

**TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES**

April 10, 2008

The meeting was called to order at 10:15 a.m. by Chair, Michael Arambula, M.D. Committee members present were, Julie Attebury, Jose M. Benavides, M.D., Manuel Guajardo, M.D., Roberta Kalafut, D.O., Melinda McMichael, M.D., Paulette B. Southard, Timothy J. Turner, Timothy Webb, and Irvin Zeitler, D.O.

Agenda Item 9 - Discussion, recommendation, and possible action regarding the rule review and proposed amendments to the following board rules and chapters in 22TAC:

Item 9a Texas Medical Board Rules. Ms. Kaufman presented the following recommendations:

vi. Chapter 184 Surgical Assistants

Mr. Turner moved to recommend to the full board that the rules be published, with changes as discussed, in the Texas Register for public comment. Mr. Webb seconded. All voted in favor and the motion passed.

Agenda Item 2 - Discussion, recommendation, and possible action regarding applicants for licensure, permits, and certification.

Executive Session was considered. Mr. Turner moved, Dr. Benavides seconded, and the motion passed at 10:40 a.m. to go into executive session for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action and consideration of possible rehabilitation orders 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, 164.007 and 164.203; and Attorney Generals Opinion No. H-484.

There was no final action, decision, or vote with regard to any matter considered or discussed in executive session. The executive session ended at 3:10 p.m. A certified agenda of the executive session was made.

Item 2a Applicants appearing concerning eligibility

The Licensure Committee conducted hearings to review applicants appearing concerning eligibility. The hearings were conducted in Executive Session for deliberations concerning licensure applications and consideration of possible rehabilitation orders 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, 164.007 and 164.203; and Attorney Generals Opinion No. H-484. Following the hearings, the Committee reconvened and considered the applications.

1. Physician Licensure Applicants

Applicant #647 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that the applicant be granted a Texas medical license under a non-public, non-disciplinary rehabilitation order that includes the requirements specified in the Rehabilitation Checklist that has been distributed to the members of the committee.** This recommendation is due to a mental condition that may affect the practice of medicine. Factors contributing to this recommendation include the recommendation by a Board consultant that applicants likelihood of impairment will be substantially lowered to an acceptable risk if appropriate controls are in place. **Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #630 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be granted an unrestricted license. Ms. Attebury seconded the motion. All voted in favor. The motion passed.**

Applicant #640 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be determined ineligible for licensure.** This recommendation is due to providing false or misleading information to the Board; committing unprofessional or dishonorable conduct that is likely to deceive or defraud the public, or injure the public; and commission of a felony. Factors contributing to this recommendation include the applicants 1991 misdemeanor conviction for transfer of a concealable firearm without a permit; 1996 conviction for misdemeanor and felony unlawful use of a weapon, for carrying a concealed weapon in his car; 2003 arrest for assault; and the Committees determination that the

applicant's failure to disclose his criminal history on the physician licensure application was intentional. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #629 appeared, with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that the applicant be granted a Texas medical license, subject to an administrative penalty in the amount of \$1000.** This recommendation is due to providing false or misleading information to the Board. Factors contributing to this recommendation include the Committee's determination that the falsification was intentional. **Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Applicant #616 appeared, with counsel, before the Committee in executive session, on referral by the Executive Director. In open session, **Dr. Guajardo moved to recommend to the full Board that the applicant be granted a Texas medical license, subject to an administrative penalty in the amount of \$1000.** This recommendation is due to providing false or misleading information to the Board. Factors contributing to this recommendation include the committee's determination that the falsification was intentional. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #644 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Guajardo moved to recommend to the full Board that the applicant be granted an unrestricted license.** **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #643 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Mr. Turner moved to recommend to the full Board that the applicant be determined ineligible for licensure.** This recommendation is due to the applicant's failure to submit proof of passage of an acceptable licensure examination within the 10 years prior to the date of application, and to provide evidence that the applicant met an exception under Board rule 163.7 regarding recertification, passage of SPEX, or completion of 6 months of unique training. In addition, the applicant has not engaged in the active practice of medicine as defined by Board rule 163.11. **Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Applicant #646 appeared, with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Ms. Attebury moved to recommend to the full Board that the applicant be determined ineligible for licensure.** This recommendation is due to failure to practice

