



Texas Medical Board

BOARD MEETING

APRIL 8, 2011

333 GUADALUPE, TOWER 2, SUITE 225

AUSTIN, TEXAS

The meeting was called to order on April 8, 2011 at 8:06 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; John D. Ellis, Jr.; J. Scott Holliday, D.O.; Margaret McNeese, 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. Pat J. Crocker, D.O.; Manuel Guajardo, M.D.; and Charles Oswalt, M.D, were not present. Board staff present 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. Benavides 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.

Committee assignment requests. Dr. Zeitler requested that members notify him of any preference for new committee assignments.

Presentation to Dr. Benavides. Dr. Benavides was presented with a crown and several gifts in honor of his service and commitment to the board.

Agenda item # 3, Executive Director Report.

Legislative update. Ms. Robinson gave a legislative update summarizing several of the key proposed bills. Staff is tracking over 200 bills related to the board.

Budget update. Ms. Robinson gave budget update.

Agenda item #4, Medical Director Report.

Orientation for new licensees. Dr. Gage-White asked if the board had an interest in developing and implementing an orientation program for new licensees. After discussion, the board directed staff to explore possible options for implementing mandatory orientation and bring additional information back to the board.

Solicitation of chart monitors. Dr. Gage-White requested assistance in the solicitation of chart monitors for Ob-GYN and Expert Panelists for pediatric subspecialties and endocrinologists.

Agenda item #5, Discussion, recommendation, and possible action regarding the impact of prior board orders as aggravating factors in determining appropriate sanctions for board

members. The board discussed the impact of prior board orders as aggravating factors in determining appropriate sanctions. The board discussed prior orders on similar actions should be considered as an aggravating factor in determining appropriate sanctions when the prior order indicates a pattern and when the respondent is aware of the allegation.

Agenda item #6, Discussion, recommendation, and possible action regarding guidelines for mediations. Ms. Robinson presented proposed guidelines for mediations. After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to adopt the proposed mediation guidelines with the revisions that #2 and #7 are discretionary, and add that any agreed mediated order must be signed prior to the conclusion of the mediation.**

Agenda item #30, Consideration and approval of Proposal for Decision for Roderick Ekmark, M.D., SOAH #503-10-3644. Dr. Ekmark was present with his attorney, Ace Pickens.

Administrative Law Judge, Roy Scudday, gave a report and recommendation. Mr. Pickens gave a presentation. Roger Calhoun, staff attorney, gave a presentation. **Dr. McMichael moved, Mr. Turner seconded, and the motion passed to go into Executive Session at 10:35 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 10:48 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to remand the case and reopen the record to introduce evidence of the Licensure Committee and Board minutes and actions in relation to this case.**

Consideration and approval of Proposal for Decision for Khanh Nguyen Vu, D.O., SOAH #503-09-0302. Khanh Nguyen Vu, D.O., was not present. Attorney Dan Lype was present representing Dr. Vu. Administrative Law Judge, Paul D. Keeper, gave a report and recommendation. Mr. Lype gave a presentation. Scott Freshour, staff attorney, gave a presentation. After discussion, **Mr. Turner moved, Dr. Benavides seconded, and the motion passed to adoption the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, except Conclusion of Law #17, because it is reserved to the board; and to adopt the Administrative Law Judges recommendation of revocation of Dr. Vus license.**

Consideration and approval of Proposal for Decision for Guillermo Ruben Pechero, M.D., SOAH #503-08-0828. Guillermo Ruben Pechero, M.D., was not present. Attorney Ace Pickens was present representing Dr. Pechero. Administrative Law Judge Thomas Walston gave a report and recommendation. Mr. Pickens gave a presentation. Scott Freshour, staff attorney, gave a presentation. After discussion, **Dr. McMichael moved, Mr. Turner seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge in the Proposal for Decision and approve the recommendation for dismissal.**

Agenda item #8, Discussion, recommendation, and possible action regarding Chiropractic rules. Suzanne Mitchell reported on the status of proposed amendments to rules governing chiropractor scope of practice. She summarized recent activity of the Texas Board of Chiropractic Examiners which, at its February 11, 2011 meeting, voted (1) to withdraw its proposed November 19, 2010 proposed amendment to Scope of Practice Rule 75.17; and (2) not to adopt amendments to Rule 75.17 proposed by the Texas Chiropractic Association.

She also discussed the March 18, 2011 TBCE Rules Committee meeting, at which the Committee voted, despite objections from TBCE staff, to recommend that the TBCE Board publish the draft amendments to Rule 75.17 (with companion amendments to 75.2) proposed by the Texas Chiropractic Association.

