



Texas Medical Board

BOARD MEETING

FEBRUARY 7, 2014

333 GUADALUPE, TOWER 2, SUITE 225

AUSTIN, TEXAS

The meeting was called to order on February 7, 2014 at 8:20 a.m. by Michael Arambula, M.D., Vice-President. Due to inclement weather, the meeting was held via electronic communication with posted access for the public. Board members present were Julie Attebury; David Baucom; Devinder S. Bhatia, M.D.; Frank S. Denton; Carlos L. Gallardo; Margaret McNeese, M.D.; Wynne Snoots, M.D.; Karl W. Swann, M.D.; Timothy Webb, J.D., Manuel G. Guajardo, M.D.; J. Scott Holliday, D.O.; Robert B. Simonson, D.O.; and Stanley Wang, M.D. Irvin E. Zeitler, Jr., D.O., Board President joined the meeting at 9:10 a.m. and Allan Shulkin, M.D. joined the meeting at 10:00 a.m. Paulette Southard, Secretary/Treasurer.; John D. Ellis, J.D.; and George Willeford III, M.D were not present. Board staff present were Mari Robinson, Executive Director; Robert Bredt, M.D., Medical Director, Scott Freshour, J.D., General Counsel; Tonie Knight, Licensure Manager; and Megan Goode, Governmental Affairs and Public Information Manager, and various other staff.

Agenda item #1, Mission Statement. 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.*

There were no items for Agenda item #2.

Agenda item #3, Executive Director Report.

Legislative update. Ms. Robinson reported there was no specific House Interim Committee charges issued related to the agency for the 83rd Legislature. In addition, Ms. Robinson discussed the strategic plan process and the customer service survey that will be conducted at the end of the call center's incoming calls.

Budget. Ms. Robinson gave a budget report.

Personnel Update. Ms. Robinson gave a brief update on the remaining open staff positions.

Outreach Update. Ms. Robinson gave an update on the significant progress made this fiscal year. Ms. Robinson also reported by the end the fiscal year all Physician Assistant schools; six of the nine medical schools – 1st year medical student programs; and about 11 residency programs would have received a presentation.

Outreach Survey. Ms. Robinson provided a summary of a recent outreach survey conducted on first year medical students.

Audit Update. Ms. Robinson informed the Board of the satisfactory results received from the last audit conducted on performance measures calculations; the final report will be provided to the Board at later board meeting.

Performance numbers. Ms. Robinson reviewed the agency's current performance numbers that were submitted in the annual legislative report of investigations that are over a year.

JPS Mini-Residency closing. Ms. Robinson informed the Board, John Peter Smith Hospital will no longer have a mini-residency program tied to KSTAR. The medical director of Texas A&M KSTAR program will be contacting other groups to discuss the possibility of setting up a new mini-residency program to attach to KSTAR.

FSMB & data analysis. Ms. Robinson requested feedback on a FSMB request to gather various data analysis on how agreed orders are put together and the demographics involved. FSMB will be using this study to possibly create an article for The Journal of Medical Regulation.

Staff survey. Ms. Robinson indicated as in previous years the agency is conducting a staff survey on organizational excellence.

Agenda item #4, Medical Director Report. Dr. Bredt gave an update on the progress of the expert panelists retraining session that is scheduled at the end of the month. Dr. Bredt discussed the need of more expert panelists in the pain management specialty.

Agenda item #5, Public Information Update. Was deferred to the next board meeting.

Agenda item #6, Medical Board/Physician Assistant Liaison update. Dr. Wang indicated there had not been a Physician Assistant board meeting since the last Medical Board meeting.

Agenda item #7, Discussion, recommendation, and possible action regarding physician coaching program. Was deferred to the next board meeting.

Agenda item #9, Discussion, recommendation, and possible action regarding TMB inspections of office based anesthesia and pain management clinics. Ms. Robinson requested direction on how to proceed with possible administrative violations if found in the first set of

TMB office based anesthesia and pain management clinic inspections. After discussion, **the Board directed staff to treat any administrative violation as a remedial phase and potentially ask for proof of the correction; the Board also directed staff to provide an update after a year.**

Agenda item #8, Discussion, recommendation, and possible action regarding chart monitor procedures. Was deferred to the next board meeting.

Agenda item #11, Consideration and possible action regarding pending litigation. Mr. Freshour gave a brief report on pending litigation pertinent to the board.

Dr. Zeitler joined the meeting at 9:10 a.m.

