



**ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY**

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Board Members:
Gary A. Erbstoesser, D.O., Pres.
Jonathan A. Maitem, D.O., V.P.
Jeffrey H. Burg, AIF
Dawn K. Walker, D.O.
Ken S. Ota, D.O.
Samara Shipon, D.O.
Michael Goodman

Executive Director
Justin Bohall

DRAFT MINUTES FOR MEETING OF THE

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

Held on Saturday December 2, 2023 at 8:30 am

1. CALL TO ORDER

Board President Erbstoesser called the meeting to order at 8:34 am.

President Erbstoesser thanked the Board members and staff for facilitating today’s proceedings and read aloud the Board’s Mission Statement: “The mission of the Board is to protect the public by setting educational and training standards for licensure, and by reviewing complaints made against osteopathic physicians, interns, and residents to ensure that their conduct meets the standards of the profession, as defined in law (A.R.S. § 32-1854).”

2. ROLL CALL AND REVIEW OF AGENDA

	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Present	X	X		X	X	X	X
Absent			X				

Other Board Staff Present during the Board Meeting:

	Justin Bohall, Executive Director	Lindsey Castro, Deputy Director	Barbara Prah-Wix, DO- Med. Cons.	Jeanne Galvin, Assistant AG	Meaghan Cool, Licesing	Kellye Mykhailov, Operations Coord.	Irma Dominick, Licensing
Present	X	X	X	X	X	X	X
Absent							

3. CALL TO THE PUBLIC

A. President Erbstoesser made a call to the public. No one from the public requested to speak.

4. REVIEW, CONSIDERATION, AND APPROVAL OF MINUTES

A. October 13, 2023, Open Session

MOTION: Vice-President Maitem motioned to approve October 13, 2023, Open Session minutes

SECOND: Dr. Shipon

VOTE: 4-aye, 0-nay, 2-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	4	X	X				X	X
Nay:	0							
Abstain/ Recuse:	2				X	X		
Absent:	1			X				

B. October 13, 2023, Executive Session

MOTION: Vice-President Maitem motioned for the Board to approve the October 13, 2023, Executive Session minutes.

SECOND: Dr. Shipon

VOTE: 4-aye, 0-nay, 2-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	4	X	X				X	X
Nay:	0							
Abstain/ Recuse:	2				X	X		
Absent:	1			X				

5. REVIEW, DISCUSSION, AND POSSIBLE ACTION ON CASE REVIEW

A. DO-20-0088A, Joshua Duncan, DO

Dr. Duncan was present during the Board's consideration of the matter and was represented by legal counsel Dr. Perlmutter, at the virtual meeting. Complainant JA was also present.

Board staff provided a summary of the case review.

Dr. Duncan stated that he discussed with the patient in depth the chance a different operation of the eye may need to occur and the patient did have an excellent outcome with all things considered.

Patient JA stated he was counseled for one operation and not about the other operation or warnings of what to look out for. He also stated that Dr. Duncan lacked communication about the operation and why specific actions were needed.

Upon hearing the summary of the case review and provided materials, the Board made a motion to move to an Investigative Hearing.

MOTION: President Erbstoesser motioned for the Board to move to an Investigative Hearing.

MOTION FAILED ON ACCOUNT OF NO SECOND.

Upon hearing the summary of the case review and provided materials, the Board made a motion to issue a Letter of Concern due to inadequate documentation and poor patient communication.

MOTION: Vice President Maitem motioned for the Board to issue a Letter of Concern.

SECOND: Dr. Walker

VOTE: 5-aye, 1-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	5	X	X		X	X	X	X
Nay:	1	X						
Abstain/ Recuse:	0							
Absent:	1			X				

6. REVIEW, DISCUSSION, AND ACTION ON INVESTIGATIVE HEARINGS PURSUANT TO A.R.S. § 32-1855 (E).

A. DO-21-0094A, Jason Johnson, DO

Dr. Johnson was present for the Board’s consideration of the matter.

Board staff provided a summary of the case.

