

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

June 2, 2011

The meeting was called to order at 10:40 a.m. on June 2, 2011 by Chair, Michael Arambula, M.D. Committee members present were John D. Ellis Jr., Wynne M. Snoots, M.D., Paulette B. Southard, Timothy J. Turner, and Timothy Webb.

Mr. Turner moved, Ms. Southard seconded, that the Committee close the meeting to the public and continue in Executive Session for deliberations concerning Agenda items #2 and 3. The motion passed. Dr. Arambula announced that the meeting would be closed for deliberations at 10:42 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.

Dr. Holliday entered the meeting at 1:30pm, during executive session.

The Executive Session ended at 3:55 p.m.

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

Item 2a - Request of physician for activation of canceled physician licenses –

Licensee #1124 appeared with counsel, before the Committee, in executive session, to appeal the Executive Director's determination to deny activation of the licensee's cancelled license. Following discussion, **Mr. Webb moved to recommend to the full Board that the licensee's request be denied and that the license remain cancelled.** This recommendation is due to the determination that, in accordance with the Medical Practice Act and Board rule, the licensee had adequate notice regarding requirements to maintain licensure. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Item 2b - Request of physician to return to Active Status from Texas Retired Status – There were none.

Agenda Item 3 - Discussion, recommendation and possible action regarding applicants for licensure, permits, and certification:

Item 3a - Applicants for pain management clinic certification. There were none.

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 #1057 appeared with counsel, 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, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions: the applicant must demonstrate through use of a proctor approved by the Executive Director, five successful completions of each of the eight laparoscopic procedures outlined by the health care entity that restricted the applicant's privileges.** This recommendation is due to failure to practice medicine in an acceptable professional manner consistent with public health and welfare; disciplinary action by a health care entity based on unprofessional conduct or professional incompetence likely to harm the public. Factors contributing to this recommendation include failure to meet the standard in surgical cases reviewed; health care entity recommended proctorship to address deficiencies, and the applicant resigned in lieu of completing requirements to maintain clinical privileges. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #1078 appeared with counsel, before the Committee, in executive session, on appeal of an administrative penalty order offered by the Executive Director. **In open session, Mr. Webb 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 providing false or misleading information to the Board. Factors contributing to this recommendation include the committee's determination that the falsification was intentional. **Ms. Southard seconded the motion. Mr. Ellis, Ms. Southard, Mr. Turner, and Mr. Webb voted in favor. Dr. Holliday was opposed. All voted in favor. The motion passed.**

Applicant #1106 appeared with counsel, 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 an unrestricted license.. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #1117 appeared with counsel, 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 denied reissuance of licensure.** This recommendation is due to conviction of a felony; past disciplinary history with the Texas Medical Board; disciplinary action by other state licensing entity; and time out of the active practice of medicine. Factors contributing to this recommendation include that the applicant was convicted of income tax evasion and as a result incarcerated and required to pay the federal government nearly one million dollars in restitution; the applicant remains on supervised release; the applicant's Texas medical license was suspended in 2007 due to the applicant's incarceration and the license was later revoked in 2008; in 2009, the applicant's California medical license was revoked as a result of the action by the Texas Medical Board; the applicant has not actively practiced medicine since 2006 and has not taken any steps to keep medical knowledge current; and the applicant has failed to demonstrate that the applicant's return to the practice of medicine is in the best interest of the public. **Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #1118 appeared with counsel, 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, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions: requirement that the applicant complete the Anger Management for Healthcare Professionals Program offered by the UC San Diego PACE Program, and payment of an administrative penalty in the amount of \$2000.** This recommendation is due to disciplinary action taken by peers based on unprofessional conduct or professional incompetence likely to harm the public; submission of a false or misleading statement on an application for licensure; and unprofessional or dishonorable conduct likely to deceive, defraud or injure the public. Factors contributing to this recommendation include that the applicant was the subject of multiple complaints by colleagues and patients regarding the applicant's unprofessional interactions, aggressive behavior, and refusal to treat patients; as a result of the applicant's behavior, the applicant was requested to participate in disruptive physician programs; and that the applicant failed to disclose the warnings received and the request that applicant participate in disruptive physician programs. Mitigating factors include lack of

