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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

D R A F T M I N U T E S

MEETING OF:

STATE BOARD OF OSTEOPATHIC MEDICINE

TIME: 9:29 A.M.

BOARD ROOM C

One Penn Center

2601 North Third Street

Harrisburg, Pennsylvania 17110

Wednesday, April 10, 2019

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State Board of Osteopathic Medicine
April 10, 2019

BOARD MEMBERS:

- Randy G. Litman, D.O., Chairman
- William B. Swallow, D.O., Vice Chairman
- Burton T. Mark, D.O., Secretary
- Kalonji Johnson, Acting Commissioner, Bureau of Professional and Occupational Affairs
- John B. Bulger, D.O.
- Christopher S. Poggi, D.O.
- Frank M. Tursi, D.O.
- Arlene G. Seid, M.D., M.P.H., Secretary of Health designee, present on behalf of Rachel Levine, M.D., Physician General/Secretary of Health

BUREAU PERSONNEL:

- Kenneth J. Suter, Esquire, Board Counsel
- Kerry E. Maloney, Esquire, Board Counsel
- Anita P. Shekletski, Esquire, Board Prosecution Liaison
- Keith E. Bashore, Esquire, Board Prosecutor
- Jason T. Anderson, Esquire, Board Prosecutor
- Aaron Hollinger, Board Administrator

ALSO PRESENT:

- Andy Sandusky, Executive Vice President, Public Policy and Association Affairs, Pennsylvania Osteopathic Medical Association
- Michael DePalma, PA-C, Pennsylvania Society of Physician Assistants
- Andrew C. Harvan, Esquire, Pennsylvania Medical Society
- Mary Marshall, Director, Workforce & Professional Services, The Hospital and Healthsystem Association of Pennsylvania

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2 ***

3 State Board of Osteopathic Medicine

4 April 10, 2019

5 ***

6 The regularly scheduled meeting of the State
7 Board of Osteopathic Medicine was held on Wednesday,
8 April 10, 2019. Randy G. Litman, D.O., Chairman,
9 called the meeting to order at 9:29 a.m. Kalonji
10 Johnson, Acting Commissioner, Bureau of Professional
11 and Occupational Affairs, was not present at the
12 commencement of the meeting.

13 ***

14 Approval of Minutes of the February 13, 2019 meeting

15 CHAIRMAN LITMAN:

16 May I have approval of the February 13
17 minutes?

18 DR. SEID:

19 I'll move.

20 DR. TURSI:

21 Second.

22 CHAIRMAN LITMAN:

23 All in favor?

24 [The motion carried unanimously.]

25 ***

26 [Christopher S. Poggi, D.O.; John B. Bulger, D.O.; and

1 Burton T. Mark, D.O., Secretary, exited the meeting at
2 9:30 a.m. for recusal purposes.]

3 ***

4 Report of Prosecutorial Division

5 [Jason T. Anderson, Esquire, Board Prosecutor,
6 presented a Consent Agreement for File No. 18-53-
7 02759.]

8 ***

9 [Christopher S. Poggi, D.O.; John B. Bulger, D.O.; and
10 Burton T. Mark, D.O., Secretary, reentered the meeting
11 at 9:31 a.m.]

12 ***

13 [Keith E. Bashore, Esquire, Board Prosecutor,
14 presented the Consent Agreement for File No. 18-53-
15 009450.]

16 ***

17 [Anita P. Shekletski, Esquire, Board Prosecution
18 Liaison, presented the VRP Consent Agreement for File
19 No. 19-53-000991.]

20 ***

21 Report of Board Counsel

22 [Kerry E. Maloney, Esquire, Board Counsel, noted
23 agenda items 6 and 7 for discussion during executive
24 session.

25 Mr. Suter addressed the Sports Medicine Licensure

1 Clarity Act for informational purposes. He stated
2 this federal act had been enacted to permit
3 physicians, athletic trainers, and other sports
4 medicine professionals who travel to another state
5 with an athletic team to provide medical care for that
6 team.

7 Mr. Suter noted the act to be somewhat unclear
8 and ambiguous in terms of enforcement from a licensing
9 perspective. He commented that the act was much
10 broader in terms of not just limiting travel to
11 contiguous states. He believed, theoretically, that
12 professionals could travel across the country and
13 still practice as long as the professional was
14 traveling with a sports team. This federal act could
15 trump the Board's regulations. Mr. Suter commented
16 that any inconsistency could create a gray area.

17 Dr. Seid questioned whether a person who goes to
18 California and something happens in California are
19 subject to the Medical Board of California or the
20 Medical Board of Pennsylvania.]

