

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

June 3, 2010

The meeting was called to order at 1:08 pm on June 3, 2010 by Chair, Michael Arambula, M.D. Committee members present were Jose M. Benavides, M.D., John D. Ellis, Jr.; James Scott Holliday, D.O., Timothy J. Turner, and Timothy Webb, J.D.

Agenda Item 2

Dr. Holliday moved, Mr. Turner 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 1:10 p.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 any executive session will be made.

Dr. Snoots entered the meeting at 1:20 p.m.

The Executive Session ended at 5:11 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. and 2. Physician Licensure and Physician in Training Permit applicants

Applicant #623 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 a Texas medical license under a public order that includes the requirements set out in the applicants current agreed order for the applicants physician in training permit, excluding the following Ordering Paragraphs #6, 12, 13, 14, and modifying #10 to allow**

prescriptions for controlled substances within a hospital setting. This recommendation is due to disciplinary history with the Board; writing of fraudulent prescriptions in 1994 and 2003 and subsequent placement on deferred adjudication for felony offenses; intemperate use of drugs or alcohol that could adversely affect the applicants ability to safely practice medicine; the applicants demonstration that the reissuance of the applicants license would be in the best interest of the public; and the applicants demonstration that the applicant is physically, mentally and otherwise competent to practice medicine under certain restrictions. Factors contributing to this recommendation include the applicants sobriety for over 6 years; compliance with the applicants contract with the applicants county medical societys PHR Committee; the applicants work with others who suffer from addiction; the applicants compliance with a current agreed order issued in April 2008; and the applicants successful completion of additional residency training where the applicant was chief resident and received excellent evaluations. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #936 did not appear, but the applicants attorney appeared on the applicants behalf, 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 applicant be granted a physician in training permit subject to the following conditions: \$1,000 administrative penalty to be paid within 60 days of the effective date of the order.** This action is due to violation of 164.052(a)(5) due to unprofessional and dishonorable conduct. Factors contributing to this recommendation include that the Licensure Committee previously determined that the applicant had practiced as a physician in training without being licensed. The applicant subsequently withdrew that application and submitted an application for a physician in training permit along with new information regarding the issue of unlicensed practice. The committee determined that the new information did not disprove the previous determination. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #947 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 determined ineligible for relicensure.** This recommendation is due to failure to practice medicine in a professional manner consistent with public health and welfare; unprofessional or dishonorable conduct likely to deceive, defraud or injure the public; prescribing medications with addictive potential to persons known or who should have been known as potential abusers. Factors contributing to this recommendation include that the applicant received letters of concern and was required to take corrective action as a result of peer review that found the applicant to be inappropriately prescribing to known substance abusers and the applicant failed to demonstrate satisfactory remediation

regarding treatment of such patients. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #949 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 determined ineligible for licensure.** This recommendation is due to the applicants failure to practice medicine in a professional manner consistent with public health and welfare and disciplinary peer action taken against the applicant due to professional incompetence likely to harm the public. Factors contributing to this recommendation include that the applicants clinical privileges were summarily suspended at two hospitals due to concerns about professional competence, medical management of patients, and substandard medical documentation. **Ms. Southard seconded the motion. Mr. Ellis recused himself. Dr. Benavidez, Dr. Holliday, Dr. Snoots, Ms. Southard, Mr. Turner, and Mr. Webb voted in favor. The motion passed.**

