



# Texas Medical Board

BOARD MEETING

APRIL 12, 2013

333 GUADALUPE, TOWER 2, SUITE 225  
AUSTIN, TEXAS

The meeting was called to order on April 12, 2013, at 8:33 a.m. by Irvin E. Zeitler, Jr., D.O., Board President. Board members present were Melinda McMichael, M.D., Vice-President; Michael Arambula, M.D.; Julie Attebury; David Baucom; Patricia Blackwell; John D. Ellis, Jr., J.D.; Carlos Gallardo; Manuel G. Guajardo, M.D.; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Allan Shulkin, M.D.; W. Roy Smythe, M.D.; Wynne M. Snoots, M.D.; Stanley S. Wang, M.D. Paulette Southard, Secretary/Treasurer; Wynne M. Snoots, M.D.; Timothy Webb, J.D.; and George Willeford, III, M.D. arrived a few minutes after roll call. Richard R. Rahr, Ed.D, PA-C liaison from the Physician Assistant Board was also present. Board staff present were Mari Robinson, Executive Director; Robert Bredt, M.D., Medical Director; Scott Freshour, J.D., General Counsel; Tonie Knight, Licensure Manager; Megan Goode, Public Information and Special Projects Manager; and various other staff.

Dr. McMichael 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.** Deferred to later in the meeting.

**Agenda item #3, Executive Director Report.**

**Budget.** Ms. Robinson briefly reviewed the current budget.

**Legislative Update.** Ms. Robinson provided an overview of pending legislation related to the board. Staff will continue to monitor bills related to the board.

**Personnel Update.** Ms. Robinson reported all departments being fully staffed with the exception of the Investigations department.

**Outreach Update.** Ms. Robinson reported the Outreach presentations will resume in June after the Legislative session ends; residency programs and schools have been contacted.

Two outreach presentations for licensed physicians to obtain CME credit will be scheduled.

**Audit Update.** Ms. Robinson gave an update on the Governance audit being conducted; a report will be given in the near future.

**Agenda item #2, Board Member Report.**

**Presentation to member.** Dr. Zeitler presented Dr. Melinda McMichael a Texas plaque and resolution in recognition of her dedicated service to the board from April 2007 to April 2013.

**Process for election of board officer.** Dr. Zeitler discussed the nomination process to elect a board officer; a new Vice-President was elected later in the meeting.

**Agenda item #4, Medical Director Report.** Dr. Bredt reported the positive outcome of a recent publication for the recruitment of neurosurgeon expert panelist.

Dr. Bredt requested the board's direction as to whether or not all modification and termination requests that have the likelihood of being set for an Informal Settlement Conference be sent for review during the QA process. The board directed staff to screen all modification and termination requests and present the requests that have the possibility of being granted during the QA process.

**Agenda item #11, Consideration and Approval of Proposal for Decision at 9:00 a.m.**

- 1. Marshall James Dyke, M.D., SOAH Docket #503-10-5299.MD.** Lee Bukstein, J.D., staff attorney was present. Dr. Dyke was not present. Ace Pickens, appeared representing Dr. Dyke. Mr. Bukstein gave a presentation. Mr. Pickens gave a presentation. After discussion, **Dr. McMichael moved, Mr. Gallardo seconded, and motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, and the Final Order filed by Board staff for revocation with the corrections in Findings of Fact #1 and #2 as outlined by Mr. Bukstein.**

**Agenda item #5, Public Information Update.** Ms. Hopper, Public Information Officer, gave an update on the number of email subscribers to the TMB Bulletin that opens the newsletter. Ms. Hopper also provided the Board with an update of the redevelopment of the website and the intention to have a mobile friendly website.

The board recessed at 9:25 a.m.

The board reconvened at 9:34 a.m.

