



# **Texas Medical Board**

## **BOARD MEETING**

**APRIL 9-10, 2015**

**333 GUADALUPE, TOWER 2, SUITE 225**

**AUSTIN, TEXAS**

The meeting was called to order on April 9, 2015 at 3:15 p.m. by Michael Arambula, M.D., Board President. Board members present were: George Willeford III, M.D., Vice-President; Paulette Southard, Secretary/Treasurer; David Baucom; Frank S. Denton; John R. Guerra, D.O.; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Allan Shulkin, M.D.; Robert B. Simonson, D.O.; Wynne M. Snoots, M.D.; Karl W. Swann, M.D.; Surendra K. Varma, M.D.; and Stanley S. Wang, M.D. Timothy Webb, J.D., arrived at 4:46 p.m. Julie Attebury; John D. Ellis, Jr., J.D.; Carlos L. Gallardo; and Manuel G. Guajardo, M.D; were not present. Board staff present were Mari Robinson, J.D., Executive Director; Robert Bredt, M.D., Medical Director, Scott Freshour, J.D., General Counsel; Tonie Knight, Licensure Manager; and Megan Goode, Governmental Affairs & Communications Manager, and various other staff.

### **Agenda item #2, Public Hearing on proposed amendments to 22 Texas**

#### **Administrative Code:**

1. Chapter 174. Telemedicine
  - a. §174.2 Definitions
  - b. §174.5 Notice to Patients
  - c. §174.6 Telemedicine Medical Services Provided at an Established Medical Site
  - d. §174.8 Evaluation and Treatment of Patient
2. Chapter 190. Disciplinary Guidelines
  - a. §190.8 (1)(L) Violation Guidelines

Mr. Freshour gave a procedural overview of the public hearing scheduled. Written comments were received and reviewed. Billy Philips, Texas Tech; Monica Saenz, M.D., Doc-Aid; Mark Janes; Roy Smythe, M.D., HC360/AVIA; Henry DePhillips, M.D., Teladoc, also provided additional documents; Bill Hammond, Texas Association of Business; Deborah Mulligan, M.D., MD Live, also provided additional documents; Adam Vandervoort, Teladoc; Tim Howard, M.D., Teladoc; Steven L. Yount, D.O. ; Oscar Boultinghouse, M.D.; signed in and presented oral comments. The following signed-in only: Dudley McCalla, Teladoc; Jennifer Hicks; Debbie Curdy, Texas Tech; Dave Montgomery, NTT; Brion Lamouski, New Benefits; Kristen Benton; Jessica Lance; Matt Dow, Teladoc; Kelly Barreto, Teladoc; Glenn G. Hammack, O.D.; Tara Kepler, Kepler Health Law; Brian Henry, Seton.

### **Agenda item #3, Adjourn public hearing on proposed rules, 22 TAC 190.8 (1)(L) and**

**22 TAC 174.2-174.8. Mr. Webb moved, Ms. Southard seconded, and the motion passed to adjourn the public hearing at 5:25 p.m.**

The meeting was recessed at 5:29 p.m.

The meeting was reconvened on April 10, 2015 at 8:05 a.m. by Michael Arambula, M.D., Board President. Board members present were: Paulette Southard, Secretary/Treasurer; David Baucom; Frank S. Denton; John R. Guerra, D.O.; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Robert B. Simonson, D.O.; Karl W. Swann, M.D.; Surendra K. Varma, M.D.; and Stanley S. Wang, M.D.; and Timothy Webb, J.D. George Willeford III, M.D., Allan Shulkin, M.D.; and Wynne M. Snoots, M.D. arrived a few minutes after roll call. Julie Attebury; John D. Ellis, Jr., J.D.; Carlos L. Gallardo; and Manuel G. Guajardo, M.D.; were not present. Jason Cooper, P.A., Physician Assistant Liaison was present. Board staff present were Mari Robinson, J.D., Executive Director; Robert Bredt, M.D., Medical Director, Scott Freshour, J.D., General Counsel; Tonie Knight, Licensure Manager; and Megan Goode, Governmental Affairs & Communications Manager, and various other staff.

