

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES
April 12, 2012

The meeting was called to order at 10:55 a.m. on April 12, 2012 by Chair, Michael Arambula, M.D. Committee members present were Pat Crocker, D.O., John D. Ellis Jr., Carlos Gallardo, William Roy Smythe, M.D., Wynne M. Snoots, M.D., and Paulette B. Southard.

Ms. Southard moved, Dr. Crocker seconded, that the Committee close the meeting to the public and continue in Executive Session for deliberations concerning Agenda item 2a. The motion passed. Dr. Arambula announced that the meeting would be closed for deliberations at 10:57 a.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 any executive session will be made.

Mr. Webb entered the meeting at 1:25 p.m. during Executive Session.

The Executive Session ended at 4:32 p.m.

Agenda Item 2 - Discussion, recommendation and possible action regarding licensee requests

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.

Applicant #447 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be allowed to convert the applicants licensure application to an administrative medicine licensure application within 60 days, and upon compliance with all other requirements be granted an Administrative Medicine License. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #818 appeared before the Committee, in executive session, on appeal of a referral to the Texas Physicians Health Program (TXPHP) by the Executive Director as a requirement prior to full licensure following almost three years on a confidential non-disciplinary rehabilitation order while under a Physician in Training permit. In open session, **Dr. Smythe moved to recommend to the full Board that the applicant be granted an unrestricted license upon resolution with the TXPHP.** This recommendation is due to the applicants diagnosis of Mood Disorder NOS and ADHD, a statement from the applicants current treating physician that he will continue to monitor the applicant, the recommendation by the TXPHP that the applicant be monitored for two years with quarterly reports from a treating psychiatrist and the Committees opinion that the transition from a training permit to full licensure can be stressful and the applicant should be supported through that transition. The Committee stressed that the applicants condition appears to be in remission and the applicant is doing very well in all areas. **Dr. Crocker seconded the motion. All voted in favor. The motion passed.**

Applicant #1164 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Mr. Ellis moved recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Texas Medical License upon entering into a nondisciplinary remedial plan with the following terms 8 hours CME in Ethics and 8 hours CME in disruptive behavior.** This recommendation is due to unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public; action taken by a health care entity due to the applicants professional incompetence or unprofessional conduct; and submission of a false or misleading statement on an application for licensure. Factors contributing to this recommendation include that while in residency training the applicant received a letter of warning in 2008, was placed on probation in 2010, and was given additional to requirements to complete in 2011 due to concerns regarding professionalism; and the applicant did not report the 2008 letter of warning on the applicants application for licensure. Mitigating factors are that the applicant successfully completed residency training; and the action taken by health care entity was primarily based on performance in two rotations, while the rest of applicants training indicates satisfactory evaluations. **Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #1214 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions: completion of 8 hours CME in Ethics, an Administrative Penalty of \$2000, and referral to the Texas Physician Health Program.** This recommendation is due

to action taken by a health care entity due to unprofessional conduct or professional incompetence likely to harm the public; action taken by another state medical board; and unprofessional or dishonorable conduct likely to deceive, defraud or injure the public. Factors contributing to this recommendation include that the applicant was terminated from a residency training program in 2008 due to instances of unprofessional conduct and obtaining narcotic pain medications for the applicants own use without following proper protocols, specifically the applicant obtained pain medications from colleagues without undergoing a medical examination or following pain treatment guidelines; applicant was denied licensure by another state medical board in November 2009 based on the residency training action in 2008; mitigating factors include board certification in 2010, favorable employment evaluations for the past two years and no evidence of patient harm. **Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #1215 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 an unrestricted license.** **Mr. Gallardo seconded the motion. All voted in favor. The motion passed.**

