



Texas Medical Board

BOARD MEETING
333 GUADALUPE, TOWER 2, SUITE 225
AUSTIN, TEXAS
August 25-26, 2016

The meeting was called to order on Thursday, August 25, 2016 at 4:02 p.m. by Board President, Michael Arambula M.D., PharmD. Board members present were: George Willeford III, M.D., Vice-President; Julie Attebury; Frank S. Denton; John R. Guerra, D.O.; Margaret McNeese, M.D.; Allan Shulkin, M.D.; Robert B. Simonson, D.O.; Karl W. Swann, M.D.; Surendra K. Varma, M.D.; Stanley S. Wang, M.D.; and Timothy Webb, J.D. Board members absent were Paulette Southard, Secretary/Treasurer; David Baucom, John Ellis, Jr., J.D.; Manuel G. Guajardo, M.D.; and J. Scott Holliday, D.O. Board staff present were Mari Robinson, J.D., Executive Director; Robert Bredt, M.D., Medical Director; Scott Freshour, J.D., General Counsel; Sarah Tuthill, J.D.; Wendy Pajak, J.D.; 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 at 4:00 p.m., Discussion, recommendation, and possible action regarding the adoption of proposed amendments and rule review to 22 Texas Administrative Code:

Chapter 174, Telemedicine

- §174.11 On-Call Services

Chapter 177 Business Organizations

- §177.16, (Subchapter C) Physician
- New Subchapter E, Physician Call Coverage Medical Services
- §§177.18-177.20

Chapter 199, Public Information

- §199.6 Enhanced Contract or Performance Monitoring

Chapter 200, Standards for Physicians Practicing Complementary and Alternative Medicine

- §200.3 – Practice Guidelines for the Provision of Complementary and Alternative Medicine

Ms. Robinson gave a brief history of rule §174.11 On-Call Services. The discussion was deferred to later in the meeting.

Chapter 177 Business Organizations, New Subchapter E, Physician Call Coverage Medical Services §§177.18-177.20. Ms. Tuthill presented a review of the proposed rules for adoption. Written comments were received and reviewed. Julie Hall-Barrow, Children Health, presented oral comments. After discussion, **Dr. Willeford moved, Dr. Simonson seconded, and the motion passed to adopt the proposed amendments to 22 T.A.C. Chapter 177 Business Organizations, New Subchapter E. Physician Call Coverage Medical Services §§177.18-177.20 for publication in the Texas Register.** Mr. Denton opposed the motion.

Ms. Robinson presented a brief summary of Chapter 174, Telemedicine, §174.11 On-Call Services, that was earlier in the meeting. No one signed-in to present oral comments. No written comments were reviewed for §174.11. Written comments received for §§177.18-177.20 were reviewed. **Dr. Varma moved, Mr. Webb seconded, and the motion passed to adopt the proposed amendments to 22 T.A.C. Chapter 174, Telemedicine, §174.11 On-Call Services for publication in the Texas Register.** This rule does not void or affect rule §190.8. The injunction stands for §190.8 as issued by the Court. Mr. Denton opposed the motion.

Ms. Robinson gave a brief summary of Chapter 177 Business Organizations, §177.16 (Subchapter C) Physician. No written comments were received. No one signed-in to present oral comments. After discussion, **Dr. Wang moved, Mr. Webb seconded, and the motion passed to adopt the proposed amendments and rule review to 22.T.A.C. Chapter 177 Business Organizations, §177.16 (Subchapter C) Physician for publication in the Texas Register.**

Ms. Pajak gave a brief summary Chapter 199, Public Information §199.6 Enhanced Contract or Performance Monitoring. No written comments were received. No one signed-in to present oral comments. **Dr. Wang moved, Mr. Webb seconded, and the motion passed to adopt the proposed amendments and rule review to 22 T.A.C. Chapter 199, Public Information §199.6 Enhanced Contract or Performance Monitoring for publication in the Texas Register.**

