreement – DOH Case #2004-27899

The respondent was present and represented by Brian Newman, Esq., Tallahassee, Florida.

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 459.015, F.S. (1) (x) practicing below the standard of care and safety for a physician and (o) failing to maintain appropriate medical records. (2002)

Action Taken: After discussion, Dr. Andriole moved to ADOPT the settlement agreement presented by the parties in this case. The motion was seconded by Dr. Burns and carried unanimously.

It was noted for the record that Dr. Fahie had taken it upon himself to seek out and take the FMA Medical Record Keeping course in October of 2006. He requested the board's acceptance of this course for meeting the requirements of the settlement agreement. The board required that proof of completion be submitted to the board office with in 5 days of the board meeting.

Penalty Imposed: Letter of concern; \$5,000 fine; \$1489.98 in costs; completion of the FMA Medical Records Course – with proof of completion to be submitted to the board office in 5 days.

Tab 29 - Ramsey H. Saffouri, D.O. – Settlement Agreement – DOH Case #2006-11284

Dr. Andriole was recused due to participation on the probable cause panel.

The respondent was present and represented by Michael Ragan, Esq., Miami, Florida.

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 459.015, F.S. (1) (pp) violating a law or rule of the board by not appropriately advertising a free or discounted service and (d) failing to conspicuously identify the physician in an advertisement as an osteopathic physician. (2005)

Action Taken: After discussion, Dr. Rodriguez moved to ADOPT the settlement agreement presented by the parties in this case. The motion was seconded by Dr. Burns and carried unanimously.

Penalty Imposed: Letter of concern; \$5,000 fine, \$839.37 in costs; and the FOMA Laws & Rules Course

Tab 30 - Jeffrey Helfand, D.O. – Settlement Agreement - DOH Case #2005-53051

The respondent was present and represented by James Glober, Esq., Jacksonville, Florida.

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 459.015, F.S. (1) (b) having a license revoked, suspended, or otherwise acted against in another jurisdiction and 456.072 (1) (v) failing to comply with the requirements for profiling (2004).

Action Taken: After discussion, Dr. Burns moved to ADOPT the settlement agreement presented by the parties in this case. The motion was seconded by Dr. Andriole and carried unanimously.

Penalty Imposed: \$3,000 fine, \$1,009.20 in costs; FOMA Laws & Rules course; FMA Medical Record Keeping Course; and the USF Drug Course

Tab 31 - Robert J. Kaplan, D.O. – Settlement Agreement – DOH Case #2004-50494

The respondent was present and represented by Ryan Newman, Esq., Tallahassee, Florida.

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 459.015, F.S. (1) (b) having a license revoked, suspended, or otherwise acted against in another jurisdiction (2004).

Action Taken: After discussion, Dr. Burns moved to ADOPT the settlement agreement presented by the parties in this case. The motion was seconded by Dr. Andriole and carried unanimously.

Penalty Imposed: Letter of concern; \$1,000 fine; \$1000 in costs; FMA Record Keeping Course to be submitted at the time of the board meeting.

Tab 32 - John A. King, D.O. – Settlement Agreement – DOH Case #2006-09502

The respondent was present and represented by Angela Weir, Esq., Orlando, Florida.

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 459.015, F.S. (1) (b) having a license revoked, suspended, or otherwise acted against in another jurisdiction. (2005)

Action Taken: After discussion, Dr. Andriole moved to ADOPT the settlement agreement presented by the parties in this case. The motion was seconded by Dr. Burns and carried unanimously.

Penalty Imposed: Letter of concern; \$2,500 fine; \$667.86 in costs; FOMA Laws and Rules Course.

Tab 33 - Hai H. Kenney, D.O. – Settlement Agreement – DOH Case #2004-50345

The respondent was present and represented by Ken Metzger, Esq., Tallahassee, Florida.

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 459.015, F.S. (1) (x) practicing below the standard of care and safety for a physician (2004).

Action Taken: After much discussion, Dr. Andriole moved with REJECT the settlement agreement. The motion was seconded by Dr. McCann and carried unanimously.

Action Taken: After additional discussion, Dr. Andriole moved to offer a COUNTER STIPULATION to include all the requirements in the originally proposed settlement agreement with the addition of reimbursement for the actual costs in the case of \$5,412.54 to be paid in 60 days.

Both parties accepted the counter stipulation on the record.

Penalty Imposed: Letter of concern; \$5,000 fine; \$5,412.54 in costs; 5 hours of CME in angioplasty and/or stenting.

Tab 34 - Nathalie A. Koenig, D.O. – Settlement Agreement – DOH Case #2005-61624

Dr. Andriole was recused due to participation on the probable cause panel.

The respondent was present and represented by Cary Capper, Esq., Miami, Florida

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 459.015, F.S. (1) (x) practicing below the standard of care and safety for a physician and (o) failing to maintain legible medical records. (2001)

Action Taken: After discussion, Dr. Burns moved to ADOPT the settlement agreement presented by the parties in this case. The motion was seconded by Dr. Rodriguez and carried unanimously.

Penalty Imposed: Letter of concern; \$10,000 fine; \$1,807.11 in costs; FMA Medical Record Keeping Course; 5 hours of CME in diagnosing cardiac murmurs

Tab 35 - James A. Zaccari, D.O. – Settlement Agreement – DOH Case #2005-50699, 2004-26753, 2004-32229

The respondent was present and represented by Ken Metzger, Esq., Tallahassee, Florida.

