



Texas Medical Board

BOARD MEETING
FEBRUARY 4, 2011
333 GUADALUPE, TOWER 2, SUITE 225
AUSTIN, TEXAS

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The meeting was held telephonically due to inclement weather. Board President, Irvin E. Zeitler, Jr., D.O., called the meeting to order at 8:03 a.m. Board members present telephonically were Melinda McMichael, M.D., Vice-President; Timothy J. Turner, Secretary/Treasurer; Michael Arambula; Julie Attebury; David Baucom; Jose M. Benavides, M.D.; Patricia Blackwell; Pat J. Crocker, D.O.; Manuel Guajardo, M.D.; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Wynne M. Snoots, M.D.; Paulette B. Southard; and George Willeford III, M.D. Timothy Turner was not present. Board staff present telephonically were Mari Robinson, Executive Director; Linda Gage-White, M.D., Medical Director; Nancy Leshikar, J.D., General Counsel; Jaime Garanfio, Director of Licensure; Megan Goode, Public Information and Special Projects Manager; and various other staff.

Dr. Zeitler 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.

Discussion of election of officers in June. Dr. Zeitler reported the election of board officers will be scheduled for the June board meeting.

Allan Shulkin, M.D., Charles E. Oswalt III, MD, and Manuel G. Guajardo, M.D., joined the meeting telephonically.

Committee assignments. Dr. Zeitler requested board members to notify him if they have any preference for their committee assignments. New committee assignments will be considered at the April board meeting and assigned for the June board meeting.

Appointment for Ad Hoc Committee on Advertising. The following board members were appointed to the Ad Hoc Committee on Advertising: Pat J. Crocker, D.O., Melinda McMichael, M.D., Michael Arambula, M.D., Margaret McNeese, M.D., Paulette Southard, Timothy Turner, Timothy Webb, George Willeford, M.D., and Irvin Zeitler, Jr. D.O.

Federation meeting representative. Dr. Zeitler requested a board representative to attend the Federation of State Medical Board annual meeting. After discussion, Dr. Holliday was appointed to represent the board at the Federation of State Medical Board's annual meeting April 28-30, 2011.

Agenda item # 3, Executive Director's Report.

Medical Director introduction. Linda Gage-White, M.D., PhD, new Medical Director, was introduced and gave a brief statement.

Ms. Robinson disconnected from the meeting to call in for a better phone connection.

Agenda item # 4, Discussion recommendation, and possible action regarding process and sign-in forms for representation before state agencies, was postponed to the April 8, 2011 meeting.

Agenda item #5 was deferred to later in the meeting.

Agenda item #7, Discussion, recommendation, and possible action regarding

Chiropractic rules. Ms. Suzanne Mitchell, Assistant General Counsel gave a brief report of ongoing litigation and regulatory developments pertaining to the chiropractic scope of practice rules. The Board directed staff to draft a letter indicating that due to recent judicial decisions anesthesiologists should not assist a chiropractor seeking to do manipulation under anesthesia ("MUA"). Mari and Dr. Zeitler will review this letter. Copies of the letter should be sent to: Texas Society of Anesthesiologists; Texas Board of Nursing; Texas Hospital Association; Texas Medical Association; and DSHS for notification to ambulatory surgery centers.

Ms. Robinson was reconnected to the meeting telephonically.

Dr. Oswalt was disconnected from the meeting.

John D. Ellis, Jr., was connected to the meeting telephonically.

Agenda item #3, Executive Director report (continued).

Update retirement availability. Ms. Robinson gave an update on the new process for a physician's retirement of licensure. The proposed draft rule will offer physicians, who self-report an impairment, the options to voluntarily retire licensure; sign with the PHP; convert license to an administrative medicine license, if impairment is only physical in nature; or proceed forward with an investigation.

Legislative update. Ms. Robinson provided an overview of pending legislation related to the board.

Dr. Oswalt was reconnected to the meeting.

Budget update. Ms. Robinson gave a budget update.

Agenda item #5, Discussion, recommendation, and possible action regarding guidelines for mediations. Ms. Robinson presented draft mediation guidelines for board members consideration. After discussion, the board directed staff to defer the guidelines for mediations to the April board meeting for further discussion.

Agenda item #6, Discussion, recommendation, and possible action regarding penalty guidelines, was postponed to the April 8, 2011 meeting.

Agenda item #8, Discussion, recommendation, and possible action regarding community service and agreed orders, was postponed to the April 8, 2011 meeting.

Agenda item #9, Discussion, recommendation, and possible action regarding physician assistant owned clinics, was postponed to the April 8, 2011 meeting.

Agenda item #10, Discussion, recommendation, and possible action related to physician executive training, was postponed to the April 8, 2011 meeting.

