



Texas Medical Board

BOARD MEETING

FEBRUARY 10, 2012

333 GUADALUPE, TOWER 2, SUITE 225

AUSTIN, TEXAS

The meeting was called to order on February 10, 2012 at 8:02 a.m. by Board President Irvin E. Zeitler, Jr., D.O. 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.; Manuel G. Guajardo, M.D.; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Allan N. Shulkin, M.D.; W. Roy Smythe, M.D.; Stanley S. Wang, M.D., J.D.; Timothy Webb, J.D.; and George Willeford III, M.D. Carlos Gallardo and Wynne M. Snoots, M.D., were not present. Board staff present were Mari Robinson, Executive Director; Linda Gage-White, M.D., Medical Director; Nancy Leshikar, J.D., General Counsel; Tonie Knight, Licensure Manager; Megan Goode, Public Information and Special Projects Manager; Jennifer Kaufman, Assistant General Counsel; and various other staff.

Dr. Zeitler welcomed new board member, W. Roy Smythe, M.D. Dr. Smythe 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. The board members were encouraged to attend the Federation of State Medical Board's annual meeting in April.

Agenda item #3, Executive Directors Report.

Budget update. Ms. Robinson gave a brief update that the budget is in good standing to end the year on target.

Public Outreach update. Ms. Robinson reported the Public Outreach projects are on track to offer societies, schools, and hospitals outreach presentations with possible Category I Continuing Medical Education.

Personnel update. Ms. Robinson reported there are several open posted staff positions.

Annual Financial Reports. Ms. Robinson presented the Addendum A, Report on Complaints Received and Complaint Disposition for Fiscal Year 2011, and Addendum B, Report Investigations Pending Over One-Year for Fiscal Year 2011.

Number of ISC dates vs. number of cases per day. Ms. Robinson reported on the number of informal settlement cases scheduled per day versus the number of ISC dates. After discussion, the board directed staff to continue to schedule six to eight cases per day and look into splitting the schedule for members serving by audio/video. Ms. Robinson reported the need for board members to serve approximately 10-15 days per year on Informal Settlement Conferences panels and SOAH mediations. The board directed staff to remind the Quality Assurance Panel to note if a case appears to be lengthy when scheduling.

Legislative update. Ms. Robinson provided a status report of the implementation of key legislative provisions and requirements.

The remainder of the Executive Director's report was deferred to later in the meeting.

Agenda item #4, Medical Directors report.

Panelist/reviewer recruiting. Dr. Gage-White reported that forty-one physician panelists were recruited in the last six months. She stated the experts were working to resolve the backlog of cases. In addition, fifty-four physician assistants responded to the request for expert panelists for the Physician Assistant Board.

Panelist/reviewer orientation. Dr. Gage-White reported receiving positive feedback from the panelists on the panelist orientation training that is available online.

OMFS Licensing update. Dr. Gage-White gave an report on the process of licensing oral and maxillofacial surgeons.

After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 8:46 a.m. for deliberations concerning disciplinary action, investigative information, peer review information, and rehabilitation orders under the authority of The Medical Practice Act Sections 152.009, 160.006 through .008, 164.007(c), and 164.202 & .203, Occupations Code.** Open session resumed at 9:11 a.m. and it was announced that no action was taken. A certified agenda was made.

FSMB. Dr. Gage-White reported on the value of attending the Federation of State Medical Board meetings and announced her nomination to the Board of Directors for the Federation.

Ms. Robinson gave a follow-up report on the shortage of neurosurgeon expert panelists.

Agenda item #5, Discussion, recommendation, and possible action regarding autopsy consent form per HB 1009. Dr. Gage-White presented an autopsy consent form per HB1009 with suggested revisions. After discussion, **Ms. Southard moved, Dr. Crocker seconded, and the motion passed to recommend the revised autopsy consent form with the addendum to the Texas Department State Health Services.**

Agenda item #6, Discussion, recommendation, and possible action regarding physicians texting orders. Ms. Kaufman summarized the question of physicians texting orders. After discussion, the board agreed with the Joint Commission's position statement on physicians texting orders and that it is not acceptable for physicians to text orders due to potential HIPAA violations, medical record concerns, and potential problems regarding verification of sender's and patient's identity. The board directed staff to post an article in the newsletter that until technology improves and can verify the identity of the sender it is not acceptable for physicians to text orders.

