



Texas Medical Board

BOARD MEETING

October 18, 2019

The meeting was called to order on Friday October 18, 2019 at 8:01 a.m. by Board President Sherif Zaafran, M.D. Board members present were: Arun Agarwal; Sharon Barnes; Devinder S. Bhatia, M.D.; George L. DeLoach, D.O.; Kandace B. Farmer, D.O.; Robert Gracia; Vanessa F. Hicks-Callaway; J. Scott Holliday, D.O., MBA; Jeffrey L. Luna, M.D.; Roberto D. Martinez, M.D.; Linda Molina, J.D.; LuAnn R. Morgan; Jayaram N. Naidu, M.D.; Satish Nayak, M.D.; Manuel "Manny" Quinones, Jr., M.D.; Jason K. Tibbels, M.D. and David G. Vanderweide, M.D. Michael E. Cokinos did not attend. Staff members present were Stephen Brint Carlton, J.D.; Scott Freshour, J.D., General Counsel; Robert Bredt, M.D., Medical Director; Taurie Randermann, Governmental Affairs and Public Information Manager; and the Assistant General Counsels: Sarah Tuthill, J.D., Wendy Pajak, J.D., and Amy Swanholm, J.D.; and various other staff.

Agenda item #1, Mission Statement. Dr. Zaafran 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. Zaafran welcomed the new members of the Texas Medical Board.

AG Opinion KP-0266 - Dr. Zaafran presented a letter from the Attorney General's office regarding regulatory authority over the administration of anesthesia when delegated by a physician to a nurse anesthetist.

Opioid Workgroup Dr. Zaafran gave an update on the October 9, 2019 Opioid Workgroup. The goal is to have proposed rules written by the December board meeting regarding the required two hours of CME.

Presentation & Resolution. Dr. Zaafran announced that Board Resolutions and Texas plaques would be sent to Frank Denton; Timothy Webb, J.D.; Margaret McNeese, M.D.; Karl W. Swann, M.D.; and Surendra K. Varma, M.D. in honor of their service.

Dr. Zaafran reported that this is Dr. Holliday's last board meeting and a new vice president will need to be appointed. Dr. Holliday nominated Dr. Farmer. Dr. Farmer accepted the nomination. After consideration, **Ms. Barnes moved, Dr. Naidu seconded and the motion passed to appoint Dr. Farmer as Texas Medical Board Vice President effective next board meeting.**

Agenda item #3, Consideration and approval of Mediated Settlement Agreed Orders.

After discussion, **Ms. Barnes moved, Ms. Morgan seconded and the motion passed to approve the Mediated Settlement Agreed Orders for William B. Betts, MD; Oscar M. Aguilar, MD; and Nathan Arthur Vermedahl, MD.**

Agenda item #4, Consideration and approval of Remedial Plans. After consideration, **Dr. Quinones moved, Dr. Martinez seconded and the motion passed to approve the Remedial Plans for Rudolph E. Branch, MD; Thomas M Daniel, MD; Mindee Suzann Flippin, MD; Bruce Scot Lachterman, MD; Victor Maduabuchi Nwilo, MD; Christian Efosa Ogbobor, MD; and Matthew M. Robinson, MD.**

After consideration, **Mr. Gracia moved, Ms. Morgan seconded and the motion passed to approve the Remedial Plans for Crystal Cassidy, MD; Michael D. Lyons, DO; William Larkin Musgrave, DO; and Roger William Timperlake, MD**

After consideration, **Ms. Morgan moved, Dr. Farmer seconded and the motion passed to approve the Remedial Plans for Antonio Cavazos, Jr, MD; Mary Elizabeth Geldernick, MD; and Abraham Rajan, MD.**

Agenda item #5, Consideration and possible action for Agreed Orders. After consideration, **Dr. Farmer moved, Ms. Morgan seconded and the motion passed to approve the Agreed Orders for Long Phan Nguyen, MD.**

After consideration, **Dr. Bhatia moved, Ms. Morgan seconded and the motion passed to approve the Agreed Orders for Lawrence Duane Lyford, MD and Dennis D. Tedford, MD.** After consideration, **Dr. Nayak moved, Dr. Barnes seconded and the motion passed to approve the Agreed Orders for Jolene D. Bean-Lijewski, MD; Paul Andrew Cox, MD; Gerald P. Gibson, MD; Emmanuel Elmo Harrison, MD; Dennis Ho, DO and William John Smith, MD.**

