



Texas Medical Board

BOARD MEETING
333 GUADALUPE, TOWER 2, SUITE 225
AUSTIN, TEXAS
October 19, 2018

The meeting was called to order on Friday, October 19, 2018 at 8:04 a.m. by Board President, Sherif Z. Zaafran, M.D. Board members present were: Michael E. Cokinos; Kandace B. Farmer, D.O.; Frank S. Denton; George L. De Loach, D.O.; Robert Gracia; Jeffrey Luna, M.D.; Robert D. Martinez, M.D.; Margaret McNeese, M.D.; Linda Molina, J.D.; LuAnn Morgan; Jayaram B. Naidu, M.D.; Manuel "Manny" Quinones, Jr., M.D.; Karl W. Swann, M.D.; David G. Vanderweide, M.D.; Surendra Varma, M.D.; and Timothy Webb, J.D. Board members not present were Sharon Barnes. Kandace Farmer, M.D., and J. Scott Holliday, D.O. Board staff present were Stephen Brint Carlton, J.D., Executive Director; Scott Freshour, J.D., General Counsel; Robert Bredt, M.D., Medical Director; Megan Goode, Governmental Affairs and Public Information Manager; and the Assistant General Counsels, Sarah Tuthill, J.D., Yvette Yarbrough, J.D. 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.

- a. Presentation – no items were presented.
- b. **PHP Update** – Dr. Zaafran gave an update on the process to assist the Physician Health Program (PHP) and the request for an opinion from the Office of the Attorney General to determine if PHP Advisory Committee members may assist processing applications.

Mr. Carlton reported the Memorandum of Understanding (MOU) approved by the board is to provide administratively services to improve efficiency in several areas including address the backlog of cases. Mr. Carlton also reported on some of the issues to be addressed by the MOU, such as self-referrals.

- c. **Prescription Dispensing Issues** - Dr. Zaafran reported on several prescription dispensing issues, including the consequences of a pharmacist not filling a prescription as prescribed by a physician.

Dr. Zaafran reported that there is nothing in the law that allows a pharmacist to change the duration, dosage, or frequency of any medication as prescribed by a physician or change

the amount to dispense without consulting with or obtaining the consent of the prescribing physician.

- d. **CDC/MME Guidelines** – Dr. Zaafran reported the CDC/MME guidelines are for primary care physicians prescribing medications for chronic pain patients. Some states and pharmacies have taken these guidelines as policy or law Dr. Zaafran explained that these are guidelines only, and not the standard of care.

Dr. Zaafran reported on the meeting of the International Association of Medical Regulatory Authorities (IAMRA) where topics such as global medical issues, including responses to natural disasters to provide safe medical care; and rules, regulations, and definitions concerning sexual boundaries, were discussed.

After discussion, Dr. Zaafran appointed Board Member, Ms. Linda Molina, to head a Task Force that will research and ultimately develop guidelines related to sexual boundaries and report back to the Board. The Task Force will be comprised of board members and experts approved by the Executive Director.

- e. **Expert Panelist Conflict Update-** Dr. Zaafran reported to the Board that Panelists are permitted to testify on both sides of malpractice suits or give other testimony. However, they are not permitted to testify on behalf of the physicians appearing before the board.
- f. **Complainant Confidentiality-**Dr. Zaafran reported that the Board's letter to complainants will be revised to clarify that a complainant may maintain their option for confidentiality and that such would not hinder an investigation of a complaint.

Dr. Farmer arrived at 8:30 a.m.

Agenda item #3, Consideration and Approval of Mediated Settlement Agreed Orders. After consideration, **Dr. Varma moved, Dr. McNeese seconded, and the motion passed to approve the Mediated Settlement Agreed Orders for Roberto Zayas, Jr., M.D.; Christopher Lee Boehme, M.D.; Suresh-Venkayya Dutta, M.D.; Raynaldo Ortiz, Jr., M.D.; Guarav Aggarwala, M.D.; Jordan B. Graffagnino, S.A.; James E. Williams, M.D.; Larry D. Brown, M.D.; and Lance S. Smith, M.D.** The remaining order #3 was deferred to later in the meeting.

