



Texas Medical Board

BOARD MEETING

NOVEMBER 4, 2011

333 GUADALUPE, TOWER 2, SUITE 225

AUSTIN, TEXAS

The meeting was called to order on November 4, 2011 at 8:10 a.m. by Board President Irvin E. Zeitler, Jr., D.O. Board members present were Melinda McMichael, M.D., Vice-President; Julie Attebury; Patricia S. Blackwell; Pat J. Crocker, D.O.; John D. Ellis, Jr., J.D.; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Allan N. Shulkin, M.D.; Wynne M. Snoots, M.D.; Paulette B. Southard; Stanley S. Wang, M.D., J.D.; Timothy Webb, J.D.; and George Willeford III, M.D. Michael Arambula, M.D., and Manuel Guajardo, M.D., were not present. Board staff present were Mari Robinson, Executive Director; Linda Gage-White, M.D., Medical Director; Nancy Leshikar, J.D., General Counsel; Jaime Garanfio, Director of Licensure; Megan Goode, Public Information and Special Projects Manager; Jennifer Kaufman, Assistant General Counsel; Suzanne Mitchell, Assistant General Counsel; and various other staff.

Ms. Attebury 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.

Presentation to board member. The board members presented Timothy J. Turner a plaque and resolution in honor of Mr. Turner's dedication and service to the board.

Agenda item 3, Nomination and election for Board Secretary/Treasurer. Dr. McNeese nominated Ms. Southard for the position of Board Secretary/Treasurer. Dr. Crocker seconded the nomination of Ms. Southard for Secretary/Treasurer. Mr. Ellis moved, Dr. Wang seconded, and the motion passed to approve to close the nominations. A vote was taken on the original motion in support of Ms. Southard for the position of Board Secretary/Treasurer. Ms. Southard was elected Board Secretary/Treasurer by unanimously.

Agenda item #2, Executive Directors Report.

Physician Coaching. Ms. Robinson presented the status of physician coaching process.

Ms. Robinson noted that the Federation of State Medical Boards extended an offer for one board member from each state medical board the opportunity to take the enhanced version of the SPEX exam at no charge.

Interim Charges. Ms. Robinson gave a report of the Legislative Interim Charges related to the board.

Public Outreach update. Ms. Robinson gave an update of the Public Outreach projects. Public outreach presentations will be offered with a request for a minimum attendance level.

Budget update. Ms. Robinson presented a brief summary of the budget.

Personnel update. Ms. Robinson reported that the hiring freeze was lifted and the remaining open positions were posted.

Out of state licensees. Deferred report to later in the meeting.

Agenda item #5, Medical Directors report.

Panelist/reviewer recruiting. Dr. Gage-White reported there was an encouraging number of nominations from the recruitment process. The process will continue with a focus on recruitment of panelists for obstetrics/gynecology, family physicians and physician assistant.

Panelist/reviewer orientation. Dr. Gage-White reported the training process is moving forward to address clarification of the expert panelist reports. Training is now available online.

Agenda item #6, Discussion, recommendation, and possible action regarding the use of expired emergency resuscitation drugs during the drug shortage. After discussion, the board directed staff to research the available drug repositories and draft a board statement for the newsletter regarding the use of expired drugs during a shortage.

Agenda item #7, Discussion, recommendation, and possible action regarding pending litigation. Dr. McMichael moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 8:40 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, GOVERNMENT CODE, 551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, 152.009, 155.058, 160.006, and 164.007; and Attorney Generals Opinion No. H-484. Open session resumed at 9:10 a.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #8, Consideration and Approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, Dr. McMichael moved, Ms. Attebury seconded, and the motion passed to approve the Termination Granted of Rehabilitation Order #598, as written.

