



Texas Medical Board

June 4, 2010

BOARD MEETING MINUTES

The meeting was called to order June 4, 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 E. Oswalt III, M.D.; Allan N. Shulkin, M.D.; Wynne M. Snoots, M.D.; Paulette 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; Megan Goode, Public Information and Special Projects Manager; and various other staff.

Mr. Webb 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 announced the resignation of Dr. Moore and expressed the boards appreciation for Dr. Moores dedication and service to the board.

Agenda item #3, Executive Directors Report. Ms. Robinson gave a report on the Federation of State Medical Boards meeting in Chicago. Mr. Turner gave a report on the developing relationship with the Federation.

Ms. Robinson gave a report on the Outreach Programs this summer scheduled in McAllen, San Angelo, Austin, and Temple. The board discussed ideas to customize the Outreach Program to develop an earlier more interactive relationship with medical students.

Ms. Robinson gave a summary of the 81st Legislative Session Interim Charges related to the board concerning the confidentiality of complaints and the corporate practice of medicine for hospitals directly hiring physicians.

Tony Merritt in the Information Technology department gave an update on the evaluation of a teleconferencing system for board members. The board directed staff to schedule a demonstration and report back with the feasibility of the cost and adequate technical support for a system.

Ms. Robinson gave a report on the status of the Physician Health Program that is accepting referrals and is continuing to face financial difficulties as a start up program.

After Ms. Robinson gave a report on the use of peer review documents, the board directed staff to draft an amendment expanding 190.82 to clarify the use of peer review records.

Agenda item #4, Medical Directors report. Dr. Moore gave a report on his resignation from the board and expressed his appreciation to the board and staff.

Dr. Moore gave an update on the process at an Informal Settlement Conferences. If an ISC panel member has additional questions, two options are to 1.) defer the decision and ask for another expert opinion, or 2.) dismiss the case and refer it back to the Disciplinary Process Review Committee to review.

Agenda item #5, Discussion, recommendation, and possible action for procedures for hearings for probation appearances. After discussing the procedures for probation appearances, the board directed staff to review the process for possible efficiencies.

Agenda item #6, Discussion, recommendation, and possible action related to transition of care. After discussion, the board directed staff to draft a rule to address those who may be held accountable for transition of care and to report back to the Disciplinary Process Review Committee.

Agenda item #7 and #8 were deferred to later in the meeting.

Agenda item #9, Consideration and Approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, Dr. Benavides moved, Ms Attebury seconded, and the motion passed to approve the Termination Granted of Rehabilitation Order #405, #361, and #380; Modification Granted of Rehabilitation Order #526, #452, and #536; and the Termination Denied of Rehabilitation Order #565.

Agenda item # 10, Consideration and Approval of Agreed Board Orders. After discussion, Ms. Attebury moved, Dr. Benavides seconded a motion to add a chart monitor in substitution of the \$2,000 fine. The motion failed. After discussion, Mr. Turner moved, Dr. Arambula seconded, and the motion passed to approve the Agreed Order for J. Mark McBath, M.D, with the modification to clarify that the fine is for the falsification of records.

Dr. Arambula moved, Mr. Turner seconded, and the motion passed to approve the Agreed Orders en masse for Benjamin Aaron, M.D.; Victor J. Atun, M.D.; Alberto L. Belalcazar, M.D.; Andrew F. Campbell, M.D.; Christina Clardy, M.D.; Freddie L. Contreras, M.D. Mark C. Dawson, M.D.; Odell J. Dean, Jr., M.D.; Charles L. Fougrousse, M.D.; Clifford D. Garvin, M.D.; Paul S. Gulbas, M.D.; Darryl C. Harris, M.D.; Patrick F. Kelly, D.O.; Wasim M. Khan, M.D.; Suresh Kukreja, M.D.; Daniel Luczkow, M.D.; Jerry D. McLaughlin, M.D.; Day P. McNeel, Jr., M.D.; Mahoor C. Moradi, M.D.; Nasser Nakissa, M.D.; Don M. ONeal, M.D.; Dennis L. Ortiz, D.O.; Cabe M. Owens, M.D.; Helson Pacheco-Serrant, M.D.; Ralph D. Patman, M.D.; Paula C. Plummer, M.D.; Michael G.

Sargent, M.D.; Grady C. Shaw, M.D.; Precha Suvunrungsi, M.D.; Archana Thota, M.D.; Gene Vertkin, M.D.; Gary G. Wofford, M.D.; Junior De Freitas, M.D.; Teresa Guerrero, M.D.; Bernard D. Kornell, M.D.; John R. Mathias, M.D.; Justin Merszei, M.D.; Leonard G. Nepper, D.O.; Deborah K. Parr, M.D.; Michael J. Pendleton, M.D.; Michael T. Schell, M.D.; Arun Sharma, M.D.; Jeffrey M. Shear, M.D.; Shah N. Siddiqi, M.D.; Robert Stroud, M.D.; Robert R. Trostel, M.D.; Santiago A. Zamora, M.D.; Kevin B. Anderson, D.O.; John C. Gunn, M.D.; Daniel A. Crain, D.O.; Kiran Sharma, M.D.; Lawrence R. Clarke, M.D.; Howard Grant, M.D.