Ms. Pajak gave a brief summary Chapter 200, Standards for Physicians Practicing Complementary and Alternative Medicine, §200.3 Practice Guidelines for the Provision of Complementary and Alternative Medicine. No written comments were received. No one signed-in to present oral comments. **Dr. Wang moved, Dr. Simonson seconded, and the motion pass to adopt the proposed amendments and rule review to 22 T.A.C. Chapter 200, Standards for Physicians Practicing Complementary and Alternative Medicine, §200.3 Practice Guidelines for the Provision of Complementary and Alternative Medicine for publication in the Texas Register.**

Ms. Robinson asked for direction on the drafting new rules. After discussion, the board directed staff to pend petitions for rulemaking until the legislation ends.

Agenda item #3, Recess. The meeting recessed at 4:48 p.m.

Texas Medical Board

BOARD MEETING August 25-26, 2016 (CONTINUED)

The meeting was reconvened at Friday, August 26, 2016 at 8:03 a.m. by Michael Arambula, M.D., Board President. Board members present were: Julie Attebury; Frank S. Denton; Carlos L. Gallardo; John R. Guerra, D.O.; Margaret McNeese, M.D.; Robert B. Simonson, D.O.; Karl W. Swann, M.D.; Surendra K. Varma, M.D.; Stanley S. Wang, M.D.; and Timothy Webb, J.D. A quorum was confirmed.

Board members absent were David Baucom; John D. Ellis, Jr., J.D.; Manuel G. Guajardo, M.D.; J. Scott Holliday, D.O.; Paulette Southard; and George Willeford III, M.D. Board staff present were Mari Robinson, J.D., Executive Director; Robert Bredt, M.D., Medical Director, Scott Freshour, J.D., General Counsel; Monique Johnston, Licensure Manager and various other staff.

There were no items for Agenda item #2.

Agenda item #3, Consideration and approval of Modification Request/Termination Request Orders. After discussion, **Mr. Gallardo moved, Dr. McNeese seconded, and the motion passed to approve the Denial of the Termination Request of Suspension for Bernice Anderson, D.O.; the Granted Modification Request Orders for James H. Elder III, D.O.; Lloyd F. Mercer, Jr., M.D.; and the Granted Termination Request Orders for Paul A. Grant, M.D.; Cynthia H. Moran, M.D.; and Laura S. Stiles, D.O.**

Dr. Shulkin arrived at 8:05 a.m.

Agenda item #4, Consideration and possible action for Agreed Board Orders. After discussion, **Mr. Denton moved and Dr. Wang seconded a motion to approve the Agreed Order #35 with the modification to increase the administrative penalty to \$12,000, due to the respondent's extensive board history.** After discussion, **Dr. Varma moved for a friendly amendment, Dr. McNeese seconded, and the motion passed to approve the friendly amendment to the motion to add the restriction of no DEA registration during the time the order is in effect.** After discussion, **a vote was taken and the original motion with the friendly amendment passed unanimously to approve the Agreed Order #35 with the modifications to increase the administrative penalty to \$12,000 and add no DEA registration during the time the order is in effect.**

After discussion, **Dr. Varma moved, Mr. Denton seconded, and the motion passed to approve the Agreed Order for Raul Rodriguez, M.D.**

After discussion, **Ms. Attebury moved, Mr. Gallardo seconded, and the motion passed to approve the Agreed Orders en masse for Omar H. Durrani, M.D.; Ron M. Mansolo, M.D.; James Lee Slater II, M.D.; Ryan T. Thai, M.D.; Randy J. Davis, D.O.; Vikram**