**Agenda item #1, Mission Statement.** Dr. Arambula read the board's mission statement into the minutes. *Our Mission is to protect and enhance the public's health, safety and welfare by establishing and maintaining standards of excellence used in regulating the practice of medicine and ensuring quality health care for the citizens of Texas through licensure, discipline, and education.*

**Agenda item #2, Board Member Report.** Dr. Arambula introduced and welcomed Jason Cooper, P.A., a Physician Assistant Board member, who is serving as a board liaison.

**Agenda item #3, Executive Director Report.**

**Budget.** Ms. Robinson reported the budget remains stable and on track.

**Outreach Update.** Ms. Robinson presented dates that are currently scheduled for Outreach presentations and announced eight of the nine medical schools have scheduled Outreach presentations. The medical schools, physician assistant programs, county medical societies, and hospitals will all be offered presentations later this month.

**Legislative Update.** Ms. Robinson gave an update on the status of priority legislation related to the agency.

**Agenda item #5, Medical Director Report.**

**Re-offer of remedial plans at QA.** Dr. Bredt reviewed the current process for complaints related to administrative matters such as incomplete CME, where Remedial Plans may be offered by staff during the 45 days of receipt of the complaint. The board was informed that cases where the re-offering of the Remedial Plan is appropriate for either not responding or submitting a response, the QA panel is reviewing these and

setting a potential hearing. After discussion, the Board directed staff to re-offer Remedial Plans for administrative matters, when deemed necessary to lessen the burden of the QA panel.

**Expert Panelists update.** Dr. Bredt requested direction from the Board on whether physician assistants were acceptable to conduct chart monitoring on physician assistant orders that required chart monitoring; currently a physician is required to conduct the chart monitoring. The Board directed staff to keep the existing process.

**Agenda item #6, Public Information Update.** Ms. Goode and Mr. Schneider gave an update on the topics featured on the agency's website and newsletter. The Board suggested adding topics relevant to retired physicians.

There were no items for Agenda item #7.

**Agenda item #8, Discussion, recommendation, and possible action regarding modification/termination hearings.** An update regarding modification/termination hearings was given. As previously directed staff presented a sample packet for input from the Board. The Board commended staff's proposal and directed staff to begin to use the materials May 1<sup>st</sup>.

**Agenda item #9, Discussion, recommendation, and possible action regarding adoption of electronic medical records and communication position statement.** Two position statements related to electronic medical records and communication were reviewed. Dr. Snoots moved to adopt the second version of the position statement and later withdrew his motion. After discussion, **Mr. Denton moved, Ms. Southard seconded, and the motion passed to adopt version one of the position statement with the substitution of the word "administrative" with "regulatory" and remove the parenthetical remarks followed.**

The board recessed at 9:13 a.m.

The board reconvened at 9:25 a.m.

There were no items for Agenda item #11.

**Agenda item #12, Consideration and approval of Modification Request/Termination Request Orders.** After discussion, **Dr. McNeese moved, Mr. Webb seconded, and the motion passed to deny the Termination Granted Order #1, and add a chaperone provision to the order presented.**

After consideration, **Ms. Southard moved, Dr. Simonson seconded, and the motion passed to approve the Modification Granted Orders for: James H. Fowler, M.D.; Yolanda L. Hamilton, M.D.; Elisa Ribelles, M.D.; Luis F. Tschen, M.D.; and Samuel S. Morgan, Jr., D.O.; the Termination Denied Order for Cynthia Moran, M.D.; the Termination Granted Orders for: DeCarlo Noble, M.D.; Jose Reyes, M.D.; Jennifer Berry, M.D.; and Carol Andrus, M.D.**

**Agenda item #13, Consideration and possible action for Agreed Board Orders.** After discussion, **Mr. Denton moved, Mr. Baucom seconded, to approve Agreed Order #10 with the addition of a public reprimand, 12 cycles of chart monitoring, an administrative penalty of \$5,000, and complete the Knowledge, Skills, Training, Assessment, and Research (KSTAR) program. A hand vote was taken and the motion passed.**

**Agreed Order #22 was pulled from consideration; licensee withdrew.**

After discussion, **Dr. McNeese moved, Ms. Southard seconded, and the motion passed to approve Agreed Order #25 with new suggested findings of fact presented by board staff.**

