

**THE LOUISIANA STATE
BOARD OF MEDICAL EXAMINERS**

**MINUTES
OF
MEETING**

**MAY 18, 2020
NEW ORLEANS, LOUISIANA**

A meeting of the Louisiana State Board of Medical Examiners, pursuant to lawful notice, was convened and called to order at 8:30 a.m., Monday, May 18, 2020, by order of the President, at the offices of the Board, 630 Camp Street, New Orleans, Louisiana. The Board members participated via live streaming video and teleconferencing.

Board Members present as follows:

Roderick V. Clark, M.D., President
Terri 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
Denise Businelle, Deputy Executive Director
Lawrence H. Cresswell, DO, JD, Director of Investigations
Aloma James, Director of Licensure
Alan W. Phillips, IT Director
Mary K. Peyton, Esq., General Counsel
Thadra C. White, Esq., Compliance Counsel
Leslie Rye, Compliance Investigator
Carol Chauvin, Compliance Officer
Cathy Storm, Compliance Officer
Lawrence Robinson, Compliance Investigator

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Paula Pigford, Compliance Officer
Joseph Bonck, Compliance Investigator
Kieshan Williams, Administrative Program specialist
Jacintha Duthu, Administrative Program Specialist
Rita L. Arceneaux, Executive Staff Officer

Legal counsel to the Board was present as follows:

Judge Michael G. Bagneris (Ret)

Legal Counsel – Attorney General's Office

Patricia Wilton
Lauryn Sudduth
Angelique Freel

1. **Welcome.** Dr. Clark welcomed everyone to the meeting.
2. **Mission Statement.** Leslie Rye, Compliance Officer, read the mission statement of the Board.
3. **Minutes of April 27, 2020 Meeting.** The Board reviewed the minutes of its meetings held April 27, 2020. On the motion of Dr. Weather, duly seconded by Dr. Thomas and passed by majority roll call vote¹, the Board approved the minutes of the meetings with any necessary corrections.
4. **Rulings and Advisory Opinions; Physician Assistants; Scope of Practice; Interpretation of X-Rays; Follow-up.** The Board reviewed a draft response prepared relative to the request for an advisory opinion received from Lyn S. Savioe, Benton, Benton & Associates on whether the interpretation of x-rays is a service that may be delegated by a physician to a physician assistant. Following review and discussion of the draft response, it was the consensus of the Board to draft a more definitive response as to the x-rays that may be interpreted by the PA, the credentials required of the PA, and the level of supervision required by the supervising physician.
5. **Rulings and Advisory Opinions; Physician Assistants; Scope of Practice; Removal of Percutaneous Intraaortic Balloon Pump; Follow-Up.** The Board reviewed the draft response prepared in response to electronic correspondence received from Kathleen Degeyter, RHIA, CPMSM, Director of Medical Staff Services, Lafayette General Health, asking is the removal of a percutaneous intraaortic balloon pump within the scope of practice of a physician assistant. Following review and discussion, it was the consensus of the Board to defer action on this request pending further research.

¹ Dr. O'Neill abstained from voting on this matter.

6. General Administrative Matters; President's Report. The Board received the report of its President on his activities since the last meeting of the Board. Dr. Clark stated that as referenced in his report the Attorney General's letter to the Board dated May 12, 2020 should be added to the agenda.

7. General Administrative Matters; New Business; Attorney General's Correspondence; Lack of Professional Legal Service Contract. On the motion of Ms. Sport, duly seconded by Dr. Taylor and passed by unanimous roll call vote, the Board voted to add a letter from the Attorney General dated May 12, 2020 regarding the lack of a current professional legal services contract to the agenda as an item of new business for further discussion in executive session, pursuant to, La.Rev.Stat., 42:17A(1).² Later, on the motion of Dr. Taylor, duly seconded by Dr. O'Neill and passed by majority roll call vote, the Board voted to recall the addition of the May 12, 2020 Attorney General letter to the public agenda (see number 23).

8. General Administrative Matters; Executive Director's Report. The Board reviewed the report of its Executive Director on his activities since the last meeting of the Board. No further action was required or taken on this matter.

