



# Texas Medical Board

BOARD MEETING  
333 GUADALUPE, TOWER 2, SUITE 225  
AUSTIN, TEXAS  
June 16, 2017

The meeting was called to order on Friday, June 16, 2017 at 8:06 a.m. by Board President, Sherif Z. Zaafran, M.D. Board members present were: Michael E. Cokinos, Frank S. Denton, Carlos L. Gallardo, John R. Guerra, D.O., J. Scott Holliday, D.O., Margaret McNeese, M.D., LuAnn Morgan, Jayaram B. Naidu, M.D., Paulette Southard, Karl W. Swann, M.D., Surendra K. Varma, M.D., and Timothy Webb, J.D. Board members Michael Arambula, M.D., PharmD, Julie Attebury, Kandace B. Farmer, D.O., George Willeford III, M.D., and Stanley S. Wang, M.D., were absent. Staff present were Scott Freshour, J.D., Interim Executive Director and General Counsel, Robert Bredt, M.D., Medical Director, Megan Goode, Governmental Affairs and Public Information Manager, and the Assistant General Counsels, Amy Swanholm, J.D., Rob Blech, J.D., Sarah Tuthill, J.D., Wendy Pajak, J.D., and Yvette Yarbrough, J.D., and various other staff.

**Agenda item #1, Mission Statement.** Dr. Zaafran 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. Zaafran reported the full board meeting agenda order as followed #1, 4, 15, 13, 9, 8, 16-18, 24, 3, 5, 6, 7, 10, 11, 12, 14, 19 through 38.

**Agenda item #4, Medical Director Report.** Dr. Bredt requested suggestions interventional radiologists, pulmonologists, neurosurgeons and orthopedic spine surgeons to contact who might be interested to serve as expert panelists.

The concern of physician experts possibly testifying on behalf of other physicians which may result is a conflict of interest was presented by Dr. Bredt. As noted, a potential conflict may arise when an expert panelist is engaged by the responding physician and council to provide testimony which may result in a conflict of interest during an Informal Settlement Conference. The Board encouraged staff to allow a reasonable degree of flexibility. The Board directed staff to match some specialties with overlap with two different experts, such as a respondent who is a cosmetic surgeon with a cosmetic surgeon and a plastic surgeon

The board clarified that initial board certification is required to be an expert. However, maintenance of certification is not required to remain on the expert panel.

Agenda item #9 was pulled from the agenda.

**Agenda item #15, Consideration and approval of Modification Request/ Termination Request of Orders.** The board directed staff to review the process of presenting orders.

After consideration, **Dr. Holliday moved, Mr. Guajardo seconded the motion to deny the Termination Requested Order for #10.** The motion failed.

After further discussion, **Dr. Zaafran moved, Mr. Denton seconded, and the motion passed to approve the Termination Request Order for #10, with the modification to add one more cycle of chart monitoring, and if a favorable report from the chart monitor is received then the order will automatically terminate.**

Dr. Varma was recused for James T. Cammack, M.D. After consideration, **Mr. Webb moved, Mr. Gallardo seconded, and the motion passed to approve the Termination Request Granted Orders for: Bruce L. Ackerman, M.D., James T. Cammack M.D., Gary W. Earp, D.O., Amelia Gosuico, M.D., Mauricio E. Jimenez, M.D., Eva Klima, M.D., Jerome F. Schrapps, M.D., Keeli L. Stumbo, M.D., Jack C. Smith, III, M.D., James A. Summa, M.D. and Marcus K. Free, M.D.; Termination Request Denied Orders for: Samuel A. Adebsoa, M.D., Ronald Pucillo, M.D. and Robert A. Weaver, M.D.; Modification Request Granted Orders for: David Burkett M.D., Shawn R. Gorden, M.D., Robert P. Ryan M.D., Phillip D. Smith, M.D. and Julia R. Ward, M.D.**

After discussion, the board directed staff to research and bring back an analysis for an alternate process for orders outside of the guidelines with input from Mr. Webb, Mr. Gallardo, and Mr. Denton.

**Agenda #13, Consideration and possible action regarding pending litigation.** Mr. Freshour gave a brief litigation update and introduced Sean Flammer, Office of the Attorney General, to discuss settlement offers. After discussion, **Ms. Morgan moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 9:19 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.** Open session resumed at 10:21 a.m. and it was announced that no action was taken. A certified agenda was made.