Agenda item #10, Discussion, recommendation, and possible action regarding acudetox. After discussion, **the Board directed staff to research whether APRNs may be certified as acudetox specialists under the applicable statute and present the information at the following Board meeting.**

There were no items for Agenda item #14.

Agenda item # 15, Consideration and approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders. After consideration, **Dr. Bhatia moved, Dr. Simonson seconded, a verbal vote was taken identifying each board member by name, and the motion passed to grant the Termination of Rehabilitation Order #425.**

Agenda item #16, Consideration and approval of Modification Request/Termination Request Orders. After consideration, **Dr. Wang moved, Mr. Gallardo seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve the Termination Granted for Lynn L. Bourdon, Jr., M.D.; Joseph Feste, M.D.; Ahmed Khalifa, M.D.; and Debra K. Woodward, M.D.; the Termination Denied for Timothy Malone, D.O.; and the Modification Requests Granted for Ernest C. Alsop, M.D.; Rosa A. Fuentes, M.D.; Mark Hatch, M.D.; Victor A. Pallares, M.D.; Sergio Silva, M.D.; and David L. Chin, M.D., as presented.**

Agenda item #17, Consideration and possible action for Agreed Board Orders. After discussion, **staff was directed to postpone discussion regarding the use and interpretation of the boundary violation penalty guidelines until the following board meeting.**

After discussion, **the board directed staff to add a discussion item on the following board meeting agenda relating to testosterone hormone for anti-aging prescribing.**

After discussion, **Mr. Gallardo moved, Ms. Attebury seconded to modify Agreed Order # 16, a verbal vote was taken identifying each board member by name, and the**

motion passed to replace the chaperone requirement with only treating male patients, due to the respondent's ongoing sexual relationships with female patients.

Dr. Wang was recused for consideration of Lane Sebring, M.D.

Dr. Wang moved, Dr. Bhatia seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve the following Agreed Board Orders en masse for: Wilfredo A. Munoz, M.D.; Lane Sebring, M.D.; Edward E. Ramsey, Jr., M.D.; Dennis D. Roberts, M.D.; Ashley L. Sizer, NCT; Phillip R. Kravetz, M.D.; Allan D. Ahlschier, M.D.; Sean G. BURGESS, M.D.; Yulan Jankowski, M.D.; Angela Jones-Allen, M.D.; George F. Knight, M.D.; Gerald Ratnov, M.D.; Arthur L. Williams, M.D.; Warren B. Dailey, M.D.; John C. Ferrell, M.D.; Rispba N. McCray-Garrison, M.D.; Scott S. McNeil, M.D.; Leon Menajovsky, M.D.; Richard A. Schram, M.D.; William G. Simpson, M.D.; William Franklin Simpson, Jr., D.O.; Jose Katz, M.D.; Gregory Skie, M.D.; Young C. An, M.D.; Samson G. Adegbite, M.D.; Davill Armstrong, M.D.; David W. Cardwell, M.D.; Clay Gruesbeck, M.D.; Ralf B. Lukner, M.D.; Yash Mehndiratta, M.D.; and Anibal R. Hadad, M.D., and Tad Taylor, M.D.

Agenda item #18, Consideration and approval of Mediated Settlement Agreed Orders. Dr. Shulkin recused for consideration of Joseph D. King, M.D.

After consideration, **Dr. Wang moved, Dr. Bhatia seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve the following Mediated Settlement Orders en masse for: Viraf R. Cooper, M.D.; Darrel W. Dodson, M.D.; Antonio Gallegos-Rosales, M.D.; Ronald Kahn, M.D.; Joseph D. King, M.D.; Jose L. Lizarribar, M.D.; Adila N. Siddiqi, D.O.; Barlow Smith, M.D.; and Hossein Lahiji, M.D.**

Agenda item #12, Consideration and approval of Determinations of Default.

- 1. Samuel Clark Hoover, D.O., SOAH # 503-13-4659.** Nycia Deal, staff attorney gave a presentation. Dr. Hoover did not appear. No one representing Dr. Hoover appeared. After discussion, **Dr. Guajardo moved, Dr. Simonson seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve the Determination of Default Order for Samuel Clark Hoover, D.O.**

Agenda item #19, Consideration and approval of Remedial Plans. Dr. Holliday recused for consideration of Francisco B. Rodriguez, IV, M.D.