**The remaining Agreed Board Orders were deferred to later in the meeting.**

**Agenda item #27, at 10:00 a.m., Consideration and approval of Proposal for Decisions for:**

**1. Chau Doan Khuu, M.D., SOAH #503-13-0863.** Scott Freshour, General Counsel, gave a procedural background. Susan Rodriguez, J.D., staff attorney, was present and gave a presentation. Dr. Khuu was present. Louis Leichter and Dan Lype appeared representing Dr. Khuu. Mr. Leichter and Mr. Lype gave a presentation. Ms. Rodriguez gave a brief rebuttal statement. After discussion, **Dr. Holliday moved, Dr. Snoots seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision and approve the staff's suggested Final Order for revocation of the license of Chau Doan Khuu, M.D.**

**2. Russell Roby, M.D., SOAH #503-12-8054.** Mr. Freshour gave a summary of procedural background. Trina Richardson, J.D., staff attorney, was present and gave presentation. Dr. Roby appeared without attorney representation and gave a presentation. Ms. Richardson gave a brief rebuttal presentation. **Dr. Holliday moved, Dr. Varma seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision and approve the staff's suggested Final Order for Suspension. Dr. Snoots and Dr. McNeese opposed to the motion.**

**3. Fredrick S. Leach, M.D., Ph.D., SOAH #503-13-4300.MD.** Mr. Freshour gave a summary of procedural background. Christopher Palazola, J.D., Litigation Manager, was present. Dr. Leach was not present and no one appeared representing Dr. Leach. Mr. Palazola gave a presentation. After discussion, **Dr. Simonson moved, Dr. Wang seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision and approve the staff's suggested Final Order for Dismissal.**

**Agenda item #28, at 10:30 a.m., Consideration and approval of Determinations of Default.** Kenneth S. Koeneman, M.D. Nikki Karr, J.D., staff attorney was present. Dr.

Koeneman was not present and no one appeared representing Dr. Koeneman. **Dr. Varma moved, Mr. Baucom seconded, and the motion passed to adopt the Determination of Default Order for Kenneth S. Koeneman, M.D., for revocation.**

There were no items for Agenda item #29.

**Agenda item #30 at 11:00 a.m., Discussion, recommendation, and possible action regarding the adoption of proposed amendments and rule review to 22 Texas Administrative Code:**

- 5. Chapter 174. Telemedicine
  - a. §174.2 Organization and Structure

Ms. Robinson and Mr. Freshour gave a brief summary and history of the process of the drafting of the telemedicine rules. Written comments were received and reviewed. After discussion, **Dr. Willeford moved, Dr. Shulkin seconded, to approve the proposed amendments and rule review to 22 T.A.C. §174.2 Organization and Structure for adoption and publication in the Texas Register, with the direction to staff to ensure the effective date of the adopted rules is June 3. A hand vote was taken and the motion passed. Mr. Denton opposed the motion.**

- 7. Chapter 190. Disciplinary Guidelines
  - a. §190.8 (1)(L) Violation Guidelines

Ms. Robinson and Mr. Freshour gave a brief summary. Written comments were received and reviewed. After discussion, **Ms. Southard moved, Dr. Varma seconded, and the motion passed to approve the proposed amendments and rule review to 22 T.A.C. §190.8 (1)(L) Violation Guidelines for adoption and publication in the Texas Register with direction to staff to ensure the effective date is June 3. Mr. Denton opposed the motion.**

The remaining rules were deferred to later in the meeting.

**Agenda item #33, at 11:30 a.m., Public Comments.** No one signed-in to present oral comments.

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

- 1. Chapter 161. General Provisions
  - a. §161.3 Organization and Structure

Ms. Robinson gave a brief summary. No written comments were received and no one signed-in to present oral comments. **Ms. Southard moved, Dr. Snoots seconded, and the motion passed to approve the proposed amendments and rule review to 22 T.A.C. §161.3**

**Organization and Structure for adoption and publication in the Texas Register. Mr. Denton opposed to the motion.**

- 2. Chapter 163. Licensure
  - a. §163.1 Definitions
  - b. §163.7 Ten Year Rule
  - c. §163.11 Active Practice of Medicine