**Agenda #26 scheduled 9:30 a.m., Consideration and approval of Proposal for Decisions:**

**1.) Naeem Kahn, MD, SOAH #503-15-3860.MD.** Ms. Pajak gave a brief procedural background. Christopher Palazola, J.D., litigation manger, was present. Naeem Kahn, M.D., was not present. James McClendon appeared on behalf of Dr. Kahn. Mr. Palazola gave a presentation. Mr. McClendon gave a presentation. After discussion, **Mr. Webb moved, Dr. McNeese seconded, and the motion passed to adopt Findings of Fact, Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for Naeem Kahn, M.D., and to approve the staff suggested order to dismiss.**

**2.) Robert Hadley Gross, MD, SOAH #503-16-6188.MD.** Mr. Blech gave a brief procedural background. Barbara Jordan, J.D., staff attorney, was present. Robert Hadley Gross, M.D., was not present. No one appeared on behalf of Dr. Gross. Ms. Jordan gave a presentation. After discussion, **Dr. Varma moved, Dr. Varma seconded, and the motion passed to adopt Findings of Fact, Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for Courtney R. Morgan, M.D., and adopt the staff suggested final order for revocation.**

**Agenda item #8, Report, consideration, and possible approval of Physician Health Program Executive/Medical Director position.** Allison Jones, M.D., Presiding Officer of the Physician Health Governing Board, introduced the PHP Board's recommendation for the Executive/Medical Director position, David Karney, M.D. Dr. Karney presented a brief statement. After consideration, **Mr. Denton moved, Dr. Varma seconded, and the motion passed to approve David Karney, M.D., for the position of the Physician Health Program Executive/Medical Director.**

**Agenda item #16, Consideration and possible action for Agreed Board Orders.** After consideration, **Dr. Varma moved, Ms. Southard seconded, and the motion passed to approve the Agreed Orders en masse for Gerald P. Foom, M.D., Jeffrey A. Hassenflug, M.D., Elliot J. Blumberg, M.D., Stephen C. Fischer, M.D., Willie J. Hawkins, G. Gardner Sumner, M.D., Miguel De La Garza, M.D., Kenneth D. Haygood, M.D., Marc A. Ibanez, M.D., Diana I. Mummert, M.D., Roger Olade, M.D., J. Mark Palmer, M.D., Sanjeen D. Ravipudi, M.D., John R. Rodney, M.D., Ann A. Tran, M.D., Arturo C. Arauzo, M.D., Victor J. Atun, M.D., Lourdes R. Bosquez, M.D., Roy L. Caivano, D.O., Flavio Castenado-Mendoza, M.D., Dennis J. Costa, M.D., Thomas G. Easter, M.D., Michael Flores, M.D., Syed M.A. Jamal, M.D., Randall B. Lane, M.D., Corey J. Mark, M.D., Charles T. Porter, Jr., M.D., Parvez A. Quershi, M.D., Michael V. Shelton, M.D., Vicki J. Sparks, M.D., Thurman H.V. Benjamin, M.D., Timothy W. Anderson, M.D., Gerald L. Bullock, M.D., Zenia E. Cortes, M.D., Khanj Gia Do, M.D., James T. Fontenot, M.D., Christopher Ince, M.D., Pedro J. Lored, III, M.D., Norman J. McCall, M.D., James D. Pierre, M.D., Scott M. Pratho, M.D., Daniel E. Rousch, D.O., Jack C. Smith, III, M.D., Gonzalo Uribe-Botero, M.D., Terry D. Madsen, M.D., William D. Moehlman, M.D., Brian C. Procter, M.D., Donald J. Boss, M.D., Gregory G. Theodore, M.D. and Fidelis K. Unini, M.D., John G. Preddy, D.O., and Peter M. Buffa, Sr., M.D.**

**Agenda item #17, Consideration and approval of Mediated Settlement Agreed Orders.** After consideration, **Ms. Southard moved, Mr. Webb seconded, and the motion passed to approve the Mediated Settlement Agreed Orders en masse for Giam M. Nguyen, M.D., Jeffrey E. Friedman, M.D., Owen S. Maat, M.D., Cynthia D. Goodman, M.D., Andrew A. Konen, M.D., Tony S. McClung, M.D., Paula L. Springer, M.D., and Albert D. Friday, Jr., M.D.**

**Agenda item #18, Consideration and approval of Remedial Plans.** Dr. Varma and Dr. McNeese were recused for Caleb Cook, M.D. After consideration, **Dr. Varma moved, Ms. Southard seconded, and the motion passed to approve the Remedial Plans en masse for Jyothi Achi, M.D., John J. Bawduniak, M. D., Natash Caballero, M.D., Maria G. Cardenas,**

