

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

February 4, 2010

The meeting was called to order at 11:20 a.m. by Chair, Michael Arambula, M.D. Committee members present were Jose M. Benavides, M.D., John D. Ellis, Jr.; James Scott Holliday, D.O., Wynne M. Snoots, M.D., Paulette B. Southard, Timothy J. Turner, and Timothy Webb, J.D.

Agenda Item 2 - Discussion, recommendation, and possible action regarding applicants for licensure, permits, and certification.

Ms. Southard moved, Dr. Benavides seconded, that the Committee close the meeting to the public and continue in Executive Session for deliberations concerning licensure applications and return to active status applications for licensees in retired status. The motion passed. Dr. Arambula announced that the meeting would be closed for deliberations at 11:25 a.m. concerning licensure applications and the character and fitness of applicants under the authority of The Medical Practice Act Sections 152.009 and 155.058, Occupations Code, and that while in executive session, the Board would not take any action, make any decision, or vote with regard to any matter that may be considered or discussed. A certified agenda of any executive session will be made.

The Executive Session ended at 4:25 p.m.

Item 2a Applicants appearing concerning eligibility

The Licensure Committee conducted hearings to review applicants appearing concerning eligibility. The hearings were conducted in Executive Session. Following the hearings, the Committee reconvened and considered the applications.

1. and 2. Physician Licensure and Physician in Training Permit applicants

Applicant #918 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Benavides moved to recommend to the Full Board that a determination on this applicants application for licensure be deferred and the applicants application and fees be**

extended 7 months past the expiration date to allow the applicant to complete the applicants residency program. If final evaluations are good, the Executive Director may approve the applicant for licensure. This recommendation is due to applicants poor performance in applicants surgery residency training program although upon switching to Family Medicine, applicant performed satisfactorily. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #919 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted an unrestricted Texas medical license. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #883 appeared with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a temporary Texas medical license subject to an administrative penalty in the amount of \$1000, as well as the following conditions: restriction to a PGY 4 residency position and completion of 8 hours of continuing medical education in ethics. Upon completion of residency program the applicant must reappear before the Licensure Committee for consideration of full licensure.** This recommendation is due to disciplinary action taken by health care entities that was supported by the evidence and based on unprofessional or dishonorable conduct likely to injure the public. Specifically, the applicants privileges were revoked by a psychiatric clinic and the applicant was dismissed from a residency-training program due to allegations that the applicant had inappropriate contact with a patient. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #888 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Snoots moved to recommend to the full Board that the applicants application for licensure be deferred and an extension on the application and fees be granted for 6 months to allow applicant to complete a KSTAR assessment. If the assessment is favorable and does not recommend any additional training, application will be placed on list for consideration of permanent licensure. If the assessment is not favorable or makes recommendations for further training, applicant must appear before the Board for further review.**

This recommendation is due to failure to meet the standard of care in the field of emergency medicine with regard to the treatment of three patients from 1984-2000. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #889 appeared with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be denied reissuance of applicants prior medical license.** This recommendation is due to the applicants past disciplinary history with the Board, including multiple orders eventually resulting in the suspension and revocation of applicants license; time out of the active practice of medicine; and failure to demonstrate that reissuance is in the publics best interest. Factors influencing this recommendation include that the Boards actions were related to intemperate use of alcohol and drugs; writing fraudulent prescriptions; criminal history including multiple DWIs; and felony conviction for intoxicated assault with a motor vehicle and failure to render aid resulting in serious injuries to two pedestrians for which applicant was subsequently incarcerated for two years. In addition the applicant is encouraged to self refer to the Texas Physician Health Program (TPHP). **Dr. Benavides seconded the motion. All voted in favor. The motion passed.** Note upon consideration the full Board determined that the statement encouraging the applicant to self-refer to the TPHP should be removed.

Applicant #900 appeared, with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that the applicant be determined ineligible for licensure due to applicants 10-year time away from the active practice of medicine, and applicants placement on probation in residency training and failure to meet the terms of the probation in relation to applicants clinical performance and failure to meet the standard of care. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #828 appeared with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Turner moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions for a period of five years: practice limited to administrative medicine only; applicant must take a boundaries course approved by the Executive Director; and applicant will be referred to the Texas Physician Health Program (TPHP).** This recommendation is due to: past disciplinary history with the Board, specifically applicant has been the subject of multiple orders with the Board for drug abuse and unprofessional conduct whereby applicants license was suspended and eventually surrendered in 2005; disciplinary action by two health care entities relating to having an inappropriate relationship with a patient; and failure to demonstrate that he has actively practiced medicine since 2004. In addition, the Committee considered the following mitigating factors: demonstrated sobriety since November 2004; compliance with treatment for mental condition and

substance dependency; applicants compliance with an Interim Agreement with the Board that has required drug testing since February 2008; and the applicants request for a restricted license that does not include the clinical practice of medicine. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.** Note Upon consideration of this motion the Full Board determined that this applicant be granted a Texas medical license subject to the following terms and conditions for an indefinite period: practice limited to administrative medicine only. In addition the applicant will be referred to the Texas Physician Health Program.

