

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

November 3, 2011

The meeting was called to order at 10:37 a.m. on November 3, 2011 by Chair, Michael Arambula, M.D. Committee members present were John D. Ellis Jr., Wynne M. Snoots, M.D., and Paulette B. Southard and Irvin E. Zeitler Jr. D.O.

Pat Crocker, D.O., entered the meeting at 10:53 a.m. during Executive Session.

Dr. Snoots moved, Ms. Southard seconded, that the Committee close the meeting to the public and continue in Executive Session for deliberations concerning Agenda items 2a, 3b, and 4a. The motion passed. Dr. Arambula announced that the meeting would be closed for deliberations at 10:39 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 4:45 p.m.

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

Licensee #1168's request to return to active status was considered. **Dr. Crocker moved to recommend to the full Board that the physicians licensure status be returned to active status upon passage of SPEX or specialty board recertification. This recommendation is due to time out of the active practice of medicine. Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Agenda Item 3 - Discussion, recommendation and possible action regarding applicants for licensure, permits, and certification:

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 #935 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Dr. Zeitler moved to recommend to the full Board that the applicant complete a KSTAR assessment and 90 day mini-residency, and upon successful completion and upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions through a 10-year agreed order:**

All the terms and conditions of previous agreed order that was in place at time of cancellation of licensure

Any additional recommendations made by KSTAR (assuming Chair of Licensure Committee agrees).

This recommendation is due to intemperate use of drugs or alcohol that could endanger the public; unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; violation of federal or state law in connection with the practice of medicine; prescription of a dangerous drug and a controlled substance in a manner inconsistent with public health and welfare; and time out of the active practice of medicine. Factors contributing to this recommendation include: substance abuse history including alcohol and opioid dependency with multiple relapses and self-prescribing; that applicant was required to surrender DEA license in 2002 and medical license was subsequently suspended; that the applicant was subsequently allowed to practice medicine under an agreed order which remained in place until the applicant elected to not renew the license in 2008; and that the applicant has not practiced medicine since April 2008. Mitigating factors include sobriety since 2002, compliance with past order at the time the applicant's license was cancelled, completion of more than 141 hours CME in past year, and employment as a nurse educator and director of program development for a home health agency. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1159 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Dr. Crocker moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions under a remedial plan: completion of the Physician Coaching Program with information to be provided by the Executive Director.** This recommendation

is due to action taken by a health care entity due to unprofessional conduct or professional incompetence; and unprofessional conduct likely to deceive, defraud or injure the public. Factors contributing to this recommendation include that the applicant was placed on probation in 2009 while in residency training due to issues relating to communication and professionalism; that the applicant was suspended while under investigation in 2010 due to alleged violations of the applicants probation; and that the applicant resigned from the program while under investigation.**Dr. Crocker added that due to a technical issue several pages of applicant submissions were not reviewed by the Committee prior to the applicants appearance, so as a result, if the applicant chooses not to accept the remedial plan agreement, the applicant may request another appearance before the Committee in February 2012. Dr. Zeitler seconded the motion. Dr. Zeitler, Ms. Southard, Dr. Snoots, and Dr. Crocker voted in favor. Mr. Ellis was opposed The motion passed.**

Applicant #1163 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Dr. Zeitler moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions under a remedial plan: 8 hours CME in Ethics.** This recommendation is due to action taken by a health care entity due to professional competence or unprofessional conduct and action taken by another state licensing board. Factors contributing to this recommendation include that in March 2011, the applicant received a letter of admonition and had privileges suspended for two weeks from a hospital due to a single incident of unprofessional conduct; and the Colorado Medical Board issued a letter of admonition on the same issue of unprofessional conduct. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1164 appeared 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, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions under a remedial plan for one year: the applicant have monthly face-to-face meetings with a mentor approved by the Executive Director with biannual reports to the Board.** This recommendation is due to failure to practice medicine in an acceptable professional manner; and action taken by a health care entity due to the applicants professional incompetence or unprofessional conduct. Factors contributing to this recommendation include that while in residency training the applicant received a letter of warning in 2008, was placed on probation in 2010, was given additional requirements to complete in 2011, and the applicants training was restricted due to concerns regarding professionalism and patient care. Mitigating factors include that standard of care

issues did not cause serious patient harm, and the applicant complied with terms of probation and successfully completed a residency training program. **Dr. Crocker seconded the motion.** During discussion, Dr. Arambula asked about if there was also an issue of falsification. **Dr. Zeitler and Dr. Crocker voted in favor. Ms. Southard, Dr. Snoots, and Mr. Ellis were opposed. The motion failed. Dr. Zeitler then moved to recommend to the full Board that the applicant be determined ineligible for licensure.** This recommendation is due to failure to practice medicine in an acceptable professional manner, action taken by a health care entity due to the applicants professional incompetence or unprofessional conduct, and submission of a false or misleading statement on an application for licensure. Factors contributing to this recommendation include that while in residency training the applicant received a letter of warning in 2008, was placed on probation in 2010, given additional to requirements to complete in 2011, the applicants training was restricted due to concerns regarding professionalism and patient care, and the applicant did not report one of the actions taken while in residency training to the Board on the applicants application for licensure. **Ms. Southard seconded the motion. Dr. Snoots, Ms. Southard, and Mr. Ellis voted in favor. Dr. Zeitler and Dr. Crocker were opposed. The motion passed.**

