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**MINUTES
BOARD OF OSTEOPATHIC MEDICINE
February 26-27, 2010**

**Lake Erie College of Osteopathic Medicine
5000 Lakewood Ranch Blvd.
Bradenton, FL 34211
941-782-5927**

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Friday, February 26, 2010

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

MEMBERS PRESENT:

Allan R. Escher, D.O., Chair
Joel Rose, D.O., Vice Chair
Ronald Burns, D.O.
Anna Hayden, D.O.
James S. St. Louis, D.O. (Saturday)
Rina A. Malan - Consumer Member

MEMBERS ABSENT:

COURT REPORTER:

Berryhill & Associates
813-229-8225

BOARD STAFF PRESENT:

Kaye Howerton, Executive Director
Christy Robinson, Program Operations Administrator

BOARD COUNSEL:

Ed Tellechea, Esquire

DEPARTMENT OF HEALTH:

Tobey Schultz, Esquire

OTHERS PRESENT:

James Andriole, DO- PCP Chair, FOMA Rep.
Judy Rivenbark, MD, PRN

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

PLEDGE OF ALLEGIANCE

Dr. Hayden led the Board in the Pledge of Allegiance to begin the meeting.

REVIEW AND APPROVAL OF MINUTES

Tab 1 - Review and Approval of November 13-14, 2009 Meeting Minutes

Ms. Malan noted a typographical error on page 13 of the draft minutes.

Action Taken: Dr. Rose moved to approve the minutes with the correction. Dr. Burns seconded the motion, which passed unanimously.

PRESENTATION OF AWARDS

Presentation of 2nd Annual Morton Morris, DO, JD Award – The award was presented to Catherine Lannon, Esq. and was accepted by Mr. Tellechea on Ms. Lannon's behalf as she could not be there.

Recognition of Former Board Member, Robert McCann, DO – Ms. Howerton presented a plaque of recognition to Dr. McCann for his years of service on the Board.

1 Presentation of Annual Board Chairman's Award – Dr. Escher presented the annual Board Chairman's
2 award to Robert McCann, DO. He thanked Dr. McCann for his leadership and guidance to the Board
3 and his service to the citizens of Florida.
4

5 **BOARD COUNSEL'S REPORT AND RULES DISCUSSION – Ed Tellechea, Esq.**

6 7 **Tab 8 - 64B15-12.009 - Osteopathic Medical Faculty Certificate**

8 Mr. Tellechea advised the Board that a JAPC letter had been received on this rule. He noted that
9 JAPC's concerns were handled as technical changes and no action was needed by the Board.
10

11 **Tab 9 - 64B15-12.005 - Limited License**

12 Mr. Tellechea advised the Board that a JAPC letter had been received on this rule and the form
13 associated with it. He summarized the changes that were made to the rule and the form as a result of
14 JAPC's concerns.
15

16 **Action Taken:** Dr. Burns moved to approve the recommended changes to the form and the rule. Dr.
17 Rose seconded the motion, which passed unanimously. Dr. Burns then moved to find that the changes
18 proposed would have no impact on small business and a SERC was not needed. Ms. Malan seconded
19 the motion, which passed unanimously.
20

21 **Tab 10 - 64B15-19.002 - Violations and Penalties**

22 Mr. Tellechea outlined the proposed changes to the rule as a result of Ms. McNulty's review.
23

24 **Action Taken:** After discussion, Dr. Burns moved to approve the changes as proposed. Ms. Malan
25 seconded the motion, which passed unanimously. Dr. Rose then moved to find that the changes
26 proposed would have no impact on small business and a SERC was not needed. Ms. Malan seconded
27 the motion, which passed unanimously.
28

29 **Tab 11 - 64B15-14.0076 – Requirements for Osteopathic Physician Office Registration**

30 Mr. Tellechea explained that the draft language proposed was meant to clarify that the office surgery
31 registration application was to be submitted to the department, rather than the Board.
32

33 **Action Taken:** Ms. Malan moved to approve the proposed changes and notice the rule for
34 development. Dr. Rose seconded the motion, which passed unanimously. Dr. Rose then moved to
35 find that the changes proposed would have no impact on small business and a SERC was not needed.
36 Ms. Malan seconded the motion, which passed unanimously.
37

38 **Tab 12 - 64B15-12.003 - Application for Licensure**

39 Mr. Tellechea advised the Board that a JAPC letter had been received on this rule. He noted that
40 JAPC's concerns were handled as technical changes and no action was needed by the Board.
41

42 **Tab 13 - 64B15-22.004 - Mandatory Registration of Unlicensed Physicians**

43 Mr. Tellechea advised the Board that a JAPC letter had been received on this rule. He noted that
44 JAPC's concerns were handled as technical changes and no action was needed by the Board.
45

46 **Tab 14 - 64B15-13.001 - Continuing Education for Biennial Renewal**

47 Mr. Tellechea advised that no action was needed on this rule. Ms. Robinson advised the Board that
48 because the Board's 5 most misdiagnosed conditions were different than the Board of Medicine's
49 conditions, licensees would not necessarily be able to receive credit for a prevention of medical errors
50 course that included the Board of Medicine's conditions.
51

52 **Tab 15 - Request from FOMA to Discuss 64B15-14.007(6)(b) – Standard of Care for Office** 53 **Surgery**

1 Jason Winn, Esquire, legal counsel to FOMA was present during this discussion. Mr. Tellechea
2 explained that the Board of Medicine had been challenged on this rule provision years ago and lost on
3 appeal due to the lack of statutory authority to set supervision requirements for CNAs.
4

5 **Action Taken:** After discussion, Dr. Burns moved to notice the rule for development and have the draft
6 language presented at the next meeting. Ms. Malan seconded the motion, which passed unanimously.
7