Agenda item #7, Discussion, recommendation, and possible action regarding Peace Officer/ Concealed Carry. The board discussed concerns for staff investigators' safety. After discussion, the board directed staff to draft a policy for concealed carry for Investigators and Compliance Officers.

Agenda item #8, Consideration and possible action regarding pending litigation. Dr. McMichael moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 9:28 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 9:44 a.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #9, Consideration and Approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Modification Granted of Rehabilitation**

Order #562; Modified Agreed Rehabilitation Order #644; and Termination Granted of Rehabilitation Orders #357, 412, 444, and 658, as written.

Agenda item #10, Consideration and possible action for Agreed Board Orders. After discussion, **Dr. Shulkin moved, Ms. Blackwell seconded, and the motion passed to approve the Agreed Board Order for #01, with the modification that Respondent cannot reapply for a DEA certificate until coming back before the board for approval, due to concerns of over prescribing.**

After discussion, **Dr. Arambula moved, Dr. McNeese seconded, and the motion passed to approve the Agreed Order for #04, with the modification that respondent cannot reapply for DEA license until coming back before the board, due to concerns of supervision.**

After discussion, **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for #17, with the modification to remove the Conclusion of Law #3, which was in error.**

Dr. McMichael moved, Ms. Southard seconded a motion to go into Executive Session at 10:24 a.m. for deliberations concerning disciplinary action, investigative information, peer review information, and rehabilitation orders under the authority of The Medical Practice Act Sections 152.009, 160.006 through .008, 164.007(c), and 164.202 & .203, Occupations Code. Open session resumed at 10:39 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. Holliday moved, Mr. Baucom seconded a motion to amend the Agreed Order for #50, adding a public reprimand; suspend the doctor from supervision of midlevels and turn over his DEA license. Ms. Attebury made a friendly amendment to add a revocation. After discussion, Dr. Holliday and Mr. Baucom withdrew the original motion and Ms. Attebury withdrew her friendly amendment. Dr. Holliday moved, Ms. Attebury seconded, and the motion passed to modify the Agreed Order for #50, adding a public reprimand, revocation, and no mediation due to concerns for patient safety.**

Dr. Holliday was recused for consideration and approval of the order for Stanley W. Whisenant, M.D. Dr. Wang was recused for consideration and approval of the order for James M. Lackey, M.D.

After discussion, **Mr. Webb moved, Ms. Blackwell seconded, and the motion passed to approve the following Agreed Orders en masse for: R. Anton Lester, III, D.O.; Conrad Murray, M.D.; William H. Boylston, M.D.; Gary W. Earp, M.D.; Russell Griffith, M.D.; Rebecca U. Garza, M.D.; Philip A. Head, Jr., M.D.; Virginia M. Mills, M.D.; Darryl R. Smith, M.D.; James D. Gay, M.D.; Sharon M. Taliaferro, M.D.; Annie J. Tang, M.D.; Stanley W. Whisenant, M.D.; Thomas R. LeConey, M.D.; Alan H. Molson, M.D.; Daniel R. Theesfeld, M.D.; Cecil C. Bailey, M.D.; Yvonne J. Billue, M.D.; Jule T. Connolly, M.D.; Joseph R. Fest, M.D.; Robert J. Genovese, M.D.; John J. Gonzalez, M.D.; Robert E. Hanson, Jr., M.D.; Michael Heistand, M.D.; James M. Lackey, M.D.; David T. Le, M.D.; Bryan C. Lipsen, M.D.; Howard Marmell, M.D.; Charles T. Marrow, III, M.D.; Gilbert Mayorga Jr., M.D.; Pablo Molina, M.D.; Owen O. Osagie, M.D.; Edward E. Ramsey, Jr., M.D.; Sybil R. Reddick, M.D.; Elisa Ribelles, M.D.; Manuel Rivera-Alsina, M.D.; Kalman J. Shwartz, M.D.; Sang B. Joo, M.D.; Sarah K. Libell, M.D.; Lemuel Newton, M.D.; Michael S. Phillips, M.D.; Dee A. Roach, M.D.; Eldon S. Robinson, M.D.; and George N. Stokes, M.D.**