Agenda item #4, Consideration and approval of Remedial Plans. After consideration, **Dr. Quinones moved, Dr. Farmer seconded, and the motion passed to approve the Remedial Plans for Kwasi Adzotor, M.D.; Richard M. High, M.D.; Douglas Lee Kruckner, M.D.; Kitten Sue Linton, M.D.; Michael James Maloy, Jr., M.D.; James Thomas Moyer, M.D.; Martin James Nejat, M.D.; Jason Nelson, M.D.; Enrique Rodriguez, M.D.; David Scherer, M.D.; Jerry W. Sinclair, M.D.; Felix Ekanem, M.D.; Ferdinand R. Rico, M.D.; Brooke E. Jemelka, M.D.; Devry Saenz, M.D.; Henry Norman Small, M.D.; Dolores N. Ifezue, M.D.; Maran K. Querry, M.D.; Michael G. Winnie, M.D.; and Timothy J. Twaddell, M.D.** Dr. Varma was recused for Kitten Sue Linton, M.D., and David M. Scherer, M.D.

Agenda item #5, Consideration and possible action for Agreed Orders. After consideration, **Dr. Varma moved, Dr. Luna seconded, and the motion passed to approve the Agreed orders for Thomas C. Conder, D.O.; Jeff D. Ethridge, M.D.; Jose A. Fuentes, M.D.; Sang Bai Joo, M.D.; Bryant Allan Pryor, M.D.; Jason Evans, M.D.; David Richard Stager, Jr., M.D.; Zane R. Travis M.D.; Cindy Nguyen Sirois, M.D.; Lloyd Jeffrey Krapin, M.D.; Michael F. Ruggiero, D.O.; Raleigh Arnold Smith, M.D.; Norman Jose Torres, M.D.; David Michael Wallace, D.O.; Douglas Powell, D.O.; Shabnam K. Qasim, M.D.; Benjamin S. Zertuche, M.D.; Simon Garza-Keever, D.O.; Kenneth E. Rose, M.D.; Chad Seabold, M.D.; Jesus G. Rodriguez, M.D.; Robin E. Rothrock, M.D.; and David D. Kim, M.D.**

Agenda item #6, Consideration and approval of Modification Request/Termination Request Orders. After consideration, **Mr. Cokinos moved, Dr. Quinones seconded, and the motion passed to approve the Modification Request Granted Orders for Irina V. Borissova, M.D., Paula Lynn Bryant, M.D., Steve Wade Fath, M.D., Kirk Reese Lee, M.D., Paul James Parkey, M.D., John D. Griffith, M.D.; the Termination Request Granted Orders for Robert M. Bowers, M.D., Mary F. Burgess, M.D., Roy Louis Caivano, D.O., John E. Halberdier, M.D., Nancy Scheinost, M.D., Andrew Peter Trussler, M.D., and Eli T. Anderson, M.D.; the Termination Request Denied Order for Ismael Diaz, M.D.; and the Termination of Suspension Request Order for David Flores, S.A.** Mr. Gracia was recused for Kirk Reese Lee, M.D.

Agenda item #3, Consideration and Approval of Mediated Settlement Agreed Orders (continued). After consideration, **Dr. Luna moved, Mr. Gracia seconded, and the motion passed to approve the Mediated Settlement Agreed Order for Suresg-Venkayya Dutta, M.D.**

There were no items for Agenda items #7-8.

Agenda items #9-11 was deferred to later in the meeting

Agenda item #12, Executive Director Report

Budget Update - Brandy Corrales, Finance Manager, reported the budget's projected expenditures and revenue collections are on track and in good standing.

Legislative Update – Ms. Goode presented an update on Legislative 2018 Interim Charges & Hearings related to opioid abuse, prescription monitoring hearings and telemedicine.