Ms. Robinson and Ms. Pajak gave a brief summary. No written comments were received and no one signed-in to present oral comments. **Dr. Varma moved, Ms. Southard seconded, and the motion passed to approve the proposed amendments and rule review to 22 T.A.C. §163.1 Definitions; §163.7 Ten Year Rule with the addition of the word “or” in §163.7 (1) (A); and §163.11 Active Practice of Medicine for adoption and publication in the Texas Register.**

- 3. Chapter 165. Medical Records
  - a. §165.1 (a) Medical Records

Ms. Robinson gave a brief summary. Written comments were received and reviewed. No one signed-in to present oral comments. After discussion, **Mr. Denton moved, Mr. Baucom seconded, and the motion passed to approve the proposed amendments and rule review to 22 T.A.C. §165.1 (a) Medical Records adoption and publication in the Texas Register with direction to staff to draft an FAQ related to non-biographical populated fields.**

- 4. Chapter 172. Temporary and Limited Licenses
  - a. §172.8 Faculty Temporary License

Ms. Robinson gave a brief summary. No written comments were received and no one signed-in to present oral comments. **Dr. Willeford moved, Dr. McNeese seconded, and the motion passed to approve the proposed amendments and rule review to 22 T.A.C. §172.8 Faculty Temporary License for adoption and publication in the Texas Register.**

- 6. Chapter 176. Health Care Liability Lawsuits and Settlements
  - a. §176.1 Definitions

Ms. Robinson gave a brief summary. No written comments were received and no one signed-in to present oral comments. **Dr. Willeford moved, Dr. Holliday seconded, and the motion passed to approve the proposed amendments and rule review to 22 T.A.C. §176.1 Definitions for adoption and publication in the Texas Register.**

There were no items for Agenda item #31.

**Agenda item #32, Discussion, recommendation, and possible action regarding adoption of proposed rule changes to 22 T.A.C. Chapter 185, Physician Assistants.**

- 1. §185.4 Procedural Rules for Licensure Applicants.

Ms. Robinson gave a brief summary. No written comments were received and no one signed-in to present oral comments. **Ms. Southard moved, Dr. McNeese seconded, and the motion passed to adopt proposed amendments to 22 T.A.C. Chapter 185, Physician Assistants, §185.4 Procedural Rules for Licensure Applicants, as recommended by the Physician Assistant Board.**

**Agenda item #13, Consideration and possible action for Agreed Board Orders continued.** After discussion, **Mr. Baucom moved, Dr. McNeese seconded, and the motion passed to approve Agreed Order #16, with the modification to the findings of fact to indicate that the patient and respondent were not having a sexual relationship.**

After discussion, **Dr. McNeese moved, Dr. Varma seconded, and the motion passed to approve Agreed Order #28, with the addition of a public reprimand and filing of a copy of prescriptive authority with the respondent's delegate with the Board.**

**Mr. Baucom, Ms. Southard seconded, and the motion passed to approve the Agreed Orders en masse for: Laura K. Baker, M.D.; Shawna M. Deeves, M.D. ; Brianne Nicole Williams, M.D.; Holly Jo Wyder, M.D.; Anthony V. Dallas, Jr., M.D.; Zubeida Khan, M.D.; Bruce D. Smith, M.D.; Enrique Zarate, M.D.; Jeffrey C. Caruth, M.D.; Nicholas Lin, M.D.; Joseph A. Marotta, M.D.; Julio C. Olivieri, M.D.; Robert F. White, M.D.; Pieter J. De Wet, M.D.; Daniel E. Rousch, M.D.; Luciano J. Sarabosing, Jr., M.D.; James A. Summa, M.D.; Jill Ann Taylor, D.O.; Thomas Vincent Taylor, M.D.; Jeffrey S. Krantz, D.O.; Tich N. Troung, M.D.; Fermin Briones, Jr., M.D.; John R. Connolly, Jr., M.D.; Michael C. Edwards, M.D.; and Sameer A. Fino, M.D.**