9. General Administrative Matters; Pennington Biomedical Research Center; Raoul Manalac, M.D., Medical Director; Model Diabetes Clinic. The Board reviewed the power point presentation prepared by Raoul Manalac, M.D., Medical Director, Model Diabetes Clinic, Pennington Biomedical Research Centers asking the Board for modification of the Board's rules to allow for a longer-term use of phentermine with clearly defined restrictions. Following review and discussion, it was the consensus of the Board to defer action on this request pending further research into the clinical protocols and any advantages to its use. Dr. Culotta was directed to contact Dr. Manalac with the Board's decision.

10. General Administrative Matters; Professional Legal Service Contract; Stanley, Reuter, Ross, Thornton & Alford, L.L.C. The Board noted that the professional legal service contract with Stanley, Reuter, Ross, Thornton & Alford, L.L.C, expires July 19, 2020. Following review and discussion, on the motion of Ms. Sport, duly seconded by Dr. O'Neill, and passed by unanimous voice vote, the Board authorized renewal of the contract and struck the following resolution:

WHEREAS, Stanley, Reuter, Ross, Thornton & Alford, L.L.C, provides professional legal services to the Board, when and to the extent determined to be necessary, in the institution, investigation, development, conduct and presentation of formal and informal administrative proceedings, arising under the Louisiana Medical Practice Act and other governing Law; and

WHEREAS, Stanley, Reuter, Ross, Thornton & Alford, L.L.C., may represent the Board as legal counsel, as and when the Board requests such representation, in any judicial or administrative proceedings to which the Board is a party; and

WHEREAS, Stanley, Reuter, Ross, Thornton & Alford, L.L.C, 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

² There was a public comment received from Jeff Williams, Executive Vice President & CEO, Louisiana State Medical Society, asking that discussion of a professional legal services contract take place in public session.

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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

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, L.L.C, and

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

11. General Administrative Matters; Liability Insurance; Follow-Up. The Board reviewed the request to submit a follow-up request, with an updated Resolution, to the Attorney General seeking approval to purchase liability coverage for its members and staff. Following review and discussion, on the motion of Ms. Sport, duly seconded by Dr. Taylor and passed by unanimous roll call vote, the Board approved sending a follow-up request.

12. Rules and Regulations.

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

b. **Rules/Amendments; Noticed for Intent to Adopt: Physician Licensure; Waiver of Qualifications:** The Board was asked to extend the waiver of licensure qualifications (currently limited by §§315 and 327) to applicants appointed by a medical school to a full-time position at a rank of assistant professor or above) to applicants who will be full-time employees of a *major teaching hospital* as defined by the rules. Among proposed amendments to various other sections of the rules (e.g., §§311, 323, 361 and 363), the request also includes a suggested definition for *major teaching hospital* as one which is a sponsor of at least four approved residency programs two of which are in certain specialties. A working draft of the proposed amendments was presented for initial review and discussion. At its February 17, 2020 meeting, the Board voted to provide *Notice of Intent* to amend its rules to extend a waiver of licensure qualifications. The *Notice of Intent* did not appear in the April edition of the *Louisiana Register*, but is anticipated to appear in the June edition.

c. **Rules/Amendments Under Development: Physician Compounding Medication:** At its December 2014 and January 2015 meetings, the Board reviewed Emergency Rules adopted by the Louisiana Board of Pharmacy to reflect certain changes in federal law concerning compounded medication. Following review and discussion, the Board elected to undertake a rulemaking effort as to physicians who compound medication in order to insure consistency with federal and state law and regulations. It was noted at its February 17, 2020 meeting, that an advisory opinion on *Physician Compounding* is on the website. Following discussion, it was the consensus of the Board to leave the advisory opinion on its website in lieu of proceeding with a rule-making effort on this topic. **Physician Advertising; Board Certification:** At its March 2015 meeting, the Board determined to undertake a rulemaking effort to establish a process for its approval of certifying boards, alternative to the ABMS and AOA, for purposes of physician advertising of *Board Certification*. The Board directed that a draft be prepared and presented for review and approval. In conformity with the Board's direction, a draft was presented for initial review and discussion at the April 2015 meeting. At its May 2015 meeting, the Board approved publication of a *Notice of Intent* to adopt the rule amendments in the *Louisiana Register*.

