

**THE LOUISIANA STATE
BOARD OF MEDICAL EXAMINERS**

**MINUTES
OF
SPECIAL CALL
MEETING**

**MARCH 30, 2020
NEW ORLEANS, LOUISIANA**

A Special Call Meeting of the Louisiana State Board of Medical Examiners, pursuant to lawful notice, was convened and called to order at 9:00 a.m., Monday, March 30, 2020, by order of the President, with the following members participating via videoconferencing.

Board Members present as follows:

Roderick V. Clark, M.D., President
Terrie R. Thomas, M.D., Secretary-Treasurer
Rita Y. Horton, M.D.
Lester Wayne Johnson, M.D.
Patrick K. O'Neill, M.D.
Kim S. Sport, JD
James A. Taylor, Jr., M.D.
Christy Lynn Valentine, M.D.
Leonard Weather, Jr., M.D.

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

Vincent A. Culotta, Jr., M.D., Executive Director
Lawrence H. Cresswell, DO, JD, Director of Investigations
Mary K. Peyton, Esq., General Counsel
Thadra C. White, Esq., Compliance Counsel
Aloma James, Director of Licensure
Alan Phillips, Director of IT
James Coolman, IT Technical Support Specialist
Jacintha Duthu, Administrative Program Specialist
Rita L. Arceneaux, Executive Staff Officer

Legal counsel to the Board was present as follows:

Philip O. Bergeron
Don K. McKinney

Members of the public present as follows:

None

1. **Welcome.** The President thanked everyone for his or her attendance.

[2.] Minutes of February 17, 2020 Executive Sessions. On the motion of Dr. Thomas, duly seconded by Dr. Weather 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 February 17, 2020. The Board deferred approval pending further review.

[3.] General Disciplinary Matters. Continuing in executive session, the Board considered 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, (4) and (5). Following review and discussion, the Board resumed in open session and upon the motion of Ms. Sport, duly seconded by Dr. Thomas and passed by unanimous voice vote, made the following decisions:

- a. Donovan, Timothy Joseph, M.D. – To deny the request of Timothy Joseph Donovan, M.D., for reinstatement of his suspended license to work at Angola State Penitentiary during the COVID-19 pandemic.
- b. Feldman, Arnold E., M.D. – To deny the request of Arnold E. Feldman, M.D., for reinstatement of his suspended license to assist with healthcare needs due to the COVID-19 pandemic.
- c. Bruce, Barbara Ann, M.D. – To deny the request of Barbara Ann Bruce, M.D., for reinstatement of her suspended license to assist with healthcare needs due to the COVID-19 pandemic.
- d. Auzine, Donald Peter, M.D. – To deny the request of Donald Peter Auzine, M.D., for reinstatement of his revoked license to assist with healthcare needs due to the COVID-19 pandemic.
- e. Jacqueline Ann Macaluso, MDW – To deny the request of Jacqueline Anne Macaluso, MDW, for the ability to work and assist with healthcare needs due to the COVID-19 pandemic.

- f. Investigation File No., 18-33¹ – To deny the request for the ability of the physician to work at David Wade Correctional Facility and treat inmates via telemedicine during the COVID-19 pandemic.
- g. Investigation File No. 20-168 – To deny the request of the physician to be able to return to work during the COVID-19 pandemic.
- h. Williams, Calvin Edward, Jr., M.D.² – To deny the request of Calvin Edward Williams, Jr., M.D., for removal of the limitation on his surgical practice during the COVID-19 pandemic.
- i. Zganjar, Brian E., M.D. – To deny the request of Brian E. Zganjar, M.D., for reinstatement of his suspended license during the COVID-19 pandemic.

[4.] Investigative Reports. On the motion of Dr. Thomas, duly seconded by Dr. Horton, and passed by unanimous voice vote, the Board convened in executive session, to consider the investigative reports as a matter relating to the character and professional conduct of a licensee, and allegations of misconduct, La. Rev. Stat. §42:17A(1), (4) and (5). Following review and discussion the Board resumed in open session. On the motion of Dr. Taylor, duly seconded by Dr. Valentine and passed by unanimous voice vote, the Board made the following decisions:

- a. Preliminary Review: The Board approved the requests to commence preliminary reviews in the following matters as expeditiously as possible:

- Investigation No., 20-300
- Investigation No., 20-297
- Investigation No., 20-298
- Investigation No., 20-299

5. Licensure and Certification; Fingerprinting. Recognizing the Louisiana State Police's overall functional suspension of its "In person fingerprinting" program and the Board's compliance with the Governor's Proclamation (1) that the Board is "authorized and directed to cooperate in actions the State may take" and (2) that the State of Louisiana intends to encourage social distancing and unnecessary personal interactions during this unprecedented and unique Public Health Emergency, the Board reviewed the request to functionally suspend the need for an applicant to submit or attempt to submit fingerprints," as long as all other requirements for issuance under 402 are met, and suspending the 90 day limitation of a temporary provisional permit, so as to provide that the provisional temporary permit remain in effect from date of issuance until 90 days after one of the following events occurs, whichever is later: the Louisiana State Police lifts its functional suspension on in person fingerprinting or the Governor ends the Public Health Emergency in the State of Louisiana. Following review and discussion, on the

1 Drs. Horton and Johnson recused themselves from any and all participation in discussion and/or consideration of this matter.

