

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES
February 9, 2012

The meeting was called to order at 9:00 a.m. on February 9, 2012 by Chair, Michael Arambula, M.D. Committee members present were Pat Crocker, D.O., John D. Ellis Jr., Paulette B. Southard, and Irvin E. Zeitler Jr. D.O.

Ms. Southard moved, Dr. Crocker seconded, that the Committee close the meeting to the public and continue in Executive Session for deliberations concerning Agenda item 2. The motion passed. Dr. Arambula announced that the meeting would be closed for deliberations at 9:02 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-client privilege under the authority of the Open Meetings Act Section 551.071, Government 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.

William Smythe, M.D. entered the meeting at 9:07 a.m. during Executive Session.

The Executive Session ended at 9:30 a.m.

Agenda Item 2 - Discussion, recommendation and possible action regarding pending litigation:

Mr. Ellis moved to recommend to the full Board that the settlement offer proposed by Licensee #889 be rejected. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Ms. Southard moved, Dr. Crocker seconded, that the Committee close the meeting to the public and continue in Executive Session for deliberations concerning Agenda items 3a, 3b, and 4a. The motion passed. Dr. Arambula announced that the meeting would be closed for deliberations at 9:32 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.

Timothy Webb entered the meeting at 9:36 a.m. during Executive Session.

The Executive Session ended at 3:30 p.m.

Agenda Item 3 - Discussion, recommendation and possible action regarding licensee requests

Item 3a

Licensee #1202 appeared before the Committee, in executive session, to appeal the Executive Directors determination to deny activation of the licensees cancelled license. Following discussion, **Ms. Southard moved to recommend to the full Board that the licensees request for reinstatement be granted.** This recommendation is due to an administrative error by the Board in that the applicants license was cancelled with a pending Board order/investigation, for which the licensee had not received proper notice.

Furthermore, the committee recommends to the full Board that the order be vacated due to the fact the licensee was held captive in a foreign country and was unable to respond to the Boards notice.

Dr. Zeitler seconded the motion. All voted in favor. The motion passed.

Item 3b

Licensee #1184 appeared before the Committee, in executive session, on referral by the Executive Director regarding the applicants request to return to active practice from retirement status. Following discussion, **Dr. Zeitler moved to recommend to the full Board that the Licensees request to be returned to active status be granted upon passage of the Special Purpose Examination (SPEX), passage of the American Board of Family Medicines recertification exam and completion of a three month mini-residency approved by the Executive Director. Dr. Crocker seconded the motion. All voted in favor. The motion passed.**

Agenda Item 4 - Discussion, recommendation and possible action regarding applicants for licensure, permits, and certification:

Item 4a - 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.

Applicant #1004 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions: referral to the Texas Physicians Health Program.** 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; writing a false prescription for a controlled substance or dangerous drug, with no criminal charges ever filed; and prior disciplinary history with the Board. Factors contributing to this recommendation include 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 issues of unprofessional conduct; applicant was granted a PIT under a disciplinary order in September 2010 due to factors mentioned; terms of the order including drug-testing and bi-monthly psychiatric treatment; applicant completed one year under the order. Mitigating factors include compliance with 2010 order and favorable evaluations from most recent residency program; near completion of five-year PHP agreement with Alabama PHP, and nearly five years of demonstrated sobriety. **Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Applicant #1091 appeared before the Committee, with counsel, 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 determined ineligible for a KSTAR Visiting Physician Training Permit.** This recommendation is due to the applicants prior disciplinary history with the Texas Medical Board; disciplinary actions by health care entities; commission of a felony and misdemeanor related to alcohol consumption; violation of federal and state laws related to the practice of medicine; and inability to safely practice medicine due to intemperate use of drugs or alcohol. Factors contributing to this recommendation include applicants conviction of a third degree felony and placement on probation for 10 years for the offense of Obtaining a Dangerous Drug by Fraud; discipline by the Board in 1992 due to standard of care and substance abuse issues; a subsequent surrender of the applicants license in 1992 due to felony conviction for drug diversion; denial of reinstatement of licensure in 2000; 1996 conviction of driving while ability impaired and applicants long history of substance abuse with multiple relapses. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1174 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Mr. Ellis moved to recommend to the full Board that the applicant complete a KSTAR assessment and 90 day mini-residency, and upon successful completion of the mini-residency and compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions:**

An administrative penalty in the amount of \$2000.

Any additional recommendations made by KSTAR (assuming Chair of Licensure Committee agrees).

