



Texas Medical Board

BOARD MEETING
AUGUST 31, 2012
333 GUADALUPE, TOWER 2, SUITE 225
AUSTIN, TEXAS

The meeting was called to order on August 31, 2012 at 8:08 a.m. by Irvin E. Zeitler, Jr., D.O., Board President. Board members present were Melinda McMichael, M.D., Vice-President; Paulette Southard, Secretary/Treasurer; Michael Arambula, M.D.; Julie Attebury; David Baucom, Patricia S. Blackwell; Pat J. Crocker, D.O.; John D. Ellis, Jr., J.D.; Carlos L. Gallardo; Scott Holliday, D.O.; Margaret McNeese, M.D.; Allan N. Shulkin, M.D.; Wynne M. Snoots, M.D.; W. Roy Smythe, M.D.; Stanley S. Wang, M.D., J.D.; Manuel G. Guajardo, M.D.; Timothy Webb, J.D.; and George Willeford III, M.D., were not present. Board staff present were Mari Robinson, Executive Director; Tonie Knight, Licensure Manager; Megan Goode, Public Information and Special Projects Manager; Charles Homer, J.D., Assistant General Counsel and Sarah Tuthill, J.D., Assistant General Counsel; and various other staff.

Ms. Attebury 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 and the board discussed the appropriate demeanor for participants during conferences and hearings.

Agenda item #3, Executive Director Report. Ms. Robinson introduced and welcomed new Medical Director, Robert Bredt, M.D., who gave a brief statement.

Budget. Ms. Robinson presented the budget and stated there were enough funds to end the fiscal year in good-standing.

Texas Physician Health Program Fee Structure. Ms. Robinson reviewed the Texas Physician Health Program fee structure that covers the cost of administering the program for monitoring and exceptions.

Legislative Update. Ms. Robinson gave a brief statement on Senate Bill 7 and the role of the Institute for Health Care Quality & Efficiency Committee. Ms. Robinson was assigned to the sub-committee named building the next generation health data & information infrastructure that will create a statewide database to track claim information for healthcare provided in Texas.

Ms. Robinson gave a summary of House Bill 300 and the requirements related to Health Information Technology (HIT). The Texas Medical Board is required to assist HHSC, DSHS and TDI in rule developing, reporting to the legislature on new development in safeguarding protected health information and reviewing issues regarding security and accessibility of protected health information maintained by unsustainable covered entities. Ms. Robinson asked for direction on the recommendation of posting an FAQ on the boards website to give licensees an overview of what is expected of them relating to House Bill 300, the board had no objection to the creation of the FAQ recommendation.

Strategic Plan and LAR. Ms. Robinson reported the strategic plan being submitted for fiscal years 2013-2017 as well as the Legislative Appropriation Request (LAR) for FY 2014-15.

Internal Audit. Ms. Robinson gave a brief summary of the results and recommendations that are noted in the Internal Audit Report 2012-1 Advisory Project on the procedures to ensure human resources data security.

Scheduling Pain Management Cases. Ms. Robinson reviewed the process to schedule pain management cases with two board members.

Personnel Update. Ms. Robinson gave a brief update on the reduced number of open staff positions.

Outreach Update. Ms. Robinson reported continuing to receive positive feedback from the Outreach presentations. The presentations are scheduled by request and will continue to be scheduled through January 2013.

Federation Update. Update deferred to later in the meeting.

Agenda item #4, Medical Director Report.

MMMR Committee for DSHS update. Dr. Bredt gave a report with respect to his participation with the Maternal Morbidity & Mortality Review Committee; DSHS goal is to setup a maternal morbidity and mortality review in an effort to reduce maternal death and adverse outcome.

Expert Panelist quality update. Dr. Bredt gave an update on the Expert Panelist quality of reports and review. Dr. Bredt asked the board to provide him with any feedback in ways that may improve the quality of the Expert Panelists reports. Dr. Crocker recommended a general reminder to panelists to clearly state the reasoning of the outcome of the case. Dr. Bredt also reported on the continued effort to recruit neurosurgeons as expert panelists.

Dilute/invalid drug screens. Dr. Bredt gave a report on the options for dilute drug screens. The board was receptive to hair and nail testing and directed staff to follow-up with other sample types for dilute drug screens.

Agenda item #5, Physician Assistant Liaison Report. Dr. Wang gave a brief report on the August 3, 2012 Physician Assistant Board meeting.

Agenda item #6, Public Information Update. Ms. Hopper discussed communication with Office of the Governor concerning correspondence from Public Citizen regarding TMB activities, as well as various items in the news media concerning TMB.