**Agenda item #11, Consideration and Approval of Proposal for Decision at 9:30 a.m.**

- 2. Rahul Kumar Nath, M.D., SOAH Docket #503-11-7285.MD.** Christopher Palazola, J.D., staff attorney was present. Dr. Nath was not present. Brad Beers, appeared representing Dr. Nath. Mr. Palazola gave a presentation. Mr. Beers gave a presentation. After discussion, **Dr. McMichael moved, Dr. Arambula seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law by the Administrative Law Judge in the Proposal for Decision, and the Final Order**

**filed by Board staff for dismissal.**

**Agenda item #6, Medical Board/Physician Assistant Liaison update.** Mr. Rahr reported going to the Licensure Committee meeting the prior day. Dr. Wang gave a brief report on the March 8, 2013 Physician Assistant Board meeting.

**Agenda item #7, Discussion, recommendation, and possible action regarding Physician Profile Information.** Ms. Robinson summarized the current process for the information provided on physician profiles related to Temporary Suspension orders and actions. Ms. Robinson requested the board's direction on whether to make an exception by removing Temporary Suspension orders that were denied where the subsequent action was dismissed. After discussion, **the board directed staff to remove Temporary Suspension orders if they were denied and the subsequent action was dismissed from the physician profile.**

**Agenda item #8, Discussion, recommendation, and possible action regarding the practice of dental sleep medicine.** Dr. Wang and board staff presented a board draft position statement related to dental sleep medicine as directed at the prior board meeting. After discussion, **Dr. Wang moved, Mr. Gallardo seconded, and the motion passed to adopt the statement with Dr. Wang overseeing any edits.**

**Agenda item #9, Discussion, recommendation, and possible action regarding establishing an IRB review process.** Ms. Robinson discussed the contents and requirements Board Rule 198 outlines. A request was received requesting the board to review their IRB for potential approval; however, a process is not in place to evaluate these groups. The board directed staff to create a subcommittee and gather resource materials for the first subcommittee meeting that will be held in June. Protocols will need to be set before returning to the applicant. The following board members were appointed to the Institutional Review Board Ad Hoc Committee: W. "Roy" Smythe, M.D.; Margaret McNeese, M.D.; Stanley Wang, M.D.; J. Scott Holliday, D.O.; and Timothy Webb.

#### **Consent Agenda**

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

1. Consideration and approval of the February 8, 2013 Board Meeting Minutes. **Dr. Arambula moved, Ms. Attebury seconded, and the motion passed to approve the February 8, 2013 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.

Mr. Webb gave a report of the Ad Hoc Committee on Advertising meeting. **Mr. Webb moved, Dr. McMichael seconded, and the motion passed to approve the Ad Hoc Committee on Advertising minutes and action items.**

Dr. Zeitler gave a report of the Executive Committee meeting. **Dr. McMichael moved, Ms. Attebury seconded, and the motion passed to approve the Executive Committee.**

Ms. Attebury gave a report of the Finance Committee meeting. **Ms. Attebury moved, Mr. Webb seconded, and the motion passed to approve the Finance Committee minutes.**

**Agenda item #12, Consideration and Approval of Reconsideration of Proposal for Decision at 10:00 a.m.**

- 1. Larry Thirstrup, M.D., SOAH Docket No. 503-11-7462.MD.** Wendy Pajak, J.D., staff attorney was present. Dr. Thirstrup was not present. Scott Jones, appeared representing Dr. Thirstrup. Mr. Jones gave a presentation. Ms. Pajak gave a presentation. Dr. Thirstrup arrived during Ms. Pajak's presentation. **Dr. McMichael moved, Dr. Arambula seconded, and the motion passed to go into Executive Session at 10:12 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 10:35 a.m. and it was announced that no action was taken. A certified agenda was made. After discussion, **Ms. Southard moved, Mr. Gallardo seconded, and the motion passed to deny the request for amendment of the Final Order.**

**Agenda item #10, Consideration and possible action regarding pending litigation.** **Dr. McMichael moved, Dr. Arambula seconded, and the motion passed to go into Executive Session at 10:44 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 11:08 a.m. and it was announced that no action was taken. A certified agenda was made.

Mr. Freshour gave a brief update on pending litigation pertinent to the board.