This recommendation is due to failure to practice medicine in an acceptable professional manner consistent with public health and welfare; action taken by a health care entity due to concerns of professional incompetence; time out of the active practice of medicine; and unprofessional or dishonorable conduct likely to deceive, defraud or injure the public. Factors contributing to this recommendation include while in residency training in 2005-2006 applicant was placed on extended probation due to instances of unprofessional conduct and cognitive deficiencies; applicant subsequently remediated all issues; applicant did not report the actions taken while in residency training on the physician licensure application; applicant has not actively practiced medicine since 2006 when applicant completed residency training; and has not become board certified or licensed in any other state. **Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Applicant #1181 appeared before the Committee, with counsel, 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 determined ineligible for licensure.** This recommendation is due to failure to practice medicine in an acceptable manner consistent with public health and welfare; unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; action taken by a health care entity due to professional incompetence or unprofessional conduct; and submission of a false statement on an application for licensure. Factors contributing to this recommendation include, applicant was placed on probation several times during medical school due to poor academic performance; applicant was placed on probation and terminated from residency training in 2011 due to issues relating to unprofessional conduct; and applicant did not report the actions taken while in medical school on a prior application for a physician in training permit. **Ms. Southard seconded the motion. Dr. Snoots, Ms. Southard, and Mr. Ellis voted in favor. Dr. Zeitler and Dr. Crocker were opposed. The motion passed.**

Applicant #1183 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Dr. Crocker moved to recommend to the full Board that the**

applicant be granted an unrestricted license. Ms. Southard seconded the motion. All voted in favor. The motion passed.

Applicant #1187 appeared before the Committee, in executive session, on appeal of an administrative penalty order offered by the Executive Director. In open session, **Ms. Southard 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 and misleading information to the Board. Factors contributing to this recommendation include the committees determination that the falsification was intentional and egregious. **Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Applicant #1189 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 surgical assistant license, subject to an administrative penalty in the amount of \$2000.** This recommendation is due to providing false and misleading information to the Board. Factors contributing to this recommendation include the committees determination that the falsification was intentional and egregious. **Mr. Ellis seconded the motion. All voted in favor. The motion passed.**

Applicant #1192 did not appear before the Committee, but requested consideration of the applicants appeal of an administrative penalty order offered by the Executive Director. In open session, **Dr. Crocker moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to an administrative penalty in the amount of \$2000.** This recommendation is due to providing false and misleading information to the Board. Factors contributing to this recommendation include the committees determination that the falsification was intentional and egregious. **Ms. Southard seconded the amendment. All voted in favor. The motion passed.**

Applicant #1197 appeared before the Committee, with counsel, 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 Texas medical license, subject to an administrative penalty in the amount of \$2000 and the following terms and conditions: completion of 8 hours CME in Ethics and 8 hours of CME in Risk Management.** This recommendation is due to failure to practice medicine in an acceptable professional manner consistent with public health and welfare; unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; action taken by a health care entity due professional

incompetence or unprofessional conduct; and submission of a false statement on an application for licensure. Factors contributing to this recommendation include applicant was placed on academic remediation for one year while in medical school due to academic difficulties; applicant did not report the academic remediation on current application for licensure or past application for a physician-in-training permit; and applicant was placed on probation while in residency training in 2010 due to unprofessional communications with other staff. Mitigating factors include compliance with terms of residency probation and improved performance while in residency training to remediate issues. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #1201 appeared before the Committee, with counsel, on referral by the Executive Director. In open session, **Dr. Crocker moved to recommend to the full Board that a decision be deferred for up to one year to allow the applicant to complete 50 hours of category 1 CME in pathology due to time out of the active practice since January 2009, although applicant did take and pass SPEX, and is board certified. The hours to be completed must be taken on or after February 10, 2012.** Upon satisfactory completion of CME and compliance with all further requirements for licensure the applicant may be approved for licensure by the Executive Director. **Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Mr. Ellis recused himself from the following motion.