8 Mr. Tellechea explained that although the impact of this rule on small business would be positive, he
9 would recommend that the Board do a SERC incase the rule was challenged.
10

11 **Additional Action Taken:** After additional discussion, Dr. Burns moved to have staff prepare a SERC
12 for review at the next meeting. Dr. Rose seconded the motion, which passed unanimously.
13

14 **Tab 16 and 57- Rules Report (Updated Report under Tab 57 of Addendum)**
15 Informational only.
16

17 Physician Assistant Rules:
18

19 **Tab 58 - 64B15-6.011 – Disciplinary Guidelines**

20 Mr. Tellechea explained that the Board's rules pertaining to physician assistants should be consistent
21 with those approved by the Board of Medicine.
22

23 **Action Taken:** Dr. Burns moved to approve the changes proposed. Dr. Rose seconded the motion,
24 which passed unanimously. Dr. Rose then moved to have staff prepare a SERC for review at the next
25 meeting. Ms. Malan seconded the motion, which passed unanimously.
26

27 **COUNCIL ON PHYSICIAN ASSISTANTS REPORT – Ronald Burns, DO**
28

29 **Tab 19 - Review of December 19, 2009 PA Council Meeting Minutes**

30 **Tab 60 - February 4, 2010 PA Council Meeting Minutes**

31 **Tab 61 - Correspondence to DOH, Bureau of Radiation Control Re: PA Supervision of X-Ray**
32 **Technicians**

33 Dr. Burns provided the Board with a report and overview of the December 2009 meeting, the February
34 2010 meeting and the correspondence regarding the supervision of x-ray technicians.
35

36 **ANESTHESIOLOGIST ASSISTANT COMMITTEE REPORT – Ronald Burns, DO**
37

38 Dr. Burns had no report at this time.
39

40 **GENERAL BUSINESS / CORRESPONDENCE**
41

42 **Tab 3 - AAOE Annual Meeting Update- Ronald Burns, DO**

43 Dr. Burns provided the Board with an overview of the meeting highlights. Dr. Andriole spoke to the
44 Board about a bill that had been recently proposed in New Mexico to consolidate their Board of
45 Osteopathic Medicine into their Board of Medicine.
46

47 **Tab 2 - Correspondence from ABIPP Requesting Approval as a Board Specialty Certification**
48 **Organization**

49 Bradley Wargo, DO and Edward Frankoski, DO spoke to the Board about their request. They noted that
50 they had also requested approval by the Board of Medicine. Mr. Tellechea clarified that this request
51 was not related to the pain management clinic rules.
52

53 **Action Taken:** After much discussion, Dr. Rose moved to approve the request contingent upon receipt
54 of the examination analysis conducted by their psychometrician. Dr. Burns seconded the motion, which

1 passed unanimously. After additional discussion, it was the consensus of the Board to allow the Chair
2 to review and approve the analysis of the examination.
3

4 **Additional Action Taken:** After further discussion, Dr. Burns moved to open rule 64B15-14.001 for
5 development and add ABIPP and AAPS to the rule, after review and approval of the exam analysis. Dr.
6 Escher seconded the motion, which passed unanimously. Dr. Rose then moved to find that the
7 changes proposed would have no impact on small business and a SERC was not needed. Ms. Malan
8 seconded the motion, which passed unanimously.
9

10 **Tab 4 - Discussion Re: FSMB 2010 Annual Meeting Attendance**

11 Ms. Howerton explained that the department's current travel policy would prevent the staff from
12 attending the Federation's annual meeting. She also noted that, at the request of the Board Chair, she
13 asked the Federation if another Board Member would be able to attend the meeting on staff's
14 scholarship, to which they replied no.
15

16 Dr. Andriole, the Federation's current treasurer, advised the Board that they should investigate, as soon
17 as possible, sending a consumer member to the meeting as this was recently discussed by the FSMB's
18 Board of Directors.
19

20 **Break for 10 minutes**
21

22 **Tab 5 - FSMB Nominating Committee Report**

23 Dr. Andriole encouraged all members of the Board to attend the FSMB annual meeting if possible. He
24 also noted that all members of the Board were considered diplomats of the FSMB.
25

26 **Tab 6 - FSMB Update RE: SPEX Examination**

27 Informational only.
28

29 **Tab 7 - Article- Bills Add Residency Slots for Florida (Health News Florida)**

30 Informational only.
31

32 **EXECUTIVE DIRECTOR'S REPORT – Kaye Howerton** 33

34 **Tab 59 - Annual Delegation of Authority** 35

36 **Action Taken:** After discussion, Dr. Rose moved to approve the annual delegation of authority with the
37 following amendments:

- 38 • The Chair should be granted authority to grant temporary approval of monitors.
- 39 • The Chair should be granted authority to grant temporary approval of CME, etc. imposed by
40 discipline, unless otherwise stated in a Final Order.
- 41 • The Chair should be granted authority to require an appearance for licensure.
- 42 • The Board Counsel should be granted the authority to review requests for DOAH hearing in
43 licensure cases and refer to DOAH when appropriate.

44 Dr. Burns seconded the motion, which passed unanimously.
45

46 **No Tab –** Ms. Howerton thanked Dr. Escher and Dr. McCann for their involvement with the pain clinic
47 joint committee. She also thanked Ms. Robinson, Ms. McNulty, Ms. Murphy and Mr. Tellechea for their
48 many hours of work and participation on the committee. Ms. Howerton advised the Board that the
49 department's leadership has offered its full support to both Boards on this extremely important task.
50

51 **No Tab –** Ms. Howerton noted that Mr. Najjar recently resigned from the Board and there were at least
52 2 applicants for the consumer member position pending review by the Governor's office.
53
54

1 **2010 LEGISLATIVE OVERVIEW AND UPDATE**

2
3 **Tab 17 - Summary of Bills to Date**

4
5 **Presentation by the Florida Perfusion Society (Re: HB 251 and SB 912)**

6
7 Juan Mixon and Mark Martin were present and offered testimony to the Board regarding the need for
8 clinical perfusionists to be regulated. The noted that there was growing concern with having no
9 regulatory oversight of those individuals practicing as a perfusionist in Florida and offered examples of
10 perfusionists with issues that could cause patient harm.

