

# Texas Medical Board

## BOARD MEETING MINUTES

February 6, 2009

The meeting was called to order February 6, 2009 at 8:02 a.m. by Irvin E. Zeitler, Jr., D.O., Board President. Board members present were Michael Arambula, M.D.; Julie Attebury; David Baucom; Patricia Blackwell; Jose M. Benavides, M.D.; Manuel Guajardo, M.D.; J. Scott Holliday, D.O.; Amanullah Khan, M.D.; M.D.; Margaret McNeese, M.D.; Larry Price, D.O.; Annette Raggette; Allan N. Shulkin, M.D.; Timothy J. Turner; and Timothy Webb, J.D. Board staff present were Mari Robinson, Interim Executive Director; Alan Moore, M.D., Interim Medical Director; Robert Simpson, J.D., General Counsel; Jane McFarland, Chief of Staff; Jaime Garanfio, Director of Customer Affairs; and various other staff.

The Texas Medical Board Mission was read into the minutes.

*Our Boards mission is to protect and enhance the publics 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.*

**Agenda item #2, Board Member Report.** Dr. Zeitler introduced and welcomed new board member J. Scott Holliday, D.O.

**Discussion/Action Items to be considered at any time the full board is in session:**

**Consent Agenda, Item #2. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.**

Dr. Zeitler gave a report of the Executive Committee minutes. **Ms. Raggette moved, Mr. Turner seconded, and the motion passed to approve the Executive Committee Minutes, as written.**

Ms. Attebury gave a report of the Finance Committee minutes. **Ms. Attebury moved, Mr. Turner seconded, and the motion passed to approve the Finance Committee Minutes, as written.**

**Agenda item #2, Board Member Report (continued).** Dr. Zeitler notified members that new committee assignments would be assigned for future committee meetings and requested members to notify him of any preferences for new committee assignments. Dr. Zeitler announced plans to attend the Federation of State Medical Boards meeting at the end of April. A topic of discussion at the FSMB will be maintenance of competence, which at this point is not something this board will address. Dr. Zeitler presented a commemorative Texas plaque and resolution for past board member, Melinda Fredricks dedication and service to the board.

**Agenda item #3, Executive Directors Report.** Ms. Robinson requested direction for time guidelines for temporary suspensions. The board directed staff to provide notice that temporary suspensions scheduled with notice will be set for eight hours, four hours for board staff and four hours for defense counsel. Additional time for the hearings panels questions will be provided.

Ms. Robinson reported on ongoing plans for security. After discussion, **Dr. Price moved, Mr. Turner seconded, and the motion passed to go into Executive Session at 8:20 a.m. for the purpose of deliberations concerning security matters under the authority of the Open Meetings Act, Government Code section 551.076.** Open session resumed at 8.45 a.m. and it was announced that no action was taken. A certified agenda was made.

The board directed staff to review security for 1.) the configuration of the ISC room; 2.) a possible security system to include cameras; 3.) the prescreening of individuals attending hearings; and 4.) the location and configuration of the board room security officer.

Ms. Robinson reported meeting with several legislators and reported that the Senate Finance hearing is scheduled on February 23<sup>rd</sup> and encouraged board members to attend the hearing.

Ms. Robinson reported that the Sunset Review in the first quarter of fiscal year 2009 validated both the agency's success in accomplishing licensure goals and the current challenges in meeting increased enforcement demands.

Ms. Robinson reported on interaction with Department of Public Safety and Drug Enforcement Administration to address the issue of pill mills by requiring pain clinic owners to be a licensed physician and the clinic registered and inspected with a fee to administer this program.

Ms. Robinson gave a report on a proposed state-wide physician health and rehabilitation program overseen by this board, but separate, to encourage physicians to seek rehabilitation and care.

Ms. Robinson gave a report on the AAPS draft bill and the proposed response.

Ms. Robinson gave a report on the Legislative Appropriation Request and Exceptional Items. Additional revenue may provide funding for exceptional items for 1.) 11 new staff members; 2.) information technology; 3.) security; 4.) outreach to medical community; and 5.) merit pay for staff.

Ms. Robinson gave a report that the 2.5% cut directed by the Lieutenant Governor and Speaker of the House was achieved by reducing: newsletters mailings; staff travel; document storage; computer replacement; one board meeting for the Acupuncture and Physician Assistant boards; mailings of paper license; advertising vacant staff positions; microfilming; using wireless modems; combining phone and fax lines for filed staff; travel for management training; and SOAH cases to next year.