Agenda item #9, Consideration and possible action for Agreed Board Orders. After discussion, Ms. Attebury moved, Dr. McMichael seconded, and the motion passed to approve the agreed Board Orders en masse for the following: Roland G. Arafiles, Jr., M.D.; Christina J. Clardy, M.D.; Walter A. Dobson, D.O.; William L. Fontenot, M.D.; Edwin Read, M.D.; Robert T. Angel, M.D.; William J. Dickey, Jr., M.D.; Richard K. Ho, M.D.; Siegfredo M. Nadela, M.D.; Habiboola Niamatali, M.D.; Shahid H. Syed, M.D.; Bo Wang, M.D.; Isam Anabtawi, M.D.; Salvatore A. Barbaro, III, M.D.; Todd E. Bell, M.D.; Laura J. Bennack, M.D.; Richard K. Cardenas, M.D.; John C. M.D.; Jose D. Gil, M.D.; Paul E. Kobza, D.O.; Charles J. O'Hearn, M.D.; Thomas Perry, M.D.; Mark L. Spencer, D.O.; Justina P. Taube, M.D.; John W. Young, M.D.; Davill Armstrong, M.D.; Doyle H. Brashear, M.D.; Michael R. Kilgore, M.D.; Justin L. Koch, M.D.; Gene W. Voskuhl, M.D.; Sarah E. Andrews, M.D.; Andrew W. Campbell, M.D.; Stephen H. Smith, M.D.; Deborah Z. Bain, M.D.; German Benavides, M.D.; Wanda Castro-Borrero, M.D.; Mary G. Gorman, M.D.; Sabrina D. Harris, M.D.; Robert W. Paige, M.D.; Cwanza A. Pinckney, M.D.; Luis F. Tschen, M.D.; R. Craig Saunders, M.D.; Bradley P. Axline, M.D.; and Ramon Cruz, M.D., as written.

After discussion, Dr. Shulkin moved, Ms. Blackwell seconded, and the motion passed to approve the Agreed Board Order for No. 24 with the modification to add that the respondent participate in the KStar program evaluation within a year and require respondent fulfill any KStar recommendations, in addition to all other stipulations in the order, due concerns of competency.

After discussion, Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the Agreed Board Order for Fulgencio P. Salinas, M.D., as written.

After discussion, Ms. Attebury moved, Dr. McMichael seconded, and the motion passed to approve the Agreed Board Order for Benjamin H. Kim, M.D., as written.

Agenda item #10, Consideration and Approval of Modification Request/Termination Request Orders. After discussion, Dr. McMichael moved, Ms. Blackwell seconded, and the motion passed to approve the Modification Granted Order for John R. Hall, D.O.; Kevin D. Light, D.O.; Navinchandra C. Parikh, M.D.; and Brian D. Rappe, D.O.; and the Termination Granted Orders for Alice Ingram, M.D.; Beau L. McCrory, M.D.; Peter Raphael, M.D.; Oscar M. Reichert, D.O.; Gerald C. Simpson, M.D.; and Alan D. Smith D.O., as written

Agenda item #11, Consideration and Approval of Nunc Pro Tunc Orders. After discussion, Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the Nunc Pro Tunc Orders for Daniel Dawson, M.D. and Jennifer Johnson-Caldwell, M.D., as written.

Agenda item #12, Consideration and Approval of Mediated Settlement Agreed Orders. Dr. Wang was recused for consideration of Dr. DeMaio. After discussion, Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the Mediated Settlement Agreed Orders en masse for the following: Susan B. Kern, M.D.; Dorothy V. Martin, M.D.; Gary R. Burman, M.D.; Samuel J. DeMaio, M.D.; Troy R. Hailpam, M.D.; Don M. ONeal, M.D.; Carlos Reyes-Pescador, M.D.; Francisco J. Rodriguez, M.D.; James L. Slater II, D.O.; William M. Spurlock, M.D.; Robert L. True, M.D.; Andrew P. Jones, M.D.; Raul A. Pena, M.D.; Jack A. Chapman, M.D.; and Akram A. Mushtaha, M.D., as written.

Agenda item #13, Consideration and Approval of Remedial Plans. After discussion, Dr. McMichael moved, Ms. Southard seconded, and the motion passed to pull the Remedial Plan for #70, due to the policy that a remedial plan cannot be used for boundary violations. The board directed staff to send the case back through the process to review the Findings of Facts.

