



Texas Medical Board

BOARD MEETING

AUGUST 26, 2011

333 GUADALUPE, TOWER 2, SUITE 225

AUSTIN, TEXAS

The meeting was called to order on August 26, 2011 at 8:40 a.m. by Board President Irvin E. Zeitler, Jr., D.O. Board members present were Melinda McMichael, M.D., Vice-President; Timothy J. Turner, Secretary/ Treasurer; Michael Arambula; Julie Attebury; David Baucom; Patricia S. Blackwell; Pat J. Crocker, D.O.; John D. Ellis, Jr., J.D.; Manuel Guajardo, M.D.; J. Scott Holliday, D.O.; Allan N. Shulkin, M.D.; Wynne M. Snoots, M.D.; Paulette B. Southard; Stanley S. Wang, M.D., J.D.; Timothy Webb, J.D.; and George Willeford III, M.D. Board staff present were Mari Robinson, Executive Director; Linda Gage-White, M.D., Medical Director; Nancy Leshikar, J.D., General Counsel; Jaime Garanfio, Director of Licensure; Megan Goode, Public Information and Special Projects Manager; Jennifer Kaufman, Assistant General Counsel; Suzanne Mitchell, Assistant General Counsel; and various other staff.

Ms. Attebury read the boards mission statement into the minutes. Our Mission is to protect and enhance the publics 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 was deferred to later in the meeting.

Agenda item #2, Executive Directors Report.

2010-2011 FSMB Participation Report. Ms. Robinson presented the April 2010 April 2011 Federation of State Medical Boards (FSMB) participation report of the activities of current and past board members and staff. Ms. Robinson noted that the next Federation meeting is scheduled April 26-28, 2011 in Fort Worth and board members were encouraged to attend.

Budget update. Ms. Robinson presented the budget update. The agency is projected to meet the target budget for FY2011. The hiring freeze was lifted and should be fully staffed by the end of the year

Legislative update. Ms. Robinson gave a legislative report and reported rules are continuing to be drafted to meet legislative requirements.

Agenda item #5, Medical Director Report

Panelist/reviewer recruiting. Dr. Gage-White reported a number of physicians were recently nominated to be Expert Panelists with the continuing recruiting efforts. The recruitment process will continue to actively recruit spine surgeons and family medicine physicians to serve as expert panelists.

Panelist/reviewer orientation. Dr. Gage-White reported the new panelist orientation program is completed and will be available online September 1, 2011.

Agenda item #26, Discussion, recommendation, and possible action regarding penalty guidelines. Ms. Robinson presented proposed penalty guidelines and requested the boards input and direction. After discussion, the board revised the new proposed guidelines to include documentation

of the respondents offence and to list mitigating and aggravating factors to explain why an order is lenient or harsh. The guidelines will be available during Informal Settlement Conferences as a resource.

The board discussed the remedial plan concept and directed the following clarifications: Remedial plans will be agreed plans requiring respondent's signature; remedial plans will not be published in the newsletter or contained in the press release, but will be on the physician profile; a charge of \$500 will be the administrative fee per year for the length of the remedial plan; a remedial plan may be offer only prior to a SOAH mediation; a remedial plan may not be modified or terminated; physician may accept a remedial plan only once in a life time; and chart monitor may be used discretionarily as education.

The board directed the District Review Committee members be educated on the penalty guidelines and the boards expectations for the process.

Agenda item #5 at 9:00 a.m., Discussion, recommendation, and possible action including rule review regarding rule changes to 22 T.A.C.

- b. Chapter 200, Standards for Physicians Practicing Complementary and Alternative Medicine including new Section 200.4 Use of Investigational Agents. The board reviewed proposed changes to Chapter 200, Standards for Physicians Practicing Complementary and Alternative Medicine and the possibility of creating a new Chapter 198. After discussion, **Dr. Willeford moved, Dr. Crocker seconded, and the motion passed to approve to create a new Chapter 198, Standards for Use of Investigational Agents for public comment with the modifications to change must either be to or; and 2.) clarify within the definition that this is not intended to impact off label use of FDA approved medications.**
- a. Chapter 177, Non-Profit Health Organizations and new Subchapter C Jointly Owned Entities, and Subchapter D - Employment of Physicians. No one signed in to present oral comments. Written comments were received. After discussion, **Dr. Wang moved, Ms. Southard seconded, and the motion passed to approve Chapter 177, Non-Profit Health Organizations and new Subchapter C Jointly Owned Entities, for public comment with the clarification that all physician assistant clinic ownership must be reported annually.** The board directed staff to send the rule to the Physician Assistant Board for their comments.