The Complaint is patient, DM, who had problems breathing, talking, and walking after a tummy tuck. The patient met with Dr. Johnson for a second opinion consultation and was taken to surgery in January 2021. After feeling a “pop” and seeing a bulge in her abdomen, a CT scan was done and revealed gallbladder problems but nothing else. The complainant was taken to surgery by another surgeon for hernia repair. The Board’s expert felt Dr. Johnson fell below the standard of care as she left a minimally invasive approach, with mesh, which should have been considered and the patient having a high BMI weight loss techniques should have been instituted prior to any other surgery.

Dr. Johnson provided a background of his schooling and surgery experience. Dr. Johnson stated the patient’s breathing issues were due to her abdominal wall being too tight from a previous surgery. Dr. Johnson stated that he removed all sutures from her previous surgery and was able to breathe better, walk, and even go upstairs which she could not do

a year prior. Dr. Johnson states he let her know that she will have a bulge in her upper abdomen that is due to her diastasis. Dr. Johnson stated that he referred her to another doctor regarding her gallbladder. The patient then returned to Dr. Johnson and the patient was upset about her interaction with the doctor she was referred to. Dr. Johnson stated he spent an hour with the patient explaining all previous surgeries and what was found. Dr. Johnson stated when he was finished the patient and her husband thanked him for spending so much time with them and explaining everything. Dr. Johnson stated there was not a less invasive procedure to fix the patient's problem.

Upon hearing the summary of the case review and provided materials, the Board made a motion to move to dismiss the case.

MOTION: Vice-President Matiem motioned for the Board to dismiss the case

SECOND: Dr. Ota

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Matiem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

B. DO-22-0159A, Naveen Kumar, DO

Dr. Kumar was present for the Board's consideration of the matter. Dr. Kumar's legal counsel, Anne Holmgren, was also present.

Dr. Kumar provided a summary of his current work and medical experience.

Board staff provided a summary of the case.

The complainant alleges that Dr. Kumar has a horrible bedside manner and is inhumane. The patient alleges that Dr. Kumar did not introduce himself before the procedure and she could hear a dog barking during the procedure. She also stated that Dr. Kumar became frustrated and threw his tool down. The patient alleges she was tended to by Megan the Operations Manager after the procedure. The Board's expert felt that Dr. Kumar may have fallen below the standard of care due to the patient's blood pressure being very low before surgery and delaying or rescheduling the surgery would have been more

appropriate. There was also a lack of documentation including the patient’s postoperative vitals.

Dr. Kumar stated that his goal is always the care and safety of the patient. He states that he was treated maximally and disagrees with the Board’s expert. Dr. Kumar stated his goal for the procedure was to relieve the patient of her symptoms. Dr. Kumar advised the Board that for some procedures he does have an anesthesiologist but he did not need one for this procedure, however, the patient was given medications to help with anxiety before the procedure. Dr. Kumar stated while there is no documentation, he did evaluate the patient after the procedure, and was stable enough that Dr. Kumar advised her to go home.

MOTION: President Erbstoesser motioned for the Board to move to Executive Session for legal advice pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: Dr. Walker

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board entered into Executive Session at 10:36 a.m.

The Board returned to Open Session at 10:50 a.m.

No legal action was taken by the Board during Executive Session.

	Vote	Gary Erbstoesser, DO	Jonathan Matiem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

Upon hearing the summary of the case review and provided materials, the Board made a motion to issue an Administrative Warning.

MOTION: Vice-President Matiem motioned for the Board to issue an Administrative Warning for violations of ARS§32-1854(A) 6, 21, 34, and 39.

SECOND: Dr. Shipon

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

C. DO-23-0049A, Edward Markman, DO

Dr. Markman was present for the Board’s consideration of the matter.

Dr. Markman provided a summary of his medical education and work experience.

Board staff provided a summary of the case.

The complaint is regarding a malpractice claim. The patient was admitted to the hospital in 2018 for acute pancreatitis and Dr. Markman was notified of a critical calcium level which he provided orders to give calcium orally. The patient was allowed by nursing staff to take off his telemetry leads to take a shower and the patient was later found unresponsive in the shower. The Board’s expert felt that Dr. Markman may have fallen below the standard of care due to not ordering the IV calcium but also noted some medical literature states that IV calcium is not appropriate unless the patient is showing symptoms.