Agenda item #11, Discussion, recommendation, and possible action regarding Attorney General Request No. 0938-GA, related to homeostasis analyzers and the practice of medicine. Ms. Kaufman gave a summary of the Attorney General Request No. 0938-GA. After discussion, the board directed staff to draft a letter notifying the Attorney General that the board considers homeostasis analyzers fall within the practice of medicine.

The board recessed at 9:52 a.m. for a short break.

Dr. Zeitler reconvened the meeting at 10:00 a.m. Ms. Robinson called roll and a quorum was confirmed.

Agenda item #27 at 10:00 a.m., Consideration and Approval of Determinations of Default. Joseph M. Tabaracci presented the Determination of Default Orders for Terri Miller Elkins, M.D.; Garza Gilberto; Dario Rivera Juarez; Roby Dean Mitchell, M.D.; Pedro Valdez, M.D.; and Michael Weichamann. After discussion, **Dr. Crocker moved, Dr. Benavides seconded, and the motion passed to approve the Default Orders for Terri Miller Elkins, M.D.; Garza Gilberto; Dario Rivera Juarez; Roby Mitchell, M.D.; Pedro Valdez, M.D.; and Michael Weichamann.**

Agenda item #12 was deferred to later in the meeting.

Agenda item #13, Consideration and Approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, **Dr. Benavides moved, Dr. Crocker seconded, and the motion passed to approve Termination Granted of Rehab Orders #447, #599, #529, #377, #423, and #617; Termination Denied of Rehabilitation Order #631; and Modification Granted of Rehabilitation Order #639, and #371. Dr. Crocker moved, Dr. Benavides seconded, and the motion passed to amend the motion to include Modification Granted of Rehabilitation Order #528 in the motion. The original motion passed to approve Termination Granted of Rehab Orders #447, #599, #529, #377, #423, and #617; Termination Denied of Rehabilitation Order #631; and Modification Granted of Rehabilitation Order #639, #371, and #528.**

Agenda item #14 was deferred to later in the meeting.

Agenda item #15, Consideration and Approval of Modification Request/Termination Request Orders. Ms. Blackwell was recused for consideration and approval of Dr. Dennis M. Shaughnessy orders. After discussion, **Ms. Southard moved, Dr. Crocker seconded, and the motion passed to approve the Modification Request Orders for Demetris Green, M.D., Dennis M. Shaughnessy, M.D., and Elizabeth Johnson, M.D.; and the Termination Request Orders for Jose A Cigarroa, M.D.; Pamela L. Johnson, M.D.; Lucy Q Li, M.D.; Kenneth Winton, D.O.; Martin Yudovic M.D., Dennis Shaughnessy, M.D.; Joseph R, Kilianski, M.D., Maro K Restrepo, M.D., and Melissa A. Bean, D.O., as presented.**

There were no items for Agenda item #16.

Agenda item #17 was deferred to later in the meeting.

Agenda item #18, Consideration and Approval of Termination of Suspension Orders. Dr. McMichael moved, Dr. Crocker seconded, and the motion passed to approve the Termination of Suspension Orders for Timothy N. Marks, M.D., and Stephen F. Waller, M.D., as presented.

Agenda item #19 was deferred to later in the meeting.

There were no items for Agenda items #20-21.

Agenda item #22, Report on Temporary Suspensions. Reports were presented for the Temporary Suspensions of Emilio Luna, M.D.; David J. Shin, M.D.; Ruth Atlas, M.D.; Araceli Ramirez, M.D.; Julia Renee Ward, M.D.; Rajen B. Desai, M.D.; and Spring Wellness Center Pain Management Certificate No. PMC00146.

Agenda item #23, Report on Automatic Orders. Ms. Robinson presented the reports for the Automatic Orders for Victor Asiatico; Andrew J. Szadole; Rafael Guzman; Michelle O'Donnell; and John Halberdier, M.D.

Agenda item #24, Consideration and Approval of Agreed Cease and Desist Orders. After discussion, Dr. Shulkin moved, Dr. Crocker seconded, and the motion passed to approve the Cease and Desist Orders for Saxon Borden, M.D., and Teresa Dickson, M.D.

There were no items for Agenda item #25.

Agenda item #26, Report on motions for rehearing. A report was presented on a motion for rehearing.

Agenda item #12, Consideration and possible action regarding pending litigation. Ms. Leshikar gave a brief report. Dr. Holliday moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 10:26 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matter subject to the attorney-client privilege under the authority of the Open Meetings Act Section 551.071, Government Code.

The board reconvened at 11:23 a.m. Ms. Robinson called roll and a quorum was confirmed. Dr. Zeitler reported that the Executive Session ended at 11:16 a.m. and no action was taken during the Executive Session. A certified agenda of the Executive Session was made.

