



# **Texas Medical Board**

**October 28, 2010**

## **BOARD MEETING MINUTES**

The meeting was called to order October 28, 2010 at 8:30 a.m. by Vice-President Melinda McMichael, M.D. Board members present were Timothy J. Turner, Secretary/Treasurer; Michael Arambula; Julie Attebury; David Baucom; Jose M. Benavides, M.D.; Patricia Blackwell; Pat J. Crocker, D.O.; John D. Ellis, Jr., J.D.; Manuel Guajardo, M.D.; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Charles E. Oswalt III, M.D.; Allan N. Shulkin, M.D.; Wynne M. Snoots, M.D.; Paulette B. Southard; Timothy Webb, J.D.; and George Willeford III, M.D. Board staff present were Mari Robinson, Executive Director; Nancy Leshikar, J.D., General Counsel; Jaime Garanfio, Director of Licensure; Megan Goode, Public Information and Special Projects Manager; and various other staff.

Ms. Attebury read the board's mission statement into the minutes.

*"Our Board's 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's Report.**

**Update on FAQs.** Ms. Robinson gave an update that staff is working on developing the FAQs (Frequently Asked Questions) relating to Telemedicine and the National Practitioner Data Bank. After discussion, the board directed staff to replace the Outreach link with the Telemedicine FAQ on the home page of the agency website.

**Physician Health Program update.** Ms. Robinson gave a brief report of the Physician Health Program that will be presented at future Disciplinary Process Review Committee meetings.

**Legislative update.** Ms. Robinson gave a brief report on a number of issues that the agency is providing information as a resource to legislators.

**Budget update.** Ms. Robinson gave a brief report of the initial budget hearing and the possible negative impact.

**Medical Director update.** Ms. Robinson updated the board on the hiring search for a Medical Director.

**Agenda item #4, Discussion, recommendation, and possible action related to electronic death certificate registration.** After discussion, the board directed staff to cease action on electronic death certificate registration cases through the end of the legislative session and to dismiss and retract pending cases. The board discussed the mandatory system and directed staff to offer assistance in efforts to improve the system.

**Agenda item #5, Consideration and possible action related to the travel reimbursement process.** Finance staff presented the new travel voucher and checklist to provide a more efficient reimbursement process.

**Agenda item #6, Discussion, recommendation, and possible action related to Disciplinary Process Review Committee to grant authority to individual board members to dismiss a case.** After discussion, it was determined that it is not permissible to grant an individual board member the authority to dismiss a case. The authority to dismiss a complaint is a discretionary function given by statute to the Board, and therefore it cannot be delegated.

After the board inquired about the length of time scheduled for mediations, the board directed staff to bring options available for more efficient scheduling of mediations to the next board meeting.

**Agenda item #7, Discussion, recommendation, and possible action related to retirement of license with an active investigation.** After discussion of the options for the retirement of licensure, the Mr. Turner moved, Ms. Southard seconded, and the motion passed to continue to follow the standard process for referrals to PHP and draft a letter to the Physician Health Program requesting them to consider an exception to reduce the \$1,200 fee for physicians who are no longer physically able to practice and agree to surrender licensure. The board directed staff to develop language and continue to review options for the retirement of licensure to present at the next board meeting.

**Agenda item #8, Consideration and possible action regarding pending litigation.** Ms. Leshikar gave a report on pending litigation. Mr. Turner moved, Dr. Benavides seconded, and the motion passed to go into Executive Session at 10:16 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. Open session resumed at 10:25 a.m. and it was announced that no action was taken. A certified agenda was made.

**Agenda item #24 at 10:30 a.m., Consideration and approval of Proposal for Decision.** Randy Ramahi, D.O., SOAH #503-09-6208. Thomas H. Walston, Administrative Law Judge, gave the report of the Proposal for Decision and recommendation. John Heisler, staff attorney, was present and gave a brief presentation. Randy Ramahi, D.O., was present and gave a brief presentation. After discussion, Mr. Turner moved, Ms. Southard seconded, and the motion passed to adopt the

**Findings of Fact, Conclusions of Law, and recommendation by the Administrative Law Judge in the Proposal for Decision to revoke the license of Randy Ramahi, D.O.**

**Agenda item #9, Consideration and Approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders.** After discussion, Mr. Turner moved, Ms. Southard seconded, and the motion passed to deny the Modification Order #476.

After discussion, Mr. Turner moved, Ms. Attebury seconded, and the motion passed to approve enmasse the Modified Agreed Rehab Order #481; and the Termination Granted of Rehabilitation Orders #345, #440, #448, #487, #490, #523, #535, #551, #569, #649, #593, and #389.

**Agenda item #10, Consideration and Approval of Agreed Board Orders.** After discussion, Dr. McNeese moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for David H. Janowitz, M.D., with the modification to add a public reprimand, due to unnecessary high risks that ultimately resulted in fetal demise.

Agenda item #10 is continued later in the meeting.