Agenda item #11, Consideration and Approval of Modification Request/Termination Request Orders. After discussion, **Dr. McNeese moved, Ms. Blackwell seconded, and the motion passed to approve the Modification Granted for Ajay Aggawal, M.D., Theresa Guerrero, M.D.,**

Suzanne E. Mack, M.D., and Stephen C. White, M.D.; Termination Request Orders Granted for James Henderson, M.D., Charles King, M.D., John R. Mathias, M.D., Kinjal Parikh, D.O., and Nihal Siddiqui, M.D.; and Termination Denied Orders for Oscar F. Quintan, M.D., and Darrel R. Wells, M.D.

Agenda item #12, 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 Mary G. Gorman, M.D., and Stephen H. Smith, M.D.

Agenda item #13, Consideration and Approval of Mediated Settlement Agreed Orders.

After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 10:50 a.m. for deliberations concerning disciplinary action, investigative information, peer review information, and rehabilitation orders under the authority of The Medical Practice Act Sections 152.009, 160.006 through .008, 164.007(c), and 164.202 & .203, Occupations Code. Open session resumed at 10:56 a.m. and it was announced that no action was taken. A certified agenda was made.**

Dr. Guajardo was recused for deliberation of the order for Bill Weldon, D.O. After discussion, **Dr. McNeese moved, Ms. Southard seconded, and the motion passed to approve the Mediated Settlement Agreed Order for #12, with the modification to add to revoke, due to continued disciplinary action.**

Mr. Webb moved, Ms. Attebury seconded, and the motion passed to approve the Mediated Settlement Agreed Orders en masse for: David P. Abrams, D.O.; Michael J. Gehrke, M.D.; Robert W. Jackson, M.D.; Syed M. Quadri, M.D.; Odette L. Campbell, M.D.; Gregory C. Cooke, M.D.; James H. Fowler, M.D.; Jorge R. Guevara, M.D.; Suresh N. Pathikonda, M.D.; Michael J. Perez, D.O.; and John M. Marsden, M.D., as written.

Agenda item #14, Consideration of Remedial Plans. After discussion, Dr. Crocker moved, Mr. Webb seconded, and the motion passed to approve the Remedial Plan for Hoe B. Chu, M.D., as written. Ms. Southard and Dr. Arambula opposed the motion.

Dr. Guajardo was recused for deliberation of the Remedial Plan for Lynn C. Anderson, Jr., M.D. After discussion, **Ms. Attebury moved, Mr. Webb seconded, and the motion passed to approve the Remedial Plans for Elias Benhamou, M.D.; Ralph A. Brooks, M.D.; Courtney Sessions, M.D.; Ravi V. Pachigola, M.D.; Stanley Stancil, M.D.; Tayo A. Addo, M.D.; M. Khalil Ali, M.D.; Rhonda L. Anderson, M.D.; Sridhar Beeram, M.D.; Vernon R. Benson, M.D.; Shazia Billal, M.D.; Robert A. Brock, D.O.; Bertrand J. Brown, Jr., M.D.; Douglas K. Burke, M.D.; James M. Chandler, Jr., M.D.; Ray V. Cortez, M.D.; Abdias D. Ethienne, M.D.; Ray P. Fernandez, M.D.; Sahitya Gadiraju, D.O.; Mark H. Garnett, D.O.; Doris Garrido, M.D.; Ricardo R. Gonzalez, M.D.; Thomas G. Hardaway, M.D.; Thomas L. Hau, M.D.; Sandra J. Hazelip, D.O.; Norman D. Kalmin, M.D.; Herman J. Keillor, M.D.; Joseph C. Lampley, D.O.; Cheryl C. Landry, M.D.; Bryan L. Lane, D.O.; Teresa V. Manx, M.D.; Jack A. Maxwell, D.O.; Delbert L. McCaig, D.O.; Grant R. McKeever, M.D.; Leovares A. Mendez, M.D.; Carlos J. Palacios, M.D.; Tamika L. Perry, D.O.; Niti K. Randhawa, M.D.; David G. Reynolds, M.D.; Nicholas Schwedock, M.D.; Zille H. Shah, M.D.; Christopher Stephens, M.D.; Leopoldo A. Tecuanhuey, M.D.; Abraham G. Thomas, m.D.; Jorge H. Trevino, M.D.; Scott A. Welsh, M.D.; Atheer Ahmed, M.D.; Mohammed R. Alnajjar, M.D.; C. Lynn Anderson, Jr., M.D.; Marcos Aquino, M.D.; Robert G. Bass, Jr., M.D.; Dean Chen, M.D.; John Choe, M.D.; Hoe B. Chu, M.D.; Michael P. Dunnigan, D.O.; Robert Feferman, M.D.; Larry Flowers, M.D.; Jay Fogelman, M.D.; Scott Lauer, D.O.; Kenneth D. LeCroy, M.D.; Jesus A. Lopez, M.D.; Gilbert Manso, M.D.; Ronald M. Manzanero, M.D.; Marshall Morrison, M.D.; Maya R. Patel, M.D.; Jose Rodriguez, M.D.; Thomas A. Salzer, M.D.; Alfred A. Santos, M.D.; Norberto J. Vargas,**

