

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

October 9, 2008

The meeting was called to order at 10:03 a.m. by Chair, Michael Arambula, M.D. Committee members present were Jose M. Benavides, M.D.; Roberta Kalafut, D.O.; Paulette B. Southard; Timothy J. Turner; Timothy Webb; and Irvin Zeitler, D.O.

Agenda Item 2 Discussion, recommendation, public comment, and possible action regarding licensure application and additional forms.

Ms. Garanflo presented a draft containing possible changes to the physician licensure application and additional forms. The Committee discussed the possibilities, including additional language regarding failure to disclose information on the application. The Committee directed staff to incorporate changes that were discussed into a final draft and to place a discussion item on the agenda for the next meeting.

Agenda Item 11 - Discussion, recommendation, and possible action regarding administrative penalty guidelines.

The Committee discussed the possibility of utilizing a range of penalty amounts in orders offered by the Executive Director, in consultation with the Licensure Chair, to applicants who intentionally failed to disclose information on their licensure applications. Discussion focused on the seriousness of events that are not disclosed and how recently the events occurred. The Committee reached consensus that there should be a range in penalty fees from \$1,000 to \$2,000 for intentional falsification. Regarding applicants who fail to disclose information on their applications and who can clearly and convincingly demonstrate that the false statements were made without willful intent, the Committee reiterated that the Executive Director, in consultation with the Licensure Chair, may consider offering applicants the opportunity to withdraw the application with false statements and reapply with truthful answers.

Agenda Item 3 - Discussion, recommendation, and possible action regarding applicants for licensure, permits, and certification.

Dr. Kalafut moved, **Ms. Southard** seconded, that the Committee close the meeting to the public and continue in Executive Session for deliberations concerning licensure applications. The motion passed. Dr. Arambula announced that the meeting would be closed for deliberations at 10:59 a.m. concerning

licensure applications and the character and fitness of applicants under the authority of The Medical Practice Act Sections 152.009 and 155.058, Occupations Code, and that while in executive session, the Board would not take any action, make any decision, or vote with regard to any matter that may be considered or discussed. A certified agenda of any executive session will be made.

The executive session ended at 3:25 p.m.

Item 3a Applicants appearing concerning eligibility

The Licensure Committee conducted hearings to review applicants appearing concerning eligibility. The hearings were conducted in Executive Session. Following the hearings, the Committee reconvened and considered the applications.

1. Physician Licensure Applicants

Applicant #704 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 applicants history of depression since 2001; that applicants mental condition resulted in relinquishment of clinical privileges in 2006; and that applicant underwent an independent psychiatric evaluation and the psychiatrist recommended licensure with conditions. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #689 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, subject to an administrative penalty in the amount of \$1000.** This recommendation is due to disciplinary action taken by another state board unrelated to patient care. Factors contributing to this recommendation include that another state board took action based on the applicants personal relationship with a patient. **Dr. Benavides seconded the motion. Dr. Kalafut recused herself. Dr. Benavides, Ms. Southard; Mr. Turner; Mr. Webb; and Dr. Zeitler voted in favor. The motion passed.**

Applicant #717 appeared before the Committee, with counsel, 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 granted an unrestricted Texas medical license. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #715 appeared before the Committee, in executive session, on appeal of the Executive Directors determination of ineligibility. 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 failure to comply with the Medical Practice Act regarding exam attempts. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #714 appeared, with counsel, before the Committee in executive session, on appeal of the Executive Directors recommendation of an administrative penalty. In open session, **Dr. Zeitler 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 \$2000.** 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. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #492 appeared, with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Benavides moved to recommend to the full Board that the applicant be granted a Texas medical license under a public, non-disciplinary rehabilitation order that limits practice specialty to Psychiatry and includes the requirements specified in the Rehabilitation Checklist that has been distributed to the members of the committee.** This recommendation is due to the applicants substance abuse history and prior action by the Board. Factors contributing to this recommendation include the applicants compliance with current Board order, sobriety date of February 2004, and favorable evaluations from training program. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #705 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 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 the applicants inability to practice