11
12 **Action Taken:** Dr. Rose moved to support HB 251 and SB 912 and applaud the Florida Perfusion
13 Society for its efforts to protect the public. Dr. Burns seconded the motion, which passed unanimously.

14
15 Ms. Howerton noted that there were many bills provided to the Board for review, some of which were
16 for informational purposes.

17
18 **HB 135- Relating to the Practice of Optometry**

19 **Action Taken:** After discussion, Dr. Burns moved to reaffirm their opposition to HB 135. Dr. Hayden
20 seconded the motion, which passed unanimously.

21
22 **HB 573 and SB 1456 – Relating to Physician Assistants**

23 Mr. Tellechea explained the difference in the two bills and noted the technical issues with HB 573. He
24 indicated that he believed HB 573 would be amended to address those concerns.

25
26 **Action Taken:** After discussion, Dr. Burns moved to support both bills providing that the technical
27 issues were appropriately addressed. Dr. Hayden seconded the motion, which passed unanimously.

28
29 **HB 671 – Relating to Pain Management Clinics**

30 The Board noted concerns with items 11 and 12 on page 15 of the bill.

31
32 **Action Taken:** After discussion, Dr. Burns moved to support HB 671, with the exception of items #11
33 & 12 on page 15. Dr. Rose seconded the motion, which passed unanimously.

34
35 **HB 373 – Relating to Pain Management Clinics**

36 **Action Taken:** After discussion, there was a consensus to support HB 373.

37
38 **HB 677 – Relating to Advanced Registered Nurse Practitioners**

39 **Action Taken:** After discussion, Dr. Rose moved to oppose HB 677. Dr. Hayden seconded the
40 motion, which passed unanimously.

41
42 **HB 791 – Relating to Emergency Healthcare Providers**

43 The Board noted concern with the fact that on-call doctors working in a hospital emergency room would
44 not be covered under this bill. There was consensus that any physician working to stabilize a patient in
45 the emergency room should be offered the sovereign immunity. There was not a vote or consensus
46 offered on this bill.

47
48 **SB 2272 – Relating to Pain Management**

49 **Action Taken:** After much discussion, Dr. Burns moved to support the bill with the exception of the 72-
50 hour provision. Dr. Rose seconded the motion, which passed unanimously.

51
52 **SB 188 – Relating to Advanced Registered Nurse Practitioners**

53 **Action Taken:** After discussion, Dr. Rose moved to oppose SB 188. Ms. Malan seconded the motion,
54 which passed unanimously.

1 Mr. Tellechea suggested that staff email any new bills received to all Board Members for their review
2 and comments, rather than emailing the Chair or Legislative Liaison only.

3
4 **Tab 18 - Draft Healthcare Workforce Act (no bill # assigned)**

5 Due to time constraints, this item was not discussed by the Board.

6
7 **BUDGET LIAISON REPORT- Rina Malan**

8
9 **Tab 20 - Expenditures by Function for Period Ending September 30, 2009**

10 Ms. Malan gave the Board a brief overview of the report.

11
12 **PHARMACISTS FORMULARY COMMITTEE REPORT- Joel Rose, DO**

13 Dr. Rose indicated that the committee had received no requests for changes to the formulary.

14
15 **UNLICENSED ACTIVITY LIAISON REPORT – James St. Louis, DO**

16 This report was tabled due to Dr. St. Louis' absence.

17
18 **BOARD CHAIRMAN'S REPORT – Allan Escher, DO**

19 Dr. Escher provided the members with an overview of the applications he reviewed as Chair and the
20 types of application issues he encountered.

21
22 **RATIFICATION OF LICENSURE**

23
24 **Tab 24 - Ratification of Licensure Approval from 10/16/2009 – 2/3/2010**

25 **Action Taken:** D. Burns moved to approve the list as presented. Dr. Hayden seconded the motion,
26 which passed unanimously.

27
28 **Tab 62 - Ratification of Board Chairman Approvals**

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

31
32 **VOLUNTARY RELINQUISHMENTS**

33
34 **Tab 25 - Requests to Voluntary Relinquish with No Pending Discipline**

35 **Action Taken:** There was a motion and second to approve the list as presented. The motion passed
36 unanimously.

37
38 **PAIN MANAGEMENT CLINIC STANDARD OF CARE JOINT COMMITTEE REPORT – Allan Escher,**
39 **DO**

40
41 Dr. Escher and Mr. Tellechea summarized the actions of the Joint Committee to date. Dr. Escher
42 asked that the Board pay careful attention to the Broward County Grand Jury Report as it was a useful
43 tool during the creation of the proposed draft rules. DR. Escher went through the rule page by page
44 summarizing some of the controversial issues seen and discussed by the Committee. Dr. Escher
45 advised the members that he would like to address and act on the rules at the end of the meeting on
46 Saturday.

