

TEXAS MEDICAL BOARD
BOARD MEETING MINUTES

June 2, 2006

The meeting was called to order on June 2, 2006 at 8:30 a.m. by Board President, Roberta Kalafut, D.O. Board members present were Lawrence L. Anderson, M.D.; Julie Attebury; Jose M. Benavides, M.D.; Patrica S. Blackwell; David E. Garza, D.O.; Manuel G. Guajardo, M.D.; Margaret C. McNeese, M.D.; Eddie J. Miles, Jr.; Keith E. Miller, M.D.; Charles Oswalt, M.D.; Elvira Pascua-Lim, M.D.; John W. Pate, Jr., M.D.; Larry Price, D.O.; Annette P. Raggette; Paulette Southard; and Timothy J. Turner. Board staff present were Donald W. Patrick, M.D., J.D., Executive Director; Jerry T. Walker, M.P.H., Deputy Executive Director; Michele Shackelford, J.D., General Counsel; Robert Simpson, J.D., Assistant General Counsel; and various other staff. Dr. Garza read the Texas Medical Board Mission into the minutes.

"Our Board's mission is to protect and enhance the public's health, safety, and welfare by establishing and maintaining standards of excellence used in regulating the practice of medicine and ensuring quality health care for the citizens of Texas through licensure, discipline, and education."

Dr. Kalafut presented Dr. Garza a Board Resolution signed by board members and a plaque in honor of his dedication and service to the Board.

Agenda item #2, Executive Session. Dr. Price moved, Ms. Blackwell seconded, and the motion passed to go into Executive Session at 8:43 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and deliberation concerning licensure applications, and/or disciplinary action under the authority of the Open Meetings Act, Government Code, §§551.071 and 551.074; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, §§152.009, 155.058, 160.006, and 164.007, and 164.203; and Attorney General's Opinion No. H-484. Open session resumed at 9:21 a.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #3, Discussion, recommendation and possible action regarding approval of settlement in Cause No. GN304321; Texas State Board of Physician Assistant Examiners v. Greg Abbot, Attorney General of Texas. Ms. Shackelford reviewed the proposed settlement agreement concerning open records. After discussion, **Dr. Garza moved, Ms.**

Raggette seconded, and the motion passed to approve the settlement agreement as recommended by staff. After discussion, Dr. Price moved, Dr. Garza seconded, and the motion passed to authorize the Executive Committee to approve other pending lawsuit settlements agreements relating to release of licensure files contingent upon staff's recommendation that the agreement meets the intent to keep such information exempt from disclosure under the Open Government Act.

Agenda item #4, Discussion, recommendation and possible action regarding adoption of board policies regarding:

- A. The changing of applicant names in the past Licensure Committee minutes posted on the agency website to the appropriate applicant number. After discussion, Mr. Turner moved, Ms. Blackwell seconded, and the motion passed to adopt the Board policy as distributed that provides for the substitution of applicant names with the applicant number as included in past Licensure Committee minutes posted on the agency website.**
- B. DPRC procedure for action regarding cases recommended for dismissal by ISC panel. After discussion, Mr. Turner moved, Ms. Blackwell seconded, and the motion passed to adopt the Board policy as distributed that requires inclusion in the appropriate minutes the action and reason if the DPRC modifies or rejects an ISC panel recommendation to dismiss a case or if the Board modifies or rejects an ISC panel recommendation for settlement.**

Agenda item #5, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders. Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the Termination of Non-Public Rehabilitation Orders #287 and #213; Modification of Non-Public Rehabilitation Orders #278, #291, and #264; and Non-Public Rehabilitation Orders #389 and #390.

Agenda item #6, Consideration and Approval of Agreed Board Orders. Dr. Pate moved, Dr. Benavides seconded, and the motion passed to approve Agreed Board Orders for the following: Alfredo T. Garcia, M.D.; Bill J. Johnson, M.D.; Cassius M. Drake, M.D.; Michael S. Huffman, M.D.; John D. Huff, Sr., M.D.; Ramesh K. Srungaram, M.D.; Margaret G. Vanderlee, M.D.; Juan H. Serrano, M.D.; Killeen M. Moreno, M.D.; Edward A. Talmage, M.D.; Adam G. Arredondo, M.D.; Julio Shahar, M.D.; Davill Armstrong,

M.D.; Jianhuan Meng, M.D.; Paul H. Cho, M.D.; Jacob J. Novak, M.D.; Robert L. Cook, M.D.; Douglas C. Decker, M.D.; Jose Reyes, M.D.; David T. Netscher, M.D.; Scott W. Spann, M.D.; and Anant N. Mauskar, M.D.

