



Texas Medical Board

BOARD MEETING

AUGUST 29, 2014

333 GUADALUPE, TOWER 2, SUITE 225

AUSTIN, TEXAS

The meeting was called to order on August 29, 2014 at 8:03 a.m. by Irvin E. Zeitler, Jr., D.O., Board President. Board members present were Michael Arambula, M.D., Vice-President; Paulette Southard, Secretary/Treasurer; Julie Attebury; David Baucom; Carlos L. Gallardo; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Robert B. Simonson, D.O.; Karl W. Swann, M.D.; Stanley S. Wang, M.D. John D. Ellis, J.D.; Allan Shulkin, M.D.; Wynne Snoots, M.D.; Timothy Webb, J.D.; and George Willeford, III, M.D., arrived a few minutes after roll call. Devinder S. Bhatia, M.D.; Frank S. Denton; Manuel G. Guajardo, M.D., were not present. Board staff present were Mari Robinson, J.D., Executive Director; Robert Bredt, M.D., Medical Director, Scott Freshour, J.D., General Counsel; Tonie Knight, Licensure Manager; and Megan Goode, Governmental Affairs & Communications Manager, and various other staff.

Agenda item #1, Mission Statement. Dr. Arambula 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 thanked the board and staff for their hard work and dedication to the agency's mission. Ms. Robinson presented a board resolution and plaque to Dr. Zeitler for his extensive years of service to the Board as a District Review Committee member and Board member.

Agenda item #3, Executive Director Report.

Budget. Ms. Robinson gave a budget update.

Legislative Update. Ms. Robinson gave an overview of the Legislative Appropriations Request including the exceptional item requests for FY 16-17 submitted. An update on Sunset Advisory Commission recommendations on DSHS was given; the agency is in the initial process of estimating the amount of staff and funding needed in the event four licensing groups including: Medical Physicists, Medical Radiologic Technologists, Perfusionists and Respiratory Care Practitioners are transferred to the Texas Medical Board.

An update on an Interim Charge hearing related to prescription drug abuse & Texas prescription monitoring program was given.

Ms. Robinson gave an update on the Licensure Compact and hospital reporting.

Outreach Update. Ms. Robinson provided an updated outreach presentation schedule; outreach will not be given during the months of February – May due to legislative session. An update on the FSMB grant opioid prescribing seminars was given.

ISC Quarterly Quality Staff Meeting. Ms. Robinson informed the Board of a new process – a quarterly staff quality meeting related to Informal Settlement Conferences. The process will ensure the quality of the hearings; staff will monitor the ISC reports and ISC's, any issues of concern that may relate to quality, training, process changes that need to occur will be discussed every quarter. Board members were encouraged to provide input/concerns related to ISC's to staff for purposes of these meetings.

Agenda item #4, Medical Director Report.

Expert Panelist Training Update. Dr. Bredt gave an update of additional expert panelist training to be held in December.

Agenda item #5, Discussion, recommendation, and possible action relating to felony convictions and sanctions. After discussion, **the Board directed staff to defining moral turpitude in the guide presented.**

Agenda item #6, Public Information Update. Ms. Goode and Mr. Schneider gave an update on topics included in the most recent TMB bulletin and provided statistics of the TMB website.

Agenda item #7, Medical Board/Physician Assistant Liaison update. Dr. Wang gave an update of the August 1, 2014 Physician Assistant Board meeting. Based on the qualitative improvement between both boards the Medical Board/Physician Assistant Liaison program will be discontinued.

Agenda item #8, Discussion, recommendation, and possible action relating to the use of zohydro. Mr. Blech presented possible elements that could be included in a Texas Medical Board rule addressing the prescription of extended release of hydrocodone products manufactured without tamper proof features. After discussion, **the Board directed staff to send the presented letter, coordinate with the Pharmacy Board as to their position on this matter, and proceed with rulemaking process.**

Agenda item #9, Discussion, recommendation, and possible action relating to the use of telemedicine. After discussion, **the Board directed staff to convene the Telemedicine Stakeholder's group to discuss and receive feedback on the current state of telemedicine and discuss the possibility of updating the current telemedicine board rule to parallel with**

today's technology. The focus was to be directly on behavioral health services provided by telemedicine, due to problems with federal laws related to prescribing schedules drugs. In addition, direction was to include several telemedicine companies as stakeholders.