medicine due to a mental condition, and unprofessional conduct that resulted in disciplinary action by peers. Factors contributing to this recommendation include placement on probation during residency training due to unprofessional conduct that eventually resulted in the applicants resignation from the program in lieu of further action; subsequent completion of residency training at another program with no further instances of unprofessional conduct reported; and a diagnosis of major depression for which applicant has obtained treatment and last reported incident or treatment since 2005. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #702 appeared 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 applicants application be deferred to allow applicant to obtain a 96 hour inpatient psychiatric evaluation approved by the Executive Director and to include the Minnesota Multiphasic Personality Inventory (MMPI) and Millon Clinical Mutiaxial Inventory (MCMI) evaluations.** This recommendation is due to disciplinary action taken by peers. Factors contributing to this recommendation include disciplinary action while in residency training due to dishonesty and unprofessional conduct that resulted in termination from training program. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #716 appeared, with counsel, 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 applicants request for reissuance be denied.** This recommendation is due to: use of alcohol that could endanger patient safety, past disciplinary history with the Board, and time out of the active practice of medicine. Factors contributing to this recommendation include the applicants history of alcohol dependence; disciplinary action by the Board that included the suspension of applicants license due to violation of prior order by relapsing; and that the applicant has not practiced in over five years, and has not maintained sufficient medical knowledge. **Further, Mr. Webb moved to recommend to the full Board that the applicant be granted a Physician in Training permit 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.** Factors contributing to this recommendation include the applicants acceptance into a residency program that is aware of applicants alcohol dependence history and will assist in recovery and compliance with Boards action; and statements by treating practitioner that support applicants sobriety and recovery. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #713 appeared before the Committee in executive session, on referral by the Executive Director. In open session, **Dr. Zeitler moved to recommend to the full Board that the applicant be determined ineligible for a Texas medical license.** This recommendation is due to disciplinary action by peers and submission of false or misleading information to the Board. Factors contributing to this recommendation include that residency program dismissed applicant for unacceptable standard of care, specifically illegal conduct related to the removal of patient charts from patient setting and the subsequent alteration of the official medical record. Applicant did not report the disciplinary action taken by the program on the application for licensure. **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 3b Applicants appearing for rehearing concerning eligibility.

1. Physician Licensure Applicants There were none.
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 3c Proposed orders offered by the Executive Director.

1. Physician Licensure Applicants Ms. Garanflo reported on seven orders offered by the Executive Director. **Dr. Zeitler moved to recommend to the full Board that all seven 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 3d Applicants determined by staff to meet eligibility requirements.

1. Physician Licensure Applicants - There were 268 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 268 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 three surgical assistant licensure applicants to be considered for approval. **Mr. Turner moved to recommend to the full board that all three surgical assistant licensure applicants be approved. Dr. Zeitler seconded the motion. All voted in favor. The motion passed.**

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

Item 4a Requests for Rehearing Applicant #670's request for rehearing was considered. **Ms. Southard 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. However, the minutes from the June 2008 board meeting should be amended to remove the language regarding recurring claims and complaints with the Florida board as mostly related to standard of care. The minutes should state that the complaints were related to standard of care and inadequate supervision of delegates. **Dr. Kalafut 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 Discussion, recommendation and possible action regarding unsigned orders from previous meetings.

Ms. Garanflo reported that of the four orders offered at the August 2008 Board meeting, all four have been accepted. Two orders are still pending from previous meetings.

Agenda Item 6 Reports on:

Item 6a 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 August 25, 2008 through September 30, 2008.

Item 6b Physician licensure process statistics Ms. Garanflo presented physician licensure statistics for FY 08, including the final count of applications received during the year. A report of the 226 physicians to be licensed at this board meeting as of October 2, 2008 reflected an average time to license of 47 days. Ms. Garanflo noted that during the licensure phase of the process, some applicants were discovered to be

lacking items that they should have been provided during the pre-licensure screening process. This increases the average days to license physicians. Ms. Garanflo will monitor the situation.

Agenda Item 7 Discussion, recommendation, and possible action regarding licensee requests:

Item 7a - Request of physician for activation of canceled physician licenses There were none.

Item 7b - Request of physician to return to Active Status from Texas Retired Status There were none.

Agenda Item 8 - Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration.

Item 8a Surgical Assistants There were none.

Item 8b Acudetox There were none.

Agenda Item 9 Discussion, recommendation, and possible action regarding Nonprofit Health Organizations:

Item 9a - Applicants for initial certification - There were two 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. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Item 9b - Requests for biennial recertification - There were 35 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 9c - Cancellation of organizations certified as Nonprofit Health Organizations - There were none.

Agenda Item 10 - Discussion, recommendation, and possible action regarding Rule Review and proposed changes to **board rules** in the following sections in Title 22 of the Texas Administrative Code:

Texas Medical Board Rules

1. 163.5 - Licensure Documentation
2. 166.1 - 166.6 Physician Registration
- a. 3. 172.4 - State Health Agency Temporary License

Mr. Turner moved to recommend to the full board that all three rules be published as proposed in the Texas Register for public comment. Dr. Zeitler seconded the motion. All voted in favor. 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.

The Committee directed staff to research other states policies regarding applicants who are determined ineligible. Of special interest is: 1) whether other state licensing boards allow applicants to withdraw before the final determination of ineligibility is made; 2) if withdrawals are allowed, whether they are reported to the Federation of State Medical Boards or any other entity; and, 3) whether other state licensing boards would want to know that a sister state licensing board allowed an applicant to withdraw in lieu of a determination of ineligibility. Staff is to report to the Committee at the February 2009 board meeting.

Agenda Item 12 - There being no further business, Dr. Arambula adjourned the meeting at 3:45 p.m.