



Texas Medical Board

BOARD MEETING

JUNE 27, 2014

333 GUADALUPE, TOWER 2, SUITE 225

AUSTIN, TEXAS

The meeting was called to order on June 27, 2014 at 8:02 a.m. by Irvin E. Zeitler, Jr., D.O., Board President. Board members present were Michael Arambula, M.D., Vice-President; Paulette Southard, Secretary/Treasurer; Julie Attebury; David Baucom; Carlos L. Gallardo; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Robert B. Simonson, D.O.; Karl W. Swann, M.D.; Stanley S. Wang, M.D. John D. Ellis, J.D.; Allan Shulkin, M.D.; Wynne Snoots, M.D.; Timothy Webb, J.D.; and George Willeford, III, M.D., arrived a few minutes after roll call. Devinder S. Bhatia, M.D.; Frank S. Denton; Manuel G. Guajardo, M.D., were not present. Board staff present were Mari Robinson, J.D., Executive Director; Robert Bredt, M.D., Medical Director, Scott Freshour, J.D., General Counsel; Tonie Knight, Licensure Manager; and Megan Goode, Governmental Affairs & Communications Manager, and various other staff.

Agenda item #1, Mission Statement. Dr. Simonson 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. Zeitler requested input for the Executive Director's annual evaluation. Dr. Zeitler announced his last board meeting will be in August and a successor will be appointed.

Agenda item #3, Executive Director Report.

Budget. Ms. Robinson gave a budget update.

Legislative Update. Ms. Robinson gave an update on a recent Sunset hearing related to the Department of State Health Services; currently DSHS is undergoing a Sunset review. As part of the Sunset review, DSHS's licensing groups were examined and it was recommended to eliminate 19 of the licensing groups they oversee and possibly transfer the licensing groups involving patient care to the Texas Medical Board, an update will be given at a future board meeting.

Ms. Robinson also reported the Strategic Plan for Fiscal Years 2015-2019 was submitted.

Personnel Update. Ms. Robinson reported on the number of open positions.

Outreach Update. Ms. Robinson reported on the progress made during the current school year for physician assistant programs and medical schools. Ms. Robinson also gave the status of the outreach programs funded by the Federation of State Medical Boards related to opiate prescribing.

Board Calendar Update. 2015 – 2019 Board meeting dates were presented.

Audit Update. Ms. Robinson briefly reviewed the evaluation on Risk Management Prevention conducted by the State Office of Risk Management and presented the Internal Audit report for fiscal year 2014 on Finance.

Legislative Appropriations Request Update. Fiscal Year 2016-2017 Legislative Appropriations Request policy letter requirements were discussed. Ms. Robinson reviewed potential requests for Exceptional Items including additional licensing and registration staff to ensure the licensing quality continues during the increase of licensure applications, and possibly additional funding for IT resources.

Ms. Robinson described the agency's online licensee profiles. The information in the first section is verified by TMB, however, the second section is not due to the lack of funding. After discussion, the Board agreed to not seek funding for verification at this time.

Stakeholders Telemedicine and Electronic Medical Records. Ms. Robinson presented a document that discusses the purpose of The Partnership for Safe Telemedicine. After discussion, the Board directed staff to proceed with the document, as it represents the board's view point on safe telemedicine.

DPS. Ms. Robinson gave an update on two items the agency is participating with DPS on that are not progressing. Ms. Robinson reported the committee group created to work on the DPS database system has had two meetings, however, no action has been taken and the project to have TMB's licensee registrations connected with DPS registration system has also not been implemented. Staff will continue to monitor this issue and will provide an update.

Agenda item #4, Medical Director Report. Dr. Bredt updated the Board on expert panelists processes, he reported there are currently no backlogs in assigning cases.

Agenda item #5, Public Information Update. Mr. Schneider gave an update on the various items in the media concerning TMB. Mr. Schneider also provided web statistics including the top five pages visited.

There were no items for Agenda item #6.

Agenda item #7, at 9:00 a.m. Federation of State Medical Boards presentation. Donald Polk, D.O., Chair of the FSMB Board of Directors and David Johnson, M.A., FSMB Senior Vice President for Assessment Services gave a presentation.

