

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

August 26, 2010

The meeting was called to order at 8:36 a.m. on August 26, 2010 by Chair, Michael Arambula, M.D. Committee members present were Jose M. Benavides, M.D., John D. Ellis, Jr., Wynne M. Snoots, M.D., Paulette B. Southard, Timothy J. Turner, and Timothy Webb, J.D. Irvin E. Zeitler, Jr. D.O. was also present as a substitute Committee member.

**Agenda Item 6a - Discussion, recommendation and possible action regarding licensee requests:
Request of physician for activation of canceled physician licenses.**

Dr. Francisco Aviless request to return activate a cancelled license and return his license to active status was considered. **Mr. Turner moved to recommend to the full Board that the applicants request be denied. Ms. Southard seconded the motion.** This recommendation is due to time out of the active practice of medicine and failure to timely renew license after being given proper notice by the board. **All voted in favor. The motion passed.**

Agenda Item 2

Dr. Zeitler moved, Ms. Southard 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 9:00 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 3:09 p.m.

Item 2a 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 #474 appeared, with counsel 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 a Physician in Training permit. Dr. Benavides seconded the motion.** During discussion, Mr. Turner directed staff to refer this applicant to the Texas Physicians Health Program. **All voted in favor. The motion passed.**

Applicant #962 appeared before the Committee, in executive session, on appeal of the referral by the Executive Director to the Texas Physicians Health Program. In open session, **Dr. Zeitler 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: annual reporting from the applicants treating physician.** This recommendation is due to concern regarding the applicants ability to safely practice medicine due to a physical condition. Factors contributing to this recommendation include diagnosis in 2004 of young onset Parkinsons; although not practicing clinical pediatrics does want to practice in some capacity in the medical field; and applicants neurologist believes that applicant can work as a physician in a part time position with close monitoring during the progression of applicants disease. **Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #965 appeared with counsel before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Turner moved to recommend to the full Board to defer action and extend application and fees until February 28, 2010 to allow applicant to submit results of board certification exam. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #966 appeared, with counsel 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 license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #969 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 determined ineligible for licensure due to unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public; disciplinary action taken by a health care entity due to unprofessional**

conduct; conviction or placement on deferred adjudication for misdemeanor involving moral turpitude; and intemperate use of alcohol or drugs that could endanger the public. Factors contributing to this recommendation include: in 1997, applicant was required to complete a professional assessment program to address concerns about professional boundary violations; failing to maintain confidentiality of a patient; in 2006, applicant was arrested and charged with driving while intoxicated and shoplifting, applicant pled guilty to both charges and completed all requirements of sentences. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #970 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, upon compliance with all further requirements of licensure, the applicant be granted a license subject to the following conditions: completion of the Vanderbilt boundary course or similar course approved by the Executive Director within one year.** This recommendation is due to unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public; and disciplinary action taken by peers due to unprofessional conduct. Factors contributing to this recommendation include engaging in a sexual relationship with a patient that led to applicants resignation from residency training in lieu of termination by the program and subsequent placement on professional probation by another training program based on the problems at the first training program. **Mr. Ellis seconded the motion. All voted in favor. The motion passed.**

Applicant #978 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.** Ms. Southard seconded the motion. All voted in favor. The motion passed.

Applicant #982 appeared, with counsel, 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 allowed to withdraw the application for a Texas medical license due to providing incorrect information to the Board.** Factors contributing to this recommendation include the committees determination that the submission of incorrect information was not intentional. The applicant will be allowed to file a new application in which the correct information is provided. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #983 appeared before the Committee, 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 a Physician in Training permit, subject to an administrative penalty in the amount of \$2000. This recommendation is due to providing false or misleading information to the Board. Factors contributing to this recommendation include the committees determination that the falsification was intentional. Dr. Zeitler seconded the motion. All voted in favor. The motion passed.

