

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

October 28, 2010

The meeting was called to order at 10:58 a.m. on October 28, 2010 by Chair, Michael Arambula, M.D. Committee members present were Jose M. Benavides, M.D., John D. Ellis, Jr., James Scott Holliday, D.O., Wynne M. Snoots, M.D., Paulette B. Southard, and Timothy Webb, J.D.

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

Item 2a - Request of physician for activation of canceled physician licenses There were none.

Item 2b - Request of physician to return to Active Status from Texas Retired Status There were none.

Agenda Item 3

Item 3a - Applicants for pain management clinic certification -

Luis E. Zepeda, M.D., appeared after having been referred to the Committee for a determination of eligibility on certification for a pain management clinic.

Dr. Holliday moved, Ms. Southard seconded, that the Committee close the meeting to the public and continue in Executive Session for private consultation and advice of counsel. **The motion passed.**

Dr. Arambula announced that the meeting would be closed for deliberations at 11:17 a.m. 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 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.

The Executive Session ended at 11:30 a.m.

Following discussion, **Ms. Southard moved that the Committee recommend to the full board that Dr. Zepeda be determined ineligible to own, operate or work in a pain management clinic.** The recommendation is due to the fact that Dr. Zepeda was previously under a disciplinary order with the Board for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying,

or selling a controlled substance, which makes him ineligible to own, operate, be employed by, or contract with a pain management clinic. **Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Dr. Holliday 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 11:40 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.

The Executive Session ended at 4:08 p.m.

Item 3b 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. Physician Licensure and Physician in Training Permit applicants

Applicant #580 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 license. Dr. Benavides 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, **Dr. Benavides moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a medical license subject to the following conditions: restriction to a group/institutional setting practice setting approved by the Executive Director for a period of two years.** This recommendation is due to action taken by a health care entity related to unprofessional conduct or professional incompetence likely to harm the public and time out of the active practice of medicine. Factors contributing to this

recommendation include applicants failure to actively practice medicine since 2004, and disciplinary action including placement on academic probation on more than one occasion and requirement that the applicant repeat a year of training due to issues regarding academic performance, poor interpersonal and communication skills, and lack of respect for authority. Mitigating factors include completion of KSTAR evaluation and residency indicating readiness to return to the practice of medicine and applicants efforts to improve interpersonal skills. **Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #713 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 applicant be granted subject to the following conditions: completion of 5 hours of continuing medical education (CME) in medical record keeping and 5 hours of CME in ethics within one year. This recommendation is due to disciplinary action by a health care entity due to unprofessional conduct or unprofessional conduct likely to harm the public and violation of federal and state laws related to confidentiality of patient records.** Factors contributing to this recommendation include while in residency training in 2006, applicant was warned regarding unprofessional conduct with colleagues and then dismissed from the program in 2008 for taking patient charts home and making alterations. Mitigating factor includes that applicant has subsequently undergone additional training with good evaluations. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #1015 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 #1018 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 applicant be denied relicensure.** This recommendation is due to a felony conviction, disciplinary action by other state licensing boards including cancellation for cause and suspension for cause, disciplinary history with TMB and time out of the active practice of medicine. Factors contributing to this recommendation include the applicants conviction of prescription fraud in 2001 for which the applicant was sentenced to one year imprisonment and one year supervised release; applicants surrender of California medical license in 1997 in lieu of further investigation and subsequent cancellation of said license; applicants previous discipline (public reprimand and administrative penalty) by the TMB in 1998

based on failure to report a malpractice settlement, surrender of California license, and false statement on licensure renewal application; applicants Utah license was also suspended in 1999 and subsequently stipulation agreement was signed in 2003 agreeing to certain conditions that were outlined in the suspension order should the applicant ever apply for relicensure in Utah; and the applicant has not actively practiced medicine since 1999. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #1027 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 the applicant be granted an unrestricted license. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1028 appeared, with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Snoots 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 #1029 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Snoots moved to recommend to the full Board that the applicant be granted an unrestricted license. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #1034 appeared 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 the applicant be granted an unrestricted license. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #1035 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 applicants request for relicensure be granted. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1040 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**

applicant be granted an unrestricted license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.

Applicant #1041 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 applicant be determined ineligible for licensure.** This recommendation is due to: conviction for a felony; failure to practice medicine in an acceptable professional manner consistent with public health and welfare; disciplinary action by another state board including cancellation for cause; disciplinary action by a health care entity due to unprofessional conduct or professional incompetence likely to harm the public; repeated or recurring meritorious health care liability claims that are evidence of professional incompetence likely to injure the public; and unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public. Factors contributing to this recommendation include: Felony conviction for health care fraud in 2001 resulting in a three-year probation and other terms including the surrender of applicants Texas, New York and New Jersey medical licenses and DEA license; and negligence in four medical malpractice cases resulting in patient harm. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #1042 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 a physician in training permit. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #1043 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. Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #1046 appeared 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 the applicant be granted an unrestricted license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #1048 appeared before the Committee, in executive session, on appeal of the Executive Directors determination. In open session, **Mr. Ellis moved to recommend to the full Board that**

applicant be granted a Physician-in-Training permit 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 #1051 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 determined ineligible for a Physician in Training permit.** This recommendation is due to action taken by a health care entity due to unprofessional conduct or professional incompetence likely to harm the public and unprofessional or dishonorable conduct likely to deceive, defraud or injure the public. Factors contributing to this recommendation include two boundary violations with other medical staff resulting in applicants resignation in 2008 from the training program while under investigation. Prior to this time, applicant was licensed in other country and had reported having sexual relationships with other patients and medical staff. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #1055 appeared before the Committee, in executive session, on appeal of the Executive Directors determination of ineligibility. In open session, **Mr. Ellis moved to recommend to the full Board that the applicant be determined ineligible for due to applicants failure to pass an acceptable exam for licensure within the required number of attempts.** Mr. Turner seconded the motion. All voted in favor. The motion passed.

