

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

April 7 - 8, 2010

The meeting was called to order at 3:30 pm on April 7, 2010 by Chair, Michael Arambula, M.D. Committee members present were Jose M. Benavides, M.D., John D. Ellis, Jr.; James Scott Holliday, D.O., Wynne M. Snoots, M.D., Timothy J. Turner, and Timothy Webb, J.D.

Agenda Item 2 - Discussion, recommendation, and possible action regarding applicants for licensure, permits, and certification.

Item 2b Proposed orders offered by the Executive Director.

1. Physician Licensure Applicants Ms. Kaufman reported on three orders offered by the Executive Director and accepted by applicants. **Mr. Webb moved to recommend to the full Board that all three orders be approved. Dr. Holliday seconded. All voted in favor and the motion passed.**
2. Physician in training permit applicants There were none.
3. Acudetox certification applicants - There were none.
4. Surgical assistant licensure applicants - There were none.

Item 2c Applicants determined by staff to meet eligibility requirements.

1. Physician Licensure Applicants - There were 625 applicants who met all requirements to be considered for permanent licensure by the full Board. **Mr. Turner moved to recommend to the full Board that all 625 physician licensure applicants determined to meet eligibility requirements by staff be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**
2. Acudetox certification applicants There were none.
3. Surgical assistant licensure applicants - There were four surgical assistant applicants to be considered for approval. **Dr. Benavides moved to recommend to the full Board that all four surgical assistant applicants determined to meet eligibility requirements by staff be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Agenda Item 3 Discussion, recommendation and possible action regarding unsigned orders from previous meetings. Ms. Kaufman presented a report on the six orders offered by the Licensure

Committee at the February, 2010 meeting. Two were resolved. One applicant withdrew. One applicant appealed to SOAH. One applicant requested a rehearing. One applicant was referred back to the Licensure Committee for further determination.

Agenda Item 4 Reports on:

Item 4a Applicant determinations of eligibility made by the Executive Director in the last period -

Ms. Garanflo presented a report on applicant determinations of eligibility made by the Executive Director for the period January 29, 2010 through April 5, 2010.

Item 4b Physician licensure process statistics Ms. Garanflo presented physician licensure statistics for applicants considered for licensure at this meeting. Average time to complete applications for licensure in FY 10 Quarter 2 was 36 days. Estimated average time to complete applications for physicians licensed at this meeting, not including the applicants seen by the Committee is 25 days. If applicants seen by the Committee are licensed, the average number of days to complete will increase due to the more complex nature of the applications.

Agenda Item 5 Discussion, recommendation, and possible action regarding licensee requests:

Item 5a - Request of physician for activation of canceled physician licenses There were none.

Item 5b - Request of physician to return to Active Status from Texas Retired Status There were none.

Agenda Item 6 - Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration.

Item 6a Surgical Assistants There were none.

Item 6b Acudetox There were none.

Agenda Item 7 Discussion, recommendation, and possible action regarding Nonprofit Health Organizations:

Item 7a - Applicants for initial certification - There were 10 applications for initial certification as a Nonprofit Health Organization for approval. **Mr. Turner moved to recommend to the full board that the requests for initial certification as a Nonprofit Health Organization be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Item 7b - Requests for biennial recertification - There were 14 applications for biennial recertification as a Nonprofit Health Organization for approval. **Mr. Turner moved to recommend to the full board that the requests for biennial recertification as a Nonprofit Health Organization be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Item 7c - Cancellation of organizations certified as Nonprofit Health Organizations - There were 17 requests for cancellation by a Nonprofit Health Organization. **Mr. Turner moved to recommend to the full Board that the request for cancellation of the Nonprofit Health Organization be granted. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Agenda Item 8 - Discussion, recommendation, and possible action regarding proposed additions and modifications to **board rules**: There were none.