Ms. Robinson announced the retirement of long time employee Lloyd McRae, Compliance Manager.

**Agenda item #4, Medical Directors report.** Dr. Moore reported that the chart monitoring system is being reviewed to help provide a more efficient and effective system with the goal to provide consistency in the reports.

**Agenda item #5, Discussion regarding joining in a new lawsuit regarding the Marriage and Family Therapists, who want to be able to diagnose mental illness.** After discussion, the board directed staff to join the Texas Medical Associations lawsuit regarding the Marriage and Family Therapists.

**Agenda item #6, Discussion and possible action regarding current litigation.** Mr. Simpson discussed pending litigation.

The board recessed for ten minutes.

**Agenda item #7, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders.** Mr. Turner moved, Ms. Attebury seconded, and the motion passed to approve the Non-Public Rehabilitation Orders #566, #567, #569, and #571; the Non-Public Nunc Pro Tunc Orders #562 and #513; Non-Public Modification Denied of Rehabilitation Order #416; Non-Public Modification of Rehabilitation Orders #371, and #380; and Non-Public Termination Granted of Rehab Orders #464, and #324.

Dr. Price moved, Ms. Raggette seconded, and the motion passed to go into Executive Session at 9:42 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 Generals Opinion No. H-484. Open session resumed at 10:03 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, Dr. McNeese moved, Ms. Raggette seconded, and the motion passed to approve the Non-Public Termination Granted of Rehab Order #453, as written.

After discussion, Mr. Turner moved, Dr. Price seconded, and the motion passed to approve the Non-Public Rehab Order #568, as written.

After discussion, Dr. Holliday moved, Dr. Benavides seconded, and the motion passed to deny the Non-Public Modification Granted of Rehab Order #323.

After discussion, Dr. Price moved, Mr. Turner seconded, and the motion passed to approve the Non-Public Rehab Order #570 with the modification to the Findings of Fact #11 to read that the Respondent believes

**Agenda item #19, Consideration and Approval of Proposal for Decision.** Edward Van Wormer, M.D., SOAH #503-08-4001. Suzanne Marshal, Administrative Law Judge, gave the report and recommendation. Dr. Van Wormer appeared with his attorney, Louis Leichter. Scott Freshour, staff attorney, appeared representing the Board. Mr. Freshour gave a presentation. Mr. Leichter gave a presentation. After discussion, Dr. Arambula moved, Dr. Benavides seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, except Findings of Fact #8 which is a sanction recommendation from the ALJ, the determination of which is reserved for the board and to approve the Final Order by staff, to revoke Dr. Van Wormers license. Dr. Price voted against the motion.

**Agenda item #8, Consideration and Approval Agreed Board Orders.** Dr. Holliday was recused for consideration of the Agreed Order for Richard A. Carter, M.D. Dr. Price moved, Mr. Turner

seconded, and the motion passed to approve the Agreed Board Orders for the following: Daniela Badea-Mic, M.D.; Rick A. Boyles, M.D.; Richard A. Carter, D.O.; Kathleen M. Gilmore, M.D.; Reuben A. Isern, M.D.; Thun T. Nguyen, M.D.; Donald Delmer Pope, M.D.; Narasimha S. Rao, M.D.; Gary Lynn Rea, M.D.; Robert G. Snow, D.O.; Bashar Alaswad, M.D.; Jose Campo, M.D.; David D. Cassles, S.A.; Dora Busby Crandall, M.D.; Mark Crouch, D.O.; James A. Facello, D.O.; David P. Gillett, M.D.; Pamela Gruchacz, M.D.; Vernon J. Hayes, D.O.; Darcey G. Kobs, Jr., M.D.; Sunil K. Reddy, M.D.; Ricardo M. Rodriguez; Charles Sitomer, M.D.; Stephen F. Waller, M.D.; Phillip A. Ward, D.O.; Douglas W. Wheeler, M.D.; Mark L. Wright, M.D.; and Qaiser Yusuf, M.D.

After discussion, Dr. Arambula moved, Dr. Price seconded, and the motion passed to approve the Agreed Order for Minerva Gomez, M.D., as written.

After discussion, Dr. Arambula moved, Mr. Turner seconded, and the motion passed to approve the Agreed Order for Timothy T. Hamilton, M.D., with the modification to Finding of Facts #13 to amend language to Respondent does not deny all of the Findings of Facts

After discussion, Dr. Price moved, Dr. Benavides seconded, and the motion passed to approve the Agreed Order for Alan T. Lloyd, M.D., as written.

