



Texas Medical Board

BOARD MEETING

FEBRUARY 13, 2015

333 GUADALUPE, TOWER 2, SUITE 225

AUSTIN, TEXAS

The meeting was called to order on February 13, 2015 at 8:03 a.m. by Michael Arambula, M.D., Board President. Board members present were: Julie Attebury; David Baucom; Frank Denton; John R. Guerra, D.O.; Manuel G. Guajardo, M.D.; J. Scott Holliday, D.O; Robert B. Simonson, D.O.; Karl W. Swann, M.D.; Surendra K. Varma, M.D.; Stanley S. Wang, M.D.; and Timothy Webb, J.D.; George Willeford III, M.D. John D. Ellis, Jr., J.D.; Paulette Southard; Allan Shulkin, M.D.; and Wynne Snoots, M.D.; arrived a few minutes after roll call. Carlos L. Gallardo and Margaret McNeese, M.D., were not present. Board staff present were Mari Robinson, J.D., Executive Director; Robert Bredt, M.D., Medical Director, Scott Freshour, J.D., General Counsel; Tonie Knight, Licensure Manager; and Megan Goode, Governmental Affairs & Communications Manager, and various other staff.

Agenda item #1, Mission Statement. Dr. Guerra read the board's mission statement into the minutes. *Our Mission is to protect and enhance the public's 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, Board Member Report. Dr. Arambula introduced and welcomed new board member, John R. Guerra, D.O., who presented a brief statement.

Agenda item #3, Executive Director Report.

Budget. Ms. Robinson reported the budget continues to remain on target.

Legislative Update. Ms. Robinson and Ms. Goode gave a legislative update. Key legislation dates were reviewed.

Personnel Update. Ms. Robinson reported on the number of open positions in the agency.

Outreach Update. Ms. Robinson gave a brief update of the opioid trainings and announced the medical schools will be notified in March of the presentations that will offered for the upcoming school year.

Audit Update. A brief audit update was given. Ms. Robinson reported that the internal audit topic is for Licensure and will begin the first of July.

Pain Clinics. Data outlining the quantity of pain management clinic inspections conducted the past year was presented to the Board.

Topics for ethics/professional responsibility approval. Item was deferred to later in the meeting.

Agenda item #4, Medical Director Report.

Opioid Training update. Dr. Bredt gave an update on the opioid trainings held in December statewide.

Expert Panel update. Dr. Bredt reported in conjunction with the opioid trainings additional training was conducted for the expert panelists. A web based training will be available to expert panelists on the agency website in the near future for those who were not able to attend.

Agenda item #5, Public Information Update. Ms. Goode and Mr. Schneider reiterated on the information that is statutorily required to be included in the agency's newsletter.

There were no items for Agenda item #6.

Agenda item #7, Report on criminal convictions and sanctions. This item was pulled from the agenda.

Agenda item #8, Discussion, recommendation, and possible action regarding guidelines for modification/termination orders. Ms. Robinson discussed concerns raised during the Texas Physician Assistant December Board meeting related to guidelines for modification/termination orders. After discussion, the Board directed staff to make revisions concerning time frame for requesting a modification/termination hearing; ensuring adequate information is available for such hearings; and when a licensee has a hearing and there is an unresolved case outstanding in which settlement has been offered board, staff should include information regarding the offer in the unresolved case.

Agenda item #9, Discussion, recommendation, and possible action regarding acupuncture. Mr. Freshour discussed acupuncture scope of practice and concerns involving Physicians, Physician Assistants, and Acupuncturists practicing or delegating the practice of acupuncture. After discussion, **the Board recommended clarifying the concern of the delegation of Acupuncture to a Physician Assistant, referencing the appropriate board rules and statues in the next TMB newsletter.**

Agenda item #10, Discussion, recommendation, and possible action regarding compact licensure. Ms. Robinson gave an update on compact licensure legislation and seeked an affirmation on the Board's position related to whether or not the Board supports the idea of mandatory board certification or mandatory maintenance of certification for ongoing active

practice in the State of Texas or for initial licensure in the State of Texas unless that board certification is being used for a remedy that is included in the law related to international graduates who did not attend a substantially equivalent medical school. The Board confirmed that the intention of the Board is not to require mandatory board certification or mandatory maintenance of certification for all physicians that participate in the compact licensure.