After discussion, Ms. Attebury moved, Ms. Southard seconded, and the motion passed to approve the Remedial Plan en masse for the following: Jason L. Davis, M.D.; Francis J. Amede, M.D.; Craig C. Callewart, M.D.; Dennis C. Doherty, D.O.; R. Juan A. Aguilera, M.D.; Amer Alanbari, M.D.; Tiffany L. Albritton, M.D.; Katrina E. Allen, M.D.; Alcides N. Amador, M.D.; Emilio B. Apostol, M.D.; Americo M. Baca, M.D.; Allakbar Bhurwala, M.D.; Fredricka M. Borland, M.D.; Tom D. Byrd, M.D.; James A. Cain, III, M.D.; Marcos Calderon; Angela L. Cope, M.D.; Barbara A. Coulter-Smith, M.D.; Janice R. Crowder, M.D.; Alberto D. Duran, M.D.; Daniel J. Guerra, M.D.; Riaz Haider, M.D.; Gary M. Horndeski, M.D.; Sorab Italia, M.D.; Arnulfo Izquierdo, M.D.; Dinesh K. Jain, M.D.; Nelson R. Kalaf, M.D.; Harini P. Kanani, M.D.; Marcia F. Katz, M.D.; Charles W. Kennedy, Jr., M.D.; Wendy A. Kindrick, D.O.; Sherry J. Lim, M.D.; Bryan C. Lipsen, M.D.; Monica E. Lopez, M.D.; Nick D. Manitzas, M.D.; Agustin Martinez, M.D.; Max R. Mintz, M.D.; Vaddarse N. Nagaraja, M.D.; William J. Norberg, M.D.; Kelly F. OCarroll, M.D.; Melva Palacios, M.D.; Shalin D. Patel, M.D.; Juan D. Posada, M.D.; Leonora T. Punsalan, M.D.; Chittury Ramanathan, M.D.; Christopher K. Robertson, M.D.; Ricardo M. Schwarcz, M.D.; Kusumam Sidharthan, M.D.; Virabandith Songbandith, M.D.; Averell Sutton, M.D.; Hiram Tavarez, M.D.; Tommy C. Thompson, M.D.; Ernesto Trevino, M.D.; Winder N. Vasquez, M.D.; Tario Zia, M.D.; Leslie J. Allison, M.D.; Dhiman Basu, M.D.; Sreenivasulu Cherlo, M.D.; Brian J. Feaver, M.D.; Gustavo A. Fierro-Carrion, M.D.; Thandavarajan Gopalakrishnan, M.D.; Edward E. Kirby, M.D.; Clifford M. Kitten, M.D.; Brian Marcum, M.D.; Corey J. Mark, M.D.; Horace Petersen, D.O.; Daniel G. Stroud, M.D.; David M. Way, M.D.; Mary E. Bohnenblust, M.D.; J. Jesus Diaz, M.D.; Alfredo Trevino, Jr., M.D.; Marc A. Wilson, M.D.; Abdue-Aziz Alhassan;

Shahid Aziz, D.O.; Frank P. Bonikowski, M.D.; Steven L. Casey, D.O.; Alvaro M. Giraldo, M.D.; Jose A. Gonzalez, M.D.; Timothy N. Hickman, M.D.; Vincent F. Honrubia, M.D.; Laurie, McKenzie, M.D.; Hoa X. Nguyen, M.D.; and Jose F. Pena, M.D.

There were no items for Agenda items #14-16.

Agenda item #17, Report on Temporary Suspensions. Reports were presented on the October 4, 2011 and October 14, 2011 Temporary Suspension Hearings.

Agenda item #18, Report on Automatic Orders. Reports were presented on the Automatic Suspension Order for Theresa Rice, M.D., and the Automatic Cease and Desist Order for Joseph A. Diruzzo.

Agenda item #19, Consideration and approval of Agreed Cease and Desist Orders. After discussion, Ms. Attebury moved, Ms. Southard seconded, and the motion passed to approve the Agreed Cease and Desist Order for Daniel V. Bodin, as written.

There were no items for Agenda item #20.

Agenda item #21, Consideration and Approval of Determinations of Default.

1. **Dennis Marrero, S.A.** Joe Tabaracci, staff attorney, gave a presentation. Mr. Dennis Marrero was not present. After discussion, **Dr. McNeese moved, Ms. Southard seconded, and the motion passed to approve the Determination of Default for Dennis Marrero, S.A.**
2. **Jason Levon Simmons, M.D.** Joe Tabaracci, staff attorney, gave a presentation. Dr. Simmons was not present. Ray Jackson, attorney, was present to represent Dr. Simmons. Mr. Jackson gave a presentation. After discussion, **Dr. Willeford moved, Ms. Southard seconded, and the motion passed to deny the Determination of Default Order and to reinstate the case back at the State Office of Administrative Hearings.**
3. **John C. Collier, M.D.** Susan Rodriguez, staff attorney, gave a presentation. Dr. Collier was not present. After discussion, **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the Determination of Default Order for John C. Collier, M.D.**
4. **Sabrina Harris, M.D.** The Determination of Default Order was pulled.

