State Board of Osteopathic Medicine February 10, 2021

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BOARD MEMBERS:

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7 Randy G. Litman, D.O., Chairman
8 K. Kalonji Johnson, Commissioner, Bureau of
9 Professional and Occupational Affairs
10 William B. Swallow, D.O., Vice Chairman

11 Christopher S. Poggi, D.O., Secretary 12 Alison Beam, Acting Secretary of Health 13 John B. Bulger, D.O.

John B. Bulger, D.O. Thomas S. Dardarian, D.O.

Bette A. Grey, BA, RRT, CPFT
Mary Pat Howard, M.S., RN-BC, Executive Advisor
of Quality Assurance

18 Frank M. Tursi, D.O.

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BUREAU PERSONNEL:

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23 Shana M. Walter, Esquire, Board Counsel 24 Dana M. Wucinski, Esquire, Board Counsel 25 Jason T. Anderson, Esquire, Board Prosec

Jason T. Anderson, Esquire, Board Prosecution Liaison

Keith E. Bashore, Esquire, Board Prosecutor

Adam L. Morris, Esquire, Board Prosecutor

Aaron Hollinger, Board Administrator

Nichole Wray, Acting Board Administrator Carolyn DeLaurentis, Deputy Chief Counsel, Prosecution

Division

Theodore Stauffer, Executive Secretary, Bureau of Professional and Occupational Affairs

ALSO PRESENT:

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Andy Sandusky, Executive Vice President, Public Policy and Association Affairs, Pennsylvania Osteopathic Medical Association

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3 * * * 1 2 State Board of Osteopathic Medicine 3 February 10, 2021 * * * 4 5 [Pursuant to Section 708(a)(5) of the Sunshine Act, at 6 9:30 a.m. the Board entered into executive session with Dana M. Wucinski, Esquire, Board Counsel, and Shana M. Walter, Esquire, Board Counsel, for the purpose of conducting quasi-judicial deliberations and 10 to receive legal advice from Board counsel. The Board 11 returned to open session at 10:30 a.m.] * * * 12 13 The regularly scheduled meeting of the State 14 Board of Osteopathic Medicine was held on Wednesday, 15 February 10, 2021. Randy G. Litman, D.O., Chairman, 16 called the meeting to order at 10:31 a.m. * * * 17 18 Approval of minutes of the December 9, 2020 meeting 19 CHAIRMAN LITMAN: 20 May I have a call for approval of the minutes? 21 22 DR.TURSI: 2.3 So moved. 2.4 CHAIRMAN LITMAN: 25 May I have a second?

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MS. GREY:
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                  Second.
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   CHAIRMAN LITMAN:
                  All in favor?
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   [The motion carried unanimously.]
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   [Shana M. Walter, Esquire, Board Counsel, reminded
   everyone the meeting was being recorded, and those
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   participating in the public session were consenting to
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   be recorded.]
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   Appointment - Carolyn A. DeLaurentis, Esquire, Deputy
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     Chief Counsel, Prosecution Division Presentation
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   [Carolyn A. DeLaurentis, Esquire, Deputy Chief
   Counsel, Prosecution Division, provided highlights of
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   the prosecution division's work during the past year.
   She commended staff for all of their hard work to make
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   telework successful. She noted all decisions were
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   made thoughtfully and with the safety of all in mind.
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        Ms. DeLaurentis stated the Board prosecutors made
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   every effort to monitor the restrictions, waivers,
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   policies, and new procedures specific to the practice
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   in each profession regarding challenges imposed on
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   licensees by the COVID-19 pandemic.
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Ms. DeLaurentis noted the Pennsylvania Licensing System (PALS) to be a lifeline. She stated the Bureau of Enforcement and Investigation (BEI) worked closely with prosecution to continue investigations and figure out the best methods during statewide shutdowns and stay-at-home orders. She also noted the Professional Compliance Office continued opening cases and processing files, and legal assistants had been working a hybrid schedule to ensure mailings and filings were completed.

