



Texas Medical Board

April 9, 2010

BOARD MEETING MINUTES

The meeting was called to order April 9, 2010 at 8:30 a.m. by Board President Irvin E. Zeitler, Jr., D.O. Board members present 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.; John D. Ellis, Jr.; Manuel Guajardo, M.D.; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Allan N. Shulkin, M.D.; Wynne M. Snoots, M.D.; and Timothy Webb, J.D. Board staff present were Mari Robinson, Executive Director; Alan Moore, M.D., Medical Director; Nancy Leshikar, J.D., General Counsel; Jaime Garanfio, Director of Licensure; and various other staff.

Mr. Webb 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 went over the rulemaking process to adopt or amend board rules.

Dr. Zeitler notified the board members of the new process to access and delete mail in their personal laserfiche folders.

Agenda item #3, Executive Directors Report. Ms. Robinson gave a report on the status of the Physician Health Program and the financial difficulties the program continues to face as a start up program.

Ms. Robinson gave a report on the budget. She reported that instructions were issued to move the funding for the States proposed 5% budget cut into a separate account until a determination is made on any reductions. She reported staff is researching ways to bring in more money via appropriated receipts.

Ms. Robinson gave a report that the computer hardware was purchased and testing has begun on the teleconferencing system for board members.

Ms. Robinson gave a report on the series of Outreach presentations that were held in Houston, San Antonio, and Temple. Information about upcoming Outreach programs and the Outreach calendar are available on the website.

Ms. Robinson gave a report on the QA panel. Several modification and termination requests have been approved through the QA panel that will not require a hearing. After discussion, the board directed staff to scan and include the modification or termination approval form into the file for board members to review with the modification and termination order.

Ms. Robinson gave a report of the Physician Assistant Board concerns for clarification of the rules for physician assistants and APNs owning clinics with physicians working in the clinic as an independent contractor. A Physician Assistant Stakeholder group is scheduled in May to discuss issues of physician assistant clinic ownership.

Ms. Robinson gave a report that the date for the Health and Human Services Interim Hearing for Charge #10 has not been set at this time.

Mr. Turner, Ms. Robinson and Leigh Hopper, Public Information, are scheduled to speak at the Federation of State Medical Boards in Chicago. A report of the Federation meeting will be presented at the June board meeting.

Reports for the Electronic newsletter item and Maintenance of Licensure for CME requirements were deferred to later in the meeting

Agenda item #4, Medical Directors report. Dr. Moore gave an update on the additional recruitment of over 140 Expert Panelists and 27 Chart Monitors. The qualifications reviewed include licensure, active practice of medicine, board certification, investigation and malpractice history. The board discussed the time constraints involved when sending the respondents expert panel rebuttal back to the boards expert panelist for comment. The discussion was deferred to later.

Agenda item #5, Discussion, recommendation, and possible action regarding reporting Corrective Orders. After discussion, **Dr. Crocker moved, Mr. Webb seconded a motion to publish the name and license number of Corrective Orders in the newsletter.** After discussion, **Dr. McNeese moved, and Mr. Turner seconded, and the motion passed to approve a friendly amendment to include the definition of a Corrective Order in the newsletter. The board voted on the original motion as amended and the motion as amended passed to approve to publish the name and licensure number of Corrective Orders with a definition of Correct Orders.**

Agenda item #6, Consideration and possible action regarding pending litigation. Ms. Leshikar gave a report on the pending litigation cases regarding Chiropractic Board and the Tonn Johnson.

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

1. Consent Agenda:

A. Consideration and approval of the February 5, 2010 Board Meeting Minutes.

After consideration, Mr. Turner moved, Dr. Crocker seconded, and the motion passed to approve the February 5, 2010 Board Meeting Minutes.

- B. Consideration and approval of the February 3, 2010 Temporary Suspension Without Notice minutes regarding William Olmsted, M.D. After consideration, **Dr. Arambula moved, Ms. Blackwell seconded, and the motion passed to approve the February 3, 2010 Temporary Suspension Without Notice minutes regarding William Olmsted, M.D.**
- C. Consideration and approval of the March 17, 2010 Temporary Suspension Without Notice minutes regarding Alan Dale Shiller, M.D. After consideration, **Dr. McMichael moved, Ms. Blackwell seconded, and the motion passed to approve the March 17, 2010 Temporary Suspension Without Notice minutes regarding Alan Dale Shiller, M.D.**

Agenda item #3, Executive Directors Report (continued). Ms. Robinson gave a report on the maintenance of licensure requirements for continuing medical education credits. She reported the specialty boards have different recertification requirements for CME. After discussion, the board directed staff to draft language for possible CME credit across the various specialties.

