

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

May 28, 2009

The meeting was called to order at 9:55 a.m. by Chair, Michael Arambula, M.D. Committee members present were Jose M. Benavides, M.D.; John D. Ellis, Jr.; James Scott Holliday, D.O.; Wynne M. Snoots, M.D.; Paulette B. Southard; Timothy J. Turner; and Timothy Webb.

Agenda Item 10 - Discussion, recommendation, and possible action regarding documentation requirements for graduates of schools located on islands in the Netherlands Antilles. Ms. Garanflo presented information regarding problems encountered by graduates of Saba University School of Medicine on the island of Saba in the Netherlands Antilles in obtaining documentation required of international medical graduates. Ms. Garanflo reported that documentation regarding eligibility for licensure in the country of graduation will not be required of applicants in the future due to amendments to the Medical Practice Act through the adoption of HB 3674, which was recently passed by the legislature. Under the Boards current rules, if an applicant is a graduate of an international medical school, as part of demonstrating that the school is substantially equivalent to that of a Texas medical school, the applicant must show that his medical school had the authority to grant degrees by the countrys appropriate authority at the time of graduation t Following discussion regarding the islands that compose the country of the Netherlands Antilles, the committee directed staff that such documentation should be provided by the country of the Netherlands Antilles, and not the Executive Council of the Island of Saba.

Agenda Item 2 - Discussion, recommendation, and possible action regarding **applicants for licensure, permits, and certification.**

Mr. Turner 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 10:35 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 the executive session was made.

The Executive Session ended at 3:29 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 Applicants

Applicant #788 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 to defer action and extend application fees for one year to allow the applicant to obtain licensure through board certification pending adoption of HB3674 of the 81st regular legislative session, or applicant may choose to withdraw application.** This recommendation is due to the applicants failure to demonstrate that the applicants medical education was substantially equivalent to that of a Texas medical school. Factors contributing to this recommendation include that the applicant graduated from the National University of Rwanda in 1989 but was unable to provide an original diploma, unable to obtain any confirmation of graduation directly from the school, and could not demonstrate that the school had authority to grant degrees. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #786 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 an unrestricted Texas medical license after HB3674 is signed by the Governor or 20 days after the end of the 81st regular legislative session.** Mr. Webb seconded the motion. All voted in favor. The motion passed.

Applicant #447 appeared with counsel, 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 a Texas Public Health license.** Mr. Turner seconded the motion. All voted in favor. The motion passed.

Applicant #785 appeared with counsel, before the Committee, in executive session, on appeal of the Executive Directors determination of ineligibility. In open session, **Mr. Webb moved to recommend to the full Board to defer action until such time that the applicant becomes board certified or the**

application expires, whichever occurs first. This recommendation is due to the applicants failure to demonstrate that the medical education the applicant completed in the United States, specifically several clerkships, met regulatory requirements. **Mr. Turner seconded the motion. All voted in favor. The motion passed. Note: After discussion the Full Board voted that Applicant #785 be allowed to appear at the August Licensure Committee meeting to present new information regarding the applicants physician licensure application.**

Applicant #594 appeared with counsel, 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 a Texas medical license under an eight-year non-public non-disciplinary agreed rehabilitation order with substantially similar terms and conditions to the applicants current non-public non-disciplinary agreed rehabilitation order in effect for the applicants Physician in Training permit.** This recommendation is due to self-reported intemperate use of drugs or alcohol; an admission by the applicant indicating that the applicant suffers from a potentially dangerous limitation or an inability to practice medicine with reasonable skill and safety by reason of illness or as a result of any physical or mental condition. Factors contributing to this recommendation include a history of alcohol and opioid dependency that is in sustained full remission; diagnosis of major depressive disorder, also in remission; and compliance with applicants 2007 Order under a Physician in Training permit. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #777 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 Texas medical license under a three-year non-public non-disciplinary agreed rehabilitation order that includes the requirements specified in the Rehabilitation Checklist that has been distributed to the members of the committee.** This recommendation is due to inability to practice medicine with reasonable skill and safety due to a physical or mental condition. Factors contributing to this recommendation include that applicant was placed on probation during residency training due to academic difficulties and was required to repeat internship year, and even after remediation was not granted a PGY2 position. Applicant was also treated for anxiety disorder that affected performance in residency training and the applicants current treating psychologist has reported that applicant has no symptoms which would impair applicants ability to function as a physician and symptoms appear to be in full remission. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #787 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 an unrestricted Texas medical license after HB3674 is signed by the Governor or 20 days after the end of the 81st regular legislative session.** Ms. Southard seconded the motion. All voted in favor. The motion passed.

