

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

August 20, 2009

The meeting was called to order at 11:04 a.m. by Chair, Michael Arambula, M.D. Committee members present were John D. Ellis, Jr.; James Scott Holliday, D.O.; Wynne M. Snoots, M.D.; and Paulette B. Southard.

Agenda Item 10 - Discussion, recommendation, and possible action regarding Driscoll Childrens Hospital allowing a resident to train without a physician in training permit. Driscoll Childrens Hospital Pediatric Residency Director, William Dirksen MD, appeared with counsel to discuss the program allowing a resident to train without a permit, and failing to report the residents absence of more than 21 days, as required by Board rule. The Committee reviewed the action plan devised by Driscoll Childrens Hospital to ensure compliance with the Boards rules in the future.

Mr. Webb, Mr. Turner and Dr. Benavides entered the meeting at 11:20 am.

Agenda Item 9 - Discussion, recommendation, and possible action regarding proposed additions and modifications to **board rules**:

- a. 22 TAC 163 Licensure
 - i. 22 TAC 163.1 Definitions (modification)
 - ii. 22 TAC 163.2 Full Texas Medical License (modification)
 - iii. 22 TAC 163.4 Procedural Rules for Licensure Applicants (modification)
 - iv. 22 TAC 163.5 Licensure Documentation (modification)
 - v. 22 TAC 163.6 Examinations Accepted for Licensure (modification)
 - vi. 22 TAC 163.7 Ten Year Rule (modification)
 - vii. 22 TAC 163.11 Active Practice of Medicine (modification)

Mr. Turner moved to recommend to the full board that all the rules be published with changes noted in the Texas Register for public comment. Mr. Webb seconded the motion. All voted in favor. The motion passed.

- b. 22 TAC 166.1 166.6 Physician Registration (modification)

Mr. Turner moved to recommend to the full board that all the rules be published in the Texas Register for public comment. Ms. Southard seconded the motion. All voted in favor. The motion passed.

- c. 22 TAC 168.1 168.2 Criminal History Evaluation Letters (addition)

Ms. Southard moved to recommend to the full board that all the rules be published in the Texas Register for public comment. Dr. Holliday seconded the motion. All voted in favor. The motion passed.

- d. 22 TAC 171 Postgraduate Training Permits
 - i. 22 TAC 171.3 Physician-in-Training Permits (modification)
 - ii. 22 TAC 171.4 Board-Approved Fellowships (modification)
 - iii. 22 TAC 171.5 Duties of PIT Holders to Report (modification)

Ms. Southard moved to recommend to the full board that all the rules be published in the Texas Register for public comment. Mr. Webb seconded the motion. All voted in favor. The motion passed.

- e. 22 TAC 172 Temporary and Limited Licenses
 - i. 22 TAC 172.8 Faculty Temporary License (modification)
 - ii. 22 TAC 172.12 Provisional Licenses for Medically Underserved Areas (addition)

Ms. Southard moved to recommend to the full board that all the rules be published in the Texas Register for public comment. Dr. Holliday seconded the motion. All voted in favor. The motion passed.

- f. 22 TAC 175.4 Application Forms (repeal)

Ms. Southard moved to recommend to the full board that all the rules be published in the Texas Register for public comment. Dr. Holliday seconded the motion. All voted in favor. The motion passed.

- g. 22 TAC 194 Non-Certified Radiologic Technicians
 - i. 22 TAC 194.2 Definitions (modification)
 - ii. 22 TAC 194.3 Registration (modification)
 - iii. 122 TAC 94.5 Non-Certified Technician's Scope of Practice (modification)

Dr. Holliday moved to recommend to the full board that all the rules be published in the Texas Register for public comment. Ms. Southard seconded the motion. All voted in favor. The motion passed.

Agenda Item 12 Discussion, recommendation, and possible action regarding **request for board-approved fellowship in pre-neurological surgery by UT Houston**. Dr. Dong Kim, Chair of the Department of Neurological Surgery at the University of Texas Medical School in Houston presented a request for Board approval of a pre-neurological surgery residency fellowship. **Ms. Southard moved to defer action on this item until the November Board meeting. The Committee directed staff to work with UT Houston to research possible ways in which the proposed program could comply with**

Board rules regarding Board-approved fellowships. Dr. Benavides seconded. All voted in favor and the motion passed.

