



Texas Medical Board

BOARD MEETING MINUTES

February 5, 2010

The meeting was called to order February 5, 2010 at 8:32 a.m. by Board President Irvin E. Zeitler, Jr., D.O. Board members present were Melinda McMichael, M.D., Vice-President; Timothy J. Turner, Secretary/ Treasurer; Michael Arambula; Julie Attebury; David Baucom; Jose M. Benavides, M.D.; Patricia Blackwell; Pat J. Crocker, D.O.; John D. Ellis, Jr.; Manuel Guajardo, M.D.; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Charles Oswalt, M.D.; Allan N. Shulkin, M.D.; Wynne M. Snoots, M.D.; Paulette B. Southard; Timothy Webb, J.D.; and George Willeford III, M.D. Board staff present were Mari Robinson, Executive Director; Alan Moore, M.D., Medical Director; Nancy Leshikar, J.D., General Counsel; Jaime Garanfio, Director of Licensure; and various other staff.

Dr. McMichael read the boards mission statement into the minutes.

Our Boards mission is to protect and enhance the publics health, safety, and welfare by establishing and maintaining standards of excellence used in regulating the practice of medicine and ensuring quality health care for the citizens of Texas through licensure, discipline, and education.

Agenda item #2, Presidents Report. Dr. Zeitler gave a report on the Federation of State Medical Boards meeting scheduled April 22-24, 2010, and announced that one scholarship was available for a board member to attend the meeting in Chicago.

Dr. Zeitler read an excerpt from the Bexar County Medical Society letter announcing Dr. Benavides as the physician recipient of the 2010 Golden Asclepius Award for his service and commitment to Bexar County.

Agenda item #3, Executive Directors Report. Ms. Robinson gave a status report on the Physician Health Program which began accepting referrals of licensees the beginning of 2010. Guidelines will be developed to notify the board of any egregious cases.

Ms. Robinson presented a budget report.

After a report on options for teleconferencing, the board directed staff to purchase preliminary equipment and begin testing the use of teleconferencing for board members to participate in Informal Settlement Conferences.

Ms. Robinson gave a report on the scheduled monthly Outreach Programs beginning in February to provide educational opportunities for medical students and licensees, regarding the

board processes. Two hours of continuing medical education will be available for a ten dollar processing fee.

Ms. Robinson gave a report on the status of the Quality Assurance Panels to be instituted with the boards approval. The QA panels will consist of up to five Board or District Review Committee members to review cases before scheduling an ISC. The QA panel will have the ability to schedule an ISC, offer a Corrective Order without the necessity of an ISC, or refer the case to the Disciplinary Process Review Committee for dismissal.

After discussion of the release of information in the Newsletter, the board directed staff to research the different options for the release of physician information in the Newsletter regarding Corrective Orders and to report back at the April board.

Ms. Robinson requested the boards input on the disciplinary guidelines. After discussion, the board directed staff not to schedule a stakeholder meeting to review the disciplinary guidelines, but to list aggravating and mitigation factors in orders to better explain the basis of decisions and provide consistency in disciplinary orders. The board directed staff to provide a copy of the guidelines in the ISC room.

Agenda item #5, Discussion, recommendation, and possible action regarding advertising board certification. Ms. Robinson gave a summary of rule 164.4 regarding who may advertise board certification, not who is board certified. The following signed-in and presented oral comments: Luis Saldana, M.D., Association of Emergency Physicians; Mark Boswell, M.D., AIPP; Angela Fulgham Gardner, M.D.; American College of Emergency Physicians; Otto J. Marquez, M.D.; Association of Emergency Physicians; John W. Becher, D.O.; AOA-BOS; AOBMM; D. L. Brekker, ABMS; Howard Blumstein, M.D., American Academy of Emergency Medicine; David Mendelson, M.D.; FACEP; William McVisk, ABMS; Tim Ryan, ABPS; and Joe Nixon, ABPS. After discussion, **Ms. Southard moved, Mr. Turner seconded, and the motion passed to leave rule 164 as is and schedule an Ad Hoc Committee Regarding 164.4 Advertising Board Certification to meet prior to the next board meeting to consider the possible modification of rule 164.4.** The board directed staff to provide various options to the members before the committee meeting.

Agenda item #25, Presentation by Camille Miller, Texas Health Institute. Ms. Miller, President/CEO, gave a presentation and asked board volunteers to participate in the Regional Extension Centers for health information exchange. Dr. Zeitler, Dr. McMichael, Mr. Turner, and Dr. Snoots volunteered to participate.