2. Acudetox certification applicants There were none.
3. . Surgical assistant licensure applicants There were none.

Item 3c Applicants appearing for rehearing concerning eligibility There were none.

Item 3d Proposed orders offered by the Executive Director.

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

Item 3e Applicants determined by staff to meet eligibility requirements.

1. Physician Licensure Applicants - There were 76 applicants who met all requirements to be considered for permanent licensure by the full Board. **Dr. Benavides moved to recommend to the full Board that all 76 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 six applicants who met all requirements to be considered for acudetox certification by the full Board. **Mr. Turner moved to recommend to the full Board that all 6 applicants determined to meet eligibility requirements by staff be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**
3. Surgical assistant licensure applicants - There were three surgical assistant applicants to be considered for approval. **Mr. Turner moved to recommend to the full Board that all 3 surgical assistant applicants determined to meet eligibility requirements by staff be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Item 4a Requests for Rehearing

Applicant #969s request for rehearing was considered. Mr. Turner moved to deny the applicants request for a rehearing based on the failure to submit new information. Dr. Holliday seconded the motion. All voted in favor. The motion passed.

Applicant #998s request for rehearing was considered. Dr. Snoots moved to deny the applicants request for a rehearing based on the failure to submit new information. No one seconded the motion. Dr. Snoots withdrew the motion. Dr. Snoots moved to grant the applicants request for a rehearing based on the submission of new information. Ms. Southard seconded the motion. All voted in favor. The motion passed.

Item 4b Request for Waiver of Acupuncture License Requirements There were none.

Agenda Item 5 Discussion, recommendation and possible action regarding **unsigned orders from previous meetings** - Ms. Garanflo presented a report on the six orders offered by the Licensure Committee at the August, 2010 meeting. Five were resolved. One applicant elected to work with the PHP towards a resolution.

Agenda Item 6 Report on physician licensure statistics. Ms. Garanflo presented the final FY 10 statistics. 3,522 licenses were issued in an average of 36 days. That is the second highest number of physician licenses issued in one year. 4,218 physician licensure applications were received, exceeding last years record 4,094 applications. Ms. Garanflo also presented the committee statistics on the Licensure Divisions other activities for FY 10, including issuance and registration of physician assistant and acupuncturist licenses, physician in training permits and various other permits. The committee members conveyed their compliments to the staff.

Agenda Item 7 - Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration There were none.

Agenda Item 8a - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Applicants for initial certification. There were five applications for initial certification as a Nonprofit Health Organization for approval. **Dr. Benavides moved to recommend to the full board that the requests for initial certification as a Nonprofit Health Organization be approved. Mr. Webb seconded. All voted in favor and the motion passed.**

Agenda Item 8b - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Requests for biennial recertification - There were 62 applications for biennial recertification as a Nonprofit Health Organization for approval. **Dr. Benavides moved to recommend to the full board that the requests for biennial recertification as a Nonprofit Health Organization be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Agenda Item 8c - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Cancellation of organizations certified as Nonprofit Health Organizations. There were two requests for cancellation of organizations certified as Nonprofit Health Organizations. **. Mr. Webb moved to recommend to the full board that the requests cancellation be approved. Ms. Southard seconded. All voted in favor and the motion passed.**

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

- a. 22 TAC 163.13 Expedited Licensure Process

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

b. 22 TAC 171.2 Construction

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

c. 22 TAC 171.5 Duties of PIT Holders to Report

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

Agenda Item 12 - Discussion, recommendation, and possible action regarding policy and procedure for board approval of office-based anesthesia CME courses. Ms. Garanflo advised the Committee that the Board has received an inquiry from a provider regarding approval of courses to meet the requirement that at least two persons in such settings maintain current competency in basic life support. The committee directed staff to request information from the provider including a course outline; information about course faculty, education, and experience; whether the course is approved by other state licensing boards or entities; whether there is a graded examination at the conclusion of the course to demonstrate proficiency; the delivery method of the course, i.e., in person, web-based, etc.; and, how the course compares to ACLS training.

Agenda Item 10 - Discussion, recommendation, and possible action regarding cancellation notices. Ms. Garanflo advised the committee that the cost to send cancellation notices by certified mail was prohibitive. Ms. Garanflo further advised the committee that the board did not have the authority to assess an additional fee to cover the cost of using certified mail for cancellation notices.

Agenda Item 11 - Discussion, recommendation, and possible action regarding applicants for pain management clinic registration as it relates to enforcement. Ms. Leshikar addressed the issue of pain management clinic registrations in cases of physicians who have been offered Agreed Orders based on conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance which have not been accepted by the respondents. She advised the committee that requests in such cases cannot be denied or rescinded until a disciplinary action is administratively final or the physicians license has been temporarily suspended.

Agenda Item 13 - There being no further business, Dr. Arambula adjourned the meeting at 5:00 p.m.