



Texas Medical Board

BOARD MEETING MINUTES

August 21, 2009

The meeting was called to order August 21, 2009 at 8:30 a.m. by Irvin E. Zeitler, Jr., D.O., Board President. Board members present were Melinda McMichael, M.D.; Timothy J. Turner, Secretary/Treasurer; Michael Arambula; David Baucom; Jose M. Benavides, M.D.; Patricia Blackwell; Patrick J. Crocker, D.O.; John D. Ellis, Jr.; Manuel Guajardo, M.D.; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Charles Oswalt, 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; Alan Moore, M.D., Medical Director; Jane McFarland, Chief of Staff; Jaime Garanfio, Director of Customer Affairs; Nancy Leshikar, J.D., General Counsel; and various other staff.

Ms. Blackwell read the boards mission statement into the minutes.

Our Boards mission is to protect and enhance the publics 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, Presidents Report. Dr. Zeitler gave a report on the board policy for ex parte communication. Board members are required to maintain their objectivity until all of the information is presented at a board meeting and are automatically recused from the decision making process if they are contacted by a licensee and discuss an active complaint or application.

Agenda item #3, Executive Directors Report. Dr. Zeitler requested the status of the agency computer system. Ms. Robinson reported on the temporary interruption in computer service and reported the agency expects to receive new funding September 1st for additional updated equipment.

Ms. Robinson gave a report on the new Travel Funds Expenditures policy 4.1.1 to accept travel vouchers by fax or electronically, and to allow error corrections by staff under twenty-five dollars. After January 1, 2010, Mapquest may also be used to calculate mileage, instead of tracking with an odometer.

Ms. Robinson gave a report on new space arrangements and new hires.

Ms. Robinson gave a status report on the Winkler County prosecution of two nurses for an alleged complaint against a physician.

Ms. Robinson gave a follow-up of the board member retreat. She summarized potential changes to handle the overwhelming numbers of disciplinary cases that have been coming into the agency. After discussion, the board directed staff to draft a procedure for an additional review level before a case comes before an Informal Settlement Conference panel.

Agenda item #6, Federation of State Medical Boards Presentation. Lisa Robin, Senior Vice President of Federation of State Medical Boards, and Leslie Gallant, Executive Director of the Board of Directors of the Alaska Medical Board gave a presentation of the organization, the mission and the services provided by the Federation of State Medical Boards.

Agenda item #4, Medical Directors Report. Dr. Moore gave a report on the Expert Panelist Tutorial and Quiz to be emailed to the expert panelists at the end of August to increase the consistency and quality of the panelist reports. The board directed staff to confirm if board members were qualified to receive Ethics CME for taking the tutorial and quiz.

Agenda item #5, Discussion, recommendation, and possible action regarding non-disciplinary status of licensure orders. After discussion, the board directed staff to draft licensure orders effective Monday to comply with statute. Licensure applicant orders with a restriction on the license will be a public disciplinary order.

Agenda item #7, Discussion, recommendation, and possible action regarding tanning advisory statement required by HB 1310. After discussion, Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the tanning advisory statement required by HB 1310.

Agenda item #8, Discussion and possible action regarding current litigation. Ms. Leshikar gave a report on pending litigation.

Agenda item #9, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, Ms. Blackwell moved, Dr. Arambula seconded, and the motion passed to deny the modification for Rehabilitation Order #486 due to the length of the original order.

After discussion, the board directed staff to provide additional training guidelines for boundary and impairment issues, and to provide a review of typical terms.

After discussion, the board pulled Order #547 for review and discussion later during the meeting.

After discussion, Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the following orders en mass: Modification Granted of Rehabilitation Order #465; Termination Granted of Rehabilitation Order #215; Non-Public Rehabilitation Order #597; Non-Public Rehabilitation Order #600; Non-Public Rehabilitation Order #601; Non-Public Rehabilitation Order #602; Non-Public Rehabilitation Order #604; Non-Public Rehabilitation Order #605; Non-Public Rehabilitation Order #606; Non-Public Rehabilitation Order #607; Non-Public Rehabilitation Order #608; Non-Public Rehabilitation Order #609; Non-Public Rehabilitation Order #610; Non-Public Rehabilitation Order #611; Non-Public Rehabilitation Order #612; Non-Public Rehabilitation Order #613; Non-Public Rehabilitation Order #614; Non-Public Rehabilitation Order #615; Non-Public Rehabilitation Order #616; Termination Granted of Rehabilitation Order #336; and the Non-Public Rehabilitation Order #617. Dr. Oswalt, Ms. Southard, and Dr. McNeese were recused for the Non-Public Rehabilitation Order #617.

Agenda item #10, Consideration and Approval of Agreed Board Orders. After discussion, Dr. McMichael moved, Mr. Turner seconded, and the motion passed to approve the Agreed Order for

Jack F. Hardwick , M.D., with the modification adding K-Star program with a follow-up Informal Settlement Conference in one year due to concerns for failure to diagnose.