After consideration, **Dr. Bhatia moved, Dr. Quinones seconded and the motion passed to approve the Agreed Orders for John Joseph Kelemen, III, MD; Kenneth Jiann-Hung Lee, MD; Linda M. Petrovich, MD; Nancy Andes Towbin, MD; Miguel A. Berastain, Jr. MD; Don Milligan, MD; Fred W. Rohm, DO; Orlando Julio Terneny, MD; Aruna Yarrazu, MD; C. Lynn Anderson, Jr., MD; Henry R. Armstrong, MD; Dustin Wayne Davis, DO; Michael J. Jenks, MD; Stanley Wayne Whisenant, MD; Jeffrey Kyle Bacon, DO; Barbara P. Tyler, MD; and Jose Carranza, MD.**

After discussion, **Dr. Holliday moved, Dr. Quinones seconded and the motion passed to go into Executive Session at 8:32 am 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 8:52 am and it was announced that no action was taken. A certified agenda was made.

After discussion, **Mr. Quinones moved, Dr. Gracia seconded and the motion passed to approve the agreed order for Suresh Dutta, MD with the change of the word “Rescind” to “Terminate.”**

Agenda item #6, Consideration and approval of Modification Request/Termination Request Orders. After consideration, **Ms. Morgan moved, Dr. Holliday seconded and the motion passed to approve the Modification Request/Termination Request Orders for Vikram Durairaj, MD; Michael Anthony Flores, MD; Terry C. Lairmore, MD; Brian J. Norkiewicz, MD; Thomas Glen Ockershausen, MD; Ranjitkumar P. Patel, MD; and Michalle O. Wooten Roberts, MD.**

There were no items for agenda item #7.

Agenda item #8, Consideration and approval of Cease and Desist Agreed Orders. After consideration, **Dr. Bhatia moved, Dr. Nayak seconded and the motion passed to approve the Cease and Desist Agreed Orders for Mariel Belloso; Sary A. Garcia; Jaime Martiz; and Theodore Pait, MD.**

There were no items for agenda items #9.

Agenda Item #10, Report on identifying child abuse. Rebecca Girardate, McGovern Medical School, gave a presentation on identifying child abuse.

Agenda item #11, Consideration and approval of Determinations for Defaults.

- a) **Kristopher Michael McKay, M.D., SOAH #503-18-4889.** Jerry Bergman, Staff Attorney, was present and gave a brief presentation. Dr. McKay did not appear. No one appeared on Dr. McKay’s behalf. After consideration, **Dr. Zaafran moved, Ms. Barnes seconded and the motion passed to adopt the Findings of Fact and the Conclusions of Law of the Administrative Law Judge in the Determinations for Defaults for Kristopher Michael McKay, M.D., and to adopt the staff’s suggested final order of revocation.**

Agenda Item #12, Consideration and approval of Proposal for Decisions.

- a) **Gabriel Rodriguez, M.D., SOAH #503-18-3019.** Nikki Karr, Staff Attorney, was present and gave a brief presentation. Dr. Rodriguez did appear. Mr. Franklin Hopkins appeared on his behalf. After discussion, **Dr. Holliday moved, Dr. Quinones seconded and the motion passed to go into Executive Session at 10:14 am for the purpose of deliberations concerning disciplinary action, investigative information, peer review information, and possible rehabilitation orders under the authority of The Medical Practice Act Sections 152.009, 160.006-160.008, 164.007(c), and 165.202-165.203, Occupations Code.** Open session resumed at 10:49 am and it was announced that no action was taken. A certified agenda was made.

After consideration, **Dr. Holliday moved, Dr. Bhatia 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 for Gabriel Rodriguez, MD, and to adopt the staff suggested final order with the following amendments: reduction of the number of billing monitoring cycles to 6-cycles, and reducing the administrative penalty to \$14,296.40.

- b) **Jose De Jesus Martinez, M.D., SOAH #503-18-5099.**MD Jonathan Stone, Staff Attorney, was present and gave a brief presentation. Dr. Martinez did not appear. Ms. Laura Silva appeared on his behalf. After discussion, **Ms. Molina moved, Ms. Morgan seconded and the motion passed to go into Executive Session at 11:05 am for the purpose of 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 11:22 am and it was announced that no action was taken. A certified agenda was made.

