

**THE LOUISIANA STATE
BOARD OF MEDICAL EXAMINERS**

**MINUTES
OF
MEETING**

**SEPTEMBER 15, 2014
NEW ORLEANS, LOUISIANA**

A meeting of the Louisiana State Board of Medical Examiners, pursuant to lawful notice, was duly convened and called to order at 8:30 a.m., Monday, September 15, 2014, by order of the President, at the offices of the Board, 630 Camp Street, New Orleans, Louisiana.

Board Members present as follows:

Mark Henry Dawson, M.D., President
Kweli J. Amusa, M.D., Secretary-Treasurer
Joseph D. Busby, Jr., M.D.
Roderick V. Clark, M.D.
Kenneth Barton Farris, M.D.
Christy Lynn Valentine, M.D.

Board Member absent as follows:

John Michael Burdine, M.D., Vice-President

The following members of the Board's staff were present:

Cecilia Ann Mouton, M.D., Executive Director
Emily Diane Eisenhauer, M.D., Assistant Director of Investigations
Thania Elliott, RN, Investigator
Grace Hammons, Administrative Manager
Lilly Rodgers, Administrative Program Specialist A
Merian Gaspard, Director of Licensure
Rita L. Arceneaux, Executive Assistant

Legal counsel to the Board was present as follows:

Judge Frederick S. Ellis

Philip O. Bergeron

- 1. Minutes of August 18, 2014 Meeting.** The Board reviewed the minutes of its meeting of August 18, 2014. On the motion of Dr. Clark duly seconded by Dr. Farris and passed by unanimous voice vote, the Board approved the minutes of the August 18, 2014 meeting with all necessary corrections.
- 2. Status Report on Action Items of Prior Board Meetings; Report on Assignments to Counsel.** The Board noted the action items as assigned to staff and counsel from previous meetings.
- 3. Rulings and Advisory Opinions; Billing for Computerized Patient Profile.** The Board reviewed electronic correspondence received from Kevin Martinez, M.D., asking whether the Board has an opinion on the utilization of a CPT code for billing for computerized patient profiles in determining those with psychiatric issues. Following review and discussion it was the consensus of the Board to advise Dr. Martinez that the CPT code being utilized appeared to be compliant, however, his question would be better directed to CMS.
- 4. Rulings and Advisory Opinions; Continuous Positive Airway Pressure (“CPAP”) Delivery Directly to Patients.** The Board reviewed electronic correspondence from Donna K. Thiel, Attorney, King & Spalding, LLP, requesting clarification related to the delivery and instruction of CPAP machines and supplies to patients. Following review and discussion, it was the consensus of the Board to advise Ms. Thiel that in accordance with the Law and rules of the Board, the devices, equipment and patient instructions necessary to insure proper PSG testing must be performed under physician direction and supervision and given or applied in-person by Louisiana licensed polysomnographic or respiratory therapy personnel.
- 5. Rulings and Advisory Opinions; Physician Assistants; Prescriptive Authority; Administration of Ketamine.** The Board reviewed the request of Steven Schauer, DO, asking the Board to reconsider the rules to allow physician assistants the ability to administer low-dose ketamine. Following review and discussion, on the motion of Dr. Busby, duly seconded and passed by unanimous voice vote, the Board denied the request to allow physician assistants’ with prescriptive authority the ability to administer ketamine.
- 6. Communication and Information; Physician Assistant; Prescriptive Authority; Schedule II Medications.** The Board reviewed correspondence received from Andrew Utter, M.D., Neurosurgery, Spine Institute of Louisiana, asking the Board to consider allowing physician assistants (“PAs”) with prescriptive authority to prescribe Schedule II medications citing the fact that hydrocodone/acetaminophen combinations had been reclassified as Schedule II drugs. Following review and discussion, it was the consensus of the Board concur with the advice given to Dr. Utter that until the Law is changed, the Board could not authorize PAs to prescribe Schedule II medications.

7. Communication and Information; Federation of State Medical Boards (“FSMB”); Interstate Medical Licensure Compact. The Board noted receipt of the Interstate Medical Licensure Compact as prepared by the Medical Licensure Compact Taskforce of the FSMB. Following review and discussion, it was the consensus of the Board to defer action on this matter pending further review.