Agenda Item 9 - Discussion, recommendation, and possible action regarding Visiting Physician Temporary Permits for the KSTAR program. Ms. Robinson presented the issue of out-of-state physicians requesting to participate in KSTAR and applying for Visiting Physician Temporary Permits in order to participate in the program. The Committee directed staff to draft a rule that will create a permit specifically for the KSTAR program to allow out-of-state physicians to obtain a temporary permit even if the physicians have restrictions on their out-of-state medical licenses; however, those with felony convictions will not be eligible for a permit. In addition, the issued permit should provide the caveat that being granted this permit does not in any way indicate the individual will be granted licensure in Texas. Until the rule is adopted, only out-of-state physicians with unrestricted licenses will be considered eligible for a Visiting Physician Temporary Permit in order to participate in the KSTAR program.

Agenda Item 10 - Discussion, recommendation, and possible action regarding delegated authority to staff to issue licenses. Ms. Robinson presented a proposal regarding staff issuance of full licenses to applicants who clearly meet all licensing requirements once or twice a month, as allowed by statute, rather than at the Board meetings. If allowed, it will benefit applicants who currently have problems sitting for specialty board examinations without a full license, and will benefit applicants who experience billing difficulties with the temporary license. **Mr. Turner moved to recommend to the full Board that staff begin issuing licenses to applicants who clearly meet all licensing requirements. Dr. Holliday seconded. All voted in favor and the motion passed.**

Agenda Item 11 - Discussion, recommendation, and possible action regarding expanding the authority of the Executive Director to offer orders with administrative penalties. Ms. Robinson asked the Committee if the guidelines used for Enforcement fast track penalty orders should be used for applicants for licensure. **Mr. Turner moved to recommend to the full Board that the Executive Director in consultation with the Chair of the Licensure Committee use the guidelines to offer administrative penalty orders to licensure applicants. Dr. Snoots seconded. All voted in favor and the motion passed.**

Agenda Item 13 - Discussion, recommendation, and possible action regarding criminal background checks. Ms. Garanflo opened a discussion regarding fingerprinting Physician in Training (PIT) permit applicants. Ideally fingerprints would be stored, so if a PIT holder later applied for licensure, the stored fingerprints could be resubmitted for a background check with state and federal criminal authorities. Staff learned however that the Federal Bureau of Investigation (FBI) does not currently store fingerprints, nor do they have plans to store them. The Committee directed staff to draft a letter to the Special Agent in Charge of the FBI's Houston office requesting that the FBI work with the Texas Department of Public Safety or another entity to store fingerprints.

Agenda Item 12 - Discussion, recommendation, and possible action regarding process and information exchange with applicants. **Mr. Turner moved, Dr. Snoots seconded, that the Committee close the meeting to the public and continue in Executive Session for the purpose of private consultation and advice of counsel. The motion passed.** Dr. Arambula announced that the meeting would be closed for deliberations at 4:34 pm 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., 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 5:02 p.m.

Ms. Robinson informed the Committee that although licensees appearing for informal settlement conferences receive a packet of information, applicants appearing before the Licensure Committee do not. The Committee directed staff to release expert consultant reports for standard of care issues, and psychiatric or medical evaluations requested by the Board, to applicants invited to appear before the Licensure Committee. The Committee also directed staff to evaluate the other types of information that make up the licensure file and report on it at the June Committee meeting.

The Committee recessed at 5:06 p.m. until 10:30a.m. Thursday, April 8, 2010. .

The meeting was reconvened at 12:35 p.m. on April 8, 2010 by Chair, Michael Arambula, M.D. Committee members present were Jose M. Benavides, M.D., John D. Ellis, Jr.; James Scott Holliday, D.O., Wynne M. Snoots, M.D., Timothy J. Turner, and Timothy Webb, J.D.

Agenda Item 14

Mr. Turner moved, Dr. Holliday seconded, that the Committee close the meeting to the public and continue in Executive Session for deliberations concerning licensure applications. The motion passed. Dr. Arambula announced that the meeting would be closed for deliberations at 12:36 p.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 5:40 p.m.