Applicant #917 appeared before the Committee, in executive session, on appeal of the Executive Directors determination. In open session, **Dr. Holliday moved to recommend to the full Board that the applicant be granted an unrestricted Texas medical license. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #912 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Benavides moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions: applicant be required to take 8 hours continuing medical education specifically in topics related to treating severely depressed or potentially suicidal patients.** This recommendation is due to failure to meet the standard of care in the treatment of a psychiatric patient who was released by applicant after a brief involuntary commitment and subsequently committed suicide. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #920 appeared with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Ellis moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted an unrestricted Texas medical license. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #898 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Turner moved to recommend to the full Board that the applicant be denied reissuance of applicants prior medical license.** This recommendation is due to: prior disciplinary history with the Board including having the applicants license twice revoked in relation to felony convictions of federal drug laws; time out of the active practice of medicine since 2003; failure to meet Board requirements regarding the 10 year rule; and failure to demonstrate that the return to the

practice of medicine is in public's best interest. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #899 appeared before the Committee in executive session, on referral by the Executive Director. **In open session, Dr. Holliday moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions: that the applicant have a chart monitor for four quarters to include review of office and hospital records.** This recommendation is due to failure to meet the standard of care in two surgical cases in which there was patient harm. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #901 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that the application be deferred until the applicant undergoes a comprehensive focal evaluation approved by the Executive Director and upon completion reappear before the Committee. If applicant can obtain evaluation and results on or before March 10, 2010, applicant may reappear at the April Committee meeting. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #909 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Ellis moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions: that the applicant be required to take 12 hours CME in antimicrobial therapy for tuberculosis and 12 hours CME in medical record keeping, and that the applicant have a chart monitor for 4 quarters of applicant's office-based practice.** This recommendation is due to failure to meet the standard of care resulting in a patient's permanent loss of eyesight and inadequate medical records. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #902 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Turner moved to recommend to the full Board that the applicant's request for relicensure be denied and that the applicant be allowed to withdraw the applicant's application for licensure.** This recommendation is due to prior disciplinary action with the Texas Medical Board that resulted in licensure suspension due to intemperate use of alcohol and criminal history for alcohol-related offenses; disciplinary action taken by peers and another state licensing entity due to applicant's alcohol-related issues; and time out of the active practice of medicine. **Dr. Benavides**

seconded the motion. Mr. Turner directed staff to speak with the applicant regarding a refund of the application fee. All voted in favor. The motion passed.

Applicant #907 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Ellis moved to recommend to the full Board that the applicant be granted an unrestricted Texas medical license. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #921 appeared, before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Benavides moved to recommend to the full Board that the applicant be granted a Texas medical license, subject to an administrative penalty in the amount of \$2000.** This recommendation is due to applicant intentionally providing false or misleading information to the Board. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #800 did not appear before the Committee but his application was considered following appearance and deferral before the Licensure Committee in August 2009, and deferral of the application in November 2009 to allow the applicant to complete a KSTAR evaluation and mini-residency. In open session, **Dr. Holliday moved to recommend to the full Board that the applicants application for relicensure be deferred and an extension on the application and fees be granted for 9 months to allow applicant to complete the 180-day (24 week) Drexel University Physician Re-Entry Preceptorship. The program must include 12 weeks of Inpatient Internal Medicine and 12 weeks of General Medicine Outpatient /Clinical Practice. Upon successful completion of the program and the Boards receipt of a report regarding performance and conclusions regarding the Applicants adequacy to return to practice, relicensure may be granted under a public order that was recommended by the Committee at its November 2009 meeting. Additionally, upon successful completion of the training, the order offered in November 2009 shall include that, should the Applicant return to Texas to practice medicine, the Applicant shall appear before the Board to discuss the Applicants return to practice. Ms. Southard seconded the motion. All voted in favor. The motion passed.** This recommendation is due to the nature of applicants plan to practice general Internal Medicine, which Applicant did not practice prior to losing Applicants Texas license.

3. Acudetox certification applicants There were none.
4. Surgical assistant licensure applicants There were none.

Item 2b Applicants appearing for rehearing concerning eligibility.