21 ***

22 [Kalonji Johnson, Acting Commissioner, Bureau of
23 Professional and Occupational Affairs, entered the
24 meeting at 9:37 a.m.]

25 ***

1 [Mr. Suter responded to Dr. Seid that was not clear
2 according to the act who would enforce any violation.
3 He discussed a similar case that set a precedent in
4 Commonwealth Court, wherein the psychologist was
5 located in Pennsylvania and was not licensed by the
6 Psychology Board but was providing psychological
7 services only to people in Israel over the internet.

8 Mr. Suter stated that the question was whether
9 the Board had jurisdiction, but the Psychology Board
10 found in that case that if any part of the action was
11 taking place in Pennsylvania that there was
12 jurisdiction and Commonwealth Court upheld it.]

13

14 [Chairman Litman discussed his performing remote area
15 free medicine in neighboring states and having to
16 register with the states at a time period well ahead.
17 He noted no reference to this circumstance in the
18 statute.

19 Mr. Suter stated there was not any similar
20 reference in the statute.]

21

22 Report of Regulatory Counsel

23 [Kenneth J. Suter, Esquire, Regulatory Counsel,
24 addressed House Bill 15 regarding telemedicine. He
25 stated the bill did not pass last session but

1 anticipated the bill to pass this year. He referred
2 to the definitions in terms of the scope of who is
3 included in telemedicine for the Board's review.

4 Mr. Suter addressed Section 3(a)(1) regarding
5 requirements, encouraging the Board to review this
6 section with regard to developing regulations. He
7 stated the Board would need to move relatively quickly
8 in order to promulgate a new regulation within a two-
9 year period.

10 Mr. Suter discussed Section 4 regarding
11 compliance. He noted an important section related to
12 being a provider of telemedicine services, noting
13 compliance with all federal and state laws, especially
14 the Health Insurance Portability Accountability Act
15 (HIPAA).

16 Mr. Suter referred to Section 5(a)(1) regarding
17 the evaluation and treatment requirements and
18 established provider-patient relationship and
19 evaluation. He also referred to Section 5(a)(2)
20 regarding informed consent, Section 5(a)(3) regarding
21 appropriate examination or assessment, Section 5(a)(4)
22 regarding diagnosis and treatment, Section 5(b)
23 regarding disclosures, and Section 6 regarding
24 insurance coverage of telemedicine.

25 Acting Commissioner Johnson commented that the

1 bill enumerates more specialties. He has worked with
2 the sponsors of last year's bill to determine the
3 scope of practitioners covered under the bill. He
4 also noted discussion over whether this bill would
5 simply be essentially an insurance bill or whether
6 this bill would delve closer into the scope of
7 practice.

8 Acting Commissioner Johnson also commented that
9 last year's bill was primarily just a vehicle for
10 reimbursement. He expressed a concern over this bill
11 being essentially an insurance bill. He noted
12 questions about essentially creating a de facto long-
13 arm statute with this bill. Acting Commissioner
14 Johnson discussed the Board considering the
15 implementation of regulations based on this bill.

16 Dr. Seid stated the Department of Health was very
17 active in Senate Bill 780, which was sponsored by
18 Senator Elder Vogel. She commented that this bill in
19 terms of its content from SB 780 was not substantially
20 different. The rules that apply for face-to-face
21 would also apply to telemedicine.

22 Mr. Suter referred to a statement concerning the
23 electronic medical record and questioned whether it
24 was an audio and a visual electronic medical record.
25 He discussed not having manual diagnostic reports. He

1 suggested clarifying what constitutes an acceptable
2 electronic medical record (EMR).

3 Dr. Tursi noted the need for rules and
4 regulations as to what is acceptable by the Board and
5 voiced his skepticism of this bill.

6 Dr. Bulger suggested a regulation should be
7 written on telemedicine. He stated the crux of this
8 issue the last time was the payment and/or billing and
9 nothing to do with the scope of practice. He referred
10 to one large payer in the state that did not want to
11 pay and applied a lot of pressure, causing the bill to
12 die.

13 Dr. Bulger further commented that the bill was
14 just not voted on. He agreed the Board should have
15 jurisdiction to govern the professionals utilizing
16 telemedicine from Pennsylvania or utilizing
17 telemedicine on someone in Pennsylvania.

18 Dr. Tursi commented that it was the Board's
19 responsibility to say who is licensed and protect the
20 people in Pennsylvania.

21 Acting Commissioner Johnson commented that
22 individuals practicing telemedicine in the
23 Commonwealth must also be licensed by the
24 Commonwealth.