Agenda item #7, Discussion, recommendation, and possible action regarding reports of Remedial Plans to the Federation of State Medical Boards. Ms. Robinson requested the board's direction regarding the reporting of remedial plans to the Federation of State Medical Boards. After discussion, the board directed staff to continue to delay reporting remedial plans to the Federation of State Medical Boards. The board directed staff to gather additional information and the potential effects and to add to the November board meeting agenda for further discussion.

Agenda item #8, Discussion, recommendation, and possible action regarding referrals to KStar. The board discussed referrals to KStar. KStar assesses competence therefore only individuals should be referred to KStar when there is a question of competence. KStar is not appropriate, if an individual is competent and violates the standard of care. The board directed staff to request clarification of the KStar recommendations.

Agenda item #9, Discussion, recommendation, and possible action regarding the new DPS controlled substances database. After discussion, the board directed staff to research the DPS requirements and who can access the DPS database. The board directed staff to research the intent of the DPS database and draft a proposed rule and FAQ to clarify the requirements for prescribing for acute or chronic pain.

Agenda item #10, Discussion, recommendation, and possible action regarding communicating with hospitals about board orders. After discussion, the board directed staff to research the consequences of adding a standard paragraph to orders and bring back to the board.

Agenda items #11-14 deferred to later in the meeting for the General Counsel to be present.

The board recessed at 10:00 a.m.

The board reconvened at 10:15 a.m.

Consent Agenda

2. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting. Dr. Crocker gave a report of the Ad Hoc Retail Clinics Committee. **Dr. Crocker moved, Ms. Southard seconded, and the motion passed to approve the Ad Hoc Retail Clinics Committee minutes and action items.**

Agenda item #16, Consideration and Approval of Modification Request/Termination

Request of Non-Public Rehabilitation Orders. After consideration, **Dr. McMichael moved, Ms. Blackwell seconded, and the motion passed to approve the Termination Granted of Rehabilitation Orders #421, #270, and #371.**

Agenda item #17, deferred to later in the meeting.

Agenda item #18, Consideration and Approval of Modification Request/Termination Request Orders. After consideration, **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the Modification Request Order for James H. Elder, III, D.O.; and the Termination Request Orders for Paul E. Barrus, D.O.; Sheila F. Calderon, M.D.; Maricela Cantu, D.O.; James Elbaor, M.D.; Rodolfo Giraldi, M.D.; Richard Hoefelmann, M.D.; and James H. Liu, M.D.**

Agenda item #19, Consideration and Approval of Mediated Settlement Agreed Orders
After consideration, **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Mediated Settlement Agreed Orders en masse for Stefan P. Thiele, M.D.; Robert Hernandez, M.D.; Robert Hernandez, M.D., Vacating Order; Seshagiri Rao, M.D.; Jerome Schrapps, M.D.; Andrew B. Small, III, M.D.; and Gerald Ray Harris, D.O.**

After discussion, **Dr. McMichael moved, Ms. Blackwell seconded, and the motion passed to approve the Mediated Settlement Agreed Order for James F. Holleman, Jr., D.O.**

Agenda item #20, deferred to later in the meeting.

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

Agenda item #23, Report on Temporary Suspensions. A report was given on the Temporary Suspension Without Notice and With Notice of Stephen H. Smith, M.D.; Temporary Suspension Without Notice of Cynthia H. Moran, M.D.; and Temporary Suspension Without Notice of Stephen Melcher, M.D.

There were no items for Agenda item #24.

Agenda item #25, Consideration and approval of Cease and Desist Orders. After consideration, **Dr. Arambula moved, Ms. Attebury seconded, and the motion passed to approve the Cease and Desist Orders for Jeanne Caillet; and John Collier, M.D.**

There were no items for Agenda items #26-30.

Agenda item #31, Consideration and Approval of Nunc Pro Tunc Orders. After consideration, **Ms. Attebury moved, Ms. Southard seconded, and the motion passed to approve the Nunc Pro Tunc Order for James Hoyt Kern, M.D.**

Agenda item #15, Consideration and Approval of Proposal for Decision at 10:30 a.m.
Larry Thirstrup, M.D., SOAH Docket No. 503-11-7462.MD. Wendy Pajak, J.D., staff attorney, was present. Larry Thirstrup, M.D. was present with Scott G. Jones, attorney. Mr. Jones

gave a presentation. Ms. Pajak gave a presentation. Dr. Thirstrup gave a brief statement. After discussion, **Dr. Arambula moved, Ms. Attebury 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 the determination of any final action is reserved to the Board and approved the staff Final Order with the modification to add quarterly visits to his counselor and add attendance at 3 weekly AA meetings with a minimum 90 day KStar, mini-residency. Tolling will not apply to KStar and mini-residency provisions, drug testing will begin if move back to Texas. *See reconsideration below.**