2 Dr. Valentine recused herself from any and all participation in discussion and/or consideration of this matter.

motion of Dr. Valentine, duly seconded by Dr. O'Neill and passed by unanimous voice vote, the Board approved the motion to lift the fingerprinting requirement at this time.

6. Licensure and Certification; PGY 1- 3 and GETP Permits. The Board reviewed the request to extend the current permits for all PGY-1 through PGY 3 and GETP permits under LAC 46XLV.404 and LAC 46XLV.411 for the period up to and including 90 days after the Governor ends the Public Health Emergency inasmuch as the USMLE had suspended testing due to COVID-19. Following review and discussion, on the motion of Dr. Valentine, duly seconded by Dr. Taylor and passed by unanimous vote, the Board approved the motion to extend the permits.

7. Licensure and Certification; CME Audit. The Board reviewed the request that recognizing that the Governor had taken note of the CDC guidance regarding "social distancing and prevention of unnecessary personal interactions (25 JBE 2020), that the Board suspend enforcement and audits of licensees for continuing medical education for 2020 until 120 days after termination of the COVID-19 Public Health Emergency. Following review and discussion, on the motion of Ms. Sport, duly seconded by Dr. Valentine, and passed by unanimous voice vote, the Board voted to suspend enforcement and audits of licensees for the CME Audit for 2020 until 120 days after termination of the COVID-19 Public Health Emergency. This does not apply to the 3 hour required CME on CDS for first time renewal of authorized prescribers of CDS.

8. Licensure and Certification; Telehealth Access Act. The Board reviewed the request that recognizing that the Governor has instructed that "all departments, commissions, boards, agencies and officers of the State, or any political subdivision thereof, are authorized and directed to cooperate in actions the State may take in response to the effects of this event." 25 JBE 2020 (Section 11). Additionally, the Governor, in an attempt to increase the number of health care providers in Louisiana, has taken extraordinary measures to include suspending Louisiana state licensure laws, rules, and regulations for medical professionals and personnel for those medical professionals and personnel from other states or other countries offering medical services in Louisiana to those needing medical services as a result of this disaster." 29 JBE 2020, the Board consider all licensees from the following categories as referred to in the Telehealth Access Act: licensed midwifery, podiatry, occupational therapy, athletic training, medical psychology, perfusionists, respiratory therapy and clinical laboratory personnel. With regard to these licensee categories, for the duration of the COVID-19 Public Health Emergency, the Board hereby interprets the Telehealth Access Act to be applicable to all licenses issued under those categories of licensees, to include occupational therapy assistants. Following review and discussion, on the motion of Dr. Valentine, duly seconded by Dr. Weather, and passed by unanimous voice vote, the Board voted to interpret the Telehealth Access Act to include those as stated: licensed midwifery, podiatry, occupational therapy, athletic training, medical psychology, perfusionists, respiratory therapy, clinical laboratory personnel, occupational therapy assistants and all of its other categories of licensees.

9. Licensure and Certification; Physician Assistants. The Board reviewed the request that for the duration of the COVID-19 Public Health Emergency, with regard to physician assistants, with or without prescriptive authority under LAC46XLV.1521, who practice in a new location, under their existing practice guidelines, and/or under the direction of a new supervisory physician(s), that the PA may practice under the new supervisory physician(s) by sending an email to the Board via covid19pa@lsbme.la.gov with the name of the new supervising physician,

license number, the new practice location, and the name, license number and state of licensure of the physician assistant. Following review and discussion, on the motion of Dr. Valentine, duly seconded by Ms. Sport and passed by unanimous voice vote, the Board approved that during the COVID-19 Public Health Emergency, PAs, with or without prescriptive authority, may practice under a new supervising physician by sending an e-mail to the Board with the name of the new supervising physician, license number, the new practice location, and the name, license number and state of licensure of the physician assistant.

10. Licensure and Certification; Enforcement of Practice Acts. The Board reviewed the request to suspend the enforcement of the practice acts in order that (i) licensees can ensure they comply; that (ii) the public can have their health care needs addressed and (iii), given the extreme logistical challenges to good health care due to a shortage of supplies, a shortage of health care provider staffing, and the peculiar features of the COVID-19 virus and to ensure Board licensees are not disciplined, troubled or rendered ineffective by their inability to comply with the letter of their practice act and/or rules as a result of the above listed COVID-19 issues. Following review and discussion, on the motion of Dr. Valentine, duly seconded by Dr. Taylor and passed by unanimous voice vote, the Board voted to not enforce violation provisions of each licensee's practice act, where (i) the Board's licensee or permit holder acts in good faith and in accordance with patients' immediate health needs; (ii) his/her actions do not constitute gross negligence, willful misconduct or an intentional tort; and (iii) his/her actions are in response to, as a result of, or arise out of, the lack of personnel, equipment and/or resources arising from the COVID-19 pandemic.