Durairaj, M.D.; Stephanie Eyestone, M.D.; Connie Ann Ivey, NCT, Andrew M. Psyk, M.D.; Mary F. Burgess, M.D.; Ron Mark, M.D.; Victoria M. Adeleye, M.D.; Horacio Alberto Diaz, M.D.; Gregory B. Fehr, M.D.; John D. Griffith, M.D.; Coty W. Jewell, M.D.; Brian J. Norkiewicz, M.D.; Mary O. Rosenquist, D.O.; Ricardo B. Tan, M.D.; Daniel R. Theesfeld, M.D.; David F. Villacres, M.D.; Odette L. Campbell, M.D.; Barry Lee Myones, M.D.; Toribio T. Natividad, M.D.; Timothy Nguyen II, M.D.; Austin A. Orette, M.D.; and Edwin J. Sasin, II, M.D. Ms. Robinson noted that the Agreed order Benjamin A. Deaton, M.D., will not replace the Temporary suspension that is in place.

Agenda item #5, Consideration and approval of Mediated Settlement Agreed Orders. Mediation order #2 was withdrawn for consideration. After discussion, Mediated Settlement Order # 3 was deferred to later in the meeting.

Dr. Shulkin was recused for consideration of Mediated Settlement Agreed Order #4. After discussion, **Mr. Denton moved, Mr. Gallardo seconded, and the motion passed to go into Executive Session at 8:29 a.m. for private consultation and 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 at 8:45 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. Wang, moved, Ms. Attebury seconded, and the motion passed to approve the Mediated Settlement Order for David L. Turner, M.D.**

After discussion, **Dr. Varma moved, Dr. Guerra seconded, and the motion passed to approve the Mediated Settlement Order for W. Brad Wilson, M.D.**

After discussion, **Mr. Gallardo moved, Ms. Attebury seconded, and the motion passed to approve the Mediated Settlement Order for Leo T. Chretien, M.D.**

Agenda item #6, Consideration and approval of Remedial Plans. After discussion, **Mr. Denton moved and Mr. Gallardo seconded a motion to convert the Remedial Plan to an Agreed Order for #20, due to the number of standard of care violations.** After discussion, **Dr. Wang moved, Dr. Guerra seconded, and the motion passed to go into Executive Session at 8:59 a.m. for private consultation and 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 at 9:11 a.m. and it was announced that no action was taken. A certified agenda was made.

Ms. Robinson restated the original motion to convert the Remedial Plan #20 to an Agreed Order with 24 hours of CME, due to the number of standard of care violations. After discussion, **Mr. Gallardo moved, Dr. Shulkin seconded, and the motion passed to approve a friendly amendment to add an additional 8 cycles of chart monitoring and a \$6,000 administrative penalty.** Ms. Robinson restated the original motion with the amendment. **A vote was taken and passed unanimously to approve the original motion to convert Remedial Plan #20 to an**

Agreed Order with 24 hours of CME and the additional amendment to add 8 cycles of chart monitoring and \$6,000 administrative penalty.

Consideration of Remedial Plan #23 was deferred to later in the meeting.

Dr. Wang was recused for Rodolfo R. Alamia, M.D., and Michael S. Lifshen, M.D. After discussion, **Ms. Attebury moved, Mr. Gallardo seconded, and the motion passed to approve the Remedial Plans for Rodolfo R. Alamia, M.D.; Sergio A. Avalos, M.D.; James E. Baker, Jr., M.D.; Allen W. Burton, M.D.; Juan P. Calero, M.D.; Steven M. Elwell, M.D.; Socrates A. Garrigos, M.D.; Sandeep K. Gupta, M.D.; Zulfaqqar M. Jaffar, M.D.; Tapan M. Kadia, M.D.; Wayne A. Lee, M.D.; Caceres Maselli, M.D.; Robert D. Menzies, M.D.; Munir S. Merchant, M.D.; Mary V. Mirto, D.O.; Angel Rodriguez, M.D.; Brian T. Spore, D.O.; William G. Silber, M.D.; Christopher T. Buchanan, M.D.; Pierre-Yves M. Chevray, M.D.; Walter C. Cox, M.D.; Michael S. Lifshen, M.D.; Timothy S. Martin, M.D.; Michael R. McLeod, M.D.; Brian S. Nelson, M.D.; Onamma C. Nwosu, M.D.; Hoard L. Schreiber, M.D.; James G. Stovall, M.D.; Juan M. Taveras, M.D.; Hector Trevino, M.D.; Robert A. Vogel, M.D.; John S. Volk, D.O.; Hitesh B. Yagnik, M.D.; and Bradley N. Shipman, M.D.**