25 Chairman Litman requested clarity if a doctor has

1 a patient in the state of New York and the doctor
2 speaks with them from the Commonwealth of
3 Pennsylvania, then the Commonwealth of Pennsylvania
4 law governs because that is where the person who is
5 practicing from and the state of New York laws are not
6 involved or are both states involved. Dr. Bulger
7 noted the Board should have jurisdiction over
8 physicians practicing from Pennsylvania or practicing
9 on a patient in Pennsylvania.

10 Ms. Shekletski stated UPMC and large health care
11 facilities have a telemedicine model. She noted that
12 if a doctor is in New York and is treating a patient
13 in Pennsylvania, they must be licensed in
14 Pennsylvania. She stated the doctor must be licensed
15 where the patient is located, which is how prosecution
16 has been handling such matters without guidance or
17 actual laws in place.

18 Mr. Suter commented that the locus of the patient
19 is what rules the jurisdiction based on the last bill.
20 He suggested waiting to see if there are any changes
21 to this bill before implementing any regulations and
22 looking at how other states are handling a similar
23 type of law that may give further questions or answers
24 for the regulations. He also requested the Board
25 provide comments regarding the legislation at the next

1 meeting.

2 Mr. Suter referred to Section 4 regarding
3 compliance and Section 5 regarding evaluation and
4 treatment, where both sections seem to be looking at
5 health care provider, which is the legislation, in
6 terms of requirements.

7 Dr. Swallow noted it to be appropriate at the
8 committee level in the assembly to request or hold a
9 hearing where representatives from respective Boards
10 with legal accompaniment testify. Mr. Suter stated
11 the committee can decide whether or not to hold a
12 public hearing on a piece of legislation but comments
13 and feedback should be brought out in a public
14 hearing.

15 Chairman Litman noted the importance of sending a
16 message to the committee that this is significant
17 legislation and the Board has concerns about the bill,
18 including the need for a better definition as well as
19 identification of providers and such.

20 Acting Commissioner Johnson will work with the
21 Office of Legislative Affairs and push those requests
22 through our legislative director, who is the liaison
23 to the General Assembly to make that recommendation.

24 Mr. Maloney explained the difference between
25 legislation and regulation.

1 Chairman Litman commented that setting criteria
2 and making some direction-type suggestions including
3 licensure was probably the only avenue for this Board.

4 Mr. Suter questioned whether the Board wanted to
5 weigh in concerning the legislation by supporting or
6 opposing and come back at the next Board meeting with
7 a plan.

8 Mr. Maloney addressed the bill process with bill
9 analysis, where pros and cons and recommended language
10 additions or deletions are discussed, and then the
11 information is provided to the legislative office to
12 the committee.

13 Chairman Litman commented that the Board will
14 formulate some ideas and pass them on to Board Counsel
15 to assemble for discussion at the next meeting.

16 Dr. Seid mentioned that the Joint Commission has
17 rules covering texting and other types of electronic
18 conferences, and audio records are required to have
19 the same standard as paper to ensure they do not
20 degrade over time.]

21

22 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
23 10:08 a.m. the Board entered into Executive Session
24 with Kenneth J. Suter, Esquire, Board Counsel, and
25 Kerry E. Maloney, Esquire, Board Counsel, for the

1 purpose of conducting quasi-judicial deliberations and
2 to receive legal advice from Board Counsel. The Board
3 returned to open session at 10:48 a.m.]

4 ***

5 MOTIONS

6 MR. SUTER:

7 We were in executive session for
8 quasi-judicial deliberations. The
9 purpose of the executive session was to
10 discuss items 3, 4, 5, 6, 7, 10, 11, and
11 12 on the Board's agenda.

12 As a result of the discussions in
13 executive session, I understand the
14 Board will entertain a motion to approve
15 all three Consent Agreements. They are
16 items 3, 4, and 5 at File No. 18-53-
17 02759, File No. 18-53-009450, and File
18 No. 19-53-000991.

19 DR. TURSI:

20 So moved.

21 DR. SEID:

22 Second.

23 CHAIRMAN LITMAN:

24 All in favor?

25 [The motion carried. Dr. Mark, Dr. Poggi, and

1 Dr. Bulger recused themselves from deliberations and
2 voting on the motion regarding File No. 18-53-02759.
3 The Respondent's name for Item No. 3 at No. 18-53-
4 02759 is Ronald P. Vandergriff, D.O.. The Respondent's
5 name for Item No. 4 at File No. 18-53-009450 is Walter
6 Yutaka Uyesugi, D.O.]

7 ***

8 MR. SUTER:

9 Item No. 6 is Alexander Bunt Jr., D.O.,
10 File No. 17-53-03919. Dr. Mark and Dr.
11 Bulger are recused.

12 I understand the Board will
13 entertain a motion to adopt the hearing
14 examiner's Adjudication and Order as the
15 Board's final Adjudication and Order in
16 this matter.