Agenda item #22 at 10:00 a.m., Consideration and Approval of Proposal for Decision for Fernando Mallou, M.D., SOAH #503-099-4217. Sharon Cloninger, Administrative Law Judge, gave a report and recommendation. John Heisler, staff attorney, was present and gave a presentation. Fernando Mallou, M.D., was not present. Larry L. Gollaher, attorney for Dr. Mallou was present and gave a presentation. After discussion, **Mr. Turner moved, Mr. Webb seconded, and the motion passed to approve to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, except Conclusion of Law #6, is not adopted because it is a recommendation, and the determination of any final action is reserved to the Board, and to further adopt the recommendation of the ALJ as the Boards final decision in this matter to adopt the ALJs recommended sanction, and approve the Final Order filed in this matter by Board Staff including the suspension of Fernando Mallou, M.D.s license.**

Agenda item #7, Consideration and Approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, **Dr. Arambula moved, Mr. Webb seconded, and the motion passed to approve the Termination Denied of Rehab Order #541; Termination Granted of Rehab Order #534, #590, #419, #394, #312, #368, #254; Modification Granted of Rehab Order #574 and #529; and Modified Agreed Rehab Order #657.**

Agenda item #8, Consideration and Approval of Agreed Board Orders. Order #8 was deferred until later in the meeting. After discussion, **Dr. McMichael moved, Dr. Benavides seconded, and the motion passed to go into Executive Session at 10:36 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, GOVERNMENT CODE, 551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, 152.009, 155.058, 160.006, and 164.007; and Attorney Generals Opinion No. H-484.** Open session resumed at 11:06 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. Shulkin moved, Dr. Benavides seconded, and the motion passed to approve the Agreed Order for Paula Bessonett, M.D., with the modification to require an Advance Cardiac Life Support course, and 8 hours of CME in reading EKGs and 8 hours of CME in the treatment of acute coronary syndrome, due to concerns of missed diagnosis.**

After discussion, **Dr. McMichael moved, Mr. Turner seconded, and the motion passed to approve the Agreed Order for Hillard Floyd, M.D., with the modification to require 14 hours of CME in risk management, and a chart monitor for 8 cycles to include 30 charts, 10% of the charts in office and hospital cases, with an effort to have a significant amount in surgery cases, due to concerns of the respondents level of knowledge.**

After discussion, **Dr. Arambula moved, Mr. Webb seconded, and the motion passed to approve the Agreed Board Orders en masse for Mark L. Allen, M.D.; Ramon Almodovar, M.D.; Louis W. Apostolakis, M.D.; Kenneth L. Armstrong, M.D.; Doyle H. Brashear, M.D.; Gene Burke, M.D.; Alfred R. Johnson, D.O.; Bernard Kornell, M.D.; Jorge A. Martinez, M.D.; Normal J. McCall, M.D.; Mary Milam, M.D.; Conrad Murray, M.D.; George A. Nasser, M.D.; Leonard G. Nepper, D.O.; Manhai H. Nguyen, M.D.; William R. Olmsted, M.D.; Pankajkumar Shah, M.D.; David P. Sheridan, M.D.; Krishnamurthy Shivshanker, M.D.; Walter Sorokolit, M.D.; Marvin L. Faulkner; Donald Gibson, II, M.D.; Joseph J. Horn, M.D.; Kenneth J. Laurora, M.D.; Sung Lee, M.D.; Roger C. Pham, M.D.; Mansoor A. Sheikh, M.D.; Stephen W. Watson, M.D.; John R. Woodward, M.D.; Eli T. Anderson, M.D.; and Sidney Richardson, M.D., as written. Dr. Zeitler was recused during the consideration of Lloyd H. Barlow, M.D.s order. Consideration and approval of Agreed Order for Robert Clark, D.O., was deferred to later in the meeting.**

