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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
VIA TELECONFERENCE**

TIME: 10:44 A.M.

Wednesday, August 12, 2020

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State Board of Osteopathic Medicine
August 12, 2020

BOARD MEMBERS:

- Randy G. Litman, D.O., Chairman
- K. Kalonji Johnson, Commissioner, Bureau of Professional and Occupational Affairs
- William B. Swallow, D.O., Vice Chairman
- Burton T. Mark, D.O., Secretary - Absent
- Mary Pat Howard, M.S., RN-BC, Executive Assistant of Quality Assurance, on behalf of Rachel Levine, M.D., Physician General/Secretary of Health
- John B. Bulger, D.O.
- Bette A. Grey, BA, RRT, CPFT
- Christopher S. Poggi, D.O.
- Frank M. Tursi, D.O.

BUREAU PERSONNEL:

- Kenneth J. Suter, Esquire, Board Counsel
- Jason T. Anderson, Esquire, Board Prosecution Liaison
- Aaron Hollinger, Board Administrator
- Marc Farrell, Deputy Policy Director, Department of State
- Cynthia K. Montgomery, Esquire, Deputy Chief Counsel/Regulatory Counsel, Department of State

1 ***

2 State Board of Osteopathic Medicine

3 August 12, 2020

4 ***

5 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
6 9:00 a.m. the Board entered into executive session
7 with Kenneth J. Suter, Esquire, Board Counsel, for the
8 purpose of conducting quasi-judicial deliberations and
9 to receive legal advice from Board counsel. The Board
10 returned to open session at 10:30 a.m.]

11 ***

12 The regularly scheduled meeting of the State
13 Board of Osteopathic Medicine was held on Wednesday,
14 August 12, 2020. Randy G. Litman, D.O., Chairman,
15 called the meeting to order at 10:44 a.m.

16 ***

17 Approval of minutes of the June 10, 2020 meeting

18 CHAIRMAN LITMAN:

19 May I have an approval of the June 10,
20 2020 minutes?

21 DR. TURSI:

22 So moved.

23 DR. SWALLOW:

24 Second.

25 CHAIRMAN LITMAN:

1 All in favor?

2 [The motion carried unanimously.]

3 ***

4 Report of Prosecutorial Division

5 [Jason T. Anderson, Esquire, Board Prosecution
6 Liaison, presented the VRP Consent Agreements for Case
7 No. 20-53-005225, Case No. 20-53-007515, and Case No.
8 20-53-008094. He noted that all of the consent
9 agreements are standard agreements. He mentioned
10 prior Board discussion during executive session and
11 offered to answer any questions from the Board.]

12 ***

13 Report of Board Counsel

14 [Kenneth J. Suter, Esquire, Board Counsel, addressed
15 the Sunshine Act, explaining the act as a guide to
16 open meetings and allowing the public to be part of
17 Board decisions.

18 Mr. Suter stated the Board is considered an
19 agency under the Sunshine Act, where any type of
20 official action and discussion of agency business has
21 to be done in public with a public notice. He
22 addressed exceptions to the Sunshine Act, including
23 conferences and training programs.

24 Mr. Suter mentioned personnel issues, consulting
25 with him for legal advice, and issuing an adjudication

1 and order are appropriate for executive session. He
2 noted the Board must vote in public session on matters
3 discussed in executive session. He commented that
4 Board business should be conducted in open meetings
5 and not be discussed outside the meeting.

6 Mr. Suter stated the Board can delegate
7 administrative functions to a committee, such as the
8 Chair being appointed for the Act 41 applications.

9 Mr. Suter noted VRP Consent Agreement items 3, 4,
10 and 5 were discussed during executive session.]

11 ***

12 MOTIONS

13 MR. SUTER:

14 Those items were 3, 4, and 5 at Case No.
15 20-53-005225, Case No. 20-53-007515, and
16 20-53-008094.

17 I understand the Board, as a result
18 of executive session, will entertain a
19 collective motion to approve all three
20 of these VRP agreements.

21 DR. TURSI:

22 So moved.

23 DR. SWALLOW:

24 Second.

25 CHAIRMAN LITMAN:

1 All in favor?

2 [The motion carried unanimously.]

3 ***

4 Applications for Licensure

5 MR. SUTER:

6 The other matters we discussed in
7 executive session are the two
8 applications that you find on your
9 agenda at items 14 and 15. These are
10 both applications.