An additional word change was discussed and pre-notice input was received from interested parties. Following review and discussion, the Board elected to defer this effort to allow further consideration and input by other stakeholders. Inasmuch as further input had not been received, it was the consensus of the Board to write to several interested parties to ask for their input by the May meeting of the Board. During the May 2016 meeting, the Board reviewed the additional information submitted by the various stakeholders and entertained brief presentations by interested parties. Following discussion, the Board voted to defer action on this rule-making effort pending further review and voted to designate a Special Committee consisting of individuals recommended by the deans of the state's medical schools and a former Board member, to provide information on the processes involved in the accreditation of physician post-graduate training. During its January 2017 meeting, the Board received the committee's input. Following discussion, the Board requested certain changes to the draft previously appearing on its agenda, along with additional information for its consideration. Following further discussion and consideration at its April 2017 meeting, the Board voted to provide *Notice of Intent* to adopt Draft 2(A). During the March 2018 meeting, the Board determined to defer moving forward to the next step of the rulemaking process until it had an opportunity to further explore and consider all other available options, as well as the outcome of a bill introduced in the 2018 Legislative session that would remove the Board's jurisdiction to act in this matter (See SB 186). At its May meeting, the Board further discussed this rule making effort. Ms. Freel with the Attorney General's Office, reported that it was the opinion of Sen. Cortez that the Board did not have the authority to request Board certification. After review and discussion, at the request of Dr. Johnson, it was the consensus of the Board to defer action pending research on the proposed rules relative to any anti-trust violations and any other opinions on this matter and after thorough research to present this information to the Board for consideration. **Physicians; Licensure:** Amendments to the physician licensure rules as suggested by staff was presented for initial review and discussion to update generally for consistency with current standards and make other substantive and technical modifications made necessary by the passage of time and current practices. Following review and discussion at its January 2018 meeting, the Board suggested proceeding slowly with the proposed changes to consider how such changes may affect other Sections of the rules. In the interim, the Board approved moving forward with the suggested amendment to §417B to clarify that a renewal reminder would be mailed to licensees in lieu of an actual application. Note: This rule amendment to §417B was incorporated into the rule-making effort on Waiver of Qualifications. (See Rules Noticed for Intent to Adopt.) **Physicians; Complaints and Investigations; Assessment of Costs:** During its June 2019 meeting, the Board voted to provide *Notice of Intent* to adopt the originally proposed amendments in the *Louisiana Register* and to give consideration to a rule on assessment of costs. The draft remains under consideration by the Board. **Petitions for Rulemaking:** A rule for the form for petitions for adoption, amendment or repeal of a rule, and the procedure for their submission, consideration and disposition remains under consideration. Following further consideration and discussion during the February 17, 2020 meeting, the Board determined to provide *Notice of Intent* to adopt the proposed rules in the *Louisiana Register*. The proposed rules were transmitted to the Louisiana Occupational Review Commission and are anticipated to be considered at the Commission's next meeting. **Physician Licensure; International Medical Graduates (IMGs):** The Board was asked to conform the requirements for post-graduate training (PGY) for international medical