Agenda item #11, Discussion, recommendation, and possible action regarding Peace Officer/Concealed Carry. The Board considered the issues presented by investigators carrying a handgun while on duty as well as statutory provisions concerning carrying concealed handguns and peace officers commissioned by the board. The board directed staff to request an Attorney General's opinion as to whether the Board may issue a disclaimer allowing, but not directing, investigators to carry handguns on duty and whether, if issued, such a disclaimer would effectively shield the board from liability for incidents that might arise from investigators carrying handguns, and then report back to the board.

Agenda item #15, reconsideration. Dr. Smythe moved, Dr. Arambula seconded, and the motion passed to modify the Final Order for Larry Thirstrup, M.D., that the KStar requirement can be tolled until Dr. Thirstrup returns to Texas.

Agenda item #12, Discussion, recommendation, and possible action regarding expunction orders. Ms. Leshikar gave a brief summary of the process for expunction orders. After discussion, the board directed staff to delete respondent's information for expunction orders whether or not the Board is named.

Agenda item #13, Discussion, recommendation, and possible action regarding emeritus retired licensure status. The agenda item was deferred to next board meeting.

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

a. Chapter 163. Licensure

163.2 Full Texas Medical License

163.5 Licensure Documentation

Ms. Robinson gave a brief summary of proposed amendments to Chapter 163. No written comments were received. No one signed-in to present oral comments. After discussion, **Dr. Arambula moved, Dr. Wang seconded, and the motion passed to adopt proposed amendments to 22 T.A.C. Chapter 163. Licensure, 163.2 Full Texas Medical License, and 163.5 Licensure Documentation, for publication.**

b. Chapter 177. Business Organizations

177.17 Exceptions to Corporate Practice of Medicine Doctrine

Ms. Robinson gave a brief summary of proposed amendments to Chapter 177. Written comments were received and reviewed. No one signed-in to present oral comments. After discussion, **Dr. Arambula moved, Mr. Gallardo seconded, and the motion**

passed to adopt the proposed amendments to 22 T.A.C. Chapter 177, 177.17 Exceptions to Corporate Practice of Medicine Doctrine, for publication.

c. Chapter 187. Procedural Rules

187.18 Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance.

187.83 Proceedings for Cease and Desist Orders.

Ms. Robinson gave a brief summary of proposed amendments to Chapter 187. No written comments were received. No one signed-in to present oral comments. After discussion, **Ms. Southard moved, Dr. Arambula seconded, and the motion passed to adopt the proposed amendments to 22 T.A.C. Chapter 187. Procedural Rules, 187.18 Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance, and 187.83 Proceedings for Cease and Desist Orders, for publication.**

d. Chapter 189. Compliance Program

Ms. Robinson gave a brief summary of proposed amendments to Chapter 189. Compliance Program. No written comments were received. No one signed-in to present oral comments. After discussion, **Ms. Southard moved, Dr. Arambula seconded, and the motion passed to adopt the proposed amendments to Chapter 189. Compliance Program.**

e. Chapter 192. Office Based Anesthesia

192.1 Definitions

192.2 Provision of Anesthesia in Outpatient Settings

Ms. Robinson gave a brief summary of proposed amendments to Chapter 192. Office Based Anesthesia and recommended the rule be pulled for further review. The rule was pulled. Written comments were received and reviewed. Carla Cox, T.A.N.A., signed-in and presented oral comments.

f. Chapter 193. Standing Delegation Orders.

193.13 Non-Surgical Cosmetic Procedures

Ms. Robinson gave a brief summary of proposed amendments to Chapter 193. Standing Delegation Orders. Written comments were received and reviewed. Renee Moschitto, R.N., Suzette Smith, R.N., Louis Leichter, and Meredith Brethe, R.N., signed-in and presented oral comments. After discussion, the rule was pulled.

The board directed staff to research Informed Consent delegation, law delineation for mid-levels, make the terminology of the rule consistent with other delegation rules, and provide clarification on the federal law regarding who can use these devices and how they are used.

There were no items for Agenda items #33-34.

Agenda item #35, Forum for public comments. No one signed-in to present public comments.

The board recessed at 12:56 p.m.

The board reconvened at 1:09 p.m. A quorum was confirmed.