11 Item 14 is the Clifford Pang, D.O.,
12 application.

13 I understand, as a result of
14 discussions in executive session, the
15 Board will approve this application.

16 DR. TURSI:

17 So moved.

18 DR. POGGI:

19 Second.

20 CHAIRMAN LITMAN:

21 All in favor?

22 [The motion carried unanimously.]

23 ***

24 MR. SUTER:

25 Item 15 that we discussed in executive

1 session was the Reactivation Application
2 of Caitlin Ann Halbert, D.O. This was a
3 waiver request.

4 I understand, as a result of
5 discussions in executive session, the
6 Board will deny this waiver request.

7 CHAIRMAN LITMAN:

8 Motion?

9 DR. TURSI:

10 So moved.

11 DR. SWALLOW:

12 Second.

13 CHAIRMAN LITMAN:

14 All in favor?

15 [The motion carried unanimously.]

16 ***

17 Report of Board Counsel (cont.)

18 [Kenneth J. Suter, Esquire, Board Counsel, noted the
19 Bureau of Professional and Occupational Affairs
20 Recusal Guidelines for the Board's review. He
21 encouraged members to consult with him if any issues
22 arise. He explained that recusal deals with the image
23 of the Board to make fair and unbiased decisions.

24 Mr. Suter provided an overview of mandatory,
25 strongly suggested, and discretionary recusals.]

1 ***

2 Report of Regulatory Counsel

3 [Kenneth J. Suter, Esquire, Regulatory Counsel,
4 referred to House Bill 2636 regarding the Health Care
5 Practitioner Non-compete Agreement Act for the Board's
6 review. He referred to Section 4(a), where a covenant
7 not to compete is deemed contrary to public policy and
8 is void and unenforceable to the extent the covenant
9 not to compete restricts movement of health care
10 practitioners or a health care practitioner from
11 practicing within a geographic area.

12 Mr. Suter stated the purpose of the legislation
13 was to promote the ability of health care
14 practitioners to be able to move around because of
15 shortages of health care practitioners. He referred
16 to Section 4(b) regarding notification and limitations
17 on what can be disclosed and the duty of the employer
18 in Section 5 to release information regarding the
19 separation of the health care practitioner.

20 Dr. Litman questioned whether there was a
21 limitation on access to patient information after
22 separation from an employer.

23 Mr. Suter did not think there were any
24 limitations because of not wanting to limit the
25 geographic area.

1 Mr. Suter referred to Section 5 regarding the
2 duty of the employer, where within a reasonable period
3 of time after this notice of the health care
4 practitioner's intent to separate from the employer,
5 the employer shall make available to the separating
6 health care practitioner all contact information and
7 existing electronic medical records of the prior
8 patients of the health care practitioner.

9 Dr. Tursi noted an argument from those opposed to
10 the bill, where someone built up a practice for the
11 first several years at probably a loss and now they
12 are finally at the point where they could be
13 productive and someone leaves and goes right across
14 the street and takes all of their patients.

15 Dr. Tursi questioned where House Bill 2636 was in
16 the legislature as far as timeline.

17 Mr. Suter noted it was referred to the House
18 Professional Licensure Committee on June 29 and that
19 legislature was not in session now.

20 Marc Farrell, Deputy Policy Director, Department
21 of State, reported the bill had been filed and
22 referred to committee but has not moved. He noted
23 legislature was in recess until September 15 but would
24 mention the bill to Victor Wills at legislative
25 affairs and report back.]

1 ***

2 [Kenneth J. Suter, Esquire, Board Counsel, addressed
3 the Act 41 annex regarding licensure by endorsement,
4 which allows people from other jurisdictions to obtain
5 a license in Pennsylvania. He noted requirements,
6 where an individual's home jurisdiction must be
7 substantially equivalent to commonwealth requirements
8 and would have to meet other criteria the Board would
9 require for licensure without any disciplinary issues.

10 Mr. Suter stated each respective Board must also
11 determine competency by choosing either practicing 2
12 of the last 5 years prior to application or continuing
13 education. He noted the Board previously adopted
14 practiced 2 of the last 5 years prior to application,
15 along with passing the respective national
16 examination.