After discussion, **Dr. Kalafut moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Dean E. Wade, M.D., as written.**

After discussion, **Dr. Price moved, Dr. Benavides seconded, and the motion passed to deny the Administrative Agreed Order for Federico Maese, M.D., and to schedule him for an Informal Settlement Conference.**

After discussion, **Dr. Garza moved, Dr. Price seconded, and the motion passed to deny the Agreed Order and to direct staff to file a State Office of Administrative Hearing complaint due to his prior board orders for drug or alcohol abuse and lack of rehabilitative potential.**

After discussion, **Dr. Price moved, Dr. Benavides seconded, and the motion passed to approve the Agreed Order for Craig T. Kopecky, M.D., with a clerical correction.**

After discussion, the Board deferred the Agreed Order for Peter Van Doren Kuhl, M.D., in order to review the file.

After discussion, **Dr. Benavides moved, Dr. Garza seconded, and the motion passed to approve the Agreed Order for Tina P. Di Blasi, M.D.**

After discussion, **Dr. Benavides moved, Ms. Raggette seconded, and the motion passed to approve the Agreed Order for Julio Shahar, M.D.**

Dr. Kalafut was recused. After discussion, **Dr. Price moved, Dr. Garza seconded, and the motion passed to approve the Agreed Order for Gary L. Heath, M.D.** Dr. Price signed the Agreed Order as Dr. Kalafut was recused.

After discussion, **Mr. Turner moved, Dr. Price seconded, and the motion passed to approve the Agreed Order for Frank E. Smith, M.D. with a clerical correction.**

After discussion, the Board deferred the Agreed Order for Gary S. Donovitz, M.D., in order to review the file.

Agenda item #7, Consideration and Approval of Modification Request/Termination Request Orders. Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the Modification Request/Termination Request Orders for the following: Halsey A. Wyatt, M.D.; Mounir M. Mekhail, M.D.; George R. Smith, Jr., M.D.; Jairo R. Olivares,

M.D.; William N. Meshel, M.D.; Keith E. Kesler, D.O.; Kevin B. Lane, D.O.; Jaime C. Lim, M.D.; Darrel R. Wells, M.D.; and Robert M. Lambert, M.D.

After discussion, Ms. Blackwell moved, Mr. Turner seconded, and the motion passed to approve the Modification Request Order for Roger D. Harman, M.D. with a clerical correction.

There were no items for Agenda item #8.

Agenda item #9, Consideration and Approval of Nunc Pro Tunc Orders. After discussion, **Dr. Garza moved, Ms. Blackwell seconded, and the motion passed to approve the Nunc Pro Tunc Order for Susan B. Kern, M.D.**

Agenda item #10, Consideration and Approval of Mediated Settlement Agreement Orders. After discussion, **Dr. Price moved Dr. Garza seconded, and the motion passed to approve the Mediated Settlement Agreement Orders for Carl S. Heller, M.D.; Miltiadis N. Leon, M.D.; and Muhammad Y. Shaikh, M.D.**

Agenda item #11, Consideration and Approval of Termination of Suspension Orders. **Dr. Garza moved, Dr. Pascua-Lim seconded, and the motion passed to approve the Termination of Suspension Order for Ricardo A. Rocha, M.D.** After discussion, **Dr. Garza moved, Dr. Pascua-Lim seconded, and the motion passed to approve the Termination of Suspension Order for Faiz Ur. Rehman, M.D.**

There were no items for Agenda item #12.

Agenda item #13, Report on Temporary Suspensions. Dewey Helmcamp, Manager of Litigation, gave a report on the following temporary suspension orders: 1.) Richard B. Patt, M.D. (Ex Parte); 2.) Richard B. Patt, M.D. (With Notice); and 3.) Mark R. Prince, M.D. (With Notice).

Discussion items #3 - #7, Consideration and approval of the April 6-7, 2006 Board meeting minutes; Consideration and Approval of Appointments to the Expert Physician Panel; Consideration and approval of the April 6, 2006 Disciplinary Panel Minutes; Consideration and approval of the May 9, 2006 Disciplinary Panel Minutes; and Consideration and approval of the May 11, 2006 Disciplinary Panel Minutes. After discussion, **Dr. Miller moved, Ms. Southard seconded, and the motion passed to approve the April 6-7, 2006 Board meeting minutes; Appointments to the Expert Physician Panel; April 6, 2006 Disciplinary Panel Minutes; the May 9, 2006 Disciplinary Panel Minutes; and the May 11, 2006 Disciplinary Panel Minutes.**

Agenda item #6 (continued), Consideration and Approval of Agreed Board Order for Gary S. Donovitz, M.D, and Peter Van Doren Kuhl, M.D. After discussion, Ms. Southard moved, Dr. Garza seconded, and the motion passed to deny the Administrative Agreed Board Order for Gary S. Donovitz, M.D. and to schedule him for an Informal Settlement Conference.