Applicant #1219 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Dr. Crocker moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions under a remedial plan: completion of 8 hours of CME in Ethics.** 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. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1220 appeared 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 applicant be determined ineligible for licensure.** This recommendation is due to action taken by a health care entity due to unprofessional conduct or professional incompetence likely to harm the public unprofessional conduct likely to deceive, defraud, or injure the public, and criminal conviction of a misdemeanor. Factors contributing to this recommendation include that the applicant was placed on probation for six months while in residency training due to failure to report for clinical duties for three days during a hurricane when applicants presence was required; and in 2008 the applicant was convicted of misdemeanor assault and battery, and placed on probation for three years as a result of the 2008 conviction, resulting is the

applicants subsequent relinquishment of privileges at two hospitals **Mr. Gallardo seconded the motion. All voted in favor. The motion passed.**

Applicant #1232 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Crocker 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 #1233 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Ms. Southard moved recommend to the full Board that the applicant be determined ineligible for licensure.** This recommendation is due to conviction of a misdemeanor for retail theft; action taken by a health care entity based on unprofessional conduct or professional incompetence likely to harm the public; action taken by another state medical board; failure to practice medicine in an acceptable professional manner consistent with public health and welfare; unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; and submission of a false or misleading statement on an application for licensure. Factors contributing to this recommendation include that during the applicants first year of residency training in 2004 the applicant was placed on probation and subsequently dismissed from the program due to poor performance and falsification of a medical record; in August 2007, the applicant received a letter of reprimand from the applicants residency training program due to a pattern of unprofessional behavior and lack of attention to duties; in November 2009, applicant was convicted of shoplifting of approximately \$1500 of merchandise while out shopping with the applicants spouse and children; as a result of the 2009 conviction the applicants employment was terminated and applicant was fined \$5,000; applicant was also disciplined by the Wisconsin medical board; and applicant failed to report on application for licensure the applicants termination of employment, action taken by Wisconsin Board, a 2003 arrest for DWI, and letter of reprimand from residency training program. **Dr. Crocker seconded the motion. All voted in favor. The motion passed.**

Applicant #1234 appeared 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 applicant be granted an unrestricted surgical assistant license. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1236 appeared 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 applicant be**

determined ineligible for licensure. This recommendation is due to failure to demonstrate that the applicant has completed two years of progressive graduate medical training in the United States as required by Sec. 155.004 of the Medical Practice Act and Board rule 163.2(b)(5). Factors contributing to this recommendation include the applicant completing two years of training in orthopedic surgery of the spine in the United States, but those years were not progressive in nature as required and not acceptable for board certification or subspecialty board certification. **Dr. Smythe seconded the motion. All voted in favor. The motion passed.**

Item 2b - Proposed orders offered by the Executive Director.

Ms. Knight reported on 7 orders offered by the Executive Director and accepted by applicants. **Mr. Webb moved to recommend to the full Board that all 7 orders be approved. Dr. Crocker seconded. All voted in favor and the motion passed.**

Item 2c Physician licensure applicants to be licensed.

There were 112 applicants who met all requirements to be considered for permanent licensure by the full Board. **Mr. Webb moved to recommend to the full Board that all 112 physician licensure applicants determined to meet eligibility requirements by staff be approved. Dr. Crocker seconded the motion. All voted in favor. The motion passed.**

Item 2d Surgical assistant licensure applicants to be licensed

There were 5 applicants who met all requirements to be considered for licensure by the full Board. **Ms. Southard moved to recommend to the full Board that all 5 surgical assistant applicants determined to meet eligibility requirements by staff be approved. Dr. Smythe seconded the motion. All voted in favor. The motion passed.**

Item 2e Acudetox applicants to be certified

There was 1 applicant who met all requirements to be considered for certification by the full Board. **Mr. Webb moved to recommend to the full Board that the 1 acudetox 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 Report on physician licensure statistics. Ms. Knight reported that the average time to complete applications for physician licensure in FY 12 so far was 36 days, which is within the new mandate of 44 days.