Agenda Item 11 Discussion, recommendation, and possible action regarding **physician in training permits for research**. The Committee directed staff to postpone review of this agenda item until the November Board meeting.

Agenda Item 13 Discussion, recommendation, and possible action regarding **policy for physician temporary licenses for applicants who sign Executive Director-offered rehabilitation orders**. The Committee authorized the Executive Director, in consultation with the Chair of the Licensure Committee, to determine, on a case-by-case basis, whether temporary licenses should be issued to applicants who accept orders offered by the Executive Director prior to consideration by the Licensure Committee.

Agenda Item 14 Discussion, recommendation, and possible action regarding **delegation of authority to staff to issue provisional licenses pursuant to SB202 of the 81st Legislative Session**. The Committee delegated authority to staff to issue provisional licenses to applicants who meet eligibility criteria.

Agenda Item 15 Discussion, recommendation, and possible action regarding **request for modification to previously approved acudetox training program**. The committee reviewed the request of the acudetox program to provide didactic education online. **Ms. Southard moved to recommend to the full Board that the request be approved. Mr. Webb seconded. All voted in favor and the motion passed.**

Agenda Item 16 Discussion, recommendation, and possible action regarding **mediated licensure orders**. The Committee directed staff to draft a letter to SOAH on behalf of the Board stating that cases in which applicants are denied licensure are not subject to mediation.

Agenda Item 17 Discussion, recommendation, and possible action regarding **documentation of medical education performed in the United States by licensure applicants who are international medical graduates**. Ms. Garanflo presented information to the Committee regarding a method by which applicants have been allowed to attempt to demonstrate compliance with 155.003(b) of the Tex. Occ. Code by submitting documentation that medical education received in the United States was received side-by-side with, and taught by the same faculty as, medical students enrolled in accredited medical schools in the United States. The Committee directed staff to discontinue use of this method. The Committee further

directed that the change should apply to physicians who submit applications for licensure the day after the conclusion of this board meeting.

Agenda Item 18 Discussion, recommendation, and possible action regarding **a process for submission of requests and approval of CME courses for ethics and/or professional responsibility.** The Committee members agreed to consider the process questions presented by staff before the next board meeting so that the matter could be decided at the next board meeting.

Agenda Item 2 - Discussion, recommendation, and possible action regarding **applicants for licensure, permits, and certification.**

Mr. Turner moved, **Ms. Southard** seconded, that the Committee close the meeting to the public and continue in Executive Session for deliberations concerning licensure applications. The motion passed. Dr. Arambula announced that the meeting would be closed for deliberations at 12:30 p.m. concerning licensure applications and the character and fitness of applicants under the authority of The Medical Practice Act Sections 152.009 and 155.058, Occupations Code, and that while in executive session, the Board would not take any action, make any decision, or vote with regard to any matter that may be considered or discussed. A certified agenda of the executive session was made.

The Executive Session ended at 5:34 p.m.

Item 2a Applicants appearing concerning eligibility

The Licensure Committee conducted hearings to review applicants appearing concerning eligibility. The hearings were conducted in Executive Session. Following the hearings, the Committee reconvened and considered the applications.

1. and 2. Physician Licensure and Physician in Training Permit applicants

Applicant #795 appeared with counsel, before the Committee, in executive session, on appeal of an order offered by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be granted a Texas medical license under the non-public, non-disciplinary rehabilitation order that was previously proposed by the Executive Director.** This recommendation is

due to the applicants physical impairment that affects the applicants ability to practice medicine with reasonable skill and safety. Factors contributing to this recommendation include that the applicant suffers from a sleep disorder that has affected the applicants medical performance and required medical leaves of absences with modified work schedules. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #785 appeared with counsel, before the Committee, in executive session, following a deferral from the May Board meeting. In open session, **Mr. Ellis moved to recommend to the full Board to defer action until such time as the applicant becomes board certified or the applicants application expires, whichever occurs first.** This recommendation is due to the applicants failure to demonstrate that the medical education the applicant completed in the United States, specifically several clerkships, met regulatory requirements. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #800 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Holliday moved to recommend to the full Board that the applicants application be extended and deferred for sixty days so the applicant can obtain information from the New Jersey Medical Board related to their specific requirements regarding the applicants cancelled Texas license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #803 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Ellis moved to recommend to the full Board that the applicant be granted a Texas medical license under a non-public, non-disciplinary rehabilitation order that includes the requirements specified in the Rehabilitation Checklist that has been distributed to the members of the Committee.** This recommendation is due to applicants intemperate use of alcohol that could endanger a patients life. Factors contributing to this recommendation include evidence of a drinking problem in residency training; arrest for public intoxication; recent diagnosis of alcohol abuse; and mitigating factors include applicants current AA attendance, psychological counseling, and sobriety. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #811 appeared before the Committee in executive session, on appeal of an order proposed by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be granted a Texas medical license, subject to the administrative penalty order in the amount of \$6000 that was previously proposed by the Executive Director.** This recommendation is due to providing false or misleading information to the Board. Factors contributing to this

