



Texas Medical Board

BOARD MEETING

APRIL 13, 2012

333 GUADALUPE, TOWER 2, SUITE 225

AUSTIN, TEXAS

The meeting was called to order on April 13, 2012 at 8:05 a.m. by Irvin E. Zeitler, Jr., D.O., President. Board members present were Melinda McMichael, M.D., Vice-President; Paulette Southard, Secretary/Treasurer; Julie Attebury; David Baucom; Patricia S. Blackwell; Pat J. Crocker, D.O.; John D. Ellis, Jr., J.D.; Carlos Gallardo; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Allan N. Shulkin, M.D.; W. Roy Smythe, M.D.; Wynne M. Snoots, M.D.; Stanley S. Wang, M.D., J.D.; Timothy Webb, J.D.; and George Willeford III, M.D. Michael Arambula, M.D., and Manuel G. Guajardo, M.D., were not present. Board staff present were Mari Robinson, Executive Director; Nancy Leshikar, J.D., General Counsel; Tonie Knight, Licensure Manager; Megan Goode, Public Information and Special Projects Manager; Jennifer Kaufman, Assistant General Counsel; and various other staff.

Ms. Southard read the boards mission statement into the minutes. *Our 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, Board Member Report.

FSMB Annual Meeting Update. Dr. Zeitler gave an update of the Federation State Medical Board annual meeting scheduled April 26-28th. The board members were encouraged to attend the Federation of State Medical Board's annual meeting in April. Ms. Robinson announced Jaime Garanflo would be accepting the award for the Federation Outstanding Service Award at the meeting.

Agenda item #3, was deferred until later in the meeting.

There were no items for Agenda item #4.

Agenda item #5, Public Information report. Ms. Leigh Hopper, Public Information Officer, gave a report on news coverage of TMB-related issues. Ms. Southard asked that these reports be continued at subsequent Board meetings.

Agenda item #3, Executive Directors Report.

Update on the Expert Panel. Ms. Robinson gave an update on the number of case assignments and on efforts to continue to recruit neurosurgeons and orthopedic surgeons.

Personnel Update. Ms. Robinson reported several open employee positions are posted.

Public Outreach Update. Ms. Robinson reported receiving a positive initial response for the Outreach Programs that are being scheduled across the state with medical schools and county medical societies. The Outreach Program is expanding to develop a multi-year program and to target first year students to provide education on the rules and policies of the board.

Physician Assistant Liaison. Ms. Robinson reported the Physician Assistant Board approved the recommendation for liaisons to interact with the Medical Board to improve communication with the two boards. Dr. Wang volunteered to serve as a liaison with the Physician Assistant Board.

Legislative Update. Ms. Robinson requested the boards input for the Agency Strategic Plan for 2013-2017 that will be presented at the June board meeting for approval.

Ms. Robinson reported on the Legislative Appropriations Request (LAR) that will be due in August.

Ms. Robinson reported receiving DIR approval to bring all registration and application processes in-house. Texas Online will no longer be used by the end of fiscal year 2013 and as a result, the Texas Online fee be removed.

Ms. Robinson presented an update of the Legislative Interim Charges related to the board.

Ms. Robinson reported that the Internal Audit of data maintenance and human resource files is in progress. In addition, she reported an audit of the internal auditor is required every three years to ensure that the proper audit standards are being used. David McCabe will be the contracted auditor for the audit of the internal auditor.

The remainder of the Executive Director's report was deferred to later in the meeting.

Agenda item #6, Presentation by PCM Ventures. Kelvin Marino, outside general counsel for PCM Ventures LLC, online pharmaceutical company QuicMed, gave a presentation.

Agenda item #7, Discussion, recommendation, and possible action regarding Texas Medical Association resolutions. Ms. Robinson presented the proposed resolutions from the Texas Medical Associations House of Delegates. The first resolution related to licensure application question 19B-C which asked for disclosure of neuropsychiatric conditions.

After discussion, the board directed staff to review these types of questions on the application and re-licensure application for consistency and refer the application question to the Licensure Committee for a recommendation to bring back to the board.

After discussion, the board directed staff to request clarification of the TXPHP process and fee structure.

The second TMA resolution related to rules to establish fees and processes for providing electronic medical records. After discussion, the board directed staff to research what other states have established to provide electronic medical records.

