



Texas Medical Board

BOARD MEETING
333 GUADALUPE, TOWER 2, SUITE 225
AUSTIN, TEXAS
December 8, 2017

The meeting was called to order on Friday, December 8, 2017 at 8:00 a.m. by Board President, Sherif Zaafran, M.D. Board members present were Julie Attebury, Michael E. Cokinos, Frank S. Denton, John R. Guerra, D.O., Jeffrey L. Luna, M.D., Margaret McNeese, M.D., LuAnn Morgan, Jayaram B. Naidu, M.D., Karl W. Swann, M.D., Surendra K. Varma, M.D. and Timothy Webb, J.D. Kandace B. Farmer, D.O., J. Scott Holliday, D.O., and Paulette Southard were absent. Board staff present were Scott Freshour, J.D., Interim Executive Director and General Counsel; Robert Brecht, M.D., Medical Director; Megan Goode, Governmental Affairs and Public Information Manager; and the Assistant General Counsels: Rob Blech, J.D., Wendy Pajak, J.D., Amy Swanholm, J.D., Sarah Tuthill, 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 presented a plaque and read the resolution into the minutes in honor of outgoing board member Carlos Gallardo, thanking him for his service and dedication to the board.

Dr. Zaafran gave a report on the use of anesthesia assistants. The Board directed staff to discuss delegation authority with different stakeholders that are involved, including Texas Society of Anesthesiologists and Texas Medical Association. The Board also requested input from the Board of Nursing.

Dr. Zaafran also discussed the creation of an Innovation Task Force. Dr. Zaafran gave an overview of what to expect with the Task Force. Ms. Morgan, Dr. Naidu and Mr. Denton expressed interest in becoming a part of the task force. Board staff to be included will be Ms. Corrales, Ms. Goode and Mr. Clausius. The Board directed staff to gather information regarding the budgetary impact of the committee.

Agenda item #3, Consideration and approval of Mediated Settlement Agreed Orders. After consideration, **Dr. McNeese moved, Ms. Attebury seconded, and the motion passed to approve the Mediated Settlement Agreed Orders for: David I. Howie, M.D.; Marshall L. Lucas, M.D. and Marshall B. Lucas, M.D.**

After further consideration, **Dr. Varma moved, Mr. Webb seconded, and the motion passed to approve the Mediated Settlement Agreed Orders for: Brad B. Hall, M.D.; Daniel B. Fish, M.D.; David B. Land, D.O.; Wright W. Singleton, M.D.; David J. Martincheck, M.D.; Sanjoy Sundaresan, M.D.; Franchell R. Hamilton, M.D and Flavia L. Thomas, D.O.**

Agenda item #4, Consideration and approval of Remedial Plans. After consideration, **Dr. Varma moved, Mr. Webb seconded, and the motion passed to approve the Remedial Plans en masse for: Carol Abalihi, M.D.; Stanley Feld, M.D.; Sandeepa Musunuru, M.D.; Samer Nachawati, D.O; Mark B. Reimer, M.D.; John K. Stokes, M.D.; Shi-Ming Tu, M.D.; Roshanak M. Zinn, M.D.; Vincent F. Honrubia, M.D.; John W. Hays, M.D.; Louis T. Moore, III, M.D.; James Landeen, M.D.; Jeffrey Wasserman, M.D. and Stephanie J. Dyer, M.D.**

Agenda item #5, Consideration and possible action for Agreed Board Orders. After consideration, **Mr. Denton moved, Dr. Luna seconded and the motion passed to approve the Agreed Order for Mario A. Martinez, M.D. with to the non-substantive addition of a mitigating factor stating that the Respondent represented to the ISC panel that he will no longer exceed prescribing opioids, benzodiazepines, barbiturates, or carisoprodol for greater than fifty percent of his patients on a monthly basis.**

Board directed staff to provide a message from Board president in the TMB newsletter on prescribing and understanding the statutory requirements on prescribing opioids.