After discussion, **Dr. Pascua-Lim moved, Dr. Garza seconded, and the motion passed to approve the Agreed Order for Peter Van Doren Kuhl, M.D.**

Agenda item #14, Report on Automatic Orders for John B. Ranelle, D.O. Oscar San Miguel, staff attorney, gave a report on the automatic suspension of John B. Ranelle, D.O. **Dr. Miller moved, Dr. Pascua-Lim seconded, and the motion passed to approve an Agreed Order for John B. Ranelle, D.O., instead of the Automatic Suspension Order as distributed.**

Discussion item #1, Executive Director's Report. Dr. Patrick presented Dr. Benavides a framed article from the San Antonio Business Journal, dated April 14, 2006, in honor of Dr. Benavides' career and service to the community.

Discussion item #2, Board Member Report. Dr. Kalafut announced the appointment of new Board member Irvin Zeitler, Jr., D.O., and introduced new District Review Committee member Noe Fernandez, who made a brief statement.

Discussion item #8, Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.

Dr. Kalafut gave a report of the Executive Committee meeting. **Dr. Kalafut moved, Dr. Benavides seconded, and the motion passed to approve the Executive Committee meeting minutes and action items.**

Dr. Garza gave a report of the Disciplinary Process Review Committee meeting. **Dr. Garza moved, Ms. Southard seconded, and the motion passed to approve the Disciplinary Process Review Committee meeting minutes and action items with a correction to add "prescriptive" before medical devices on page 4.**

Dr. Benavides gave a report of the Finance Committee meeting. **Dr. Benavides moved, Ms. Blackwell seconded, and the motion passed to approve the Finance Committee meeting minutes and action items.**

Ms. Blackwell gave a report of the Legislative Committee meeting. **Ms. Blackwell moved, Mr. Turner seconded, and the motion passed to approve the Legislative Committee**

meeting minutes and action items with the correction that Dr. Anderson was not present at the meeting.

Dr. Pascua-Lim gave a report of the Standing Orders Committee meeting. Dr. Pascua-Lim moved, Dr. Benavides seconded, and the motion passed to approve the Standing Orders Committee meeting and action items.

Ms. Southard gave a report of the Public Information Committee meeting. Ms. Southard moved, Dr. Benavides seconded, and the motion passed to approve the Public Information Committee meeting minutes and action items.

Dr. Garza gave a report of the Ad Hoc Scope of Practice Committee meeting. Dr. Garza moved, Dr. Benavides seconded, and the motion passed to approve the Ad Hoc Scope of Practice Committee meeting minutes and action items with the correction to add "with."

Dr. Pate gave a report of the Licensure Committee Meeting. Dr. Pate moved, Dr. Benavides seconded, and the motion passed to approve the Licensure Committee meeting minutes and actions items with a clerical correction to add that applicant #466 must complete 10 hours of continuing medical education in ethics during each year of the order.

Agenda item #15, Discussion and presentations. Camille D. Miller, President and CEO of Texas Health Institute, presented a consumer's perspective of the Medical Board and recommendations to better utilize stakeholder groups.

During a working lunch, Doug Swanson, reporter for the Dallas Morning News, gave a brief history of articles he has authored concerning the regulation of medicine in Texas.

Agenda item #16, Public Hearing and Consideration of Adoption of Proposed Rule Changes.

- 1. Chapter 163, Licensure, to include a limit on Texas medical jurisprudence examination attempts, delegated authority to staff to issue licenses, alternative requirements for graduates of unapproved medical schools, and general rule cleanup.** Written comments were reviewed. No one signed up to present oral comments. After discussion, **Mr. Turner moved, Dr. Garza seconded, and the motion passed to adopt the proposed rules regarding Title 22, Texas Administrative Code, Chapter 163, as published in Volume 31, Texas Register, on April 28, 2006, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.**

2. **Chapter 165, Medical Records, to include amendments to 165.1 Medical Records, and the addition of 165.6 Medical Records Regarding an Abortion on an Unemancipated Minor.** Written comments were reviewed. Dorothy Brown for Representation Naishtat; Dr. Stanley for Representative Dawanna Dukes; and Dr. Paul Fine, Medical Director of Planned Parenthood of Texas, presented oral comments.

Dr. Price moved, Dr. Benavides seconded, and the motion passed to go into executive session at 1:37 p.m. for private consultation and advice of counsel with respect to legal matters under the authority of the Open Meetings Act, GOVERNMENT CODE, §551.071. Open session resumed at 1:55 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. Miller moved, Ms. Raggette seconded, and the motion passed to withdraw the proposed changes to Sections 165.1 and 165.6 of the Board Rules regarding parental consent for an abortion on an unemancipated minor, as published in the April 28, 2006 edition of the Texas Register, and to publish a revised Chapter 165, Section 165.1 and 165.6 in the Texas Register as a proposed rule that includes the following additions: notarization of the parental consent, and reference to "A Women's Right to Know" booklet and "A Women's Right to Know" resource directory.** Dr. Garza, Dr. Price, Dr. McNeese, Dr. Oswalt, and Ms. Southard voted against the motion.