The board recessed at 11:18 a.m.

The board reconvened at 11:30 a.m.

**Agenda item #29, at 11:30 a.m. Discussion, recommendation, and possible adoption of proposed amendments and rule review to 22 Texas Administrative Code:**

- a. Chapter 163. Licensure
  - §163.6. Examinations Accepted for Licensure
  - §163.7 Ten Year Rule

Ms. Robinson gave a brief summary of proposed amendments to Chapter 163. No written comments were received. No one signed-in to present oral comments. After discussion, **Mr. Webb moved, Ms. Southard seconded, and the motion passed to adopt proposed amendments to 22 T.A.C. Chapter 163. Licensure, §163.6 Examinations Accepted for Licensure and § Ten Year Rule for publication.**

b. Chapter 172. Temporary and Limited Licenses  
§172.8. Faculty Temporary Licenses

Ms. Robinson gave a brief summary of proposed amendments to Chapter 172. No written comments were received. No one signed-in to present oral comments. After discussion, **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to adopt proposed amendments to 22 T.A.C. Chapter 172. Temporary and Limited Licenses, §172.8 Faculty Temporary Licenses for publication.**

c. Chapter 175. Fees and Penalties  
§175.5. Payment of Fees or Penalties

Ms. Robinson gave a brief summary of proposed amendments to Chapter 175. No written comments were received. No one signed-in to present oral comments. After discussion, **Dr. Arambula moved, Mr. Webb seconded, and the motion passed to adopt proposed amendments to 22 T.A.C. Chapter 175. Fees and Penalties, §175.5 Payment of Fees or Penalties for publication.**

d. Chapter 187. Procedural Rules  
§187.57. Charge of the Disciplinary Panel

Ms. Robinson gave a brief summary of proposed amendments to Chapter 187. No written comments were received. No one signed-in to present oral comments. After discussion, **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to adopt proposed amendments to 22 T.A.C. Chapter 187. Procedural Rules, §187.57 Charge of the Disciplinary Panel for publication.**

e. Chapter 196. Voluntary Relinquishment or Surrender of a Medical License  
§196.2. Surrender Associated with Disciplinary Action

Ms. Robinson gave a brief summary of proposed amendments to Chapter 196. No written comments were received. No one signed-in to present oral comments. After discussion, **Mr. Webb moved, Ms. Southard seconded, and the motion passed to adopt proposed amendments to 22 T.A.C. Chapter 196. Voluntary Relinquishment or Surrender of a Medical License, §196.2 Surrender Associated with Disciplinary Action with the typographical correction of the word “investigation”.**

f. Chapter 197. Emergency Medical Services  
§197.3 Off-Line Medical Director

Ms. Robinson gave a brief summary of proposed amendments to Chapter 197. No written comments were received. No one signed-in to present oral comments. After discussion, **Ms. Southard moved, Dr. Arambula seconded, and the motion passed to adopt proposed amendments to 22 T.A.C. Chapter 197. Emergency Medical Services, §197.3 Off-Line Medical Director for publication.**

There were no items for Agenda items #30-32.

There were no items for Agenda item #13.

**Agenda item #14, Consideration and Approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders.** After consideration, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the Termination Granted of Rehabilitation Orders #556 and #608; and Modification Granted of Rehabilitation Order #476.**

**Agenda item #15, Consideration and possible action for Agreed Board Orders.** After discussion, **Dr. McMichael moved, Dr. McNeese seconded, and the motion passed to approve the Agreed Order #17, with the addition to also monitor at least an additional 20 patient records seen by the Respondent's midlevel provider(s) and evaluate the adequacy of Respondent's supervision of his midlevel provider(s), due to supervising concerns.**

After discussion, **Dr. McMichael moved, Ms. Attebury seconded, to add PACE or a similar boundary course in place of the eight hour CME in professional boundaries to Agreed Order #25.** After discussion, **Dr. Guajardo made a friendly amendment to add a chaperone for all female patients seen by the respondent, Dr. Gallardo seconded. A hand vote was taken and the motion passed as amended.**

**Mr. Webb made a counter motion to undo the previous motion and made the motion to schedule the case for another ISC and reject the proposed order, Dr. Shulkin seconded.** After discussion, a hand vote was taken and the counter motion passed.