Agenda item #9, Discussion, recommendation, and possible action regarding community service and agreed orders. Dr. Benavides proposed the use of community service in disciplinary actions. After discussion, the board directed staff to research the use of implementing community service as part of disciplinary actions and report back to the Disciplinary Process Review Committee in June.

Agenda item #10, Discussion, recommendation, and possible action regarding physician assistant owned clinics. After discussion, the board directed staff to gather information and schedule a focus group for additional input regarding physician assistant owned clinics. Board directed staff to notify the Physician Assistant Board that physician assistant owned clinics are something that should be discussed; b.) the legislative session may answer the pending questions, and, c.) it may be appropriate for interim direction by Physician Assistant Board and Medical Board.

Agenda item #31, Discussion, recommendation and possible action relating to the following board rules in 22 TAC.

Ms. Kaufman presented a brief summary of the presented amendments to Chapter 164. No written comments were received. No one signed in to present oral comments. After discussion, **Mr. Turner moved, Dr. Willeford seconded, and the motion passed to adopt the amendments to Chapter 164, Physician Advertising, 164.2 Definitions; 164.4 Board Certification; and 164.6 Required Disclosures on Websites, and publish in the Texas Register as adopted.**

Ms. Kaufman presented a brief summary of the presented amendments to Chapter 166. No written comments were received. No one signed in to present oral comments. After discussion, **Mr. Baucom moved, Dr. Benavides seconded, and the motion passed to adopt the amendments to Chapter 166 Physician Registration, 166.7 Report of Impairment on Registration Form, and publish in the Texas Register as adopted.**

Ms. Kaufman presented a brief summary of the presented amendments to Chapter 175. No written comments were received. No one signed in to present oral comments. After discussion, **Dr. Holliday moved, Dr. Benavides seconded, and the motion passed to adopt the amendments to Chapter 175 Fees, Penalties and Forms, 175.1 Application Fees, and 175.2 Registration and Renewal Fees, and publish in the Texas Register as adopted.**

Ms. Kaufman presented a brief summary of the presented amendments to Chapter 187. No written comments were received. No one signed in to present oral comments. After discussion, **Dr. Benavides moved, Ms. Blackwell seconded, and the motion passed to adopt the amendments to Chapter 187 Procedural Rules, 187.70 Purposes and Construction; 187.71 Hearing Before a Panel of Board Representatives; and 187.72 Decision of the Panel, and publish in the Texas Register as adopted.**

Ms. Kaufman presented a brief summary of the presented amendments to Chapter 196. No written comments were received. No one signed in to present oral comments. After discussion, **Dr. Holliday moved, Mr. Turner seconded, and the motion passed to adopt**

the amendments to Chapter 196, Voluntary Relinquishment of Surrender of a License, amendments to 196.1 Relinquishment of License; and 196.3 Surrender Associated with Impairment, and publish in the Texas Register as adopted.

Agenda item #11, Discussion, recommendation, and possible action related to physician coaching. Dr. Holliday gave a presentation on a program for physician coaching. After discussion, the board directed staff to research similar courses and current requirements. The board directed staff to extend an invitation to Dr. McCracken, Dr. Hicks and Dr. Teegarden to give a presentation on physician coaching at the June board meeting.

Agenda item #12, Discussion, recommendation, and possible action regarding Attorney General Opinion RQ0938G. Ms. Kaufman summarized the Attorney General Opinion RQ0938G. After discussion, **Dr. Arambula moved, Dr. McMichael seconded, and the motion passed to notify the Office of the Attorney General that the board agrees and adopts the contents of the letter to the Attorney General stating that the assessment and analysis of information by a homestasis analyzer constitutes the practice of medicine and, therefore, may only be performed by a licensed physician or a licensed health care provider acting under the delegated authority of the physician.**

Agenda item #13, Consideration and possible action regarding pending litigation. Ms. Leshikar gave a brief report. **Dr. McMichael moved, Mr. Turner seconded, and the motion passed to go into Executive Session at 1:10 p.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 1:28 p.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #14, Consideration and approval of Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, **Dr. Benavides moved, Mr. Turner seconded, and the motion passed to approve the Modified Agreed Rehabilitation Orders #659 and #660; Modification Granted of Rehabilitation Order #520; and Termination Granted of Rehabilitation Orders #429, #524, #470, #647, #612, #568, #436, and #532.**