Agenda item #23 at 11:30 a.m., Discussion, recommendation, and possible action regarding the following board rules and chapters in 22 TAC:

a. Chapter 187, Procedural Rules, proposed new amendments to

- 187.43, Procedures for the Modification/Termination of Agreed and Disciplinary Orders
- 187.83, Proceedings for Cease and Desist Orders
- 187.84, Violation of Cease and Desist Orders
- 187.85, Purpose and Construction
- 187.86, Scope
- 187.87, Definitions;
- 187.88, Complaint Process and Resolution; and
- 187.89, Notice of Availability of Mandatory Mediation.

b. Chapter 189, Compliance Program: proposed amendments to

- 189.2, Definitions
- 189.3, Responsibilities of Probationers
- 189.8, Procedures Relating to Non-compliance

c. Chapter 190, Disciplinary Guidelines, proposed amendments to

- 190.14, Disciplinary Sanction Guidelines

d. Chapter 192, Office-Based Anesthesia Services and Pain Management Clinics, proposed amendments delete references to Pain Management Clinics;

- 192.1, Definitions
- 192.2, Provision of Anesthesia Services in Outpatient Settings
- 192.4, Registration
- 192.5, Inspections
- Repeal 192.7, Operation of Pain Management Clinics

e. Chapter 195, Pain Management Clinics, proposed new chapter

- 195.1, Definitions
- 195.2, Certification of Pain Management Clinics
- 195.3, Inspections
- 195.4, Operation of Pain Management Clinics

f. Chapter 198, Unlicensed Practice, proposed amendments

- 198.3, Investigation of Complaints
- Repeal 198.4, Cease and Desist Order
- Repeal 198.5, Contested Cease and Desist Proceeding
- Repeal 198.6, Violation of Cease and Desist Order

No written comments were received. No one signed-in to present oral comments. After discussion, **Ms. Blackwell moved, Mr. Webb seconded, and the motion passed to adopt the following proposed board rule amendments and chapters and to publish in the Texas Register:**

- a. Chapter 187, Procedural Rules, proposed new amendments to**
 - 187.43, Procedures for the Modification/Termination of Agreed and Disciplinary Orders**
 - 187.83, Proceedings for Cease and Desist Orders**
 - 187.84, Violation of Cease and Desist Orders**
 - 187.85, Purpose and Construction**
 - 187.86, Scope**
 - 187.87, Definitions;**
 - 187.88, Complaint Process and Resolution; and**
 - 187.89, Notice of Availability of Mandatory Mediation.**
- b. Chapter 189, Compliance Program: proposed amendments to**
 - 189.2, Definitions**
 - 189.3, Responsibilities of Probationers**
 - 189.8, Procedures Relating to Non-compliance**
- c. Chapter 190, Disciplinary Guidelines, proposed amendments to**
 - 190.14, Disciplinary Sanction Guidelines**
- d. Chapter 192, Office-Based Anesthesia Services and Pain Management Clinics, proposed amendments delete references to Pain Management Clinics;**
 - 192.1, Definitions**
 - 192.2, Provision of Anesthesia Services in Outpatient Settings**
 - 192.4, Registration**
 - 192.5, Inspections**
 - Repeal 192.7, Operation of Pain Management Clinics**
- e. Chapter 195, Pain Management Clinics, proposed new chapter**

195.1, Definitions
195.2, Certification of Pain Management Clinics
195.3, Inspections
195.4, Operation of Pain Management Clinics

f. Chapter 198, Unlicensed Practice, proposed amendments

198.3, Investigation of Complaints
Repeal 198.4, Cease and Desist Order
Repeal 198.5, Contested Cease and Desist Proceeding
Repeal 198.6, Violation of Cease and Desist Order

Agenda item #24, Discussion, recommendation and possible action regarding proposed rule changes to 22 T.A.C. Chapter 183, Acupuncture. After discussion, Ms. Blackwell moved, Dr. Benavides seconded, and the motion passed to approve proposed rule amendments to Chapter 183, Acupuncture, 183.4, Licensure; and 183.9, Impaired Acupuncturists and to publish in the Texas Register.

Agenda item #9, Consideration and Approval of Modification Request/Termination Request Orders. After consideration, Dr. Arambula moved, Dr. Benavides seconded, and the motion passed to approve the Termination Request Orders for William A. Brown, M.D.; David J. Findlay, M.D.; Stephen R. Neece, M.D.; Sonali Sarkar, M.D.; Norman J. Torres, M.D.; and Veema Surapaneni, M.D.; and the Modification Granted Order for Richard B. Patt, M.D., as written.