17 Mr. Suter informed the Board of regulatory
18 counsel concerns of this not getting past the
19 governor's office. He wanted the Board to consider
20 whether or not they want to maintain the requirement
21 of passing the national exams for each one of these
22 licensees or if they want to leave it where they are
23 competent because of substantial equivalence and have
24 practiced 2 of the last 5 years prior to application.

25 Mr. Farrell mentioned that Act 41 was to allow

1 people who could not get into Pennsylvania through
2 traditional endorsement. He stated by the Board
3 putting the exam into the competency piece, they are
4 double-dipping. He noted it to be critical that the
5 Board articulate the reasons why if they decide to
6 incorporate the exam in the competency.

7 Dr. Tursi questioned whether there would be any
8 unintended consequences of removing the national exam.

9 Mr. Suter noted the importance of making sure the
10 jurisdiction was substantially equivalent. He stated
11 it was not a regulation yet but wanted to make any
12 changes to the language before going any further.

13 Mr. Suter explained that the Board had to adopt
14 one of two standards for competency and could add to
15 that but cannot use "or" because somebody could then
16 just pass the national exam and would not necessarily
17 be required to have been practicing or have continuing
18 education. He looked for a motion to either delete
19 the requirement for each of the respective licensees'
20 national examination from the regulation or to
21 maintain the existing language.

22 Cynthia K. Montgomery, Esquire, Deputy Chief
23 Counsel/Regulatory Counsel, Department of State,
24 agreed with Mr. Farrell, where an individual
25 maintained their license and practiced 2 of the last 5

1 years or they take the exam.

2 Ms. Montgomery stated Boards could add other
3 options for proving competency other than the two that
4 are in the act, but at least one of the two in the act
5 had to be included.

6 Mr. Suter recommended placing a limit on when an
7 individual passed the national exam by making it
8 within the last so many years.

9 Dr. Tursi agreed and suggested it to read, "or
10 passed the national exam within the last 2 years."

11 Mr. Suter noted that to be acceptable as long as
12 2 of the last 5 years is kept as the first criteria
13 with the addition of "or."]

14 ***

15 DR. TURSI:

16 I think if we had to vote one or the
17 other to get things moving I would
18 reject the requirement for the National
19 Board Examination and go with the second
20 option, however the wording exactly was
21 but put in addition to that the "or"
22 statement, "or passage of the National
23 Board Examination within the last 2
24 years.

25 MR. SUTER:

1 Just to clarify, that is for each
2 license type.

3 Is that a motion?

4 CHAIRMAN LITMAN:

5 I think the timeline, the 2 years, for
6 example, if you are getting somebody
7 applying by endorsement and got a
8 license in another state while they were
9 in residency and took 3 years or 4 or 5
10 to finish their residency, that would be
11 the only falter that might be an issue.

12 MR. SUTER:

13 We are going to say 3 years rather than
14 2 years for passing of the exam. We
15 need a second.

16 DR. BULGER:

17 Second.

18 [Ms. Grey commented that respiratory care
19 professionals are guided by the National Board of
20 Respiratory Care, so every 5 years after July 1, 2002,
21 everybody has to update and reexam. She expressed her
22 concern with the possibility of confusion for some of
23 the allied health professionals as to what would
24 happen aside from the physicians.]

25 CHAIRMAN LITMAN:

1 Those who approve?

2 [The motion carried unanimously.]

3 ***

4 [Kenneth J. Suter, Esquire, Board Counsel, addressed
5 Act 53 of 2020 and provided a copy of Act 53 for the
6 Board's review. He stated Act 53 considers criminal
7 convictions in application cases and disciplinary
8 proceedings. He stated it dictates how boards and
9 commissions consider criminal convictions for
10 applicants and disciplinary procedures. He mentioned
11 sections § 3112 through § 3115 are not effective for
12 180 days.

13 Mr. Suter noted the importance of the definition
14 of "directly relates," which is the nature of the
15 criminal conduct for which the person was convicted
16 has a direct bearing on the fitness or ability to
17 perform one or more of the duties or responsibilities
18 necessarily related to the profession, trade, or
19 occupation for which the individual seeks licensure.
20 He stated character and moral turpitude would no
21 longer be used regarding crimes.

