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

F I N A L M I N U T E S

MEETING OF:

**STATE BOARD OF OSTEOPATHIC MEDICINE
CONDUCTED VIA VIDEOCONFERENCE**

TIME: 9:10 A.M.

Wednesday, June 10, 2020

1 State Board of Osteopathic Medicine
2 June 10, 2020

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4
5 BOARD MEMBERS:
6

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 - Absent
11 Burton T. Mark, D.O., Secretary - Absent
12 Rachel Levine, M.D., Physician General/Secretary of
13 Health
14 John B. Bulger, D.O.
15 Bette A. Grey, BA, RRT, CPFT
16 Christopher S. Poggi, D.O. - Absent
17 Frank M. Tursi, D.O.
18
19

20 BUREAU PERSONNEL:
21

22 Kenneth J. Suter, Esquire, Board Counsel
23 Anita P. Shekletski, Esquire, Board Prosecution
24 Liaison
25 Jason T. Anderson, Esquire, Board Prosecutor
26 Keith E. Bashore, Esquire, Board Prosecutor
27 Adam L. Morris, Esquire, Board Prosecutor
28 Adam Williams, Esquire, Board Prosecutor
29 Mark R. Zogby, Esquire, Board Prosecutor
30 Nathan C. Giunta, Esquire, Board Prosecutor
31 Aaron Hollinger, Board Administrator
32 Marc Farrell, Deputy Policy Director, Department of
33 State
34 Kimberly Adams, Chief of Fiscal Management, Bureau of
35 Finance and Operations, Department of State
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37

38 ALSO PRESENT:
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40 Kerry E. Maloney, Esquire, Post & Shell
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1 ***

2 State Board of Osteopathic Medicine

3 June 10, 2020

4 ***

5 The regularly scheduled meeting of the State
6 Board of Osteopathic Medicine was held on Wednesday,
7 June 10, 2020. Randy G. Litman, D.O., Chairman,
8 called the meeting to order at 9:10 a.m.

9 ***

10 Approval of minutes of the April 8, 2020 meeting

11 CHAIRMAN LITMAN:

12 May I have an approval of the minutes
13 from April 8?

14 DR. TURSI:

15 So moved.

16 CHAIRMAN LITMAN:

17 All in favor?

18 [The motion carried unanimously.]

19 ***

20 Report of Prosecutorial Division

21 [Jason T. Anderson, Esquire, Board Prosecutor, on
22 behalf of Keith E. Bashore, Esquire, Board Prosecutor,
23 presented the Consent Agreement for Case No. 19-53-
24 017095.

25 Kerry E. Maloney, Esquire, Post & Schell, Counsel

1 for the Respondent, was also present for the
2 discussion.]

3

4 [Jason T. Anderson, Esquire, Board Prosecutor, on
5 behalf of Anita P. Shekletski, Esquire, Board
6 Prosecution Liaison, presented the VRP Consent
7 Agreement for Case No. 20-53-001700.]

8

9 [Jason T. Anderson, Esquire, Board Prosecutor,
10 presented the VRP Consent Agreements for Case No. 20-
11 53-007120 and Case No. 20-53-007143.]

12

13 Report of Board Counsel

14 [Kenneth J. Suter, Esquire, Board Counsel, noted Item
15 No. 7 for discussion during Executive Session.]

16

17 Report of Regulatory Counsel

18 [Kenneth J. Suter, Esquire, Regulatory Counsel,
19 referred to Senate Bill 857 regarding telemedicine.
20 He mentioned language change, noting the bill went
21 through the House and Senate but was vetoed by the
22 Governor because of a provision concerning prescribing
23 non-FDA-approved drugs through telemedicine, which
24 brought up the abortion issue.

25

Commissioner Johnson stated the Department of

1 State's Office of Legislative Affairs was working with
2 the Governor's Legislative Office, as well as the
3 Governor's Policy Office, to assess and reach out to
4 various chambers.

5 Marc Farrell, Deputy Policy Director, Department
6 of State, commented that telemedicine use during the
7 pandemic was going to create a lot of momentum for
8 this to get done. He noted the waiver to allow
9 telemedicine remains in effect until the end of the
10 Disaster Declaration on September 2, 2020.

11 Mr. Anderson reported receiving a chat message
12 from Anita Shekletski during the teleconference,
13 wanting to say farewell because this was her last
14 meeting before retirement. She stated she enjoyed
15 working with the Board and wanted the Board to know
16 they are in good hands with excellent staff,
17 prosecutors, and Board counsel.