graduates (IMGs) with those applicable to US graduates, provided the applicant graduated from an approved medical school. Currently, IMGs are required to complete three years of PGY training in an accredited medical residency training program prior to licensure eligibility. U.S. medical graduates are required to complete 2 years of PGY accredited training or one (1) year with a commitment from the program for PGY-2 training with demonstration of completion of PGY-2 training as a condition to licensure renewal. Among other items, the request includes revising the criteria for approving foreign medical schools (e.g., treating them on par with U.S. Schools), which are accredited by some combination of the World Health Organization, the Accreditation Commission on Colleges of Medicine (ACCM), the National Committee on Foreign Medical Education and Accreditation (NCFMEA) and the Education Commission on Foreign Medical Graduates (ECFMG). A working draft of the proposed amendments was presented for the Board's initial review and consideration. Following review and discussion, it was the consensus of the Board to solicit input from the medical schools and other interested stakeholders prior to proceeding any further. **Physician Licensure; Continuing Medical Education:** On the motion of Dr. Howell, duly seconded by Ms. Sport, and passed by unanimous voice vote, the Board voted to defer action on the request to amend its continuing medical education ("CME") rules for all categories of licensees (starting first with physicians) to utilize an electronic reporting service for tracking and reporting CME hours. Notices will be sent at periodic intervals of the number of CME hours completed/required. A physician who does not satisfy the annual CME requirement will be ineligible for licensure renewal. A draft of the amendments was presented for review and discussion following which on the motion of Ms. Sport, duly seconded by Dr. Taylor and passed by unanimous voice vote, the Board voted to provide *Notice of Intent* to adopt the rule amendment in the next edition of the *Louisiana Register*. **Podiatry; Performance of History and Physicals:** Noting that a uniform podiatry 3 year postgraduate training program was implemented throughout all podiatry schools in 2013, the Board's Podiatry Advisory Committee has suggested a change in the current rules (1307G) to provide that licensed advanced practice podiatrists with 2 or more years of postgraduate training, may independently perform a complete history and physical ("H&P") on patients for the purpose of preoperative evaluation before podiatric procedure. The Committee also suggested that all licensed advanced practice podiatrists may independently perform a complete H&P for IRB approved podiatry research. The Committee appends its suggestions with the notes that (i) the H&P is done for evaluation and diagnosis only and (ii) there is no financial gain by the performance of H&Ps. At its February 17, 2020 meeting, the Board voted to provide a *Notice of Intent* to adopt the proposed rule amendments in the *Louisiana Register*. **Complaints and Investigations ("C&I"):** In conformity with recommendations of the LLA, the Board directed the development of: (i) criteria for determining whether to issue public or non-public actions; and (ii) guidance to provide a framework to guide future disciplinary dispositions. Draft rules were compiled to address such criteria and guidance and were attached for consideration. Following review and discussion, there was a request to change "complainant" in the draft rules to "Board". Following review and discussion, it was the consensus of the Board to defer action pending review by counsel.

13. General Administrative Matters; New Business; Attorney General's Representation.

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On the motion of Dr. Weather, duly seconded by Dr. Taylor and passed by majority roll call vote³, the Board voted to add the representation of the Office of the Attorney General as an item of new business. Following review and discussion, on the motion of Ms. Sport, duly seconded by Dr. Weather and passed by majority voice vote, the Board voted to accept the Attorney General's offer for legal services, in the interim of finding new legal counsel, for the foreseeable future, especially in the need of rulemaking as well as the agency at large, excluding the operations or processes of investigations.

14. General Administrative Matters; New Business; Allowance of Office of the Attorney General to Attend Executive Sessions. On the motion of Mrs. Sport, duly seconded by Dr. Weather and passed by unanimous voice vote, the Board voted to add the attendance of representatives from the Office of the Attorney General to attend executive sessions of the Board as an item of new business. Following discussion, on the motion of Ms. Sport, and duly seconded by Dr. Weather, and by unanimous voice vote, the Board voted to allow the Attorney General's staff to remain during executive sessions of the Board.

15. Public Comments. The President asked if anyone from the public had questions and/or any further comments. Hearing none the public session concluded.

[16.] Minutes of Executive Sessions. On the motion of Dr. Weather, duly seconded by Ms. Sport 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 April 27, 2020. Following review and discussion, the Board resumed in open session. On the motion of Dr. Thomas, duly seconded by Dr. Valentine and passed by unanimous voice vote, the Board approved the minutes of the executive sessions conducted during its meetings of April 27, 2020 with any necessary corrections.

[17.] Report on Pending Litigation. On the motion of Dr. O'Neill, duly seconded by Dr. Valentine and passed by unanimous voice vote, 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.

[18.] Personal Appearances/Docket Calendar. 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 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.

[19.] 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) and (4). Following review and

³ Dr. Weather abstained from voting on this matter.

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discussion the Board resumed in open session. On the motion of Dr. Valentine, duly seconded by Dr. Thomas and passed by unanimous voice vote, the Board made the following decisions:

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

Robin Kathleen Ford, DO, (Docket No., 98-I-016)
Kelsey Jeannine Webb, M.D., (Docket No., 20-I-076)
Patrick T. Gallagher, M.D., (Docket No., 19-I-712)
Derek Mark Smith, CLP-TCH, (Docket No., 17-I-338)
Daniel Christopher Dollar, M.D., (Docket 20-I-0101)

- b. Consent Order: The following Consent Order was rejected:

Docket No., 19-I-223

- c. Closed/Dismissed: The following matters were approved for closure/dismissal:

Investigation No., 20-066	Investigation No., 19-306 ⁴
Investigation No., 20-277	Investigation No., 17-849
Investigation No., 19-546	Investigation No., 20-316
Investigation No., 19-836 ⁵ ⁶	Investigation No., 20-298
Investigation No., 20-299	Investigation No., 20-I-307
Investigation No., 20-267	

- d. Closed/Dismissed: The following matters recommended for closure/dismissal with a Letter of Concern were accepted:

Investigation No., 19-I-810

Investigation No., 19-I-275

[20.] Licensure and Certification; Physicians and Surgeons; U.S./Canadian Medical Graduate; Reinstatement. On the motion of Dr. Johnson, duly seconded by Dr. Taylor and passed by unanimous voice vote, the Board convened in executive session to consider the non-routine application for reinstatement of the following, 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 on the motion of Ms. Sport, duly seconded by Dr. Valentine and passed by unanimous voice vote, the Board voted to deny the request of the following for reinstatement of her medical license until all the requirements are met:

Gupta, Suman D., M.D.

⁴ Dr. O'Neill recused himself from any and all participation in discussion and/or consideration of this matter.

⁵ Dr. Johnson recused himself from any and all participation in discussion and/or consideration of this matter.

⁶ The Board requested information on the protocol for handling prisoner complaints.

[21.] General Disciplinary Matters. On the motion of Dr. Johnson, duly seconded by Dr. Taylor and passed by unanimous voice vote, the Board convened in executive session to consider the request relating to the execution or modification of a Decision and/or Board Order as a matter relating to the character and professional conduct of a licensee, pursuant to La.Rev.Stat. 42:17A(1), (4) and (5). Following review and discussion, the Board resumed in open session and on the motion of Dr. Valentine, duly seconded by Ms. Sport and passed by unanimous voice vote, the Board voted to deny the request of the following for reinstatement of his suspended license in order to obtain a limited purpose license to work during the COVID-19 crisis:

Dyess, James Malcolm, M.D.

22. General Administrative Matters; New Business; Payment of Outstanding Invoices, Adams and Reese, LLP. On the motion of Dr. Valentine, duly seconded by Ms. Sport, and passed by unanimous voice vote, the Board voted to take up an item of new business, payment of outstanding invoices of Adams and Reese, LLP. Following discussion, on the motion of Dr. Taylor, duly seconded by Dr. Valentine and passed by unanimous voice vote, the Board voted to authorize Dr. Culotta to petition the Division of Administration for approval to pay the outstanding fees of Adams and Reese, LLP for the services provided from January 1, 2020 through June 15, 2020.

23. General Administrative Matters; Correspondence from the Attorney General; Lack of Professional Legal Service Contract. Following review and discussion, on the motion of Dr. Taylor, duly seconded by Dr. O'Neill and passed by majority roll call vote, the Board voted to recall the addition of the May 12, 2020 Attorney General letter to the public agenda (see number 7).

24. General Administrative Matters; New Business, Correspondence from the Attorney General; Lack of Professional Legal Service Contract; Executive Session. Following review and discussion, on the motion of Dr. Taylor, duly seconded by Dr. O'Neill, it was moved that the Board take up an item of new business, the correspondence from the Attorney General regarding the lack of a professional legal service contract, in executive session, pursuant to La.Rev.Stat. § 42:17A(1). The motion failed due to lack of a unanimous vote. Therefore, the letter is not on the executive agenda.

25. General Administrative Matters; New Business; Election of Vice-President. A motion was made by Ms. Sport, duly seconded by Dr. Taylor, to take up an item of new business, an election to fill the vacancy of the office of Vice-President due to the resignation of Dr. Howell. The motion failed due to the lack of a unanimous voice vote.

26. Next Meeting of the Board. The President reminded the members that the next meeting of the Board was scheduled for June 29, 30, 2020.

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 May 18, 2020 and approved by the Board on the 29th day of June 2020.

Witness my hand and seal of the Louisiana State Board of Medical Examiners this 29th

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day of June 2020.

Terri Roselyn Thomas, M.D.
Secretary-Treasurer

Attest:

Roderick Vince Clark, M.D., MBA
President