Applicant #950 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 an unrestricted Texas medical license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #953 appeared with counsel, 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 licensure.** This recommendation is due to the applicants failure to practice medicine in a professional manner consistent with public health and welfare; and time out of the active practice of medicine. Factors contributing to this recommendation include the applicants poor performance during the applicants second year of residency training in 2007 that contributed to the applicants withdrawal from the program. The applicants resignation was due to the programs requirement that the applicant repeat training due to inability to carry the patient load expected of a PGY2 and failure to complete medical documentation in a timely manner. Additionally, since the applicants withdrawal from training, the applicant has not practiced medicine or otherwise remediated issues raised during residency training. **Further, Mr. Ellis moved to recommend to the full Board that upon receipt within one calendar year of a request for a physician in training permit of no less than one year, the physician in training permit may be granted by the Executive Director. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #954 appeared before the Committee, with counsel, 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 telemedicine license. Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #955 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, subject to an administrative penalty in the amount of \$2,000.** This recommendation is due to providing false or misleading information to the Board. Factors contributing to this recommendation include the committees determination that the falsification was intentional. **Mr. Turner seconded the motion. Mr. Ellis, Dr. Holliday, Dr. Snoots, and Mr. Webb voted in favor. Dr. Benavides, Ms. Southard, and Mr. Turner were opposed. The motion passed.**

Applicant #959 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 that the applicant be determined ineligible for a Texas medical license.** This recommendation is due to a pending investigation instituted against the applicant for the restriction, cancellation, suspension or revocation by a uniformed service of the United States. Factors contributing to this recommendation include that the pending investigation by the U.S. military regarding allegations of unprofessional conduct may result in court martial. **Ms. Southard seconded the motion.** During discussion Mr. Turner mentioned that he had been in favor of a deferral on the application until he learned that the application would expire in August and that military investigations could be quite prolonged. **All voted in favor. The motion passed.**

Applicant #963 appeared 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 that the applicant be determined ineligible for a Texas medical license.** This recommendation is due to surrender of another state medical license resulting in the license being cancelled for cause; disciplinary history with another state medical licensing board; and unprofessional or dishonorable conduct likely to deceive, defraud or injure the public. Factors contributing to this recommendation include that as a condition for licensure in another state, the applicant entered into a five-year order in 2005 due to a history of disruptive behavior. The applicant subsequently surrendered that license while under investigation for allegations of unprofessional conduct, and the license was then cancelled with the

agreement that the applicant would never again apply for licensure in that state. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #967 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 a physician in training permit. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #975 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 granted an unrestricted Texas medical license. Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #927 did not appear before the Committee, but the applicants application and appeal of the Executive Directors determination of ineligibility was considered. 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 the fact that the applicant has a license in another state that is suspended for cause due to the applicants failure to comply with the other state licensing boards requirement that the applicant undergo a neuropsychiatric evaluation. This suspension makes the applicant statutorily ineligible under Tex. Occ. Code 155.003(e)(1) and is also grounds for ineligibility pursuant to Sec. 164.051(a)(9) as the applicant has a mental or physical condition that renders the applicant unable to safely practice medicine. **Mr. Webb seconded the motion. All voted in favor. The motion passed. (See amended motion for this applicant under agenda item 14).**

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
Applicant #912 appeared before the Committee, with counsel, after a rehearing was granted at the April 2010 Board meeting. In open session, **Mr. Ellis moved to recommend to the full Board that the applicant be granted an unrestricted license based on the applicants presentation of new evidence that the applicants treatment of the patient at issue met the requirements of the state law where the applicant was then practicing and that the applicant has**

proven expertise in the field of emergency psychiatry. Mr. Turner seconded the motion. All voted in favor. 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 2c Proposed orders offered by the Executive Director.

1. Physician Licensure Applicants Ms. Kaufman reported on seven orders offered by the Executive Director and accepted by applicants. **Mr. Turner moved to recommend to the full Board that all seven orders be approved. Dr. Holliday 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 695 applicants who met all requirements to be considered for permanent licensure by the full Board. **Mr. Turner moved to recommend to the full Board that all 695 physician licensure applicants determined to meet eligibility requirements by staff be approved. Dr. Holliday seconded the motion. All voted in favor. The motion passed.**
2. Acudetox certification applicants There was one applicant who met all requirements to be considered for acudetox certification by the full Board. **Mr. Turner moved to recommend to the full Board that the applicant determined to meet eligibility requirements by staff be approved. Dr. Benavides seconded the motion. All voted in favor. The motion passed..**
3. Surgical assistant licensure applicants - There were four surgical assistant applicants to be considered for approval. **Ms. Southard moved to recommend to the full Board that all four surgical assistant applicants determined to meet eligibility requirements by staff be approved. Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Agenda Item 3

Item 3a Requests for Rehearing Applicant #935s request for rehearing was considered. Mr. Webb moved to recommend to the full Board that the committee deny the applicants request for rehearing based on the failure to submit new information. No one seconded and the motion failed.