Applicant #984 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 application be deferred for up to 6 months until the applicant undergoes a comprehensive focal evaluation approved by the Executive Director and upon completion reappear before the Committee. Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Applicant #985 appeared, with counsel, 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 granted an unrestricted license. Ms. Southard seconded the motion. Dr. Benavides, Mr. Ellis, Dr. Snoots, Ms. Southard, Mr. Webb, and Dr. Zeitler voted in favor. Mr. Turner voted against. The motion passed.**

Applicant #986 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 granted an unrestricted license. Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Applicant #989 appeared before the Committee, 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. Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Applicant #991 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 granted a Physician in Training permit. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #997 appeared with counsel 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 a Physician in Training permit. The Committee strongly encouraged the**

applicant to complete a three-year residency before applying for full licensure. If the applicant applies for a full licensure, the applicant will be required to reappear before the Licensure Committee. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #998 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 licensure.** This recommendation is due to disciplinary action taken by peers due to unprofessional conduct or professional incompetence; failure to practice medicine consistent with public health and welfare; and disciplinary action taken by a state licensing entity. Factors contributing to this recommendation include: placement on academic probation during residency training due to academic deficiencies, and applicants subsequent resignation from the program; applicants resignation from a hospital clinical position during a pending investigation of allegations concerning quality of care involving computerized tomography (C.T.) readings of two patients, and recommendation by the medical executive committee that applicants C.T. privileges be temporarily suspended until the completion of a three-month fellowship, and a subsequent evaluation of applicants C.T. cases for six months; and two health care liability claims from 2005 in which the applicant violated the standard of care, causing one patient to have residual neurological deficits. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #999 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 granted a Physician in Training permit.** **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1004 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 determined ineligible for licensure.** This recommendation is due to intemperate use of drugs or alcohol that could endanger a patients life; unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; violation of federal or state law related to the practice of medicine; and writing a false prescription for a controlled substance or dangerous drug. Factors contributing to this recommendation include: complaints against applicant during residency training that related to applicants aggressive behavior and verbal harassment directed toward patients; applicants history of stimulant dependency that led to an instance of a forged prescription and subsequent referral to an inpatient program; placement on academic probation while in residency training from 2004 through 2010 due to interpersonal skills, deficient medical knowledge, not reporting to work, and working more than allowed. **In addition, upon**

receipt of a valid Physician in Training application, a Physician in Training permit will be granted subject to the following terms and conditions: psychiatric treatment twice a month, follow recommendations of psychiatrist, completion of 8-hours CME in patient/physician relationships, and drug testing. Dr. Benavides seconded the motion. All voted in favor. The motion passed.

Applicant #1006 appeared before the Committee, 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. Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Applicant #1005 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Ellis recommended 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: \$2,000 administrative penalty and treatment by a psychiatrist or other mental health provider approved by the Board every other week.** This recommendation is due to placement on deferred adjudication for misdemeanor involving moral turpitude; unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure the public; and submission of a false or misleading statement on an application for licensure. Factors contributing to this recommendation include: in 2009, while in medical school, applicant was terminated from a clinical rotation due to unprofessional conduct; in 2004 applicant was charged with driving under the influence; and in 2005 was charged with burglary and criminal mischief. The applicant did not report the DUI charge on the Physician in Training permit application. A mitigating factor is that the applicants proposed residency training program is aware of the applicants unprofessional conduct and criminal history issues and still wants the applicant in their program. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #1009 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. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1010 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 license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #1011 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, upon compliance with all further requirements of licensure, the applicant be granted a Physician in Training permit subject to the following conditions: non-public non-disciplinary agreed rehabilitation order with substantially similar terms and conditions to the applicants previous non-public non-disciplinary agreed rehabilitation order including provisions that the order be provided to program directors and appear before the Licensure committee upon application for full licensure.** This recommendation is due to inability to practice medicine with reasonable skill and safety to patients because of excessive use of drugs, narcotics, chemicals, or another substance. Factors contributing to this recommendation include applicants history of drug abuse including marijuana, alcohol, cocaine, and intravenous narcotics; and resignation from residency training program in lieu of possible action based on applicants drug relapse while in training. Mitigating factors include past history with the board in which applicant was offered a rehabilitation order at time of applicants relapse; six-years of sobriety; and active participation in AA. . **Mr. Turner seconded the motion.** During discussion the Committee wondered how the Board can offer a non-disciplinary non-public rehabilitation order. It was then determined that the intention was to make a motion to continue the prior agreed order with additional terms and conditions. **Mr. Ellis moved to table the motion so new language could be drafted. Dr. Zeitler seconded the motion. All voted in favor of tabling the motion and the motion passed.**