22 Mr. Suter referred to § 3113 regarding
23 consideration of criminal convictions, where the Board
24 has to follow the procedures in this section when
25 determining whether an individual with a criminal

1 conviction qualifies for a license, certificate,
2 registration, or permit. He stated the Board shall
3 not consider good moral character, crimes of moral
4 turpitude, ethical or dishonest practice as provided
5 in the Criminal History Records Information Act
6 (CHRIA).

7 Mr. Suter noted the need to first determine
8 whether the criminal conviction directly relates to
9 the occupation and then look at the schedule of
10 offenses developed by the Board in conjunction with
11 the commissioner.

12 Mr. Suter has started working on a list of
13 offenses and would be providing those to the
14 commissioner to solicit information from the Board and
15 public. He stated it was presumed the individual
16 would pose a substantial risk to public health and
17 safety. He noted no rebuttable presumption if it is
18 not on the list.

19 Mr. Suter noted a licensing Board may not issue a
20 license, registration, certificate, or permit or
21 otherwise allow an individual to practice as a health
22 care practitioner if the individual has been convicted
23 of a sexual offense.

24 Mr. Suter addressed crimes of violence, where the
25 Board can grant a license if it is a crime of violence

1 but three years must have elapsed since the release
2 from incarceration and three years since imposition of
3 sentence if other than incarceration and remain free
4 of conviction from that three-year period and then the
5 Board has to do the individualized assessment and
6 determine the person is not a risk to public health
7 and safety.

8 Mr. Suter addressed the applying drug trafficking
9 offenses.

10 Mr. Suter referred to § 3114 concerning juvenile
11 adjudications, noting the Board was prohibited from
12 considering those.

13 Mr. Suter referred to § 3115 regarding preliminary
14 determinations, where individuals can pay a \$45 fee
15 and contact the Board if they cannot tell whether or
16 not they can receive a license.

17 Mr. Suter mentioned that the wording for this was
18 confusing in the act where it reads, if a preliminary
19 determination is issued, it is not final or binding
20 and then states in subsequent provisions that
21 determination shall be binding.

22 Mr. Suter referred to § 3116, where a guide of
23 best practices regarding criminal history must be
24 developed by the state through the commissioner's
25 office within 180 days.

1 Mr. Suter referred to § 3117 regarding the list of
2 criminal offenses, where the commissioner, in
3 consultation with the boards and business community
4 with knowledge of the respective profession, must
5 publish a list. He stated the commission also must
6 update the Schedule of Criminal Offenses and has to be
7 made part of the application.

8 Mr. Suter referred to 16A-5334 regarding the
9 schedule of fees. He stated it would be published by
10 the Legislative Reference Bureau on August 15, 2020.
11 He mentioned application fees would change upon
12 publication, and renewals would take effect at the
13 next renewal cycle.

14 Mr. Suter referred to proposed annex 16A-5335
15 regarding licensure qualifications. He mentioned a
16 meeting with a subset of the Board, Mr. Hollinger, and
17 the Pennsylvania Osteopathic Medical Association
18 (POMA) representatives to discuss language. He noted
19 editing areas the subcommittee and POMA recommended.]

20

21 DR. TURSI:

22 I make a motion we accept it as
23 presented.

24 DR. SWALLOW:

25 Second.

1 CHAIRMAN LITMAN:

2 All in favor?

3 [The motion carried unanimously.]

4 ***

5 [Cynthia K. Montgomery, Esquire, Deputy Chief
6 Counsel/Regulatory Counsel, Department of State,
7 referred to proposed rulemaking 16A-5326 regarding
8 child abuse reporting requirements. She provided a
9 preamble and annex. Ms. Montgomery stated 16 Boards
10 needed to develop regulations, noting the Dental Board
11 regulation was approved by the Independent Regulatory
12 Review Commission (IRRC) and incorporated changes to
13 the other 15 boards.

14 Ms. Montgomery noted a substantial number of
15 amendments were made to the Child Protective Services
16 Law from 2014 to November 2019 with Act 31 of 2014,
17 which required the agency to implement mandatory
18 training in child abuse.]

19 ***

20 MS. MONRGOMERY:

21 It would appropriate for there to be a
22 motion to move forward and promulgate
23 this rulemaking as proposed rulemaking.

24 DR. TURSI:

25 So moved.

1 CHAIRMAN LITMAN:

2 Second?

3 DR. POGGI:

4 Second.

5 CHAIRMAN LITMAN:

6 All in favor?

7 [The motion carried unanimously.]