Mr. Carlton reported that staff is working with DIR to find options to track CMEs and working through the details of changing from the use of the US mail system to utilizing email for some correspondence with licensees.

Agenda Item #10 at 8:45 a.m., Consideration and approval of Determination of Default.

- a. **Lionel Levison, M.D., SOAH #503-17-5936.** Staff attorney, Samer Shobassy, J.D., gave a presentation. Dr. Levison did not appear and no one appeared to represent Dr. Levison or on his behalf. After consideration, **Dr. Varma moved, Mr. Gracia seconded, and the motion passed to approve the Determination of Default Order for Lionel Levison, M.D., as presented.**

Agenda item #11 at 9:00 a.m., Consideration and approval of Proposal for Decisions

- a. **Adeniran Abraham Ariyo, M.D., SOAH #503-16-3383.MD** agenda item was pulled from the agenda.
- b. **Darnel Michael Durand, M.D., SOAH #5-3-16-6174.MD.** Mr. Freshour, General Counsel, gave a brief review of procedural background of the case. Nikki Karr, J.D. was present and gave a presentation. Don Lewis, J.D., appeared representing Dr. Durand, and gave a presentation. Dr. Durand was present and presented oral comments to the Board. Ms. Karr gave a rebuttal statement. After discussion, **Mr. Webb moved, Ms. Morgan 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 Darnel Michael Duran, M.D., and adopt the board staff's suggested final order for licensure revocation with the modification to remove paragraph #5 related to cost reimbursement.**

Agenda item #12 was presented earlier in the meeting.

Agenda item #13, Medical Director Report. Dr. Bredt reported that additional experts are needed across the board in every discipline and specialty. The most acute needs are neurosurgery, orthopedic spine surgery, pain management, family practice, internal medicine, and subspecialties, oncology, cardiology and gastroenterology.

Agenda item #9, Consideration and possible action to vacate prior board order/action. Mr. Freshour gave a brief report. After consideration, **Dr. McNeese moved, Dr. Varma seconded, and the motion passed to approve to vacate the prior order for James Demberg, M.D.** After discussion, **Dr. Varma moved, Dr. Quinones seconded, and the motion passed to direct staff to open an investigation.**

The board recessed for 15 minutes.

The board reconvened at 10:00 a.m. and a quorum was confirmed.

Agenda item #34, Open Forum for Public Comments. Kristin McGarity; Mimi Shelton; C. M. Schade, M.D., PhD, PE; Sheila Hemphill; Hejuz Aeschback, M.D.; and Citpa Aeschbach Jackmann, M.D., signed-in and presented public comments.

Agenda item #14, Public Information Update. Ms. Goode reported on previous Board bulletin content and reminded board members that the January 2018 bulletin contained a message from the board president on opioid prescribing. After discussion, the Board requested that the

message for the December 2018 Board bulletin include a clarification on board rules regarding opioids, national prescribing guidelines, and information on the Prescription Monitoring Program. Mr. Schneider added that the December 2018 bulletin will also include items previously suggested by Dr. Varma on CME requirements and retirement options for physician licensees.

Dr. Naidu left at 10:50 a.m.

There were no items for Agenda item #15.

Agenda item #16, Consideration and possible action regarding pending litigation.

Mr. Freshour gave a brief summary of ongoing litigation. The agenda item was continued to later in the meeting.

Agenda item #17, Report on Temporary Suspension Hearings. A Report on Temporary Suspension Hearings was presented.

Agenda item #18, Report on Motions for Rehearing Requests. A Report on Motions for Rehearing Requests was presented.

Agenda item #19, Report of Suspension by Operation of Law. A Report of Suspension by Operation of Law was present.

Agenda item #20, Report on Cease and Desist Orders approved by the Executive Director. A Report on Cease and Desist Orders approved by the Executive Director was presented.

There were no items for Agenda items #21-26.