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Ms. DeLaurentis commented that the Board, Board staff, and counsel all have adapted to virtual Board meetings and prosecution will continue to work with everyone to ensure efficient and effective presentation and resolution of cases. She mentioned 2020 was a year filled with challenges, but the prosecution division led by the incredible senior staff rose to the challenge and will continue to do so in 2021.

Ms. DeLaurentis informed the Board that 401 files were opened in 2020 and 709 in 2019 with 520 files closed in 2020 for the Board of Osteopathic Medicine. She noted 345 open cases as of January 1, 2021. She thanked Timothy Smith for his assistance providing information for 2020.

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Ms. DeLaurentis addressed enforcement actions
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   with 26 total cases that resulted in discipline in
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   2020 for the Board of Osteopathic Medicine.
   reported 60 warning letters, 2 fines, 12 suspensions,
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   1 automatic suspension, 6 revocations or voluntary
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   surrenders, and 5 probation cases in 2020.
        Ms. DeLaurentis discussed 2020 overall
   prosecution as a whole. She noted 44 immediate
   temporary suspensions in 2020. She mentioned 17 of
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   the 1,223 opened COVID-19 cases are for the Board of
   Osteopathic Medicine. She reported the total number
11
   of open cases as of January 1, 2021, was 12,250.
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                                                       The
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   total number of cases opened overall in 2020 was
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   13,394, which is down from 2019 at 16,295. She noted
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   13,274 files were closed in 2020.
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        She noted most general COVID complaints involved
   violations of the governor's orders, secretary of
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   health orders, CDC guidelines, Board guidelines, and
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   masking requirements.]
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                              * * *
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   Report of Prosecutorial Division
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   [Keith E. Bashore, Esquire, Board Prosecutor,
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   presented the Consent Agreement for Case No. 20-53-
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1 [Jason T. Anderson, Esquire, Board Prosecution
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- 2 Liaison, presented the VRP Consent Agreements for Case
- 3 No. 20-53-007378 and Case No. 20-53-013215.1
- 4 ***
- 5 Report of Board Counsel
- 6 | [Dana M. Wucinski, Esquire, Board Counsel, noted the
- 7 | Board was in Executive Session at 9:30 a.m. and
- 8 discussed the Consent Agreements presented, along with
- 9 agenda items 7 and 8 and 11 through 15.]
- 10
- 11 Report of Regulatory Counsel
- 12 [Dana M. Wucinski, Esquire, Board Counsel, addressed
- 13 House Bill 171 of 2021 regarding prohibiting non-
- 14 compete clauses for health care practitioners. She
- 15 stated the bill would void employment agreements that
- 16 | would restrict or prohibit a health care practitioner
- 17 | from treating a prior patient after termination of the
- 18 employment.
- 19 Ms. Wucinski referred to section 4 concerning an
- 20 exception, where it would not render void or
- 21 unenforceable the remaining provisions of a contract
- 22 or agreement, including any buyout clauses. She noted
- 23 it was referred to Labor and Industry on January 28,
- 24 2019.
- 25 Ms. Wucinski stated the bill is meant to

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encourage economic development and lower the
unemployment rate by creating an environment where
businesses and individuals have the opportunity to
thrive.

Ms. Walter addressed House Bill 192 of 2021,
which allows for one aspect of participation in the
Interstate Medical Licensure Compact specifically to
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8 the obtaining by the Pennsylvania State Police an

9 examination of national and criminal history record

10 | checks.]

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12 [Randy G. Litman, D.O., Chairman, confirmed those in attendance.]

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[Dr. Poggi referred back to the 13,000 complaints filed and expressed concern with the frivolous complaints costing licensees more money, noting that was also a concern of the Pennsylvania Osteopathic Medical Association (POMA). He questioned whether there was a way to have frivolous claims knocked down.