47
48 **Tab 21 - November 21, 2009 Joint Committee Meeting Minutes**

49 Informational only.

50
51 **Tab 22 - December 19, 2009 Joint Committee Meeting Minutes**

52 Informational only.

53
54 **Tab 23 - January 23, 2010 Joint Committee Meeting Minutes**

1 Informational only.

2

3 **Tab 52 - Correspondence Inviting Lt. Governor Kottkamp to the Meeting**

4 Informational only.

5

6 **Tab 53 - February 19-20, 2010 Draft Joint Committee Meeting Minutes**

7 Informational only.

8

9 **Tab 54 - 64B15-14.0051 – Standards of Practice for Physicians Practicing in Pain Management**
10 **Clinic Draft Rule**

11 Tabled until Saturday.

12

13 **Tab 55 - 64B15-14.0052 – Requirement for Pain Management Clinic Registration; Inspection or**
14 **Accreditation – Draft Rule**

15 Tabled until Saturday.

16

17 **Tab 56 - 64B15-14.0053 – Approval of Pain Management Clinic Accrediting Organizations – Draft**
18 **Rule**

19 Tabled until Saturday.

20

21 **OLD BUSINESS**

22

23 **NEW BUSINESS**

24

25 **The meeting recessed at 8:05pm.**

1 **SATURDAY, February 27, 2010**

2 **9:00 am**

3
4 **PETITIONS FOR VARIANCE OR WAIVER**

5
6 **Tab 26 - Douglas Baska, DO – Petition for Variance or Waiver of 64B15-13.001, F.A.C.**

7 Dr. Baska was present without counsel. Dr. Baska elaborated on his medical condition as it pertained
8 to his petition for variance or waiver of the live continuing education requirement. He clarified that he
9 only sought a waiver of the requirement for certain hours to be live.

10
11 **Action Taken:** After much discussion, Dr. St. Louis moved to deny the petition. The motion died with
12 no second. After additional discussion, Dr. Rose move to grant the petition for this current biennium
13 contingent upon receipt of a letter from his treating physician confirming the medical condition, and
14 require that he obtain an updated letter from his treating physician for the waiver or variance to apply to
15 any subsequent renewal period. Dr. Burns seconded the motion, which passed with Dr. Escher and
16 Dr. St. Louis opposed.

17
18 **Additional Action Taken:** After additional discussion, the motion was amended and seconded to not
19 require the letter from the treating physician for this biennium as there was one in the record.

20
21 **Tab 27 - Brian R. Kirkland, DO - Petition for Variance or Waiver of 64B15-13.001, F.A.C.**

22 The petition was withdrawn prior to the meeting.

23
24 **PROBATION AND COMPLIANCE REVIEW**

25
26 **Tab 28 - Regan Burke, DO – Petition for Modification or Extension**

27 Dr. Burke was present and represented by Edwin Bayo, Esquire. Mr. Bayo advised the Board that Dr.
28 Burke was in compliance with PRN and had completed his continuing education and community
29 service.

30
31 **Action Taken:** After discussion, Dr. Rose moved to grant a payment plan of \$250 per month until the
32 balance was paid in full and require an appearance every 2 years to review his financial situation. Dr.
33 Hayden seconded the motion, which passed with Dr. Escher opposed.

34
35 **Tab 29 - Mary Jane Eicher, DO – Required Appearance for Reinstatement of License**

36 Dr. Eicher was present without counsel. Dr. Eicher indicated that she was unaware that she would be
37 required to demonstrate the ability to practice with skill and safety at this meeting. It was suggested
38 that she consider taking the UF Cares program as a method of demonstrating competency.

39
40 **Action Taken:** After much discussion, Ms. Malan moved to deny the request for reinstatement due to
41 lack of proof of current competency. Dr. Rose seconded the motion, which passed unanimously.

42
43 **Tab 30 - Antonio J. Ramirez, DO – Required Appearance to Present Required Report**

44 Dr. Ramirez was present and represented by Richard Schwam, Esquire. It was suggested that he not
45 use the “ACOS” credential after his name as it was misleading to the public because he was not board
46 certified by that entity.

47
48 **Action Taken:** After discussion, Dr. Burns moved to accept the appearance and approve the CME
49 report. Ms. Malan seconded the motion, which passed unanimously.

50
51 **NEW DISCIPLINARY CASES**

52
53 **Tab 31 - Joseph Deluca, DO – Informal Hearing – DOH Case #2008-18103**

54 Allegations of Complaint: 459.015(1)(bb)- violate an order of the Board

1
2 Dr. Deluca was not present or represented by counsel. Mr. Schultz represented the department and
3 presented the case to the Board.

4
5 Dr. Rose moved to adopt the agenda materials as evidence, find that the respondent was properly
6 served and requested an informal hearing before the Board. Dr. St. Louis seconded the motion, which
7 passed unanimously. Dr. Burns then moved to adopt the findings of fact as presented in the
8 administrative complaint. Dr. Rose seconded the motion, which passed unanimously. Dr. Burns then
9 moved to adopt the conclusions of law as presented in the administrative complaint. Dr. Rose
10 seconded the motion, which passed unanimously.

11
12 **Action Taken:** After discussion, Dr. Rose moved to impose the following penalty:

- 13 • Reprimand
- 14 • \$5000.00 fine to be paid within 30 days of the Final Order
- 15 • Suspension for 2 years
- 16 • Probation for 4 years to include indirect supervision; 100% review of all charts where controlled
17 substances were prescribed or 10% overall chart review, which ever is greater
- 18 • Restrictions during probation- cannot own, operate or practice in a pain management clinic and
19 cannot prescribe schedule II controlled substances while on probation

20 Dr. Hayden seconded the motion, which passed unanimously.

21
22 **Additional Action Taken:** Dr. Burns moved to assess costs in the case in the amount of \$2905.02.
23 Dr. Rose seconded the motion, which passed unanimously. Dr. Rose moved to deny the respondent's
24 request for 6 equal payments of the costs. Ms. Malan seconded the motion, which passed
25 unanimously.