The board recessed at 9:48 a.m.

The board reconvened at 9:56 a.m.

Agenda item #9, Discussion, recommendation, and possible action regarding continuing medical education. Ms. Robinson reported back to the board on the possibility of earning continuing medical education credit for board member training. After discussion, **Dr. Snoots moved, Dr. Willeford seconded, and the motion passed to approve the April board member training as continuing medical education credit and create documentation for auditing purposes. The board directed staff to research whether CME credit could be received for participating in Informal Settlement Conferences.**

Agenda item #14, at 10:00 a.m. Consideration and approval of Proposal for Decisions:

1. **Ruben Aleman, M.D., SOAH # 503-13-4126. MD.** Franklin Hopkins, J.D., staff attorney was present. Dr. Aleman was not present and no one was identified as representing Dr. Aleman. Mr. Hopkins gave a presentation. After discussion, **Mr. Gallardo moved, Ms. Southard seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, and adopt the staff's suggested Final Order filed by Board requiring Dr. Aleman to pass within one year and within three attempts the Medical Jurisprudence Exam, pay an administrative penalty of \$3,000, within one year complete 16 hours of CME, with eight hours in the topic of ethics, and with eight hours in the topic of risk management.**
2. **Daniel K. Leong, D.O., SOAH #503.14.1838.DO.** Barbara Jordan, J.D., staff attorney was present. Dr. Leong was not present and no one was identified as representing Dr. Aleman. Ms. Jordan gave a presentation. After discussion, **Mr. Gallardo moved, Ms. Southard seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, and approve the suggested Final Order filed by Board staff for revocation.**

Agenda item #8, Discussion, recommendation, and possible action regarding the use of hydromorphone. Mr. Blech presented research materials as directed at the previous Board meeting. After discussion, **the Board directed staff to draft a position statement, request input from the Texas Pain Society, and concurrently contact the attorney general's office regarding a potential statement.**

Agenda item #10, Update on Dental Board rules related to sleep medicine. Mr. Blech gave an update on Dental Board rules related to sleep medicine recently published. After discussion, **the Board directed staff to share information with TMA related to sleep medicine in hopes to raise awareness of the issue.**

Agenda item #11, Discussion, recommendation, and possible action regarding office-based anesthesia. Ms. Robinson identified the conflicts surrounding office-based anesthesia inspections. After discussion, **the Board directed staff to postpone office-based anesthesia inspections for a 6-month period, examine board rule 192 – Office Based Anesthesia Services, and present the conflicts that have arisen to the stakeholder group to include specialized stakeholders in this area.**

Agenda item #12, Consideration and possible action regarding pending litigation. Dr. Arambula moved, Mr. Gallardo seconded, and the motion passed to go into Executive Session at 11:01 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 11:52 a.m. and it was announced that no action was taken. A certified agenda was made.

There were no items for Agenda item #13.

Agenda item #32, at 11:30 a.m., Discussion, recommendation, and possible action regarding the adoption of proposed amendments and rule review to 22 Texas Administrative Code:

a. §163.4 Procedural Rules for Licensure Applicants

Ms. Pajak gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Dr. Willeford moved, Mr. Gallardo seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §163.4, Procedural Rules for Licensure Applicants, as published in the Texas Register.**

b. §163.5 Licensure Documentation

Ms. Pajak gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Mr. Webb moved, Dr. Holliday seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §163.5, Licensure Documentation, as published in the Texas Register.**

c. §166.6 Exemption from Registration fee for retired physician providing voluntary charity care

