

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

August 25, 2011

The meeting was called to order at 10:59 a.m. on August 25, 2011 by Chair, Michael Arambula, M.D. Committee members present were Pat Crocker, D.O., John D. Ellis Jr., Wynne M. Snoots, M.D., Paulette B. Southard, Timothy J. Turner, and Timothy Webb.

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

There were none.

Dr. Crocker moved, Ms. Southard seconded, that the Committee close the meeting to the public and continue in Executive Session for deliberations concerning Agenda item 3. The motion passed. Dr. Arambula announced that the meeting would be closed for deliberations at 11:02 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 4:21 p.m.

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 #1135 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 to defer the application for a Texas medical license pending further investigation by the Board. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1138 did not appear before the Committee, but requested consideration of the applicants relicensure application 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 failure to practice medicine in an acceptable professional manner consistent with public health and welfare; unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; action taken by a health care entity based on unprofessional conduct or professional incompetence likely to harm the public; and submission of a false statement to the Board on an application for licensure. Factors contributing to this recommendation include prior to applicants Texas medical license being cancelled for nonpayment, applicant had privileges at a Texas hospital where the applicants hospital privileges were repeatedly suspended due to late medical records and expired DEA registration, instances of unprofessional behavior in the OR, limitation of privileges, and denial of reappointment to medical staff and subsequent resignation due to conduct and professional competence concerns. Applicant also failed to report to the Board the actions taken by the Texas hospital with regard to applicants privileges. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1123 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 granted an Out of State Telemedicine License. Dr. Crocker seconded the motion. All voted in favor. The motion passed.**

Applicant #1139 appeared with counsel, before the Committee, 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 relicensure subject to the following conditions: limitation to a group or institutional setting.** This recommendation is due to time out of the active practice of medicine. Factors contributing to this recommendation include applicant has not practiced medicine since 1999, when applicant did general surgery. Within the past year, applicant completed a KSTAR evaluation and a mini-residency, and the KSTAR program director recommended applicant for licensure with the advice that applicant be limited to a group setting. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1140 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 Texas medical license subject to the following conditions for three years: the applicant be required to obtain a three-day focal evaluation; continuation of psychiatric treatment with a board-approved psychiatrist on a monthly basis to focus on anger management issues; completion of Anger Management for Healthcare Professionals Program offered by the UC San Diego PACE Program and payment of a \$2,000 administrative penalty.** This recommendation is due to unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; failure to practice medicine in an acceptable professional manner consistent with public health and welfare; action taken by a health care entity based on professional incompetence or unprofessional conduct likely to harm the public; and submission of a false statement to the Board on application for licensure. Factors contributing to this recommendation include that while in residency training over a three-year period and immediately prior to date of application, applicant was the subject of numerous complaints from other staff regarding applicants unprofessional interactions resulting in applicants placement on probation; that while in training, applicant treated a family member at the hospital where applicant was training and improperly treated the person, was belligerent with staff, resulting in applicant being escorted out of the area where the applicants family member was being treated; and that applicant failed to report on application for licensure applicants placement on academic probation. **Dr. Snoots seconded the motion. All voted in favor. The motion passed.**

Applicant #1142 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 license. Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #1144 appeared with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Crocker moved to recommend to the full Board that the applicant be granted a physician in training permit. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1145 appeared before the Committee, 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: limitation to an institutional setting where a supervisory physician is on-site at all times, with reports submitted quarterly to the Board from the supervising physician.** This recommendation is due to failure to practice medicine in an acceptable manner consistent with public health and welfare; and action taken by a health care entity due to unprofessional conduct or professional competence. Factors contributing to this recommendation include the applicants placement on probation twice during postgraduate training due to issues relating to insufficient knowledge, inattention to patient charting, and professional competence; applicant has not had additional training or employment experiences since completion of applicants PGY1 to demonstrate satisfactory remediation of those issues or that applicant should practice without oversight. Mitigating factors include credit for one year of postgraduate training with additional retraining and passage of all steps of the USMLE within one attempt each. **If applicant does not elect to sign the proposed order, applicant may withdraw application for full license and upon receipt within one calendar year of a request for a physician in training permit of no less than one year, a physician in training permit may be granted by the Executive Director.** **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1146 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 an unrestricted license. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #1148 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Mr. Turner 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: 12 hours CME in Ethics and a \$2000 Administrative Penalty.** This recommendation is due to action taken by a health care entity due to unprofessionalism or professional incompetence likely to harm the public; unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; and submission of false or misleading information on an application for licensure. Factors contributing to this recommendation include that during the applicants single year of residency training, applicant received a letter of counseling, was placed on remediation and then placed on probation due to unprofessional conduct, including repeated tardiness, poor intercommunication skills with colleagues and supervisors, and instances of dishonesty; and that