After discussion, the board directed staff to provide guidelines for internet prescribing for the discussion in November.

Agenda Item #27, Public Comments. Steven Cohen, M.D., presented public comments. The board requested Dr. Cohen send his concerns in writing to the board.

Agenda item #10, Consideration and Approval of Agreed Board Orders (continued). After discussion, **Dr. McMichael moved, Dr. Oswalt seconded, and the motion passed to approve the Agreed Order for Rafael G. Torres, M.D., with the modification to add to the Findings of Fact that respondent failed to disclose a pending investigation with the North Carolina board.**

After discussion, **Dr. Holliday moved, Dr. Oswalt seconded, and the motion passed to approve the Agreed Order for Steven C. Mays, M.D., with the modification to #4D to add five additional hours of CME in diagnosis and management of thyroid disorders.**

After discussion, **Dr. McMichael moved, Mr. Turner seconded, and the motion passed to approve the Agreed Board Orders en masse for the following: Robert M. Anderson, M.D.; Fernando Avila, M.D.; Jennifer Y. Berry, M.D.; Robert T. Berwind, M.D.; James Black, M.D.; Francisco I. Bracamontes, M.D.; Rudolph E. Branch, M.D.; William W. Burgin, Jr., M.D.; Philip M. Cantu, M.D.; Eugene Y. Chen, M.D.; Debbie Crawford, D.O.; Theodore Dake, M.D.; Brian Daugherty, M.D.; Charles E. Fontanier, M.D.; Donald Gibson, II, M.D.; Tadeusa Glinkowski, M.D.; James S. Grant, M.D.; Sabrina D. Harris, M.D.; Thu Anh Hoang, M.D.; Janelle K. House, M.D.; James David Key, Sr., M.D.; Muhammad Khan, M.D.; Zohra Khan, M.D.; Amy W. Klein, D.O.; Jeffrey Klem, M.D.; Scott David Lauer, M.D.; David D. Le, M.D.; Rick G. Lorentz, M.D.; Victor Lugo, M.D.; Sergio H. Luna, M.D.; John B. Mullen, M.D.; Trevelyn J. Olive, M.D.; William R. Olmsted, M.D.; Navinchandra C. Parikh, M.D.; Wendy D. Phipps, M.D.; Jerry Polasek, M.D.; Brian D. Rappe, D.O.; Margo K. Restrepo, M.D.; H. Dudley Ross, M.D.; Lisa M. Roy, M.D.; Ankur Sarkar, M.D.; Bruce E. Scaff, M.D.; Rebecca S. Schmidt, M.D.; Gustav R. Schmiede, Jr., M.D.; Samuel Serna, M.D.; Pankaj K. Shah, M.D.; Zille H. Shah, M.D.; Thomas L. Sharp, D.O.; Donald R. Simmons, M.D.; Charles Singstad, M.D.; Kenneth R. Sirinek, M.D.; Howard B. Smith, M.D.; Zainab H. Soumahoro, M.D.; James B. Spencer, M.D.; Dominic G. Sreshta, M.D.; Benoit D. Tano, M.D.; Judy G. Taylor, M.D.; Rafael G. Torres, M.D.; Richard T. Turner, M.D.; Andrew L. Wade, M.D.; Kelly J. Warren, M.D.; A. Ross Webster, M.D.; Mae E. Wesson, M.D.; Matthew J. Wills, M.D.; Hugh H. Wilson, Jr.; Kenneth R. Winton, D.O.; Ronald Din Wong, M.D.; Benjamin Ybarra, D.O.; Martin Yudovich, M.D.; Hwai C. Yueh, M.D.; Rolando Zegarrundo, M.D.; Chad F. Babcock, M.D.; Richard D. Bang, M.D.; Royal H. Benson, M.D.; James Burleson, M.D.; Barry Fenton, M.D.; Voker Gressler, M.D.; Luke R. Hinshaw, M.D.; Kevin E. Kendall, M.D.; Scott Patterson Liggett, M.D.; Manrique de Lara, M.D.; Steven C. Mays, M.D.; Hugo E. Muzza, M.D.; Amit Sadana, M.D.; David E. Tomaszek, M.D.; David Weeks, M.D.; Embry W. Williams III, M.D.; Demetris Green, M.D.; Raul Garza, Jr., M.D.; Brandon To, M.D.; and Lucy Quan Li, M.D.** Dr. McMichael and Dr. Zeitler were recused for Brian D. Rappe, D.O. Mr. Turner was recused for Dr. Jennifer Berry. Dr. Oswalt and Dr. Holliday were recused for Dr. Kenneth Sirinek.

There were no items for Agenda Item #11.