Agenda item #10, Consideration and possible action regarding pending litigation. Dr. Arambula moved, Dr. McNeese seconded, and the motion passed to go into Executive Session at 9:04 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-client privilege under the authority of the Open Meetings Act Section 551.071, Government Code. Open session resumed at 9:14 a.m. and it was announced that no action was taken. A certified agenda was made.

Mr. Freshour gave a brief summary of a settlement offer tendered in a civil proceeding related to Alireza Atef-Zafarmand, MD. After discussion, **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to accept the settlement offer in the matter of Alireza Atef-Zafarmand.**

Mr. Freshour provided the board members with an update concerning current litigation involving the board.

The board recessed at 9:19 a.m.

The board reconvened at 9:33 a.m.

Agenda item #11, at 9:30 a.m., Discussion, recommendation, and possible action regarding the adoption of proposed amendments to 22 Texas Administrative Code:

§193.17 Nonsurgical Medical Cosmetic Procedures

Mr. Freshour gave a brief summary. No written comments were received. Oral comments were given. After discussion, **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to adopt 22 Texas Administrative Code §193.17, Nonsurgical Medical Cosmetic Procedures, as published in the Texas Register.**

Agenda item #12, at 10:00 a.m., Consideration and approval of Proposal for Decisions for:

- 1. Shayna Lee, M.D., SOAH #503-13-5971. MD. Barbara Jordan, J.D., staff attorney was present. Dr. Lee was present. Lori C. Gray, J.D., participated by phone, representing Dr. Lee. Ms. Jordan gave a presentation. Ms. Gray gave a presentation. Dr. Lee presented oral comments. Ms. Jordan gave a brief rebuttal presentation. After discussion, Mr. Denton moved, Mr. Baucom seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, and approve the suggested Final Order filed by Board staff for revocation.**

2. **George R. Smith, Jr., M.D., SOAH #503-14-0148. MD.** Christopher Palazola, J.D., staff attorney was present. Dr. Smith was present. Louis Leichter, J.D., appeared representing Dr. Smith. Mr. Palazola gave a presentation. Mr. Leichter gave a presentation. Dr. Smith presented oral comments. Mr. Palazola gave a brief rebuttal presentation. After discussion, **Mr. Baucom moved, Mr. Webb seconded, to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, and approve the suggested Final Order filed by Board staff for revocation. A hand vote was taken, and the motion failed. Dr. Simonson, Mr. Ellis, Dr. Snoots, Ms. Attebury, Dr. Guajardo, Dr. Willeford, Dr. Holliday, and Mr. Denton voted against the motion.**

Dr. Willeford moved, Dr. Snoots seconded a motion to adopt Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for George R. Smith, Jr., M.D., to adopt a Final Order with the following terms: probate revocation, required to permanently surrender his DEA/DPS registrations that allow the prescribing of controlled substances, permanently be restricted from delegating prescriptive authority to or supervising midlevel providers, to monitor his practice on a quarterly basis, that he appear before the Board annually, the order may not be modified or terminated.

Mr. Denton moved, Ms. Southard seconded, and the motion passed to approve an amendment to include the public reprimand, a \$5,000 administrative penalty.

After discussion, a hand vote was taken and the motion passed to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision, and to adopt a Final Order that requires that Dr. Smith's license be revoked, but that the revocations be stayed and that he be with a publicly reprimanded, required to permanently surrender his DEA/DPS registrations that allow the prescribing of controlled substances, permanently be restricted from delegating prescriptive authority to or supervising midlevel providers, to monitor his practice on a quarterly basis, that he appear before the Board annually, and that he pay a \$5,000 administrative penalty. Dr. Wang, Mr. Baucom, Mr. Webb, Ms. Southard, Dr. Arambula, Dr. McNeese, and Dr. Swann voted against the motion.