applicant failed to report the letter of counseling or placement of remediation on applicants application for licensure. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1153 appeared before the Committee, with counsel, 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 a Texas physician in training permit. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1156 appeared before the Committee, with counsel, in executive session, on appeal of an administrative penalty order offered by the Executive Director. In open session, **Dr. Crocker 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.** This recommendation is due to applicants provision of false or misleading information to the Board. Factors contributing to this recommendation include the committees determination that the falsification was intentional. **Ms. Southard seconded the motion. Ms. Southard, Dr. Snoots, Mr. Ellis and Mr. Webb voted in favor. Mr. Turner was opposed. The motion passed.**

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

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 eleven orders offered by the Executive Director and accepted by applicants. **Mr. Webb moved to recommend to the full Board that all 11 orders be approved. Dr. Snoots seconded. All voted in favor and the motion passed.**
2. Physician in Training Applicants Ms. Garanflo reported on two orders offered by the Executive Director and accepted by applicants. **Ms. Southard moved to recommend to the full Board that both orders be approved. Mr. Webb seconded. All voted in favor and the motion passed...**
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 67 applicants who met all requirements to be considered for permanent licensure by the full Board. **Dr. Crocker moved to recommend to the full Board that all 67 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 three acudetox certification applicants to be considered for approval. **Dr. Snoots moved to recommend to the full Board that all 3 acudetox certification applicants determined to meet eligibility requirements by staff be approved. Ms. Southard seconded the motion. All voted in favor. The motion passed.**
3. Surgical assistant licensure applicants - There were six surgical assistant applicants to be considered for approval. **Ms. Southard moved to recommend to the full Board that all 6 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 two physicians who had been issued licenses under orders limiting their practice to Administrative Medicine met requirements for conversion to the Administrative Medicine license type. **Dr. Snoots moved to recommend to the full Board that both conversions be approved. Ms. Southard seconded. All voted in favor and the motion passed.**

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

Item 4a was deferred until the end of the meeting.

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 June 2011 Board meeting. Two orders remain unresolved as the applicants 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 11 so far was 42 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

Item 7a Surgical Assistants There were nine surgical assistants whose licenses have been delinquent for at least one year and who have not completed the registration process. **Dr. Snoots moved to recommend to the full board that the surgical assistant licenses be cancelled. Ms. Southard seconded. All voted in favor and the motion passed.**

Item 7b Acudetox - There were none

Agenda Item 8a - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Applicants for initial certification. There were fourteen 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. Ms. Southard 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. **Mr. Turner moved to recommend to the full board that the requests for biennial recertification as a Nonprofit Health Organization be approved. Ms. Southard 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 none

Agenda Item 10 - Discussion, recommendation, and possible action regarding medical liability information documentation requirements for physician licensure applicants. Dr. Gage-White opened a discussion regarding the issue of reporting claims without payouts on licensure applications. The physician licensure application does not currently require disclosure of claims that have no payment. Following discussion, the Committee opted not to change the licensure application.

Agenda Item 9 - Discussion, recommendation, and possible action regarding proposed additions and modifications to board rules:

- a. 22 TAC 163 Licensure
- b. 22 TAC 167 Reinstatement and Reissuance
- c. 22 TAC 171 Postgraduate Training Permits
- d. 22 TAC 172 Temporary and Limited Licenses
- e. 22 TAC 184 Surgical Assistants
- f. 22 TAC 192 Office-Based Anesthesia Services

Ms. Southard moved to recommend to the full board that the rules be published in the Texas Register for public comment. Mr. Webb seconded. All voted in favor. The motion passed.