Dr. Markman agreed with the summary and stated that he uses the nurses as his eyes and ears as a nocturnist. Dr. Markman stated that if you go through the medical records there was no indication of any symptoms due to his calcium level. Dr. Markman stated that he has used this case to learn and improve himself. Upon hearing the summary of the case review and provided materials, the Board made a motion to move to dismiss the case.

MOTION: Vice-President Maitem motioned for the Board to dismiss the case.

SECOND: Dr. Ota

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

D. DO-22-0133A, Namir Shaba, DO

Dr. Shaba was present for the Board’s consideration of the matter.

Board staff provided a summary of the case.

The complainant is the daughter of the patient and states Dr. Shaba was rude and did not inform her mother that her 12th rib was removed during surgery. The Board’s expert felt that Dr. Shaba may have fallen below the standard of care in that the treatment options were not explained fully preoperatively and a possible delay in treatment.

Dr. Shaba provided a summary of his school and work history. Dr. Shaba states he has known the patient since 2020 and sometimes the daughter was with her at appointments but believes the daughter was not with the patient when the risks and benefits were discussed about the surgery. Dr. Shaba states the surgery went well and does not remember if he spoke with the daughter or not after surgery but his protocol is to attempt to contact the family in the waiting room or via the telephone. Removing the rib was something that was explained to the patient prior to surgery. Dr. Shaba stated the patient continues to follow up with him and that he gave the patient the best care that he could.

Upon hearing the summary of the case review and provided materials, the Board made a motion to move to dismiss the case.

MOTION: Vice-President Maitem motioned for the Board to dismiss the case

SECOND: President Erbstoesser

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

7. REVIEW, CONSIDERATION, AND ACTION ON APPLICATIONS FOR LICENSURE PURSUANT TO A.R.S. § 32-1822; PERMITS PURSUANT TO A.R.S. § 32-1829; AND RENEWALS OF LICENSES PURSUANT TO A.R.S. § 32-1825 (C-D) AND A.A.C. R4-22- 207.

A. DO-23-0098A, Terry Himes, DO

Dr. Himes was present for the Board’s consideration of this matter.

Board staff provided a summary of the case.

On his application, Dr. Himes disclosed a malpractice payment made on his behalf for the amount of \$625,000 in May of 2010 for failure to recognize a complication while treating a patient in Nebraska. Dr. Himes further disclosed he was issued a disciplinary letter for failure to properly supervise a physician assistant in the state of Colorado.

Dr. Himes provided a summary of the malpractice case to the Board and the terms of the malpractice were settled with his lawyer without his knowledge. Dr. Himes also provided the Board with an explanation regarding his disciplinary letter with the State of Colorado.

MOTION: President Erbstoesser motioned for the Board to move to Executive Session for legal advice pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: Vice-President Maitem

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

The Board entered into Executive Session at 12:09 p.m.
The Board returned to Open Session at 12:16 p.m.
No legal action was taken by the Board during Executive Session.

Upon hearing the summary of the case and reviewing all materials provided, the Board made a motion to issue an unrestricted license.

MOTION: Vice-President Maitem motioned to grant an unrestricted license.
SECOND: Mr. Goodman
VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

8. ACTION ON PROPOSED CONSENT AGREEMENT

A. DO-22-0048A, Travis Lam, DO

Board staff provided a summary of the proposed consent agreement.

Upon hearing the summary of the consent agreement the Board motioned to rescind the previous Board Order.

MOTION: Vice-President Maitem motioned to rescind the previous Board Order in the matter.

SECOND: Mr. Goodman

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

Upon hearing the summary of the proposed consent agreement for settlement the Board motioned to accept the terms of the consent agreement for non-disciplinary continuing medical education.

MOTION: Vice-President Maitem motioned to adopt the terms of the consent agreement for non-disciplinary continuing medical education.

SECOND: Mr. Goodman

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

B. DO-22-0024A, Sheldon Wagman, DO

Board staff provided a summary of the proposed consent agreement.

Upon hearing the summary of the consent agreement the Board motioned to rescind the previous interim board order.