Agenda item #9, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders (continued). After

discussion, **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to the Modification Granted of Rehabilitation Order #547.**

Agenda item #12, Consideration and approval of Modification Request/Termination Request Orders. After discussion, **Ms. Southard approved, Dr. Crocker seconded, and the motion passed to approve the Termination Denied Orders for Harold Adelman, M.D.; Philip Eichelberger, M.D.; Robert H. Gross, M.D.; Pamela Johnson, M.D.; Alan C. Nelsen, M.D.; Andrew M. Psyk, M.D.; the Termination Granted Orders for Paul K. Blissard, M.D., Rajeev Gupta, M.D.; and William M. Spurlock, M.D.; the Modification Granted Orders for Howell E. Davis, D.O., and Robert R. Perry, M.D.; and the Modification Denied for John S. Truitt, M.D.**

There were no items for Agenda item #13.

Agenda item #14, Consideration and Approval of Mediated Settlement Agreed Orders. After discussion, **Dr. McMichael moved, Dr. McNeese seconded, and the motion passed to approve the Mediated Settlement Agreed Orders of Joel Alvear, M.D.; Michael A. Bertino, M.D.; John Standefer, M.D.; Lucia Williams, M.D.; and Martin McGonagle, M.D.** After discussion, the board pulled the order for Arlene Palazzolo, M.D., for review and discussion later in the meeting.

Agenda item #15, Consideration and Approval of Termination of Suspension Orders. After discussion, **Dr. McMichael moved, Mr. Webb seconded, and the motion passed to approve the Termination of Suspension Order Granted for Mark L. Glasglow, M.D., and the Termination of Suspension Order Denied for Sergio Silva, M.D.**

There were no items for Agenda item #16.

Agenda item #17, Report on Temporary Suspensions. A report was given for the following Temporary Suspensions: Bernard Albina, M.D.; Odette L. Campbell, M.D.; and Jeffrey E. Lewis, M.D.

Agenda item #18, Report on Automatic Orders. A report was given for the following Automatic Orders: John C. Gunn, M.D.; and Samuel M. Theagene, M.D.
There were no items for Agenda item #19.

Agenda item #20, Consideration and Approval of Determinations of Default. After discussion, **Dr. McMichael moved, Mr. Turner seconded, and the motion passed to approve the Determinations of Default for Daniel Crain, M.D., and William Littlejohn, M.D.**

There were no items for Agenda item #21-23.

Agenda item #24, Discussion, recommendation, and possible action regarding proposed rules:

a. Chapter 163. Licensure with amendments to

163.4, Procedural Rules for Licensure Applicants.

No comments were received and no one signed in to present comments.

b. Chapter 175. Fees, Penalties, and Forms, amendments to

175.1, Application Fees.

175.2, Registration and Renewal Fees.

175.5, Payment of Fees or Penalties.

No written comments were received and no one signed in to present oral comments. After discussion, **Dr. McMichael moved, Ms. Blackwell seconded, and the motion passed to approve the proposed rules to publish with the Texas Register.**

Agenda item #26, Discussion recommendation and possible action regarding Acupuncture rules.

a. Chapter 183. Acupuncture, with amendments to

183.14, Acudetox Specialists.

No comments were received and no one signed in to present comments.

After discussion, **Dr. McMichael moved, Ms. Blackwell seconded, and the motion passed to approve the proposed amendments to Chapter 183.14, Acudetox Specialists for publication.**

Agenda item #25, Discussion, recommendation, and possible action regarding proposed emergency rule Chapter 180. Physician Health Rehabilitation Program. Written comments were received. After discussion, **Mr. Turner moved, Ms. Blackwell seconded, and the motion passed to adopt the emergency rule Chapter 180 with amendments by staff.**

Agenda item #14, Consideration and Approval of Mediated Settlement Agreed Orders. (Continued) **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Arlene Palazzolo, M.D., with the following modifications to remove presenting to Licensure Committee; 3 year order; obtain 10 CME regarding the supervision of Physician Assistants and/or Nurse Practitioners before practicing; chart monitor for 2nd year regarding the P.A.s and Nurse Practitioners, because that was the area of concern.**

Discussion/Action Items to be considered at anytime the full board is in session:

Item #1. Consent Agenda: Mr. Turner moved, Dr. Benavides seconded, and the motion passed to approve the minutes for the May 29, 2009 Board Meeting Minute. Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the July 28, 2009 Temporary Suspension Without Notice minutes of Bernard Albina, M.D.

Item #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 Licensure Committee. **Dr. Arambula moved, Dr. Benavides seconded, and the motion passed to approve the minutes and action items.**

Dr. McMichael gave a report of the Disciplinary Process Review Committee. **Dr. McMichael moved, Mr. Turner to approve the minutes and action items. Dr. Benavides made an amendment motion to remove file # 09-0548 for another expert review, Dr. McNeese, and motion passed to approve the amendment. The original motions passed to approve the committee minutes as amended and action items.**

Dr. Zeitler gave a report of the Executive Committee. **Mr. Turner moved, Dr. Arambula seconded, and the motion passed to approve the minutes and action items.**

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

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

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

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

There being no further agenda items the meeting adjourned at 12:08 p.m.