Agenda Item 14 - Discussion, recommendation, and possible action regarding interpretation of terms of Agreed Order, Applicant #998. Ms. Kaufman requested guidance on the over-read process required by the Board for this applicant. Following discussion, the Committee confirmed staffs interpretation of the term and that the intent of the over-read requirement was for the over-reads to take place concurrently or shortly after the applicants original read. Because the applicant misunderstood the intent of the Board at the time the applicant signed the order, **Mr. Turner moved to recommend to the full Board that the order be vacated, and the license rescinded. Ms. Southard seconded. All voted in favor and the motion passed.** Further, the Committee wanted the minutes to reflect that the reason the order is vacated and the license rescinded is not disciplinary but due to the misunderstanding regarding the term over-read and the Board will consider the applicants re-application should applicant elect to reapply.

Agenda Item 11 - Discussion, recommendation, and possible action regarding staff issuance of conversion to administrative medicine license for impaired physicians. Ms. Garanflo reviewed the process for handling licensee reports of impairment on their registrations. The Committee directed that licensees who report impairments and subsequently elect to convert their licenses to administrative medicine license types be brought to the Committee for approval. Ms. Garanflo presented the first case of a licensee who reported a physical impairment and requested conversion to an administrative medicine license type. **Mr. Turner moved to recommend to the full Board that the conversion be approved. Ms. Southard seconded. All voted in favor and the motion passed...**

Item 3a - Applicants for pain management clinic certification.

Son Nguyen, MD, owner, Southern Pain Institute dba Texas Pain Institute appeared with counsel, on referral by the Executive Director for a determination of eligibility. **Mr. Turner moved to recommend to the full board that Dr. Nguyens application for pain management clinic certification be denied.** This recommendation is due to the terms of his December 9, 2009 Agreed Order, which constituted grounds for ineligibility for certification under Tex. Occ. Code, Sec. 167.201(a)(3), which provides that the owner or operator of a pain management clinic may not have been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance. **Mr. Ellis seconded the motion. All voted in favor and the motion passed.**

Fernando Avila, MD, owner, Avila Pain & Wellness/The Pain Management Center of South Texas appeared with counsel, on referral by the Executive Director following his determination of ineligibility for pain management clinic certification. Dr. Avila requested reconsideration of his request for withdrawal of his pain management clinic certification application, which was submitted prior to the effective date of the current rule regarding withdrawal of applications... **Mr. Turner moved to recommend to the full Board that Dr. Avilas request to withdraw be deferred for up to 30 days and Dr. Avila submit to a board audit of his practice in order to determine whether or not his practice is exempt from pain management clinic certification. If the board confirms that pain management clinic certification is not required, the board will allow Dr. Avila to withdraw his application. If the board feels certification is required, then the issue will return to the committee. Ms. Southard seconded the motion. 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. Phillip M. Cantu**, owner of Interventional Spine Solutions, following the determination that he was ineligible for pain management clinic certification, was considered. **Mr. Turner moved to deny the applicants 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. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #1126s request for rehearing was considered. Dr. Snoots moved to deny the applicants 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. Mr. Ellis seconded the motion. All voted in favor. The motion passed.

Applicant #1118s request for rehearing was considered. Mr. Webb moved to deny the applicants 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. Mr. Turner seconded the motion. All voted in favor. The motion passed. Note - The full board at its meeting August 26, 2011, overturned this recommendation based on provision of new information, and voted in favor of deferring a determination on the rehearing request to allow the applicant time to resolve the lawsuit against the applicants previous employer.

Applicant #1078s request for rehearing was considered. Mr. Webb moved to deny the applicants 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. Mr. Turner seconded the motion. All voted in favor. The motion passed.

Agenda Item 12 - Discussion, recommendation, and possible action regarding disciplinary files related to recent licensure applicants. The Committee postponed review of this item until the November meeting.

Agenda Item 13 - Discussion, recommendation, and possible action regarding input from Oral and Maxillofacial Surgery Stakeholder Meeting. Ms. Robinson presented a report regarding the stakeholder meeting. The issue of concern is that dentists participating in Oral and Maxillofacial Surgery (OMFS) dental residencies rotate through accredited physician postgraduate training programs without appropriate supervision on cases which extend beyond OMFS, potentially practicing medicine without a license. The stakeholders discussed the new ACGME guidelines regarding direct supervision of all first year residents, which they agreed would provide the required supervision of non-physician OMFS residents rotating through medical postgraduate training programs. The Committee agreed that the supervision level was appropriate and directed staff to notify the stakeholders by letter.

Agenda Items 15 - There being no further business, Dr. Arambula adjourned the meeting at 6:20 p.m.