**Agenda item #25 at 11:00 a.m., Discussion, recommendation and possible action regarding the following board rules in 22 TAC:**

- a. Chapter 164. Physician Advertising**
  - §164.4, Board Certification.
- b. Chapter 172. Temporary Licenses**
  - §172.5, Visiting Physician Temporary Permits (VPTP).
- c. Chapter 175. Fees, Penalties, and Forms**
  - §175.1, Application Fees.

Dr. Crocker summarized the process that allowed extensive input from individuals and organizations related to the revision of the board rule 164.4 Board Certification. Written comments were received and reviewed. The following signed in to present oral comments: Mark Steele; John Becker, D.O., American Osteopathic Association; Joe Nixon, American Board of Physician Specialties; William Carbon, CEO, ABPS; Dr. Compton Broders; Dr. Ernest Stroupe, ABPS; Dr. Sandy Schneider, ACEP; Dr. Nathan Deal, EMRA; Dr. Otto Marquez, ABPS; Dr. Mack Till, ABPS; R. Petrella, ABPS; Dr. Edward Buckingham, ABFPRS; Dr. Nick Zermans, TCEP; Dr. David Mendelson, TCEP; Dr. Carrie de Moor, TCEP; Dr. Jason Disney, ABPS; Dr. Otto Marquez, ABPS; Dr. David Garza, ABPS; Dr. Tom White, ABPS; Dr. Brenda Lobley, ABPS; Adam Haughey, M.D.; Robert Greenberg, M.D., TMA; Dr. David Abefefe ABPS; Dr. Holliefield, ABPS; Dr. Henry Martrez, ABPS; Dr. Elliot Trotter, ABPS; Dr. Atweiz Rica, ABPS; Tom Sartwell, ABPS; and Dr. Dan Brown, ABPS.

After discussion, Dr. Crocker moved, Mr. Webb seconded, and the motion passed to adopt the amendments to Chapter 164.4 Board Certification as published with one non-substantive change allowing either a doctor or a certifying society to seek board approval rather than just the individual doctors.

The board recessed.

The board reconvened at 1:40 p.m. A quorum was confirmed.

After discussion, **Ms. Southard moved, Dr. Arambula seconded, and the motion passed to adopt the published amendments to §172.5, Visiting Physician Temporary Permits (VPTP) for publication in the Texas Register.**

After discussion, **Ms. Attebury moved, Ms. Southard seconded, and the motion passed to adopt the published amendments to §175.1, Application Fees with the exception of 175.1.1(D) for publication in the Texas Register.**

**Agenda item #10, Consideration and Approval of Agreed Board Orders (continued.) Dr. Arambula moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 1:52 p.m. for deliberations concerning disciplinary action, investigative information, peer review information, and rehabilitation orders under the authority of The Medical Practice Act Sections 152.009, 160.006 through .008, 164.007(c), and 164.202 & .203, Occupations Code. Open session resumed 2:12 p.m. and it was announced that no action was taken. A certified agenda was made.**

After discussion, **Dr. Crocker moved, Ms. Southard seconded, and the motion passed to refer Agreed Order #39 back for a second Informal Settlement Conference due to an additional case # 10-0459.**

After discussion, **Ms. Southard moved, Ms. Attebury seconded, and the motion passed to approve the Agreed Order for Karin E. Montero, M.D., with the modification to add a \$2,000 administrative penalty and the Jurisprudence Exam, due to failure to document records for 48 hours.**

Dr. Benavides was recused. After discussion, **Ms. Blackwell moved, Mr. Webb seconded, and the motion passed to approve the Agreed Order for Francis W. Mueller, M.D., with a clerical correction in paragraph 2 on page 4 should be Schedule II-V. After discussion, Ms. Attebury moved, Mr. Webb seconded, and the motion passed to reconsider the motion. After discussion, Ms. Blackwell moved, Dr. Holliday seconded, and the motion passed to approve the Agreed Order for Francis W. Mueller, M.D., with the amendment to 2N in paragraph 2 on page 4.**

Dr. Holliday was recused. After discussion, **Dr. Oswalt moved, Mr. Webb seconded, and the motion passed to approve the Agreed Order for Ingrid Arnold, M.D., with the modification to add the Jurisprudence Exam, due to concerns about the respondent's level of knowledge.**

The board directed staff to report on the status of amended orders at the February board meeting.

After discussion, Mr. Webb moved, Ms. Southard seconded, and the motion passed to approve the Agreed Orders en masse for the following: Charles P. Anderson, M.D.; Nitesh A. Banker, M.D.; Dawn D. Black, M.D.; Eladio S. Carrera, M.D.; Pay-Zen Cheng, M.D.; Tracy Crnic, M.D.; Timothy Dannemiller, M.D.; Joe W. Dickerson, M.D.; Pedro E. Garcia, Jr., M.D.; Daniel C. Garner, M.D.; Marco Ghignone, M.D.; Harold B. Hamilton, M.D.; Anatoliy M. Ilizarov, M.D.; Daniel H. Kellum, Sr., M.D.; Imran Nathani, M.D.; John Edward Perry III, M.D.; Ronald W. Philleaux, M.D.; Michael B. Pickrell, M.D.; Lionel Rangel, M.D.; James E. Redfield, Jr., M.D.; John d. Rodriguez, M.D.; Amit Sadana, M.D.; Paul May Tucker, M.D.; Roderick Vergel De Dios, M.D.; Gary K. Wilson, M.D.; Clarence J. Wolinski, M.D.; Nora J. Davis, M.D.; Robert A. Moore, Jr., M.D.; Ronald D. Ray, M.D.; Cordell O. Nwokeji, M.D.; Lawrence S. Weprin, M.D.; Kirk Brauer, M.D.; Ronald N. White, M.D.; and Caroline N. Mbogua, M.D., as written.