Agenda item #27, Discussion, recommendation, and possible action relating to a petition for possible rule change to §172.13. Conceded Eminence. Ms. Yarborough gave a brief presentation of a petition for a possible rule change to §172.13 Conceded Eminence. After discussion, **Dr. Varma moved, Dr. Quinones seconded, and the motion passed to deny the petition for a possible rule change to §172.13 Conceded Eminence.**

There were no items for Agenda item #28.

Agenda item #29, Discussion, recommendation, and possible action regarding adoption of proposed rule amendments and rule review to 22 T.A.C. Ms. Yarborough gave a brief summary and review of the proposed rules for adoption.

a. Chapter 175, Fees and Penalties

- **§175.5 Payment of Fees or Penalties**

Ms. Yarborough gave a brief summary and review of proposed rule amendments and rule review to §175.5 Payment of Fees or Penalties for adoption. No written comments were received and no one signed-in to present oral comments. After discussion, **Dr. Varma moved, Dr. Martinez seconded, and the motion passed to**

approve to adopt the proposed rule amendments and rule review to Chapter 175, Fees and Penalties, §175.5 Payment of Fees or Penalties, if no additional written comments are received within the required deadline for comments.

b. Chapter 188, Perfusionists

- **§188.4 Qualifications for Licensure**
- **§188.26 Exemption from Registration Fee for Retired Perfusions Providing Voluntary Charity Care**
- **§188.28 Exemption from Registration Fee for Retired Perfusionist**
- **§190.14 Disciplinary Sanction Guidelines**

Ms. Yarborough gave a brief summary and review of proposed rule amendments and rule review to §188.4 Qualifications for Licensure; §188.26 Exemption from Registration Fee for Retired Perfusions Providing Voluntary Charity Care; and §188.28 Exemption from Registration Fee for Retired Perfusionist. No written comments were received and no one signed-in to present oral comments. After discussion, **Mr. Webb moved, Ms. Morgan seconded, and the motion passed to adopt proposed amendments and rule review to Chapter 188, Perfusionists, §188.4 Qualifications for Licensure; §188.26 Exemption from Registration Fee for Retired Perfusions Providing Voluntary Charity Care; and §188.28 Exemption from Registration Fee for Retired Perfusionist.**

Ms. Yarbrough gave a brief summary and review of proposed rule and rule review to §190.14 Disciplinary Sanction Guidelines. No written comments were received and no one signed-in to present oral comments. **Dr. McNeese moved, Ms. Morgan seconded, and the motion passed to adopt proposed rule amendments and rule review to §190.14 Disciplinary Sanction Guidelines.**

There were no items for Agenda items #30-33.

Agenda item #34, Open Forum for Public Comments (Continued). Mr. Carlton reported the emails received from chronic pain patients Marie Morgan and Nancy Wheeler were included in the Open Forum for Public Comments folder for the board members to review.

CONSENTAGENDA

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

Dr. Varma moved, Ms. Morgan seconded, and the motion passed to approve the Consent Agenda items:

1. **The August 24, 2018 Board Meeting Minutes and action items.**
2. **The October 18, 2018 Finance Committee minutes and action items; the October 18, 2018 Licensure Committee minutes and action items; and the October 18, 2018 Disciplinary Process Review Committee (DPRC) minutes and action items.**

Agenda Item #16, Consideration and possible action regarding pending litigation.
(Continued) After discussion, **Dr. Zaafran moved, Mr. Webb seconded, and the motion passed to go into executive session at 11:34 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 Texas Government Code, Section 551.071.** Open session resumed at 12:11 p.m. It was announced that no action was taken. A certified agenda was made.

Dr. Zaafran reported a workgroup meeting will be scheduled the first part of 2019. Dr. Farmer will coordinate and facilitate the workgroup.

Agenda item #35, Adjourn. There being no further agenda items, **Mr. Webb moved, Dr. McNeese seconded, and the motion passed to adjourn the meeting at 12:11 p.m.**