Applicant #1166 appeared 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, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions under an agreed order for 7 years: the applicant submit to an independent forensic psychiatric evaluation; follow the recommendations of the evaluating psychiatrist with at least monthly psychiatric visits for the first year and after that no less than quarterly visits; the applicant may supervise midlevel practitioners; and the applicant must complete 8 hours CME in Ethics within one year of the effective date of the order.** This recommendation is due to action taken by a health care entity due to unprofessional conduct or professional incompetence; unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; and the applicants inability to safely practice medicine due to a mental condition. Factors contributing to this recommendation include that the applicant was placed on probation in May 2010 while in residency training due to unprofessional conduct evidenced by anger management issues, disrespect for fellow professionals, and the use of unprofessional language; and that repeated professionalism issues occurred resulting in the applicants resignation from the program in October 2010. Mitigating factors include lack of actual patient harm as a result of the applicants behavior, and that the applicant has undergone counseling to address issues. **Mr. Ellis seconded the motion. All voted in favor. The motion passed.**

Applicant #1175 appeared 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, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions under a remedial plan: 4 hours CME in ethics.** This recommendation is due to disciplinary action taken by another state medical board. Factors contributing to this recommendation include that in 2010, the Kentucky medical board fined applicant \$1,000 due to failure to report dismissal from medical school in 1979, and disciplinary action by the West Virginia Board also for failure to disclose the dismissal on the licensure application. **Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Applicant #1176 appeared before the Committee, with counsel, 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 granted a Texas medical license, subject to an administrative penalty in the amount of \$2000 and the following terms and conditions: completion of 8 hours CME in Ethics.** 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, and the applicants falsification of a 2008 Physician in Training application and a 2011 application for licensure. **Dr. Crocker seconded the motion. All voted in favor. The motion passed.**

Applicant #1177 appeared before the Committee, with counsel, in executive session, on appeal of a determination by the Executive Director that the applicant should complete a residency program before application. In open session, **Dr. Crocker moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions under an agreed order for three years: successful completion of a live preparation course for specialty board certification in Family Medicine approved by the Executive Director; restriction to a group or institutional practice; completion of 50 hours CME in Family Medicine annually (the board preparation course may count toward the first years requirement), a chart monitor with quarterly reports to the Board; and monthly meetings with a mentor approved by the Executive Director with biannual reports to the Board.** This recommendation is due to action taken by a health care entity due to professional incompetence or unprofessional conduct; failure to practice medicine in an acceptable professional manner consistent with public health and welfare;. Factors contributing to this recommendation include that the applicant was placed on an academic remediation plan during the applicants first year of surgical residency training, was

placed on probation during the second year of training, and only given one year of credit due to issues relating to Medical Knowledge, Patient Care, Professionalism, and Interpersonal and Communication Skills. Mitigating factors include that the applicant received one year of credit for postgraduate training despite difficulties, has been offered employment in a rural setting that is underserved, that other physicians in the area plan to act as resources and are aware of the applicants past difficulties and intend to assist the applicant in transition to family practice. **Ms. Southard seconded the motion.** During discussion Dr. Arambula pointed out that the recommendation states it is due in part to the applicants mental condition, however the proposed order does not address that. **Dr. Crocker amended his motion to remove one of the grounds for the recommendation. Dr. Snoots seconded the amendment. All voted in favor. The motion passed.**

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

Item 3a Applicants for pain management clinic certification-

Fernando Avila, MD, owner, Avila Pain & Wellness/The Pain Management Center of South Texas appeared with counsel, after his request to withdraw his pain management clinic certification application was deferred for more information at the August 2011 Board meeting. **Dr. Crocker moved to recommend to the full Board that Dr. Avilas request to withdraw be denied on the basis that Dr. Avila applied for certification and was determined ineligible. Ms. Southard seconded the motion. All voted in favor and the motion passed.**

Agenda Item 15 Discussion, recommendation and possible action regarding resident internal moonlighting under Physician-in-Training permits. Ms. Robinson presented a report on residency programs that allow internal moonlighting or practice in the program clinics after hours and not as part of the training program. Representatives from one of the family practice training programs were present to discuss the issue. The Committee directed staff to approach the programs involved to create a stakeholder group and draft rules to clarify these issues.

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

Item 3d Proposed orders offered by the Executive Director.