8. Communication and Information; Bill O’Neill, Regional Director; The Center for Personalized Education (“CPEP”) for Physicians. Bill O’Neill, Regional Director, CPEP, appeared before the Board to give an overview of the CPEP program. Mr. O’Neill reported that the mission of the program is to promote quality patient care and safety by enhancing the competence of physicians and other healthcare professionals and reported that since 2000, 24 physicians and 1 PA from Louisiana had been referred to them, of which 12 were for assessments and 13 were for ethics remediation. No further action was required or taken on this matter.

9. Rules; *Noticed for Intent*; Office-Based Surgery; Personal Appearance; Kraig DeLanzac, M.D., President, Louisiana Society of Anesthesiologist. Kraig De Lanzac, M.D., President, Louisiana Society of Anesthesiologists, appeared before the Board to offer comments regarding proposed amendments to the Office-Based Surgery rules which appeared as a *Notice of Intent* in the July 20, 2014 edition of the *Louisiana Register*. It was noted that a response to comments received would be in accordance with the Louisiana Administrative Procedures Act.

10. General Administrative Matters; Executive Director’s Report. The Board received the report of its Executive Director on her activities since the last meeting of the Board. Dr. Mouton gave an update on information technology issues, reported on adjusted lobby hours for Fridays and that she would be meeting with the acupuncture assistants to discuss their various issues.

11. General Administrative Matters; Professional Legal Contract; Stanley, Reuter, Ross, Thornton and Alford, LLC. The Board noted that the professional legal contract with Stanley, Reuter, Ross, Thornton and Alford, LLC, expired July 19, 2014. Following review and discussion, on the motion of Dr. Farris, duly seconded by Dr. Amusa, the Board authorized renewal of the contract and struck the following resolution:

WHEREAS, Stanley, Reuter, Ross, Thornton & Alford, LLC, provides professional legal services to the Board relative to the Board’s rules and regulations, legislation, Board actions, and disciplinary hearings and adjudications regarding alleged violations of rules and regulations promulgated by the Board; and

WHEREAS, Stanley, Reuter, Ross, Thornton & Alford, LLC, appears and advises the Board at its regular and special meetings, represents the Board in formal and informal disciplinary matters, provide legal advise and assistance to the Board, provides other legal services that are required by the Board and agreed on by the parties to this agreement and represents the Board in litigation filed against or by the Board.

WHEREAS, Stanley, Reuter, Ross, Thornton & Alford, LLC, may provide such other legal or other professional services and assistance as the Board may from time to time deem necessary or appropriate in the discharge of its responsibilities under the Act and Other Governing Laws. Such services, however, shall not include any professional legal services with respect to the defense or other representation of the Board, its members, officers, employees or agents in any suit, action or claim in tort or for worker’s compensation benefits; and

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WHEREAS, this resolution shall take effect immediately.

THEREFORE BE IT RESOLVED that the Louisiana State Board of Medical Examiners, pursuant to La. R.S. 42:262, does hereby retain and employ, Stanley, Reuter, Ross, Thornton & Alford, LLC as special counsel; and

BE IT FURTHER RESOLVED, that this Resolution and proposed contract Be submitted to the Attorney General for the State of Louisiana for approval.

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12. General Administrative Matters; Professional Legal Contract; George M. Papale, Esq. The Board noted that the professional legal contract for George M. Papale, Esq., expired July 31, 2014. Following review and discussion, on the motion of Dr. Farris, duly seconded by Dr. Amusa, the Board authorized renewal of the contract and struck the following resolution:

WHEREAS, George M. Papale, Esq., provides professional legal services to the Board relative to the Board's rules and regulations, legislation, Board actions, and disciplinary hearings and adjudications regarding alleged violations of rules and regulations promulgated by the Board; and

WHEREAS, George M. Papale, Esq., appears and advises the Board at its regular and special meetings, represents the Board in formal and informal disciplinary matters, provide legal advise and assistance to the Board, provides other legal services that are required by the Board and agreed on by the parties to this agreement and represents the Board in litigation filed against or by the Board.

