

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

February 7, 2008

The meeting was called to order at 9:45 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.

Executive Session was considered. Mr. Webb moved, Dr. Benavides seconded, and the motion passed at 9:47 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 3:24 p.m. A certified agenda of the executive session was made. Following the hearings, the Committee reconvened and considered the applications.

Dr. Zeitler was excused from the meeting.

Agenda Item 2 - Discussion, recommendation, and possible action regarding applicants appearing concerning eligibility.

Item 2a Physician licensure and Physician in Training permit

Applicant #622 appeared 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 granted a Texas medical license, subject to a public reprimand and an administrative penalty in the amount of \$1500.** This recommendation is due to providing false or misleading information to the Board. Factors contributing to this recommendation include the committees determination that the falsification

was intentional and multiple instances of failure to disclose. **Dr. Kalafut seconded the motion. All voted in favor. The motion passed.**

Applicant #537 appeared before the Committee in executive session due to a previous deferral for more information by the Licensure Committee. 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 recommendation is due to a mental condition that may affect the practice of medicine. Factors contributing to this recommendation include an independent psychiatric evaluation, which states that while there is evidence that the applicant has personality characteristics that have presented an unacceptable impairment in judgment, interpersonal skills and professional conduct, the applicant does not now have any illness or mental condition that is likely to present unacceptable impairment to practice medicine safely and reliably; and action taken by a hospital and by the Massachusetts Board. **Ms. Attebury seconded the motion. All voted in favor. The motion passed.**

Applicant #478 appeared with counsel before the Committee in executive session on referral by the Executive Director. In open session, **Dr. Kalafut 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: a recurrence of depression in September of 2007. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #503 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 determined ineligible for licensure.** This recommendation is due to a mental condition that may affect the practice of medicine, and not having actively practiced medicine full-time for one of the two years preceding the date of application. Factors contributing to this recommendation include that the applicant was involuntarily admitted in 2005 for treatment of schizophrenia; and has not actively practiced medicine since 2004. **Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #613 appeared with counsel before the Committee in executive session on appeal of an order offered by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that the applicant be granted a Physician in Training permit under a non-public, non-disciplinary rehabilitation order that includes the requirements in the order proposed by the Executive Director, with the exception that participation in AA or any equivalent program will be at the discretion of the independent forensic psychiatrist conducting the required medical evaluation.** This recommendation is due to the applicants inability to practice medicine with reasonable skill and safety because of substance abuse. Factors contributing to this recommendation include the applicants history of marijuana and alcohol use; and that in medical school the applicant was an excellent student and complied with monitoring requirements. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #625 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 an unrestricted license. Mr. Webb seconded the motion.** In discussion, Ms. Southard expressed concerns about the applicants problems in surgical practice. She stated that she would like to see a restriction to a group setting, and perhaps a chart monitor. Mr. Turner stated that there were four problem instances in this case with the most recent in 2004. Mr. Turner stated that he was inclined to vote against unrestricted licensure because the Board has been inundated with a large number of applicants due to tort reform and this applicant has peer review and medical malpractice cases and the Board should be cognizant of physicians having the perception that Texas does not hold them liable. Mr. Turner stated that he was inclined to support chart monitoring, and group practice. Dr. Guajardo stated that the applicant has been in practice for a number of years with numerous cases, and surgery, unfortunately, has risks and complications. Dr. Guajardo stated that the applicant has only had one case in ten years that was a real problem and that in his opinion the applicant would not be a danger to the public. Mr. Webb agreed with Dr. Guajardo and stated that the applicant is already planning to work in a group setting. Mr. Webb also wanted to point out that this applicants cases dont rise to the level of threat to public. The Chair called for a vote. **Dr. Arambula, Ms. Attebury, Dr. Benavides, Dr. Guajardo, Dr. Kalafut, and Mr. Webb voted in favor. Dr. McMichael, Ms. Southard, and Mr. Turner were opposed. The motion passed.**

Applicant #617 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, subject to a public reprimand and 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. McMichael seconded the motion. Ms. Attebury, Dr. Benavides, Dr. Guajardo, Dr. Kalafut, Dr. McMichael, Ms. Southard, and Mr. Webb voted in favor. Mr. Turner was opposed. The motion passed.**

Applicant #442 appeared with counsel before the Committee in executive session on appeal of a determination of ineligibility by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that the applicant be determined ineligible for a Texas medical license.** This recommendation is due to problems during prior training; inability to practice medicine with reasonable skill and safety because of a mental condition; unprofessional conduct; and negative evaluations (current program). Factors contributing to this recommendation include problems with three different training programs; history of depression; arrest for theft in 2003; and suboptimal evaluations from medical students. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #609 appeared with counsel before the Committee with counsel in executive session on appeal of determination of that a mini-residency would be required for unrestricted licensure. In open session, **Mr. Turner moved to recommend to the full Board that the applicant be determined ineligible for a Texas medical license.** This recommendation is due to not having actively practiced medicine full-time for one of the two years preceding the date of application. Factors contributing to this recommendation include that the applicant has not practiced clinical medicine since April 1998. **Dr. Guajardo seconded. All voted in favor. The motion passed.**

Applicant #620 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 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 unprofessional conduct towards peers, supervisors and hospital staff. **Dr. Guajardo seconded the motion. All voted in favor. The motion passed.**

Applicant #618 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 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 committees determination that the falsification was intentional. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Item 2b Acudetox certification - There were none.

Item 2c Surgical assistant licensure - There were none.