Agenda item #11, Consideration and possible action regarding pending litigation. Mr. Freshour provided the Board with an update regarding current pending litigation and open records requests involving the Board. **Ms. Southard moved, Dr. Willeford seconded, and the motion passed to go into Executive Session at 9:16 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-client privilege under the authority of the Open Meetings Act Section 551.071, Government Code.**

Open session resumed at 9:40 a.m. and it was announced that no action was taken. A certified agenda was made.

Mr. Webb moved, Dr. Shulkin seconded, and the motion passed to direct staff to forgo seeking an appeal on the judge's temporary injunction on the Teladoc case but to instead seek a motion for clarification from the judge.

Agenda item #14, Consideration and approval of Modification Request of Non-Public Rehabilitation Orders. After consideration, **Ms. Southard moved, Ms. Attebury seconded, and the motion passed to approve the Termination Granted of Rehabilitation Order #558.**

The Board recessed at 9:43 a.m.

The Board reconvened at 9:53 a.m.

Agenda item #15, Consideration and approval of Modification Request/Termination Request Orders. After discussion, **Dr. Wang moved, Mr. Webb seconded, and the motion passed to deny the Termination Granted Order for #4, and reschedule for a second hearing.**

After consideration, **Ms. Attebury moved, Mr. Webb seconded, and the motion passed to approve the Modification Granted Orders for: Bill Alexander, M.D.; Stephen Horton, M.D.; Felix N. Sabates, Jr., M.D.; and Julia Ward, M.D.; the Modification Denied Order for Hector O. Molina, M.D.; the Termination Granted Orders for Robert E. Flynn, M.D.; Donald M. Gibson, M.D.; Mario Nutis, M.D.; Pinakin R. Patel, M.D.; Brent L. Pennington, M.D.; Jhansi M. Raj, M.D.; and Barbara Wojcik-Sapeta, M.D.; and the Termination Denied Orders for Shawna M. Deeves, M.D.; Bruce A. Henry, M.D.; and Randall Walker, M.D.**

Agenda item #12, at 10:00 a.m., Consideration and approval of Proposal for Decisions for:

1. Joseph Cotropia, M.D.; SOAH #503-13-3809.MD. Amy Swanholm, J.D., staff attorney was present. Joseph Cotropia, M.D., was not present and no one appeared representing Dr. Cotropia. Ms. Swanholm gave a presentation. After discussion, **Dr. Holliday moved, Dr. Guajardo seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision and approve the staff's suggested Final Order for revocation of the license of Joseph Cotropia, M.D.**

2. Shawn Gorden, M.D.; SOAH #503-14-1734.MD. Lee Bukstein, J.D., staff attorney was present. Dr. Gorden was present. Enrique Chavez, appeared representing Dr. Gorden. Mr. Bukstein gave a presentation. Mr. Chavez gave a presentation. Mr. Bukstein gave a brief rebuttal presentation. Mr. Chavez gave another brief presentation. Mr. Bukstein was granted to give a second presentation. **Dr. Guajardo moved, Dr. Holliday seconded, to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision and approve the staff's suggested Final Order with the modification of the length of licensure restriction to three months, during of which Dr. Gorden should complete a mini-residency program at Texas Tech in an OB/GYN residency setting.**

Dr. Varma moved, Ms. Attebury seconded, and the motion passed to amend the motion to not state Texas Tech specifically but to allow for completion in a mini-residency program accredited by ACGME in an OB/GYN residency setting, approved in advance by the Executive Director.

After discussion, a vote was taken and the motion passed to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision and approve the staff's suggested Final Order with the modification of the length of licensure restriction to three months and to include completion of a mini-residency program accredited by ACGME in an OB/GYN residency setting, approved in advance by the Executive Director.

3. Charles T. Clayton, M.D.; SOAH #503-13-3759.MD. Susan Rodriguez, J.D., staff attorney was present. Charles T. Clayton, M.D., was not present and no one appeared representing Dr. Clayton. Ms. Rodriguez gave a presentation. After discussion, **Dr. Varma moved, Dr. Guajardo seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision and approve the staff's suggested Final Order, and make a final determination that Applicant is ineligible for a Texas Medical License.**

4. Walter J. Zawislak, M.D., was deferred to later in the meeting.

Agenda item #13, at 10:30 a.m., Consideration and approval of Determinations of Default. James Gregory Trevino, M.D., SOAH #503-14-3580.MD. Ginger Hunter, J.D., staff attorney was present. James Gregory Trevino, M.D., was not present and no one representing Dr.