Agenda item #7, Consideration and approval of Nunc Pro Tunc Orders. After discussion, **Mr. Gallardo moved, Dr. Varma seconded, and the motion passed to approve the Nunc Pro Tunc Orders for Barry T. Hill, M.D.; and Dimple T. Tharian, M.D.**

Agenda item #8, Consideration and approval of Order Vacating Prior Order. After discussion, **Dr. McNeese moved, Dr. Simonson seconded, and the motion passed to approve the Order Vacating the Prior Order for Theodore Herring, M.D.**

There were no items for Agenda items #9-12.

Agenda item #13, Consideration and approval of Cease and Desist Agreed Orders. After discussion, **Mr. Gallardo moved, Ms. Attebury seconded, and the motion passed to approve the Cease and Desist Agreed Orders for Ghada Abuhakmeh; Consuelo Harwood, and Sarai J. Rivera.**

There were no items for Agenda item #14.

Agenda item #15, Consideration and approval of Proposal for Decisions deferred until 10:00 a.m.

Agenda item #16, Consideration and Approval of Disposition of Final Decision – Barry Sachs, DO., SOAH #503-14-2557 was deferred to later in the meeting.

Agenda item #17, Report on Temporary Suspension Hearings. A report was presented on the Temporary Suspension Hearings for James M. Wilson, M.D., Benjamin A. Deaton, M.D.; Vikram Durairaj, M.D.; and Craig C. Beasley, M.D.

Agenda item #18, Report on Cease and Desist Orders approved by Executive Director. A report was presented on the Cease and Desist Orders approved by the Executive Director for Ammar Hashi and James Dunn.

Agenda item #19, Report on Motions for Rehearing Requests. A report was presented on the Motions for Rehearing Requests.

Agenda item #20, Report of Suspension by Operation of Law. A report was presented on the Suspension by Operation of Law of Leonard Kibert, M.D., Rachel C. Kientcha-Tita, M.D.

Agenda item #21, Report on Automatic Orders. A report was presented on the Automatic Orders for Daniel E. Rousch, D.O.

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

§185.2. Definitions

§185.4 Procedural Rules

§185.6 Annual Renewal

§185.7 Temporary License

§185.8 Inactive License

Ms. Robinson gave a brief overview. No one signed-in for oral comments. No written comments were received. After discussion, **Dr. Varma moved, Mr. Gallardo seconded, and the motion passed to adopt the proposed rule changes and rule review to 22 T.A.C. Chapter 185, Physician Assistants, §185.2. Definitions; §185.4 Procedural Rules; §185.6 Annual Renewal; §185.7 Temporary License; and §185.8 Inactive License for publication in the Texas Register.**

There were no items for Agenda items #23-26.

CONSENT AGENDA

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

1. **Consideration and approval of the June 10, 2016 minutes.**
Mr. Gallardo moved, Dr. Varma seconded, and the motion passed to approve the June 10, 2016 Medical Board meeting minutes.
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, Mr. Gallardo seconded, and the motion passed to approve the Finance Committee meeting minutes and action items.**

Dr. Arambula gave a report of the Executive Committee meeting minutes and action item. **Dr. Arambula moved, Mr. Gallardo seconded, and the motion passed to approve the Executive Committee Meeting Minutes and action items.**

Dr. McNeese gave report of the DPRC meeting. After discussion, **Dr. McNeese moved, Dr. Shulkin seconded, and the motion passed to approve the DPRC Committee meeting minutes and action items.** The board directed staff to get more information on needle EMG testing.