26
27 **Tab 32 - Charles J. Franson, Jr., DO – Informal Hearing – DOH Case #2008-24108**

28 Allegations of Complaint: 459.015(1)(bb)- violate an order of the Board

29
30 Dr. Franson was present without counsel. Ms. Malan was recused from participating in this case due to
31 her participation on the probable cause panel. Mr. Schultz represented the department and presented
32 the case to the Board.

33
34 Dr. Burns moved to adopt the agenda materials as evidence, find that the respondent was properly
35 served and requested an informal hearing before the Board. Dr. Rose seconded the motion, which
36 passed unanimously. Dr. Burns then moved to adopt the findings of fact as presented in the
37 administrative complaint. Dr. Rose seconded the motion, which passed unanimously.

38
39 The Board then heard testimony from the respondent.

40
41 Dr. Burns then moved to adopt the conclusions of law as presented in the administrative complaint. Dr.
42 Rose seconded the motion, which passed unanimously.

43
44 **Action Taken:** After discussion, Dr. Burns moved to impose the following penalty:

- 45 • Reprimand
- 46 • \$2500.00 fine to be paid within 6 months of the Final Order
- 47 • Compliance with the terms of the previous final order within 6 months of the Final Order

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

49
50 Dr. Burns clarified that he deviated from the fine amount recommended by the department due to the
51 mitigating factor that the respondent paid his fine promptly in the previous case.

52
53 **Additional Action Taken:** Dr. Burns moved to assess costs in the case in the amount of \$713.50. Dr.
54 Rose seconded the motion, which passed unanimously.

1
2 **Tab 33 - Carolyn Ann McGrail, DO – Informal Hearing – DOH Case #2009-09010**

3 Allegations of Complaint: 459.015(1)(c)- convicted of a crime related to the practice

4
5 The respondent was not present or represented by counsel. Ms. Malan was recused from participating
6 in this case due to her participation on the probable cause panel. Mr. Schultz represented the
7 department and presented the case to the Board.

8
9 Dr. Rose moved to adopt the agenda materials as evidence, find that the respondent was properly
10 served and requested an informal hearing before the Board. Dr. Burns seconded the motion, which
11 passed unanimously. Dr. Rose then moved to adopt the findings of fact as presented in the
12 administrative complaint. Dr. Burns seconded the motion, which passed unanimously. Dr. Rose then
13 moved to adopt the conclusions of law as presented in the administrative complaint. Dr. Burns
14 seconded the motion, which passed unanimously.

15
16 **Action Taken:** Dr. Rose moved to impose the following penalty:

- 17 • Permanent revocation

18 Dr. Hayden seconded the motion, which passed unanimously.

19
20 **Additional Action Taken:** Dr. Burns moved to assess costs in the case in the amount of \$1779.42.
21 Dr. Rose seconded the motion, which passed unanimously.

22
23 **Break for 10 minutes**

24
25 **Tab 34 - Dina Marie Doolin, DO – Settlement Agreement – DOH Case #2009-01309**

26 Previously granted a continuance.

27
28 **Tab 35 - David H. Flaherty, DO – Settlement Agreement – DOH Case #2009-01398**

29 Allegations of Complaint: 459.015(1)(g)- fail to comply with a statutory or legal obligation;
30 459.015(1)(pp)- violate a law or rule of the Board

31
32 Dr. Flaherty was present without counsel. Dr. St. Louis was recused from participation in this case due
33 to his participation on the probable cause panel. Mr. Schultz represented the Department and
34 presented the case to the Board.

35
36 **Action Taken:** After discussion, Dr. Burns moved to adopt the settlement agreement as presented:

- 37 • Letter of Concern
- 38 • \$3450.00 fine
- 39 • \$735.28 in costs
- 40 • Completion of 23 hours of continuing education through the FOMA to include 20 hours of AOA
41 Category IA, 1 hour of laws and rules, 1 hour of risk management and 1 hour of uses and
42 abuses of controlled substances

43 Dr. Rose seconded the motion, which passed unanimously.

44
45 **Tab 36 - Jonathan P. Halcovage, DO – Settlement Agreement – DOH Case #2009-01368**

46 Allegations of Complaint: 459.015(1)(g)- fail to comply with a statutory or legal obligation;
47 459.015(1)(pp)- violate a law or rule of the Board

48
49 Dr. Halcovage was present without counsel. Dr. St. Louis was recused from participation in this case
50 due to his participation on the probable cause panel. Mr. Schultz represented the Department and
51 presented the case to the Board.

52
53 **Action Taken:** After discussion, Dr. Burns moved to adopt the settlement agreement as presented:

- 54 • Letter of Concern

1 • \$704.93 in costs
2 Dr. Rose seconded the motion, which passed with Ms. Malan opposed.
3

4 **Tab 37 - Edward Thomas Humbert, DO – Settlement Agreement – DOH Case #2009-08069**

5 Allegations of Complaint: 456.072(1)(bb)- wrong site surgery; 459.015(1)(pp)- violate a law or rule of
6 the Board by violating 64B15-14.006(2)(b)- fail to comply with the surgical pause rule
7

8 Dr. Humbert was present and represented by Kevin Crews, Esquire. Ms. Malan was recused from
9 participating in this case due to her participation on the probable cause panel. Mr. Schultz represented
10 the department and presented the case to the Board.
11

12 **Action Taken:** After discussion, Dr. Burns moved to adopt the settlement agreement as presented:

- 13 • Letter of Concern
- 14 • \$5000.00 fine
- 15 • \$1032.26 in costs
- 16 • 1 hour lecture on wrong site surgery

17 Dr. Rose seconded the motion, which passed unanimously.
18

19 **Tab 38 - James Meli, DO – Settlement Agreement – DOH Case #2009-02023**

20 Allegations of Complaint: 456.072(1)(q)- violate a lawful order of the Board
21

22 The respondent was not present or represented by counsel. Dr. St. Louis was recused from
23 participation in this case due to his participation on the probable cause panel. Mr. Schultz represented
24 the Department and presented the case to the Board.
25