M.D.; Omar D. Vidal, M.D.; Beverly E. White, M.D.; Balmore W. Williams, M.D.; Syed Zaheer, M.D.; and Syed N. Zaidi, M.D.

There were no agenda items for Agenda items #15-17.

Agenda item #18, Report on Automatic Orders. A report was given on the Automatic Orders for Jaime Cortes, N.C.T.; Daniel A. Crain, D.O.; Laurie G. Harris, D.O.; and Carolyn D. Clark, N.C.T.

Agenda item #19, Consideration and approval of Cease and Desist Orders. After discussion, **Ms. Southard moved, Ms. Attebury seconded, and the motion passed to approve the Cease and Desist Orders for Christopher J. OBrien; and Lina Taing.**

After discussion, **Ms. Southard moved, Mr. Webb seconded, and the motion passed to approve the Cease and Desist Orders for Jacques Jaikaran; Monica Moreno; and Amy Neuzil.**

There were no items for Agenda item #20.

Agenda item #20, Consideration and Approval of Determinations of Default.

1. Rosemary Ann Stogre, SOAH Docket #503-12-1512. Chris Palazola, J.D., staff attorney, gave a presentation. Rosemary Ann Stogre did not appear. No one appeared representing Rosemary Ann Stogre. After discussion, **Ms. Southard moved, Mr. Baucom seconded, and the motion passed to approve the Determination of Default revoking the license of Rosemary Ann Stogre.**
2. Emilio Luna, SOAH Docket #503-12-2171. Scott Freshour, J.D., Manager of Litigation, gave a presentation. Emilio Luna did not appear. No one appeared representing Emilio Luna. After discussion, **Ms. Southard moved, Ms. Attebury seconded, and the motion passed to approve the Determination of Default revoking Emilio Lunas license.**

There were no items for Agenda items #22-24.

Agenda item #25, Discussion, recommendation, and possible action including adoption of rule review and proposed amendments to 22 Texas Administrative Code:

- a. **Chapter 173, Physician Profiles.** Ms. Kaufman summarized the rule review and proposed amendments. No written comments were received. No one signed-in to present oral comments.. **Dr. Willeford moved, Dr. Holliday seconded, and the motion passed to approve to adopt the rule review and proposed amendments to Chapter 173, Physician Profiles, as published.**
- b. **Chapter 177, Business Organization.** Ms. Kaufman summarized the rule review and proposed amendments. Written comments were received and reviewed. Charles W. Bailey, Texas Hospital Association, presented oral comments. Susan Hendricks signed-in, but was not present to present oral comments. Mr. Baucom moved and Dr. Arambula seconded a motion to approve the rule review and proposed amendments to Chapter 177, Business Organizations, except for section 177.5 to schedule a stakeholder group to review the language of section 177.5. The motion failed.

After discussion, Dr. Willeford moved and Dr. Crocker seconded a motion to approve the rule review and proposed amendments to Chapter 177, Business Organizations, as published. The motion failed.