**M. D., Robert Church, Jr., M. D., Michael K. Do, D.O., Reynaldo E Garza, M. D., Alexander I. Glogau, M.D., Lindsey G. Golden, M.D., John P. Harvey, M.D., Ambrosio Hernandez, M.D., David M. Hunter, M.D., George S. Ingram, M.D., Madhavi Machineni, M.D., Delio P. Ortegon, III, M.D., Mobin A. Sadiq, M.D., Carlye K Schulte, M.D., Arunkumar J. Shah, M.D., Timothy S. Shepherd, M.D., James L Smith, Jr., M.D., Kevin R. Smith, M.D., Kathleen Szelei-Stevens, M.D., Flavia Thomas, M.D., Vishal Verma, M.D., Michael Williams, M.D. Shahbaz Yazdani, M.D., Todd D. Akins, M.D., Arnulfo Cisneroz,, M.D., Roberto, J. Diaz, M.D., Peter E. Grays, M.D., Edwin B. Locke, M.D., Maria E. Rodriguez De Lima, M.D., Kris H. Wusterhausen,, D.O., Robert K. Fullick, M.D., Anumeha Tandon, M.D., Febe L. Oro, M.D., Juan E. Paz, M.D., Pill Raja, M.D. and Jennifer H. Zahn, M.D., Renu Hausen, M.D., and Priti Palvadi, M.D.**

After consideration **Mr. Gallardo moved and Ms. Southard seconded a motion to approve to convert the Remedial Plan #13 to an Agreed Order with the modification to include 8 cycles of chart monitoring, a Pace course in medical recordkeeping, the JP exam, and an additional 8 hours of continuing medical education in recordkeeping and a \$2,000 penalty, due to concerns of previous violations.**

After discussion, **Dr. Luna moved, Dr. Naidu seconded, and the motion for a friendly amendment passed to approve to remove the requirements for a Pace Course, the JP Exam, and cme. .**

**Dr. Zaafran restated the original motion with the friendly amendment for a vote and the motion passed to convert Remedial Plan #13 to an Agreed Order with 8 cycles of chart monitoring, due to concerns of previous violations.**

After discussion, **Ms. Morgan moved and Dr. Naidu seconded a motion to deny the Remedial Plan #29.**

After discussion, **Ms. Morgan moved, Ms. Southard seconded and the motion passed to go into Executive Session at 11:03 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.** Open session resumed at 11:14 a.m. and it was announced that no action was taken. A certified agenda was made.

**A vote was taken on the motion to deny the Remedial Plan #29. The motion failed.**

After consideration, **Mr. Webb moved, Ms. Southard seconded, and the motion passed to approve the Remedial Plan for Caleb Cook, M.D.**

**Agenda item #24, Consideration and approval of Cease and Desist Agreed Orders.** After consideration, **Mr. Webb moved, Ms. Southard seconded, and the motion passed to approve the Agreed Cease and Desist Order Lance Fortner, Laura Precourt, George R. Rivaux, and Robert Morrow, D.C.**

**Agenda item #19, Consideration and approval of Nunc Pro Tunc Orders.** After consideration, **Mr. Gallardo moved, Ms. Southard seconded, and the motion passed to approve the Nunc Pro Tunc Order for Leeroy McCurley, M.D.**

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

**Legislative Update.** Ms. Goode presented a Legislative Update that included a summary of key legislation and dates of interest. Some of the priority legislative items included the Prescription Management Program that will be administered by the Pharmacy Board and a bill relating to the maintenance of certification which is not required for initial licensure. The board discussed reviewing if there are any rules regarding maintenance of certificate.

Ms. Goode gave a report on the status of the Sunset legislation that will be reviewed during a Legislative Special Session starting July 18, 2017. The board discussed the importance of the Sunset Bill that includes the Medical Practice Act.

Ms. Goode gave a report on the Legislative Appropriations Request for FY18-19 biennium and reviewed the reduced funding and the exceptional items requested for funding for additional call center staff and I.T. projects.

**Outreach Update.** Ms. Goode reviewed the Outreach presentation schedule and the progress made.

**Personnel Update.** No items were discussed.

**Budget Update.** Ms. Corrales reported the budget remains stable and on track.

**Audit Update.** Ms. Goode reported that the internal audit has concluded. A response and final report will be presented at the August board meeting.