Mr. Turner moved to recommend to the full Board that the request for rehearing be approved based on the submission of new information not previously considered. Ms. Southard seconded the motion. Mr. Ellis, Ms. Southard, and Mr. Turner voted in favor. Dr. Benavidez, Dr. Holliday, Dr. Snoots, and Mr. Webb were opposed. The motion failed. Mr. Webb moved to recommend to the full Board that the committee deny the applicants request for rehearing based on the failure to submit new information. Dr. Benavides seconded the motion. Dr. Benavides, Dr. Holliday, Dr. Snoots and Mr. Webb voted in favor. Mr. Ellis, Ms. Southard, and Mr. Turner were opposed. The motion passed.

Applicant #940s request for rehearing was considered. Ms. Southard moved to recommend to the full Board that the committee deny the applicants request for rehearing based on failure to present new information not previously considered by the Committee. No one seconded and the motion failed. Dr. Holliday moved to recommend to the full Board that the committee grant the applicants request for rehearing based on new information not previously considered. Mr. Webb seconded the motion. Dr. Benavidez, Mr. Ellis, Dr. Holliday, Dr. Snoots, Mr. Turner, and Mr. Webb voted in favor. Ms. Southard was opposed. 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 presented a report on the five orders offered by the Licensure Committee at the April, 2010 meeting. Three were resolved. One applicant withdrew. One applicant withdrew and resubmitted a physician in training permit application for consideration at this meeting.

Agenda Item 5a Reports on: Applicant determinations of eligibility made by the Executive Director for the last period. Ms. Garanflo presented a report on applicant determinations of eligibility made by the Executive Director for the period April 6, 2010 through May 20, 2010.

Agenda Item 5b Reports on: Physician licensure process statistics. Ms. Garanflo advised the Committee that the estimated average number of days to complete physician licensure applications for those licensed in June who did not appear before the Committee for determinations of eligibility was 28 days. She further advised that if applicants appearing before the Committee for determinations of eligibility were included, the average number of days would likely increase to 32. Both estimates are considerably less than the mandated 51 day average.

Agenda Item 6a - Discussion, recommendation and possible action regarding licensee requests: Request of physician for activation of canceled physician licenses. There were none.

Agenda Item 6b - Discussion, recommendation and possible action regarding licensee requests: Request of physician to return to Active Status from Texas Retired Status. There were none.

Agenda Item 7a - Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration Surgical assistant. There were none.

Agenda Item 7b - Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration Acudetox. Mr. Turner moved to recommend to the full board that 5 acudetox specialists certifications be cancelled. Mr. Webb seconded. All voted in favor and the motion passed.

Agenda Item 8a - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Applicants for initial certification. There were 6 applications for initial certification as a Nonprofit Health Organization for approval. Dr. Benavides moved to recommend to the full board that the requests for initial certification as a Nonprofit Health Organization be approved. Mr. Webb seconded. All voted in favor and the motion passed.

Agenda Item 8b - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Requests for biennial recertification - Requests for biennial recertification - There were 5 applications for biennial recertification as a Nonprofit Health Organization for approval. Dr. Benavides moved to recommend to the full board that the requests for biennial recertification as a Nonprofit Health Organization be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.

Agenda Item 8c - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations: Cancellation of organizations certified as Nonprofit Health Organizations. There were none.