Applicant #762 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 application be deferred until the applicant undergoes a comprehensive focal evaluation approved by the Executive Director due to concerns about inconsistent and likely implausible statements given by the applicant. Upon completion of the evaluation the applicant will need to reappear before the committee. Application fees will be extended until October 31, 2009.** Mr. Webb seconded the motion. All voted in favor. The motion passed.

Applicant #791 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 a Texas medical license.** This recommendation is due to multiple instances of submission of false or misleading information on an application for licensure and to the Boards licensing committee and his failure to practice medicine in acceptable professional manner consistent with public health and welfare. Factors contributing to this recommendation include failure to meet the standard of care in three surgical cases, the committees determination that the submission of false or misleading information was intentional, and Applicants lack of credibility in oral responses to the committees questions. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #784 appeared, with counsel, before the Committee, in executive session, on appeal of the Executive Directors determination that the applicants license be subject to an administrative penalty. In open session, **Dr. Benavides moved to recommend to the full Board that the applicant be granted an unrestricted Texas license.** Mr. Turner seconded the motion. All voted in favor. The motion passed.

Applicant #783 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, upon compliance with all further requirements of licensure, the applicant be granted a Texas medical license subject to the following conditions: a public reprimand and completion of 8 hours ethics**

CME to be approved by the Executive Director and completed within one year. This recommendation is due to action taken by health care entity, and unprofessional or dishonorable conduct that is likely to deceive, defraud or injure the public. Factors contributing to this recommendation include a Letter of Reprimand and applicants resignation in lieu of termination during residency for violations of professionalism and dishonesty. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #779 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 a decision on this application be deferred to allow applicant to undergo a KSTAR Assessment and complete a mini-residency.** If both requirements are not completed before the application expires, the applicant must reapply for licensure. 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 April 2004. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #758 appeared before the Committee, in executive session, on appeal of the Executive Directors determination that the applicants license be subject to an administrative penalty. In open session, **Dr. Holliday moved to recommend to the full Board that the applicant be granted an unrestricted Texas medical license.** **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #775 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 Texas medical license.** **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #778 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 applicants application be extended and deferred for six months to allow the applicant to undergo a KSTAR evaluation.** This recommendation is due to the applicants inability to practice medicine due to a physical condition; and time out of the active practice of medicine. Factors contributing to this recommendation include that the applicant has not actively practiced medicine since May 2006; and the applicants paralysis due to a car accident in 2006. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #761 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 a Texas medical license under a public, non-disciplinary rehabilitation order that includes the requirements specified in the Rehabilitation Checklist that has been distributed to the members of the committee.** This recommendation is due to the applicants inability to practice medicine with reasonable skill and safety due to excessive use of drugs, narcotics, chemicals, or another substance; criminal history; and submission of a false statement to the Board on an application for licensure. Factors contributing to this recommendation include a history of cocaine and alcohol dependency with less than a year of reported sobriety; 2007 arrest for DWI and Possession of a Controlled Substance that resulted in conviction for the DWI and deferred adjudication for the possession charge. Mitigating factors include the applicants compliance with the terms of deferred adjudication that has included AA/NA 3 times per week, participation in random drug screen programs, and completion of outpatient drug and alcohol counseling. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #789 appeared with counsel, 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 determined ineligible for relicensure.** This recommendation is due to action taken by Texas Medical Board (TMB) due to unprofessional conduct and violation of state law for prescribing without a valid medical purpose; time out of professional medicine; and failure to practice medicine in acceptable professional manner consistent with public health and welfare. Factors contributing to this recommendation include that the TMB previously revoked the applicants license; the applicant has been out of the active practice of medicine since August 2002; the applicants licenses in several other states were revoked based on the TMB action; and the committees determination that the applicant failed to prove reissuance of the license would be in the best interests of the physician or the public. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

2. Physician in training permit applicants

Applicant #792 appeared, with counsel, 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 under a non-public, non-disciplinary rehabilitation order that includes the requirements specified in the Rehabilitation Checklist that has been distributed to the members of the committee.** This recommendation is due to inability to

practice medicine with reasonable skill and safety due to a mental or physical condition. Factors contributing to this recommendation include applicants diagnosis of a mood disorder that affected the practice of medicine and history of complaints regarding inappropriate comments and behavior with medical staff that were filed against applicant where applicant had hospital privileges. Mitigating factors include no disciplinary action taken by other state boards or other health care entities for conduct issues, and that the applicant has taken corrective action to address behavior issues, and has undergone psychiatric treatment with the recommendation that the applicant can safely practice medicine. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Agenda Item 6 Discussion, recommendation, and possible action regarding licensee requests:

Item 6a - Request of physician for activation of canceled physician licenses There were none.