Item 14a 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. and 2. Physician Licensure and Physician in Training Permit applicants

Applicant #930 appeared with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be determined ineligible for a Texas medical license.** This recommendation is due to applicants violation of the Medical Practice Act and Board rules including criminal history, unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; and submission of false statements on application for licensure. Factors contributing to this recommendation include that the applicants criminal history includes felony conviction for burglary, theft by receiving stolen goods and by fraud, unauthorized use of credit card, and probation violation. Also, while in residency training, the applicant was suspended for three days for blogging about patients on a commercial website, received two warnings for unprofessional conduct; and applicant did not report a 1991 arrest for parole violation nor the disciplinary actions taken while applicant was in residency training. **Mr. Ellis seconded the motion. All voted in favor. The motion passed.**

Applicant #923 did not appear before the Committee. The application was considered at the applicants request. In open session, **Mr. Turner moved to recommend to the full Board that the applicant be determined ineligible for licensure.** This recommendation is due to the applicants violation of the Medical Practice Act and Board rules including failure to pass a licensing exam in the ten years prior to the date of application. Factors contributing to this recommendation include that the applicant passed FLEX in 1975 and has not passed a more recent licensure examination. **Mr. Ellis seconded the motion. All voted in favor. The motion passed.**

Applicant #940 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Snoots moved to recommend to the full Board that the applicant be determined ineligible for a Texas medical license.** This recommendation is due violation of the Medical Practice Act and Board rules including failure to meet the standard of care, and time out of the professional practice of medicine. Factors contributing to this recommendation include the applicants failure to meet the standard of care in four surgical cases, and that the applicant has not practiced medicine since 2003. **Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #932 appeared before the Committee, in executive session, on referral by the Executive Director, due to a possible physical impairment. In open session, **Mr. Turner moved to recommend to the full Board that the applicant be granted an unrestricted Texas medical license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #936 appeared, with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Holliday 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 subject to an administrative penalty in the amount of \$1000 payable within 60 days.** This recommendation is due to violation of 164.052(a)(5) due to unprofessional and dishonorable conduct. Factors contributing to this recommendation include that the applicants response made it appear that the applicant was practicing as a physician in training; applicants admission to attempting to overstate duties in a mistaken effort to inflate active practice credentials; applicant drafting content of letter signed by supervising physician outlining duties as a clinical fellow; and a subsequent letter from supervising physician in which the applicants duties were clarified as a glorified medical assistant. **Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #939 appeared, with counsel before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be granted an unrestricted license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #925 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Holliday moved to recommend to the full Board that the applicant be granted an unrestricted Texas medical license. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #828 appeared with counsel, before the Committee, in executive session, on referral by the Executive Director at the request of the Texas Physician Health Program. In open session, **Mr. Webb 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 for an indefinite period of time: practice limited to administrative medicine only; psychiatric therapy with a psychiatrist or psychologist with visits every other week; psychiatric treatment with a psychiatrist**

for medication management with visits every other week; attend AA meetings at least 3 times a week; applicant must complete the Vanderbilt boundary course approved by the ED within one year; and must submit to TMB drug/alcohol screens. This recommendation is due to the applicants violation of the Medical Practice Act and Board rules including past disciplinary history with the board, specifically applicant has been the subject of multiple orders with the Board for drug abuse and unprofessional conduct whereby applicants license was suspended and eventually surrendered; disciplinary action by two health care entities relating to having an inappropriate relationship with a patient; and submission of a false statement to the Board on application for licensure by failing to report one of the health care entity actions. In addition, the Committee considered the following mitigating factors: demonstrated sobriety since November 2004; compliance with treatment for mental condition and substance dependency; applicants compliance with Interim Agreement with the Board that has required drug testing; and applicants request for a restricted license that does not include the clinical practice of medicine. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #934 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Ellis 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 condition: an Administrative Penalty of \$1000 payable within 60 days.** This recommendation is due to violation of 164.051(a)(7), 164.052(a)(5) and 164.053. Factors contributing to this recommendation include suspension from a residency program for violation of HIPAA rules. Mitigating factors include successful completion of the residency program and support of the residency director. **Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #931 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Snoots moved to recommend to the full Board that the applicant be determined ineligible for a Texas medical license.** This recommendation is due to the applicants criminal history. Factors contributing to this recommendation include that the applicant was convicted of failure to file IRS form 8300 for currency in excess for \$10,000, i.e. \$300,000 (misdemeanor) and was incarcerated for five months. **Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #929 appeared with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Physician-in-**

Training permit subject to the following conditions: the applicant must take and pass the Texas medical jurisprudence examination within one year; take a boundaries violation course approved by the Executive Director within one year; pay an administrative penalty of \$2000 within 90 days.