Ms. Wucinski explained that the Professional Compliance Office receives the complaints and opens the files but believed they do shut a number of files before forwarding it.

Commissioner Johnson noted there was no formula

in place to determine what the exact cost is and what the cost-benefit analysis of that would look like.

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Mr. Anderson stated the 13,000 complaints is an overall office number as opposed to just assigned to one particular Board. He commented that complaints are received from many sources and various methods of investigation are utilized based on the facts of the allegations and complaint. He stated everything is done efficiently as possible with due diligence.

Dr. Swallow noted that POMA's concern was a general issue regarding the increase in licensure fees and suggested providing them with a more distinct explanation of licensees with respect to fiscal year management.

Andy Sandusky, Executive Vice President,

Pennsylvania Osteopathic Medical Association,

explained that a question was asked from a member of

POMA's Executive Committee, where he spent several

thousand dollars to clear his name of what he

described as a meritless claim.

Mr. Sandusky stated no one from POMA was questioning the fact that the Board had to do its job and due diligence, noting that Mr. Anderson did mention a mechanism by which some cases are filtered and closed before moving any further and explaining

1 POMA's position under that particular situation.]

- 3 Roll Call
- 4 [Chairman Litman requested Mr. Hollinger provide an
- 5 official roll call.]
- 6 ***
- 7 Report of Board Chair
- 8 | [Randy G. Litman, D.O., Chairman, referred to a letter
- 9 received in January from the National Board of
- 10 Osteopathic Medical Examiners reviewing their
- 11 intention to resume the Level 2-Performance Evaluation
- 12 (PE), which is an alternative means to meeting the
- 13 practical exam component needed to satisfy an
- 14 application for an unrestricted license in
- 15 | Pennsylvania.
- 16 Chairman Litman mentioned all of the clinical
- 17 skills-related examinations were ceased because of a
- 18 danger to the public due to the pandemic in March
- 19 2020. He noted the United States Medical Licensing
- 20 Examination (USMLE) had also suspended the use of
- 21 their Step 2 Clinical Skills (CS) exam, which is an
- 22 equivalent exam to Level 2-PE.
- 23 Chairman Litman noted the situation raises the
- 24 question of the use of the Level 2-PE with the
- 25 | longstanding requirements to have a practical exam as

part of Pennsylvania's licensure requirement.

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Chairman Litman mentioned the Commonwealth of Pennsylvania-issued state exam available four times a year as an alternative. He noted the Federation of State Medical Boards will be discussing the benefits and downsides of continued use of a clinical skills or simulation examination at their annual meeting March 4, 2021.

Chairman Litman informed the Board of a formal meeting he had with John Gimpel, President of the National Board of Osteopathic Medical Examiners (NBOME), wanting to speak to the Board to explain the avenues NBOME wished to approach to restore the Level 2-PE exam, noting a proposed date of April 2021. He stated NBOME would like to clarify the efficacy of that exam as compared to the current practice.

Dr. Bulger questioned whether the Board had the ability to change rules around the statutes due to the public health emergency.

Ms. Wucinski reported a number of waivers requested by the department and granted by the Governor waiving certain regulatory language to meet the needs of the emergency declaration. She noted no issues yet with the Step 2 CS being canceled, because the law requires an applicant for licensure complete

Step 2.

Dr. Bulger explained that the osteopathic regulations require a practical exam and addressed issues, including the fact that Step 2-PE had not been given in almost a year, and it was still unclear when it may be given. He mentioned the potential for a whole group of graduates who had not completed Step 2-PE, which meant they would fall back to completing the practical exam given by the state, which at best was unreliable.

Dr. Bulger stated candidates trying to obtain licensure in Pennsylvania would have to wait extended periods of time as the test was given quarterly and sometimes not because there were not enough people to take the exam. He reported the Board promulgated regulations to change that but they had been mired in the regulatory process for 3 years.