Applicant #1013 appeared, with counsel, before the Committee, in executive session, on appeal of the order proposed by the Executive Director. In open session, **Mr. Ellis moved to recommend to the full Board that the applicant be allowed to withdraw the application for a Texas medical license due to providing incorrect information to the Board.** Factors contributing to this recommendation include the committees determination that the submission of incorrect information was not intentional. The applicant will be allowed to file a new application in which the correct information is provided. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #1017 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Zeitler moved to recommend to the full Board that the applicant be granted an unrestricted license. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

The motion regarding **Applicant #1011** was revisited. **Dr. Benavides 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: continuation of 2005 non-public non-disciplinary agreed rehabilitation order including additional requirements that the order be provided to program directors and that Applicant appear before the Licensure committee upon application for full licensure. This recommendation is due to inability to practice medicine with reasonable skill and safety to patients because of excessive use of drugs, narcotics, chemicals, or another substance. Factors contributing to this recommendation include applicants history of drug abuse including marijuana, alcohol, cocaine, and intravenous narcotics, resignation from residency training program in 2004 in lieu of possible action based on applicants drug relapse while in training. Mitigating factors include past history with the board in which applicant was offered a rehabilitation order at time of applicants relapse; six-year sobriety; and active participation in AA. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

2. Acudetox certification applicants There were none.
3. . Surgical assistant licensure applicants **Applicant #990** 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 granted an unrestricted license. Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Dr. Zeitler moved, Ms. Southard 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 3:41 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 4:05 p.m.

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

1. Physician Licensure Applicants - There were 70 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 70 physician licensure applicants determined to meet eligibility**

requirements by staff be approved. Ms. Southard seconded the motion. All voted in favor. The motion passed.

2. Acudetox certification applicants There were two applicants who met all requirements to be considered for acudetox certification by the full Board. **Mr. Turner moved to recommend to the full Board that the applicant 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 eight surgical assistant applicants to be considered for approval. **Ms. Southard moved to recommend to the full Board that all the 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 5 Report on physician licensure statistics. Ms. Garanflo advised the Committee that, between 7/1/10 and 8/16/10, staff had issued 745 licenses under the newly implemented process. Ms. Garanflo noted that for FY 10 to date, 3,435 licenses had been issued in an average of 35 days. For FY 10 through 8/25/10, 4,104 physician licensure applications have been received, which breaks the record set last year of 4,094.

Agenda Item 7a - Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration Surgical assistant. There were 12 surgical assistants whose licenses have been delinquent for at least one year and who have not completed the registration process. **Mr. Turner moved to recommend to the full board that the surgical assistants licenses be cancelled. Ms. Southard seconded. All voted in favor and the motion passed.**

Agenda Item 8a - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Applicants for initial certification. There were 11 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 12 applications for biennial recertification as a Nonprofit Health Organization for approval. **Ms. Southard moved to recommend to the full board that the requests for biennial recertification as a Nonprofit Health Organization be approved. Mr. Turner seconded the motion. All voted in favor. 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 consideration and approval of the June 3, 2010 Licensure Committee minutes. Mr. Webb moved to recommend to the full board that the minutes be approved. Ms. Southard seconded. All voted in favor and the motion passed.

Item 3a Requests for Rehearing Applicant #947s request for rehearing was considered. Ms. Southard moved to deny the applicants request for a rehearing based on the failure to submit new information. Mr. Turner seconded the motion. All voted in favor. The motion passed.

Item 2c Proposed orders offered by the Executive Director.