11. Licensure and Certification; Dispensation of Non-Controlled Medications. The Board reviewed the request to suspend the requirements of the dispensing rules, Chapter 65 relative to dispensing of non-controlled medications during the declared emergency or disaster, as defined by the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or as otherwise provided in title 29 of the *Revised Statutes* of 1950 or the Board's rules; provided, the physician's record on the patient shall document the amount, dosage and instructions for any medication dispensed to a patient. This exception does not apply to controlled substances and expires upon termination of the public health emergency or as otherwise as determined by the board. Following review and discussion, on the motion of Dr. Valentine, duly seconded by Dr. Horton, the Board approved the request to suspend the requirements of the dispensing rules, Chapter 65 relative to dispensing of non-controlled medications during the declared emergency or disaster. This exception does not apply to controlled substances and expires upon termination of the public health emergency or as otherwise determined by the Board.

12. General Administrative Matters; Enforcement of Marijuana and Pain Rules. The Board reviewed the request to suspend enforcement of the Board's marijuana rules, LAC 46XLV.7705.A and the Board's pain rules, LAC 46XLV.6921.B.1 requiring in person visits. Following review and discussion, on the motion of Dr. Valentine, duly seconded by Ms. Sport and passed by unanimous voice vote, the Board voted to suspend enforcement of the state's marijuana and pain rules during the declared emergency or disaster as prescribed in the rules requiring in person visits. It was noted that this does not impact the federal law requirement on in person visits for prescribing Schedule I drugs.

13. Investigative Matters; Administrative Procedure. The Board reviewed the request that, pursuant to 27 JBE 2020 all legal deadlines in Louisiana are currently suspended until April 13, 2020. While it is likely the Governor will act again to suspend these, the preliminary review and formal investigation deadlines arise from both law and rules, and each deadline is case specific. Further, there are administrative hearings, including but not limited to summary suspension hearings and administrative deadlines which are also case specific. It is necessary to extend and suspend these deadlines to facilitate the orderly administration and continuity of the cases. Following review and discussion, on the motion of Ms. Sport, duly seconded by Dr. Valentine and passed by unanimous voice vote, the Board approved that (a) the preliminary review and formal investigation deadlines as well as the deadlines applicable to administrative actions, including but not limited to the time within which a summary suspension hearing must occur, set out in Louisiana law as applicable to Board licensees, are hereby extended until 90 days after the end of the COVID-19 Public Health Emergency; additionally, the preliminary review and formal investigation deadlines as well as the administrative hearing/action deadlines set out in Board rules applicable to Board licensees are hereby suspended until 90 days after the end of the COVID-19 Public Health Emergency; and the administrative hearing dates currently set regarding Board licensees are hereby postponed until 90 days after the end of the COVID-19 Public Health Emergency to be reset thereafter.

14. Licensure and Certification; Midwifery; Vaginal Birth after Caesarean Section (“VBAC”). The Board reviewed the requests of several midwives that the Board allow a temporary lift of the VBAC rule that applies to home births by midwives. Following review and discussion, on the motion of Dr. Valentine, duly seconded by Dr. Weather, and passed by unanimous voice vote, the Board vote to deny the request.

15. Licensure and Certification; Restricted Temporary Permits; Emergency Temporary Permits (LAC 46:XLV, 402D, 412H). The Board reviewed the emergency provisions of the Administrative Procedure Act. On the motion of Dr. Valentine, duly seconded by Ms. Sport and passed by unanimous voice vote, approved an Emergency Declaration and the emergency provision, specifically at La.R.S. 49:953B, to promulgate amendments to its existing temporary permits for formerly licensed Louisiana physicians and allied health care practitioners during the COVID-19 emergency effective March 30, 2020 and shall remain in effect for the maximum time period allowed under the Administrative Procedure Act or until the adoption of the final rule, whichever shall first occur.

16. Next Meeting of the Board. The President set the next meeting of the Board for Monday, April 6, 2020 at 9:00 a.m.

I HEREBY CERTIFY that the foregoing is a full, true and correct account of the proceedings of the meeting of the Louisiana State Board of Medical Examiners, save for executive session of the Board conducted therein, held on March 30, 2020 and approved by the Board on the 27th day of April, 2020.

Witness my hand and seal of the Louisiana State Board of Medical Examiners this 27th day of April 2020.

Terrie Roselyn Thomas, M.D.
Secretary-Treasurer

Attest:

Roderick Vince Clark, M.D., MBA
President