Dr. Bulger questioned whether the Board could make an emergency change to the regulations based on what the Board had approved regarding the practical examination to fix the issue in the short term. He suggested approving other pathways to satisfy the requirement, which included osteopathic courses and a list of options beyond Step 2 PE, beyond the state run practical exam or waive the whole requirement.

Dr. Bulger stated, allowing a wide berth of how to satisfy that requirement, which the Board already approved, would be beneficial to candidates in the pipeline right now that are coming from other states who took Level 2 before there was PE.

Dr. Swallow also stated there were candidates for a license who would be impacted by not waiving this for a period of time. He suggested an amendment once the motion was made that a timeline be included in the motion, whether it be 6 or 12 months or pending approval of the proposed legislation to modify regulations.

Dr. Tursi noted Dr. Bulger's point was well made, noting that waiting until June when all of new residents come out would be a mess as far as the requirements. He mentioned that the American Osteopathic Association (AOA) Board of Trustees was considering doing away with the COMLEX Level 3 portion as it is based on student recommendation and would possibly be changing anyway. He wanted to make a motion to hold in advance the requirement for the physical/practical requirement for state licensure for 1 year.

Ms. Wucinski referred to § 25.241(3) regarding receiving a passing score on the practical examination

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and clarified the Board's decision is to have a waiver

2 for the duration of the declared state of emergency

3 plus 120 days.]

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5 DR. TURSI:

I make a motion to hold in advance the

requirement for the practical/clinical

examination for licensure for the

duration of the public health emergency

10 plus 120 days.

11 DR.BULGER:

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12 I second that motion.

13 [The Board discussed the motion.]

14 CHAIRMAN LITMAN:

All in favor? Any nays?

16 [The motion carried unanimously.]

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18 Report of Vice Chair - No Report

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20 Report of Commissioner - No Report

21 [K. Kalonji Johnson, Commissioner, Bureau of

22 | Professional and Occupational Affairs, welcomed Board

23 counsel, Shana Walter and Dana Wucinski, who would be

24 Board counsel of the health licensing boards to

25 provide one consistent framework to ensure policies

1 and regulatory structures were working in synergy with 2 one another.

Commissioner Johnson welcomed Nichole Wray, who will be acting as the new Board Administrator. He announced this was Mr. Hollinger's last meeting as he will be joining the Commissioner to continue improving the Pennsylvania Licensing System (PALS) and all of the initiatives of creating a better user experience.

Commissioner Johnson welcomed Dr. Dardarian, noting the Board to be very active and committed to serving the commonwealth and improving the well-being of the regulated community.]

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14 Report of Department of Health

15 | [Mary Pat Howard, M.S., RN-BC, Executive Assistant of

16 Quality Assurance, announced the new Physician General

17 | Wendy Braund. She encouraged everyone to visit the

18 | Department of Health's COVID and vaccine dashboards

19 | concerning activity in the state.

Ms. Howard provided an update regarding COVID-19. She reported a total of 11,309 new COVID cases for the past 3-day weekend and 2,881 hospitalizations with 565 cases in intensive care. She reported the positivity rate is 8.6% from January 20 to February 4 and down

25 from 9.3% the week before. She noted quality

1 assurance had provided vaccines for surveyors and 2 testing every Tuesday.

Dr. Poggi questioned the philosophy of testing people every week if individuals have no symptoms, noting the cost of around \$168 or \$178 to be a massive amount of money wasted on a test that is not very accurate.

Dr. Swallow commented that testing should not be the focus right now. He stated the focus in the Commonwealth should be on procuring the vaccine and getting it to the people of Pennsylvania in order to get back to normal. That should be the focus right now, not the testing.

Ms. Howard mentioned the vaccine dashboard on the website reflected the vaccination progress.]

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17 MOTIONS

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18 MS. WALTER:

Number 3 on the agenda is Case No. 2053-006858. I believe the Board would
entertain a motion to approve the
Consent Agreement at Item No. 3.