18 Chair Litman thanked Ms. Shekletski for her great
19 work for the Board.

20 Mr. Suter referred to the final preamble and
21 annex of 16A-5334 regarding Schedule of Fees. He
22 noted drafting a standard type of fee increase
23 regulation in 2018, which raised fees one time for a
24 10-year period. After discussions with Policy and the
25 Independent Regulatory Review Commission (IRRC), the

1 Board decided to no longer do fee increases in that
2 fashion and have graduated fee increases. He
3 mentioned Board licensees renew at different times
4 depending on their license type.

5 Mr. Suter explained the preamble as the Board
6 explaining what the regulation will do and responding
7 to all of the comments. He also explained the annex
8 as the actual regulation incorporated into the green
9 book once approved.

10 Mr. Suter stated the Board voted for the fee
11 increase in 2019, which was exactly the same as what
12 is in the annex with the exception of physician fees
13 going down a little bit. He asked the Board to review
14 comments on the final regulation prior to the meeting
15 and summarized what was received.

16 Mr. Suter mentioned meeting with the policy
17 office and the Bureau of Finance and Operations (BFO)
18 to address whether the fee increase could be put off
19 or lowered, noting that a lot of the comments deal
20 with COVID-19 and the Board implementing a fee
21 increase during the time of the virus.

22 Mr. Suter explained that the Board would have a
23 deficit of over \$1 million FY2020-2021 through FY2021-
24 2022, because the revenue was not there to put the fee
25 increase off.

1 Mr. Suter addressed a decrease in Board expenses
2 because of the virus with an uptick in the number of
3 licensees, which enabled the Board to adjust the
4 physician fee for biennial renewal from \$350 to \$330
5 for November 1, 2020.

6 Mr. Suter stated the Board received 36 public
7 comments, including comments from the Pennsylvania
8 Osteopathic Medical Association (POMA) and the
9 Pennsylvania Medical Society (PAMED). He mentioned
10 that the House Professional Licensure Committee and
11 IRRC submitted comments asking the Board to delay the
12 fee increase because of the virus and concerns about
13 the timing of getting the regulation out and the
14 renewals in time for the November 1, 2020 renewal. He
15 emphasized the fact that both POMA and PAMED did not
16 oppose the fee increase.

17 It was noted the Board would be dealing with two
18 separate issues, including long-term Board fees and
19 fees in the middle of an emergency. He suggested the
20 Board pass policy regarding what fees should be in
21 order to do the business of the Board and then the
22 state administratively could make a decision as to
23 waiving the fees for 2020 or delaying the renewal
24 process for 2020. He also noted having a hard time
25 voting for a fee increase in the middle of a pandemic

1 when there is an emergency declared.

2 Mr. Suter emphasized the need to address this in
3 terms of the funds, where the Board does not have the
4 money to operate and can move forward with something
5 to provide sufficient revenues for the Board to
6 operate.

7 Mr. Suter noted the importance of going before
8 IRRC and getting this through for November 1, 2020,
9 because of the short time frame going back 60 days in
10 terms of notices. He discussed general opposition to
11 the fee increase, including applications based on the
12 amount of staff time to process the application and
13 the use of the Pennsylvania Justice Network (JNET)
14 system. He also mentioned additional costs associated
15 with the Pennsylvania Licensing System (PALS).

16 Mr. Suter addressed comments comparing the Board
17 of Medicine and the Osteopathic Medicine Board and why
18 the Board of Medicine was in shape. He explained that
19 the Board of Medicine did not do a reduction in fees
20 in 2010.

21 Mr. Suter commented, after the Medical Care
22 Availability and Reduction of Error (MCARE) was
23 implemented, the Osteopathic Board reduced fees, so
24 for 10 years, the Board has been paying, noting the
25 current Osteopathic Medicine Board renewal fee of \$220

1 and the Board of Medicine has been up to \$360, which
2 was \$30 more than what the Osteopathic Board was
3 proposing to do with the fee increase with the first
4 renewal cycle. He also stated the fees and
5 applications were the Board's revenue source.

6 Mr. Suter addressed comments regarding an
7 insufficient time to respond. He noted discussions at
8 many Board meetings beginning in 2016, along with it
9 being published in the *Pennsylvania Bulletin* on March
10 7, which was before COVID-19 hit Pennsylvania.

11 Mr. Suter discussed comments concerning the
12 Osteopathic Medicine Board and Board of Medicine being
13 combined, noting this was for the legislature to
14 address.

15 Commissioner Johnson stated the issue of whether
16 or not the fees were necessary was not up for debate,
17 noting that the Board cannot operate if it does not
18 authorize this particular fee increase, questioning
19 how detrimental the impact on the Board's operation
20 would be if the fees were not collected in October and
21 delayed till December or January.

22 Chairman Litman addressed budgetary information
23 based on prior years and projections for future years,
24 noting the importance of knowing what the fees were
25 associated with maintaining the Pennsylvania Licensing

1 System (PALS) and the number of staff required to
2 maintain PALS.

3 Chairman Litman stated the fee increases were
4 appropriate based on the information reviewed when the
5 decision was made but mentioned staggering versus
6 delaying because of a possible second wave of this
7 attack.