17 DR. TURSI:

18 So moved.

19 DR. SWALLOW:

20 Second.

21 CHAIRMAN LITMAN:

22 All in favor?

23 [The motion carried. Dr. Mark and Dr. Bulger recused
24 themselves from deliberations and voting on the
25 motion.]

1 ***

2 MR. SUTER:

3 Based on discussions in executive
4 session, I understand the Chair would
5 entertain a motion for Item No. 7 on the
6 agenda, Jazmine A. Cole, PA-C, File No.
7 15-53-10367. The motion would be to
8 approve the final Adjudication and Order
9 that the Board reviewed in executive
10 session.

11 DR. POGGI:

12 So moved.

13 DR. TURSI:

14 Second.

15 CHAIRMAN LITMAN:

16 All in favor?

17 [The motion carried unanimously.]

18 ***

19 MR. SUTER:

20 Item No. 10 on the agenda is the
21 application of Samara H. Peters, D.O.

22 I understand the Board will
23 entertain a motion to approve this
24 application.

25 DR. TURSI:

1 So moved.

2 DR. MARK:

3 Second.

4 CHAIRMAN LITMAN:

5 All in favor?

6 [The motion carried unanimously.]

7 ***

8 MR. SUTER:

9 Finally, the Petition for Exception of
10 COMLEX Attempt Limit Policy of Dilisha
11 Rodrigopulle and the Reconsideration
12 Petition for Exception of COMLEX Attempt
13 Limit Policy of Michael Glenn Duley.

14 I understand the Board will
15 entertain a motion to approve both of
16 these petitions.

17 DR. SWALLOW:

18 So moved.

19 DR. TURSI:

20 Second.

21 CHAIRMAN LITMAN:

22 All in favor?

23 [The motion carried unanimously.]

24 ***

25 Report of Board Chair - No Report

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Report of Vice Chair - No Report

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Report of Acting Commissioner - No Report

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Report of Department of Health

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[Arlene G. Seid, M.D., M.P.H., Secretary of Health

8

designee, present on behalf of Rachel Levine, M.D.,

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Physician General/Secretary of Health, encouraged

10

people to still get flu shots.

11

Dr. Seid addressed Lyme disease, stating that it

12

has been found in each of Pennsylvania's 67 counties.

13

She noted that Governor Wolf was proposing \$2.5

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million in the 2019-2020 budget towards Lyme disease

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education and prevention to assist the efforts to

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build a more robust Lyme disease program, to conduct

17

surveillance for ticks in Pennsylvania, and to improve

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participation in tickborne disease surveillance with

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health care providers.

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Dr. Seid noted the importance of wearing long

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sleeves and pants, using insect repellent with DEET,

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and checking for ticks when showering after being

23

outdoors.

24

Dr. Seid stated the Pennsylvania Department of

25

Health achieved national accreditation through the

1 Public Health Accreditation Board. She commented that
2 the National Public Health Accreditation Board was
3 launched in 2011 with funding from the Centers for
4 Disease Control and the Robert Wood Johnson
5 Foundation, noting that 240 health departments
6 nationwide achieved this prestigious designation.

7 Dr. Seid stated a draft of the new hospital
8 regulations will be out with a public comment period
9 in late summer or early fall.

10 Dr. Seid noted that Dr. Levine will be attending
11 the next meeting.]

12 ***

13 Report of Board Administrator - No Report

14 ***

15 For the Board's Information/Discussion

16 [Randy G. Litman, D.O., Chairman, noted the next
17 meeting date scheduled for June 12, 2019.]

18 ***

19 Adjournment

20 CHAIRMAN LITMAN:

21 Motion for adjournment.

22 [Board members respond aye.]

23 CHAIRMAN LITMAN:

24 All in favor?

25 [The motion carried unanimously.]

[There being no further business, the State Board of
Osteopathic Medicine Meeting adjourned at 10:56 a.m.]

CERTIFICATE

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.



Seth R. Baier,

Minute Clerk

Sargent's Court Reporting
Service, Inc.

STATE BOARD OF OSTEOPATHIC MEDICINE
REFERENCE INDEX

April 10, 2019

TIME	AGENDA
9:29	Official Call to Order
9:29	Approval of Minutes
9:30	Report of Prosecutorial Division
9:32	Report of Board Counsel
9:47	Report of Regulatory Counsel
10:08	Executive Session
10:48	Return to Open Session
10:48	Motions
10:53	Report of Department of Health
10:55	For the Board's Information/Discussion
10:56	Adjournment