After consideration, **Dr. Farmer moved, Dr. Vanderweide seconded the motion to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for Jose De Jesus Martinez, M.D., and to adopt the staff suggested final order of suspension.** Dr. Martinez recused.

Dr. Luna moved to amend the motion to include a probated suspension and Dr. Naidu seconded the motion to amend the original motion.. 7 voted in favor of the amendment and 10 opposed the motion to amend the motion. The motion to amend failed. A vote was taken on the original motion to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for Jose De Jesus Martinez, M.D., and to adopt the staff suggested final order of suspension. 5 opposed the original motion. The motion passed.

Agenda item #13, Executive Director Report.

Budget Report. Mr. Carlton reported that the budget was utilized appropriately last fiscal year. This fiscal year just started and the budget is on track.

PHP Update. Mr. Carlton reported that PHP is doing very well.

Building Update. The Medical Board will be moving to the George H. W. Bush building in 2022.

Stakeholder Update. Mr. Carlton gave an update on stakeholders meetings held earlier this month. The Board directed staff to bring back a draft of proposed changes to the conceded eminence rule defining conceded eminence and clarification of the exam requirements pertaining to conceded eminence.

Continuation of **Agenda Item #5, Consideration and possible action for Agreed Orders.** After consideration, **Dr. Nayak moved, Dr. Quinones seconded and the motion passed to approve the Agreed Order for Daniel Ramiro Canchola, M.D.**

Agenda Item #14, Discussion, recommendation, and possible action Physician Health Program White Paper. This item was deferred to the December board meeting.

Agenda Item #15, Medical Director Report. Dr. Bredt reported that we currently have 674 experts in a variety of specialties. There are still some continuing and acute needs for experts. The continuing needs are orthopedic spine surgery, neurosurgery and pain management. There are currently 40 cases backlogged for these experts. Acute needs include 1-2 pediatric neurologists and gynecologic oncologists. Also, need evaluating psychiatrists. Any suggestions are welcome.

Agenda Item #17, Report Physician Assistant Liaison. Ms. Mills was present and gave a report.

Agenda Item #16, Public Information Report. Ms. Randermann updated the board on the bulletin that will be coming out. Board members were reminded to funnel questions to staff when contacted by media.

Agenda Item #18, Consideration and possible action regarding pending litigation. No action was taken.

Agenda Item #19, Report of Temporary Suspension Hearings. A report on Temporary Suspensions was presented.

There were no items for agenda item #20-21.

Agenda Item #22, Report on Cease and Desist Orders approved by Executive Director. A report on Cease and Desist Orders approved by Executive Director was presented.

There were no items for agenda item #23.

Agenda Item #24, Report on Chapter 53 automatic revocation and suspension letters. A report on Chapter 53 automatic revocation and suspension letters was presented.

There were no items for agenda item #25-26.

Agenda Item #27, Discussion, recommendation and possible action regarding proposed rule amendments and rule review to 22 T.A.C.

- Chapter 165, Medical Records
§165.7 Out of Network Notice and Disclosure

Ms. Pajak presented a brief summary and review of the proposed rule amendments and rule review to §165.7 Out of Network Notice and Disclosure. After discussion, **Ms. Morgan moved, Dr. Barnes seconded and the motion passed to publish the proposed rule amendments and rule review to §165.7 Out of Network Notice and Disclosure in the Texas Register for comment.**

Agenda Item #28, Discussion, recommendation, and possible action regarding adoption of proposed rule amendments to 22 T.A.C.