Agenda item #12, Consideration and possible action regarding pending litigation (continued). Ms. Leshikar gave a report of pending Association of American Physicians & Surgeons litigation and asked for the board's direction. The board directed staff to draft a letter to the Attorney General to convey the board's concerns regarding their avenues of possible action regarding the 5th Circuit's decision. All board members in attendance agreed that they all shared in the Board's concerns and that these concerns be shared with the Attorney General's office in a letter.

Agenda item #14, Consideration and Approval of Agreed Board Orders. After discussion, Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Robert E. Clark, III, M.D., with the modification for the Licensee to notify the Board when applying for a DEA permit.

After discussion, **Dr. McMichael moved, Dr. Crocker seconded, and the motion passed to approve the Agreed Order for Paul E. Barrus, D.O., with the modification to increase the monitor cycle to eight consecutive cycles, due to concerns that 4 cycles is not long enough.**

After discussion, **Dr. Holliday moved, Dr. Benavides seconded, and the motion passed to approve the Agreed Order for Richard R. Jones, M.D., with the modification to add to the Finding of Fact that the following morning the patient was oliguria for the next 24 hours, for clarification.**

Mr. Turner moved, Dr. Crocker seconded, and the motion passed to approve Agreed Orders en masse for the following: Javier P. Escalera, m.D.; Justin M. Lee, M.D.; Rafael, M.D.; Carol D. Weidner, M.D.; Richard M. Covin, M.D.; John S. Davis, M.D.; Herbert M. Emejulu, M.D.; Jerald B. Felder, M.D.; Richard W. Hoefelmann, M.D.; Timothy A. Scroggins, M.D.; Roy C. Brown, M.D.; Tom S. Korn, M.D.; Celest A. Lujan-Baez, M.D.; Richard D. Rossin, M.D.; Cini Abraham, M.D. Manuel R. Carrasco-Santiago, M.D.; Harvey L. Carter, III, M.D.; Gloria A. Castro-Zappia, M.D.; Gregory T. Clariday, M.D.; Karen D. Dickerson, M.D.; Jaime P. Durand, M. D.; Surendranath Ekanayake, M.D.; Mitchell Golden, M.D.; Juan M. Gonzalez, M.D.; Mustafa Hussain, M.D.; R. Anton Lester, III, M.D.; Naila S. Malik, M.D.; Beth W. Miller, M.D.; Kasturirangan Saranathan, M.D.; Jose J. Silva, M.D.; Fernando Avila, M.D.; Daniel M. Brudnak, M.D.; Subbarao Daggubati, M.D.; Jerry W. Dodson, M.D.; Armando Espiritu, M.D.; Jose A. Fuentes, M.D.; Terry L. Johnson, M.D.; Dominic M. Joseph, M.D.; Elias T. Kanaan, M.D.; Richard Kondejweski, M.D.; Malini A. Kumar, M.D.; Joe M. Pruneda, III, M.D.; Nirmal Saran, M.D.; Ronald E. Sims, M.D.; Randal N. Vinther, M.D.; Dezra White, M.D.; Bryan R. Wiech, M.D.; Luis P. Bay, M.D.; Ransome Etindi, M.D.; John J. Faillace, M.D.; Stella L. Kirby, M.D.; Stephen H. Smith, M.D.; Rolando N. Torio, M.D.; Gustav R. Schmiede, Jr., M.D.; Ellen Remenchik, M.D.; Maricela Cantu, D.O.; and Spring Wellness Clinic, LLC.

Agenda item #28, Consideration and approval of Proposal for Decision, was postponed to the April board meeting.

Agenda item #29, Discussion, recommendation and possible action relating to the following board rules in 22 TAC:

1. Chapter 163, Licensure, amendments to
§163.13, Expedited Licensure Process
2. Chapter 171, Post-Graduate Training Permits, amendments to
§171.2, Construction; and
§171.5, Duties of PIT Holders to Report.
3. Chapter 187, Procedural Rules, amendment to
§187.8, relating to Subpoenas;
§187.14, relating to Informal Disposition of Disciplinary Issues Against a Licensee;
§187.27, relating to Written Answers in SOAH Proceedings and Default Orders;
§187.55, relating to Purpose; and
§187.59, relating to Evidence.