After consideration, **Dr. McNeese moved, Dr. Varma seconded and the motion passed to approve the Agreed Orders en masse for: Kathleen D. Daniel, M.D.; Helson Pacheco-Serrant, M.D.; Rexford K. Anderson, Jr., M.D.; Yousri M.H. Barri, M.D.; Michael L. Grandberry, M.D.; Johnathan M. Johnson, M.D.; James M. Hamilton, M.D.; John A. Wells, M.D.; Robert O. Zimmerman, M.D.; Dan C. Cohen, M.D.; Jeff E. Nance, III, M.D.; Timothy G. Leeds, M.D.; Elias Benhamou, M.D.; Marlon P. Quinones, M.D.; Scott P. Franczek, M.D.; Mark L. Harrison, M.D.; Kevin J. Shelton, M.D.; Carlos Venegas, M.D. and James J. Galizia, M.D.**

Agenda item #6, Consideration and approval of Modifications Request/ Termination Request Orders. After consideration, **Ms. Attebury moved, Mr. Cokinos seconded, and the motion passed to approve the Termination Request Order Granted for Jeffrey P. Cahill, M.D.**

Agenda item #7, Consideration and approval of Cease and Desist Agreed Orders. After consideration, **Dr. Varma moved, Dr. Guerra seconded, and the motion passed to approve the Agreed Cease and Desist Orders for Jaime Martiz and Louanna Salvaggio.**

There were no items for **Agenda item #8.**

Agenda Item #9 at 9:00 a.m., Consideration and approval of Proposal for Decisions:
A. Soo Young Chong, M.D., 503-14-1671.MD. Ms. Swanholm gave a brief procedural background. Ann Skowronski, J.D., staff attorney, was present. Soo Young Chong,

M.D., was not present. No one was present to represent Dr. Chong. Ms. Skowronski gave a presentation. After discussion, **Dr. Varma moved, Ms. Attebury 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 for Soo Young Chong, M.D., and adopt the staff suggested final order for revocation.**

The board recessed for a short break at 10:12 a.m.

The board reconvened at 10:18 a.m.

- B. **Robert Van Boven, M.D., SOAH #503-14-1671.MD.** Christopher Palazola, J.D., staff attorney, was present. Robert Van Boven, M.D., was present. Mark. T. Beaman, J.D. was present representing Dr. Van Boven. Dr. Van Boven filed a motion for recusal directed towards Mr. Webb and Dr. McNeese. Mr. Webb stated that he understood the presented motion for recusal request and stated that he could be fair and impartial. Dr. McNeese stated that she understood the presented motion for recusal request and stated that she could be fair and impartial. Dr. Van Boven objected. Following the objection, the matter proceeded with Mr. Webb and Dr. McNeese proceeding. Ms. Yarbrough gave a brief procedural background. Mr. Palazola gave a presentation. Dr. Van Boven gave a presentation. Mr. Palazola gave a brief rebuttal. After discussion, **Dr. Zaafran moved, Mr. Webb seconded, and the motion passed to go into Executive Session at 9:43 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 10:47 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Mr. Denton moved and Dr. Guerra seconded a motion to prepare an order dismissing the case, superseding the Temporary Suspension/Restriction order of February 29, 2016, and lifting any restrictions that may be present on the license. A vote was taken, Dr. McNeese abstained, and the motion passed.** Dr. Zaafran gave a brief overview of the findings. The Board directed staff to move forward with a discussion at SOAH about handling sexual misconduct types of board cases.

- C. **Stephen Patrick Anthony, D.O., SOAH #503-16-3925.DO.** Mr. Blech gave a brief procedural background. Michelle McFaddin, J.D., staff attorney, was present. Stephen Patrick Anthony, D.O., was present. Jeff McDonald, J.D., and Timothy E. Weitz, J.D., were present to represent Dr. Anthony. Mr. Weitz gave a presentation. Ms. McFaddin gave a presentation. Mr. Weitz gave a brief rebuttal. After discussion, **Dr. Varma moved that the Board adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for Stephen Patrick Anthony, D.O., and adopt the order proposed by board staff. Dr. Luna moved to go into Executive Session at 11:19 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. The motion was seconded. After a vote, the motion passed.** Open session resumed at 11:32 a.m. and it was announced that no action was taken. A certified agenda was made. Dr. Varma withdrew the motion

previously made. After further consideration, **Mr. Webb moved, Dr. Naidu seconded, and the motion passed to adopt the Findings of Fact and the Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for Stephen Patrick Anthony, D.O., and issue an unrestricted license.**

- D. Warren Bertrand Dailey, M.D., SOAH #503-1-4375.MD.** Warren Bertrand Dailey, M.D., was not present. Ms. Skowronski, staff attorney, was present. No one was present to represent Dr. Dailey. Ms. Skowronski gave a presentation. After discussion, **Dr. Varma moved, Ms. Attebury seconded, and the motion passed to adopt the Findings of Fact and the Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for Warren Bertrand Dailey, M.D., and adopt the staff suggested final order for revocation.**

Agenda item #10, Executive Director Report.