Agenda item #26, Discussion, recommendation, and possible action regarding the following board rules and chapters in 22 TAC:

- a. Chapter 175, Fees, Penalties and Forms, with proposed amendments to 175.5, relating to Payment of Fees or Penalties**
No written comments were received. No one signed-in to present oral comments. **Ms. Attebury moved, Mr. Turner seconded, and the motion passed to adopt Chapter 175, Fees, Penalties and Forms, with proposed amendments to 175.5, relating to Payment of Fees or Penalties and publish in the Texas Register.**

b. Chapter 180, Operation of Program, with proposed amendments to 180.4, Operation of Program

Written comments were received and reviewed. No one signed-in to present oral comments. **Dr. McMichael moved, Dr. Arambula seconded, and the motion passed to adopt Chapter 180, Operation of Program, amendments to 180.4, Operation of Program and publish in the Texas Register, and submit amendments to 180.4 for public comment to the Texas Register based on public comments received.**

c. Chapter 187, Procedural Rules, proposed new amendments to

187.14, Informal Resolution of Disciplinary Issues Against A Licensee

No written comments were received. No one signed-in to present oral comments. **Ms. Southard moved, Dr. Arambula seconded, and the motion passed to adopt Chapter 187, Procedural Rules, proposed new amendments to 187.14, Informal Resolution of Disciplinary Issues Against A Licensee and to publish in the Texas Register.**

Agenda item #27 was deferred to later during the meeting.

Agenda item #28, Open forum for public comments. Cynthia Paulis, D.O., presented public comments regarding discipline procedures.

Agenda item #4, Medical Directors report. Dr. Moore gave a report on efforts to increase the number of expert panelists especially in the areas of pain management and orthopedic surgery.

Agenda item #6, Discussion, recommendation, and possible action regarding ratification of hiring Physician Health Program Medical Director. After discussion, **Ms. Southard moved, Ms. Attebury seconded, and the motion passed to ratify the hiring of Lloyd Garland, M.D., as the Medical Director of the Physician Health Program.**

Agenda item #7, Discussion, recommendation, and possible action regarding Texas Medical Associations request for rule-making. After discussion, **Dr. Crocker moved, Ms. Attebury seconded, and the motion passed to deny the Texas Medical Associations request for rule-making.**

Agenda item #8, Discussion, recommendation, and possible action regarding underage patient waiver. After discussion, the board directed staff to develop an article for the Newsletter concerning the use of a chaperone during an underage patient exam.

Agenda item #29, Consideration and Approval of Proposal of Decision. Allegra Garcia-Cantu, M.D., SOAH #503-08-4000. Anne Perez, Administrative Law Judge, gave a report and recommendation. Ace Pickens was present representing Allegra Garcia-Cantu, M.D., and gave a presentation. Dr. Garcia-Cantu was not present. Scott Freshour, staff attorney, gave a presentation. After discussion, **Mr. Turner moved, Ms. Southard seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the**

Administrative Law Judge in the Proposal for Decision, except Conclusion of Law #9 which is a sanction recommendation from the ALJ, the determination of which is reserved for the board and to approve the Final Order by staff including the denial of licensure.

Mircea Iacon Lengyel, M.D., SOAH #503-09-3769. Thomas Walston, Administrative Law Judge, gave a report and recommendation. Dr. Lengyel or attorney were not present. Staff attorney, Elaine Snow was present and gave a presentation. After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, except Conclusion of Law #12 which is a sanction recommendation from the ALJ, the determination of which is reserved for the board, and to approve the Final Order by staff to revoke the license of Dr. Lengyel.**

Agenda item #9, Discussion, recommendation, and possible action regarding disseminating information to licensee by email or electronic newsletter. After discussion, the board directed staff to begin the development of a LIST server to allow licensees to be notified when the newsletter and past issues are available for viewing online.

Agenda item #10, Consideration and possible action regarding pending litigation. Ms. Leshikar gave a report on pending litigation.

Agenda item #11, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, **Mr. Turner moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 2:14 p.m. for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, GOVERNMENT CODE, §551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, §§152.009, 155.058, 160.006, and 164.007; and Attorney General's Opinion No. H-484.** Open session resumed at 2:27 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve Modification Granted of Rehabilitation Orders #429, #480, and #447; Termination Denied of Rehabilitation Order #513; Termination Granted of Rehabilitation Orders #495 and #537; and Nunc Pro Tunc of Rehabilitation Order #650.** Non-Public Rehabilitation Order #656 was pulled to refer to the Physician Health Program.