26 **Action Taken:** Dr. Rose moved to adopt the settlement agreement as presented:

- 27 • Letter of Concern
- 28 • \$331.61 in costs
- 29 • Compliance with this Final Order is considered compliance with the citation in the underlying
30 case

31 Dr. Hayden seconded the motion, which passed unanimously.
32

33 **Tab 39 - James Otis, DO – Settlement Agreement – DOH Case #2009-00278**

34 Allegations of Complaint: 456.015(1)(bb)- wrong site surgery;
35

36 Dr. Otis was present and represented by Kevin Crews, Esquire. Dr. St. Louis was recused from
37 participation in this case due to his participation on the probable cause panel. Mr. Schultz represented
38 the Department and presented the case to the Board.
39

40 **Action Taken:** Dr. Burns moved to adopt the settlement agreement as presented:

- 41 • Letter of Concern
- 42 • \$2500.00 Fine
- 43 • \$1163.46 in costs
- 44 • Lecture on wrong site surgery within 6 months of the Final Order

45 Ms. Malan seconded the motion, which passed unanimously.
46

47 **Tab 40 - Srinivas Sanka, DO – Settlement Agreement – DOH Case#2009-04086**

48 Allegations of Complaint: case dismissed
49

50 Dr. Sanka was present and represented by Edwin Bayo, Esquire. Dr. St. Louis was recused from
51 participation in this case due to his participation on the probable cause panel. Mr. Schultz represented
52 the Department and presented the case to the Board.
53

1 Mr. Bayo explained to the Board that it was not his client's intent to dispute the original non-disciplinary
2 citation that was offered. He advised the Board that Dr. Sanka was willing to pay the amount of the
3 original non-disciplinary citation if the current case were to be dismissed.
4

5 Mr. Schultz explained the process for handling citations and noted that there may have been an
6 oversight in this particular case. He indicated that the department would be opposed to dismissal of
7 this case.
8

9 Mr. Bayo withdrew acceptance of the Settlement Agreement for the record.
10

11 **Action Taken:** After much discussion, Ms. Malan moved to dismiss this case contingent upon receipt of
12 payment in the amount of \$4297.35 for the costs associated with the original non-disciplinary citation
13 and agreement that the respondent would not pursue attorney's fees in this matter. Dr. Rose seconded
14 the motion, which passed unanimously.
15

16 **Tab 41 - Neal Krouse, DO – Motion for Determination of Waiver Case – DOH Case #2009-01948**

17 Allegations of Complaint: 456.072(1)(q)- violate a lawful order of the Board
18

19 Dr. Krouse was present and represented by Ariel Sofro, Esquire. Dr. St. Louis was recused from
20 participation in this case due to his participation on the probable cause panel. Mr. Schultz represented
21 the Department and presented the case to the Board.
22

23 Dr. Rose moved to accept the materials and investigative report as presented into the record and to
24 find that the respondent was properly served and waived his rights to a hearing. Dr. Burns seconded
25 the motion, which passed unanimously. Dr. Burns then moved to adopt the findings of fact and
26 conclusions of law as presented in the administrative complaint. Dr. Rose seconded the motion, which
27 passed unanimously.
28

29 Ms. Sofro offered comments to the Board on her client's behalf.
30

31 Dr. Burns moved to adopt the conclusions of law as presented in the administrative complaint. Dr.
32 Rose seconded the motion, which passed unanimously.
33

34 **Action Taken:** After discussion, Dr. Burns moved to impose the following penalty:

- 35 • Reprimand
- 36 • \$5000.00 fine
- 37 • Compliance with the terms of the previous Final Order within 6 months of this Final Order

38 Dr. Rose seconded the motion, which passed unanimously.
39

40 **Additional Action Taken:** Dr. Burns moved to assess costs in the case in the amount of \$435.82. Dr.
41 Rose seconded the motion, which passed unanimously.
42

43 **MISC. DISCIPLINARY MATTERS**
44

45 **Tab 42 - Larry W. Shapiro, DO – Motion to Vacate Final Order – DOH Case #2008-00429**

46 Dr. Shapiro was not present or represented by counsel. Mr. Schultz represented the Department and
47 presented the case to the Board and recommended that the Board vacate the Final Order.
48

49 **Action Taken:** After discussion, Dr. Burns moved to dismiss the case and vacate the Final Order. Ms.
50 Malan seconded the motion, which passed unanimously.
51

52 **No Tab – PSU Report**

53 Mr. Schultz provided the Board with a status overview of the cases currently in the department's
54 possession.

1
2 **LICENSURE APPEARANCES**

3
4 **Tab 43 - Steven Todd Patterson, DO**

5 Dr. Patterson was present without counsel. Dr. Rivenbark from PRN was present and provided the
6 Board with an overview of his status.

7
8 **Action Taken:** After much discussion, Dr. Burns moved to approve the license with the following
9 conditions:

- 10
- 11 • His practice is restricted to the pain fellowship program
 - 12 • Must comply with PRN recommendations
 - 13 • Must reappear before the Board upon completion of the pain fellowship with PRN to request
14 the practice restriction be lifted

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

16 **Tab 44 - Lori Beth Schmerling, DO**

17 Dr. Schmerling was present and represented by George Indest, Esquire. Dr. Schmerling was required
18 to appear before the Board to discuss her application for licensure, probation during training and
19 resignation from a training program. D. Schmerling advised the Board that she completed the course
20 offered by Nova Southeastern University regarding clear communications.

21
22 **Action Taken:** After much discussion, Dr. Burns moved to approve the applicant for licensure. Ms.
23 Malan seconded the motion, which passed unanimously.