23 DR. TURSI:

24 So moved.

25 DR. POGGI:

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                  Second.
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   CHAIRMAN LITMAN:
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                  All in favor?
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   [The motion carried unanimously. The Respondent's
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   name is M. Lisa Attebery, D.O.]
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   MS. WALTER:
                  Number 4 on the agenda will be presented
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                  at another meeting.
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   MS. WALTER:
                  Number 5 is VRP Case No. 20-53-007378.
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                  Number 6 is VRP Case No. 20-53-013215.
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                        I believe the Board would entertain
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15
                  a motion to accept the VRP Agreements at
                  Nos. 5 and 6.
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   CHAIRMAN LITMAN:
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                  Motion to accept?
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   DR. TURSI:
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                  So moved.
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   DR. POGGI:
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                  Second.
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   CHAIRMAN LITMAN:
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                  All in favor?
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   [The motion carried unanimously.]
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18 * * * 1 2 MS. WALTER: 3 Item No. 7. I believe the Board would entertain a motion to direct Board 4 5 counsel to adopt the proposed 6 Adjudication and Order, address exceptions, and issue a substitute Final Board Order consistent with discussions 9 in executive session for Frederick R. 10 Wilson, D.O., Case No. 17-53-06203. 11 CHAIRMAN LITMAN: 12 Motion to approve? DR. TURSI: 13 14 So moved. 15 CHAIRMAN LITMAN: Second? 16 17 MS. GREY: 18 Second. 19 CHAIRMAN LITMAN: 20 All in favor? 21 [The motion carried. Dr. Poggi and Dr. Bulger recused 22 themselves from deliberations and voting on the 2.3 motion.] * * * 24 25 MS. WALTER:

19 I believe the Board would entertain a 1 2 motion to deny the request of Bruce H. 3 Grossinger, D.O., Case No. 17-53-00180 to vacate the order delegating the 4 5 matter to a hearing examiner. 6 DR. TURSI: So moved. DR. POGGI: 9 Second. 10 CHAIRMAN LITMAN: All in favor? 11 12 [The motion carried.] 13 * * * 14 Applications for Licensure - Unrestricted 15 MS. WALTER: 16 Agenda items 11 and 12. I believe the Board would entertain a motion to 17 18 approve the Application for Unrestricted 19 License to Practice Osteopathic Medicine 20 and Surgery for Viet Hoang Nguyen, D.O. 21 and Matthew Joseph Carey, D.O. 22 DR. TURSI: 2.3 So moved. 2.4 CHAIRMAN LITMAN: 25 Second?

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   DR. POGGI:
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                  Second.
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   CHAIRMAN LITMAN:
                  All in favor?
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   [The motion carried unanimously.]
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   Applications for Licensure - Allied Health
     Professionals
   MS. WALTER:
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                  Agenda items 13 and 14. I believe the
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                  Board would approve the following
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                  Applications for Registration as a
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                  Supervising Physician: Blake Isom, D.O.
14
                  and Tara Monihan, PA-C and Luke
15
                  Sullivan, D.O. and Kylie Verespy, PA-C.
   DR. TURSI:
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                  So moved.
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   CHAIRMAN LITMAN:
                  Second?
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   MS. GREY:
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                  Second.
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   CHAIRMAN LITMAN:
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                  All in favor?
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   [The motion carried unanimously.]
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21 1 MS. WALTER: 2 I believe the Board would entertain a motion to direct Board counsel to send a 3 discrepancy letter to Joseph Dekker, 4 5 D.O. and Nathan Mychak, PA-C related to 6 supervision. 7 DR. TURSI: So moved. 9 CHAIRMAN LITMAN: 10 Second? 11 MS. GREY: 12 Second. CHAIRMAN LITMAN: 1.3 All in favor? 14 15 [The motion carried unanimously.] 16 17 Report of Board Administrator 18 [Aaron Hollinger, Board Administrator, thanked the 19 Board for its help over the past few years. He will 2.0 have a continued interest in the Osteopathic Board to 21 see how the Board continues to shape the regulations 22 and help the citizens and licensees in Pennsylvania. 2.3 He offered his assistance with any future issues. 24 Mr. Hollinger informed the Board that he had been 25 working with Nichole Wray to get her onboard as the