**Agenda item #5, Public Information Update.** Ms. Goode gave a public information update. After discussion, the board directed staff to draft FAQs to clarify the roles and responsibilities of physicians delegating to mid-levels.

Ms. Goode reported a request to include links for continuing education on the TMB website. After discussion, the Board directed staff to research the use of additional links and bring back ways to enhance educational information on the website.

**Agenda item #6, Report Physician Assistant Liaison.** Maribel De Ponce, PA-C, gave a brief statement.

**Agenda item #7, Report, consideration, and possible action regarding executive director position.** Dr. Zaafran reported the Executive Search Committee will be putting forth the job description soon and the process is moving forward.

**Agenda item #10, Discussion, recommendation, and possible action regarding emeritus.** The item was set pending.

**Agenda item #11, Discussion, recommendation, and possible action regarding evidence related to sexual boundary violations.** After discussion, the board directed staff to schedule a training session on evaluating sexual boundary cases. The board discussed evidence and issues related to sexual boundary violations and noted that physicians who chose not have a chaperone do so at their own risk. When cases come to the board dealing with sexual boundary violations the board should be mindful in these situations that the physician is in a respected position of authority. The Board directed staff to provide additional educational information for physicians on the website or bulletin relating to maintaining professional boundaries with patients.

The Board directed staff to provide information on the website to inform the public that the reporting concerns to the board is a mechanism to address such violations.

**Agenda item #12, Discussion, recommendation, and possible action regarding billing services.** The board discussed issues involving transparency of in-network and out-of-network billing services for patients between physicians, mid-levels, and facilities. Disclosure of network providers needs to be part of the process and discussed with patients. A physician can provide transparency by confirming patients understand there is a process for billing services disclosure and ensure mid-levels are part of the process. The board directed staff to include information on the website and in TMB bulletins. The board directed to staff to research ways to clarify the rules.

### **Consent Agenda**

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

1. Consideration and approval of the March 3, 2017 Board Meeting Minutes and action items. **Dr. Varma moved, Ms. Southard seconded, and the motion passed to approve the March 3, 2017 Board Meeting Minutes and action items.**
2. Committee report and the consideration and approval of the February 17, 2017 Executive Search Committee minutes and action items. **Dr. Varma moved, Ms. Southard, and the motion passed to approve February 17, 2017 Executive Search Committee Meeting Minutes and action items.**
3. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.

**Dr. Varma moved, Ms. Southard seconded, and the motion passed to approve the Advertising Board Certification Ad Hoc Committee meeting minutes and action items.**

**Dr. Varma moved, Ms. Southard seconded, and the motion passed to approve the DPRC Committee meeting minutes and action items.**

**Dr. Varma moved, Ms. Southard, and the motion passed to approve the Licensure Committee meeting minutes and action items.**

**Dr. Varma moved, Ms. Southard seconded, and the motion passed to approve the Advertising Board Certification Ad Hoc Committee meeting minutes and action items.**

**Dr. Varma moved, Ms. Southard, and the motion passed to approve the Finance Committee meeting minutes and action items.**

**Agenda item #27, Report on Temporary Suspensions Hearings.** A report was given on the Temporary Suspension hearings for Donald O. Ozumba, M.D., Noah A. Wempe, M.D., David V. Jeyaraj, M.D., Humberto R. Bruschetta, M.D. and Gregory M. Gibbons, M.D.

**Agenda item #28, Report on Cease and Desist Orders approved by Executive Director.** A report was given on the Cease and Desist Order for Blanca Mata.

There were no items for agenda #29

**Agenda item #30, Report of Suspension by Operation of Law.** A report was given on the Suspensions by Operation of Law Order for Kathleen D. Daniel, M.D., Habiboola Niamatali, M.D., Robert E. Windsor, Jr, M.D., Pedro Garcia, Jr, M.D. and Cyrus Sajadi, M.D.

**Agenda item #31, Report on Automatic Orders.** A report was given on the Automatic Orders for Michael G. Campbell, M.D. and Justina P. Taube, M.D.

There were no items for agenda #23-36

The board recessed for a short break at 12:35.

The board reconvened at 12:45 p.m. and a quorum was confirmed.

**Agenda item #37 at 12:00 p.m., Open forum for public comments.** Chris Henderson, Tony Farmer and Representative Zedler signed-in and presented public comments.

**Agenda item #38, Adjourn.** There being no further agenda items, the meeting adjourned at 12:55 p.m.