Agenda Item 4 Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration. There were seven acudetox specialists whose certifications have been delinquent for at least one year and who have not completed the registration process. **Dr. Crocker moved to recommend to the full board that the acudetox certifications be cancelled. Mr. Webb seconded. All voted in favor and the motion passed.**

Agenda Item 5a - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Applicants for initial certification. There were 6 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. Crocker seconded. All voted in favor and the motion passed.**

Agenda Item 5b - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Requests for biennial recertification - There were 12 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. Crocker seconded. All voted in favor and the motion passed.**

Agenda Item 6 - Discussion, recommendation, and possible action regarding proposed amendments to board rules:

- a. 22 TAC 163.2 Full Texas Medical License
- b. 22 TAC 163.4 Procedural Rules for Licensure Applicants
- c. 22 TAC 163.5 Licensure Documentation
- d. 22 TAC 166.1 Physician Registration
- e. 22 TAC 166.3 Retired Physician Exemption
- f. 22 TAC 172.8 Faculty Temporary License
- g. 22 TAC 172.15 Public Health License
- h. 22 TAC 172.16 Provisional Licenses for Medically Underserved Areas

During discussion the Committee clarified for staff that Board Rule 163.5 relating to a remedy for a single unacceptable clerkship should not allow for the use of residency training obtained prior to application for licensure to satisfy the requirement, and time spent in a participatory rotation to remedy an unacceptable

clerkship should be continuous. **Ms. Southard moved to recommend to the full Board that the rules be published as noted in the Texas Register for public comment. Dr. Crocker seconded. All voted in favor. The motion passed.**

Agenda Item 7 - Discussion, recommendation, and possible action regarding Visiting Physician Temporary Permit. The Committee discussed the language of Rule 172.4 as it relates to the Visiting Physician Temporary Permit. Currently the rule limits the use of that permit to educational purposes and charity care. The Committee discussed whether the language should be expanded beyond those two situations. The Committee directed staff to draft new language to cover emergency situations or specific situations where the need cannot be met by a Texas physician.

Agenda Item 8 - Discussion, recommendation, and possible action regarding licensure and registration forms. The Committee discussed discrepancies between the question related to mental impairment on the registration/renewal form and the licensure application. The Committee directed staff to review the two forms, highlight all discrepancies, and return to the Committee for review.

Agenda Item 9 Discussion, recommendation and possible action regarding stakeholder group to discuss medical and graduate medical education policy issues. Ms. Knight presented a report on the status of a request to the Texas medical schools and Graduate Medical Education programs to participate in a stakeholder work group that would meet annually to exchange ideas with the Texas Medical Board and reinforce the Board's shared commitment with the medical schools and programs to support the next generation of Texas physicians. Interest from the proposed participants appears high and as soon as all the responses are received, a stakeholder work group meeting will be set to take place this summer. In addition the Board has offered to give outreach presentations for the schools and programs, and to expand on prior outreach presentations by developing one targeted for first year medical students to educate on rules and policy and build their relationship with the Board.

Agenda Item 10 - Discussion, recommendation, and possible action regarding PIT rotator permits. The Committee discussed application reviews for rotator permits that require in depth review and information gathering regarding impairment issues for applicants who are typically in Texas for a two to four week fully supervised rotation only, and thus are not referred to the Texas Physicians Health program. The Committee directed staff to draft a rule change for stakeholder review that would require applicants for PIT rotator permits to be reviewed for action in another state and criminal history, and

require that the Texas and out of state program certify that the resident is in good standing and able to competently practice, but would eliminate review of impairment issues.

Agenda Item 11 - Discussion, recommendation, and possible action regarding penalty for action taken in another state. The Committee reviewed an April 2010 direction to staff authorizing the Executive Director in consultation with the Chair of the Licensure Committee to offer agreed orders, in line with the penalty guidelines adopted by Enforcement, to applicants who have action taken in another state. Due to the fact that reciprocal orders, as stated in the guidelines, are not applicable since applicants under current restrictions are not eligible for licensure, the Committee determined that the Executive Director and the Chair of the Licensure Committee should continue to consult regarding these issues, and should let the seriousness of the action taken guide their decision to either refer the applicants to the Licensure Committee, offer a remedial plan in conjunction with the current guidelines, or, in cases where the action taken has mitigating circumstances such as minor infractions or actions that took place some time ago, approve the applicants on these issues.

Agenda Items 13 - There being no further business, Dr. Arambula adjourned the meeting at 5:25 p.m.