There were no items for Agenda item #22-24.

Agenda item #4, Executive Director Report (continued)

Out-of-state license for experts. Ms. Robinson gave an update of possible solutions to concerns regarding Attorney General representation of out-of-state experts in State Office of Administrative Hearings.

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

1. **Consideration and approval of the August 26, 2011 Board Meeting Minutes.** After discussion, **Dr. McMichael moved, Dr. Crocker seconded, and the motion passed to approve the August 26, 2011 Board Meeting Minutes and action items.**

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

Ms. Southard gave a report of the Licensure Committee meeting. After discussion, **Dr. Crocker moved, Ms. Attebury seconded, and the motion passed to approve the Licensure Committee minutes and action items with the amendment to revise the Penalty Guidelines to allow options for applicants to withdraw and re-apply for licensure, be offered remedial plans, or be offered administrative penalties in cases relating alleged violations of 164.052(a)(1) of the Medical Practice Act.**

Agenda item #25, Discussion, recommendation, and possible action regarding penalty guidelines. The board discussed the revision of the penalty guidelines during the consideration of the above Licensure Committee minutes.

Dr. McNeese gave a report of the Standing Orders Committee meeting. **Dr. McNeese moved, Dr. Crocker seconded, and the motion passed to approve the Standing Orders Committee minutes and action items.**

Dr. Zeitler gave a report of the Executive Committee meeting. **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the Executive Committee minutes and action items.**

Ms. Attebury gave a report of the Finance Committee meeting. **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the Finance Committee minutes and action items.**

Dr. McMichael gave a report of the Disciplinary Process Review Committee meeting. **Dr. McMichael moved, Ms. Blackwell seconded, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items.**

Staff presented a brief retirement presentation for Jaime Garanfio, Licensure Director.

Agenda item #24, Consideration and Approval of Proposal for Decision. Donald Gibson II, M.D., SOAH #504-11-3095. Scott Freshour, staff attorney, gave a presentation. Dr. Gibson was not present. After discussion, **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to adopt the Findings of Facts; Conclusion of Laws of the Administrative Law Judge, Paul D. Keeper's Proposal for Decision; and approve the staff's recommendation for revocation of the license of Donald Gibson II, M.D.**

The board recessed for lunch at 11:10 a.m.

The board reconvened at 11:30 a.m. Roll was called and a quorum was confirmed.

Agenda Item #26 at 11:30 a.m., Discussion, recommendation, and possible action relating rule review and proposed amendments to 22 TAC : Items a.) through m.) were deferred to later in the meeting.

- n. Chapter 198. Unlicensed Practice.** No one signed in to present oral comments and no written comments were received. The repeal of Chapter 198, Unlicensed Practice was approved.
- o. Chapter 198. Standards for use of Investigational Agents.** Written comments were received and reviewed. Kevin Cmunt, American Association of Tissue Banks/Allosource, and Brett Ginoir, M.D., Texas A&M System signed in and presented oral comments. After discussion, **Dr. Wang moved, Dr. Holliday seconded, and the**

motion passed to pull Chapter 198. Standards for use of Investigational Agents. The board directed staff to re-draft the rule language to clarify the boards intent with Drs. Wang, Holliday, Willeford, McNeese, Shulkin and re-publish in the Texas Register for public comments.