Budget Update. Ms. Corrales presented and reviewed the budget. Ms. Corrales reported projected expenditures and revenue are in good standing and on target for the year.

Legislative Update. Ms. Goode provided an update on current interim charges for legislative committees that overlap with the Board as well as an update on the Sunset Review process and the internal audit for FY 18. Dr. Zaafran gave direction to board staff to obtain additional legislative intent regarding SB 1148.

Audit Update. Ms. Goode presented the internal audit process which will start in mid-January. The Board directed staff to put a bid out for internal auditors

Agenda item #11, Medical Director Report. Dr. Bredt requested interventional radiologists, pulmonologists, neurosurgeons, oncologists, pain management physicians, orthopedic spine surgeons, dermatologists and endocrinologists to contact him if they might be interested to serve as expert panelists. The Board directed staff to email all board members what specialties are needed for expert panelists.

Agenda item #12, Public Information Update. Ms. Goode received direction on articles to publish in the next TMB Bulletin. Ms. Goode referenced providing the new Innovation Task Force with the current social media policy approved by the board in 2015.

Agenda item #13, Report, consideration, and possible action relating to the executive director position. After discussion, **Dr. Zaafran moved, Mr. Webb seconded, and the motion passed to approve a salary increase for the Executive Director as delineated by the legislature.** Dr. McNeese and Mr. Denton also joined to second the motion

After further discussion, **Dr. Zaafran moved, Mr. Webb seconded and the motion passed to award the Executive Director a salary increase, increasing the annual salary to equal but not to exceed the amount listed in the Texas Medical Board appropriations pattern as listed in the 2018-2019 General Appropriations Act, effective December 11, 2017.** Board directed staff to set an agenda item on the Executive committee after a permanent Executive Director has

been appointed to discuss and take possible actions regarding a potential salary increase for the General Counsel position.

Agenda item #14, Report Physician Assistant Liaison. Jason Cooper, PA, gave a brief statement recognizing the Interim Executive Director's and board staff's accomplishments.

Agenda item #15, Consideration and possible action regarding pending litigation. Mr. Freshour gave a report on the status of litigation. After discussion, **Dr. Zaafran moved to go into Executive Session at 12:02 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. The motion was seconded. After a vote, the motion passed.** Open session resumed at 12:03 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion **Mr. Webb moved, Dr. Guerra seconded, and the motion passed to vacate the cease and desist order previously issued in the Walter Wheelhouse, M.D., case (Legal Division Case # 15-0213).** Mr. Denton asked for an update to be given at the next meeting if we have pending litigation that will incur fees for the agency.

Agenda item #16, Report on Temporary Suspensions Hearings. A report was given on the Temporary Suspensions Hearings for: Alan J. Waters, Jr., M.D.; Richard M. Roberts, M.D.; Raymond T. Alexander, M.D. and Daniel B. Lankford, M.D.

Agenda item #17, Report of Suspension by Operation of Law. A report was given on the Suspensions by Operation of Law hearings for Ronald F. Khan, M.D. and Peter C. Okose, M.D.

There were no items for Agenda item #18-27

Agenda item #28, Discussion, recommendation, and possible action regarding the adoption of proposed amendments and rule review to 22 Texas Administrative Code:

A. Chapter 160. Medical Physicists.

- §160.7 Qualifications for Licensure
- §160.10 Training

B. Chapter 182 Use of Experts.

- §182.8 Expert Physician Reviewers

D. Chapter 188. Perfusionist.

- §188.5 Procedural Rules for Applicants
- § 188.9 License Renewal

E. Chapter 189, Compliance Program.

- §189.15 Determination of Successful Completion of an Order

F. Chapter 193, Standing Delegation Orders.

- §193.8 – Prescriptive Authority Agreements: Minimum Requirements

G. Chapter 195 Pain Management Clinics.

- §195.3 Inspections

Chapter 160 Medical Physicists, §160.7 Qualifications for Licensure and §160.10 Training. Mr. Blech presented a brief summary and review of the proposed rules for adoption. Written comments were received and reviewed. After discussion, **Ms. Attebury moved, Mr. Webb seconded, and the motion passed to adopt the proposed amendments to 22 T.A.C. Chapter 160. Medical Physicists, §160.7 Qualifications for Licensure and §160.10 Training for publication in the Texas Register.**

Chapter 182 Use of Experts, §182.8 Expert Physician Reviewers. Ms. Pajak presented a brief summary and review of the proposed rules for adoption. No one signed in to present oral comments. No written comments were received. After discussion, **Mr. Webb moved, Ms. Attebury seconded, and the motion passed to adopt the proposed amendments to 22 T.A.C. Chapter 182 Use of Experts, §182.8 Expert Physician Reviewers for publication in the Texas Register.**