Agenda Item 3 Discussion, recommendation, and possible action regarding applicants appearing for rehearing concerning eligibility:

Item 3a Physician licensure and physician in training permit There were none.

Item 3b Acudetox certification - There were none.

Item 3c Surgical assistant licensure - There were none.

Agenda Item 4 Discussion, recommendation, and possible action regarding applicant requests:

Item 4a Requests for Rehearing **Applicant #586's** request for rehearing was considered. **Ms. Attebury moved to recommend to the full board that the request for rehearing be denied.** This recommendation is due to no significant new information being presented to the Board. Factors contributing to this recommendation include that the Committee fully considered information at November meeting. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #601's request for rehearing was considered. **Mr. Turner moved to recommend** to the full Board that the applicants request for a rehearing be granted due to new information being presented to the Board. Factors contributing to this recommendation include that the new information may be relevant to a decision by Board. **Ms. Attebury seconded the motion. All voted in favor. The motion passed.**

Item 4b Request for Waiver of Acupuncture License Requirements There were none.

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 November 15, 2007 through January 29, 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 have decreased from 100 days to 67.5 days. In addition, Ms. Garanflo discussed the change in content and vendor on the physician licensure jurisprudence exam. The pass rate declined from over 90% to approximately 60%. We audited the exam failures and have since adjusted all the scores to comply with the old pass rate. This will continue until we get the vendor to replace this exam with the former exam. We will also be reviewing the exam questions for future revision.

Agenda Item 6 Discussion, recommendation, and possible action regarding proposed orders for restriction of physician licensure and physician in training permit applicants Mr. Simpson reported on two orders offered by the Executive Director. **Mr. Turner moved to recommend to the full Board that both orders be approved. Dr. Benavides seconded. All voted in favor and the motion passed.**

Agenda Item 7 - Discussion, recommendation, and possible action regarding unsigned orders from previous meetings. Ms. Garanflo reported that of the eight orders offered at the November 2007 Board meeting, four have been accepted. Four orders remain pending. In addition, four orders are still pending from previous meetings.

Agenda Item 8 Discussion, recommendation, and possible action regarding applicants to be considered for licensure, permits, or certification:

Item 8a Physician licensure applicants - There were 674 applicants who met all requirements to be considered for permanent licensure by the full Board, including 16 Telemedicine applicants and 2 Public

Health applicants. **Mr. Turner moved to recommend to the full board that all 674 applicants for physician licensure (regular, Telemedicine, and Public Health) be approved. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Item 8b - Acudetox certification applicants - There was 1 Acudetox certification applicant to be considered for approval. Mr. Turner moved to recommend to the full board that the Acudetox certification applicant be approved. Dr. Guajardo seconded the motion. All voted in favor. The motion passed.

Item 8c - Surgical assistant licensure applicants - There was 1 surgical assistant licensure applicant to be considered for approval. Mr. Turner moved to recommend to the full board that the surgical assistant licensure applicant be approved. Ms. Southard seconded the motion. All voted in favor. The motion passed.

Agenda Item 9 - Discussion, recommendation, and possible action regarding licensee requests:

Item 9a - Request of physician for activation of canceled physician licenses There were none.

Item 9b - Request of physician to return to Active Status from Texas Retired Status There were none.

Agenda Item 10 - Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration.

Item 10a Surgical Assistants There were none.

Item 10b Acudetox There were none.

Agenda Item 11 - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations:

Item 11a - Applicants for initial certification - There were 3 applications for initial certification as a Nonprofit Health Organization for approval. **Ms. Southard moved to recommend to the full board that the requests for initial certification as a Nonprofit Health Organization be approved. Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Item 11b - Requests for biennial recertification - There were 17 applications for biennial recertification as a Nonprofit Health Organization for approval. **Mr. Turner moved to recommend to the full board that the requests for biennial recertification as a Nonprofit Health Organization be approved. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Item 11c - Cancellation of organizations certified as Nonprofit Health Organizations - There were 2 cancellations of organizations certified as Nonprofit Health Organizations to be considered. **Mr. Turner moved to recommend to the full board that Nonprofit Health Organizations be decertified. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Agenda Item 13 - Discussion, recommendation, and possible action regarding eligibility criteria for restricted licenses and permits to applicants with mental and physical impairments by ED under delegated authority. Ms. Garanflo presented a draft version of the process for determining eligibility for these orders offered by the Executive Director. Dr. Arambula instructed the committee that the process is a work in progress and he would appreciate feedback from the Committee members.

Agenda Item 12 - Discussion, recommendation, and possible action regarding proposed additions and modifications to board rules:

Item 12a Texas Medical Board Rules. Mr. Simpson presented the following recommendations:

- i. **Chapter 162.1 Supervision of Medical Students**
- ii. **Chapter 173.1 Profile Contents to include changes to 173.3 Physician- Initiated Updates, 173.7 Corrections and the Dispute Process**

Mr. Turner moved to recommend to the full board that the previously published rules for Chapter 162.1 be withdrawn and these rules be published as proposed in the Texas Register for public

comment. In addition, Mr. Turner moved to recommend to the full Board that Chapter 173.1, 173.3, and 173.7 be published as proposed in the Texas Register for public comment. Dr. Benavides seconded. All voted in favor and the motion passed.

Item 12b Texas Physician Assistant Board Rules. There were none.

Item 12c Texas State Board of Acupuncture Examiners Rules. There were none.

Agenda Item 14 - There being no further business, Dr. Arambula adjourned the meeting at 4:20 p.m.