WHEREAS, George M. Papale, Esq., may provide such other legal or other professional services and assistance as the Board may from time to time deem necessary or appropriate in the discharge of its responsibilities under the Act and Other Governing Laws. Such services, however, shall not include any professional legal services with respect to the defense or other representation of the Board, its members, officers, employees or agents in any suit, action or claim in tort or for worker's compensation benefits.

WHEREAS, George M. Papale, Esq., may act as Independent Counsel for the Board upon request, in which capacity George M. Papale will (a) be present at hearings against any party or parties over which the Board has jurisdiction under the provisions of the Louisiana Medical Practice Act and Other Governing Laws: (b) to advise the Board on all matters relevant to providing for all parties involved a fair, impartial and unbiased hearing; (c) to advise the Board on the disposition of all prehearing motions and exceptions; (d) to provide the Board with impartial advice, suggestions and recommendations to the end that all parties appearing before the Board for any purpose whatsoever shall be accorded substantive and procedural due process of law as prescribing by the Louisiana Constitution and the Constitution of the United States of America; and (e) continually to advise the Board on developing requirements for substantive and procedural due process; and

WHEREAS, this resolution shall take effect immediately.

THEREFORE BE IT RESOLVED that the Louisiana State Board of Medical Examiners, pursuant to La. R.S. 42:262, does hereby retain and employ, George M. Papale, Esq. as special counsel; and

BE IT FURTHER RESOLVED, that this Resolution and proposed contract Be submitted to the Attorney General for the State of Louisiana for approval.

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13. General Administrative Matters; Financial Reports.

Financial Statement - The Board reviewed a statement on the revenue and expenses for the period ending June 30, 2014 and approved all expenditures as noted therein. The Board also reviewed the status of investments as of June 30, 2014. The Board also reviewed a balance sheet

and income statement for Clinical Laboratory Personnel for the period ending June 30, 2014 and approved all expenditures as noted therein. The Board also reviewed the status of investments for Clinical Laboratory Personnel as of June 30, 2014.

14. Rules and Regulations.

a. Final Rules/Amendments: None since the last meeting of the Board.

b. Rules/Amendments – Noticed of Intent - **Physicians and Surgeons – Office-Based Surgery**: The Board considered suggestions for amendment to its office-based surgery rules. A revised draft incorporating the suggested changes was considered by the Board, and following review, discussion and further suggestions, the Board voted to provide *Notice of Intent* to adopt the proposed rules in the *Louisiana Register*. Prior to publication, staff suggested additional changes relative to the performance of office-based procedures using moderate or conscious sedation. Pursuant to the Board's instructions, a revised draft was presented for consideration at its December 2013, January and February 2014 meetings. The Board reviewed minor changes and voted to provide *Notice of Intent* to adopt the rule amendment in the *Louisiana Register*. The proposed amendments appeared as a *Notice of Intent* in the July edition of the *Louisiana Register*. A request for a public hearing was not received; however two (2) written comments were submitted and presented for the Board's consideration. Following review of the comments, it was the consensus of the Board to move forward with the rules as proposed responding to the commenters as required by law. **Physicians and Surgeons – Collaborating Physicians**: The Board expressed a desire to consider the development of rules relative to physicians who collaborate with advanced practice registered nurses. A draft was prepared by staff for initial consideration at its October 2013 meeting. A revised draft incorporating comments and suggestions was considered by the Board at its December 2013 meeting. Following review and discussion, it was the consensus of the Board to preview the draft to several professional organizations (the Louisiana State Medical Society, the Louisiana Medical Association and the Louisiana Academy of Family Physicians) and the Louisiana State Board of Nursing. Revised drafts incorporating suggestions were reviewed by the Board at its March 2014 meeting at which time the Board voted to approve the draft pending the receipt of suggestions for one organization yet to respond. Additional revisions were offered by the Board during its May 2014. The Board reviewed the suggested changes offered at the May 2014 meeting along with suggestions of staff. Following consideration and discussion of the latest revised draft at its June 2014 meeting, the Board approved publication of a *Notice of Intent* to adopt the rules in the *Louisiana Register*. Said *Notice of Intent* will appear in the August 2014 issue of the *Louisiana Register*. A request for a public hearing was scheduled for Wednesday, September 24, 2014 at 10:00 a.m.