Trevino appeared. After discussion, **Dr. Shulkin moved, Ms. Southard seconded, and the motion passed to approve the Determination of Default Order for James Gregory Trevino, M.D.**

Agenda item #12, at 10:00 a.m., Consideration and approval of Proposal for Decisions continued:

4. Walter J. Zawislak, M.D.; SOAH #503-12-6625.MD. Lee Bukstein, J.D., staff attorney was present. Dr. Zawislak was present. No one representing Dr. Zawislak appeared. Mr. Bukstein gave a presentation. Dr. Zawislak gave a presentation. Mr. Bukstein gave a brief rebuttal presentation. After discussion, **Dr. Willeford moved, Dr. Varma seconded, and the motion passed to go into Executive Session at 11:04 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-client privilege under the authority of the Open Meetings Act Section 551.071, Government Code.** Open session resumed at 11:37 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. Willeford moved, Mr. Baucom seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision and approve the staff's suggested Final Order for a public reprimand, pass the Medical Jurisprudence Exam, 24 hours of continuing medical education, scheduling an assessment with K-STAR, chart monitoring for 8 cycles and correction of the continuing medical education topic in prescribing opiate medications instead of endocrinology and diseases of the thyroid.**

Agenda item #16, Consideration and possible action for Agreed Board Orders. Dr. Shulkin recused from consideration of the Agreed Order for Daniel Whitman, M.D. Dr. Holliday recused from consideration of Agreed Order #29.

After discussion, **Dr. Willeford moved, Ms. Southard seconded, and the motion passed to approve Agreed Order #19 with the addition of 8 cycles of chart monitoring and a \$3,000 administrative penalty due to the concerning allegations.**

After discussion, **Dr. Varma moved to add 4 hours of ethics to Agreed Order #22, motion failed for lack of a second.**

After discussion, **Ms. Southard moved, Dr. Shulkin seconded, and the motion passed to approve Agreed Order #29 with an additional term that the respondent must appear before the Board before applying for DEA & DPS registrations.**

After discussion, **Dr. Willeford moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 11:48 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-client privilege under the authority of the Open Meetings Act Section 551.071, Government Code.** Open session resumed at 11:58 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. Willeford moved, Dr. Shulkin seconded, and the motion passed to deny to Agreed Order #35, and refer to the State Office of Administrative Hearings for revocation.**

Remaining Agreed Orders deferred to later in the meeting.

Agenda item #31, Discussion, recommendation, and possible action regarding the adoption of proposed amendments and rule review to 22 Texas Administrative Code:

1. §166.2. Continuing Medical Education.

Ms. Robinson and Ms. Tuthill gave a brief summary. No written comments were received and no one signed in to present oral comments. **Ms. Attebury moved, Ms. Southard seconded, and the motion passed to approve the proposed amendments and rule review to 22 T.A.C. §166.2. Continuing Medical Education for adoption and publication in the Texas Register.**

2. §192.2. Provision of Anesthesia Services in Outpatient and
3. §192.5. Inspections

Ms. Tuthill gave a brief summary of §192.2 and §192.5. Written comments were received and reviewed. No one signed in to present oral comments. **Dr. Varma moved, Ms. Southard seconded, and the motion passed to adopt the proposed amendments and rule review with the non-substantive changes as outlined by Ms. Tuthill to 22 T.A.C. §192.2. Provision of Anesthesia Services in Outpatient and §192.5. Inspections for adoption and publication in the Texas Register.**

Agenda item #32, Discussion, recommendation, and possible action regarding proposed amendments to the following in 22 Texas Administrative Code:

1. §190.8. Violation Guidelines.

Mr. Freshour gave a brief summary. Written comments were received and reviewed. After discussion, **Mr. Baucom moved, Dr. Willeford seconded, and the motion passed to approve to publish §190.8. Violation Guidelines in the Texas Register for public comment.**

There were no items for Agenda item #33.

Agenda item #34, Discussion, recommendation, and possible action regarding adoption of proposed rule changes to 22 T.A.C. Chapter 185, Physician Assistants.