Agenda item #8, Discussion, recommendation, and possible action regarding the use of non-physicians performing electromyography testing (EMG). Ms. Robinson presented a letter from the Texas Neurological Society and summarized concerns about the increasing use of non-physicians performing electromyography testing (EMG). After discussion, the board directed staff to draft rules that nerve conduction studies should either be performed by a physician or by a trained individual under the direct supervision of the physician. Direct supervision means the physician is in close proximity and immediately available and is responsible for selecting the appropriate conduction to perform.

Agenda item #9, Consideration and possible action regarding pending litigation. Dr. McMichael moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 9:26 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 9:48 a.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #20, Consideration and Approval of Determinations of Default. Jose Eduardo Salinas, M.D., State Office of Administrative Hearings #503-11-9478. Lee Bukstein, staff attorney, gave a presentation. Jose Eduardo Salinas, M.D., was not present. Ms. Attebury moved, Ms. Blackwell seconded, and the motion passed to approve the Determination of Default for revocation of the licensure of Jose Eduardo Salinas, M.D.

Agenda item #12, Consideration and possible action for Agreed Board Orders. After discussion, Dr. McMichael moved, Ms. Southard seconded, and the motion passed to deny the Agreed Order for #31 and continue to proceed at the State Office of Administrative Hearings for revocation, due to persistent disciplinary action.

Agenda item #10, Consideration and Approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, Dr. McMichael moved, Ms. Attebury seconded, and the motion passed to approve the Modified Agreed Rehabilitation Order #665; Termination Denied of Rehabilitation Order #555; and Termination Granted of Rehabilitation Order #497.

Agenda item #11, Discussion, recommendation, and possible action regarding prior board action. Wendy Pajak gave a presentation on a prior board action. After discussion, the board tabled the agenda item until later in the meeting.

Agenda item #12-28 were deferred to later in the meeting.

Agenda item #29, Discussion, recommendation, and possible action regarding rule review and adoption of proposed amendments to 22 Texas Administrative Code (T.A.C.):

- a. **Chapter 166, Physician Registration.** Ms. Kaufman gave a brief summary of proposed amendment to Chapter 166. No written comments were received. No one signed-in to present oral comments. After discussion, **Ms. Southard moved, Dr. Holliday seconded, and the motion passed to adopt the rule review and proposed amendments to 22 T.A.C. Chapter 166, Physician Registration for publication.**
- b. **Chapter 192, Office-Based Anesthesia Services.** Ms. Kaufman gave a brief summary of proposed amendments to Chapter 192. Written comments were received and reviewed. H.A. Tillmann Hein, M.D., and Thomas J. Oliverson, M.D., Texas Society of Anesthesiologists, signed-in and presented oral comments. After discussion, **Dr. Holliday moved, Ms. Southard seconded, and the motion passed to adopt the rule review and proposed amendments to 22 T.A.C. Chapter 192, Office-Based Anesthesia Services for publication with a non-substantive change. correcting the name American Safety and Health Institute.** The board directed staff to refer Chapter 192 to a stakeholder group for further review with additional input from Dr. Holliday and the Texas Society of Anesthesiologists.

Agenda item #30, Discussion, recommendation and possible action including approval for publication for public comment regarding amendments to 22 Texas Administrative Code (T.A.C.): Chapter 177, Certification of Non-Profit Organizations. Ms. Kaufman gave a brief summary. Written comments were received. Charles Bailey, Texas Hospital Association signed-in and gave oral comments. After discussion, **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve proposed amendments for publication for public comment regarding amendments to 22 T.A.C. Chapter 177, Certification of Non-Profit Organizations.**

Agenda item #31, Discussion, recommendation, and possible action including adoption of proposed amendments to 22 Texas Administrative Code (T.A.C.):