Applicant #1204 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that the applicant be determined ineligible for licensure.** This recommendation is due to the applicants failure to practice medicine in an acceptable professional manner consistent with public health and welfare; unprofessional conduct likely to deceive, defraud, or injure the public; action taken by a health care entity due to concerns of professional incompetence or unprofessional conduct and time out of the active practice of medicine. Factors contributing to this recommendation include action taken by residency training program in 2009 due to competency concerns and determination that applicant had poor interactions with patients and failed to show sufficient progression to move on to a second year of training; applicant has not remedied issues that were raised in training and has not practiced medicine since completion of applicants internship year in 2009. **Further, Ms. Southard moved to recommend to the full Board that upon receipt within one calendar year of a request for a physician in training permit of no less than one year, the physician in training permit may be granted by the Executive Director. Dr. Crocker seconded the motion. The motion passed.**

Applicant #1207 appeared 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, upon compliance with all further requirements of licensure, 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 and misleading information to the Board. Factors contributing to this recommendation include the committees determination that the falsification was intentional and egregious. **Ms. Southard seconded the amendment. All voted in favor. The motion passed.**

Applicant #1208 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 a decision be deferred for up to one year so that the applicant may successfully complete at least a three-month mini-residency approved by the Executive Director. Upon completion of the mini-residency, submission of a satisfactory evaluation and compliance with all further requirements for licensure the applicant may be approved for licensure by the Executive Director.** This recommendation is due to time out of the active practice of medicine. Factors contributing to this recommendation include that the applicant has not actively practiced medicine since 2000. Mitigating factors include the applicants board recertification in 2011. **Dr. Crocker seconded the motion. All voted in favor. The motion passed.**

Applicant #1209 appeared before the Committee, with counsel, 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 A physician in training permit. Dr. Crocker seconded the motion. All voted in favor. The motion passed.**

Applicant #1213 appeared before the Committee, with counsel, in executive session, on referral by the Executive Director. In open session, **Dr. Crocker moved to recommend full Board that a decision be deferred for up to one year to allow applicant to remedy a lacking medical school clerkship.** Applicant may remedy by completing a participatory Family Medicine rotation in an ACGME accredited residency training program, or enrollment in a medical school as a visiting student. Upon satisfactory remediation of the deficiency and compliance with all further requirements for licensure the applicant may be approved for licensure by the Executive Director. **Ms. Southard seconded the motion. All voted in favor. The motion passed.** Staff asked if this remedy could be used by other applicants and the Committee clarified that it could only be used to remedy cases where there is just one deficient clerkship.

Item 4b - Proposed orders offered by the Executive Director.

Ms. Knight reported on 14 orders offered by the Executive Director and accepted by applicants. **Ms. Southard moved to recommend to the full Board that all 14 orders be approved. Dr. Crocker seconded. All voted in favor and the motion passed.**

Item 4c Physician licensure applicants to be licensed.

There were 78 applicants who met all requirements to be considered for permanent licensure by the full Board. **Ms. Southard moved to recommend to the full Board that all 78 physician licensure applicants determined to meet eligibility requirements by staff be approved. Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Item 4d Surgical assistant licensure applicants to be licensed

There were 6 applicants who met all requirements to be considered for licensure by the full Board. **Ms. Southard moved to recommend to the full Board that all 6 surgical assistant applicants determined to meet eligibility requirements by staff be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Item 4e Acudetox applicants to be certified

There were 3 applicants who met all requirements to be considered for certification by the full Board. **Ms. Southard moved to recommend to the full Board that all 3 acudetox applicants determined to meet eligibility requirements by staff be approved. Mr. Ellis seconded the motion. All voted in favor. The motion passed.**

Agenda Item 5 Report on physician licensure statistics. Ms. Knight reported that the average time to complete applications for physician licensure in FY 12 so far was 42 days, which is within the new mandate of 44 days.

Agenda Item 11 Discussion, recommendation, and possible action regarding Scott & White

Diagnostic Radiology 5 year program. Representatives from Scott & White presented information outlining the structure of their diagnostic radiology residency program and requested that physician in training permits be issued to include their programs clinical base year, which is required by the Accreditation Council for Graduate Medical Education (ACGME), but not accredited. The clinical base

year constructed for diagnostic radiology by Scott & White consists of rotations in ACGME accredited programs, and has been specifically approved by ACGME. In addition, the American Board of Radiology has granted board certification to those physicians who have completed the five year program. **Dr. Zeitler moved to recommend to the full Board that five year physician in training permits be issued to the program, but that the initial clinical base year could not be used as required ACGME or AOA training for licensure eligibility. Dr. Crocker seconded the motion. All voted in favor. The motion passed.**

Agenda Item 6a - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Applicants for initial certification. There were seven applications for initial certification as a Nonprofit Health Organization for approval. **Dr. Zeitler moved to recommend to the full Board that the requests for initial certification as a Nonprofit Health Organization be approved. Mr. Webb seconded. All voted in favor and the motion passed.**