MOTION: Vice-President Maitem motioned to rescind the previous interim board order.

SECOND: Mr. Goodman

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

Upon hearing the summary of the proposed interim consent agreement the Board motioned to adopt the proposed interim consent agreement.

MOTION: Vice-President Maitem motioned to adopt the terms of the interim consent agreement.

SECOND: Mr. Goodman

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Recuse:	0							
Absent:	1			X				

9. QUESTION AND ANSWER SESSION BETWEEN THE MEDICAL STUDENTS AND MEMBERS OF THE BOARD AND DISCUSSION RELATING TO ISSUES SURROUNDING THE PRACTICE OF OSTEOPATHIC MEDICINE.

The Board met with medical students to discuss topics and issues related to the practice of osteopathic medicine. No action was taken on this item.

10. REVIEW, DISCUSSION, AND ACTION ON THE FOLLOWING MISC ITEMS.

A. Presentation from the National Board of Osteopathic Medical Examiners
 The Board received a presentation from the National Board of Osteopathic Medical Examiners on current testing plans and changes to level 2-PE section of the COMLEX and a reduction of the number of attempts of the exam. The NBOME also provided an update on the Comprehensive Osteopathic Variable Purpose Examination which can be used by the Board to help determine the skill level of physicians seeking re-entry into the profession.

B. Election of Officers for Calendar Year 2024 pursuant to A.R.S. §32-1802(B).

A. President of the Board

Dr. Erbstoesser opened the floor for nominations of Board President for Calendar Year 2024. There was only one nomination for president. As there were no other nominations, Dr. Erbstoesser closed the nominations and called the question.

MOTION: President Erbstoesser motioned for the Board to elect Dr. Maitem for President.

SECOND: Mr. Goodman

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

B. Vice-President of the Board

Dr. Erbstoesser opened the floor for nominations of Board Vice-President for Calendar Year 2024. There was only one nomination for vice-president. As there were no other nominations, Dr. Erbstoesser closed the nominations and called the question.

MOTION: Vice-President Maitem motioned to elect Dr. Shipon as Vice-President

SECOND: Mr. Goodman

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

C. Annual Performance Review of the Board's Executive Director

The Board voted to enter Executive Session for the purpose of discussing the performance of the Board's Executive Director.

MOTION: Dr. Walker motioned for the Board to move to Executive Session for purpose of discussing the performance of the Board's Executive Director pursuant to A.R.S. § 38-431.03(A)(1).

SECOND: President Erbstoesser

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbstoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

The Board entered into Executive Session at 1:53 p.m.
The Board returned to Open Session at 2:16 p.m.
No legal action was taken by the Board during Executive Session.

The Board motioned to retain Mr. Bohall as the Board’s Executive Director and to approve a 7% increase to Executive Director’s salary, retroactive to July 1, 2023.

MOTION: Vice-President Maitem motioned to retain Mr. Bohall as the Board’s Executive Director and to approve a 7% increase to Executive Director’s salary, retroactive to July 1, 2023.

SECOND: Dr. Walker

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

10. REVIEW, CONSIDERATION, AND ACTION ON REPORTS FROM EXECUTIVE DIRECTOR.

A. Report from Board Members

The Board members had nothing to report and therefore proceeded with the Agenda as scheduled.

B. Executive Director Report

1. Financial Report
2. Current Events that Affect the Board
 - A. Notice of the Sunset Audit 2024
3. Licensing and Investigations Update
4. Report on Director Dismissed Complaints

Executive Director Bohall provided a verbal update for the Board.

12. Adjournment

MOTION: Dr. Walker motioned for the Board to adjourn.

SECOND: Vice-President Maitem

VOTE: 6-aye, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

	Vote	Gary Erbsfoesser, DO	Jonathan Maitem, DO	Jeffrey Burg	Ken Ota, DO	Dawn Walker, DO	Samara Shipon, DO	Michael Goodman
Aye:	6	X	X		X	X	X	X
Nay:	0							
Abstain/ Recuse:	0							
Absent:	1			X				

The Board's meeting adjourned at 2:43 pm.

Justin Bohall, Executive Director