1. Physician Licensure Applicants There were none.
2. Physician in training permit applicants There were none.
3. Acudetox certification applicants There were none.
4. Surgical assistant licensure applicants - There were none.

Item 2c Proposed orders offered by the Executive Director.

1. Physician Licensure Applicants Ms. Kaufman reported on eleven orders offered by the Executive Director and accepted by applicants. **Ms. Southard moved to recommend to the full Board that all eleven orders be approved. Mr. Webb seconded. All voted in favor and the motion passed.**
2. Physician in training permit applicants There were none.
3. Acudetox certification applicants - There were none.
4. Surgical assistant licensure applicants - There were none.

Item 2d Applicants determined by staff to meet eligibility requirements.

1. Physician Licensure Applicants - There were 655 applicants who met all requirements to be considered for permanent licensure by the full Board. **Dr. Holliday moved to recommend to the full Board that all 655 physician licensure applicants determined to meet eligibility requirements by staff be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**
2. Acudetox certification applicants There was one acudetox certification applicant to be considered for approval. **Ms. Southard moved to recommend to the full Board that the acudetox certification applicant determined to meet eligibility requirements by staff be approved. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**
3. Surgical assistant licensure applicants - There were six surgical assistant applicants to be considered for approval. **Ms. Southard moved to recommend to the full Board that all six surgical assistant applicants determined to meet eligibility requirements by staff be approved. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Agenda Item 3 Discussion, recommendation, and possible action regarding applicant requests:

Item 3a Requests for Rehearing Applicant #850s request for rehearing was considered. Mr. Webb moved to recommend that the committee deny the applicants request for rehearing based on failure to present new information not previously considered by the Committee. Dr. Holliday seconded the motion. All voted in favor. The motion passed.

Applicant #858s request for rehearing was considered. Dr. Holliday moved to recommend that the committee deny the applicants request for rehearing based on failure to present new information not previously considered by the Committee. Ms. Southard seconded the motion. All voted in favor. The motion passed.

Item 3b Request for Waiver of Acupuncture License Requirements There were none.

Agenda Item 4 Discussion, recommendation and possible action regarding unsigned orders from previous meetings. There were none.

Agenda Item 5 Reports on:

Item 5a Applicant determinations of eligibility made by the Executive Director in the last period - Ms. Knight presented a report on applicant determinations of eligibility made by the Executive Director for the period October 29, 2009 through January 28, 2010.

Item 5b Physician licensure process statistics Ms. Garanflo presented physician licensure statistics for applicants considered for licensure at this meeting. Estimated average time to complete applications for licensure in FY 10 Quarter 2 is 40 days. Average time to complete applications for the FY10 Quarter 1 was 50 days.

Agenda Item 6 Discussion, recommendation, and possible action regarding licensee requests:

Item 6a - Request of physician for activation of canceled physician licenses There were none.

Item 6b - Request of physician to return to Active Status from Texas Retired Status There were none.

Agenda Item 7 - Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration.

Item 7a Surgical Assistants There were none.

Item 7b Acudetox There were none.

Agenda Item 8 Discussion, recommendation, and possible action regarding Nonprofit Health Organizations:

Item 8a - Applicants for initial certification - There were 5 applications for initial certification as a Nonprofit Health Organization for approval. **Ms. Southard moved to recommend to the full board that the requests for initial certification as a Nonprofit Health Organization be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Item 8b - Requests for biennial recertification - There were 42 applications for biennial recertification as a Nonprofit Health Organization for approval. **Dr. Holliday moved to recommend to the full board that the requests for biennial recertification as a Nonprofit Health Organization be approved. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Item 8c - Cancellation of organizations certified as Nonprofit Health Organizations - There were four requests for cancellation by a Nonprofit Health Organization. **Ms. Southard moved to recommend to the full Board that the request for cancellation of the Nonprofit Health Organization be granted. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Agenda Item 9 - Discussion, recommendation, and possible action regarding proposed additions and modifications to board rules: There were none.

Agenda Item 10 Discussion, recommendation, and possible action regarding board rule 163.11 related to the active practice of medicine The committee reviewed a letter from a physician requesting that the board eliminate the active practice of medicine rule due to negative impact on physicians applicants who practice as medical directors for health insurance companies and whose employment and/or credentialing requires full unrestricted licensure. The committee sympathized with the situation

described by the physician but did not recommend a rule change. The committee directed staff to submit a request to the Federation of State Medical Boards to: 1) study the different options available and in use by state medical boards in regards to the types of licenses issued to physicians practicing as medical directors; and, 2) to develop recommendations to address the issue.

Agenda Item 11 - There being no further business, Dr. Arambula adjourned the meeting at 4:55 p.m.