3. **Robert L. Jimenez, M.D., SOAH #503-12-8055. MD.** Christopher Palazola, J.D., staff attorney was present. Robert L. Jimenez, M.D. was not present. Ace Pickens, J.D. appeared representing Dr. Jimenez. Mr. Palazola gave a presentation. Mr. Pickens gave a presentation. After discussion, **Mr. Denton moved, Dr. Arambula seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the**

Proposal for Decision, and approve of Law recommended by the Administrative Law Judge in the Proposal for Decision, and approve the suggested Final Order filed by Board staff to dismiss the complaint filed against Robert L. Jimenez, M.D. Dr. Wang opposed to the motion.

- 4. Donald R. Parker, M.D., SOAH #503-13-3781.** Christopher Palazola, J.D., staff attorney was present. Donald R. Parker, M.D., did not appear and no one appeared representing Dr. Parker. After discussion, **Ms. Attebury moved, Mr. Webb seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision and the staff's suggested Final Order for revocation of the license of Donald R. Parker, M.D.**
- 5. Ralph Arnold Smith, Jr., M.D., SOAH #503-14-1030.** Christopher Palazola, J.D., staff attorney was present. Ralph Arnold Smith, Jr., M.D., did not appear and no one appeared representing Dr. Smith. After discussion, **Dr. Arambula moved, Ms. Attebury seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision and the staff's suggested Final Order for revocation of the license of Ralph Arnold Smith, Jr., M.D.**

The board recessed at 11:30 a.m.

The board reconvened at 11:43 a.m.

Agenda item #34, at 11:30 a.m., Discussion, recommendation, and possible action regarding the adoption of proposed amendments and rule review to 22 Texas Administrative Code:

§163.6(f) Examinations Accepted for Licensure

Ms. Pajak gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Dr. Wang moved, Dr. McNeese seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §163.6 (f), Examinations Accepted for Licensure, as published in the Texas Register.**

§182.8 Expert Physician Reviewers

Ms. Tuthill gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Dr. Wang moved, Ms. Southard seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §182.8 Expert Physician Reviewers, as published in the Texas Register.**

§187.5 NPDB Reporting

Ms. Pajak gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Ms. Southard, Dr. Wang seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §187.5 NPDB Reporting, as published in the Texas Register.**

§195.2 Certification of Pain Management

Ms. Tuthill gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Ms. Southard, Dr. Wang seconded, and the motion passed to adopt the proposed amendments and rule review for 22 Texas Administrative Code §195.2 Certification of Pain Management, as published in the Texas Register.**

There were no items for Agenda item #35.

Agenda item #36, Discussion, recommendation, and possible action regarding adoption of proposed rule changes to 22 T.A.C. Chapter 185, Physician Assistants.

§185.7. Temporary License

§185.28. Emeritus retired status

Ms. Tuthill gave a brief summary of proposed amendments to Chapter 185. No written comments were received. No one signed in to present oral comments. After discussion, **Dr. Wang moved, Dr. Simonson seconded, and the motion passed to adopt proposed amendments to 22 T.A.C. Chapter 185, Physician Assistants, §185.7. Temporary License; and §185.28. Emeritus retired status, as recommended by the Physician Assistant Board.**

Agenda item #30, Report on the Enforcement Stakeholder Group meeting regarding rules under 192 related to office-based anesthesia. Ms. Robinson gave a report on the Enforcement Stakeholder Group meeting regarding issues of concern related to office-based anesthesia encountered during inspections of physicians registered with the Board as providing office-based anesthesia services. After discussion, **as relates to EMS Transfer Agreements and Emergency plans the Board directed staff to include in board rule 192, the requirement that those operating surgeons who do not practice in counties with 9-1-1 call system capability supported by EMS providers licensed at the ALS level must enter into transfer agreements with a local licensed EMS provider or accredited hospital-based EMS for purposes of transferring patients to a hospital in case of an emergency; and to include a term relating to the practices requirement to have a specific plan for securing a patient's airway pending EMS transfer to the hospital. As relates to Lipid Emulsion stocking requirements the Board directed staff to make necessary changes to reflect the feedback received from stakeholders to include clarification related to tumescent anesthesia. As relates to Mobile Anesthesia Services the Board directed staff to draft a rule based on the feedback received from stakeholders and continue rulemaking process.**

Agenda item #31, Report on Electronic Medical Records Stakeholder Group meeting. Ms. Robinson gave a report of the Ad Hoc Electronic Medical Records Committee and Stakeholder group meeting regarding Rule 165.1.