Agenda item #15, Consideration and approval of Agreed Board Orders. Dr. McMichael was recused for Araceli Ramirez, M.D. Dr. Arambula was recused for Amy E. Mulroy, M.D. Ms. Attebury was recused for Robert W. Paige, M.D. After discussion, **Ms. Southard moved, Dr. Arambula seconded, and the motion passed to approve the Agreed Orders for Eugene Q. Salvador, M.D.; James E. Hansen, M.D.; Araceli Ramirez, M.D.; Carlos A. Ricaldi, M.D.; Karen L Spetman; Annie C. Walker, M.D.; Avanindra Jain, M.D.; Stephen Sherman, M.D.; Joel Alvear, M.D.; Lloyd E. Arnold, Jr., M.D.; Charles F. Bailey, Jr., M.D.; Chance W. Dinger, M.D.; Mario V. Hernandez, M.D.; Karla J. Lee, M.D.; Harvey Randolph, Jr., D.O.; David B. Templin, M.D.; Preston O. Ukoli, M.D.; Ronald D. Wong, M.D.; Warren B. Dailey, M.D.; Betty J. Edwards, M.D.; Donnie Evans, M.D.; Commie Hisey, D.O.; Linda J. Roos, M.D.; Elisa G. Sanchez, M.D.; Sylvester . Vaughns, M.D.; Ikenna Adugba, M.D.; Kenneth E. Baird, M.D.; Rajen B. Desai, M.D.; Gina M. Esparza, M.D.; Jerome E. Hutchens, M.D.; Jerry W. Miller, M.D.; Amy E. Mulroy, M.D.; North Houston Wellness & Weight Loss Center; Luis F. Tschen, M.D.; Stanley W. Whisenant, M.D.; Margarita A. Muniz, M.D.; Clarence J. Wolinski, M.D.; Julia R. Ward, M.D.; Philip T. Eichelberger, M.D.; Joseph A. Bianco, D.O.; Mary J. Garnepudi, M.D.; Bruce R. McFarland; John C. Ferrell, M.D.; and Ramon A. Cruz, M.D.**

After discussion, **Dr. McMichael moved and Dr. Arambula seconded a motion to modify the Agreed Order for John S. Stafford, M.D., to include restriction of prescribing Schedule II, III, and IV drugs; cannot supervise midlevel practitioners; and add a chart monitor for 8 cycles due to concerns of pain management.** After discussion, **Dr. McMichael moved, Dr. Arambula seconded, and the motion passed to amend the original motion to require the restriction to prescribe Schedule II, III, and IV drugs until the respondent comes back before the board for approval. The original motion with the amendment passed to approve the Agreed Order for John S. Stafford, M.D., with the modification to include restriction of prescribing DEA Schedule II, III, and IV drugs until the respondent appears before the board for approval; the respondent cannot supervise midlevel practitioners; and a chart monitor for 8 cycles, due to concerns of pain management.**

Dr. McMichael moved, Mr. Turner seconded, and the motion passed to go into Executive Session at 1:48 p.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 2:04 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Ms. Southard moved, Dr. Willeford seconded, and the motion passed to deny the order for respondent and schedule a second Informal Settlement Conference with a panel of board members, due to his felony conviction.** The board directed that evidence be provided to enable the board to make a finding as required by Statute if it is in the best interest of the public for respondent to practice.

Agenda item #16, Consideration and Approval of Modification Request/Termination Request Orders. After discussion, **Mr. Turner moved, Dr. Arambula seconded, and the motion passed to approve the Termination Request Orders for Gregg P. Allen, M.D.; Jaudon Behrman, M.D.; Michael R. Bishop, M.D.; Gilden Blackburn, M.D.; Ralph D. Holland, M.D.; Barry J. Kern, M.D.; James M. Lackey, M.D.; Robert Layton, M.D.; Robert J. Shaw, M.D.; Fredrik P. Tolin, M.D.; George R. Walters, M.D.; John S. Truitt, M.D.; Ulysses Watkins, M.D.; Modification Request Orders for Williams S. Blessing, M.D.; Rick A. Boyles, M.D.; Howell E. Davis, D.O.; James Jew, M.D.; Randall B. Lane, M.D.; Brian B. Rogers, D.O; and Termination Request Order Denied for Stephen N. Fisher.**

Agenda item #17, Consideration and Approval of Nunc Pro Tunc Orders. After discussion, **Mr. Turner moved, Dr. Benavides seconded, and the motion passed to approve the Nunc Pro Tunc Order for Kashif Ansari, M.D.**

Agenda item #18, Consideration and Approval of Mediated Settlement Agreed Orders. After discussion, **Ms. Southard moved, Dr. Benavides seconded, and the motion passed to approve the Mediated Settlement Agreed Orders for Kalamani R. Dharma, M.D.; Daniel L. Koppersmith, M.D.; Wade N. Barker, M.D.; Manon E. Childers, M.D.; Mohammad R. Fazel, M.D.; Orestes Molina, .D.; Suraphandhu Srivathanakul, M.D.; Faiz Ahmed, M.D.; and Gregory K. Phillips, M.D.**

There were no items for Agenda item #19.