This recommendation is due to Applicants violation of the Medical Practice Act and Board rules including disciplinary action taken by a health care entity; unprofessional conduct likely to deceive, defraud or injure the public; and submission of a false statement on application for licensure. Factors contributing to this recommendation include a determination by applicants residency program that while in residency training, applicant violated the programs sexual harassment policy. As a result, the applicant resigned from the program rather than be subject to disciplinary action. Applicants failure to report a malpractice claim filed against the applicant in 2009 and the Committees determination that the falsification was intentional. Mitigating factors include that while criminal charges were filed against applicant in relation to the sexual assault, the states attorney chose not to prosecute due to lack of cooperation by complainant. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #928 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Ellis moved that the applicants application for reinstatement be deferred and an extension on the application and fees be granted for 6 months to allow the applicant to complete a KSTAR assessment. Upon completion of the KSTAR assessment the applicant must appear before the Board for further review. Dr. Snoots seconded the motion. Mr. Turner made a friendly amendment to extend the deferral for 9 months to allow the applicant time to complete the KSTAR assessment, and to add an Ethics evaluation approved by the Executive Director. Mr. Ellis accepted the amendment. Mr. Webb seconded the friendly amendment.** In discussion, Mr. Turner stated that the two evaluations might have multiple requirements. Also, when the evaluations are received by the Committee the applicant should appear before the full committee instead of a subcommittee. **All voted in favor. The motion passed.**

Applicant #935 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Turner moved to recommend to the full Board that the applicant be determined ineligible for a Texas medical license.** This recommendation is due to the applicants violation of the Medical Practice Act and Board rules including intemperate use of alcohol and drugs that could endanger a patients life; violation of state and federal law related to the applicants practice of medicine; prescription of medication inconsistent with public health and welfare; past disciplinary history with the Board; and submission of a false statement to the Board on application for licensure. Factors

contributing to this recommendation include that the applicant was diagnosed with alcohol and opioid dependence in 2000 with multiple relapses; applicant was previously licensed by the Board and the applicants license was suspended in 2002 in relation to the applicants substance dependency issues and self-prescribing, with the suspension probated in 2004 under certain terms and conditions for 10 years; applicant was convicted of theft by check in 2003; and failed to report the conviction in applicants application for licensure. **Mr. Ellis seconded the motion. All voted in favor. The motion passed.**

Applicant #903 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Snoots moved to recommend to the full Board that the applicant be granted an unrestricted Texas medical license. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #944 appeared with counsel, before the Committee, in executive session, on appeal of a determination- made by the Executive Director, regarding a possible physical impairment. In open session, **Dr. Benavides moved to recommend to the full Board that the applicant be granted an unrestricted Texas medical license. Mr. Ellis seconded the motion. All voted in favor. The motion passed.**

Applicant #946 appeared with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be denied reissuance of a Texas medical license.** This recommendation is due to Applicants violation of the Medical Practice Act and Board rules including prior disciplinary action by TMB; criminal history; time out of the professional practice of medicine disciplinary action taken by another state licensing board or agency; and intemperate use of alcohol and drugs. Factors contributing to this recommendation include applicant has been the subject of multiple agreed orders relating to applicants alcoholism and substance abuse and multiple relapses resulting in licensure revocation in 2006; applicant pled no contest to DWI in 2006; applicant has not practiced medicine since June 2006; applicant has failed to demonstrate that applicants return to the practice of medicine is in the publics best interest; and applicant surrendered California medical license in 2007 in lieu of further disciplinary action as a result of the action taken by the TMB. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #741 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Ellis moved to recommend to the full Board that the applicant be**

granted an unrestricted Texas medical license Mr. Webb seconded the motion. All voted in favor. The motion passed.