Ms. Jennifer Kaufman, Assistant General Counsel, gave a brief summary of the proposed rule amendments. No written comments were received. No one presented oral comments. After

discussion, **Dr. Benavides moved, Ms. Southard seconded, and the motion passed to approve the following amendments for publication in the Texas Register:**

1. Chapter 163, Licensure, amendments to
§163.13, Expedited Licensure Process
2. Chapter 171, Post-Graduate Training Permits, amendments to
§171.2, Construction; and
§171.5, Duties of PIT Holders to Report.
3. Chapter 187, Procedural Rules, amendment to
§187.8, relating to Subpoenas;
§187.14, relating to Informal Disposition of Disciplinary Issues Against a Licensee;
§187.27, relating to Written Answers in SOAH Proceedings and Default Orders;
§187.55, relating to Purpose; and
§187.59, relating to Evidence.

Agenda item #30, Discussion, recommendation and possible action regarding proposed rule changes to Chapter 183, Acupuncture.

- a. §183.2 Definitions
- b. §183.3 Meetings
- c. §183.15 Use of Professional Titles
- d. §183.20. Continuing Acupuncture Education

Ms. Kaufman gave a summary of the proposed rule changes. Ms. Kaufman reported the Texas State Board of Acupuncture Examiners Board requested on January 21, 2011 that §183.2 Definitions, be pulled and referred back to the Acupuncture Examiners Board. After discussion, **Dr. Benavides moved, Ms. Southard seconded, and the motion passed to approve the proposed amendments §183.3 Meetings; §183.15 Use of Professional Titles; and §183.20 Continuing Acupuncture Education, and publish in the Texas Register.** Proposed rule §183.2 Definitions, was pulled and referred back to the Acupuncture Examiners Board.

Agenda item #31, Discussion, recommendation, and possible action, including approval of amendments to Chapter 185, Physician Assistants.

- a. §185.3 Meetings

After discussion, **Ms. Southard moved, Dr. Benavides seconded, and the motion passed to approve the proposed amendments to §185.3 Meetings, and publish in the Texas Register.**

Agenda item #17, Consideration and approval of Mediated Settlement Orders. After discussion, **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Mediated Settlement Order for Dr. James A. Paskow, M.D., with the modification to add in paragraph number two that the Licensee cannot prescribe Schedule V drugs, due to his arrest history.**

Dr. Guajardo was recused for Dr. Madhavan Pisharodi, M.D. After discussion, **Dr. McMichael moved, Dr. Benavides seconded, and the motion passed to approve the Mediated Settlement Agreed Orders for Erika I. Zimmerman, M.D.; John B. Schoonmaker, M.D.; Ferril C. Smith, M.D.; Rolando G. Arafles, Jr., M.D.; Isaac Grate, Jr., M.D.; Madhavan**

Pisharodi, M.D.; Meyer L. Proler, M.D.; Dana L. Rice, M.D.; Kerry D. Neal, M.D.; and Mark S. Sanders, M.D.

Agenda item #32 at 12:30 p.m., Open forum for public comments. Ms. Sarah Black presented oral comments.

Agenda item #19, Corrective Orders. After discussion, **Dr. Crocker moved, Ms. Southard seconded, and the motion passed to approve the Corrective Order for Clifford N. Alprin, M.D., with the additional mitigating factor that the Licensee terminated person when he became aware of the problem.**

After discussion, **Dr. Snoots moved, Dr. Crocker seconded, and the motion passed to approve the Corrective Orders en masse for the following:** Joe F. Jimenez, M.D.; Allen J. Jones, M.D.; Michele L. Neblock, M.D.; James I. Okoh, M.D.; Damon C. Sacco, M.D.; Bill Alexander, M.D.; Jerry B. Cotner, M.D.; Oscar Garza, M.D.; Jennifer E. Guss, M.D.; Moshin Kapasi, M.D.; Gerald P. Laursen, M.D.; Henrique Levcovitz, M.D.; Deborah C. Peel, M.D.; Yvonne J. Reed, M.D.; Jose Reyes, M.D.; Cyrus Sajadi, M.D.; Yeheskel Zebaida, M.D.; James Algeo, Jr., M.D.; Nora O. Garza, M.D.; Anibal R. Hadad, M.D.; Michael O. Harding, D.O., David G. Johnson, M.D.; Carolin Mbogua, M.D.; Farley B. Neasman, II, M.D.; Hoa T. Nguyen, M.D.; Scott M. Pierce, D.O.; James G. Trevino, M.D.; Wanwisa Y. Jones, M.D.; Phillip H. Reeder, M.D.; Kathryn H. Arrambide, M.D.; Richard E. Martinez, M.D.; Timothy M. Collins, D.O.; and Ilyas M. Memon, M.D.

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

1. Consideration and approval of the October 29, 2010 Board Meeting Minutes. **Ms. Southard moved, Mr. Turner seconded, and the motion passed to approve the October 29, 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. McMichael gave a report of the Disciplinary Process Review Committee meeting. **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items.**

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

There being no further agenda items, the meeting adjourned at 1:01 p.m.