Agenda item #14, Consideration and possible action regarding pending litigation. Dr. McMichael moved, Dr. Arambula seconded, and the motion passed to go into Executive Session at 1:10 p.m. for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-Code. Open session resumed at 1:30 p.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #17, Consideration and possible action for Agreed Board Orders. Agreed Order #1 was pulled from the agenda. After discussion, Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for James D. Key, Sr., M.D., with the clerical correction replacing neurological with neuropsychological.

After discussion, **Dr. Wang moved, Ms. Southard seconded, and the motion passed to deny the Agreed Order for Ngoc X Nguyen, M.D., and refer to State Office of Administrative Hearings for revocation.**

Mr. Baucom was recused for consideration of order #11. After discussion, **Dr. McMichael moved, Dr. Arambula seconded, and the motion passed to approve the Agreed Order #11, with the modification to add a six month Suspension, then stay the Suspension; a Public Reprimand; the JP Exam; 8 hours of Ethics CME for three years; and a \$5,000 administrative penalty, due to seriousness of committing a felony.**

The board directed staff to add any respondents statements to orders as comments, not as facts.

After discussion, **Dr. Wang moved, Dr. Shulkin seconded, and the motion passed to approve the Agreed Order for Mark R. Fitzgerald, M.D. with the modification to the Findings of Fact #2 Specific Panel Findings; b. stop sentence after "..ambulation" and delete the rest of the sentence "to avoid."**

After discussion, **Dr. Wang moved, Dr. Arambula seconded, and the motion passed to approve the Agreed Order for #43, with the modifications to add a chart monitor for 8 cycles, due to nontherapeutic prescribing to multiple patients.**

After discussion, **Dr. Arambula moved, Mr. Gallardo seconded, and the motion passed to deny the Agreed Order for Donald Parker, M.D., and to refer to SOAH for revocation.**

After discussion, **Dr. Smythe moved, Mr. Gallardo seconded, and the motion passed to approve the Agreed Order for #58, with the modification to add a chart monitor for 8 cycles and no supervision of mid-levels.**

After discussion, **Mr. Baucom moved, Ms. Southard seconded, and the motion passed to approve the Agreed Orders en masse for** Angelis Berios, M.D.; Rosa A. Fuentes, M.D.; Mitchell K. Golden, M.D.; Laurie G. Harris, D.O.; Lisa D. Hooper, M.D.; Doris S. James, M.D.; Arnold Mech, M.D.; Robert Woodward, M.D.; Woodrow W. Coppedge, M.D.; Tu S. Dao, D.O.; Samuel S. Morgan, Jr., D.O.; Darryl Smith, M.D.; Donald W. Smith, M.D.; Stephen H. Smith, M.D.; Mark W. Swaim, M.D.; Jennifer S. Dyer, M.D.; Clarence G. Clarke, D.O.; David P. Abrams, D.O.; Royal H. Benson, III, M.D.; Clarence J. Brooks, M.D.; Defeng Chen, M.D.; Donald C. Dunlap, Jr., M.D.; Jaime R. Gomez, M.D.; Salim Gopalani, M.D.; Bruce A. Henry, M.D.; Willett J., Hickman, III, M.D.; Adnan Z. Jafri, M.D.; Kerste J. Johnson, M.D.; Nadeem A. Khan, M.D.; Richard A. Lane, D.O.; Howard Roberts, M.D.; Mark R. Rogers, M.D.; Cesar A. Sevilla, M.D.; William F. Simpson, M.D.; Ricardo B. Tan, M.D.; Christi M. Tupa, M.D.; Brian D. Wasson, M.D.; Aly K. Zarzuela, D.O.; Bernard B. Burton, M.D.; Duane L. Griffith, M.D.; Eric R. Johnson, D.O.; Minda L. Toledo, M.D.; Michael Q. Watson, M.D.; Timothy W. Anderson, M.D.; Michael Baghdoian, M.D.; Jeffry P. Mays, M.D.; Russel C. Vanbiber, III, M.D.; William Shuler, M.D.; Thomas Spera, M.D.; Mark T. Murphy, M.D.; Barbara Wojcik-Sapeta, M.D.; and Ahmed Khalifa, M.D.

Agenda item #3, Executive Director Report (continued). Federation Update. Ms. Robinson summarized a meeting of the Federation of State Medical Boards Executive Council that discussed the telemedicine movement for national licensure and different options. The board tentatively thinks the conglomerate is a good idea and directed staff to pursue this as an idea.

Agenda item #20, Consideration and Approval of Remedial Plans. After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the Remedial Plan for Kevin James, M.D., with a modification to the Conclusion of Law rules violation 164.051(A)(3) not criminal that is cited.**

Dr. Wang was recused for consideration of the remedial plans for Eric J. Giesler, M.D.; Peter Valenzuela, M.D; and #75.