After discussion, **Dr. McMichael moved, Dr. Shulkin seconded, and the motion passed to deny the Agreed Order for Agreed Order #31, and refer to the State Office of Administrative Hearings for revocation.**

After discussion, **Mr. Gallardo moved, Dr. McNeese seconded, to approve Agreed Order #32 with the modification that the respondent surrender DEA prescribing. A hand vote was taken and the motion failed.**

After discussion, **Dr. McMichael moved, Mr. Webb seconded, and the motion passed to approve the Agreed Orders en masse for Edwin Escobar-Vasquez, M.D.; Shaista Parveen, M.D.; John P. Schwartz, D.O.; Steven L. Shillings, M.D.; James B. Shook, M.D.; Wayne A. Soignier, M.D.; Tyson K. Cobb, M.D.; Ernesto Antonio Kufoy, M.D.; Edgar Livingstone, M.D.; Kenneth W. Sanders, M.D.; Michael L. Blackwell, M.D.; Harold P. Freemyer, M.D.; Christopher R. Mann, D.O.; Horis T. Stedman, Jr., M.D.; Frank Toress,**

**M.D.; Philip M. Cantu, M.D.; Gary W. Earp, M.D.; Jorge Guerrero, M.D.; Stacy E. Hamid, M.D.; Gary M. Horndeski, M.D.; Julio C. Novoa, Jr., M.D.; Jose F. Pena, M.D.; Bill E. Weldon, D.O.; William C. Sams, III, M.D.; Rupinder K. Chatha, M.D.; Mark J. Cwikla, M.D.; Clifford D. Garvin, M.D.; Praveen Moolamalla, M.D.; Clinton C. Battle, M.D.; Jerel Biggers, D.O.; and Robert Ogdee, M.D.**

**Agenda item #33, Public Comments.** No one signed-in to present public comments.

**Agenda item #16, Consideration and Approval of Modification Request/Termination Request Orders.** After consideration, **Dr. McMichael** moved, **Dr. McNeese** seconded, and the motion passed to approve the **Modification Request Orders** for **William A. Andrews, M.D.; Carol Andrus, M.D.; Dileep C. Bhateley, M.D.; Steven H. Farber, M.D.; Cynthia Lee Ketterer, M.D.; Felix Sabates, Jr., M.D.;** and **Termination Granted Orders** for **Howard L. Boland, M.D.; Anthony F. Garcia, M.D.; Ramiro Hernandez, M.D.; Allan J. McCorkle, M.D.; Joseph Motes, Jr., M.D.;** and **Dennis M. Shaughnessy, M.D.**

**Agenda item #17, Consideration and Approval of Mediated Settlement Agreed Orders.** After discussion, **Dr. Wang** moved, **Mr. Gallardo** seconded, to refer **Mediated Settlement Agreed Order # 4** to the **State Office of Administrative Hearings** for revocation. After discussion, **Dr. McMichael** moved, **Ms. Southard** seconded, and the motion passed to go into **Executive Session at 12:34 p.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 12:46 p.m. and it was announced that no action was taken. A certified agenda was made. After discussion, **the motion was restated and a hand vote was taken, and the motion passed to refer to the State Office of Administrative Hearings for revocation.**

After consideration, **Dr. Holliday** moved, **Mr. Webb** seconded, and the motion passed to approve the **Mediated Settlement Agreed Orders en masse** for **James L. Bowell, II, M.D.; Thomas J. Curvin, M.D.; Terry W. Hugg, M.D.; Judson J. Somerville, M.D.; Lloyd K. Weldon, D.O.; Rafael Canadas-Zizzias, M.D.;** and **V. John Gonino, D.O.**