8 ***

9 Report of Board Chairman

10 [Randy G. Litman, D.O., Chairman, reported receiving
11 commendation from POMA for the Board's efficiency in
12 reviewing a case and providing clarification. He
13 thanked Mr. Hollinger, who deserved all of the credit,
14 for his hard work.]

15 ***

16 Report of Vice Chair - No Report

17 ***

18 Report of Department of Health

19 [Mary Pat Howard, M.S., RN-BC, Executive Assistant of
20 Quality Assurance, on behalf of Rachel Levine, M.D.,
21 Physician General/Secretary of Health, noted 644 new
22 cases of COVID-19, bringing total cases to 117,739
23 with 7,685 deaths. She noted over 1 million tests
24 with 600-700 positive cases daily. She reported 8,749
25 of total cases are in health-care workers.]

1 Ms. Howard stated an assessment and support team
2 was reaching out to long-term care facilities who had
3 positive COVID-19 to see if they would like help with
4 training, education, or supplies. She mentioned the
5 Regional Response Health Collaboration Program was
6 also doing the same thing.

7 Ms. Howard reported more cases in the
8 Philadelphia area but nothing out of balance with what
9 was happening anywhere else.]

10 ***

11 Report of Commissioner

12 [K. Kalonji Johnson, Commissioner, Bureau of
13 Professional and Occupational Affairs, informed the
14 Board that virtual meetings would continue through the
15 end of this year.

16 Commissioner Johnson thanked Board members for
17 their continued work under the circumstances. He
18 extended appreciation to Mr. Hollinger, Mr. Suter, and
19 program staff who have been working hard to keep up
20 with the pace of applications. He thanked
21 stakeholders and legislative members for participating
22 and being wonderful partners in addressing a lot of
23 administrative concerns.

24 Commissioner Johnson thanked Mr. Farrell and
25 Board counsel for being the architects of a lot of the

1 waivers the last several months. He noted Mr.
2 LaFratte has also been extremely helping in supporting
3 the State's navigation through the process. He also
4 thanked prosecutorial counsel for the work they are
5 doing with transitioning administrative hearings to
6 virtual.

7 Commissioner Johnson commented that the bureau's
8 thoughts and prayers are with all of the Board members
9 fighting COVID-19 on the front lines.]

10 ***

11 Report of Board Administrator

12 [Aaron Hollinger, Board Administrator, addressed the
13 2020 renewal season and was working with the
14 information technology (IT) department to get those up
15 on the website. He informed everyone that renewals
16 would be done completely online through the
17 Pennsylvania Licensing System (PALS), which should be
18 going live either August 26 or September 2. He
19 offered to assist anyone who has questions concerning
20 the renewal process.]

21 ***

22 For the Board's Information/Discussion

23 [Randy G. Litman, D.O., Chairman, noted the next
24 scheduled Board meeting is October 14, 2020, by
25 WebEx.]

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Adjournment

CHAIRMAN LITMAN:

May I have a motion to adjourn?

DR. SWALLOW:

So moved.

CHAIRMAN LITMAN:

Thank you everybody. Have a good day.

[The motion carried unanimously.]

[There being no further business, the State Board of
Osteopathic Medicine Meeting adjourned at 12:08 p.m.]

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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.



Morgan McKendrick,

Minute Clerk

Sargent's Court Reporting
Service, Inc.

STATE BOARD OF OSTEOPATHIC MEDICINE
REFERENCE INDEX

August 12, 2020

	TIME	AGENDA
1		
2		
3		
4		
5		
6		
7		
8	9:00	Executive Session
9	10:30	Return to Open Session
10		
11	10:44	Official Call to Order
12		
13	10:45	Approval of Minutes
14		
15	10:46	Report of Prosecutorial Division
16		
17	10:50	Report of Board Counsel
18		
19	10:51	Motions
20		
21	10:52	Applications for Licensure
22		
23	10:55	Report of Board Counsel (cont.)
24		
25	10:58	Report of Regulatory Counsel
26		
27	11:59	Report of Board Chair
28		
29	12:00	Report of Department of Health
30		
31	12:03	Report of Commissioner
32		
33	12:07	Report of Board Administrator
34		
35	12:08	For the Board's Information/Discussion
36		
37	12:08	Adjournment
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