- h. **195.2. Certification of Pain Management Clinics.** Ms. Robinson gave a brief summary. Written comments were received and reviewed. Carla Cox, Texas Association Nurse Anesthetists, signed-in and presented oral comments. After discussion, **Dr. Holliday moved, Ms. Attebury seconded, and the motion passed to approve to adopt proposed amendments to 22 T.A.C. 195.2. Certification of Pain Management Clinics as published in the Texas Register.**
- i.-k. **198.1. Purpose, 198.2. Definitions., and 198.3. Practice Guidelines for the Use of Investigational Agents.** Ms. Kaufman gave a brief summary. Written comments were received and reviewed. Leigh Turner, professor at the University of Minnesota; Nathan Kottkamp with Celltex; Mario Salinas, Texans for Stem Cell Research, signed-in and presented oral comments. After discussion, **Dr. Willeford moved, Mr. Gallardo seconded, and the motion passed to approve to adopt the proposed amendments to 22 T.A.C. 198.1. Purpose, 198.2. Definitions, and 198.3. Practice Guidelines for the Use of Investigational Agents, as published in the Texas Register.** The board directed staff to begin the process to clarify and define the language with the assistance of stakeholders and board members.
- a.-b. **163.2. Full Texas Medical License.** Ms. Robinson gave a brief summary. Written comments were received. After discussion, **Dr. McNeese moved, Dr. Snoots**

seconded, and the motion passed to pull 163.2. Full Texas Medical License and 163.5. Licensure Documentation for further review.

- c. 171.3. Physician-in-Training Permits.** Ms. Kaufman gave a brief summary. No written comments were received. No one signed-in to present oral comments. After discussion, **Mr. Webb moved, Ms. Blackwell seconded, and the motion passed to adopt amendments to 22 T.A.C.171.3. Physician-in-Training Permits as published in the Texas Register.**
- d. 175.5. Payment of Fees or Penalties.** Ms. Kaufman gave a brief summary. No written comments were received. No one signed-in to present oral comments. After discussion, **Ms. Southard moved, Dr. McMichael seconded, and the motion passed to adopt amendments to 22 T.A.C. 175.5. Payment of Fees or Penalties as published in the Texas Register.**
- e. 178.3. Complaint Procedure Notification.** Ms. Kaufman gave a brief summary. 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 adopted amendments to 22 T.A.C. 178.3. Complaint Procedure Notification as published in the Texas Register .**
- f. 187.13. Informal Board Proceedings Relating to Licensure Eligibility.** Ms. Kaufman gave a brief summary. No written comments were received. No one signed-in to present oral comments. After discussion, **Mr. Gallardo moved, Ms. Southard seconded, and the motion passed to adopt amendments with a non-substantive changes to 22 T.A.C. 187.13. Informal Board Proceedings Relating to Licensure Eligibility.**
- g. 190.15. Aggravating and Mitigating Factors.** Ms. Robinson gave a brief summary. No written comments were received. No one signed-in to present oral comments. After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to adopt the proposed amendments to 22 T.A.C. 190.15. Aggravating and Mitigating Factors as published in the Texas Register.**

There were no items for Agenda item #32.

Agenda item #33, Discussion, recommendation, and possible action regarding adopted amendments to 22 T.A.C. Chapter 185, Physician Assistants. a.) 185.4. Procedural Rules for Licensure Applicants. Ms. Kaufman gave a brief summary. **Ms. Southard moved, Dr. Smythe seconded, and the motion passed to approve the adopted amendments to 22 T.A.C. Chapter 185, Physician Assistants, 185.4 Procedural Rules for Licensure Applicants.**

Agenda item #34, Open forum for public comments. David Greathouse signed-in and presented public comments. Other signees did not present oral comments.

The board recessed for lunch at 12:35 p.m.

The board reconvened at 1:05 p.m. A quorum was confirmed.

Agenda item #11, Discussion, recommendation, and possible action regarding prior board action. After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 1:04 p.m. for deliberations concerning disciplinary action, investigative information, peer review information, and rehabilitation orders under the authority of The Medical Practice Act Sections 152.009, 160.006 through .008, 164.007(c), and 164.202 & .203, Occupations Code.** Open session resumed at 1:43 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. Shulkin moved, Dr. McMichael seconded, and the motion passed to modify the Agreed Order #31 to add a chart monitor for 12 cycles due to concerns of a pattern of behavior.**

Agenda item #12, Consideration and possible action for Agreed Board Orders. After discussion, Dr. McNeese moved, Dr. McMichael moved for revocation of #7. After discussion, Dr. McNeese withdrew her motion and Dr. McMichael withdrew her second.

After discussion, Dr. Willeford moved, Mr. Gallardo seconded a motion to include a public reprimand in Agreed Order #18. The motion failed.