Agenda item #37, at 12:00 p.m. Open forum for public comments. No one signed in to present public comments during the Open Forum.

The board recessed at 12:20 p.m.

The board reconvened at 12:48 p.m.

Agenda item #32, Nomination and election of Board Vice-President. Dr. Zeitler requested nominations for the position of Board Vice-President. Dr. Holliday nominated Dr. Willeford for Board Vice-President, **Dr. McNeese moved, Mr. Webb seconded and the motion passed by acclamation to approve Dr. Willeford as Board Vice-President.**

Agenda item #13, Consideration and approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders. After consideration, **Dr. McNeese moved, Mr. Webb seconded, and the motion passed to approve the Modification Granted of Rehabilitation Order #589 and the Termination Granted of Rehabilitation Order #579.**

Agenda item #14, Consideration and approval of Modification Request/Termination Request Orders. After consideration, **Dr. Arambula moved, Ms. Attebury seconded, and the motion passed to approve the Termination Granted Orders for: Jerel R. Biggers, D.O.; Gary M. Horndeski, M.D.; Scott H. Hung, M.D.; Steven B. Inbody, M.D.; Kenneth I. Licker, M.D.; Ira O. Murchison, M.D.; Fulgencio Salinas, M.D.; and Mark R. Rogers, M.D.; and the Modification Granted Orders for: Gregory Cartwright, M.D.; Walid H. Hamoudi, M.D.; Charles E. Longmoor, M.D.; and the Termination Denied for William James Rea, M.D.**

Agenda item #15, Consideration and possible action for Agreed Board Orders. Dr. Wang was recused for consideration of Paul E. Stoufflet, M.D.

After discussion, **Ms. Southard moved, Dr. Wang seconded, to approve Agreed Order #30 with the inclusion of 8 cycles of chart monitoring. The motion failed.**

After consideration, **Ms. Attebury moved, Mr. Webb seconded, and the motion passed to approve the following Agreed Board Orders en masse for: William R. Francis, Jr., M.D.; Maria D. Reyes-Aguero, S.A.; Philip M. Cantu, M.D.; Laurence W. Cunningham, D.O.; Klemens E. Gustafson, M.D.; Joyce T. Hohn, M.D.; Jason Hughes, M.D.; Jack C. Smith, III, M.D.; Stephen N. Fisher, M.D.; Gary G. Gansert, M.D.; Gene C. Tu, M.D.; Maged Amine, M.D.; Heliodoro Boone, M.D.; Robert M. Bowers, M.D.; Theodore E. Okechuku, M.D.; Charles L. Poteet, Jr., M.D.; Mario Quintanilla, M.D.; Mark E. Quiring, M.D.; Douglas E. Thompson, M.D.; Gary N. Butka, M.D.; William E.**

Skiba, M.D.; Paul E. Stoufflet, M.D.; Donald Washington, Jr., M.D.; Oscar De Leon, M.D.; Tariq Mahmood, M.D.; Normandy Medical, PA & Holland Medical Clinic; Jose A. Robles, M.D.; Juan T. Santos, M.D.; David Casey, M.D.; Paul S. Crandall, M.D.; Jose L. Porras, M.D.; Muhammad A. Khan, M.D.; and Gregory N. Messer, D.O.