disciplinary history with any other licensing entities and no evidence that the applicant's past disruptive behavior adversely affected any patient's clinical condition. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #1122 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 unrestricted license. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1127 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 license. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #1129 did not appear before the Committee, but requested the appeal of the Executive Director's determination of ineligibility be considered. 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 failure to meet the eligibility requirements for licensure relating to examination attempts. Factors contributing to this recommendation include that the applicant has not demonstrated compliance with Section 155.056 of the Medical Practice Act relating to examination attempts as the applicant required 5 attempts on Step 3 of the USMLE and has not completed two years of postgraduate training in Texas in order to meet the exception to the 3-attempt requirement. **Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Applicant #1130 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 an Out of State Telemedicine license. This recommendation is due to the fact that the applicant's proposed practice type is not permissible under an Out of State Telemedicine license and inconsistent with the standard of care. Factors contributing to this recommendation include proposed practice would be inconsistent with national guidelines that require nerve conduction studies should either be performed directly by a physician or performed by a trained individual under the direct supervision of a physician who is in close proximity to the technician. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1131 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, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions: 12 hours CME in Ethics, and an administrative penalty in the amount of \$2000.** This recommendation is due to unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; disciplinary action by peers due to unprofessional conduct or professional incompetence likely to harm the public; and submission of a false or misleading statement on an application for licensure. Factors contributing to this recommendation include that the applicant was publicly reprimanded and placed on a six-month period of enhanced observation while in residency training in 2008 relating to record-keeping, punctuality, work ethic, and professionalism concerns; the applicant failed to report the warning and subsequent 6-month intensive review on the licensure application; the Committee's determination that the falsification was intentional, and that the applicant successfully remediated all issues while in residency training. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1132 appeared with counsel, before the Committee, in executive session, referral by the Executive Director. In open session, **Dr. Holliday moved to recommend to the full Board that the applicant be determined ineligible for reissuance of a medical license.** This recommendation is due to the applicant's failure to demonstrate compliance with licensure requirements under Section 155.056 of the Medical Practice Act and failure to demonstrate compliance with current licensure requirements following revocation as required under Board Rule 167.1(b)(5). Factors contributing to this recommendation include that the applicant did not pass each section of a licensure examination within three attempts as required by law, and does not currently meet any exceptions to the three-attempt requirement. **Dr. Snoots seconded the motion. All voted in favor. The motion passed.**

Applicant #1126 did not appear before the Committee on referral by the Executive Director but requested that his application be considered. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be determined ineligible for licensure.** This recommendation is due to the applicant's inability to safely practice medicine due to intemperate use of alcohol or drugs; failure to practice medicine in an acceptable professional manner consistent with public health and welfare; disciplinary action by peers due to unprofessional conduct or professional incompetence; and disciplinary action by another state licensing board. Factors contributing to this recommendation include dismissal from residency training due to poor academic performance; two convictions for driving under the influence; history of alcohol and marijuana abuse while in residency training; disciplinary action by two

other state boards based on the applicant's gross negligence in the treatment of a patient; the applicant's substance abuse and conviction for DUI. **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.

Item 3c – Applicants appearing for rehearing concerning eligibility– There were none.

Item 3d – Proposed orders offered by the Executive Director.

1. Physician Licensure– Ms. Kaufman reported on four orders offered by the Executive Director and accepted by applicants. **Ms. Southard moved to recommend to the full Board that all 4 orders be approved. Mr. Webb seconded. All voted in favor and the motion passed.**

2. Physician in Training Applicants - There were none.

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 196 applicants who met all requirements to be considered for permanent licensure by the full Board. **Mr. Webb moved to recommend to the full Board that all 196 physician licensure applicants determined to meet eligibility requirements by staff be approved. Dr. Snoots seconded the motion. All voted in favor. The motion passed.**

2. Acudetox certification applicants – There were none

3. Surgical assistant licensure applicants - There were ten surgical assistant applicants to be considered for approval. **Mr. Webb moved to recommend to the full Board that all 10 surgical assistant applicants determined to meet eligibility requirements by staff be approved. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Item 3f – Applicants for Conversion to Administrative Medicine Licenses – There were none.

Item 4a – Requests for Rehearing –

Applicant #1101's request for rehearing was considered. Mr. Turner moved to deny the applicant's request for a rehearing based on the failure to submit new information. Mr. Ellis seconded the motion. All voted in favor. The motion passed.

Applicant #1092's request for rehearing was considered. Dr. Holliday moved to deny the applicant's request for a rehearing based on the failure to submit new information. Dr. Snoots seconded the motion. All voted in favor. The motion passed.

Ms. Southard left the meeting at 4:15 p.m.

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 April 2011 Board meeting. Two orders remain unresolved.

Agenda Item 6 – Report on physician licensure statistics. Ms. Garanflo reported that the average time to complete applications for physician licensure through FY 11 Q3 was 41 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 none

Item 7b – Acudetox - There were none

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

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

- a. 22 TAC 175 – Fees
 - 1. 175.1 Application Fees
 - 2. 175.2, Registration and Renewal Fees

Mr. Webb moved to recommend to the full board that the rules be published in the Texas Register for public comment. Mr. Ellis seconded. Mr. Ellis, Dr. Holliday, Mr. Turner, and Mr. Webb voted in favor. Dr. Snoots abstained. The motion passed.

Agenda Item 10 - Discussion, recommendation, and possible action regarding qualifications of personnel in the practice of office-based anesthesia and request for approval of courses offering certification of personnel in office-based anesthesia practices. Ms. Garanflo presented a report regarding the rule on approval of courses offering certification in office-based anesthesia practices and discussed the request for approval deferred from the last committee meeting. After discussion the Committee determined that the Board rule 192.2 (k) under which the request for approval was made is obsolete and directed staff to notify the current requestor that only courses offering certification by the American Heart Association are acceptable. Mr. Webb moved to recommend to the full Board that the elimination of the rule be presented at the next stakeholders meeting. Dr. Holliday seconded. All voted in favor. The motion passed.

Agenda Items 11 - There being no further business, Dr. Arambula adjourned the meeting at 4:37 p.m.