c. Rules/Amendments Under Development: **Midwifery**: Given changes to the Louisiana Midwifery Practice Act during the 2012 session of the Legislature, staff anticipates presenting revisions to its existing rules in due course for the Board's consideration and discussion. A draft will be presented at the next meeting of the Board. **Physicians and Surgeons – Unprofessional Conduct**: During its April 2013 meeting, the Board

expressed a desire to consider the development of rules correlating a physician representing himself/herself as a specialist in a particular field of practice without appropriate formal training in that field. Pursuant to the Board's directions, a draft was submitted for initial review and discussion at its August and September 2013 meeting. The draft also includes a prohibition against physician prescribing of controlled substances to one's self or immediate family members in the absence of an emergency. At its October 2013 meeting, the Board decided to defer that part of the proposed rule dealing with self-prescribing and to provide *Notice of Intent* to adopt the rules. Staff presented additional information concerning physician's self/immediate family prescribing of controlled substances. Following consideration and discussion of the latest revised draft at its June 2014 meeting, the Board approved publication of a *Notice of Intent* to adopt the rules in the *Louisiana Register*. It is anticipated that such *Notice of Intent* will appear in the October 2014 edition of the *Louisiana Register*. **Occupational Therapy:** The Occupational Therapy Advisory Committee has proposed a number of amendments to the Board's rules respecting occupational therapists. Following review by staff and a number of revisions to conform the rules to the law, a revised draft was returned to the Committee Chair for review. Minor substantive suggestions for revision or modification have been received and incorporated into the draft. In sum, the proposed amendments update the rules generally, insert additional language provided in the law, update definitions and practice standards, rearrange various provisions and delete others that are no longer needed. The initial draft was presented for Board consideration at its July 2014 meeting. A revised draft incorporating additional changes was presented at the August 2014 meeting at which time the Board approved providing a *Notice of Intent* in the *Louisiana Register*. It is anticipated that such *Notice of Intent* will appear in the October 2014 edition of the *Louisiana Register*. **Telemedicine:** Act 442 of the 2012 Legislative Session, which amended R.S. 37:1271 of the Medical Practice Act, necessitates various changes to the Board's existing Telemedicine Rules. Preliminary suggestions were presented to the Board at its July 2014 meeting and a revised draft was presented at its August 2014 meeting at which time the Board authorized publication of a *Notice of Intent* to adopt the amendments. A draft containing technical and one substantive change was considered and upon the motion, Dr. Clark, duly seconded and passed by unanimous voice vote, the Board approved the proposed changes. It is anticipated that the *Notice of Intent* will appear in the October 2014 edition of the *Louisiana register*.

[15.] Minutes of August 18, 2014 Executive Sessions. On the motion of Dr. Clark, duly seconded by Dr. Farris and passed by unanimous voice vote, the Board convened in executive session to review the minutes of its executive sessions conducted during the meeting of August 18, 2014. Following review and discussion, the Board resumed in open session and on the motion of Dr. Farris, duly seconded by Dr. Clark, and passed by unanimous voice vote, approved the minutes of the executive sessions conducted during its meeting of August 18, 2014 with all necessary corrections.

[16.] Report on Pending Litigation. On the motion of Dr. Valentine, duly seconded by Dr. Amusa, the Board convened in executive session to receive the report of legal counsel on pending litigation to which the Board was a party and the status of proceedings for judicial review of prior Board decisions, La. Rev. Stat. § 42:17A(2). No further action was required or taken on this matter.

[17.] Personal Appearances/Docket Calendar. Continuing in executive session, the Board reviewed the calendar of personal appearances and docketed hearings, as matters relating to the character and professional conduct of a licensee and allegations of misconduct, La. Rev. Stat. 42:17 A(1), (4). No further action was required or taken on this matter.