Ms. Pajak gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Mr. Gallardo moved, Dr. Arambula seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §166.6 Exemption from Registration fee for retired physician providing voluntary charity care, as published in the Texas Register.**

d. §172.5 (b) Visiting Physician Temporary Permit

Ms. Pajak gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Mr. Gallardo moved, Dr. Arambula seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §172.5 (b), Visiting Physician Temporary Permit, as published in the Texas Register.**

e. §172.8 Faculty Temporary License

Ms. Pajak gave a brief summary. Written comments were received. No one signed in to present oral comments. After discussion, **Mr. Gallardo moved, Dr. Arambula seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §172.8, Faculty Temporary License, as published in the Texas Register.**

f. §184.4 Surgical Assistants – Qualifications for Licensure

Ms. Pajak gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Dr. Simonson moved, Dr. Arambula seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §184.4, Surgical Assistants – Qualifications for Licensure, as published in the Texas Register.**

g. §184.16 Discipline of Surgical Assistants

Ms. Tuthill gave a brief summary. 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 the proposed amendments and rule review for 22 Texas Administrative Code §184.16, Discipline of Surgical Assistants, as published in the Texas Register.**

h. §187.13 Ineligibility Determination

Ms. Pajak gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Ms. Southard moved, Ms. Attebury seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §187.13, Ineligibility Determination, as published in the Texas Register.**

i. §187.24 Pleadings

Ms. Pajak gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Dr. Wang moved, Mr. Gallardo seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §187.24, Pleadings, as published in the Texas Register.**

j. §187.26 Service in SOAH Proceedings

Ms. Tuthill gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Dr. Wang moved, Ms. Southard seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §187.26, Service in SOAH Proceedings, as published in the Texas Register.**

k. §187.28 Discovery

Ms. Tuthill gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Ms. Southard moved, Mr. Webb seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §187.28, Discovery, as published in the Texas Register.**

l. §187.29 Mediated Settlement Conferences

Ms. Tuthill gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Ms. Southard moved, Mr. Gallardo seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §187.29, Mediated Settlement Conferences, as published in the Texas Register.**

m. §190.8 (1)(L) Violation Guidelines

Ms. Tuthill gave a brief summary. Written comments were received. No one signed in to present oral comments. After discussion, **Dr. Snoots moved, Dr. McNeese seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §190.8 (1)(L), Violation Guidelines, as published in the Texas Register; the Board directed staff to complete additional research based on concerns and input from the Board and written comments received.**

n. §190.14 Disciplinary Guidelines

Ms. Tuthill gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Ms. Southard moved, Dr. Shulkin seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §190.14, Disciplinary Guidelines, as published in the Texas Register.**

There were no items for Agenda item #35.

The board recessed at 12:10 p.m.

The board reconvened at 12:37 p.m.

There were no items for Agenda item #15.

Agenda item #16, Consideration and approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders. After consideration, **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Termination Granted of Rehabilitation Order #555.**

Agenda item #17, Consideration and approval of Modification Request/Termination Request Orders. After consideration, **Ms. Southard moved, Ms. Attebury seconded, and the motion passed to approve the Termination Granted Orders for Kashif Ansari, M.D.; Alice B. Blount, M.D.; Mario A. Martinez, M.D.; Sarah McClain, M.D.; Bethany Powell, M.D.; Eric R. Johnson, M.D.; Donald R. Samuel, M.D.; Donald C. Dunlap, Jr., D.O.; and the Granted Termination of Suspension Order for Jody Leeann Smith, M.D.**

Agenda item #18, Consideration and possible action for Agreed Board Orders. Dr. Simonson was recused for consideration of Donald L. Blair, Jr., M.D. Dr. Wang was recused for consideration of Nandini D. Kohli, M.D.

After consideration, **Mr. Gallardo moved, Dr. McNeese seconded, and the motion passed to deny Agreed Order #13, and recommend a reciprocal order of voluntary surrender based on actions taken by another state.**

After discussion, **Dr. Willeford moved, Dr. Shulkin seconded, and the motion passed to approve the Agreed Order for Donald L. Blair, Jr., M.D. Mr. Gallardo voted against the motion.**

After discussion, **Dr. Shulkin moved, Mr. Gallardo seconded, and the motion passed to go into Executive Session at 12:52 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 1:04 p.m. and it was announced that no action was taken. A certified agenda was made.**

After consideration, **Mr. Gallardo moved, Dr. Wang seconded, to deny Agreed Order #24 and revoke the respondent's license. After discussion on the motion, a hand vote was taken and the motion failed.**

Dr. Snoots moved, Mr. Webb seconded to accept the order as written. After discussion, Mr. Gallardo made a friendly amendment to add a public reprimand, 8 hours

of continuing medical education in ethics, and an administrative penalty of \$10,000. Ms. Southard seconded. The motion failed.

