



Texas Medical Board

BOARD MEETING

AUGUST 28, 2015

333 GUADALUPE, TOWER 2, SUITE 225

AUSTIN, TEXAS

The meeting was called to order on August 28, 2015 at 8:00 a.m. by Michael Arambula, M.D., Board President. Board members present were: Julie Attebury; Frank S. Denton; John D. Ellis, Jr.; J.D Carlos L. Gallardo; John R. Guerra, D.O.; Robert B. Simonson, D.O.; Allan Shulkin, M.D.; Paulette Southard; Karl W. Swann, M.D.; Surendra K. Varma, M.D.; Timothy Webb, J.D.; and George Willeford III, M.D. Stanley Wang, M.D., arrived a few minutes after roll call. David Baucom; Manuel G. Guajardo, J Scott Holliday, D.O.; M.D.; Margaret McNeese, M.D.; and Wynne Snoots, 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. Varma 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.*

There were no items for Agenda item #2.

Agenda item #3, Executive Director Report.

Budget. Ms. Robinson reported the budget was tight this year but will end the fiscal year in good standing covering all expenses.

Legislative Update. Ms. Robinson reported the proposed rules that were developed out of the legislative session will be available for written comments after approval at the August or December board meetings.

Sunset Review. The agency is scheduled for Sunset Review during the 2016-17 review cycle. Sunset Review is to determine if an agency's functions are needed and if so, make recommendations.

Outreach Update. The Outreach schedule was presented. Ms. Robinson reviewed the schedule that includes all medical school 1st year student programs. Ms. Robinson reported meetings with the DEA to develop a good working relationship with that body.

Audit Update. Ms. Robinson gave an update on the Internal Audit Report that focused on the licensure process for physicians. The audit reported requirements were met and documented recommendations.

Personnel Update. Ms. Robinson gave a personnel update and welcomed Monique Johnston as the Interim Licensure Manager.

Board Training. Ms. Robinson reported the annual board training will be scheduled before or after the next board meeting.

Agenda item #4, Medical Director Report. Dr. Bredt requested referrals for additional testifying experts in all areas, including general surgery and alternative medicine. Dr. Bredt reported the process is continuing to provide high quality and uniform reports so each report can stand on its own and show a consensus. Dr. Bredt requested input on the use of the labels for the expert panelists in the reports. After discussion, the board directed staff to review the labels for experts as the 1st, 2nd and 3rd expert, and bring back potential options to address concerns of the impression of possible discord.

After discussing the expert panelist biographical summaries, the board directed staff to bring back options to expand the biographical summaries to provide more credentialing information without releasing personal identifying information.

Agenda item #5, Public Information Update. Ms. Goode reported the TMB newsletter was published last week focusing on regulatory legislation that impacts the board and establishing a new “Did You Know” column. The next bulletin is scheduled to be published in the late fall.

Agenda item #6, Report Physician Assistant Liaison. Ms. Teralea Jones, Physician Assistant board member, gave a brief introductory report.

Agenda item #7, Discussion and report on Physician Health Program (PHP) Workgroup. Ms. Robinson gave a brief overview of the appointment of the PHP Workgroup appointments and processes of the PHP recommendation on what type of documents need to be created. Alison Jones, M.D., PHP Presiding Officer, gave a brief summary of the standardization of the program processes. Brad Fitzwater, M.D., Medical Director, presented the proposed PHP Participant Policies & Procedures for Non-Compliance Review and Reporting; Performance Measures; and Drug Screening. Dr. Bredt summarized differences in the protocol between the Medical Board and PHP.

After discussion, **Mr. Denton moved, Dr. Varma seconded, and the motion passed to approve to accept the PHP Participant Policies & Procedures for Non-Compliance Review**

& Report; Performance Measures, Drug Screening; and Referral Timelines. The board directed staff to present the Physician Health Program reports at the Disciplinary Process Review Committee and to present an annual report at the August Disciplinary Process Review Committee meetings.

Dr. Wang arrived at 8:35 a.m.

Agenda item #8, Discussion, recommendation, and possible action regarding enforcement of peer review cases. Mari gave a brief comment on training regarding the enforcement of peer review cases. A review will be provided at the board member training in December on the how the law is enforced and how it relates to board rules.