Applicant #924 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be determined ineligible for relicensure.** This recommendation is due to Applicants violation of the Medical Practice Act and Board rules, including prior disciplinary action by the Board; non-therapeutic prescribing of medications; intemperate use of alcohol and drugs; and time out of the active practice of medicine. Factors contributing to this recommendation include that the applicant voluntarily surrendered a Texas medical license in 2008 in lieu of further disciplinary proceedings due to applicants organic affective disorder and poly-substance abuse that rendered applicant unable to safely practice medicine; applicant has not practiced medicine since February 2007; applicant suffers from arthritis and chronic pain for which applicant has history of self-medication; and applicant has failed to demonstrate that applicants return to the practice of medicine is in the best interest of the public and the physician. **Dr. Holiday seconded the motion. All voted in favor. The motion passed.**

Applicant #945 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Holliday moved to recommend to the full Board that, 1) upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions: restriction to the practice of gynecology, or 2) that the applicants application for relicensure be deferred and an extension on the application and fees be granted for 9 months to allow the applicant to complete a KSTAR assessment and comply with any recommendations resulting from the KSTAR evaluation. Upon completion of these requirements the applicant must appear before the Committee for further review.** This recommendation is due to three obstetrics medical malpractice cases between 1994 and 1998, applicants admission to voluntarily ceasing practice of obstetrics due to malpractice costs, and not practicing obstetrics since 1998. **Mr. Turner seconded the motion. Mr. Turner made a friendly amendment to both restrict the license and require the applicant to do KSTAR. Dr. Holliday clarified that this applicant is recently board certified, however needs assessment of obstetrics practice. Mr. Turner withdrew his amendment. All voted in favor. The motion passed.**

Applicant #901 appeared before the Committee, in executive session, after deferral from the February 2010 Board meeting. In open session, **Dr. Benavides moved to recommend to the full Board that the**

applicant be granted an unrestricted Texas medical license. Mr. Webb seconded the motion. All voted in favor. The motion passed.

Applicant #800 did not appear before the Committee. The application was reconsidered at the applicants request after deferral from the February 2010 Board meeting. In open session, **Mr. Ellis moved to approve modification of the original condition and allow the applicant to substitute the general medicine outpatient/clinical program with Dr. Chinnici for the clinical portion of the Drexel University Physician Re-Entry Preceptorship, in which he is currently participating. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #654 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Benavides moved to recommend to the full Board that the applicant be denied reissuance of a Texas medical license.** This recommendation is due to Applicants violation of the Medical Practice Act and Board rules, including prior disciplinary history with the Board; repeated or recurring meritorious health care liability claims that in the board's opinion evidence professional incompetence likely to injure the public; criminal history; disciplinary action taken by a health care entity; disciplinary action taken by other state medical boards; and time out of the active practice of medicine. Factors contributing to this recommendation include that the applicant was previously disciplined by the board for unprofessional conduct and conviction of two federal felonies (misprision of a felony and Medicare fraud) that resulted in applicants licensure revocation in 2005; subject to 18 medical malpractice suits in which violations were found in nine of the cases; conviction of two federal felonies and probation violation that included 21 months imprisonment, \$750,000 fine, and three years probation; applicants hospital privileges were revoked on two occasions due to standard of care violations; applicant surrendered applicants two other state medical licenses in lieu of further disciplinary action based on revocation of license by Board; applicant has not actively practiced medicine since June 2005; and applicant failed to demonstrate that applicants return to medicine was in the best interest of the public. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

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

Item 14b Applicants appearing for rehearing concerning eligibility.

1. Physician Licensure Applicants There were none.
2. Physician in training permit applicants There were none.

3. Acudetox certification applicants There were none.
4. Surgical assistant licensure applicants - There were none.

Agenda Item 15 Discussion, recommendation, and possible action regarding applicant requests:

Item 15a Requests for Rehearing Applicant #912s request for rehearing was considered. Mr. Turner moved to recommend that the committee approve the applicants request for rehearing based on the submission of information not previously considered. Dr. Holliday seconded the motion. All voted in favor. The motion passed.

Applicant #902s request for rehearing was considered. Mr. Turner moved to recommend that the committee deny the applicants request for rehearing based on failure to present new information not previously considered by the Committee. Mr. Webb seconded the motion. All voted in favor. The motion passed.

Item 15b Request for Waiver of Acupuncture License Requirements There were none.

Agenda Item 16 - There being no further business, Dr. Arambula adjourned the meeting at 6:30 p.m.