After discussion, Dr. Price moved, Mr. Turner seconded, and the motion passed to approve the Agreed Order for Clinton C. Price, M.D., with the modification to require a Prevention and Management of Aggressive Behavior course, due the nature of the allegation of aggressive behavior.

After discussion, Ms. Raggette moved, Ms. Attebury seconded, and the motion passed to approve the Agreed Order for Thomas D. Starkey, M.D., with the modification to clarify an ISC will be scheduled upon review of chart monitoring of surgical operative reports and medical records.

After discussion, the Agreed Order for #16 was pulled and deferred to expand the Findings of Facts to justify the order.

After discussion, Dr. Arambula moved, Dr. Benavides seconded, and the motion passed to approve the Agreed Order for Mouin Sabbagh, M.D., with the modification that due to the amount of diversion of drugs to require no prescribing of controlled substances for family members and to keep a controlled substances log book.

After discussion, Dr. Guajardo moved to approve the Agreed Order for Benjamin S. Zertuch, M.D., with the modification that due concerns for high risk patient recognition that the respondent is required to seek consultations from a OB-GYN when he has a high risk patient. Dr. Price moved, Mr. Turner seconded a friendly motion adding the modification that the order is a three year order with one year of chart monitoring and 10 hours of continuing medical education in high risk pregnancy in the first year. The motion passed to approve the Agreed Order for Benjamin S. Zertuch, M.D., with the modification that due to concerns for high risk patient recognition to modify the order to a three year order with one year of chart monitoring; 10 hours of continuing medical education in high risk pregnancy in the first year of the order; and the requirement to seek an obstetrics-gynecology consultation for any high risk patients.

**Agenda item #20. Open forum for public comments.** Joel Hochman, M.D., and Shirley Pigott, M.D., presented public comments.

The board recessed for lunch at 11:40 a.m. and reconvened at 12:13 p.m.

**Agenda item #13, Consideration and Approval of Termination of Suspension Orders.** After discussion, **Mr. Turner moved, Ms. Raggette seconded, and the motion passed to approve the Termination of Suspension Order- Denied for Guaracy F. De Carvalho, M.D., as written.**

**Agenda item #7, Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders (continued).** After discussion, **Mr. Turner moved, Ms. Raggette seconded, and the motion passed to approve the Non-Public Suspension Order for #469 with a clerical correction changing 2007 to 2009.**

**Agenda item #21, Discussion recommendation and possible action regarding proposed rules.**

- a. **Chapter 162. Supervision of Medical School and Physician Assistant Students, rule review and amendments to**
- **162.1. Supervision of Medical Students.**

No written comments were received and no one signed up to present oral comments. **Dr. McNeese moved, Dr. Arambula seconded, and the motion passed to adopt Chapter 162. Supervision of Medical School and Physician Assistant Students, rule review and amendments to 162.1. Supervision of Medical Students, as published.**

- b. **Chapter 171. Postgraduate Training Permits, amendments to**
- **171.7. Inactive Status.**

No written comments were received and no one signed up to present oral comments. **Dr. Arambula moved, Dr. McNeese seconded, and the motion passed to adopt the proposed amendments to Chapter 171. Postgraduate Training Permits 171.7. Inactive Status, as published.**

- c. **Chapter 172. Temporary Licenses, amendments to**
- **172.4. State Health Agency Temporary License.**
  - **172.8. Supervision of Medical Students.**

Representatives of the Methodist Hospital System, Jennifer Rangel, Dr. Osama Gabor and Marissa Arreola presented oral comments. Written comments were received and reviewed. After discussion, **Mr. Turner moved, Ms. Attebury seconded and the motion passed to pull 172.8. Supervision of Medical Students.** The board directed staff to continue to issue temporary facility licenses under the current procedures and to schedule a workgroup to review.

After discussion, **Ms. Attebury moved, Ms. Blackwell seconded, and the motion passed to adopt the proposed amendments to Chapter 172. Temporary Licenses, 172.4. State Health Agency Temporary License, as published.**

- d. **Chapter 175. Fees, Penalties, and Forms, amendments to**

- 175.1. Application Fees.
- 175.3. Penalties.

No written comments were received. Dr. Pigott signed in to present oral comments, but was not present. After discussion, **Ms. Attebury moved, Ms. Blackwell seconded, and the motion passed to adopt the amendments to Chapter 175. Fees, Penalties, and Forms, 175.1. Application Fees. and 175.3. Penalties, as published.**

- e. **Chapter 185. Physician Assistants,** amendments to
- 185.2. Definitions.