Mr. Hunter presented the case to the board. Allegations of the case include violating sections 459.015, F.S. (1) (x) practicing below the standard of care and safety for a physician (t) inappropriate prescribing of controlled substances, and (o) failing to maintain legible medical records. (2003-2004)

Action Taken: After much discussion, Dr. Burns moved to REJECT the settlement agreement. The motion was seconded by Dr. Andriole and carried unanimously.

Action Taken: After additional discussion, Dr. Burns moved to offer a COUNTER STIPULATION to include all the requirements in the originally proposed settlement agreement with the addition of a 1-hour lecture on appropriate practice of telemedicine to a physician group within one year.

Penalty Imposed: Reprimand; \$18,000 fine; \$8,100 in costs; USF Drug Course; FMA Medical Record Keeping Course; FOMA Laws & Rules Course; 100 hours of community service and a 1-hour lecture on appropriate practice of telemedicine.

LICENSURE APPEARANCES

Tab 40 - Wayne St. Clair Blake, D.O. – Medical School – 5 Years, Internship not AOA Approved.

Dr. Blake was present without counsel. The board interviewed Dr. Blake about his ACGME training program.

After much discussion, Dr. Blake requested to withdraw his application for licensure.

Action Taken: The consensus of the board to APPROVE the request for withdrawal of licensure.

Tab 38 - Thomas Carroll Lackey, D.O – Left Training Program, Probation During Residency, Failed to Disclose Probation, Pending Malpractice

Dr. Lackey was present without counsel. The board interviewed Dr. Lackey about his prior training and pending malpractice cases.

Action Taken: After discussion, Dr. Andriole moved to APPROVE the applicant for licensure. The motion was seconded by Dr. Burns and carried unanimously.

Tab 39 - Joshua Luke Latham, D.O. – Withdrawn

Tab 41 - James Patrick Floyd, D.O. – Charges, Failed Certification Exam, Staff Privileges Suspended

Dr. Floyd was present without counsel. The board interviewed Dr. Floyd regarding his past practice activities.

Action Taken: After discussion, Dr. Andriole moved to APPROVE the applicant for licensure. The motion was seconded by Dr. Burns and carried unanimously.

Tab 42 - Purvin Shah, D.O. – Charges, Failure to Disclose Charges

Dr. Shah was present and represented by Rosemarie Antonocci-Pollock, Esq., Miami, Florida. The board interviewed Dr. Shah regarding his past practice activities and application responses.

Action Taken: After much discussion, Dr. Andriole moved to APPROVE the applicant for licensure. The motion was seconded by Dr. Burns and carried unanimously.

Tab 43 - Robert M. Jaeger, D.O. – Pending Malpractice

Dr. Jaeger was present without counsel. The board interviewed Dr. Jaeger regarding his past practice activities.

Action Taken: After discussion, Dr. Andriole moved to APPROVE the applicant for licensure. The motion was seconded by Dr. Rodriguez and carried unanimously.

PHYSICIAN IN TRAINING APPEARANCES

Tab 44 - Irving S. Smith, D.O. – Withdrawn

Tab 45 - Bryan Robinson, D.O. – Dismissed from Training Program

Dr. Robinson was present without counsel. The board interviewed Dr. Robinson regarding his past training program.

Action Taken: After discussion, Dr. Andriole moved to APPROVE the applicant for registration. The motion was seconded by Dr. McCann and carried unanimously.

TRAINING VIOLATIONS

Tab 46 - FSU/ Sacred Heart Hospital - Pensacola

Dr. Clyde H. Dorr, II, M.D. was present as a representative from FSU/Sacred Heart Hospital OB/Gyn. Training program.

Dr. Dorr advised the board that the program had instituted several improvements to ensure that registrations for physicians in training were completed timely.

BOARD COUNSEL REPORT (Cont.)

Discussion of Rule 64B15-14.011 – Qualifications of Physicians Who Evaluate and Treat Sex Offenders

Action Taken: After much discussion, Dr. Andriole moved to APPROVE the following language for noticing and adoption:

64B15-14.011 – Qualifications of Physicians Who Evaluate and Treat Sex Offenders

(1) Before a physician may evaluate or treat sex offenders pursuant to ss. 947 and 948, F.S., as a “qualified practitioner, “ as defined in s. 947.005(9) or s. 948.001, F.S., the physician shall, at a minimum:

(a) Hold an active license under Chapter 459, F.S. and

(b) Demonstrate qualification and experience through the completion of training from a four (4)-year psychiatric residency program accredited by the ACGME or AOA.

(2) As a condition of biennial licensure renewal, a physician who evaluates or treats sex offenders as a “qualified practitioner,” as defined in s. 947.005(9) or s. 948.001(6), F.S., must complete a minimum of two (2) of the forty (40) hours of required Continued Medical Education on a topic involving the evaluation or treatment of sexual disorders as defined in DSM IV R published by the American Psychiatric Association.

(3) Physicians licensed under Chapter 459, F.S. who had been treating patients defined as sex offenders, as of January 1, 2006, will continue to be qualified practitioners as defined in s. 947.005(9) or s. 948.001(6), F.S.

The motion was seconded by Dr. McCann and carried unanimously.

ELECTION OF OFFICERS

Action Taken: After discussion, Dr. Burns moved to nominate Dr. Rodriguez as Chair of the Board. The motion was seconded by Dr. Andriole and carried unanimously.

Action Taken: After discussion, Ms. Swan moved to nominate Dr. Fedor as Vice-chair of the Board. The motion was seconded by Dr. Rodriguez and carried unanimously.

ADJOURN