- Chapter 160, Medical Physicists
§160.31 - Exemption from Licensure for Certain Military Spouses (Medical Physicists)
- Chapter 163, Licensure
§163.3 - Exemption from Licensure for Certain Military Spouses (Physicians)
- Chapter 183, Acupuncture.
§183.27 - Exemption from Licensure for Certain Military Spouses (Acu)
- Chapter 185, Physician Assistants
§185.33 - Exemption from Licensure for Certain Military Spouses (PA)
- Chapter 186, Respiratory Care.
§186.30 - Exemption from Licensure for Certain Military Spouses (RCP)
- Chapter 188, Perfusionists
§188.30 - Exemption from Licensure for Certain Military Spouses (Perfusionists)
- Chapter 194, Medical Radiologic Technology.
§194.34 - Exemption from Licensure for Certain Military Spouses (MRT)

Ms. Pajak presented a brief summary and review of the proposed rule amendments and comments received. After consideration, **Dr. Bhatia moved, Dr. Martinez seconded and the motion passed to adopt the proposed rule amendments.**

- Chapter 165, Medical Records
§165.1 - Medical Records

Ms. Pajak presented a brief summary and review of the proposed rule amendments and comment received. After consideration, **Ms. Molina, Dr. Barnes seconded and the motion passed to adopt the rule as published with non-substantive changes.**

- Chapter 172, Temporary and Limited Licenses
§172.21- Other Health Care Providers Practice and Limited License for Disasters and Emergencies.

Ms. Pajak presented a brief summary and review of the proposed rule amendments. After consideration, Ms. Molina moved, Dr. Quinones seconded and the motion passed **to adopt the rule as published with non-substantive changes.**

- Chapter 175, Fees and Penalties
§175.1 - Application and Administrative Fees
§175.2 - Registration and Renewal Fees

Ms. Tuthill presented a brief summary and review of the proposed rule amendments. After consideration, **Dr. Bhatia moved, Dr. Nayak seconded and the motion passed to adopt the proposed rule amendments.**

- Chapter 194, Medical Radiologic Technology.
 - §194.2 - Definitions,
 - §194.6 - Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry
 - §194.7 - Biennial Renewal of Certificate or Placement on the Board's General Registry for Non-Certified Technicians Generally
 - §194.10 - Retired Certificate or NCT General Registration Permit
 - §194.21 - Scope of Practice

Ms. Tuthill presented a brief summary and review of the proposed rule amendments and comments received. After discussion, **Dr. Bhatia moved, Dr. Martinez seconded and the motion passed to approve adoption of the proposed rule amendments with non-substantive changes.**

Agenda Item #29, Discussion, recommendation, and possible action regarding rule review to 22 T.A.C., Part 9, Texas Medical Board.

- Chapter 161, General Provisions (Rule Review)
 - §161.1 - Introduction
 - §161.2 - Purpose and Functions
 - §161.3 - Organization and Structure
 - §161.4 - Officers of the Board
 - §161.5 - Meetings
 - §161.6 - Committees of the Board
 - §161.8 - Chief of Staff (Repeal)
 - §161.9 - Compliance with Non-Discrimination Laws (Repeal)
 - §161.11 - Rule Changes (Repeal)
 - §161.12 - Medical Director (Repeal)
 - §161.13 - General Considerations (Repeal)

Mr. Freshour presented a brief summary and review of the proposed rule. After discussion, **Ms. Barnes, Ms. Morgan seconded and motion passed to accept the rule review to 22 T.A.C., Part 9, Texas Medical Board.**

CONSENTAGENDA

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

1. Consideration and approval of the August 16, 2019 Medical 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.

After consideration, **Ms. Barnes moved, Dr. Nayak seconded, and the motion passed to approve the Consent Agenda items:**

- 1. Consideration and approval of the August 16, 2019 Medical 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.**

Agenda Item #30, Discussion, recommendation, and possible action regard rule review to 22 T.A.C. Chapter 185, Physician Assistants.

Agenda Item #31, Discussion, recommendation, and possible action regarding rule review to 22 T.A.C. Chapter 183, Acupuncture.

Agenda Item #32, Discussion, recommendation, and possible action regarding rule review to 22 T.A.C. Chapter 194, Medical Radiologic Technology.

Agenda Item #33, Discussion, recommendation, and possible action regarding rule review to 22 T.A.C. Chapter 186, Respiratory Care.

Agenda Item #34, Open Forum for Public Comment. John Schoellman, Dana Greer, Kristin McGarity, Carol Frederick and Thomas Harold signed in and gave public comment.

Agenda Item #35, Discussion, recommendation, and possible action relating to personnel matters.

Agenda item #36, Adjourn. There being no further agenda items, **Dr. Quinones moved, Ms. Molina seconded, and the motion passed to adjourn the meeting at 1:07 p.m.**