24
25 **Tab 45 - Ronald Holley, DO**

26 Dr. Holley was present without counsel. Dr. Holley was required to appear before the Board to discuss
27 his application and criminal charges.

28
29 **Action Taken:** After much discussion, Dr. Rose moved to approve the applicant for licensure. Dr.
30 Burns seconded the motion, which passed unanimously.

31
32 **Tab 46 - Robert Chatfield, DO**

33 Dr. Chatfield was present without counsel. Dr. Chatfield was required to appear before the Board to
34 discuss his application, criminal charges, participation in an impaired practitioner program and licensure
35 action in another state. During the interview Dr. Chatfield reported that his Ohio license was pending
36 reinstatement. It was suggested that Dr. Chatfield obtain an evaluation by PRN prior to the next
37 meeting.

38
39 **Action Taken:** After much discussion, Dr. Burns moved to table the application and require an
40 appearance at the next meeting of the Board. Dr. St. Louis seconded the motion, which passed
41 unanimously.

42
43 **Tab 47 - Adriene R. Miller, DO**

44 Dr. Miller was present without counsel. Dr. Miller was required to appear before the Board to discuss
45 her application, extended training and less than favorable training evaluation.

46
47 **Action Taken:** After much discussion, Dr. Rose moved to approve the applicant for licensure. Dr.
48 Burns seconded the motion, which passed unanimously.

49
50 **Tab 48 - Bryan S. Robinson, DO**

51 Dr. Robinson was present without counsel. Dr. Robinson was required to appear before the Board to
52 discuss his application, gap in training, less than favorable training evaluation and dismissal from a
53 training program.

1 **Action Taken:** After much discussion, Dr. St. Louis moved to approve the applicant for licensure. Dr.
2 Rose seconded the motion, which passed unanimously.

3
4 **Tab 49 - Catherine M. Sears, DO**

5 Dr. Sears was not present or represented by counsel.

6
7 **Action Taken:** Dr. Burns moved to table the application and require an appearance at the May
8 meeting of the Board. Dr. Hayden seconded the motion, which passed unanimously.

9
10 **Tab 63 - John Molyneaux, DO**

11 Dr. Molyneaux was present and not represented by counsel. Dr. Molyneaux was required to appear
12 before the Board to discuss his application, extended time in medical school and leaving a training
13 program.

14
15 **Action Taken:** After discussion, Dr. Burns moved to approve the applicant for licensure. Dr. Hayden
16 seconded the motion, which passed unanimously.

17
18 **Tab 64 - William Trent, DO**

19 Dr. Trent was present and not represented by counsel. Dr. Trent was required to appear before the
20 Board to discuss his application, malpractice and failure to disclose a license in another state.

21
22 **Action Taken:** After discussion, Dr. Rose moved to approve the applicant for licensure. Dr. Hayden
23 seconded the motion, which passed unanimously.

24
25 **TRAINING LICENSE APPEARANCES**

26
27 **Tab 50 - Randall Scott, DO**

28 Dr. Scott was present and not represented by counsel. Dr. Scott was required to appear before the
29 Board to discuss his training registration application and probation during a prior training program. Dr.
30 Scott questioned whether he would be required to reappear for this same issue would he ever apply for
31 a full license in Florida. It was the consensus that he would not need to reappear unless there were
32 other issues associated with the full licensure application.

33
34 **Action Taken:** After discussion, Dr. St. Louis moved to approve the applicant for licensure. Dr. Rose
35 seconded the motion, which passed unanimously.

36
37 **REQUEST TO WITHDRAW APPLICATION**

38
39 **Tab 51 - Frank Marzocca, DO**

40 Dr. Marzocca was not present. Dr. Marzocca submitted a request to withdraw his application for
41 licensure.

42
43 **Action Taken:** Dr. Rose moved to allow the applicant to withdraw his application for licensure. Dr.
44 Burns seconded the motion, which passed unanimously.

45
46 **No Tab – Discussion Regarding Training Evaluation Forms**

47 Mr. Tellechea recommended updating the training evaluation forms included in the application to mirror
48 the statutory language regarding less than favorable evaluations.

49
50 **Action Taken:** After discussion, Dr. Burns moved to have the forms amended and bring them back to
51 the next meeting of the Board. Dr. Hayden seconded the motion, which passed unanimously,

52
53 **Break for Lunch**

1
2 **CONTINUATION OF RULES DISCUSSION**

3
4 **Tab 54 - 64B15-14.0051 – Standards of Practice for Physicians Practicing in Pain Management**
5 **Clinic Draft Rule**

6 There was discussion regarding the number of pain clinics that had been registered to date and the
7 number of those owned by an osteopathic physician or having an osteopathic physician as the
8 designated physician. It was estimated that the number of clinics owned by an osteopathic physician or
9 listing an osteopathic physician as the designated physician was approximately 100.

10
11 Mr. Tellechea noted that he was unsure how the Board of Medicine would handle these rules but
12 suggested holding joint hearings with the Board of Medicine as there would likely be hearings
13 requested on both Boards' rules. He indicated that holding joint hearings may keep the rule adoption
14 process from being further slowed.

15
16 Mr. Tellechea advised the Board that the department strongly encouraged both Boards to get the rule
17 making process started as quickly as possible due to the length of time it would likely take to get the
18 rules adopted, as hearing requests and challenges were expected.

19
20 Dr. Escher added that the Board should take the opportunity to move forward with these rules as it
21 would shed a positive light on the Board amidst all of the negative press currently surrounding the pain
22 clinic issue.

23
24 The Board went through the rule page by page noting several changes, which are referenced below.

25
26 Page 1

27
28 There was discussion regarding the preamble and its meaning.