Agenda item #12, Consideration and Approval of Agreed Board Orders. After discussion, **Dr. Arambula moved, Dr. Crocker seconded, and the motion passed to approve the Agreed Order for Sylvan Bartlett, M.D., with the modification adding the JP exam and five hours of Continuing Medical Education for record-keeping to address inadequate recordkeeping.**

After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 2:35 p.m. for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings**

Act, GOVERNMENT CODE, §551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, §§152.009, 155.058, 160.006, and 164.007; and Attorney Generals Opinion No. H-484. Open session resumed at 3:01 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. McMichael moved, Dr. Oswalt seconded, and the motion passed to approve the Agreed Order for Wayne Fagan, M.D., with the modification to add that the respondent take 15 hours of CME in pigmented lesions pathology in the first year of the order and a chart monitor for two years of successful slide readings, due to failure to maintain adequate medical records or meet the standard of care when he misdiagnosed basal cell carcinoma in a patient with metastatic melanoma.**

After discussion, **Dr. Michael moved, Dr. Arambula seconded, and the motion passed to approve the Agreed Order for Ronald Fraser, M.D., with the modification that the respondent may take the JP exam two more times within the next six months due to the respondents age.**

After discussion, **Dr. Oswalt moved, Dr. Arambula seconded, and the motion passed to approve the Agreed Order for Rebecca U. Garza, M.D., with the modification requiring participation in the K-Star Program and to follow program recommendations to address concerns of medical competency.**

After discussion, **Dr. McMichael moved, Ms. Attebury seconded a motion to approve the Agreed Order for Joseph Patrick, M.D., with the modification to add to the Findings of Fact that he reported that he is not performing surgery. Dr. Oswalt moved, and Mr. Turner seconded a motion to approve a friendly amendment restricting the respondent from performing surgery except in an educational setting until he comes back to the board. The motion passed to approve the Agreed Order for Joseph Patrick, M.D., with the modification to the Findings of Fact that the respondent reported that he is not performing surgery and to add the amendment restricting the respondent from performing surgery except in an educational setting due to concerns of failure to timely diagnosis and treat two patients that resulted in fatalities.**

After discussion, **Ms. Southard moved, Dr. Crocker seconded, and the motion passed to approve the Agreed Order for Theresa C. Rice, M.D., with the modification to add requirement to pass the JP exam due to concerns of lack of knowledge.**

After discussion, **Mr. Turner moved, Dr. Benavides seconded, and the motion passed to approve the Agreed Order for Alan D. Smith, D.O., with the modification requiring a chart monitor for three years.**

After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Theodore Tuinstra, D.O., with the modification requiring a chart monitor for three years.**

After discussion, **Dr. Oswalt moved, Mr. Webb seconded, and the motion passed to approve the following Agreed Orders en masse for Robert J. Bacon, Jr., M.D.; Thomas J. Brown,**

M.D.; Jose Burbano De Lara, M.D.; Brian T. Carlin, M.D.; George J. Carsten, III, M.D.; Teresa Dickson, M.D.; Edgardo Espiritu, M.D.; Tracy Gapin, M.D. Thomas Havard, M.D.; Jose L. Hinojosa, M.D.; Wentian Huang, M.D.; Larry Charles Hughes, D.O.; Terry L. Johnson, M.D.; Abdu Kadri, M.D.; Amed Khan, M.D.; Jeffrey E. Lewis, M.D.; Howard H. Nguyen, D.O.; Stanton C. Packard, M.D.; Meenakshi Prabhakar, .D.; Jose, Reyes, M.D.; Sergio Sanchez-Zambrano, M.D.; Emily J. Sandback, M.D.; Geraldo M. Sioco, M.D.; Alan D. Smith, D.O.; Niphon Sudhivoraseth, M.D.; Hugh M. Tadlock, M.D.; Rita Villanueva, M.D.; Phillip A. Ward, D.O.; Lloyd K. Weldon, D.O.; Richard Wiseman, M.D.; Paul S. Worrell, D.O.; Paul Zajac, M.D.; Jose L. Zamora, M.D.; Isam N. Anabtawi, M.D.; Laura J. Bennack, M.D.; Elizabeth E. Ritchey, M.D.; Daniel DiBona, M.D.; Michael C. Edwards, M.D.; Carla Michael, D.O.; David H. Nielson, M.D.; Teresa D. Rajala, M.D.; Mary L. Scharold, M.D.; Michael D. Smith, M.D.; Vaqar Dar, M.D.; Susan Kutz, M.D.; Jerry W. Miller, M.D.; Ramin Mobeh, M.D.; Anna Lichorad, M.D.; and Dorsey Shantel Coffey, S.A., as written.

Agenda item #13, Consideration and Approval of Modification Request/ Termination Request Orders. After discussion, Dr. Oswalt moved, Ms. Southard seconded, and the motion passed to approve the Termination Request Order for Mark Alan Williamson, M.D., with a referral to the Physician Health Program.