medicine with reasonable skill and safety to patients because of a mental or physical condition; disciplinary action by peers; and behaving in a disruptive manner toward other hospital personnel that could reasonably be expected to adversely affect patient care. In addition, the applicant has not actively practiced medicine since 2004. Factors contributing to this recommendation include disciplinary action, including placement on probation, and acceptance of resignation in lieu of further action by the applicants residency program, due to issues regarding academic performance; poor interpersonal and communication skills; lack of respect for authority; and treatment for depression and anxiety. **Further, Ms. Attebury moved to recommend to the full Board that upon receipt, within one calendar year, of a request for a physician-in-training permit of no less than one year, the physician-in-training permit may be granted by the Executive Director under a non-public, non-disciplinary rehabilitation order that includes the requirements specified in the Rehabilitation Checklist that has been distributed to the members of the Committee. In addition, the applicant must appear before the Licensure Committee before being granted a physician license.** Factors contributing to this recommendation include a positive evaluation from the applicants treating psychiatrist. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #623 appeared with counsel, before the Committee, in executive session, on appeal of the Executive Directors determination of ineligibility for reinstatement. In open session, **Mr. Turner moved to recommend to the full Board that the applicants request for relicensure be denied.** This recommendation is due to the applicants failure to demonstrate that the reissuance of a Texas medical license would be in the best interest of the public; the applicants disciplinary history with the Board; and failure to demonstrate that the applicant is physically, mentally and otherwise competent to return to the practice of medicine. Factors contributing to this recommendation include the applicants 8-year disciplinary history with the Board related to the intemperate use of drugs that resulted in the temporary suspension of the applicants license in 2003, and the subsequent surrender of that license; as well as 1994 and 2003 placements on deferred adjudication for felony prescription fraud; and the applicants time away from the active practice of medicine. **Further, Mr. Turner moved to recommend to the full Board that upon receipt, within one calendar year, of a request for a physician-in-training permit of no less than one year, the physician-in-training permit may be granted by the Executive Director under a public, non-disciplinary rehabilitation order that includes the requirements specified in the Rehabilitation Checklist that has been distributed to the members of the Committee. In addition, the applicant must appear before the Licensure Committee before being reissued a physician license.** Factors contributing to this recommendation include the applicants sobriety for over 4 years, compliance with the contract with the applicants county medical societys Physician Health and

Rehabilitation Committee, and the applicants work with others who suffer from addiction. **Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Applicant #645 appeared, with counsel, before the Committee, in executive session, on appeal of the Executive Directors determination of ineligibility. In open session, **Dr. Zeitler moved to recommend to the full Board that the applicant be determined ineligible for licensure.** This recommendation is due to failure to practice medicine in an acceptable professional manner consistent with public health and welfare; and disciplinary action by peers with a related malpractice suit. Factors contributing to this recommendation include partial suspension of the applicants privileges; and reprimand by the applicants peers due to complaints of inadequate infection control procedures, inadequate exam procedures, and not having a chaperone present during the examination of female patients; and a malpractice settlement for inappropriate physical examination of a patient without a chaperone. **Dr. Kalafut seconded. All voted in favor. The motion passed.**

Applicant #624 appeared with counsel, before the Committee, in executive session, on appeal of the Executive Directors determination of ineligibility. In open session, **Dr. McMichael moved to recommend to the full Board that the applicants application expiration date be extended until August 31, 2008 to allow one additional attempt at the Special Purpose Examination (SPEX).** This recommendation is due to the fact that the applicant has been practicing as a radiologist for over 20 years without any complaints or restrictions against the applicants licenses and that the three-attempt limit for SPEX did not go into effect until several weeks after the date of application. **Further, Dr. McMichael moved to recommend that upon passage of SPEX within one more attempt and completion of all other licensure requirements, the applicant be granted an unrestricted license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

2. Physician in training permit applicants There were none.
3. Acudetox certification applicants There were none.
4. Surgical assistant licensure applicants

Applicant #642 appeared before the Committee, in executive session, on appeal of the Executive Directors determination of ineligibility. In open session, **Dr. Zeitler moved to recommend to the full Board that the applicant be determined ineligible for surgical assistant licensure.** This recommendation is due to the applicants failure to demonstrate that the applicant is a graduate of a Commission on Accreditation of Allied Health Education Programs (CAAHEP) accredited surgical

assistant program or that the applicants education is substantially equivalent. **Dr. Guajardo seconded the motion. All voted in favor. The motion passed.**

Item 2b Applicants appearing for rehearing concerning eligibility.

1. Physician Licensure Applicants

Applicant #586's application was considered pursuant to new information that was available, but did not get considered, at the February 2008 Board meeting. In open session, **Mr. Turner moved to recommend to the full Board that the applicant be granted a Texas medical license under a non-public, non-disciplinary rehabilitation order that includes the requirements specified in the Rehabilitation Checklist that has been distributed to the members of the committee.** This action is due to an alcohol related incident in training and action taken by the applicants residency program due to the incident. Factors contributing to this recommendation include that an independent psychiatric evaluation was favorable if appropriate controls and treatment are in place. **Dr. Kalafut seconded the motion. All voted in favor. The motion passed.**

Applicant #601 appeared, with counsel, before the Committee, in executive session pursuant to the Committee granting the applicants motion for rehearing at the Boards February 2008 meeting. In open session, **Ms. Attebury moved to recommend to the full Board that the applicant be granted an unrestricted license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

2. Physician in training permit applicants There were none.

3. Acudetox certification applicants There were none.

4. Surgical assistant licensure applicants - There were none.

Item 2c Proposed orders offered by the Executive Director.