recommendation include the applicants submission of false statements on an application for a Physician in Training permit and on two physician licensure applications regarding placement on academic probation while in residency training and the committees determination that the falsification was intentional. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #646 appeared with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that the applicants application for a Texas medical license be deferred and an extension on the application and fees be granted until February 2010 to allow applicant to complete a KSTAR evaluation and follow all KSTAR recommendations, including but not limited to, a 90 day mini-residency. Upon completion of the evaluation and mini-residency, if recommended, the applicant will be required to reappear before the Licensure Committee.** This recommendation is due to failure to practice medicine with reasonable skill and safety to patients because of a mental or physical condition; disciplinary action by peers; behaving in a disruptive manner toward other hospital personnel that could reasonably be expected to adversely affect patient care; and failure to actively practice medicine since 2004. Factors contributing to this recommendation include that the applicant has been unable to find mini-residency programs that applicant could enter, notwithstanding multiple attempts, as previously required by the Board at its April 2008 meeting, regarding applicants previous application; applicant has continued to shadow another physician without compensation once a week for over a year performing those activities applicant could under his direct supervision; applicant passed all portions of the USMLE on the first time indicating that applicant has basic fundamental knowledge; applicants desire to practice is a driving force in applicants life and the KSTAR program will allow applicant and the Board to determine whether applicant can safely practice medicine. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #828 appeared, with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that the application be deferred until the applicant undergoes a comprehensive focal evaluation approved by the Executive Director with results provided to the Board no later than January 1, 2010. Upon completion of the evaluation the applicant will need to reappear before the committee. Application fees will be extended until February 5, 2010. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #810 appeared, before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Benavides moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Physician in Training permit subject to the following conditions: completion of 10 hours CME on medical ethics to be approved by the Executive Director and completed within one year, and participation in the residency programs PHRC program for at least one year.** This recommendation is due to placement on deferred adjudication for felony arrest for possession of a controlled substance by fraud. Factors contributing to this recommendation include that the applicant never possessed the controlled substance; has never been arrested before or since; is still under probation in relation to the deferred adjudication; is entering a residency program that is aware of the applicants criminal history and supports PIT; has been compliant with the criminal probation and seeking early termination of probation; and underwent a psychiatric evaluation that determined that the applicant did not meet criteria for substance abuse or dependency. **Dr. Snoots seconded the motion. All voted in favor. The motion passed.**

Applicant #836 appeared with counsel, before the Committee, in executive session, on appeal of an order proposed by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that the applicant be granted a Physician in Training permit under the non-public, non-disciplinary rehabilitation order that was previously proposed by the Executive Director.** This recommendation is due to applicants mental condition that could potentially render applicant unable to safely practice medicine. Factors contributing to this recommendation include that applicant was diagnosed with Major Depressive Disorder that affected applicants academic performance and required nearly a year-long leave of absence, but that the applicant has not suffered a depressive episode since 2005 and has responded well to psychotherapy. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #851 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Holliday moved to recommend to the full Board that the applicant be granted an unrestricted license. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #837 appeared with counsel, before the Committee, in executive session, on appeal of an order offered by the Executive Director. In open session, **Mr. Turner moved to recommend to the full Board that the applicant be granted a Physician in Training permit under the public, non-disciplinary order that was previously proposed by the Executive Director.** This recommendation is due to

unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; intemperate use of alcohol that could endanger a patients life; and violation of a state law that involved assault as an essential element. Factors contributing to this recommendation include a criminal history involving multiple arrests and convictions for alcohol-related charges, resisting arrest, and assault; no criminal actions since 2001; evidence of sobriety and completion of alcohol abuse treatment; and that applicants residency program is aware of applicants criminal and alcohol issues and plans to monitor. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #814 appeared with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Turner moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Physician in Training permit subject to the following conditions: completion of 8 hours CME on boundary issues to be approved by the Executive Director and completed within one year.** This recommendation is due to disciplinary action taken by a health care entity; and unprofessional or dishonorable conduct that is likely to deceive, defraud or injure the public. Factors contributing to this recommendation include that the disciplinary action by residency program included a warning and suspension due to inappropriate personal contact with a minor patient through the Internet. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #812 appeared, with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Ellis moved to recommend to the full Board that the applicant be granted an unrestricted license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #686 appeared before the Committee, in executive session, on referral by the Executive Director and as a requirement of the applicants TMB agreed order with regard to the applicants physician in training permit. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be granted a Texas medical license under a non-public, non-disciplinary rehabilitation order that includes the requirements specified in the Rehabilitation Checklist that has been distributed to the members of the committee.** This recommendation is due to a mental condition that could potentially render applicant unable to safely practice medicine. Factors contributing to this recommendation include that the applicant has been diagnosed with Major Depression, OCD, and Anxiety that necessitated a leave of absence from work in 2008 and monthly treatment for condition; and

applicants compliance with previous TMB order issued for Physician in Training permit. **Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #813 appeared before the Committee, in executive session, on appeal of the Executive Directors determination of ineligibility. In open session, **Dr. Benavides moved to recommend to the full Board that the applicant be determined ineligible for a Texas medical license.** This recommendation is due to noncompliance with 155.051 of the Medical Practice Act that requires passage of all parts of licensure examinations within seven years. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #762 appeared with counsel, before the Committee, in executive session, following a deferral from the May Board meeting. In open session, **Dr. Snoots moved to recommend to the full Board that the applicant be granted a Texas medical license subject to an administrative penalty in the amount of \$2000.** This recommendation is due to providing false or misleading information to the Board. Factors contributing to this recommendation include the committees determination that the falsification was intentional. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #815 appeared with counsel, before the Committee in executive session, on referral by the Executive Director. In open session, **Dr. Holliday moved to recommend to the full Board that the applicant be granted Physician in Training permit under a public, non-disciplinary order that includes the requirements specified in the Rehabilitation Checklist that has been distributed to the members of the committee.** This recommendation is due to disciplinary action taken by a health care entity; unprofessional conduct that is likely to deceive, defraud or injure the public; placement on deferred adjudication for a misdemeanor involving moral turpitude; and excessive use of drugs or alcohol that renders applicant unable to safely practice medicine with reasonable skill and safety. Factors contributing to this recommendation include a lengthy history of drug dependency; termination from residency training program due to drug dependency issues and failure to stay in treatment for condition; and placement on deferred adjudication for misdemeanor assault that included probation for 12 months. Mitigating factors include sobriety since 2007, being offered a residency position with the program that had previously terminated applicant, and applicants compliance and successful completion of applicants two-year physician rehabilitation agreement with the Harris County Medical Society. **In addition, Dr. Holliday moved to recommend to the full Board that the applicant be subject to an administrative penalty in the amount of \$4000.** This recommendation is due to submission of false statements on two applications for Physician in Training permits. Factors contributing to this recommendation include the committees

determination that the falsification was intentional. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

4. Acudetox certification applicants There were none.
5. Surgical assistant licensure applicants There were none.

Item 2b Applicants appearing for rehearing concerning eligibility.

1. Physician Licensure Applicants

Applicant #755 appeared, with counsel, before the Committee, in executive session pursuant to the Committee granting the applicants motion for rehearing at the Boards May 2009 meeting. In open session, **Ms. Southard moved to recommend to the full Board that the applicant be granted an unrestricted license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

2. Physician in training permit applicants There were none.
3. Acudetox certification applicants There were none.
4. Surgical assistant licensure applicants - There were none.

Item 2c Proposed orders offered by the Executive Director.