Agenda Item 9a - Discussion, recommendation, and possible action regarding proposed additions and modifications to board rules: 22 TAC 163.6 Examinations Accepted for Licensure. Ms.

Southard moved to recommend to the full board that the rules be published in the Texas Register for public comment. Mr. Webb seconded. All voted in favor and the motion passed.

Agenda Item 9b - Discussion, recommendation, and possible action regarding proposed additions and modifications to board rules: 22 TAC 172 Temporary and Limited Licenses. Ms. Southard moved to recommend to the full board that 22 TAC 172.2, 172.3, 172.5, 172.16, and 172.17 be published with changes noted in the Texas Register for public comment. Mr. Webb seconded. All voted in favor and the motion passed.

Agenda Item 9c - Discussion, recommendation, and possible action regarding proposed additions and modifications to board rules: 22 TAC 175.1 Application Fees. Mr. Turner moved to recommend to the full board that the rules be published with changes noted in the Texas Register for public comment. Ms. Southard seconded. Dr. Arambula, Dr. Benavides, Mr. Ellis, Ms. Southard, Mr. Turner, and Mr. Webb voted in favor. Dr. Holliday and Dr. Snoots opposed. The motion passed.

Agenda Item 10 - Discussion, recommendation, and possible action regarding consideration and approval of the April 7-8, 2010 Licensure Committee minutes. Mr. Webb moved to recommend to the full board that the minutes be approved. Ms. Southard seconded. All voted in favor and the motion passed.

Agenda Item 11 - Discussion, recommendation, and possible action regarding eligibility for pain management clinic registration. Ms. Robinson requested direction from the Committee regarding eligibility of certain physicians for pain management clinic registration. The board rule regarding eligibility requirements states in part that physicians who have been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance are not eligible to own or operate a pain management clinic, to be an employee of a clinic, or to be a person with whom a clinic contracts for services. Some physicians may have been subject to disciplinary action in which the findings of fact relate to the conduct specified above, although the conclusions of law do not. The Committee directed staff that, to be determined ineligible for pain management clinic registration, the conclusions of law must directly relate to conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

Agenda Item 12 - Discussion, recommendation, and possible action regarding provisional licenses.

Ms. Robinson asked the Committee for clarification regarding applicants who are statutorily ineligible and issuance or termination of provisional licenses. **Mr. Turner moved to recommend to the full board that once it is immediately apparent that an applicant is statutory ineligible, authority to make a board determination of ineligibility be delegated to the Chair of the Licensure Committee, in consultation with the Executive Director. Ms. Southard seconded. All voted in favor and the motion passed.**

Agenda Item 13 - Discussion, recommendation, and possible action regarding retakes of USMLE.

Ms. Robinson requested direction to staff regarding the policy on retakes of previously passed USMLE examination steps for applicants who must comply with the mandated time frame between passage of all steps. The Committee directed staff that in cases of applicants who passed USMLE Step 2 CK prior to the existence of USMLE Step 2 CS, passage of both USMLE Step 2 CK and USMLE Step 2 CS would be required.

Agenda Item 14 - Discussion, recommendation, and possible action regarding process and

information exchange with applicants. Ms. Robinson discussed with the committee the types of documents in licensure application files that the Committee believed should be made available to applicants appearing before the Committee for determinations of eligibility. The Committee directed that the General Counsel develop a draft policy and timeline to be presented to the Committee for review at the August board meeting.

Mr. Ellis asked the Committee to consider an amended motion for **Applicant # 927. Mr. Ellis moved to recommend to the full Board that the last sentence of his motion be retracted. The amended motion: 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 the fact that the applicant has a license in another state that is suspended for cause due to the applicants failure to comply with the other state licensing boards requirement that the applicant undergo a neuropsychiatric evaluation. This suspension makes the applicant statutorily ineligible under Tex. Occ. Code 155.003(e)(1). **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Agenda Item 15 - There being no further business, Dr. Arambula adjourned the meeting at 6:50 p.m.