Chapter 188 Perfusionist, §188.5 Procedural Rules for Applicants and § 188.9 License Renewal. Ms. Pajak presented a brief summary and review of the proposed rules for adoption. No one signed in to present oral comments. No written comments were received. After discussion, **Dr. Guerra moved, Mr. Webb seconded, and the motion passed to adopt the proposed amendments to 22 T.A.C. Chapter 188, Perfusionist, §188.5 Procedural Rules for Applicants and § 188.9 License Renewal for publication in the Texas Register.**

Chapter 189 Compliance Program, §189.15 Determination of Successful Completion of an Order. Ms. Pajak presented a brief summary and review of the proposed rules for adoption. No one signed in to present oral comments. Written comments were received and reviewed. After discussion, **Dr. McNeese moved, Ms. Attebury seconded, and the motion passed to adopt the proposed amendments to 22 T.A.C. 189 Compliance Program, §189.15 Determination of Successful Completion of an Order for publication in the Texas Register.**

Chapter 193, Standing Delegation Orders, §193.8 – Prescriptive Authority Agreements: Minimum Requirements. Ms. Swanholm presented a brief summary and review of the proposed rules for adoption. No one signed in to present oral comments. No written comments were received. After discussion, **Ms. Attebury moved, Ms. Morgan seconded, and the motion passed to adopt the proposed amendments to 22 T.A.C. Chapter 193, Standing Delegation Orders, §193.8 – Prescriptive Authority Agreements: Minimum Requirements for publication in the Texas Register.**

Chapter 195 Pain Management Clinics, §195.3 Inspections. Mr. Blech presented a brief summary and review of the proposed rules for adoption. Written comments were received and

reviewed. After discussion, **Mr. Webb moved, Dr. McNeese seconded, and the motion passed to adopt proposed amendments to 22 T.A.C. Chapter 195 Pain Management Clinics, §195.3 Inspections for publication in the Texas Register.** Dr. Zaafran directed board staff to consider some future changes to these rules. He would also like to discuss having a stakeholder meeting in mid-January about how to fine tune the rules around this legislation.

Agenda item #29, Discussion, recommendation, and possible action regarding adoption of proposed rule repeal and rule review to 22 T.A.C. Chapter 194, Subchapter B, Medical Radiologic Technology.

a. Chapter 194. Medical Radiologic Technology

- §194.34 Purpose
- §194.35 Definitions
- §194.36 Registration
- §194.37 Annual Renewal
- §194.38 Non-Certified Technician's Scope of Practice
- §194.39 Suspension, Revocation or Nonrenewal of Registration
- §194.40 Disciplinary Guidelines
- §194.41 Procedure
- §194.42 Compliance
- §194.43 Construction.

Ms. Tuthill gave a brief overview. No one signed in for oral comments. No written comments were received. After discussion, **Ms. Morgan moved, Dr. McNeese seconded, and the motion passed to approve adoption of proposed rule repeal to 22 T.A.C. Chapter 194. Medical Radiologic Technology, §194.34 Purpose, §194.35 Definitions, §194.36 Registration, §194.37 Annual Renewal, §194.38 Non-Certified Technician's Scope of Practice, §194.39 Suspension, Revocation or Nonrenewal of Registration, §194.40 Disciplinary Guidelines, §194.41 Procedure, §194.42 Compliance and §194.43 Construction.**

The Board directed staff to ensure stakeholders receive a copy of the drafted rules at least five days before the actual stakeholder meeting so that it be can reviewed in order to make recommendations at the stakeholder meeting and if possible have the stakeholders meeting before it is published in the Texas Register. Also, the Board directed Staff when rules are submitted to have a summary cover page of who (who was it that actually initiated it: Staff, DPRC, Licensure, etc.), what (what it actually does in a sentence or two), and why (why now).

Consent Agenda

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

1. Consideration and approval of the October 20, 2017 Board Meeting Minutes and action items. **Dr. McNeese moved, Mr. Webb seconded, and the motion passed to approve the October 20, 2017 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. McNeese moved, Mr. Webb seconded, and the motion passed to approve the meeting minutes and action items.**

Agenda item #33, Open forum for public comments at 11:00 a.m. Sam Stinnett signed-in and presented public comments.

Agenda item #41, Adjourn. There being no further agenda items, the meeting adjourned.