Agenda item #6, Discussion, recommendation, and possible action regarding the use of radiation machines in the healing arts. Ms. Leshikar presented the Department of State Health Services request for comments on the use of radiation machines in the healing arts. The board directed staff to gather comments from the expert panelists to refer to DSHS.

Agenda item #7, Discussion, recommendation, and possible action regarding chiropractic rules. Ms. Mitchell gave an update of ongoing litigation and regulatory developments pertaining to chiropractic scope of practice rules.

Agenda item #8, Discussion, recommendation, and possible action regarding the process for Profile disputes. Ms. Leshikar summarized the current process for profile disputes. After discussion, the board directed staff to continue the process for profile disputes. The staff attorney will review the profile language and write an opinion to submit to the Hearings Counsel. After the opinion is reviewed and approved by the Hearings Counsel, the opinion will be forwarded for final approval by the Executive Director.

Agenda item #9, Consideration and possible action regarding pending litigation. Dr. McMichael moved, Dr. Holliday seconded, and the motion passed to go into Executive Session at 9:54 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, GOVERNMENT CODE, 551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, 152.009, 155.058, 160.006, and 164.007; and Attorney Generals Opinion No. H-484. Open session resumed at 10:14 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, Dr. McMichael moved, Ms. Blackwell seconded, and the motion was approved to accept the settlement offer in the ODonnell vs. Texas Medical Board and to bring the final agreed settlement offer back to the board in November.

Agenda items #10-#24 were deferred to later in the meeting.

Agenda item #25 at 10:30 a.m., Consideration and Approval of Proposal for Decision regarding Roderick Ekmark, M.D., SOAH #503-10-3644MD, Roy Scudday, Administrative Law Judge, gave a summary of the Proposal for Decision. Dr. Ekmarks attorney, Ace Pickens, was present and gave a presentation. Staff attorney, Roger Calhoun, Staff Attorney, was present and gave a presentation. After discussion, Dr. McMichael moved, Dr. Arambula seconded, and the motion passed to go into Executive Session at 10:46 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, GOVERNMENT CODE, 551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, 152.009, 155.058, 160.006, and 164.007; and Attorney Generals Opinion No. H-484. Open session resumed at 10:59 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, Mr. McMichael moved, Dr. Arambula seconded, and the motion passed to adopt the final order regarding Roderick Ekmark, M.D., issuing Dr. Ekmark a license to practice medicine in Texas. The order resolves SOAH #503-10-3644MD by dismissing the Board's Petition in Opposition to Licensure, due to insufficient Findings of Facts.

Agenda item #10, Consideration and Approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, Ms. Blackwell moved, Dr. Guajardo seconded, and the motion passed to approve the Modified Agreed Rehabilitation Orders #662, #663, and #664; Modification Granted of Rehabilitation Order #613; Termination Granted of Rehabilitation Orders #465, #472, #491, #492, #539, and #613; and Termination Denied of Rehabilitation Orders #486 and #626.

Agenda item #11, Consideration and possible action for Agreed Board Orders. Dr. Holliday was recused for during the consideration of the orders for Richard A. Carter, D.O., Gary S. Donovitz, M.D., and J. Kirkland Grant, M.D. After discussion, Ms. Southard moved, Mr. Webb seconded, and the motion passed to approve en masse the following Agreed Board Orders for: Howard L. Boland, M.D.; Bliss w. Clark, II, M.D.; Vivian M. Habib, M.D.; Jerry Houchin, D.O.; Alexander Orlov, D.O.; Anthony F. Valdez, M.D.; James G. Casey, M.D.; Dawitt S. Davenport, M.D.; Albert Finch, M.D.; Weldon E. Glidden, D.O.; Stacy Hamid, M.D.; Arnold Kassanoff, M.D.; Margaret C. Sunderland, M.D.; Carol D. Weidner, M.D., Mae E. Wesson, M.D.; Julian R. Gershon, Jr., D.O.; Michael A. Basco, M.D.; Richard A. Carter, D.O.; Troy L. Creamean, M.D.; Gary S. Donovitz, M.D.; Arnold W. Mech, M.D.; Ricardo A. Murillo, M.D.; Sergio Sanchez-Zambrano, M.D.; Barlow Smith, M.D.; Natalie Tolbert-Bornstein,