Agenda item #9, Overview of transition of new licensing groups. Mari gave a brief overview of the transition of the four new regulatory licensing groups. I.T. is working on the new online application process for the new groups that should roll out in October. Formal notification will be sent to licensees with additional information on renewals. TMB is working diligently with the Department of State Health Services to ensure a seamless transition. New rules will be draft after the new members are appointed. Ms. Robinson reported fingerprinting will be required by statute for all current and new licensees.

Agenda item #10, Consideration and possible action regarding pending litigation. Mr. Freshour gave a brief update of pending litigation involving the Teladoc lawsuit and the lawsuit involving open records requests. Agenda item #10 was deferred to later in the meeting, after Agenda item #22.

The meeting recessed at 9:20 a.m.

The meeting was reconvened at 9:33 a.m. A quorum was confirmed

Agenda item #22, at 9:30 a.m., Consideration and approval of Proposal for Decisions for:

- 1. Andrew Jones, M.D., SOAH #503-14-1721.MD.** Mr. Freshour, General Counsel, gave a procedural background. Ann Skowronski, J.D., staff attorney, was present. Dr. Jones was not present. No one appeared on Dr. Jones' behalf. Ms. Skowronski gave a presentation. After consideration, **Dr. Varma moved, Ms. Southard 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 approve the staff's suggested Final Order for revocation of the license of Andrew Jones, M.D.**
- 2. Ayo Ayodeji Ajim, M.D., SOAH #503-14-1229.** Mr. Freshour gave a procedural background. Lee Bukstein, J.D., staff attorney, was present. Dr. Ajim was present. Don Lewis, J.D., appeared representing Dr. Ajim. Board staff attorney, Mr. Bukstein, gave a presentation. Mr. Lewis gave a presentation. Dr. Ajim presented comments.

Mr. Bukstein gave a brief rebuttal statement. After consideration, **Mr. Gallardo moved, Ms. Southard 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 approve the staff's suggested Final Order for revocation of the license of Ayo Ayodeji Ajim, M.D.**

Agenda item #10, (continued) Consideration and possible action regarding pending litigation. Dr. Willeford moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 10:05 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 10:35 a.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #29, Discussion, recommendation, and possible action regarding the withdrawal of previous proposed published amendments to the following in 22 T.A.C.: Chapter 190, Disciplinary Guidelines, a. §190.8(2)(U) Violation Guidelines. Mr. Freshour gave a brief procedural background. Ms. Pajak gave a brief summary of the rule. After discussion, **Mr. Gallardo moved, Ms. Southard seconded, and the motion passed to approve to withdraw the previous proposed published amendment §190.8(2)(U) Violation Guidelines.**

Agenda item #30, Discussion, recommendation, and possible action regarding the proposed amendments and rule review to 22 Texas Administrative Code:

1. Chapter 190, Disciplinary Guidelines.

§190.8 Violation Guidelines.

§190.8(1)(L) Ms. Tuthill gave a brief summary on §190.8(1)(L) and written comments received. After discussion, the board directed staff to revise the proposed rule §190.8(1)(L) and bring back to the board with suggested revisions.

§190.8(2)(U). Ms. Pajak gave a brief summary on 190.8(2)(U). Written comments were received and reviewed. After discussion, **Dr. Varma moved, Southard seconded, and the motion passed to approve the proposed amendments with revisions to include the commission of any action that violates any criminal or civil state or federal law if the act is connect with the physician's practice of medicine and rule review to 22 T.A.C., Chapter 190, Disciplinary Guidelines, §190.8(2)(U) Violation Guidelines to publish in the Texas Register for public comment.**

§190.8(6). Ms. Pajak gave a brief summary on 190.8(6). After discussion, **Ms. Southard moved, Dr. Wang seconded, and the motion passed to approve the proposed amendments and rule review to 22 T.A.C., Chapter 190, Disciplinary Guidelines, §190.8(6) Violation Guidelines to publish in the Texas Register for public comment.**

2. Chapter 183 Acupuncture

Ms. Pajak gave a brief summary of Chapter 183, Acupuncture, §183.14 Acudex. After discussion, **Dr. Wang moved, Mr. Webb seconded, and the motion passed to approve the proposed amendments and rule review to 22 T.A.C. to publish in the Texas Register for public comments.**

Agenda item #31, Discussion, recommendation, and possible action regarding the adoption of proposed amendments and rule review to 22 T.A.C.:

1. Chapter 171.3 Physician-in-Training Permits was pulled from the agenda.
2. **Chapter 174, Fees and Penalties; §175.1. Application and Administrative Fees; and §175.2. Registration and Renewal Fees.** Ms. Tuthill gave a brief summary. No written comments were received. No one signed in to present oral comments. After discussion, **Mr. Gallardo moved, Ms. Southard seconded, and the motion passed to approve the proposed amendments and rule review to 22 T.A.C. §175.1. Application and Administrative Fees; and §175.2 for adoption and publication in the Texas Register.**
3. **Chapter 190, Disciplinary Guidelines; §190.14 Disciplinary Sanction Guidelines.** Ms. Tuthill gave a brief summary. Written comments were received and reviewed. No one signed in for oral comments. After discussion, **Mr. Denton moved, Ms. Southard seconded, and the motion passed to approve the proposed amendments to §190.14 Disciplinary Sanction Guidelines and rule review to 22 T.A.C. for adoption and publication in the Texas Register.**

After discussion, the board directed staff to add an item to the DPRC agenda to review the penalty guidelines for agreed orders and remedial plans.

There were no items for Agenda items #32-33.

Agenda item #34, Open Forum for Public Comments. Joy Rockwell; Tamara Chauncy; and Rhonda Hampton signed in and presented oral comments regarding Lyme disease.

Agenda item #11, Consideration and approval of Modification Request/Termination Request Non-Public Orders. After discussion, **Mr. Gallardo moved, Dr. Simonson seconded, and the motion passed to approve the Modification Granted Rehabilitation Order #476; and Termination Granted of Rehabilitation Order #562.**

Agenda item #12, Consideration and approval of Modification Request/Termination Request Orders. Termination Request Order #8, was pulled for discussion. After discussion, Dr. Varma moved to approve Termination Granted for #8. The motion failed for the lack of a second. After discussion, the request was set pending for additional information.

Modification Request Order #15 was pulled for discussion. After discussion, **Mr. Gallardo moved and Ms. Southard seconded to deny the Modification Request for Order #15.** After discussion, the vote was set pending for additional information.

Termination Request Order #16 was pulled for discussion. After discussion, **Mr. Gallardo moved, Dr. Willeford seconded, and the motion passed to deny the Termination Request Order for Jesus A. Lopez, M.D., as presented.**

The board returned to Termination Request Order #8. After discussion, **Mr. Webb moved and Dr. Willeford seconded the motion to approve the Termination Request Order for Carl Gossett, M.D.** Dr. Wang spoke against the motion. **A vote was taken. The motion passed to approve the Termination Request Order for Carl Gossett, M.D., as presented.**

The discussion returned to motion to deny the Modification Request Order #15. The vote was set pending for additional information.

After discussion, **Mr. Gallardo moved, Mr. Webb seconded, and the motion passed to approve en masse the Modification Request Order for Beauford Basped, Jr., D.O.; the Termination Request Orders Denied for Frank Bonikowski, M.D., and David S. Burkett, M.D.; and the Termination Request Orders for Paul H. Cho, M.D., Lara L. Dennis, M.D., Dante P. Escalante, M.D., Matthew A.W. Folstein, M.D., Yolanda Hamilton, M.D., Mark E. Hatch, M.D., Angela S. Jones-Allen, M.D.; Timothy F. Malone, D.O., Mrugeshkumar K. Shah, M.D., Jose J. Silva, M.D.**

The board recessed at 11:55 a.m.

The board reconvened at 12:05 p.m. A quorum was confirmed.

Agenda item #12, Consideration and approval of Modification Request/Termination Request Orders. (continued). The discussion returned to the Modification Request for Order #15. After discussion, **the board voted on Mr. Gallardo's motion and Mr. Southard second, to deny the Modification Request for George A. Brooks, M.D.** A vote was taken. **The motion passed to deny the Modification Request for George A. Brooks, M.D.**

After discussion, **Dr. Varma moved, Ms. Southard seconded, and the motion passed to approve en masse the Modification Request Order for Beauford Basped, Jr., D.O.; the Termination Request Orders Denied for Frank Bonikowski, M.D., and David S. Burkett, M.D.; and the Termination Request Orders for Paul H. Cho, M.D., Lara L. Dennis, M.D., Dante P. Escalante, M.D., Matthew A.W. Folstein, M.D., Yolanda Hamilton, M.D., Mark E.**

Hatch, M.D., Angela S. Jones-Allen, M.D.; Timothy F. Malone, D.O., Mrugeshkumar K. Shah, M.D., Jose J. Silva, M.D.