After discussion, **Dr. McNeese moved, Dr. McMichael seconded, and the motion passed to approve the Remedial Plan for #75, with the modification to add a chart monitor for 8 cycles.**

Dr. Holliday was recused for consideration for Stanley Whisenant, M.D., and Dr. Scott Bartley, M.D.

After discussion, **Dr. Wang moved, Dr. Smythe seconded, and the motion passed to approve the Remedial Plan for Ernest C. Severn, D.O., with the modification to add 8 cycles of chart monitoring and include a tolling provision.**

After discussion, **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Remedial Plan for Lee M. Buono, M.D., with the modification to add the JP exam and 8 hours of ethics.**

After discussion, **Ms. Attebury moved, Dr. Arambula seconded, and the motion passed to approve the Remedial Plans en masse for** Ravinder Agusala, M.D; Carey C. Alkire, M.D.; Thomas Alston, M.D.; Maria Grace Berdayes-Bowles, D.O.; Kenneth Ray Bernal, D.O.; Francisco Javier Calica, M.D.; Wen-Li Chang, M.D.; Luis G. Echeverri, M.D.; Mohammad R. Fazel, M.D.; Maria A. Flaquer, M.D; Francis M. Gumbel, M.D.; Ahtaram M. Khan, M.D.; Savita Koolwal, M.D.; William David Kottman, M.D.; Nhi P. Le, M.D.; Richard Allen Le, M.D.; Robert L. Lee, M.D.; Msonthi Banda Levine, M.D.; Praful R. Mehta, M.D.; Julio Cesar Molina, M.D.; Norbeto Juan Carlos Montani, M.D.; James Andrew Obney, M.D.; Stephen Royce Parish, M.D.; Michael J. Pendleton, M.D.; Sujesh Sathyan Pillai, M.D.; Henry Anthony Punzi, M.D.; Teresa D. Rajala, M.D.; Engilberto J. Ramos, III, M.D.; Srinivas G. Rangu, M.D.; Sanjay Gopala Reddy, M.D.; Fernando Sanchez-Villasenor, M.D.; Imran Alam Siddiqui, M.D.; Peyton Lee Thompson, M.D.; Jonathan W. Williams, M.D.; Matthew Stephen Young, M.D.; Mohammad Yasar Zaman, M.D.; Leslie Wayne Benson, M.D., Eric T. Cancemi, M.D.; Randall J. Chee-Awai, M.D.; Robert Jay Cohen, M.D.; Cynthia L. Cotton, M.D; Sammy Lane Cox, M.D.; Hunaid Dollar, M.D.; Joseph S. Gabriel, M.D.; Eric J. Giesler, M.D.; Loyce H. Graham, M.D.; Mark S. Henderson, M.D.; Abbas Khoshdel, M.D.; Bharathi Kondur, M.D.; James M. Krause, M.D.; Jacques B. Lewis, M.D.; Yan Li, M.D.; Charles E. Longmoor, M.D.; James E. Mark, M.D.; John B. McClain, M.D.; Felix A. Olobatuyi, M.D.; Robert Alan Paul, M.D.; Charles L. Powell, M.D.; Ritesh R. Prasad, M.D.; Linda J. Roos, M.D.; David Barry Rosenfield, M.D.; Vani Shukla, M.D.; Thomas J. Sullivan, M.D.; Basti J. Thampoe, M.D.; Gonzalo Uribe-Botero, M.D.; Peter M. Valenzuela, M.D.; Keith David Vassallo, M.D.; Deborah U. Waters, M.D.; George R. West, M.D.; Stanley Whisenant, M.D.; Theresa A. Whitt, M.D.; Aly K. Zarzuela, D.O.; Scott Bartley, M.D.; Screven T. Edgerton, M.D.; John Faillace, M.D.; John H. Frierson, M.D.; Anjali Jain, M.D.; George M. Lowry, M.D.; Lawrence D. Lyford, M.D.; Hormazd B. Sanjana, M.D.; Harold K. Smith, M.D.; Madhavilatha Vuppali, M.D; Sudheer Kaza, M.D.; Theodore P. Roeser, M.D.; Carl L. Russell, M.D.; Patricia K. Watson, M.D.; and Chundar Tsai, M.D.

Consent Agenda

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

1. Consideration and approval of the June 8, 2012 Board Meeting Minutes. Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the June 8, 2012 Board Meeting Minutes and action items.
2. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.

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

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

Dr. Zeitler gave a report of the Executive Committee meeting. **Dr. Zeitler moved, Dr. McMichael 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.**

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

There being no further agenda items, the meeting adjourned at 2:32 p.m.