Agenda item #10, Consideration and Approval of Nunc Pro Tunc Orders. After consideration, Mr. Turner moved, Dr. Arambula seconded, and the motion passed to approve the Nunc Pro Tunc Order for Sylvan Bartlett, M.D., as written.

Agenda item #11, Consideration and Approval of Mediated Settlement Agreed Orders. After consideration, Dr. Arambula moved, Ms. Blackwell seconded, and the motion passed to approve the Mediated Settlement Agreed Orders for William H. Atkinson, M.D.; Pablo L. Xiques, M.D.; Bill E. Weldon, D.O.; and John E. Perry, M.D., as written.

Agenda item #12, Consideration and Approval of Termination of Suspension Orders. After consideration, Mr. Webb moved, Dr. Arambula seconded, and the motion passed to approve the Termination of Suspension Order for Tracy H. Goen, M.D., as written.

Agenda item #13, Consideration and Approval of Corrective Orders. After consideration, Dr. Arambula moved, Dr. Benavides seconded, and the motion passed to approve the Corrective Orders for Munawar Haider, M.D.; Peter W. Hine, M.D.; Terasa Kowalczyk, M.D.; Ramona G. Lopez, M.D.; and Jon E. Rosenthal, M.D., as written.

There were no items for Agenda items #14-15.

Agenda item #16, Report on Temporary Suspension. A report was given on the Temporary Suspension of William R. Olmsted, M.D., and Alan D. Shiller, M.D.

Agenda item #17, Report on Automatic Orders. A report was given on the Automatic Suspension Order for David Flores, Surgical Assistant.

Agenda item #18, Consideration and approval of cease and desist orders. After consideration, Mr. Webb moved, Dr. Arambula seconded, and the motion passed to approve the Cease and Desist Orders for Roxana M. Mayer and Bennie Webster, Ph.D., as written.

There were no items for Agenda items #19-21.

Agenda item #25, Discussion, recommendation, and possible action regarding the publication of physician registration information. After discussion, the board directed staff to continue to publish the year of birth and practice address and release the mailing address if requested.

Agenda item #26, Discussion, recommendation, and possible action regarding the lawsuit Texas State Board of Podiatric Medical Examiners, Texas Podiatric Medical Association and Bruce A. Scuddy, DPM v. Texas Orthopaedic Association, Texas Medical Association, and Andrew M. Kant, M.D. Ms. Leshikar gave a brief update of the lawsuit.

Dr. McMichael moved, Mr. Webb seconded, and the motion passed to go into Executive Session at 11:54 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, GOVERNMENT CODE, 551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, 152.009, 155.058, 160.006, and 164.007; and Attorney Generals Opinion No. H-484. Open session resumed at 12:12 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, the board directed staff to send a written response to the Board of Podiatric Medical Examiners that the Medical Board is unwilling to give up jurisdiction, but will respectively not seek out cease and desist orders for podiatrists operating on the ankle until the case is resolved.

Agenda item #27 at noon, Open forum for public comments. No one sign in to present public comments.

The board recessed at 12:39 p.m. for lunch.

The board reconvened at 12:43 p.m.

Agenda item #3, Executive Directors Report (continued). Leigh Hopper, Public Information, gave a status report of the development of the LIST server. The board will be updated in June with possible solutions to allow licensees to be notified when the newsletter and past issues are available for viewing online.

Ms. Robinson gave an update of the QA panel process. After discussion, the board directed staff to review the timeline for the expert panel rebuttal process and to report back at the June board meeting.

Agenda item #8, Consideration and Approval of Agreed Board Orders (continued). After discussion, **Dr. Holliday moved, Dr. Crocker seconded, and the motion passed to approve the Agreed Board Order for Robert D. Clark, D.O.** The board directed staff to confirm that the CRNA was referred to the Nursing Board.

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

2. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting. Ms. Kaufman advised that the board should approve the committee action items and each committee should approve the committee minutes at the next committee meeting.

Dr. Crocker gave a report of the Ad Hoc Committee Regarding Board Rule 164.4. **Dr. Crocker moved, Mr. Webb seconded, and the motion passed to approve the Ad Hoc Committee Regarding Board Rule 164.4. action items.**

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

Dr. Zeitler gave a report of the Executive Committee meeting. There were no action items.

Ms. Attebury gave a report of the Finance Committee meeting. There were no action items.

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

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

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

Agenda item #28, Adjourn. There being no further agenda items, the meeting adjourned at 1:27 p.m.