Mr. Webb gave a report of the Licensure Committee. **Mr. Webb moved, Dr. Guerra seconded, and the motion passed to approve the Licensure Committee meeting minutes and action items.**

Agenda item #15, Consideration and approval of Proposal for Decisions at 10:00 a.m.

1. Delina Katherine Walker, SA, SOAH #503-15-4505.SA. Mr. Freshour gave a procedural overview. Johnathan Stone, J.D., staff attorney, was present. Delina Katherine Walker, S.A. was present with attorney, Courtney Newton, J.D. Dr. Walker presented comments. Ms. Newton gave a presentation. Mr. Stone gave a presentation. Ms. Newton gave a brief rebuttal. After discussion, **Mr. Denton moved, Dr. Simonson seconded, and the motion passed to adopt the Findings of Fact and the Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for Delina Katherine Walker, S.A., and to approve the Final Order for licensure.** Mr. Gallardo opposed to the motion.

2. Carl Rockett, M.D., SOAH #503-14-0165.MD. Mr. Freshour gave a brief procedural background. Barbara Jordan, staff attorney, was present. Dr. Rockett was present with representation by attorney Louis Leichter, J.D. Ms. Jordan gave a presentation. Mr. Leichter gave a presentation. Ms. Jordan gave a brief rebuttal. Mr. Leichter made additional comments. After discussion, **Dr. Varma moved, Mr. Gallardo seconded, and the motion passed to adopt the Findings of Fact and the Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for Carl Rockett, M.D., and adopt the board staff suggested Final Order for revocation.**

3. Leonard Haberman, SOAH #503-16-1081.MD. Mr. Freshour gave a brief procedural background. Claudia Kirks, staff attorney, was present. Dr. Haberman was present with representation by attorney Ace Pickens, J.D. Mr. Pickens gave a presentation. Ms. Kirk gave a brief rebuttal. After discussion, **Mr. Gallardo moved, Dr. Wang seconded, and motion passed to adopt the Findings of Fact and the Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for Leonard Haberman and adopt the staff suggested final order respondent is ineligible for a Texas medical license.**

4. Fernando Sanchez-Brugal, M.D., SOAH #503-15-4443.MD. Mr. Freshour gave a brief procedural background. Johnathan Stone, staff attorney, was present. Dr. Sanchez-Brugal did not appear. Robert Simpson, J.D., was present representing Dr. Sanchez-Brugal. Mr. Stone gave a presentation. Mr. Simpson gave presentation. Mr. Stone gave brief rebuttal. After discussion, **Mr. Gallardo moved, Dr. Wang seconded, and the motion passed to adopt the Findings of Fact and the Conclusions of Law of the Administrative Law Judge in the**

Proposal for Decision for Fernando Sanchez-Brugal, MD., and adopt the staff suggested Final Order for revocation.

5. Ronald Green, MD, SOAH #503-14-2369.MD. Mr. Freshour gave a brief procedural background. Barbara Jordan, staff attorney, was present. Ronald Green M.D. did not appear. No one was present to represent Dr. Green. Ms. Jordan gave a presentation.. After discussion, **Dr. Varma moved, Mr. Gallardo seconded, and the motion passed to adopt the Findings of Fact and the Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for Ronald Green, M.D., and adopt the staff suggested Final Order for revocation.**

6. Cyrus Sajadi, MD, SOAH Docket No. 503-15-5051.MD Mr. Freshour gave a brief procedural background. Heather Pierce, staff attorney, was present. Dr. Sajadi was present with representation by attorney Ace Pickens JD. Ms. Pierce gave a presentation. Mr. Pickens gave presentation. Ms. Pierce gave brief rebuttal. After discussion, **Mr. Guerra moved, Dr. Shulkin seconded, and the motion passed to adopt the Findings of Fact and the Conclusions of Law of the Administrative Law Judge in the Proposal for Decision for Cyrus Sajadi, M.D., and adopt the staff suggested Final Order for revocation.**

The board recessed at 12:02 p.m.