After consideration, **Mr. Denton moved, Dr. Simonson seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve the following Remedial Plans en masse for: Ana G. Allison, M.D.; Omar Barakat, M.D.; Patricia C., Bergen, M.D.; Russell D. Calvo, Jr., M.D.; Matthew B. Dupree, M.D.; James M. Eggers, M.D.; Ernesto Garza, M.D.; Daniel B. Hadzic, M.D.; Federico P. Ilang-Ilang, Jr., M.D.; Ali Jaffar, M.D.; Jerry H. Jenkins, M.D.; Lewis G. King, M.D.; William H. Milnor, M.D.; Maria F. Molina Boero, M.D.; Bindu Nair, M.D.; Alan E. Nolasco, M.D.;**

Eva Prakash, M.D.; Daniel R. Samples, M.D.; Jeremy D. Sanderson, M.D.; Anita Tharian, D.O.; Rolando N. Torio, M.D.; Pamela Vallejo-Craig, M.D.; Kenneth K. Wheatley, Jr., M.D.; Fehmida Zahabi-Unwala, M.D.; Michael A. Chavin, M.D.; Paul A. Overlie, M.D.; Joseph S. Galati, M.D.; Doohi Lee, M.D.; Laura A. Merritt, M.D.; Kumarapillai Narendran, M.D.; Joseph M. Perlman, M.D.; A.R.S. Prasad, M.D.; Gabriel A. Rodriguez, M.D.; James W. Simmons, III, D.O.; Erik Sloman-Moll, M.D.; George W. English, III, M.D.; Biff F. Palmer, M.D.; Thao Q. Nguyen, D.O., Jerome L. Sang, M.D.; Louis A. Torres, M.D.; and Francisco B. Rodriguez, IV, M.D.

There were no agenda items for Agenda item #20.

Agenda item #21, Consideration and approval of Cease and Desist Orders. After consideration, **Mr. Gallardo moved, Mr. Denton seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve the Cease and Desist Orders for: Dale B. Haufrect, M.D.; Antonio G. Paletta, M.D.; and Joseph Diruzzo.**

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

Agenda item #25, Consideration and approval of Nunc Pro Tunc Orders. **Mr. Gallardo moved, Mr. Denton seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve and the motion passed to approve the Nunc Pro Tunc Orders for Tonya Y. Perkins, M.D.; and Clarence J. Wolinsky, III, M.D., as presented.**

There were no agenda items for Agenda item #26.

Agenda item #27, Report on Temporary Suspensions. A report was given for the Temporary Suspensions.

There were no agenda items for Agenda items #28-29.

Agenda item #31, Discussion, recommendation, and possible action regarding a petition for proposed rule changes to 22 T.A.C. Chapter 183, Acupuncture. Was deferred to the next board meeting. (See reconsideration below)

Consent Agenda

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

1. Consideration and approval of the December 6, 2013 Board Meeting Minutes. **Mr. Denton moved, Mr. Gallardo seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve the December 6, 2013 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. Attebury gave a report of the Finance Committee meeting. **Ms. Attebury moved, Dr. Wang seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve the Finance Committee meeting minutes.**

Dr. Snoots gave a report of the Electronic Records and Communication Ad Hoc Committee meeting. **Dr. Snoots moved, Mr. Gallardo seconded, a verbal vote was taken identifying each board member by name, and the motion pass to approve the Electronic Records and Communication Ad Hoc Committee minutes and action items.**

Dr. Arambula gave a report of the Licensure Committee meeting. **Dr. Arambula moved, Mr. Webb seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve the Licensure Committee minutes and action items.**

Dr. McNeese gave a report of the Disciplinary Process Review Committee meeting. **Dr. McNeese moved, Dr. Wang seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items.**

Agenda item #13, Consideration and approval Proposal for Decisions:

- 3. Lorenzo Spratt, SOAH #503-11-6830.** Lee Bukstein, staff attorney gave a presentation. Dr. Spratt gave a presentation. No one was identified as representing Dr. Spratt. After discussion, **Mr. Gallardo moved, Dr. Simonson seconded, a verbal vote was taken identifying each board member by name, and the motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, and the Final Order filed by Board staff for revocation.**

After discussion, **Dr. Arambula moved, Dr. Guajardo seconded, a verbal vote was taken identifying each board member by name, and the motion passed to postpone until the following board meeting the consideration of the Proposal for Decisions of Reginald C. Buford, M.D., SOAH #503-11-8751 and Garry Wayne Killyon, M.D., SOAH #503-11-8759.**

The board recessed at 11:10 a.m.

The board reconvened at 11:20 a.m.

Ms. Robinson called roll and a quorum was confirmed.

Mr. Denton joined the meeting at 11:33 a.m.

Dr. Swann joined the meeting at 11:40 a.m.