**Agenda item #18, Consideration and Approval of Remedial Plans.** After discussion, **Dr. McMichael** moved, **Dr. Arambula** seconded, to change the **Remedial Plan for #43** to an **Agreed Order** and add a fine of **\$3,000.** After discussion, **the motion passed.**

After discussion, **Mr. Gallardo** moved, **Dr. McMichael** seconded, and the motion passed to change the **Remedial Plan for #44** to an **Agreed Order** and add a fine of **\$2,000.**

After consideration, **Ms. Southard** moved, **Mr. Webb** seconded, and the motion passed to approve the **Remedial Plans en masse** for **Chacko Alexander, M.D.; Michael A. Aragon, M.D.; Anupa K. Arora, M.D.; Ariston P. Awitan, Jr., M.D.; Vaishali K. Bhusari, M.D.; Damon V. Borich, M.D.; Yuri D. Borshch, M.D.; Michael A. Codiga, M.D.; Dona E. Cooper-Dockery, M.D.; Michael W. Cowart, M.D.; Antonio A. Flores, M.D.; Lawrence E.**

**Foote, M.D.; Juan P. Garcia, M.D.; Nancy K. Hinitt, M.D.; Charles G. Holmsten, M.D.; Reza Khalili, M.D.; Ikram U. Kureshi, M.D.; Mogbolahan M. Kuye, M.D.; Mark D. Le, M.D.; Subodh K. Mallik, M.D.; Ana H. Marin, M.D.; Bong O. Mui, M.D.; Casey Nguyen, M.D.; Shreekant N. Patolia, M.D.; Devender D. Reddy, M.D.; Mark Redrow, M.D.; Scott R. Shepard, M.D.; Elcenia Simpson-White, M.D.; Kozhaya C. Sokhon, M.D.; Latha Tatineni, M.D.; Joseph G. Valdez, M.D.; Jai Varma, M.D.; Joseph Varon, M.D.; Joseph Varon, M.D.; Gary E. Vaugh, M.D.; Christopher Witherspoon, M.D.; Harry Y. Wong, M.D.; George O. Zenner, Jr., M.D.; Scott A. Stone, M.D.; Steven D. Williams, M.D.; John B. Barnett, Jr., M.D.; Padmini Bhadriraju, M.D.; Terry M. Lindsey, M.D.; Nick S. Pomonis, D.O.; Martin V. Thai, M.D.; Gregory G. Theodore, M.D.; Richard Ranne, M.D.; and Surendra K. Jain, M.D.**

There were no items for Agenda items #19-20.

**Agenda item #21, Report on Temporary Suspensions.** A report was given on the Temporary Suspension Without Notice for David W. Cardwell, M.D.; Subramaniam V. Ramanathan, M.D.; YOK Medical Concepts, PMC; AVC Wellness Center, Inc., PMC; and Owen S. Maat, M.D.

**Agenda item #22, Report on Automatic Orders.** A report was given on the Automatic Order for Amanda Campbell, NCT.

**Agenda item #23, Consideration and approval of Cease and Desist Orders.** After consideration, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the Cease and Desist Order for Florian Crittenden; Lynn Marie Formann; Christopher O'Brien; John J. Duncan; William B. Hobbins, M.D.; and Leilani Tejada.**

There were no items for Agenda items #24-28.

The board recessed at 1:09 p.m.

The board reconvened at 1:23 p.m. A quorum was confirmed.

### **Consent Agenda**

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

2. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.

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



Dr. Arambula gave a report of the Licensure Committee meeting. **Dr. Arambula moved, Dr. Guajardo seconded, and the motion passed to approve the Licensure Committee meeting minutes and action items.**

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

**Agenda item #34, Nomination and election for Board Vice-President.** Dr. Zeitler announced Dr. McNeese as the new chair for the Disciplinary Process Review Committee. Dr. Zeitler requested nominations for the position of Board Vice-President. **Dr. McNeese nominated Dr. Arambula for Vice-President, Mr. Webb seconded, and the motion passed by acclamation to approve Dr. Arambula as Vice-President.**

There being no further agenda items, the meeting adjourned at 1:40 p.m.