The board reconvened at 12:16 p.m.

Agenda item #6, Consideration and approval of Remedial Plans (Continued). After discussion, **Mr. Denton moved and Dr. Wang seconded a motion to convert Remedial Plan #23 to an Agreed Order with the 8 hours of CME and add a \$5,000 administrative penalty.** After discussion, **Mr. Gallardo moved, Dr. McNeese seconded a friendly amendment, and the motion passed to approve a friendly amendment to add for 12 cycles of chart monitoring.** Ms. Robinson restated the original motion and a vote was taken. **The motion passed to convert the Remedial Plan #23 to an Agreed Order with the 8 hours of CME, \$5,000 administrative penalty and as amended to add 12 cycles of chart monitoring.**

Agenda item #16, Consideration and Approval of Disposition of Final Decision- Barry Sachs, D.O., SOAH 503-14-2557. Mr. Freshour gave a brief summary. After discussion, **Mr. Denton moved, Dr. Varma seconded, and the motion passed to adopt the Order Disposing of Final Decision for Barry Sachs, D.O.**

There were no items for Agenda item #27.

Agenda item #28, Executive Director Report.

Legislative Update. Ms. Robinson gave a report on the initial meetings for the new Board of Medical Radiologic Technology and the Board of Respiratory Care. Ms. Robinson reported on the increase number of incoming phone calls from 10,000 to 80,000 in June and the new processes and procedures to address the increase workload.

Ms. Robinson reported the Legislative Appropriations Request (LAR) was submitted. The LAR provides the budget, revenue, and performance measures for FY15-19. Ms. Robinson reported the FY 18-19 base request includes a 4% reduction as directed by the legislature and includes a request for Exceptional Items to restore the 4% reduction.

Sunset Review Update. Ms. Robinson gave a report on the Sunset Review process and reported the tentative hearing dates for the TMB Sunset Advisory Commission review are December 8-9, 2016 and January 11, 2017 for the Commission to make final recommendations to the Legislature.

Audit. Ms. Robinson presented the FY16 Internal Audit final report on the TMB Compliance Department.

Risk Management. Ms. Robinson reported the TMB Continuity of Operations (COOP) Plan was accepted as meeting all of the COOP elements within the plan by the State Office of Risk Management.

Outreach. Ms. Robinson reported the Outreach presentations were going well and staff will begin presenting future Outreach presentations.

Budget. Ms. Robinson presented the budget and reported the initial budget is on track.

After discussion, the board directed staff to draft a letter in support of the military and Tricare participants to be able define that the practice of medicine is where the doctor is located and note the effect on Texas citizens.

Agenda item #29, Medical Director Report. Dr. Bredt gave a brief report and requested members to forward licensed oncologists and addictionologists to possibility serve as expert panelists.

Agenda item #30, Public Information Update. Ms. Goode gave a public information update.

Ms. Attebury and Dr. Varma left at 12:48 p.m.

Agenda item #31, Report Physician Assistant Liaison. Ms. Gottschalk gave a brief update and thanked the board for inviting the physician assistant board members to Medical Board meetings.

Agenda item #32, Consideration and possible action regarding pending litigation. Mr. Freshour gave a report on pending litigation and reported a brief for the Teladoc litigation is due September 2nd.

The board recessed at 12:00 p.m.

The board reconvened at 12:15.p.m.

Agenda item #33, Open forum for public comments. Dr. Ezekiel Fink, M.D., signed-in and presented public comments.

Agenda item #34, Adjourn. Mr. Gallardo moved, Mr. Webb seconded, and the motion passed to adjourn at 1:10 p.m.