1. Physician Licensure Applicants Ms. Kaufman reported on forty orders offered by the Executive Director and accepted by applicants. **Mr. Turner moved to recommend to the full Board that all forty orders be approved. Dr. Holliday seconded. All voted in favor and the motion passed.**
2. Physician in training permit applicants There were none.
3. Acudetox certification applicants - There were none.
4. Surgical assistant licensure applicants - There were none.

Item 2d Applicants determined by staff to meet eligibility requirements.

1. Physician Licensure Applicants - There were 829 applicants who met all requirements to be considered for permanent licensure by the full Board. **Mr. Turner moved to recommend to the full Board that all 829 physician licensure applicants determined to meet eligibility requirements by staff be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

2. Acudetox certification applicants There were none.
3. Surgical assistant licensure applicants - There were five surgical assistant applicants to be considered for approval. **Dr. Holliday moved to recommend to the full Board that all five surgical assistant applicants determined to meet eligibility requirements by staff be approved. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Agenda Item 3 Discussion, recommendation, and possible action regarding applicant requests:

Item 3a Requests for Rehearing

Applicant #789's request for rehearing was considered. Dr. Benavides moved to recommend that the applicants request for rehearing be denied based upon the applicants failure to demonstrate that the applicant has information that has not previously been presented to or considered by the board. Mr. Webb seconded the motion. All voted in favor. The motion passed.

Item 3b Request for Waiver of Acupuncture License Requirements There were none.

Agenda Item 4 Discussion, recommendation and possible action regarding unsigned orders from previous meetings. There were none.

Agenda Item 5 Reports on:

Item 5a Applicant determinations of eligibility made by the Executive Director in the last period - Ms. Garanflo presented a report on applicant determinations of eligibility made by the Executive Director for the period May 25, 2009 through August 11, 2009.

Item 5b Physician licensure process statistics Ms. Garanflo presented physician licensure statistics for applicants considered for licensure at this meeting. Estimated average time to complete applications for licensure in FY 09 Q4 is 47 days; for the full year FY 09 the average is estimated to be 39 days.

Agenda Item 6 Discussion, recommendation, and possible action regarding licensee requests:

Item 6a - Request of physician for activation of canceled physician licenses There were none.

Item 6b - Request of physician to return to Active Status from Texas Retired Status

Applicant #804's request to return to active status was considered. **Mr. Webb moved to recommend that a determination on applicants request to return to active status be deferred until such time as applicant completes a KSTAR assessment and mini-residency.** This recommendation is due to time out of the active practice of medicine. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #798's request to return to active status was considered. **Dr. Holliday moved to recommend that a determination on applicants request to return to active status be deferred until such time as applicant completes a KSTAR assessment and mini-residency.** This recommendation is due to time out of the active practice of medicine. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #796's request to return to active status was considered. **Ms. Southard moved to recommend that a determination on applicants request to return to active status be deferred until such time as applicant completes a KSTAR assessment and mini-residency.** This recommendation is due to time out of the active practice of medicine. **Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #797's request to return to active status was considered. **Dr. Holliday moved to recommend that a determination on applicants request to return to active status be deferred until such time as applicant completes a KSTAR assessment and mini-residency.** This recommendation is due to time out of the active practice of medicine. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Agenda Item 7 - Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration.

Item 7a Surgical Assistants There were six cancellations of surgical assistant licensure by request for incomplete registration. **Ms. Southard moved to recommend to the full board that the requests for cancellation of surgical assistant licensure by request for incomplete registration be accepted. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Item 7b Acudetox There were seven cancellations of acudetox certifications by request for incomplete registration. **Dr. Benavides moved to recommend to the full board that the requests for cancellation of acudetox certification by request for incomplete registration be accepted. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Agenda Item 8 Discussion, recommendation, and possible action regarding Nonprofit Health Organizations:

Item 8a - Applicants for initial certification - There were nine applications for initial certification as a Nonprofit Health Organization for approval. **Ms. Southard moved to recommend to the full board that the requests for initial certification as a Nonprofit Health Organization be approved. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Item 8b - Requests for biennial recertification - There were six applications for biennial recertification as a Nonprofit Health Organization for approval. **Ms. Southard moved to recommend to the full board that the requests for biennial recertification as a Nonprofit Health Organization be approved. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Item 8c - Cancellation of organizations certified as Nonprofit Health Organizations - There were none.

Agenda Item 19 - There being no further business, Dr. Arambula adjourned the meeting at 6:05 p.m.