

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

October 5, 2006

The meeting was called to order at 11:26 a.m. by Chair, John Pate, Jr., M.D. Committee members present were Julie Attebury, Jose M. Benavides, M.D., Melinda S. Fredricks, Manuel Guajardo, M.D., Eddie J. Miles, Jr., Charles Oswalt, M.D., Elvira Pascua-Lim, M.D., Larry Price, D.O., and Annette P. Raggette.

Agenda Item 13 - Discussion and direction to staff regarding possible changes to remedies for active practice of medicine requirement. Ms. Garanflo reported that applicants for full physician licensure are required to comply with Rule 163.11 regarding active practice of medicine or an alternative as listed in the rule. She stated that the mini-residency alternative has become the most frequently used, however, some applicants understand the rule to mean that if they complete one of the other alternatives they will comply with the rule. Ms. Garanflo asked the committee to provide input as to whether the rule should be changed. Committee members discussed keeping the alternatives in the rule while clarifying that the alternatives may be recommended to the applicant after review of the application. In addition, committee members discussed refining the guidelines to include consideration of recent specialty board certification or recertification and recent teaching or academic activities. The Committee directed staff to present the input for discussion at the next Licensure Stakeholder Workgroup meeting.

Agenda Item 14 - Discussion and direction to staff regarding guidelines for evaluation of circumstances in which an applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems. Senate Bill 419 mandates the board to develop these guidelines. Currently staff refers to guidelines for mental health examination referrals developed with information from a board certified forensic psychiatrist to make determinations. Staff has also added an intermediate step in the decision-making process for certain cases in which the documentation contained in the application file is sent to a forensic psychiatrist for a records review. The forensic psychiatrist is asked for his or her opinion about the need for an independent psychiatric evaluation (IPE). This has reduced the number of IPEs required of applicants. Ms. Garanflo stated that guidelines on physical impairment referrals must be developed as well. The Committee directed TMB staff to convene a resource group for input on this issue, which would then be presented for discussion at the next Licensure Stakeholder Workgroup meeting.

Ms. Fredricks joined the meeting at 12:15 p.m.

Agenda Item 15 - Discussion and direction to staff regarding interpretation of eligibility criteria under emergency rule, Chapter 163.14, Licensure, Interpretation of Section 1.51(d), S.B. 419, adopted in August 2006. Ms. Garanflo reported specific situations that have come up since the implementation of the emergency rule and asked for guidance. The Committee directed staff to consider applicants eligible to apply under the emergency rule in cases where the applicant could become eligible to apply under the rule within a year of application; and where the applicant had any physician in training permit on September 1, 2005, including rotators. The Committee directed staff to consider applicants ineligible to apply under the emergency rule in cases where the applicants did not have a permit in effect on September 1, 2005.

Agenda Item 11 - Discussion, recommendation, and possible action regarding proposed additions and modifications to board rules:

Item 11a - Texas Medical Board Rules

1. **Chapter 172.15**, regarding creation of a limited Public Health License. The Committee directed staff to present a draft of the proposed rule to the Licensure Stakeholders Workgroup.

Item 11b - Texas Physician Assistant Board Rules. There were none.

Item 11c - Texas State Board of Acupuncture Examiners Rules

1. **Chapter 183, Acupuncture**, regarding the definition of an acceptable approved acupuncture school, demonstration of an applicant's ability to communicate in English, removal of informal Continuing Acupuncture Education, cancellation of licenses after expiration, and continuing acupuncture education. **Dr. Price moved to publish the rules as proposed in the Texas Register for public comment. Dr. Benavides seconded. All voted in favor and the motion passed.**

Agenda Item 12 - Discussion and direction to staff regarding proposed rule changes to Chapter 163.2, Licensure, Full Texas Medical License, Chapter 163.5, Licensure Documentation, and Chapter 163.6, Licensure, Examinations Accepted for Licensure, for streamlining of documentation and general rule cleanup. The Committee directed staff to implement the changes in procedures included in the proposed rule changes to streamline documentation and assist with the backlog of physician licensure applications, effective immediately.