- m. Chapter 195. Pain Management Clinics.** Written comments were reviewed. Dr. Sumner J. McGee, Center for Practical Bioethics/University of Kansas Medical Center signed in and presented oral comments. After discussion, **Dr. McMichael moved, Dr. Crocker seconded, and the motion passed to adopt the rule review and amendments to Chapter 195. Pain Management Clinics, and publish in the Texas Register as adopted.**
- a. Chapter 163. Licensure.** Ms. Kaufman presented a brief summary of the rule review and amendments to Chapter 163. No one signed in to present oral comments. No written comments were received. After discussion, **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to adopt the rule review and amendments to Chapter 163. Licensure, and publish in the Texas Register as adopted.**
- b. Chapter 167. Reinstatement and Reissuance.** Ms. Kaufman presented a brief summary of the rule review and amendments to Chapter 167. No one signed in to present oral comments. No written comments were received. After discussion, **Dr. Holliday moved, Ms. Southard seconded, and the motion passed to adopt the rule review and amendments to Chapter 167. Reinstatement and Reissuance, and publish in the Texas Register as adopted.**
- c. Chapter 171. Postgraduate Training Permits.** Ms. Kaufman presented a brief summary of the rule review and amendments to Chapter 171. No one signed in to present oral comments. No written comments were received. After discussion, **Dr. Willeford moved, Ms. Southard seconded, and the motion passed to adopt the rule review and amendments with a non-substantive change to Chapter 171. Postgraduate Training Permits, and publish in the Texas Register as adopted.**
- d. Chapter 172. Temporary and Limited Licenses.** Ms. Kaufman presented a brief summary of the rule review and amendments to Chapter 172. No one signed in to present oral comments. No written comments were received. After discussion, **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to adopt the rule review and amendments to Chapter 172. Temporary and Limited Licenses, and publish in the Texas Register as adopted.**
- e. Chapter 175. Fees and Penalties.** Ms. Kaufman presented a brief summary of the rule review and amendments to Chapter 175. No one signed in to present oral comments. No written comments were received. After discussion, **Dr. Wang moved, Dr. Holliday seconded, and the motion passed to adopt the rule review and amendments to Chapter 175. Fees and Penalties, and publish in the Texas Register as adopted.**
- f. Chapter 177. Business Organizations.** Ms. Kaufman presented a brief summary of the rule review and amendments to Chapter 177. No one signed in to present oral comments. No written comments were received. After discussion, **Dr. Willeford moved, Ms. Southard seconded, and the motion passed to adopt the rule review and amendments, except section 177.5, to Chapter 177. Business Organizations, and publish in the Texas Register as adopted**
- g. Chapter 178. Complaints.** Ms. Kaufman presented a brief summary of the rule review and amendments to Chapter 178. No one signed in to present oral comments. No written

comments were received. After discussion, **Dr. Wang moved, Ms. Attebury seconded, and the motion passed to adopt the rule review and amendments to Chapter 178. Complaints, and publish in the Texas Register as adopted.**

- h. Chapter 180. Texas Physician Health Program and Rehabilitation Orders.** Ms. Kaufman presented a brief summary of the rule review and amendments to Chapter 180. No one signed in to present oral comments. Written comments were received and reviewed. After discussion, **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to adopt the rule review and amendments to Chapter 180. Texas Physician Health Program and Rehabilitation Orders, and publish in the Texas Register as adopted.**
- i. Chapter 184. Surgical Assistants.** Ms. Kaufman presented a brief summary of the rule review and amendments to Chapter 184. No one signed in to present oral comments. No written comments were received. After discussion, **Ms. Southard moved, Dr. McMichael seconded, and the motion passed to adopt the rule review and amendments to Chapter 184. Surgical Assistants, and publish in the Texas Register as adopted.**
- j. Chapter 187. Procedural Rules.** Ms. Kaufman presented a brief summary of the rule review and amendments to Chapter 187. No one signed in to present oral comments. Written comments were received and reviewed. After discussion, **Ms. Southard moved, Dr. Holliday seconded, and the motion passed to adopt the rule review and amendments to Chapter 187. Procedural Rules, and publish in the Texas Register as adopted.**
- k. Chapter 190. Disciplinary Guidelines.** Ms. Kaufman presented a brief summary of the rule review and amendments to Chapter 190. No one signed in to present oral comments. No written comments were received. After discussion, **Dr. Wang moved, Ms. Southard seconded, and the motion passed to adopt the rule review and amendments with a non-substantive change to Chapter 190. Disciplinary Guidelines, and publish in the Texas Register as adopted.**
- l. Chapter 192. Office-Based Anesthesia Services.** After discussion, **Ms. Blackwell moved, Dr. McMichael seconded, and the motion was approved to pull Chapter 192 from the agenda.**

There were no items for agenda items #27-28.

Agenda item #29, Open forum for public comments. No one signed in to present public comments.

There being no further agenda items, the board adjourned at 1:26 p.m.