Dr. Zeitler was recused for consideration and approval of the Agreed Order for John D. Hunt, M.D. After discussion, **Mr. Webb moved, Ms. Southard seconded, and the motion passed to approve the Agreed Orders en masse for Charles S. Eby, Jr., M.D.; Rao K. Nandety, M.D.; Stephen Fowler, M.D.; Anthony F. Garcia, M.D.; Stacy Hamid, M.D.; Michael D. McCord, M.D.; Scott S. McNeil, M.D.; Tanuja Reddy, M.D.; Gundlapalli Surya, M.D.; Sean D. Beaty, M.D.; Donald Samuel, M.D.; Ediberto Soto-Cora, M.D.; James E. Stevens, D.O.; Lufti S. Basatneh, M.D.; Suzanna O. Cruz, M.D.; Samuel Hoover, M.D.; Larry J. Marshall, M.D.; Vaishnavi Reddy, M.D.; Ernest T. Roman, M.D.; Alan D. Shiller, M.D.; Donald R. Simmons, M.D.; James G. Trevino, M.D.; Qaiser J. Yusuf, M.D.; Owen C. DeWitt, M.D.; James S. Jones, M.D.; Mayra L. Freeman-Ladd, M.D.; Julian K. Mardock, M.D.; David I. Howie, M.D.; and John D. Hunt, M.D..**

After discussion, **Dr. McMichael moved, Mr. Gallardo seconded, and the motion passed to approve the Agreed Order for John A. Schmidt, M.D.** The board directed staff to open a new investigation.

Agenda item #13, Consideration and Approval of Modification Request/Termination Request Orders. After discussion, **Dr. McNeese, Ms. Blackwell seconded, and the motion passed to deny the termination request #6, due to concerns of rehabilitation.**

Dr. Zeitler was recused for March W. Wimpee, M.D. After discussion, **Ms. Southard moved, Dr. McNeese seconded, and the motion passed to approve the Modification Request Granted for Gregory T. Clariday, M.D.; Stephen H. Horton, M.D.; John B. Mullen, M.D.; and Sergio Silva, M.D.; Termination Request Granted for Keith Kesler, D.O.; William J.**

Rea, M.D.; Grady Shaw, M.D.; Niphon Sudhivoraseth, M.D.; and Marc W. Wimpee, M.D.; and Termination Denied for Wasim Khan, M.D.

Agenda item #14, Consideration and Approval of Nunc Pro Tunc Orders. Ms. Southard moved, Mr. Webb seconded, and the motion passed to approve the Nunc Pro Tunc Order for Jay Fogelman, M.D.

Agenda item #15, Consideration and Approval of Mediated Settlement Agreed Orders. After discussion, Dr. McMichael moved, Mr. Gallardo seconded, and the motion passed to deny the Mediated Settlement Agreed Order for #4. After discussion, Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve en masse the Mediated Settlement Agreed Orders for Robert P. Wills, M.D.; Lynn L. Bourdon, Jr., M.D.; and Jeffrey C. Caruth, M.D.