Agenda item # 11, Consideration and Approval of Modification Request/Termination Request Orders. After consideration, **Mr. Turner moved, Dr. Arambula seconded, and the motion passed to approve the Modification Request/Termination Request Orders for Ralph Sharman, M.D.; Mark S. Wilson, M.D.; and Casey B. Green, M.D.**

Agenda item #12, Consideration and Approval of Nunc Pro Tunc Orders. After consideration, **Dr. Arambula moved, Mr. Turner seconded, and the motion passed to approve the Nunc Pro Tunc Order for John A. Standefer, M.D.**

Agenda item #13, Consideration and Approval of Mediated Settlement Agreed Orders. After consideration, **Dr. Benavides moved, Dr. Willeford seconded, and the motion passed to approve the Mediated Settlement Agreed Orders for Bruce Foreman, M.D.; Walid H. Hamoudi, M.D.; Robert D. Healing, M.D.; Alan D. Koenigsberg, M.D.; Joseph McWherter, M.D.; Cynthia Paulis, D.O.; Steven L. Silver, M.D.; Davill Armstrong, M.D.; Olie R. Garrison, D.O.; Jorge E. Tijmes, M.D.**

There were no items for Agenda item #14.

Agenda item #15, Consideration and Approval of Corrective Orders. After consideration, **Ms. Southard moved, Dr. Arambula seconded, and the motion passed to approve the Corrective Orders for Aziz W. Bhai, M.D.; Stephen A. Braden, M.D.; Chen X. Ha, M.D.; Nadia Malik, M.D.; Raul P. Rodriguez, M.D.; and Thao T. Thach, M.D.**

There were no items for Agenda items #16 - #17.

Agenda item #18, Report on Temporary Suspension. Ms. Leshikar gave a report on Temporary Suspension hearings held.

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

Agenda item #21, Consideration and Approval of Determinations of Default. Ms. Elaine Snow, staff attorney, presented the Determination of Default. After discussion, **Ms. Southard moved, Dr. McMichael seconded, and the motion passed to approve the Determination of Default of Jennifer Joanne Few, M.D., revocation of licensure.**

There were no items for Agenda item #22.

Agenda item #23, Report on motions for rehearing. Ms. Leshikar gave a report that the Fernando Mallou, M.D., motion for rehearing was denied.

Agenda item #24, Consideration and Approval of Proposal for Decision was deferred to later in the meeting.

Agenda item #8, Pending Litigation. Ms. Leshikar summarized the status of pending litigation, including the status of the lawsuit with the Texas Board of Chiropractic Examiners.

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. McNeese gave a report of the Standing Orders Committee. **Dr. McNeese moved, Ms. Blackwell seconded, and the motion passed to approve the action items.**

Dr. Zeitler gave a report of the Executive Committee. **Mr. Turner moved, Dr. McMichael seconded, and the motion passed to approve the Executive Committee action items.**

Dr. Crocker gave a report of the Ad Hoc Committee re: 164.4 Board Certification. **Dr. Crocker moved, Dr. Arambula seconded, and the motion passed to approve the Ad Hoc Committee re: 164.4 Board Certification action items.**

Dr. Arambula gave a report of the Licensure Committee. **Dr. Benavides moved, Ms. Southard seconded, and the motion passed to approve the Licensure Committee action items.**

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

Ms. Attebury gave a report of the Finance Committee. There were no action items.

Agenda item #24 at 11:00 a.m., Consideration and Approval of Proposal for Decision for Carlin Grant Bartschi, M.D. SOAH #503-10-2510. Administrative Law Judge Suzanne Marshall presented the Proposal for Decision on behalf of Thomas Walston, ALJ. Elaine Snow, staff attorney, was present and gave a presentation. Dr. Bartschi was not present. No attorney was present representing Dr. Bartschi. **Dr. Oswalt moved, Ms. Southard seconded a motion to approve the Proposal For Decision, except for Conclusion of Law #8. Dr. McMichael made a friendly amendment, Ms. Blackwell seconded, and the friendly amendment motion passed to approve to clarify the fine. A vote was take for the original motion with the friendly amendment and the motion passed to approve the Proposal for Decision exception for Conclusion of Law #8 revoking Dr. Bartschis license and to clarify the fine.**

Agenda item #7, Discussion, recommendation, and possible action for the new National Practitioner Data Bank reporting requirements. After discussion, the board directed staff to contact the National Practitioner Data Bank to clarify reporting requirements.