29
30 **Action Taken:** After much discussion, Dr. Rose moved to amend the language on page 1, starting on
31 line 5 to read:

32
33 FOR PURPOSES OF THIS RULE, IT IS PRESUMED THAT THE PREVAILING STANDARD OF CARE
34 FOR THE TREATMENT OF CHRONIC NONMALIGNANT PAIN IS A MULTI-DISCIPLINARY
35 APPROACH AND IS NOT PRESCRIPTION-BASED ONLY.

36
37 Dr. Burns seconded the motion, which passed unanimously.

38
39 Page 2

40
41 No changes were made to page 2.

42
43 Page 3

44
45 There was much discussion regarding the language needing to be clear that the drug test results must
46 be reviewed by the physician prior to prescribing and controlled substances.

47
48 **Action Taken:** After discussion, Dr. Rose moved to add "and the results reviewed" to line 6 of page 3.
49 Dr. Burns seconded the motion, which passed unanimously.

50
51 Page 4

52
53 **Action Taken:** After discussion, Dr. Rose moved to add "and the results reviewed" to line 11 of page
54 4. Dr. Hayden seconded the motion, which passed unanimously.

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Page 5

No changes were made to page 5.

Page 6

Action Taken: Dr. Hayden moved to add a comma after the word physician on line 17 of page 6. r. Rose seconded the motion, which passed unanimously.

Page 7

No changes were made to page 7.

Page 8

No changes were made to page 8.

Page 9

No changes were made to page 9.

Page 10

Action Taken: After discussion, Dr. Rose moved to add the number of new and repeat patients seen that were prescribed controlled substances as a reporting requirement. Dr. Burns seconded the motion, which passed unanimously.

Page 11

There was much discussion regarding the various levels of training requirements and the rationale behind the joint committee's proposed draft language on this portion of the rule.

There were no changes to page 11.

Page 12

Action Taken: After much discussion, Dr. Escher moved to strike "evaluation" and add "test" or "examination" to line 4 of page 12. Dr. Burns seconded the motion, which passed unanimously.

Pages 13-22

There was much discussion regarding how often the 120-hour course should be required. There was concern that requiring the course as a part of every biennial renewal period would create an undue burden to legitimate pain management physicians falling in the category of having to take it. Dr. Escher explained that the joint committee felt it was an issue of patient safety, thus requiring the course every renewal period.

Ms. Howerton and Mr. Tellechea also clarified that the 120-hour course was not to be construed as a mini-fellowship. They read language offered by the Council of Florida Medical School Deans to clarify to clarify this point.

Action Taken: After much discussion, Dr. Rose moved to amend the language to require the 120-hour course be taken every 6 years on page 13 and add the following language to page 22 of the rule:

1
2 At the conclusion of the course, each physician must pass a course test or examination. Completion of
3 the course and passage of the test or examination shall evidence compliance with the educational
4 component of this paragraph 6. Course completion shall not be considered or held out to be a
5 certification or attestation of a physician's specific medical skills or capabilities.
6

7 Dr. St. Louis seconded the motion, which passed unanimously.
8

9 Page 23
10

11 The Board discussed the implications of having a board certified pain management physician present in
12 all clinics prospectively. There was a concern about access to care as there may not be enough
13 physicians board certified in pain management to maintain operation of an appropriate amount of clinics
14 within the state.
15

16 There was discussion about adding board eligible in pain management physicians to this section of the
17 rule as an alternative. It was noted that the term "board eligible" may no longer be used by some of the
18 allopathic board certification originations.
19

20 **Action Taken:** After much discussion, Dr. Rose moved to add the following language to (o) on page
21 23:
22

23 "or physicians that successfully completed the training requirements and can provide the
24 documentation allowing them to take the certification exam"
25

26 Dr. St. Louis seconded the motion, which passed unanimously.
27

28 **Action Taken:** After additional discussion, Dr. Burns moved, in alternative to the previous motion, to
29 add "or board eligible" to section (o) and define board eligible in the definitions section of the rule. Dr.
30 Hayden seconded the motion, which passed unanimously.
31

32 **Action Taken:** Dr. Rose moved to approve 64B15-14.0051 as amended. Dr. Hayden seconded the
33 motion, which passed unanimously.
34

35 **Tab 55 - 64B15-14.0052 – Requirement for Pain Management Clinic Registration; Inspection or**
36 **Accreditation – Draft Rule**
37

38 **Action Taken:** After discussion, Ms. Malan moved to add "25" to line 9 of page 24. Dr. St. Louis
39 seconded the motion, which passed unanimously.
40

41 **Action Taken:** After discussion, Dr. Hayden moved to approve 64B15-14.0052 as amended. Dr. St.
42 Louis seconded the motion, which passed unanimously.
43

44 **Tab 56 - 64B15-14.0053 – Approval of Pain Management Clinic Accrediting Organizations – Draft**
45 **Rule**
46

47 No action.
48

49 Dr. Escher asked that staff contact the department's communications office to notify them that the
50 Board had acted on the rules.
51

52 Ms. Howerton thanked Dr. Escher for his leadership and initiative in ensuring that the rules were acted
53 on.
54

1 **Break**

2

3 **ELECTION OF 2010 OFFICERS**

4

5 Dr. Escher called for nominations for the office of Chair.

6

7 Dr. Escher and Dr. Rose were both nominated for Chair. There were two votes for the Chair position,
8 both resulting in a tie.

9

10 After discussion, Dr. Hayden was nominated for Vice Chair and was elected by unanimous vote.

11

12 After further discussion, Dr. Rose was elected Chair by a vote of 4/2.

13

14 **NEW BUSINESS**

15

16 Mr. Tellechea provided the members with a hand out that explained honorariums and for what
17 expenses a Board member could be reimbursed for speaking engagements and presentations.

18

19 **There being no further business the meeting adjourned at 5:30pm.**