Agenda item #13, Consideration and possible action for Agreed Board Orders. Agreed Order #38 was pulled for discussion. Agreed Order #46 was pulled for discussion. After discussion, **Mr. Webb moved, Mr. Gallardo seconded, and the motion passed to deny the order and to reschedule the respondent for a second Informal Settlement Conference.**

After discussion, **Mr. Webb, Dr. Varma seconded, and the motion passed to approve the Agreed Board Orders en masse for: Dennis B. Barson, Jr., D.O.; Richard B. DeBenedetto, M.D.; Charisma N. Garcia, M.D.; Dennis P. Hughes, M.D.; Rajesh, Malhotra, M.D.; Frank W. Crast, M.D.; Cynthia B. Phillips, M.D.; Ricardo A. Rocha, M.D.; Jack C. Smith III, M.D.; Earl M. Stenger, M.D.; Laura Suarez, M.D.; Robert E. Vasquez, M.D.; Richard D. Yentis, M.D.; Larry L. Alexander, M.D.; Dirk I. Rodriguez, M.D.; Shahram N. Sani, M.D.; Arturo C. Arauzo, M.D.; Joseph A. Bianco, D.O.; Jeffrey P. Cahill, M.D.; Cristo A. Calle, M.D.; Peter V. Driscoll, M.D.; Charles C. Gay, M.D.; Welton E. Hill, M.D.; Barry L. Myones, M.D.; Satish D. Narayan, M.D.; Heli M. Niemi, M.D.; Michael F. Ruggiero, D.O.; Eric S. Silverman, M.D.; Keith B. Stout, M.D.; Steven M. Strong, M.D.; David B. Templin, M.D.; James T. Cammack, M.D.; James T. Fontenot, M.D.; Terry W. Hugg, M.D.; James K. Kaufman, M.D.; William I. Kracke, M.D.; Michele E. Legall, M.D.; Bryan M. Lowery, M.D.; Francisco B. Saucedo, M.D.; Faiz Ahmed, M.D.; Henry R. Armstrong, M.D.; Randy Pearch, D.O.; Michael E. Byrne, M.D.; Jon E. Rosenthal, M.D.; Teki S. Hegwood, M.D.; Paul K. Blissard, M.D.; Darryl N. Steele, M.D.; Forrest C. Brown, M.D.; Ranjitkumar P. Patel, M.D. and Abbie M. Ewell, M.D.**

Agenda item #14, Consideration and approval of Mediated Settlement Agreed Orders. After discussion, **Mr. Webb moved, Mr. Gallardo seconded, and the motion passed to approve the Mediated Settlement Agreed Orders for Del Barker, Stigler, M.D.; Suzanna Cruz, M.D.; Scott E. Kasden, M.D.; Glen L. Mizer, M.D.; Harcharan S. Narang, M.D.; Barlow Smith, M.D.; Wilfred D. Millers, D.O.; Abraham K. Peringol, M.D.; Benjamin E. Wiseman, M.D.; and George A. Nasser, M.D.**

Agenda item #15, Consideration and approval of Remedial Plans. After consideration, three ineligible Remedial Plans were pulled. After discussion, **Dr. Willeford moved, Mr. Webb seconded, and the motion passed to approve the Remedial Plan for Jose E. Barrera, MD.** Mr. Gallardo opposed.

After discussion, **Dr. Guerra moved, Mr. Denton seconded, and the motion passed to approve the Remedial Plan for Richard A. Oria, M.D.** Mr. Gallardo opposed the motion.