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   Board Administrator.
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2
        Mr. Hollinger thanked everyone for their well
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   wishes thus far.
                              * * *
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   DR. TURSI:
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                  I'd like to make a motion, whereas Aaron
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                  Hollinger has been conscientious to the
                  Pennsylvania Board of Osteopathic
9
                  Medicine's needs, whereas he always
10
                  acted professionally, whereas he always
11
                  was timely in his responses to the
12
                  Board's questions and needs; therefore,
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                  the Pennsylvania Board of Osteopathic
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                  Medicine expresses our thanks to Aaron
15
                  Hollinger for his work and wish him well
16
                  in his future endeavors.
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   DR. SWALLOW:
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                  Second.
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   CHAIRMAN LITMAN:
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                  All in favor?
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   [The motion carried unanimously.]
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   [Chairman Litman commented that Mr. Hollinger took
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   service seriously and no words could truly emphasize
25
   the appreciation of the Board for his efforts.
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23 Ms. Wray expressed her readiness to work with 1 2 everybody and also thanked Mr. Hollinger.] 3 4 For the Board's Information/Discussion - Board Meeting 5 Dates [Randy G. Litman, D.O., Chairman, noted the next scheduled Board meeting date is April 14, 2021.] For the Board's Information/Discussion - Old 10 Business/New Business [Aaron Hollinger, Board Administrator, noted the 11 12 Federation of State Medical Boards Annual Meeting will be held virtually April 29, 2021 through May 1, 2021, 13 14 and questioned whether any Board members would be 15 interested in attending as a voting delegate.] * * * 16 17 CHAIRMAN LITMAN: 18 I could attend as a voting delegate. 19 MS. GREY: 20 I'll make that motion. 21 DR. POGGI: 22 I second. 2.3 CHAIRMAN LITMAN: 24 All in favor?

[The motion carried unanimously.]

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[Ms. Walter addressed the letter regarding an expansion of practice of respiratory therapists. She stated the letter concerns insertion and maintenance of vascular access devices by respiratory therapists, noting Board regulations state that a respiratory therapist can provide direct respiratory care.

Ms. Walter informed the Board that the proposed procedures do not fall into the category of direct respiratory care and allowing respiratory therapists to perform those procedures would be outside of their statutory scope of practice and to clear those procedures would require an act of the legislature to expand the scope.

Ms. Grey stated the regulations needed to be reopened to provide regulatory guideline updates. She reported the letter came from someone outside the state according to the Pennsylvania Society for Respiratory Care (PSRC).

Chairman Litman noted the expansion to be an issue for the legislature and not within the Board's scope to make that decision.

Chairman Litman questioned whether there was any information other than what the Centers for Disease Control talked about online this week concerning

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   pregnancy and COVID-19.
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        Dr. Dardarian noted the World Health Organization
3
   retracted their statement on pregnancy and vaccines.]
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   Adjournment
   CHAIRMAN LITMAN:
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                  May I have a motion for adjournment?
   DR. TURSI:
                  So moved.
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   DR. POGGI:
11
                   Second.
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   CHAIRMAN LITMAN:
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                   Thank you.
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   [The motion carried unanimously.]
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   [There being no further business, the State Board of
   Osteopathic Medicine Meeting adjourned at 11:48 a.m.]
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I hereby certify that the foregoing summary minutes of the State Board of Osteopathic Medicine meeting, was reduced to writing by me or under my supervision, and that the minutes accurately summarize the substance of the State Board of Osteopathic Medicine meeting.

CERTIFICATE

Morgan McKendrick,

Minute Clerk

Sargent's Court Reporting
Service, Inc.