Dr. Holliday made a friendly amendment to remove all DEA/DPS controlled substances certificates including Schedules II through V for Agreed Order #24, Dr. Arambula seconded, and the motion passed. A vote was taken on the original motion as amended. The original motion as amended passed. Mr. Gallardo voted against the motion.

After discussion, Mr. Ellis moved, Ms. Southard seconded, and the motion passed to approve Agreed Order #35 with the modification in the first paragraph of the Order section, to be replaced with “Respondent’s Texas license is hereby SUSPENDED for 6 months; however, the suspension is STAYED and Respondent is placed on PROBATION under the following terms and conditions:”

After consideration, Ms. Southard moved, Mr. Webb seconded, and the motion passed to approve the following Agreed Board Orders en masse for: Ikenna Adugba, M.D.; Charles C. Bittle, Jr., M.D.; Randy J. Davis, D.O.; Michael J. Harris, M.D.; Nisar M. Huq, M.D.; Herbert J. Robinson, M.D.; Gabriel Tarango, D.O.; Carol K. Vance, M.D.; Michael A. Basco, M.D.; Anthony S. Bianchi, M.D.; Van Reid Bohman, M.D.; Todd D. Gaddis, M.D.; Alejandro Santos, M.D.; Paul J. Schilling, M.D.; Ajay Aggarwal, M.D.; R. Juan Alberto Aguilera, M.D.; Flavio H. Alvarez, M.D.; Carl F. Erickson, M.D.; Nandini D. Kohli, M.D.; Robert L. Lee, M.D.; Hernan E. Miranda, M.D.; Ricardo A. Rocha, M.D.; Jesus Alfredo Virlar, M.D.; Richard D. Yentis, M.D.; Timothy W. Anderson, M.D.; Lisa L. Gardner, D.O.; Christopher R. Mann, D.O.; Ronald M. Pucillo, M.D.; David F. Villacres, M.D.; Dennis D. Roberts, M.D.; David I. Howie, M.D.; and Yassar I. Ahmed, M.D.

Agenda item #19, Consideration and approval of Mediated Settlement Agreed Orders. After discussion of Mediated Settlement Agreed Order #10, Mr. Gallardo moved to approve the order with the modification to add 8 hours of continuing medical education in ethics and restrict the respondent from treating female patients. Mr. Gallardo withdrew his motion.

Dr. Arambula moved, Dr. Wang seconded, and the motion passed to go into Executive Session at 1:18 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 1:45 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, Mr. Gallardo moved, Dr. Wang seconded, to approve Jaime D. Murcia, M.D., with the addition of a public reprimand, 8 hours of continuing medical education in ethics and not treat patients of the affected gender. A hand vote was taken, and the motion failed.

Dr. Willeford moved, Mr. Webb seconded, to approve the Mediated Agreed Order for Jaime D. Murcia, M.D. as written. Mr. Gallardo made a friendly amendment that the boundary course delineated be either a PACE or Vanderbilt course, Dr. Holliday seconded. A hand vote was taken and the motion failed. The original motion to approve as written was restated, and the motion passed. Mr. Gallardo voted against the motion.

After consideration, Mr. Gallardo moved, Ms. Southard seconded, and the motion passed to approve the following Mediated Settlement Agreed Orders en masse for: Patrick J. Wimmer, M.D.; Brent B. Saetrum, M.D.; Elliott Bader, M.D.; Karl K. Convington, M.D.; Mary Gorman, M.D.; Chi M. Pham, M.D.; Edward E. Ramsey, Jr., M.D.; Richard W. Walker, Jr., M.D.; Bret H. Warfield, M.D.; and Carlos Rizo-Patron, M.D.

Agenda item #20, Consideration and approval of Remedial Plans. Dr. Zeitler was recused for consideration of Remedial Plan #22. Dr. Arambula served as the chair during discussion of Remedial Plan #22.