8 Mr. Suter noted that this may be a problem from a
9 perspective of the whole system not being setup that
10 way in terms of renewal of licenses.

11 Dr. Tursi suggested explaining why the increase
12 was being made, noting the importance of the Board
13 being financially responsible. He commented that the
14 virus may end next week, next month, or five years
15 from now but to pay your next fee when your license is
16 due. He suggested staying with the decision the Board
17 made previously.

18 ***

19 MR. SUTER:

20 The blanket motion would be to approve
21 the final rulemaking, including the
22 preamble and annex.

23 DR. TURSI:

24 So moved.

25 MS. GREY:

1 I'll second it.

2 CHAIRMAN LITMAN:

3 I would call for a vote, but I think we
4 have more discussion. Most of the
5 comments I received had to do with the
6 renewal people, not the applications. I
7 did not see one application from any
8 hospital system that pays for graduate
9 fees. Based on appropriateness of the
10 fees based on our projections, we can
11 vote on that.

12 Should we agree, we are at the
13 motion based on the appropriateness of
14 the fees based on our projections
15 because that is all we can decide on,
16 the appropriateness of the fees, not the
17 time.

18 We have a motion on the table, and
19 it is seconded. All in favor? Any
20 nays?

21 [The motion carried unanimously.]

22 ***

23 [Kenneth J. Suter, Esquire, Regulatory Counsel,
24 referred to 16A-5335 regarding the proposed licensure
25 qualifications annex to be sent out for comments. He

1 recommended a regulatory committee to serve in a
2 regulatory capacity to go through the comments line by
3 line. The subcommittee could not take action on
4 behalf of the Board but could certainly iron out the
5 language and provide recommendations to get another
6 draft of this to move forward.

7 Chairman Litman requested volunteers join as an
8 advisory council to review the comments.]

9 ***

10 Applications for Licensure

11 [Kenneth J. Suter, Esquire, Regulatory Counsel, noted
12 that applications for licensure will be discussed
13 during Executive Session.]

14 ***

15 [Kerry E. Maloney, Esquire, Post & Schell, answered
16 questions regarding Consent Agreement Case No. 19-53-
17 017095.]

18 ***

19 Report of Commissioner - No Report

20 ***

21 Report of Department of Health - No Report

22 ***

23 Report of Vice Chair - No Report

24 ***

25 Report of Board Chairman

1 [Randy G. Litman, D.O., Chairman, in response to many
2 of the comments discussed in relation to the schedule
3 of fees, he wanted to clarify that no one opposed the
4 actual fee or the basis upon which the fee was based,
5 just the timing and the economic impacts of the
6 timing.]

7 ***

8 [Marc Farrell, Deputy Policy Director, Department of
9 State, announced and formally congratulated K. Kalonji
10 Johnson as Commissioner.]

11 ***

12 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
13 10:19 a.m. the Board entered into Executive Session
14 with Kenneth J. Suter, Esquire, Board Counsel, for the
15 purpose of conducting quasi-judicial deliberations and
16 to receive legal advice from Board counsel. The Board
17 returned to open session at 11:10 a.m.]

18 ***

19 MOTIONS

20 MR. SUTER:

21 The Board was in Executive Session. The
22 purpose of Executive Session was to
23 discuss items 3, 4, 5, 6, 7, 11, 12, 13,
24 14, 15, and 16 on Board's agenda. The
25 Board was in quasi-judicial

1 deliberations regarding these matters.

2 As a result of Executive Session, I
3 understand the Board will entertain a
4 motion to approve Item No. 3 on the
5 agenda, Case No. 19-53-017095.

6 DR. TURSI:

7 So moved.

8 MS. GREY:

9 Second.

10 CHAIRMAN LITMAN:

11 All in favor?

12 [The motion carried unanimously. The Respondent's
13 name is James. G. Allen, D.O.]

14 ***

15 MR. SUTER:

16 The next items are all VRP Agreements,
17 items 4, 5, and 6 on the agenda, we will
18 handle collectively.

19 I understand the Board will
20 entertain a motion to approve all three
21 of these consent agreements; Case No.
22 20-53-001700, Case No. 20-53-007120, and
23 Case No. 20-53-007143.

24 DR. TURSI:

25 So moved.

1 CHAIRMAN LITMAN:

2 Do I have a second?

3 MS. GREY:

4 Second.

5 CHAIRMAN LITMAN:

6 All in favor?

7 [The motion carried unanimously.]