1. Physician Licensure Applicants - Mr. Simpson reported on eight orders offered by the Executive Director. **Mr. Turner moved to recommend to the full Board that all eight orders be approved. Dr. Benavides seconded. All voted in favor and the motion passed.**

2. Physician in training permit applicants - There were none.

3. Acudetox certification applicants - There were none.

4. Surgical assistant licensure applicants - - There were none.

Item 2d Applicants determined by staff to meet eligibility requirements.

1. Physician Licensure Applicants - There were 688 applicants who met all requirements to be considered for permanent licensure by the full Board. **Mr. Turner moved to recommend to the full board that all 688 applicants for permanent licensure be approved. Dr. Kalafut seconded the motion. All voted in favor. The motion passed.**
2. Acudetox certification applicants There were none.
3. Surgical assistant licensure applicants - There were 5 surgical assistant licensure applicants to be considered for approval. **Dr. Kalafut moved to recommend to the full board that all 5 surgical assistant licensure applicants be approved. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Agenda Item 3 Discussion, recommendation, and possible action regarding applicant requests:

Item 3a Requests for Rehearing There were none.

Item 3b Request for Waiver of Acupuncture License Requirements There were none.

Agenda Item 4 Discussion, recommendation and possible action regarding unsigned orders from previous meetings.

Ms. Garanflo reported that of the seven orders offered at the February 2008 Board meeting, four have been accepted. Two applicants have withdrawn. One order remains pending. In addition, four orders are still pending from previous meetings.

Agenda Item 5 Reports on:

Item 5a Applicant determinations of eligibility made by the Executive Director in the last period -

Ms. Garanflo presented a report on applicant determinations of eligibility made by the Executive Director for the period January 31, 2008 through April 1, 2008.

Item 5b Physician licensure process statistics Ms. Garanflo presented a report on various statistics related to the Licensure and Customer Affairs Division. The average number of days to process physician licensure applications has decreased from 100 days to 54 days. The large number of physician licensure applications continues, with fewer than in FY 06 year to date, but more than FY 07 year to date. The

number of applications waiting to be screened has decreased by half from last board meeting. The most applications completed in a month in FY 08 were completed this March with 318. Those completed in March 2008 were done in an average of 43 days. Regarding applicants for licensure in April 2008 whose applications took more than 51 days to complete, they averaged 197 days to complete with 122 of those days needed to complete the applicants most lengthy lacking item, which in all cases was the responsibility of the applicant to complete.

Agenda Item 6 Discussion, recommendation, and possible action regarding licensee requests:

Item 6a - Request of physician for activation of canceled physician licenses There were none.

Item 6b - Request of physician to return to Active Status from Texas Retired Status

Applicant #641 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. McMichael moved to recommend to the full Board that action on this request be deferred for up to two years, until the requestor is either recertified by the American Board of Internal Medicine or successfully completes an evaluation and mini-residency from the Knowledge, Skills, Training, Assessment and Research (KSTAR) program. Upon successful completion of these requirements, the Executive Director may return the physicians license to Active status.** This recommendation is due to the requestors Retired status since August 2002. Factors contributing to this recommendation include that the requestor has not taken sufficient steps to keep up medical knowledge since being placed in Retired status. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Agenda Item 7 - Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration.

Item 7a Surgical Assistants There were none.

Item 7b Acudetox There were 6 cancellations of acudetox certifications by request for incomplete registration. **Dr. Kalafut moved to recommend to the full board that the requests for cancellation of acudetox certification by request for incomplete registration be accepted. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Agenda Item 8 Discussion, recommendation, and possible action regarding Nonprofit Health Organizations:

Item 8a - Applicants for initial certification - There were 4 applications for initial certification as a Nonprofit Health Organization for approval. **Mr. Turner moved to recommend to the full board that the requests for initial certification as a Nonprofit Health Organization be approved. Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

Item 8b - Requests for biennial recertification - There were 8 applications for biennial recertification as a Nonprofit Health Organization for approval. **Ms. Southard moved to recommend to the full board that the requests for biennial recertification as a Nonprofit Health Organization be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Item 8c - Cancellation of organizations certified as Nonprofit Health Organizations - There were none.

Agenda Item 9 - Discussion, recommendation, and possible action regarding the rule review and proposed amendments to the following board rules and chapters in 22TAC:

Item 9a Texas Medical Board Rules. Ms. Kaufman presented the following recommendations:

- i. **Chapter 163 Licensure**
- ii. **Chapter 166 Registration**
- iii. **Chapter 171 Postgraduate Training Permits**
- iv. **Chapter 172 Temporary and Limited Licenses**
- v. **Previously addressed**
- vi. **Rule 187.13 Informal Board Proceedings Relating to Licensure Eligibility**

Mr. Turner moved to recommend to the full board that the rules be published, with changes as discussed, in the Texas Register for public comment. Ms. Southard seconded. All voted in favor and the motion passed.

Item 9b Texas Physician Assistant Board Rules. There were none.

Item 9c Texas State Board of Acupuncture Examiners Rules. There were none.

Agenda Item 10 - There being no further business, Dr. Arambula adjourned the meeting at 3:50 p.m.