1. §185.18 Discipline of Physician Assistants
2. §185.16 Employment Guidelines

Ms. Robinson gave a brief summary of proposed amendments to **§185.18 Discipline of Physician Assistants and §185.16 Employment Guidelines**. Written comments were received and reviewed for §185.16. There were no written comments for 185.18. Todd Pickard, PA-C, President of TAPA presented oral comments. Jaime Capello presented oral comments. After discussion, **Dr. Wang moved, Mr. Denton seconded, and the motion passed to adopt proposed amendments to 22 T.A.C. Chapter 185, Physician Assistants, §185.18 Discipline of Physician Assistants and §185.16 Employment Guidelines, as recommended by the Texas Physician Assistant Board and direct staff to begin the rulemaking process related to physician supervision of delegates.**

Agenda item #16, Agreed Orders continued. Dr. Varma moved, Ms. Southard seconded, and the motion passed to approve the Agreed Orders en masse for: William B., Harris, M.D.; Christine Bellantoni, M.D.; Ataur-Rehman Khan, M.D.; Augusto Chiriboga, M.D.; George M. Cole, D.O.; Bernie G. Hewett, M.D.; Carlos Martinez, M.D.; James T. Murphy, Jr., M.D.; Carlos M. Ramirez, M.D.; Kimberly A. Sherrill, M.D.; Raymond T. Adedapo, M.D.; Craig W. Barker, M.D.; Hong W. Davis, M.D.; J. Jesus Diaz, M.D.; John F. Dulemba, M.D.; Omar H. Durrani, M.D.; Michael A. Flores, M.D.; Thomas H. Miller, Jr., M.D.; Arthur James Speece, M.D.; Paul E. Stoufflet, M.D.; Ricardo B. Tan, M.D.; Ronald A. Valdez, M.D.; Daniel Whitman, M.D.; Alan D. Koenigsberg, M.D.; Marcos Reis, M.D.; Gonzalo Uribe-Botero, M.D.; Matthew J. Stalker, M.D.; Laura Suarez, M.D.; Ahmad A. Kayas, M.D.; Robert W. Paige, M.D.; Sabir A. Syed, M.D.; and John B. Steele, M.D.

Agenda item #35, Public Comment at 11:30 a.m. Henry De Phillips, Teladoc, and Tiera Kepler, J.D., signed in and presented public comments.

Agenda item #3, Executive Direct Report (continued). Topics for ethics/professional responsibility approval. Ms. Robinson discussed requests for approval of topics for ethics/professional responsibility. After discussion, **the Board determined that any courses related to physician wellbeing for personal mental and or physical are not considered to fall under the ethics/professional responsibility category.**

Agenda item #17, Consideration and approval of Mediated Settlement Agreed Orders. After discussion, **Mr. Denton moved, Dr. Guerra seconded, and the motion passed to approve the Mediated Settlement Agreed Orders en masse for: Samuel A. Adesoba, M.D.; Richard B. DeBenedetto, M.D.; Donnie Evans, M.D.; V. John Gonino, D.O.; William J. Novelli, M.D.; John Q.A., Webb, Jr., M.D.; Richard Rembecki, M.D.; Ramon Apostol Cruz, M.D., Odette L. Campbell, M.D.; David P. Abrams, D.O.; Jose Cazares-Zavala, M.D.**

Agenda item #18, Consideration and approval of Remedial Plans. Dr. Wang recused from consideration of Horacio M. Agueros, M.D.; and Remedial Plan #32.

After discussion, **Mr. Baucom moved, Ms. Southard seconded, and the motion passed to change Remedial Plan #22 into an Agreed Order and add 12 cycles of chart monitoring.**

After discussion, **Ms. Southard moved, Dr. Shulkin seconded, and the motion passed to change Remedial Plan #26 into an Agreed Order with the same terms and conditions presented.**

After discussion, **Dr. Willeford moved, Ms. Southard seconded, and the motion passed to change Remedial Plan #28 into an Agreed Order and add 8 cycles of chart monitoring.**

After discussion, **Dr. Willeford moved, Ms. Southard seconded, to change Remedial Plan #23 into an Agreed Order with the same terms and conditions presented. A hand vote was taken and the motion failed.**