1. Physician Licensure and Physician in Training Applicants Ms. Kaufman reported on thirteen orders offered by the Executive Director and accepted by applicants. **Mr. Turner moved to recommend to the full Board that all the orders be approved. Ms. Southard seconded. All voted in favor and the motion passed.**
2. Acudetox certification applicants - There were none.
3. Surgical assistant licensure applicants Ms. Kaufman reported on one order offered by the Executive Director and accepted by applicant. **Mr. Turner moved to recommend to the full Board that all the orders be approved. Ms. Southard seconded. All voted in favor and the motion passed.**

Item 2b - Applicants appearing for rehearing concerning eligibility

1. Physician licensure applicants and Physician in Training permit applicants

Applicant #940 appeared before the Committee, in executive session, after a rehearing was granted in June 2010. In open session, **Dr. Zeitler 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: applicants practice be limited to administrative medicine.** This recommendation is due to applicants time out of

the active practice of medicine as defined by Rule 163.11. Factors contributing to this recommendation include that the applicant has not practiced clinical medicine or been on the teaching faculty of a hospital since 2003, but in the past year has practiced in Mexico in a clinical setting that has included supervision of surgical assistants. In the alternative, the applicant may request that the applicants licensure application be changed to an administrative medicine application upon adoption of proposed rule 172.17 based on the determination that the applicant has been determined competent to practice administrative medicine. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

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

Agenda Item 9 - Discussion, recommendation, and possible action regarding proposed additions and modifications to board rules: 22 TAC 175.1 Application Fees. Ms. Southard moved to recommend to the full board that the rules be published in the Texas Register for public comment. Mr. Ellis seconded. All voted in favor. The motion passed.

Agenda Item 11 - Discussion, recommendation, and possible action regarding draft policy and implementation timeline for provision of licensure file information to certain applicants. Ms. Kaufman and Ms. Leshikar presented a proposed policy for provision of licensure file information to certain applicants. Following discussion, the Committee directed staff to institute a policy where, prior to the Committee meeting, applicants appearing before the Committee are provided a more detailed summary of the issues to be addressed.

Agenda Item 12 - Discussion, recommendation, and possible action regarding eligibility for registration of pain management clinics whose owners/operators have pending investigations. Ms. Robinson presented information regarding the statute and rules related to eligibility for registration of pain management clinics. Ms. Robinson requested guidance concerning the eligibility of physicians who, as potential owners/operators of pain management clinics, have pending investigations with the Board. The Committee discussed the possibility of issuing certificates up to the point at which the physician had been offered an order. Following discussion, the Committee directed staff to issue certificates regardless of pending investigations, to expedite the investigations in these cases, and to draft rules for consideration at the next meeting.

Agenda Item 13 - Discussion, recommendation and possible action regarding approval of pain management clinics.

David McClellan, M.D., appeared with counsel on appeal of the Executive Directors denial of certification for a pain management clinic. Following discussion, **Mr. Turner moved that the Committee recommend to the full board that Dr. McClellans appeal be denied.** The recommendation is due to the fact that Dr. McClellan holds a restricted license, which makes him ineligible to own, operate, be employed by, or contract with a pain management clinic. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Herbert Emejulu, M.D., appeared with counsel after having been referred to the Committee for a determination of eligibility on certification for a pain management clinic. Following discussion, **Mr. Turner moved that the Committee recommend to the full board that Dr. Emejulu be determined ineligible to own, operate or work in a pain management clinic.** The recommendation is due to the fact that Dr. Emejulu is under a disciplinary order with the Board for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance, which makes him ineligible to own, operate, be employed by, or contract with a pain management clinic. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Agenda Item 14 - Discussion recommendation and possible action regarding policy of referral to Licensure Committee of applicants with felony convictions or felony deferred adjudications. Ms. Robinson requested guidance from the Committee regarding referral to the Committee of applicants with felony convictions or felony deferred adjudications. Following discussion, the Committee directed Ms. Robinson to continue referring such cases to the Committee.

Agenda Item 15 - Discussion, recommendation, and possible action regarding licensure applications completed and submitted by third parties. Ms. Garanflo presented information regarding third parties who complete and submit online physician licensure applicants on behalf of the applicants. The Committee discussed potential changes in the process and directed staff to modify the online application so that a third party could indicate completion and submission on behalf of the applicant as the applicants authorized representative. The Committee confirmed that the physician applicant would still be considered responsible for the information contained in the application. Until the application is modified, if it is discovered that a third party completed and submitted an application on behalf on an applicant, the

Committee directed staff to require the physician to submit an affidavit attesting that the information submitted on the application form was true and correct.

Agenda Item 16 - There being no further business, Dr. Arambula adjourned the meeting at 6:05 p.m.