No written comments were received. No one signed in to present oral comments. After discussion, **Ms. Blackwell moved, Dr. Khan seconded, and the motion passed to adopt the amendments to Chapter 185. Physician Assistants, 185.2. Definitions, as published.**

- f. **Chapter 189. Compliance Program** rule review and amendments to
- 189.1. Purpose and Scope.
  - 189.2. Definitions.
  - 189.4. Limitations on Physician Probationers Practice.

No written comments were received. No one signed in to present oral comments. After discussion, **Ms. Blackwell moved, Ms. Attebury seconded, and the motion passed to adopt the Chapter 189. Compliance Program, rule review and amendment to 189.1. Purpose and Scope; 189.2. Definitions; and 189.4. Limitations on Physician Probationers Practice, as published.**

**Agenda item #22, Discussion, recommendation and possible action regarding proposed rule changes to be sent to the Texas Register for purposes of allowing public comment at the Medical Boards April 2009 meeting.**

- a. **Chapter 183. Acupuncture,** rule review and amendments to
- 183.2 Definitions
  - 183.4 Licensure
  - 183.7 Scope of Practice
  - 183.10 Patient Records
  - 183.20 Continuing Acupuncture Education

After discussion, **Ms. Blackwell moved, Dr. Khan seconded, and the motion passed to approve the proposed rule review and changes to Chapter 183. Acupuncture, 183.2 Definitions; 183.4 Licensure; 183.7 Scope of Practice; 183.10 Patient Records; and 183.20 Continuing Acupuncture Education to be sent to the Texas Register for purposes of allowing public comment at the Medical Boards April 2009 meeting, as written.**

There were no items for Agenda item #9, Consideration and Approval of Administrative Orders.

**Agenda item #10, Consideration and Approval of Modification Request/Termination Request Orders.** Dr. Arambula moved, Ms. Blackwell seconded, and the motion passed to approve the Modification Request Orders for Stephen N. Fisher, M.D.; Frank Guajardo, D.O.; Paul H. Cho, M.D.; the Termination Requests Order for Gregory J. Elders, M.D.; and the Termination Requests Denied for David Donnel, M.D., and James Elbaor, M.D.

**Agenda item #11, Consideration and Approval of Nunc Pro Tunc Orders.** Dr. Arambula moved, Ms. Blackwell seconded, and the motion passed to approve the Nunc Pro Tunc Order for Suraphandhu Srivathanakul, M.D.

**Agenda item #12, Consideration and Approval of Mediated Settlement Agreed Orders.** Dr. Arambula moved, Ms. Blackwell seconded, and the motion passed to approve the Mediated Settlement Agreed Orders for Dale C. Davies, M.D.; Brian Lee LeCompte, M.D.; and Ernesto P. Rhodes, M.D.

**Agenda item #13, Consideration and Approval of Termination of Suspension Orders.** Dr. Arambula moved, Ms. Blackwell seconded, and the motion passed to approve the Termination of Suspension Order for Guaracy F. De Carvalho, M.D.

There were no items for Agenda item #14.

**Agenda item #15, Report on Temporary Suspension.** Nancy Leshikar gave a report on the Temporary Suspension of Janice Renee Crowder, M.D.

**Agenda item #16, Report on Automatic Orders.** Ms. Leshikar gave a report on the Automatic Order for Brent J. Coleman, D.O.

**Agenda item #17, Consideration and approval of cease and desist orders.** Ms. Blackwell moved, Dr. Arambula seconded, and the motion passed to approve the cease and desist order for Agnes V. Yollo, M.D.

There were no items for Agenda item #18.

**Discussion/Action Items to be considered at any time the full board is in session:**

**2. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.**

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

Dr. Shulkin gave a report of the Disciplinary Process Review Committee. **Dr. Shulkin moved, Ms. Blackwell seconded, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items.**

**1. Consent Agenda:**

- A. Dr. McNeese moved, Dr. Arambula seconded, and the motion passed to approved the December 9, 2008 Board Minutes.**
- B. Dr. Shulkin moved, Ms. Blackwell seconded, and the motion passed to approve the December 9, 2008 Disciplinary Panel Minutes regarding John E. Perry, III, M.D., Temporary Suspension With Notice and the January 27, 2009 Disciplinary Panel Minutes regarding Janice Crowder, M.D., Temporary Suspension With Notice.**

The meeting adjourned at 1:18 p.m.