After consideration, **Dr. Varma moved, Mr. Gallardo seconded, and the motion passed to approve the Remedial Plans en masse for Syed A. Abrar, M.D.; Venkataratnam Behara, M.D.; Brunel Bredy, M.D.; George G. Burnazian, M.D.; Ricardo Castillo, D.O.; Michael J. De Luca, M.D.; Ron J. Guevara, D.O.; Charles R. Hall, D.O.; Adrian C. Jessie, M.D.; Ravi K. Konidala, M.D.; Jaya Kumar, M.D.; Sergio A. Lara, M.D.; Syed J. Mahdi,**

M.D.; Rajy J. Mathews, M.D.; William R. Pitts, M.D.; Rafiquddin S. Rahimi, M.D.; Leonel Reyes, Jr., M.D.; Sergio F. Rovner, M.D.; Michael P. Sartori, M.D.; Vijayaprakash Sreenarasimhaia, M.D.; Robert F. Yerrington, M.D.; Bennet B. Fontenot, M.D.; John M. Adams, M.D.; Danilo K. Asase, M.D.; Howard G. Diamond, M.D.; Sandeep S. Gill, D.O.; Kenneth J. Lee, M.D.; Terence P. MacConnell, M.D.; Wendy M. Merola, M.D.; Everett A. Moody, M.D.; Joh T. Nguyen, M.D.; Joe T. Pittard, M.D.; Louis U. Pulicicchio, M.D.; Suhail Sharif, M.D.; Samir M. Sukkar, M.D.; Loc H. Trieu, M.D.; Jason A. Williams, M.D.; Rebecca A. Coats, M.D.; Allan D. Davis, M.D.; Michael J. Gannon, M.D.; Germaine B. Hawkins, D.O.; Randall W. McKenna, D.O.; Mark A. McQuaid, M.D.; Ositadinma O. Opara, D.O.; and Coty W. Jewell, M.D.;

There were no items for Agenda items #16-20.

Agenda item #21, Consideration and approval of Cease and Desist Agreed Orders. After discussion, **Mr. Gallardo moved, Ms. Southard seconded and the motion passed to approve the Cease and Desist Agreed Order for Damon G. Sacks.**

Agenda item #22, presented earlier in the meeting.

There were no items for Agenda items #23-24.

Agenda item #25, Report on Motions for Rehearing Requests. A report was presented the Rehearing Request was denied for Douglas Ray Shelton, M.D.

Agenda item #26, Report on Temporary Suspensions Hearings. A report was presented on the Temporary Suspension Hearings for Hughes, Dennis P., M.D., June 11, 2015 Temporary Suspension without Notice; Charles, Ronald A., M.D., June 23, 2015 Temporary Suspension with Notice; Cooke, Gregory, M.D., June 26, 2015 Temporary Restriction with Notice; Yetman, Robert J., M.D., June 30, 2015 Temporary Suspension without Notice; Patel, Ranjitkumar, M.D., July 29, 2015 Temporary Restriction with Notice; Williams, Richard P., Jr., M.D., July 31, 2015 Temporary Suspension with Notice; and Zimmerman, Erika I., M.D., August 13, 2015 Temporary Suspension without Notice.

There were no items for Agenda item #27.

Agenda item #28, Report on Automatic Orders. A report was presented on the Automatic Orders for Nick Patzakis, D.O.; Kathryn Judd, D.O.; and Garrett Merriman, M.D.

Consent Agenda

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

- 1. Consideration and approval of the June 12, 2015 Board Meeting Minutes. Mr. Gallardo moved, Ms. Southard seconded, and the motion passed to approve the June 12, 2015 Board Meeting Minutes.**

2. **Consideration and approval of the August 6, 2015 Executive Committee Minutes.** Dr. Arambula gave a report on the August 6, 2016 Executive Committee meeting. **Mr. Webb moved, Ms. Southard seconded, and the passed to approve the Executive Committee Minutes and action items.**

3. **Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.**

Dr. Arambula gave a report of the Executive Committee meeting. **Dr. Willeford 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, and Mr. Gallardo seconded, and the motion was passed to approve the Finance Committee Meeting minutes and action items.**

Mr. Gallardo gave a report of the Public Information Committee meeting. **Mr. Gallardo moved, Dr. Wang seconded, and the motion passed to approve the Public Information Committee meeting minutes and action items.**

Dr. Swann gave a report of the Telemedicine Committee meeting. **Dr. Swann moved, Dr. Guerra seconded, and the motion passed to approve the Telemedicine Committee meeting minutes and action items.**

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

Ms. Attebury gave a report of the Disciplinary Process Review Committee (DPRC) meeting. **Ms. Attebury moved, Dr. Willeford seconded, and the motion passed to approve the DPRC minutes and action items.**

Agenda item #30, Adjourn. There being no further agenda items, the meeting adjourned at 12:28 p.m.