After consideration, **Mr. Webb moved, Ms. Southard seconded, and the motion passed to approve the following Remedial Plans en masse for: Jeffrey A. Astbury, M.D.; Abimbola M. Banjo, M.D.; Robert R. Bulger, M.D.; Gregory K. Burton, M.D.; Todd M. Burton, M.D.; Kymberly N. Butler, M.D.; James F. Hefner, M.D.; Channon T. Hudgins, M.D.; Randy A. Jackson, M.D.; Avian D. Kidd, M.D.; Maria B. Kintanar, M.D.; Carlos D. Kugler, M.D.; Chi C. Mao, M.D.; Timothy R. McFarland, M.D.; Todd T. Nguyen, M.D.; Austin A. Orette, M.D.; Pat Pryor, M.D.; Bernard L. Rosenfield, M.D.; Luke Y. Shen, M.D.; Pablo V. Uceda, M.D.; Noe Zamora, Jr., M.D.; Horacio M. Agueros, M.D.; Marcus R. Anderson, M.D.; Dale D. Burluson, Jr., M.D.; Javier E. Cortinas, M.D.; Carolyn S. Fruthaler, M.D.; Kevin C. Gaffney, M.D.; Corey J. Haggard, M.D.; Liesa B. Harte, M.D.; Jason G. Nirgiotis, M.D.; Jane C. Rider, M.D.; Pablo Rodriguez-Vinas, M.D.; J. John Stasikowski, M.D.; Paul M. Wolf, M.D.; Jeffrey S. Sanders, M.D.; Daniel James Aldrich, M.D.; Victor H. Gonzalez, M.D.; and Edmund P. Williams, IV, M.D.**

Agenda item #19, Consideration and approval of Nunc Pro Tunc Orders. Mr. Webb moved, Ms. Southard seconded, and the motion passed to approve the Nunc Pro Tunc Order for Forrest C. Brown, M.D.

Agenda item #20, Consideration and final determination of ineligibility for Pain Management Certificate for Applicant #1504. Dr. Wang moved, Dr. Snoots seconded, and the motion passed to approve the final determination that Applicant #1504 is ineligible for Pain Management Certificate.

There were no items for Agenda items #21-24.

Agenda item #25, Consideration and approval of Cease and Desist Agreed Orders. Ms. Southard moved, Mr. Baucom seconded, and the motion passed to approve the Cease and Desist Agreed Orders for Larry Dean Davis, D.C.; Lorena Paico; and Max C. Paico-Garcia.

There were no items for Agenda item #26.

Agenda item #27, Report on Motions for Rehearing Requests. A report was given on the Motions for Rehearing Requests for Willie J. Hawkins, M.D., and Marelyn Medina, M.D.

Agenda item #28, Report on Temporary Suspensions. A report was given on the Temporary Suspension hearings for Ronald A. Green, M.D. with notice; Thomas V. Taylor, M.D., without notice hearing; Fermin Briones, Jr., M.D., without notice hearing; and Fermin Briones, Jr., M.D. with notice hearing.

There were no items for Agenda items #29-30.

Consent Agenda

Discussion/Action Items – to be considered at any time the full board is in session:

1. Consideration and approval of the November 7, 2014 Board Meeting Minutes. **Ms. Southard moved, Dr. Simonson seconded, and the motion passed to approve the November 7, 2014 Board Meeting Minutes.**
2. Consideration and approval of the January 16, 2015 Board Meeting Minutes. **Mr. Baucom moved, Dr. Snoots seconded, and the motion passed to approve the January 16, 2015 Board Meeting Minutes.**
3. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.
Dr. Arambula gave a report of the Executive Committee meeting. **Ms. Southard moved, Dr. Willeford seconded, and the motion passed to approve the Executive Committee meeting minutes and action items.**

Dr. Snoots gave a report of the Electronic Records and Communication Ad Hoc Committee. **Dr. Snoots moved, Mr. Webb seconded, and the motion passed to approve the Electronic Records and Communication Ad Hoc Committee meeting minutes and action items.**

Dr. Shulkin gave a report of the Finance Committee meeting. **Dr. Shulkin moved, Mr. Webb seconded, and the motion passed to approve the Finance Committee meeting minutes and action items.**

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

Dr. Willeford gave a report of the Disciplinary Process Review Committee meeting. **Dr. Willeford moved, Mr. Webb seconded, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items with the reconsideration of Log# 14-6920 for the appeal to be granted.**

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

Agenda item #36, Adjourn. Dr. Shulkin moved, Mr. Webb seconded, and the motion passed to adjourn the meeting at 2:13 p.m.