After discussion, Dr. Willeford moved, Dr. Wang seconded, to change Remedial Plan #22 into an Agreed Order to include a restriction on the license for no chronic pain treatment, no treatment for pain over 72 hours, 12 cycles of chart monitoring, 24 hours of continuing medical education divided as follows: 8 hours of medical recordkeeping, 8 hours of risk management, and 8 hours in the treatment of chronic pain; and an administrative penalty of \$3,000, due to falling out of the disciplinary guidelines for a Remedial Plan. Mr. Webb voted against the motion.

After consideration, Mr. Gallardo moved, Ms. Southard seconded, and the motion passed to approve the following Remedial Plans en masse for: Rohan Ahluwalia, M.D.; Eduardo Aquino, M.D.; Henry R. Armstrong, M.D.; Luis I. Canales, M.D.; Pedro Castro, D.O.; Marc Dao, M.D.; Jeff D. Ethridge, M.D.; Adil Habib, M.D.; Billy W. Henderson, M.D.; Timothy L. Huggins, M.D.; Huaiguang Li, M.D.; Michael S. Lovoi, M.D.; Brian J. O'Grady, M.D.; Antonio Pena, M.D.; Anthony H. Phi, M.D.; Jesus N. Sahad, M.D.; Joseph E. Sudolcan, M.D.; Robert G. Szewc, M.D.; Yvette C. Tomacruz, M.D.; Rob M. Tschauner, M.D.; Robert P. Walmsley, M.D.; Stephen S. Ladner, M.D.; John T. McDonald, II, D.O.; Clyde McMorris, Jr., M.D.; Shams S. Nandwani, M.D.; John E. Staniland, M.D.; Marion O. Williams, M.D.; Barbara J. Wood, M.D.; Harminder S. Chana, M.D.; Phuc T. Nguyen, D.O.; and Demara N. Wright, M.D.

There were no items for Agenda item #21.

Agenda item #22, Consideration and approval of Cease and Desist Orders. After consideration, **Dr. Arambula moved, Ms. Southard seconded, and the motion passed en masse for Jose Luis Diaz; R. Brett Payne, D.C.; Sangeeta Sinha; Imafidon "Thomas" Izekor; and Dennis Black.**

There were no items for Agenda items #23-27.

Agenda item #28, Report on Temporary Suspensions. A report was given on the Temporary Suspensions.

There were no items for Agenda items #29.

Agenda item #30, Report on Motions for Rehearing. A report was given on the Motions for Rehearing.

Agenda item #31, Discussion, recommendation, and possible action regarding a proposed amendment for 22 Texas Administrative Code (T.A.C.)

a. §166.2 Continuing Medical Education

Ms. Tuthill gave an overview of the data previously directed to gather related to Maintenance of Certification program. After discussion, **the Board directed staff to conduct further research and present at the next board meeting.**

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. Zeitler gave a report of the Executive Committee meeting. **Dr. Zeitler moved, Dr. McNeese seconded, and the motion passed to approve the Executive Committee meeting minutes and action items.**

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

Dr. Holliday gave a report of the Electronic Records and Communication Ad Hoc Committee. **Dr. Holliday moved, Mr. Gallardo seconded, and the motion passed to approve the Electronic Records and Communication Ad Hoc Committee meeting minutes and action items.**

1. Consideration and approval of the May 1, 2014 Board Meeting Minutes. **Dr. Zeitler moved, Mr. Webb seconded, and the motion passed to approve the May 1, 2014 Board Meeting Minutes and action items.**

Consideration and approval of the May 2, 2014 Board Meeting Minutes. **Dr. Zeitler moved, Dr. McNeese seconded, and the motion passed to approve the May 2, 2014 Board Meeting Minutes and action items.**

Dr. Shulkin gave a report of the Finance Committee meeting. **Dr. Shulkin moved, Mr. Webb seconded, and the motion passed to approve the Finance Committee meeting minutes and action items.**

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

Agenda item #36, Adjourn, Dr. Arambula, Mr. Webb seconded, and the motion passed to adjourn the meeting at 2:18 p.m.