**Agenda item #11, Consideration and Approval of Modification Request/ Termination Request Orders.** After discussion, Ms. Southard moved, Mr. Webb seconded, and the motion passed to approve the Termination Granted Orders for Bharat Gandhi, M.D. and Mahoor C. Moradi, M.D., as written.

There were no items for Agenda Item #12.

**Agenda item #13, Consideration and Approval of Mediated Settlement Agreed Orders.** After discussion, Dr. Benavides moved, Dr. Arambula seconded, and the motion passed to approve the Mediated Settlement Agreed Order for Lynanne J. Foster, M.D.

Dr. Shulkin was recused. After discussion, Ms. Southard moved, Dr. Arambula seconded, and the motion passed to approve the Agreed Orders en masse for the following: Jeffrey L. Butts, D.O.; Irwin Korngut, M.D.; Raul Loaisiga, M.D.; Theodore E. Margo, M.D.; Marelyn Median, M.D.; Michael B. Taylor, M.D.; Daniel Voglewede, M.D.; and Mohammad Athari, M.D., as written.

**Agenda item #14, Consideration and Approval of Termination of Suspension Orders.** After discussion, Mr. Turner moved, Dr. Benavides seconded, and the motion passed to approve the Termination of Suspension Order for Todd M. McCarty, M.D., as written.

**Agenda item #15, Consideration and Approval of Corrective Orders.** After discussion, Mr. Turner moved, Dr. Benavides seconded, and the motion passed to approve the Corrective Orders en masse for the following: Maureen Adair, M.D.; Miriam D. Aponte, M.D.; Stephen L. Brown, M.D.; Yong D. Chang, M.D.; Swetanshu Chaudhari, M.D.; Lourdes B. Concha, M.D.; Jose D. Gil, M.D.; James Morton, M.D.; Douglas H. Rankin, M.D.; Carlos Rubin De Celis, M.D.; James L. Ryman, M.D.; Gilberto Sustache, Jr., M.D.; James L. Tran, M.D.; Richard Trevino, M.D.; Miguel Zabalgoita-Reyes, M.D.; Carlos Aeschlimann, M.D.; and Hervy H. Hiner, Jr., M.D.

There were no items for Agenda items #16-17.

**Agenda item #18, Report on Temporary Suspensions.** A report on the Temporary Suspensions was given by Ms. Leshikar.

There were no items for Agenda Items #19-20.

**Agenda item #21, Consideration and Approval of Determinations of Default.** After discussion, **Ms. Attebury moved, Mr. Webb seconded, and the motion passed to set aside the Determination of Default for Sandra Peyton, M.D., because Dr. Peyton was responding to the board.**

**Agenda item #10, Consideration and Approval of Agreed Board Orders (continued.)** After discussion, **Ms. Attebury moved, Dr. Holliday seconded, and the motion passed to approve the Agreed Order for Sandra Peyton, M.D., as written.**

**Agenda item #21, Consideration and Approval of Determinations of Default.** After discussion, **Mr. Webb moved, Ms. Blackwell seconded, and the motion passed to approve the Determination of Default for Esperanza Fernandez, M.D., for revocation of licensure.**

After discussion, **Mr. Turner moved, Mr. Webb seconded, and the motion passed to approve the Determination of Default for Jesus Javier Gonzalez, M.D., for revocation of licensure.**

There were no items for Agenda Items #22-23.

**Agenda item #28 at NOON, Open forum for public comments.** No one presented public comments.

**Consent Agenda:**

1. Consideration and approval of the August 27, 2010 Board Meeting Minutes. **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the August 27, 2010 Board Meeting Minutes.**
2. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.

Dr. Arambula gave a report of the 3<sup>rd</sup> Party Payor for Medical Services Advisory Committee. **Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the 3<sup>rd</sup> Party Payor for Medical Services Advisory Committee minutes and action items.**

Dr. McMichael gave a report of the Disciplinary Process Review Committee. **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items.**

Dr. McMichael gave a report of the Executive Committee. **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the Executive Committee minutes and action items.**

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

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

Ms. Southard gave a report of the Public Info/Physician Profile Committee. **Ms. Southard moved, Dr. Benavides seconded, and the motion passed to approve the Public Info/Physician Profile Committee minutes and action items.**

Ms. Blackwell gave a report of the Standing Orders Committee. **Ms. Blackwell moved, Dr. Benavides seconded, and the motion passed to approve the Standing Orders Committee and action items.**

**Agenda item #29, Adjourn.** There being no further agenda items, the meeting adjourned at 3:15 p.m.

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