Agenda item #20, Consideration and Approval of Corrective Orders. After discussion, Ms. Southard moved, Dr. McNeese seconded, and the motion passed to approve the Corrective Orders for Karn-Anne Cumberbatch, M.D.; Thanh T. Le, M.D.; Orson A. Anderson, M.D.; Pritam B. Dandade, M.D.; James G. Harold, M.D.; R. Gregg Maul, D.O.; Maya S. Pathikonda, M.D.; Lionel Rangel, M.D.; Thomas C. Binzer, M.D.; Michael L. Blackwell, M.D.; Phong H. Nuyen, M.D.; John Sun, M.D.; Dennis B. Barson, Jr., D.O.; Ming K. Jeang, M.D.; and Rajesh Malhotra, M.D.

Agenda item #23, Report on Temporary Suspensions Hearings.. Reports were presented for the Temporary Suspensions of Imed Clinic, Inc.; Preferred Medical Clinic; The Oaks Medical Clinic, Inc.; Umat Clinic, LLC; Annie C.Z. Walker, M.D.; Johns S. Stafford, M.D.; Ramon A. Cruz, M.D. and Rick Szumlas, M.D.

Agenda item #24, Report on Automatic Orders. Reports were presented on the Automatic Orders for Franciso Morales, M.D.; Kerste J. Johnson, M.D.; and Eliazar C. Garcia, S.A.

There were no items for Agenda items #25-#27.

Agenda item #28, Consideration and Approval of Order to Show Cause. After discussion, Ms. Southard moved, Dr. Benavides seconded, and the motion passed to approve the Order to Show Cause for Dr. Barbara A. Wilson, M.D.

Agenda item #29, Consideration and Approval of Remand of Amended Final Orders. The agenda item was pulled.

Agenda items #30-31 were completed earlier in the meeting.

Agenda item #32, Discussion, recommendation, and possible action regarding emergency Board rule 22 T.A.C. 187.83, relating to Proceedings for Cease and Desist Orders. After discussion, Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to adopt emergency Board rule 22 T.A.C. 187.83, relating to Proceedings for Cease and Desist Orders for publication in the Texas Register as adopted.

There were no items for Agenda item #33.

Agenda item #34, Discussion, recommendation, and possible action, including approval of amendments to and new section to Chapter 185, Physician Assistants.

- a. **185.4, Procedural Rules for Licensure Applicants; and**
- b. **185.6, Annual Renewal of Licensure**

After discussion, Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve 185.4, Procedural Rules for Licensure Applicants; and 185.6, Annual Renewal of Licensure.

Agenda item #35, Open forum for public comments. No one signed in to present oral comments.

Agenda item #36 was deferred to later in the meeting.

Agenda item #37, Discussion, recommendation, and possible action regarding the Medical Director for the Physician Health Program. After discussion, Dr. Willeford moved, Dr. McMichael seconded, and the motion passed to approve the hiring of William Nemeth, M.D., for the position of Medical Director of the Physician Health Program.

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

1. **Consideration and approval of the February 4, 2011 Board Meeting Minutes. Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the February 4, 2011 Board Meeting Minutes.**
2. **Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.**

Dr. Zeitler gave a report of the Ad Hoc Committee. **Ms. southard moved, Ms. Blackwell seconded, and the motion passed to approve the Ad Hoc Committee for Advertising minutes and action items.**

Dr. Zeitler gave a report of the Executive Committee. **Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the Executive Committee minutes and action items.**

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

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

After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to deny reinstatement of applicant #1111s cancelled license due to concerns of statutory eligibility.**

Agenda item #36, I.T. Teleconference presentation and training. I.T. staff presented a demonstration on the new audio video conferencing system.

Agenda item #15, Agreed Orders (continued.) After discussion, **Dr. Arambula moved, Dr. McMichael seconded, and the motion passed to approve the Agreed Order for Gerald Ratnov, M.D.**

There being no further agenda items, the meeting adjourned at 2:56 p.m.