Agenda item #16, Consideration of Approval of Remedial Plans. Dr. Wang was recused for Carlos E. Gray, M.D. Dr. Zeitler was recused for William F. Sorrels, D.O. After discussion, Dr. McMichael, Ms. Southard seconded, and the motion passed to approve the Remedial Plans en masse for Hector G. Amaya Chinchilla, M.D.; Palaniappan Arumugham, M.D.; Charles I. Austin, M.D.; Lora P. Boone, D.O.; Travis Carroll, M.D.; Steven E. Daniels, M.D.; Thomas L. DeBauche, M.D.; Emmanuel F. Desai, M.D.; William De. Dodge, M.D.; Donald S. Douglas, M.D.; Abdias D. Etienne, M.D.; Michael S. Figueroa, M.D.; William E. Fisher, M.D.; Clifford D. Garvin, M.D.; Carlos D. Giraldo, M.D.; Omar Gomez, M.D.; Linsheng, Guo, M.D.; Fayak S. Kamili, M.D.; Jibrail Kasperkhan, M.D.; James J. Livesay, M.D.; Cheryl P. Lopez, D.O.; Jesus J. Naranjo, M.D.; Michael K. Petty, D.O.; Rafael J. Rafols, M.D.; Mariano Salinas, M.D.; Seth J. Sullivan, M.D.; Bimalkumar R. Talati, M.D.; Philomena E. Ukwade, M.D.; Gary W. White, M.D.; Imran Afridi, M.D.; Lida AghdaE. Gray, M.D.; Miguel Aleman, M.D.; Mark J. Blotcky, M.D.; Willis I. Cottel, M.D.; Garth C. Denyer, M.D.; Lynanne J. Foster, M.D.; Carlos E. Gray, M.D.; Norman Harris, M.D.; Charles H. Hudson, III, D.O.; Don F. Johnston, M.D.; Thomas E. Lavake, M.D.; Gary E. Lemack, M.D.; Walter X. Loyola, M.D.; Michael Mack, M.D.; Gilberto Maldonado, M.D.; Harcharan S. Narang, M.D.; Jairo Rodriguez, M.D.; David K. Tharakan, M.D.; Stephen J. Troum, M.D.; Carlos O. Viesca, M.D.; Beth Warren, M.D.; Beth R. Wieser, D.O.; Maurice G. Wilkinson, M.D.; James R. Wright, III, M.D.; Gary S. Branfman, M.D.; David J. Carter, M.D.; Troy L. Creamean, D.O.; Usha D. Kothari, M.D.; Charles Marable, M.D.; Anela Mosley, M.D.; Robert Snip, M.D.; William F. Sorrels, D.O.; Sharon L. Wiener, M.D.; Zachary Franco, M.D.; Abdool Hamid, M.D.; David I. Howie; Charles B. Covert, M.D.; Robert P. Hardie, M.D.; Ramrya L. Rogers, M.D.; Steven Rockman, M.D.; Bernard Adami, M.D.; and Jill Suffield, M.D.

There were no items for Agenda item #17.

Agenda item #18, Consideration and Approval of Corrective Orders. After discussion, Mr. Webb moved, Ms. Southard seconded, and the motion passed to approve the Corrective Orders for Tiffany L. Begges, D.O.

Agenda item #19, Consideration and Approval of Cease and Desist Orders. After discussion, Dr. Southard moved, Dr. Holliday seconded, and the motion passed to approve en masse the Cease and Desist Orders for Amy Neuzil; Cristina Cantu; and Ricardo F. Roca.

Agenda items #20 was considered earlier in the meeting.

There were no agenda items for Agenda items #21-25.

Agenda item #26, Report on Temporary Suspensions. A report was given on the Temporary Suspension hearings for Donnie Evans, M.D., and Akili Graham, M.D.

There were no items for Agenda items #27-28.

Agenda items #29-34 were heard earlier in the meeting.

Agenda item #3, Executive Directors report (continued).

Complaint Processing Source. Ms. Robinson reviewed the complaint processing procedures.

Use of Electronic Communication Equipment. Ms. Robinson gave a brief summary of the use of electronic communication equipment during conferences.

Ms. Robinson requested the boards feedback and direction on the revision of the penalty guidelines for consistency to revise and bring back to the June board meeting for approval.

Consent Agenda

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

1. **Consideration and approval of the February 10, 2012 Board Meeting Minutes. Ms. Blackwell moved, Mr. Webb seconded, and the motion passed to approve the February 20, 2012 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, Ms. Blackwell seconded, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items.**

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

Dr. McNeese gave a report of the Standing Orders Committee meeting. Dr. Willeford and Dr. McNeese were recused for consideration of the Memorial Hermann Medical Group waiver request. The Chair was turned over to Dr. Zeitler. **Dr. Smythe moved, Dr. Wang, and the motion passed to approve the minutes and action items except for the waiver request from Memorial Hermann Medical Group.**

The board reviewed the Memorial Hermann Medical Group waiver request. Due to concerns that approval would set a precedent, changing or limiting physician supervision requirements, the board directed staff to schedule a Standing Order

Subcommittee for 501(a) physician and non-physician group LLC/waivers to meet in August. Dr. McMichael, Dr. Crocker, Dr. Snoots, Dr. Smythe, Ms. Southard, Mr. Webb were appointed to the subcommittee. Ms. Southard gave a report of the Finance Committee meeting. **Ms. Southard moved, Dr. McMichael seconded, and the motion passed to approve the Finance Committee minutes and action items.**

There being no further agenda items, the meeting adjourned at 3:25 p.m.