**Agenda item #14, Consideration and approval of Mediated Settlement Agreed Orders.** After consideration, **Dr. McNeese moved, Ms. Southard seconded, and the motion passed to approve the Mediated Settlement Agreed Order for Subramaniam V. Ramanathan, M.D.**

**Agenda item #15, Consideration and approval of Remedial Plans.** Remedial Plan #21 was pulled from consideration.

Ms. Southard recused from consideration of Remedial Plan #23. After discussion, **Dr. Willeford moved, Dr. Wang seconded, and the motion passed to approve Remedial Plan #23, with the modification to the findings of fact to clarify that this plan was only related to record keeping and, although there was a suspension, parties decided to move forward due to settlement of litigation.**

After consideration, **Dr. McNeese moved, Dr. Simonson seconded, and the motion passed to approve Remedial Plan #24, with the modification to the findings of fact to clarify that no finding were made on the patient's death.**

**Ms. Southard moved, Dr. Simonson seconded, and the motion passed to approve the Remedial Plans en masse for: Anunaya Aashish, M.D.; Daniel G. Borrador, M.D.; David C.**

**Buescher, M.D.; James Donald Davis, M.D.; Scott A. Eskuri, M.D.; Steven P. Glusman, M.D.; Barrett K. Hays, M.D.; Victor M. Martinez-Soria, M.D.; Daniel C. Obi-Ofodile, M.D.; Dennis O. Ochei, M.D.; Chukwuma C. Osuagwu, M.D.; Richard L. Ragsdale, D.O.; Nirupama G. Shekar, M.D.; James L. Slayton, Jr., D.O.; David A. Garcia, M.D.; Gan Hu, M.D.; Eric Romanucci, M.D.; John F. Seaworth, M.D.; Nathan Walters, M.D.; Crystal R. Broussard, M.D.; Thomas E. Martens, D.O.; and Brigitte Curtis, M.D.**

**Agenda item #16, Consideration and approval of Nunc Pro Tunc Orders. Ms. Southard moved, Dr. Simonson seconded, and the motion passed to approve the Nunc Pro Tunc Orders for: Richard M. Rembecki, M.D.; Donald R. Garrett, Jr., D.O.; and Jose L. Porras, M.D.**

There were no items for Agenda items #17-20.

**Agenda item #21, Consideration and approval of Cease and Desist Agreed Orders. Ms. Southard moved, Dr. Simonson seconded, and the motion passed to approve the Cease and Desist Agreed Orders for: Frank Acosta; Debra Snell; and Dale Southerland.**

**Agenda item #22, Report on Cease and Desist Orders approved by Executive Director.** A report was given on the Cease and Desist Orders approved by the Executive Director.

**Agenda item #23, Report on Motions for Rehearing Requests.** A report was given on the Motions for Rehearing Requests for Joseph Cotropia, M.D.; Charles T. Clayton, M.D.; and Walter Zawislak, M.D.

**Agenda item #24, Report on Temporary Suspensions.** A report was given on the Temporary Suspension hearings for Robert P. Ryan, M.D. with notice; and Abraham Peringol, M.D. with notice.

**Agenda item #25, Report of Suspension by Operation of Law.** A report was given on the Suspension by Operation of Law for Dennis B. Barson, Jr., D.O.

**Agenda item #26, Report on Automatic Orders.** A report was given on the Automatic Orders for Weldon Glidden, D.O.; Alejandro Santos, M.D.; Erika I. Zimmerman, M.D.; and Donald R. Joiner, M.D.

**Agenda item #10, Consideration and possible action regarding pending litigation.** Mr. Freshour provided the Board with an update regarding current pending litigation and open records requests involving the Board.

#### **Consent Agenda**

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



1. Consideration and approval of the February 13, 2015 Board Meeting Minutes. **Ms. Southard moved, Dr. Wang seconded, and the motion passed to approve the February 13, 2015 Board Meeting Minutes.**
2. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.

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

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

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

Dr. Arambula gave a report of the Executive Committee meeting. **Dr. Arambula moved, Dr. Willeford seconded, and the motion passed to approve the Licensure Committee meeting minutes and action items.**

**Agenda item #34, Adjourn. Mr. Baucom moved, Ms. Southard seconded, and the motion passed to adjourn the meeting at 1:08 p.m.**