After discussion, Ms. Southard moved, Dr. McMichael seconded, and the motion passed to approve the Termination Granted Request Order for Syed I. Anwar, M.D., Terry L. Beck, M.D., Brooks M. Blake, D.O., William R., Francis, Jr., M.D., Harold A. Tate, M.D., and Jeffrey S. Smith, M.D.; Modification Request Orders for Jeffrey L. Butts, D.O.; Dennis D. Roberts, M.D.; and Modification Request Denied Order for Luis F. Tschen, M.D., as written.

Agenda item #14, Consideration and Approval of Nunc Pro Tunc Orders. After discussion, Dr. Benavides moved, Ms. Southard seconded, and the motion passed to approve the Nunc Pro Tunc Orders for Stacy E. Hamid, M.D., and Mobsin M. Syed, M.D., as written.

Agenda item #15, Consideration and Approval of Mediated Settlement Agreed Orders. After discussion, Mr. Turner moved, Dr. Arambula seconded, and the motion passed to approve the Mediated Settlement Agreed Orders en masse for Robert T. Angel, M.D.; Marshall J. Dyke, M.D.; Joel R. Hendricks, M.D.; Nameen Khan, M.D.; William C. Rainey, M.D.; Eldon S. Robinson, M.D.; Mouin Sabagh, M.D.; Gayle Smith-Blair, M.D.; James M. Henderson, M.D.; Lisa C. Routh, M.D., as written; and San B. Joo, M.D., with corrected preamble adding mediated language.

Agenda item #16, Consideration and Approval of Termination of Suspension Orders. After discussion, Ms. Southard moved, Dr. Arambula seconded, and the motion passed to approve the Termination of Juan C. Ruffier, M.D.; Lorenzo Spratt, M.D.; Jose J. Baca III, M.D.; and John Ranelle, D.O., as written.

Agenda item #17, Consideration and Approval of Administrative Orders. After discussion, **Dr. Benavides moved, Dr. Arambula seconded, and the motion passed to approve the Administrative Orders for Priscilla Ray, M.D., as written.**

There were items for items for Agenda items #18-19.

Agenda item #20, Report on Automatic Orders. A report was give for the Automatic Orders for Clarence G. King, M.D., Timothy, M.D., and Scott S. McNeill, M.D.

Agenda item #21, Consideration and Approval of Cease and Desist Orders. After discussion, **Ms. Southard moved, Mr. Turner seconded, and the motion passed to approve the Cease and Desist Order for Charles R. Osborn, M.D., with a date correction.**

There were no items for Agenda items #22-24.

Agenda items #25-26 were heard earlier in the meeting.

Agenda item #27, Discussion, recommendation, and possible action regarding the Department of State Health Services draft proposed laser hair removal rule. After discussion, the board directed staff to notify the Department of State Health Services that the board had no additional comments for the draft proposed laser hair removal rule as presented.

Agenda items #28-29 were heard earlier in the meeting.

Agenda item #30, Discussion recommendation and possible action regarding proposed rule changes to 22 T.A.C. Chapter 183.

- a. 183.4 Licensure
- b. 183.9 Impaired Acupuncturists
 - c. 183.15- Use of Professional Titles

After discussion, **Ms. Southard moved, Dr. Crocker seconded, and the motion passed to publish the proposed changes to 22 T.A.C. Chapter 183. Acupuncture, 183.4 Licensure, 183.9 Impaired Acupuncturists, and 183.15 Use of Professional Titles in the Texas Register for public comment .**

Discussion/Action Items

- 1. Consent Agenda A. Consideration and Approval of the November 6, 2009 Board Meeting Minutes. Dr. Oswalt moved, Dr. Arambula seconded, and the motion passed to approve the November 6, 2009 Board Meeting Minutes and Action Items.**
- 2. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.**

Dr. McMichael gave a report of the Disciplinary Process Review Committee meeting. **Dr. McMichael moved, Dr. Benavides seconded, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items.**

Mr. Turner gave a report of the Finance Committee meeting. **Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the Finance Committee minutes and action items.**

Dr. Arambula gave a report of the Licensure Committee meeting. After discussion, **Mr. Turner moved, Dr. Benavides seconded, and the motion passed to approve the Licensure Committee minutes and action items with the following changes: 1.) remove the statement encouraging Applicant #889 to self-refer to the TXPHP, and 2.) grant Applicant #828 a Texas medical license subject to the following terms and conditions for an indefinite period: practice limited to administrative medicine only, and the applicant will be referred to the Texas Physician Health Program.**

Mr. Baucom gave a report of the Standing Orders Committee meeting. **Mr. Baucom moved, Mr. Webb seconded, and the motion passed to approve the Standing Orders Committee minutes and action items.**

Mr. Turner gave a report of the Telemedicine Committee meeting. **Mr. Turner moved, Dr. Benavides seconded, and the motion passed to approve the Telemedicine Committee meeting minutes and action items.**

There being no further agenda items, the meeting adjourned at 4:12 p.m.