Agenda Item #25 at 11:30 pm, Discussion, recommendation and possible action regarding the following board rules in 22 TAC:

a. Chapter 164, Physician Advertising:

164.6, Required Disclosures on Websites.

b. Chapter 172, Temporary and Limited Licenses:

172.12, Out-of-State Telemedicine License.

c. Chapter 174, Telemedicine

174.1, Purpose.

174.2, Definitions.

174.3, Telemedicine Medical Services.

174.4, Use of the Internet in Medical Practice.

174.5, Notice of Privacy Practices.

174.6, Delegation to and Supervision of Telepresenters.

174.7, Telemedicine Medical Services Provided at Sites other than an Established Medical Site.

174.8, Evaluation and Treatment of the Patient.

174.9, Technology and Security Requirements.

174.10, Medical Records for Telemedicine Medical Services.

174.11, On-call Services.

174.12, State Licensure.

a. Chapter 164, Physician Advertising: 164.6, Required Disclosures on Websites.

Moves language to Chapter 164 that was previously in Chapter 174. No one signed-in to present oral comments. No written comments were received. After discussion, **Mr. Turner moved, Ms. Blackwell, seconded, and the motion passed to adopted the proposed rule changes to T.A.C. Chapter 164, Physician Advertising: 164.6, Required Disclosures on Websites for publication in the Texas Register.**

b. Chapter 172, Temporary and Limited Licenses. Licenses, 172.12, Out-of-State Telemedicine License.

Written comments were received and reviewed. No one signed-in to present oral comments. **Mr. Turner moved, Ms. Blackwell seconded, and the motion passed to pull the rule to make necessary changes to be in line with other Telemedicine rules and re-publish for public comment.**

c. Chapter 174, Telemedicine, 174.1, Purpose; 174.2, Definitions.; 174.3, Telemedicine Medical Services.; 174.4, Use of the Internet in Medical Practice.; 174.5, Notice of Privacy Practices.; 174.6, Delegation to and Supervision of Telepresenters.; 174.7, Telemedicine Medical Services Provided at Sites other than an Established Medical Site.; 174.8, Evaluation and Treatment of the Patient.

174.9, Technology and Security Requirements.; 174.10, Medical Records for Telemedicine Medical Services.; 174.11, On-call Services.; 174.12, State Licensure. Written comments were received and reviewed. The following presented oral comments: G. Byron Brooks, UTMB; Dr. Vo, UTMB; Kandice Sanaie, Texas Association of Business; Joe Lovelace, Texas Council Community MHMR Centers; and Chris Krohn, United Healthcare.

After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to re-publish with clarification what is considered a patients home and further clarification of 174.7c that all patients must be seen for an evaluation.**

Agenda Item #29 at Noon. Open forum for public comments. No one signed in to present oral comments.

Agenda item #26, Discussion, recommendation and possible action regarding proposed rule changes to 22 T.A.C. Chapter 183, Acupuncture. 183.2. Definitions. After discussion, **Ms. Southard moved, Dr. Arambula seconded, and the motion passed to adopt proposed rule changes to 22 T.A.C. Chapter 183, Acupuncture. 183.2. Definitions for publication in the Texas Register.**

Agenda item #27, Discussion, recommendation, and possible action regarding Chapter 185, Physician Assistant. After discussion, **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to adopt proposed rule changes to 22 T.A.C. Chapter 185, Physician Assistant for publication in the Texas Register.**

Agenda item #28, Discussion, recommendation, and possible action for the appointment of Licensure/Enforcement sub-committee members to address physicians appointed by third parties. After discussion, the board appointed Dr. Arambula, chair, Mr. Ellis, Ms. Attebury, Dr. Melissa Tonn, and Dr. Roberta Kalafut to a Licensure/Enforcement advisory group to address physicians appointed by third parties.

Agenda item # 3, Executive Directors report (continued). Ms. Robinson informed the board of a news reporters request for the board to give a reporters contact information to complainants. After discussion, the board directed staff to decline the request.

Ms. Robinson gave a report on the current procedure for files referred from the Disciplinary Process Review Committee for an Informal Settlement Conference. The board directed staff to schedule Informal Settlement Conferences for files referred back from DPRC without going to the Quality Assurance Panel for review.

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

1. Consent Agenda:

- A. Consideration and approval of the April 9, 2010 Board Meeting Minutes. **Dr. McMichael moved, Mr. Turner seconded, and the motion passed to approve the April 9, 2010 Board Meeting Minutes and action items.**

B. Consideration and approval of the May 24, 2010 Temporary Suspension Without Notice minutes regarding Don M. O'Neal, M.D. **Dr. Crocker moved, Mr. Webb seconded, and the motion passed to approve the Temporary Suspension Without Notice minutes and action items.**

Agenda item #30, Adjourn. There being no further agenda items the meeting adjourned at 1:07 p.m.