Agenda Item 6b - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Requests for biennial recertification - There were 50 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. Dr. Zeitler seconded. All voted in favor and the motion passed.**

Agenda Item 6c - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Cancellation of organizations certified as Nonprofit Health Organizations. There were four requests for cancellation of organizations certified as Nonprofit Health Organizations. **Dr. Zeitler moved to recommend to the full Board that the requests for cancellation be approved. Ms. Southard seconded. All voted in favor and the motion passed.**

Agenda Item 7 - Discussion, recommendation, and possible action regarding proposed additions and modifications to board rules:

- a. 22 TAC 163.2 Full Texas Medical License (SB189)
- b. 22 TAC 163.5 Licensure Documentation (SB189)

Dr. Zeitler moved to recommend to the full Board that the rules be published in the Texas Register for public comment. Dr. Crocker seconded. All voted in favor. The motion passed.

c. 22 TAC 171.3(a)(6)(D) Physician in Training Permits **Option 2**

Dr. Zeitler moved to recommend to the full Board that the rules be published as outlined under option two, which allows internal moonlighting, in the Texas Register for public comment. Mr. Webb seconded. All voted in favor. The motion passed.

d. 22 TAC 175.5(b) Additional Fees Based on Methods of Payment

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

e. 22 TAC 187.13 Informal Board Proceedings Related to Licensure Eligibility

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

f. 22 TAC 195.2 Pain Management Clinic Certification

Dr. Zeitler moved to recommend to the full Board that the rules be published with changes as noted to include the addition of subsection f to clarify that ownership and certification of a pain management clinic is considered the practice of medicine, in the Texas Register for public comment. Dr. Crocker seconded. All voted in favor. The motion passed.

Agenda Item 8 - Discussion, recommendation, and possible action regarding updates to application forms.

The Texas State Board of Acupuncture Examiners is requesting changes to the language of the online application in order to clarify the section on Actions and Investigations in Training or During Employment. The application is shared by applicants for acupuncture licensure, physician assistant licensure, and acudetox certification. The Medical Board must approve changes made for acudetox certification. **Dr. Crocker moved to recommend to the full Board that the proposed changes to the application be accepted. Dr. Zeitler seconded. All voted in favor. The motion passed**

The Committee then discussed proposed changes to Form W of the physician licensure application to clarify Reporting requirements on mental, physical, and neurological conditions. **Dr. Smythe moved to recommend to the full Board that the proposed changes to Form W be accepted. Dr. Zeitler seconded. All voted in favor. The motion passed**

Agenda Item 9 - Discussion, recommendation, and possible action regarding THECB guidelines.

The Committee discussed presenting a request to the Texas Higher Education Coordinating Board (THECB) that the current THECB guidelines used to determine if international medical schools have curriculum requirements substantially equivalent to those of a Texas medical school, be updated to meet curriculum standards set by the Liaison Committee on Medical Education (LCME). The Committee directed staff to put together a stakeholder group of representatives from the Texas medical schools to discuss the proposal and to discuss maintenance of the Boards Substantial Equivalence list, and acceptable possible substitutions, if any, for the courses in the curriculum guidelines. Input from the stakeholder group should be brought back to the Committee for review at the April Board meeting.

Agenda Item 12 Discussion, recommendation and possible action regarding sanction guidelines for licensure applicants.

At the last Board meeting the Committee directed staff to draft guidelines for use in licensure cases involving falsification that would allow the Committee a range of options. The Committee reviewed the draft guidelines. **Dr. Zeitler moved to accept the proposed sanction guidelines for licensure applicants. Ms. Southard seconded. All voted in favor. The motion passed.**

Agenda Item 10 - Discussion, recommendation, and possible action regarding licensure agreed order process. Ms. Robinson opened a discussion regarding the licensure process both as it relates to the volume of applicants referred for Committee review and whether or not agreed orders offered by the Committee should be mediated.

Ms. Southard moved, Dr. Zeitler seconded, that the Committee close the meeting to the public and continue in Executive Session for deliberations concerning Agenda item 10. The motion passed. Dr. Arambula announced that the meeting would be closed for deliberations at 5:07 p.m. for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-client privilege under the authority of the Open Meetings Act Section 551.071, Government 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 5:27 p.m.

The Committee directed staff to take no action on the licensure agreed order process at this time.

Agenda Items 13 - There being no further business, Dr. Arambula adjourned the meeting at 5:30 p.m.