8 ***

9 MR. SUTER:

10 As a result of Executive Session, I
11 understand the Board will also entertain
12 a motion regarding Item No. 7 on the
13 agenda, Joseph T. Acri, D.O., Case No.
14 18-53-008048.

15 I understand the Board will
16 entertain a motion directing your Board
17 counsel to adopt the hearing examiner's
18 proposed Adjudication and Order as the
19 final Adjudication and Order and to
20 address the exceptions filed on behalf
21 of the respondent.

22 DR. TURSI:

23 So moved.

24 CHAIRMAN LITMAN:

25 Second?

1 MS. GREY:

2 Second.

3 CHAIRMAN LITMAN:

4 All in favor?

5 [The motion carried unanimously.]

6 ***

7 MR. SUTER:

8 Moving on to Item No. 11 on the agenda.
9 These are all applications that are
10 before the Board. Item No. 11 was the
11 application of Sharon H. Atencio, D.O.

12 I understand the Board will also
13 entertain a motion to approve this
14 Application for Unrestricted Licensure.

15 DR. TURSI:

16 So moved.

17 MS. GREY:

18 Second.

19 CHAIRMAN LITMAN:

20 All in favor?

21 [The motion carried unanimously.]

22 ***

23 MR. SUTER:

24 The next item is Item No. 12 on the
25 agenda. It is an Application for

1 Graduate Medical Training on behalf of
2 Bryan Robert Frailey, D.O.

3 I understand the Board will
4 entertain a motion to approve this
5 application.

6 DR. TURSI:

7 So moved.

8 CHAIRMAN LITMAN:

9 Second?

10 MS. GREY:

11 Second.

12 CHAIRMAN LITMAN:

13 All in favor?

14 [The motion carried unanimously.]

15 ***

16 MR. SUTER:

17 The next one is also an Application for
18 Graduate Medical Training. It is Item
19 No. 13 on the agenda, Christopher M.
20 Ferguson, D.O.

21 I understand the Board will
22 consider a motion for approving this
23 application.

24 DR. TURSI:

25 So moved.

1 CHAIRMAN LITMAN:

2 Second? Do I have a second?

3 MS. GREY:

4 Second.

5 CHAIRMAN LITMAN:

6 All in favor?

7 [The motion carried unanimously.]

8 ***

9 MR. SUTER:

10 The next item is also an Application for
11 Graduate Medical Training. It is Item
12 No. 14 on the agenda, Jonathan Michael
13 Stahl, D.O.

14 I understand the Board will
15 entertain a motion to deny the
16 application in this case.

17 DR. TURSI:

18 So moved.

19 CHAIRMAN LITMAN:

20 Second?

21 MS. GREY:

22 Second.

23 CHAIRMAN LITMAN:

24 All in favor?

25 [The motion carried unanimously.]

1 ***

2 MR. SUTER:

3 The last item that I am going to put
4 forward collectively are applications by
5 Allied Health Professionals. It is
6 reconsideration for items 15 and 16 on
7 the agenda. Both involve James N.
8 DeAngelo, D.O.

9 There are two written agreements,
10 items 15 and 16 on the agenda. I
11 understand the Board will entertain a
12 motion to approve these written
13 agreements.

14 MS. GREY:

15 So moved.

16 CHAIRMAN LITMAN:

17 Second?

18 DR. TURSI:

19 Second.

20 CHAIRMAN LITMAN:

21 All in favor?

22 [The motion carried unanimously.]

23 ***

24 [Randy G. Litman, D.O., Chairman, noted the next Board
25 meeting date is scheduled for August 12, 2020.]

1 ***

2 Adjournment

3 [Randy G. Litman, D.O., Chairman, adjourned the open
4 session to move into a special session to address the
5 concerns of Item No. 10 regarding licensure
6 qualifications.]

7 Mr. Suter noted members of the public are welcome
8 to participate and welcomed POMA to that session.]

9

10 [There being no further business, the State Board of
11 Osteopathic Medicine Meeting adjourned at 11:16 a.m.]

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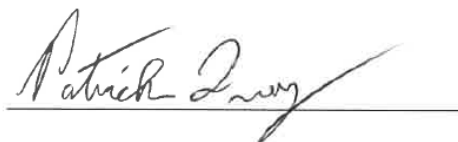
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CERTIFICATE

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.



Patrick Troy,
Minute Clerk
Sargent's Court Reporting
Service, Inc.

STATE BOARD OF OSTEOPATHIC MEDICINE
REFERENCE INDEX

June 10, 2020

TIME	AGENDA
9:10	Official Call to Order
9:11	Approval of Minutes
9:11	Report of Prosecutorial Division
9:17	Report of Board Counsel
9:17	Report of Regulatory Counsel
10:16	Report of Board Chair
10:19	Executive Session
11:10	Return to Open Session
11:10	Motions
11:16	Adjournment

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