3. **Chapter 166, Physician Registration, to include the addition of continuing medical education in forensic evidence collection, modifications to voluntary charity care practice by retired physicians, and general rule cleanup.** No written comments were received. No one signed up to present oral comments. **Ms. Raggette moved, Ms. Blackwell seconded, and the motion passed to adopt proposed rules regarding Title 22, Texas Administrative Code, Chapter 166, as published in Volume 31, Texas Register, on April 28, 2006, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules with a non-substantive grammar correction to add a colon.**
4. **Repeal of Chapter 170, Authority of Physician to Prescribe for the Treatment of Pain, and**
5. **New Chapter 170, Pain Management,** Written comments were reviewed. Ralph Rashbaum, M.D., presented oral comments. After discussion, **Mr. Turner moved,**

Ms. Blackwell seconded, and the motion passed to withdraw the repeal of Chapter 170 and the proposed new Chapter 170 as published in the Texas Register, and to form a resource group and schedule a meeting with this group to develop a revision to Chapter 170 to be considered at the August Medical Board meeting.

- 6. Chapter 171, Postgraduate Training Permits, to include clarification of reporting requirements, modifications to requirements for board-approved postgraduate fellowship training programs, and general rule cleanup. Written comments were reviewed. No one signed up to present oral comments. After discussion, Dr. Price moved, Dr. Benavides seconded, and the motion passed to adopt proposed rules regarding Title 22, Texas Administrative Code, Chapter 171, as published in Volume 31, Texas Register, on April 28, 2006, and that staff be directed to publish the proposed rules as adopted rules with a non-substantive change adding "onsite preceptor."**
- 7. Chapter 172, Temporary and Limited Licenses, to include the addition of section 172.13 relating to Conceded Eminence Licenses and general rule cleanup. No comments were received. No one signed up to present oral comments. Dr. Price moved, Ms. Blackwell seconded, and the motion passed to adopt the proposed rules regarding Title 22, Texas Administrative Code, Chapter 172, as published in Volume 31, Texas Register, on April 28, 2006, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.**
- 8. Chapter 174. Telemedicine to include amendments to 174.2, Definitions and 174.6 Delegation to and Supervision of Telepresenters regarding delegation of tasks and activities by a physician to a telepresenter. Written comments were reviewed. No one signed up to present oral comments. Ms. Ragette moved, Ms. Blackwell seconded, and the motion passed to adopt the proposed rules regarding Title 22, Texas Administrative Code, Chapter 174, as published in Volume 31, Texas Register, on April 28, 2006, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.**
- 9. Chapter 178, Complaints, to include amendments to 178.8 Appeals regarding the deletion of the deadline for filing an appeal. No written comments were received. No one signed up to present oral comments. Dr. Garza moved, Ms.**

Raggette moved, Ms. Blackwell seconded, and the motion passed to adopt the proposed rules regarding Title 22, Texas Administrative Code, Chapter 178, as published in Volume 31, Texas Register, on April 28, 2006, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.

10. Chapter 185, Physician Assistants, relating to changes mandated by SB419. No written comments were received. No one signed up to present oral comments. Dr. Garza moved, Ms. Blackwell seconded, and the motion passed to adopt the proposed rules regarding Title 22, Texas Administrative Code, Chapter 185, as published in Volume 31, Texas Register, on April 28, 2006, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules with a non-substantive clerical correction. Ms. Southard and Ms. Raggette opposed the motion.

11. Chapter 192, Office Based Anesthesia to include amendments to 192.1, to include amendments to the chapter title, 192.1, Definitions, 192.2, Provision of Anesthesia in Outpatient Settings, 192. 3, Compliance with Office-Based Anesthesia Rules, 192.4, Registration, 192.5, Inspections, 192.6 Requests for Inspection and Advisory Opinion. Written comments were reviewed. Melinda Wolford presented oral comments. Dr. Pate moved, Ms. Raggette seconded, and the motion passed to adopt the proposed rules regarding Title 22, Texas Administrative Code, Chapter 192, as published in Volume 31, Texas Register, on April 28, 2006, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules with a non-substantive correction.

12. Chapter 199, Public Information to include new 199.5, Notice of Ownership Interest in a Niche Hospital regarding requirements of physicians to notify the Department of State Health Services of an ownership interest in a niche hospital. No written comments were received. No one signed up to present oral comments. Dr. Benavides moved, Ms. Blackwell seconded, and the motion passed to adopt the proposed rules regarding Title 22, Texas Administrative Code, Chapter 199, as published in Volume 31, Texas Register, on April 28, 2006, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.

There being no further business the meeting adjourned at 2:29 p.m.