1. Physician Licensure Ms. Garanflo reported on seven orders offered by the Executive Director and accepted by applicants. **Ms. Southard moved to recommend to the full Board that all 7 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 194 applicants who met all requirements to be considered for permanent licensure by the full Board. **Ms. Southard moved to recommend to the full Board that all 194 physician licensure applicants determined to meet eligibility requirements by staff be approved. Dr. Snoots seconded the motion. All voted in favor. The motion passed.**
2. Acudetox certification applicants There were three acudetox certification applicants to be considered for approval. **Ms. Southard moved to recommend to the full Board that all 3 acudetox certification applicants determined to meet eligibility requirements by staff be approved. Dr. Snoots seconded the motion. All voted in favor. The motion passed.**
3. Surgical assistant licensure applicants - There were seven surgical assistant applicants to be considered for approval. **Ms. Southard moved to recommend to the full Board that all 7 surgical assistant applicants determined to meet eligibility requirements by staff be approved. Dr. Snoots seconded the motion. All voted in favor. The motion passed.**

Item 3f Applicants for Conversion to Administrative Medicine Licenses Ms. Garanflo reported that one physician who had been issued a license under an order limiting the physicians practice to Administrative Medicine met requirements for conversion to the Administrative Medicine license type. **Ms. Southard moved to recommend to the full Board that the conversion be approved. Dr. Zeitler seconded. All voted in favor and the motion passed.**

Agenda Item 4 Discussion, recommendation, and possible action regarding **applicant requests:**

Item 4a Requests for Rehearing

The request for a rehearing by **Dr. Son Nguyen**, owner of Southern Pain Institute, following the determination that he was ineligible for pain management clinic certification, was considered. **Ms. Southard** moved to deny **Dr. Nguyen's** request for a rehearing based on the failure to submit new information that, had it been previously considered, would have changed the determination of the Committee. **Dr. Snoots** seconded the motion. All voted in favor. The motion passed.

Applicant #1140's request for rehearing was considered. **Dr. Crocker** moved to deny the applicant's request for a rehearing based on the failure to submit new information that, had it been previously considered, would have changed the determination of the Committee. **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 regarding unsigned orders from the August 2011 Board meeting. One order remains unresolved as the applicant requested rehearing.

Agenda Item 6 Report on physician licensure statistics. **Ms. Garanflo** reported that the average time to complete applications for physician licensure in FY 12 so far was 43 days, which is well within the 51 day target.

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 ten applications for initial certification as a Nonprofit Health Organization for approval. **Ms. Southard** moved to recommend to the full board that the requests for initial certification as a Nonprofit Health Organization be approved. **Dr. Zeitler** 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 three applications for biennial recertification as a Nonprofit Health Organization for approval. **Ms. Southard** moved to recommend to

the full board that the requests for biennial recertification as a Nonprofit Health Organization be approved. Dr. Zeitler seconded. All voted in favor and 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. **Dr. Zeitler 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 187.13 This item was postponed to a later meeting.
- b. 22 TAC 163.2 Full Texas Medical License -
- c. 22 TAC 163.5 Licensure Documentation

The Committee directed staff to pursue further clarification of legislative intent on SB 189 prior to publishing proposed rule changes to 22 TAC 163 for comment.

Agenda Item 10 - Discussion, recommendation, and possible action regarding delegation to staff to convert full licenses to administrative medicine licenses for impaired physicians

Licensee #1173 - Ms. Garanflo presented the case of a licensee who reported a physical impairment and requested conversion to an administrative medicine license type. **Dr. Crocker moved to recommend to the full Board that the conversion be approved. Dr. Zeitler seconded. All voted in favor and the motion passed...**

Agenda Item 11 Discussion, recommendation, and possible action regarding military physicians practicing off-base. Ms. Garanflo presented a report on a military residency program that was granted approval to take military physicians off base to train during a facility move solely to treat members of the military and their dependents.

Agenda Item 12 Discussion, recommendation, and possible action regarding removing medical schools from the boards list of schools whose graduates are not required to complete Forms Z1-Z7 to demonstrate substantial equivalence of medical education and curriculum requirements determined by a committee of experts selected by the Texas Higher Education Coordinating Board.

Ms. Garanflo presented a report on staff concerns regarding international medical schools that don't meet the curriculum requirements of the THECB. The curriculum requirements provided by THECB were provided in 1994. The Committee directed staff to approach the THECB with updated curriculum requirements as determined by the Board and upon approval, draft a rule change for stakeholder comment.

Agenda Item 13 Discussion, recommendation, and possible action regarding American Board of Obstetrics and Gynecology physician reentry examination. Ms. Garanflo presented the case of an applicant who is requesting that the ABOG re-entry exam be considered equivalent to the specialty board certification exam for purposes of meeting the Ten Year Rule. **Dr. Zeitler moved to recommend to the full Board that the ABOG re-entry exam be considered equivalent to specialty board certification for the purposes of meeting the requirements of the Ten Year Rule. Mr. Ellis seconded. All voted in favor. The motion passed.**

Agenda Item 14 Discussion, recommendation and possible action regarding sanction guidelines for licensure applicants. Ms. Robinson discussed the sanction guidelines previously approved by the full Board. The Committee directed staff to draft guidelines for licensure cases that will allow options for the applicants to withdraw and reapply for licensure, be offered remedial plans, or be offered administrative penalties in cases relating alleged violations of 164.052(a)(1) of the Medical Practice Act..

Agenda Items 16 - There being no further business, Dr. Arambula adjourned the meeting at 6:40 p.m.