Agenda item #31, Discussion, recommendation, and possible action regarding a petition for proposed rule changes to 22 T.A.C. Chapter 183, Acupuncture. After discussion, **Dr. Arambula moved, Dr. Wang seconded, a verbal vote was taken identifying each board member by name, and the motion passed to send the proposed rule changes to the stakeholder group for further input and be brought back in May with further statutory clarification.**

Agenda item #33, at 11:40 a.m. Consideration and determination of licensure eligibility.

- 1. Applicant #1368.** After discussion, **Mr. Gallardo moved, Mr. Denton seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve the determination that Applicant was not eligible for licensure.**

Agenda item #34, at 12:00 p.m. Consideration and approval for the appointment of the Texas Physician Health Program Medical Director. After consideration, **Dr. Wang moved, Dr. Guajardo seconded, a verbal vote was taken identifying each board member by name, and the motion passed to approve Dr. Fitzwater as the new Medical Director of the Texas Physician Health Program.**

Agenda item #30, at 11:30 a.m. Discussion, recommendation, and possible action regarding the adoption of proposed amendments and rule review to 22 Texas Administrative Code:

**a. Chapter 165, Medical Records
§165.1. Medical Records**

Ms. Robinson gave a brief summary of proposed amendments to Chapter 165. Written comments were received. No one signed in for oral comments. After discussion, **Dr. Wang moved, Mr. Denton seconded, a verbal vote was taken identifying each board member by name, and the motion passed to pull the proposed amendments to 22 T.A.C. Chapter 165, Medical Records, §165.1 Medical Records and send to the stakeholders group.**

**b. Chapter 172, Temporary and Limited Licenses
§172.5 Visiting Physician Temporary Permit**

Ms. Robinson gave a brief summary of proposed amendments to Chapter 172. Written comments were received. No one signed in for oral comments. After discussion, **Mr. Denton moved to adopt proposed amendments with the clarification that visiting physician temporary permit applicants will not be determined as ineligible solely based upon a proposed supervising physician's administrative order, the motion failed for lack of a second. Mr. Gallardo moved, Mr. Baucom seconded to adopt the proposed amendments to 22 T.A.C. Chapter 172, Temporary and Limited Licenses, §172.5 Visiting Physician Temporary Permit as written.**

Dr. Holliday moved to make a friendly amendment to Mr. Gallardo's motion, so that the proposed rule be adopted with a modification to the language providing that in order to be determined eligible for a visiting physician temporary permit, in addition to other requirements, applicants must be supervised by a physician who has an unrestricted license in TX and has not been the subject of a disciplinary order, unless the order was administrative in nature. Dr. Simonson seconded. A verbal vote on Dr. Holliday's motion to amend Mr. Gallardo's original motion was taken identifying each board member by name, and passed. A verbal vote on the original motion as amended was taken identifying each board member by name, and the original motion as amended passed.

**c. Chapter 183, Acupuncture
§183.21 Continuing Auricular Acupuncture Education for Acudetox Specialists**

Ms. Robinson gave a brief summary of proposed amendments to Chapter 183. No written comments were received. No one signed in for oral comments. After discussion, **Dr. Wang moved, Dr. Guajardo seconded, a verbal vote was taken identifying each board member by name, and the motion passed to adopt the proposed amendments to 22 T.A.C. Chapter 183, Acupuncture, §183.21 Continuing Auricular Acupuncture Education for Acudetox.**

**d. Chapter 189, Compliance Program
§189.11 Process for Approval of Physicians, Other Professionals, Group Practices & Institutional Settings**

Ms. Robinson gave a brief summary of proposed amendments to Chapter 189. Written comments were received. No one signed in for oral comments. After discussion, **the Board directed staff to draft a policy related to the revocation of Executive Director approval for practice settings and certain monitoring physicians or other professionals providing that a new complaint filed to the Board will not be a sole basis for revocation of approval of the setting request or monitoring physician without other factors warranting such revocation, and further to provide that a regular report on such revocations, if any, will be provided to the DPRC. After further discussion, Dr. Guajardo moved, Dr. Arambula seconded, a verbal vote was taken identifying each board member by name, and the motion passed to adopt the proposed amendments to 22 T.A.C. Chapter 189, Compliance Program, §189.11 Process for Approval of Physicians, Other Professionals Group Practices & Institutional Settings.**

Agenda item #35, at 12:00 p.m. Open forum for public comments. No one signed in for Open forum public comments.

Agenda item #36, Adjourn. Dr. Wang moved, Mr. Gallardo seconded, a verbal vote was taken identifying each board member by name, and the motion passed to adjourn the meeting at 12:44 p.m.