M.D.; Jack M. Thomas, Jr., M.D.; William Trotter, M.D.; Stephen W. Abernathy, M.D.; Abdul Ali, M.D.; Luis F. Arango, M.D.; William H. Atkinson, M.D.; Neil J. Atlin, D.O.; Anil T. Bangale, M.D.; Beauford Baspad, Jr., D.O.; Donald W. Bishop, D.O.; Dominique W. Brooks, M.D.; David W. Cardwell, M.D.; Robert Carsner, M.D.; David L. Chin, M.D.; Philip S. Czekaj, M.D.; Daniel Dawson, M.D.; Samuel W. Dudley, III, M.D.; Frank Dulemba, M.D.; Dante P. Escalante, M.D.; Marisol Fernandez, M.D.; Lee J. Friend, M.D.; Rosalyn A. Gayle, M.D.; J. Kirkland Grant, M.D.; Anibal R. Hadad, M.D.; Craig B. Henry, M.D.; Wayne A. Hey, D.O.; Naiyer Imam, M.D.; Jennifer L. Johnson-Caldwell, M.D.; Joel Joselevitz, M.D.; Rima Z. Kittley, M.D.; Brock A. Morris, M.D.; Nagarjun Narra, M.D.; Brian A. Preston, M.D.; Nallu R. Reddy, M.D.; Larry A. Richardson, M.D.; Michael A. Storey, M.D.; Hector Urrutia, M.D.; Timothy C. Bray, D.O.; Mohammad A. Chaudhry, M.D.; James D. Key, Sr., M.D.; Mateo Reyes, M.D.; William M. Spurlock, M.D.; Suraphandhu Srivathanakul, M.D.; CPR Medical Group; Holland Medical Group; Jerry F. Castilleja, M.D.; Balbil S. Chahal, M.D.; Rebecca U. Garza, M.D.; Uma R. Gullapalli, M.D.; Jerome E. Hutchens, M.D.; Maurecio E. Jimenez, M.D.; Ali M. Moussaoui, M.D.; Felix N. Sabates, Jr., M.D.; George R. Smith, Jr., M.D.; and Charles K. Speller, M.D., as written.

Agenda item #12, Consideration and Approval of Modification Request/Termination Request Orders. After discussion, Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the following Modification Request Orders for Timothy Malone, D.O., Javier A. Valdez, M.D., and Ronald T. Wilson, M.D.; and the Termination Granted Orders for Wayne A. Fagan, M.D., John E. Garner, D.O., Alice M. Pena, M.D., David P. Sheridan, M.D., Hugh M. Tadlock, M.D., Gary D. Wolfe, D.O., and James J. Galizia, M.D., as written.

Agenda item #13, Consideration and Approval of Nunc Pro Tunc Orders. Ms. Southard moved, Dr. Arambula seconded, and the motion passed to approve the Nunc Pro Tunc Orders for Dorsey S. Coffey, S.A.; Shahrokh Safarimaryaki, M.D.; Julia R. Ward, M.D.; and Ali M. Moussaoui, M.D., as written

Agenda item #14, Consideration and Approval of Mediated Settlement Agreed Orders. Dr. Wang was recused for consideration and approval of the order for John A. Luke, M.D. After discussion, Ms. Southard moved, Dr. Arambula seconded, and the motion passed to approve the Mediated Settlement Agreed Order for Michele A. Zaniewski, M.D.; William P. Coleman, Jr., M.D.; David M. Forman, Jr., M.D.; Wayne C. Jones, M.D.; John A. Luke, M.D.; Ricardo A. Ochoa, M.D.; and Victor Pallares, M.D., as written.

There were no items for Agenda item #15.

Agenda item #16, Consideration and Approval of Corrective Orders. After discussion, Ms. Southard moved, Dr. Arambula seconded, and the motion passed to approve the Corrective Orders en masse for the following: Joseph D. Diaz, M.D.; Jose L. Pagan, M.D.; Jyothi N. Achi, M.D.; Dorothy D. Fuentes, M.D.; Earl M. Stenger, M.D.; Amer Zaheer, M.D.; David C. Champion, M.D.; Paul I. Cook, M.D.; Monica S. Farias, M.D.; John R. Howlett, M.D.; Michael A. Huott, M.D.; Rani Lewis, M.D.; Jorge A. Roque, M.D.; Ellis G. Main, D.O.; Jose, S. Ortiz, M.D.; Dezra White, M.D.; Andrea Nelsen, M.D.; and Theera Umsawasdi, M.D., as written

There were no items for Agenda item #17-#18.