[18.] Investigative Reports. On the motion of Dr. Busby, duly seconded by Dr. Clark, the Board convened in executive session, to consider the investigative reports as matters relating to the character and professional conduct of a licensee, and allegations of misconduct, La. Rev. Stat. §42:17A(1) and (4). Following review and discussion the Board resumed in open session. Upon motion made, duly seconded and passed by unanimous voice vote, the Board approved the following:

- a. Consent Orders: The following Consent Orders were accepted:

Mark Alan Parent, M.D., Docket No., 14-I-344
Jonathan Allen Sanders, M.D., Docket No., 14-I-492
Cecil William Lovell, Jr., M.D., Docket No., 13-I-1096
Joseph Francis Sejud III, M.D., Docket No., 13-I-1067
Donna Aileen Vining Donald, M.D., Docket No., 13-I-1281
Zahid Imran, M.D., Docket No., 14-I-399
Gustave Walter Younger III, Ath, Docket No., 14-I-465
Joseph M. Gautreaux III, M.D., Docket No., 14-I-629
Louis Carl Aguillard, Ath, Docket No., 14-I-640
Reynard Charles Odenheimer, M.D., Docket No., 14-I-245

- b. Closed/Dismissed: The following matters were closed/dismissed:

Docket No., 13-I-601
Docket No., 13-I-1271
Docket No., 14-I-366

- c. Closed/Dismissed: The following matters were close/dismissed with a Letter of Concern:

Docket No., 14-I-567
Docket No., 13-I-847

- d. Closed Complaint Cases: The Board reviewed the Closed Complaint Cases Report. No further action was required or taken on this matter.
- e. Interim Action: The Board approved the Interim Action that had been handled by the President:

Docket No., 14-I-664

[19.] Professional Liability Report. On the motion of Dr. Amusa, duly seconded by Dr. Valentine and passed by unanimous voice vote, the Board convened in executive session to consider the report of Dr. Eisenhauer, on professional liability cases reviewed since the last meeting of the Board as matters relating to the character and professional conduct of a licensee and allegations of misconduct, La. Rev. Stat. § 42:17A(1) and (4). No further action was required or taken on these matters.

[20.] Physicians Health Program. On the motion of Dr. Farris, duly seconded by Dr. Amusa and passed by unanimous voice vote, the Board convened in executive session to receive the report of Julie Alleman, M.Ed., LPC, LMFT, LAC, Administrative Director, Physicians' Health Foundation ("PHP") on the participants in the Physicians' Health Program who were either appearing before the Board or had matters before the Board for review and discussion, as matters relating to the character and professional conduct and allegations of misconduct of a licensee, La .Rev. Stat.§ 42:17A(1) and (4). No further action was required or taken on this matter.

[21.] General Administrative Matters; Personal Appearance; Robert Joseph Nicholson, Jr., M.D. On the motion of Dr. Farris, duly seconded by Dr. Amusa and passed by unanimous voice vote, the Board convened in executive session, for the personal appearance of Robert Joseph Nicholson, Jr., M.D., as a matter relating to the character and professional conduct and allegations of misconduct of a licensee, La .Rev. Stat.§ 42:17A(1) and (4). Dr. Nicholson, accompanied by his attorney, James Boren, appeared before the Board in connection with his request for reinstatement of his license to a full, unrestricted status, off probation. Following his dismissal, the Board resumed in open session and on the motion of Dr. Busby, duly seconded and passed by unanimous voice vote, the Board denied his request for reinstatement of the license to a full, unrestricted status, off probation.

[22.] Investigative Matters; Personal Appearance; Joseph M. Gautreaux III, M.D. On the motion of Dr. Busby, duly seconded by Dr. Valentine and passed by unanimous voice vote, the Board convened in executive session, for the personal appearance of Joseph M. Gautreaux III, M.D., as a matter relating to the character and professional conduct and allegations of misconduct of a licensee, La .Rev. Stat.§ 42:17A(1) and (4). Dr. Gautreaux, accompanied by his attorney, Chip Fleming, appeared before the Board in connection with the acceptance of his Consent Order. Dr. Gautreaux acknowledged he understood the terms of the Order. No further action was required or taken on this matter.

[23.] General Disciplinary Matters. On the motion of Dr. Farris, duly seconded by Dr. Clark, the Board convened in executive session to consider the requests relating to the execution or modification of a Decision and/or Consent Order as matters relating to the character and professional conduct of licensees, pursuant to La. Rev. Stat. §42:17A(1) and (4). Following review and discussion, the Board resumed in open session and upon motion made and passed by unanimous voice vote, took the following actions:

- a. Vang, Charlotte Diana, DPM. – To approve the request of Charlotte Diana Vang, DPM, for reinstatement of her license to a full, unrestricted status, off probation in accordance with the terms of her probation.
- b. Afzal, Fiaz, M.D. – To deny the request for Fiaz Afzal, M.D., for a re-hearing relative to the Decision and Order rendering August 18, 2014.
- c. Nathan, Paul Eli, M.D. – To deny the request of Paul Eli Nathan, M.D., for reinstatement of his surrendered license.