Agenda item #16, Consideration and approval of Mediated Settlement Agreed Orders. After discussion, **Dr. Wang moved, Dr. McNeese seconded, to deny the Mediated Settlement Agreed Order for Suzanna O. Cruz, M.D. and refer the case to the State Office of Administrative Hearings for revocation, a hand vote was taken, and the motion passed.**

After consideration, **Dr. Arambula moved, Dr. McNeese seconded, and the motion passed to approve the following Mediated Settlement Agreed Orders en masse for: Wayne Hey, D.O.; and James D. Jackson, Jr., M.D.**

Agenda item #17, Consideration and approval of Remedial Plans. After discussion, **Dr. Wang moved, Dr. Willeford seconded, and the motion passed to change Remedial Plan #28 into an Agreed Order with the same terms drafted in the presented Remedial Plan.**

After consideration, **Ms. Attebury moved, Ms. Southard seconded, and the motion passed to approve the following Remedial Plans en masse for: Martha G. Cano, M.D.; Poornima Chadlawada, M.D.; James W. Choi, M.D.; Stephen W. Farnes, M.D.; Fariborz Gorouhi, M.D.; Nathan W. Hales, M.D.; Mohammad A. Haque, M.D.; Nashaat B. Ibraheim, M.D.; Katherine M. Jew, M.D.; Robert J. Laningham, M.D.; Brent L. Pennington, M.D.; Rahul Prakash, M.D.; Hina F. Siddiqui, M.D.; Joseph S. Spindler, M.D.; Joe B. Wilkinson, M.D.; John C. Womble, M.D.; Luis A. Batres, M.D.; Carl R. Jones, D.O.; Whitney Mascorro, M.D.; Arun D. Patel, M.D.; Vinodkumar T. Patel, M.D.; Samuel Serna, M.D.; Paul H. Wright, M.D.; Khosrow Zolfoghary, M.D.; Richard F. Eller, M.D.; Carlos R. Herrera, M.D.; Deana J. Prescott, M.D.; L.E. Richey, M.D.; Rachel R. Robinson, M.D.; Devinder S. Bhatia, M.D.; Puskoor Kumar, M.D.; Salim Mathew, M.D.; and Razaali Razak, M.D.**

Agenda item #18, Consideration and approval of Agreed Cease and Desist Orders. After consideration, **Ms. Southard moved, Mr. Webb seconded, and the motion passed to approve the following Agreed Cease and Desist Orders en masse for: Bryan C. Hasse, APN, D.C.; Dulce Jimenez; and Denise Lorenzen.**

There were no items for Agenda item #19.

Agenda item #20, Consideration and approval of Nunc Pro Tunc Orders. After consideration, **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Nunc Pro Tunc Order for Jerry M. Keepers, M.D.**

There were no items for Agenda items #21-24.

Agenda item #25, Report of Suspensions by Operation of Law. A report was given on the Suspensions by Operation of Law.

Agenda item #26, Report on Cease and Desist Orders approved by Executive Director. A report was given on the Cease and Desist Orders approved by Executive Director.

Agenda item #27, Report on Temporary Suspensions. A report was given on the Temporary Suspensions.

Agenda item #28, Report on Automatic Orders. A report was given on the Automatic Orders.

Agenda item #29, Report on Motions for Rehearing. A report was given on the Motions for Rehearing.

Agenda item #33, Discussion, recommendation, and possible action regarding proposed amendments and rule review to 22 Texas Administrative Code for possible publication:

§166.2 Continuing Medical Education

Ms. Tuthill gave a brief summary of proposed amendments. After discussion, **Dr. Wang moved, Mr. Webb seconded, and the motion passed to approve proposed amendments to 22 T.A.C. Chapter 166. Physician Registration, §166.2 Continuing Medical Education for publication.**

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

1. Consideration and approval of the June 27, 2014 Board Meeting Minutes. **Dr. McNeese moved, Mr. Webb seconded, and the motion passed to approve the June 27, 2014 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. McNeese gave a report of the Disciplinary Process Review Committee meeting. **Dr. McNeese moved, Dr. Wang 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. **Dr. Arambula moved, Mr. Webb seconded, and the motion passed to approve the Licensure Committee minutes and action items.**

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

Dr. Snoots gave a report of the Electronic Records and Communication Ad Hoc Committee. **Dr. Snoots moved, Ms. Attebury seconded, and the motion passed to approve the Electronic Records and Communication Ad Hoc Committee meeting minutes with the revisions specified and action items.**

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

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

Agenda item #38, Adjourn, Ms. Attebury moved, Mr. Webb seconded, and the motion passed to adjourn the meeting at 2:15 p.m.