Agenda item #19, Report on Temporary Suspensions. A report on the temporary suspensions held with and without notice was given regarding: John P. Ramirez, M.D.; Calvin L.

Day, Jr., M.D.; Uma R. Gullapalli, M.D.; George N. Stokes, M.D.; Maurecio E. Jimenez, M.D.; Scott Freeman, M.D.; and Calvin L. Day, Jr.

Agenda item #20, Report on Automatic Orders. A report on the Automatic Orders was given regarding: Michael Atchley, M.D., and Ted S. Sturdivant, M.D.

There were no items for Agenda items #21-#22.

Agenda item #23, Consideration and Approval of Determinations of Default. Lee Bukstein, staff attorney, gave a brief presentation. William Granger, M.D., did not appear. After discussion, **Mr. Webb moved, Dr. Arambula seconded, and the motion passed to approve the Determination of Default Order for William Granger, M.D., as written.**

Lee Bukstein, staff attorney, gave a brief presentation. Alan Lloyd, M.D., did not appear. After discussion, **Dr. McMichael moved, Ms. Attebury seconded, and the motion passed to approve the Determination of Default Order for Alan Lloyd, M.D., as written.**

Agenda item #24, Consideration and Approval of Order to Show Cause. A report was given regarding Dr. Louis David Bernsteins Order to Show Cause.

Agenda item #25 - #26 were held earlier in the meeting.

There were no items for Agenda item #27.

Agenda item #28 at 11:30 a.m., Discussion, recommendation, and possible action relating to the proposed board rules in 22 TAC for adoption:

a. T.A.C. Chapter 175

i. 175.1, Application Fees.

ii. 175.2, Registration and Renewal Fees.

No one signed in to present oral comments. No written comments were received. After discussion, **Mr. Baucom moved, Mr. Webb seconded, and the motion passed to adopt the proposed rule in 22 T.A.C. Chapter 175, 175.1, Application Fees and 175.2, Registration and Renewal Fees for publication in the Texas register with the non-substantive change to lower the fee for (A) Initial biennial permit fee from \$826.00 to \$822. 00 and (B) Subsequent biennial permit fee from \$829.00 to \$822.00.**

b. T.A.C. Chapter 187,

i. 187.83, Proceedings for Cease and Desist Orders 5.4, Operation of Pain Management Clinics.

No one signed in to present oral comments. No written comments were received. After discussion, **Ms. Southard moved, Mr. Webb seconded, and the motion passed to adopt the proposed board rule in 22 T.A.C. Chapter 187, 187.83, Proceedings for Cease and Desist Orders**

There were no items for Agenda items #29-30.

Agenda item #31, Open forum for public comments at 12:00 p.m, noon. Ms. Tamara Watts presented public comments on the licensure process.

Agenda item #2, Board member report. Ms. Blackwell presented oral comments complimenting the accomplishments of the Executive Director, Mari Robinson.

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 committee meetings during the board meeting.

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

Ms. Attebury gave a report of the Finance Committee meeting. **Ms. Attebury moved, Dr. Holliday seconded, and the motion passed to approve the Finance Committee minutes and action items.**

Ms. Southard gave a report of the Public Info/Physician Profile Committee meeting. **Ms. Southard moved, Ms. Attebury seconded, and the motion passed to approve the Public Info/Physician Profile Committee minutes and action items.**

Dr. Zeitler gave a report of the Standing Orders Committee meeting. **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the Standing Orders Committee 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. McMichael gave a report of the Disciplinary Process Review Committee. After discussion, **Ms. Southard moved, Dr. Arambula seconded, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items. The board referred Chapter 189 and 187 to the full board.**

Ms. Southard moved, Dr. Arambula seconded, and the motion passed to approve to move correct updated language out of Chapter 198 regarding Cease and Desist into Chapter 187 and to approve Chapter 187 for publication with the following changes: on the definition of a probationer remove or remedial plan; on page 26 strike everything on recommended changes after unless otherwise mentioned in the order; and on page 30 subsection (c) include the provision with the exception of subsection (b)(2) as stated above.

1. Consideration and approval of the June 3, 2011 Board Meeting Minutes. After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the June 3, 2011 Board Meeting Minutes and action items.**

There being no further agenda items, the meeting adjourned at 1:10 p.m.