After discussion, **Dr. Holliday moved, Ms. Southard seconded, and the motion was approved to pull down Chapter 177, Business Organizations, except for Section 177.16 regarding Physician Assistants, which was approved for adoption.**

After discussion, **Dr. Wang moved, Dr. Holliday seconded, and the motion passed to adopt Section 177.17, Exceptions to Corporate Practice of Medicine Doctrine, as published.**

Agenda item #30, Open forum for public comments. Dave Claunch, Mayor of West Lake Hills, signed-in to present oral comments regarding proposed rules for tick-borne disease.

Agenda item #26, Discussion, recommendation, and possible action including approval for publication in the Texas Register for public comment of rule review and proposed amendments to 22 Texas Administrative Code.

- a. **Chapter 166, Physician Registration.** Ms. Kaufman summarized the proposed rule review and amendments. After discussion, the board directed staff to post a FAQ to clarify that the continuing medical education is a recommendation, not a requirement. **Dr. McMichael moved, Ms. Attebury seconded, and the motion passed to publish Chapter 166, Physician Registration, excluding Chapter 200, in the Texas Register for rule review and public comment.**
- b. **Chapter 190, Disciplinary Guidelines.** Ms. Kaufman summarized the proposed rule review and amendments. After discussion, **Dr. McMichael moved, Dr. Wang seconded, and the motion passed to approve to publish the proposed Chapter 190, Disciplinary Guidelines, rule review and amendments in the Texas Register for public comment.**
- c. **Chapter 192, Office-Based Anesthesia Services.** Ms. Kaufman summarized the proposed rule review and amendments. After discussion, **Dr. McMichael moved, Dr. Guajardo seconded, and the motion passed to approve to publish the proposed Chapter 192, Office-Based Anesthesia Services rule review and amendments in the Texas Register for public comment.** The board directed staff to clarify high pressure injections for Level 3 rectal opioid analgesics and anxiolytics and bring back to the board.
- d. **Chapter 198, Standards for Use of Investigational Agents.** Ms. Kaufman summarized the proposed rule review and amendments. After discussion, **Dr. Holliday moved, Dr. Wang seconded, and the motion passed to publish the proposed Chapter 198, Standards for Use of Investigational Agents, rule review and amendments in the Texas Register for public comment.**

There were no items for Agenda items #27-#28.

Agenda item #29, Discussion regarding appointments to the Physician Health Program Advisory Committee. Ms. Robinson reviewed the process for the board president to appoint members to the Physician Health Program Advisory Committee.

Consent Agenda

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

1. **Consideration and approval of the November 4, 2011 Board Meeting Minutes.** Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the November 4, 2011 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, Ms. Attebury 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.**

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

Agenda item #3, Executive Director Report (continued)

Out-of-State-Licensure. Ms. Robinson reported on the option to use provisional licensure for out-of-state expert panelists. The board directed staff to request the Office of Attorney General to provide confirmation of representation for out-of-state expert panelists with a provisional license.

After discussion, the board directed staff to explore the process for a type of emeritus honorary licensure or certificate and bring available options back to the board.

Funding. Ms. Robinson reported that the Nursing and Pharmacy boards are seeking independent status. After discussion, the board directed staff to move forward with the Nursing and Pharmacy board to seek independent status.

Board Member Contact Information. Ms. Robinson reported on the options for board member email contact information. After discussion, **Dr. McMichael moved, Mr. Webb seconded, and the motion passed to go into Executive Session at 2:04 p.m. to deliberate 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 2:16 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, the board directed staff to maintain email inboxes for the board members. The board discussed ways to improve communication with the board members and District Review Committee members. After discuss, the board directed staff to provide board and DRC members mandatory information sessions for a year.

Wisconsin Online. Ms. Robinson presented a Wisconsin Online proposal for nationwide verification online. After discussion, the board directed staff to pursue the participation in the nationwide verification system.

FSMB Uniform Application. Ms. Robinson presented a Federation of State Medical Board's proposal for a Uniform Application for Physician State Licensure. After discussion, the board directed staff to continue the current licensure application process, in addition, to starting the process to also accept the Uniform Application.

The board discussed additional ways to improve communication of the board's actions to the Physician Assistant Board. After discussion, the board directed staff to propose a board liaison at the next Physician Assistant Board meeting.

The board expressed their appreciation and gratitude to Dr. Gage-White for her service as the Medical Director.

There being no further agenda items, the board adjourned at 2:47 p.m.