[24.] Licensure and Certification; Physician Assistants. On motion of Dr. Clark, duly seconded by Dr. Valentine and passed by unanimous voice vote, the Board convened in executive session to consider the non-routine application for licensure as a matter of the character, professional competence, or physical or mental health of an applicant, pursuant to La. Rev. Stat. 42:17A(1). Following review and discussion, the Board resumed in open session, and upon motion made, duly seconded and passed by unanimous voice vote, approved the following for licensure provided all other requirements had been met:

Rader, Colin Ralph, Jr.

[25.] Licensure and Certification; Physicians and Surgeons; U.S./Canadian Medical Graduates. On motion of Dr. Amusa, duly seconded by Dr. Farris and passed by unanimous voice vote, the Board convened in executive session to consider the non-routine applications for licensure as a matter of the character, professional competence, or physical or mental health of an applicant, pursuant to La.Rev.Stat. 42:17A(1). Following review and discussion, the Board resumed in open session, and upon motion made, duly seconded and passed by unanimous voice vote, made the following decisions:

- a. Approved – To approve the following non-routine applicants for licensure provided all requirements had been met:

Calkins, Mark Stewart
Dupuy, Christopher Brad, DO

Konicek, Anna Gabriela, DO
Pritchett, Danielle Delores

- b. Deferred – To defer action on the following pending receipt of additional information:

Eisenberg, Steven Bernard

[26.] Licensure and Certification; Physicians and Surgeons; Foreign Medical Graduates.

On motion of Dr. Clark, duly seconded by Dr. Farris and passed by unanimous voice vote, the Board convened in executive session to consider the non-routine applications for licensure as a matter of the character, professional competence, or physical or mental health of an applicant, pursuant to La.Rev.Stat. 42:17A(1). Following review and discussion, the Board resumed in open session, and upon motion made, duly seconded and passed by unanimous voice vote, made the following decisions:

- a. Approved – To approve the following non-routine applicant for licensure provided all requirements had been met:

Oji, Greg Martins

- b. Denied – To deny the request of the following for a waiver of an examination attempt:

Cheng, Ningli

- c. Mauvais-Jarvis, Franck, M.D. – To approve the request of a waiver of the licensure requirements for Franck Mauvais-Jarvis, M.D., in accordance with §315 of the Board's rules inasmuch as he had been offered the position of professor on the tenure track in the Department of Medicine, Division of Endocrinology, at Tulane University School of Medicine.

[27.] Licensure and Certification; Other Licensure Matters; Reinstatement/Relicensure.

On motion of Dr. Busby, duly seconded by Dr. Farris and passed by unanimous voice vote, the Board convened in executive session to consider the non-routine application for relicensure/reinstatement as a matter relating to the character, professional competence, or physical or mental health of an applicant, pursuant to La. Rev. Stat. 42:17A(1). Following review and discussion, the Board resumed in open session, and upon motion made, duly seconded and passed by unanimous voice vote, approved the reinstatement of the following provided all requirements had been met:

Becker, Mark Oliver, M.D.

28. Next Meeting of Board. The President reminded the members that the next meeting of the Board was scheduled for October 20, 21, 2014.

Upon motion made, duly seconded and passed by unanimous voice vote, the meeting adjourned at 3:00 p.m., on Monday, September 15, 2014.

I HEREBY CERTIFY that the foregoing is a full, true and correct account of the

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proceedings of the meeting of the Louisiana State Board of Medical Examiners, save for executive session of the Board conducted therein, held on September 15, 2014 as approved by the Board on the 20th day of October, 2014.

Witness my hand and seal of the Louisiana State Board of Medical Examiners this 20th day of October, 2014.

Kweli J. Amusa, M.D.
Secretary-Treasurer

Attest:

Mark Henry Dawson, M.D.
President