Item 6b - Request of physician to return to Active Status from Texas Retired Status

Applicant #790's request to return to active status was considered. **Mr. Turner moved to recommend to the full Board that the applicants license be returned to active status. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Item 2a continued Applicants appearing concerning eligibility

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

Item 2b Applicants appearing for rehearing concerning eligibility.

1. Physician Licensure Applicants There were none.
2. Physician in training permit applicants There were none.
3. Acudetox certification applicants There were none.
4. Surgical assistant licensure applicants - There were none.

Item 2c Proposed orders offered by the Executive Director.

1. Physician Licensure Applicants Ms. Garanflo reported on seven orders offered by the Executive Director. **Mr. Turner moved to recommend to the full Board that all seven orders be approved. Mr. Webb seconded. All voted in favor and the motion passed.**
2. Physician in training permit applicants There were none.

3. Acudetox certification applicants - There were none.
4. Surgical assistant licensure applicants - There were none.

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

1. Physician Licensure Applicants - There were 526 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 526 physician licensure applicants determined to meet eligibility requirements by staff be approved. Mr. Turner seconded the motion. All voted in favor. The motion passed.**
2. Acudetox certification applicants There were none.
3. Surgical assistant licensure applicants - There were three surgical assistant applicants to be considered for approval. **Mr. Turner moved to recommend to the full Board that all three surgical assistant applicants determined to meet eligibility requirements by staff be approved. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Agenda Item 3 Discussion, recommendation, and possible action regarding applicant requests:

Item 3a Requests for Rehearing

Applicant #755's = request for rehearing was considered. Dr. Holliday moved to recommend that the applicants request for rehearing be granted based upon submission of information not previously presented to or considered by the board. Ms. Southard seconded the motion. All voted in favor. The motion passed.

Item 3b Request for Waiver of Acupuncture License Requirements There were none.

Agenda Item 4 Discussion, recommendation and possible action regarding unsigned orders from previous meetings.

Ms. Garanflo reported that there was one unsigned order from previous meetings. That applicant is currently requesting a rehearing.

Agenda Item 5 Reports on:

Item 5a Applicant determinations of eligibility made by the Executive Director in the last period - Ms. Garanflo presented a report on applicant determinations of eligibility made by the Executive Director for the period March 26, 2009 through May 19, 2009.

Item 5b Physician licensure process statistics Ms. Garanflo presented physician licensure statistics for applicants considered for licensure at this meeting. Statistics from one week ago reflect the estimated average time to process all applicants is 33 days. Additionally, forty-four percent of physician applications were completed for licensure within ten days. Those numbers may change slightly when the final statistics are run.

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 8 Discussion, recommendation, and possible action regarding Nonprofit Health Organizations:

Item 8a - Applicants for initial certification - There were seven applications for initial certification as a Nonprofit Health Organization for approval. **Ms. Southard moved to recommend to the full board that the requests for initial certification as a Nonprofit Health Organization be approved. Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Item 8b - Requests for biennial recertification - There were five applications for biennial recertification as a Nonprofit Health Organization for approval. **Mr. Turner moved to recommend to the full board that the requests for biennial recertification as a Nonprofit Health Organization be approved. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Item 8c - Cancellation of organizations certified as Nonprofit Health Organizations - There were twenty requests for decertification as a Nonprofit Health Organization for approval. **Mr. Turner moved to recommend to the full board that the requests for decertification as a Nonprofit Health**

Organization be approved. Ms. Southard seconded the motion. All voted in favor. The motion passed.

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

22 TAC 163.4, Procedural Rules for Licensure Applicants.

22 TAC 175.5, Payment of Fees or Penalties.

a.

- b. **Ms. Southard moved to recommend to the full board that both rules be published with changes noted in the Texas Register for public comment. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**

Item 9b Texas State Board of Acupuncture Examiners Rules. There were none.

Agenda Item 11 Report on certifying organizations for physicians and other state medical boards requirements regarding administrative medicine and recognized certification organizations. At the committees April 2009 meeting, they requested staff conduct research to find if there are any other certifying organizations for physicians who practice administrative medicine or practice as medical directors. The Committee further directed staff to query other state medical boards regarding requirements for the practice of administrative medicine and the certification organizations they recognize. Ms. Garanflo reported that research revealed only a few such organizations, none of which appeared to have requirements similar to those of specialty boards recognized by the ABMS or BOS. She also told the committee that the other state licensing boards were queried and that none of the licensing boards responding recognized the Certifying Commission in Medical Management. Further, Ms. Garanflo reported that most boards handle administrative medicine licenses as the Texas board currently does through licensure with terms and conditions. Dr. Holliday stated that he had recently learned more about

Agenda Item 12 - There being no further business, Dr. Arambula adjourned the meeting at 4:12 p.m.