Executive Session was considered. Dr. Price moved, Mr. Miles seconded, and the motion passed at 12:44 pm 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 General's Opinion No. H-484. Open session resumed at 6:25 pm and the Chair announced that no final action or decision was taken during the executive session. A certified agenda was made.

Agenda Item 2 - Discussion, recommendation and possible action regarding 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 General's Opinion No. H-484. Following the hearings, the Committee reconvened and considered the applications.

Applicant #481 appeared with counsel before the Committee in executive session on referral by the Executive Director. In open session, Mr. Miles moved to recommend to the full board that decision on the application be deferred until such time that the application is updated and we receive results of an Independent Psychiatric Evaluation by a psychiatrist appointed by the Board. Once all information is received, the applicant will need to reappear before the Committee. The expiration date of the application shall be extended for 6 months without requiring repayment of the licensure fee. This recommendation is due to new information received by the Board. Dr. Benavides seconded the motion. All voted in favor. The motion passed.

Applicant #499 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 Physician in Training Permit 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 the applicant's diagnosis of alcohol dependence and Major Depression, recurrent. Factors contributing to this

recommendation include the committee's determination that the applicant is compliant with a treatment program. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #487 appeared before the Committee in executive session after referral by the Executive Director. In open session, **Dr. Guajardo moved to recommend to the full Board that, upon compliance with all further requirements of licensure, the applicant be granted a license subject to the following restrictions: Respondent is restricted to the practice of Public Health and Preventative Medicine and is restricted from the practice of any surgery, obtaining hospital privileges, or holding privileges in any ambulatory surgery center.** This recommendation is due to: 8 Medical Malpractice Claims between 1997 and 2002; actions taken by three other State Boards; and actions taken by a hospital. Factors contributing to this recommendation include a pattern of excessive complications in surgery. **Ms. Fredricks seconded the motion.**

Ms. Raggette offered a substitute motion that the Committee recommend to the full Board that the applicant be determined ineligible for licensure due to 8 medical malpractice claims between 1997 and 2002, actions taken by three other state boards, actions taken by a hospital, and a pattern of excessive complications in surgery. Mr. Miles seconded the substitute motion.

Ms. Raggette stated that applicant has a significant problematic history and that it is in the public's best interest to deem the applicant ineligible. Dr. Guajardo stated that the applicant's negative history was in a previous specialty and that his plan was to restrict the applicant to the new specialty.

The substitute motion was considered. **Mr. Miles and Ms. Raggette voted in favor of the substitute motion. Ms. Attebury, Dr. Benavides, Ms. Fredricks, Dr. Guajardo, Dr. Oswalt, Dr. Pascua-Lim, and Dr. Price, were opposed. The substitute motion failed.**

The original motion was then considered. **Ms. Attebury, Dr. Benavides, Ms. Fredricks, Dr. Guajardo, Dr. Oswalt, Dr. Pascua-Lim, and Dr. Price voted in favor. Mr. Miles and Ms. Raggette were opposed. The motion passed.**

Applicant #505 appeared before the Committee in executive session on appeal of Executive Director's determination of ineligibility. In open session, **Mr. Miles moved to recommend to the full board that the Applicant be determined ineligible for licensure due to statutory ineligibility based on 3-attempt limit to passage of USMLE.** Factors contributing to this recommendation include the lack of authority of the Board to waive a statutory requirement for licensure. **Ms. Fredricks seconded the motion. Ms.**

Raggette wanted to note that the Board is not statutorily able to grant this license, however, it is with regret, as the physician's circumstances were understandable and tragic. All voted in favor. The motion passed.

Applicant #498 appeared before the Committee with counsel in executive session after referral by the Executive Director. In open session, **Dr. Benavides 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 specified in the Rehabilitation Checklist that has been distributed to the members of the committee.** This recommendation is due to treatment for depression. Factors contributing to this recommendation include the Committee's determination that the applicant is compliant with treatment. **Dr. Oswalt seconded the motion. All voted in favor. The motion passed.**

Applicant #506 appeared before the Committee in executive session on appeal of Executive Director's determination of ineligibility. In open session, **Dr. Benavides moved to recommend to the full Board that the applicant be allowed to withdraw the application for a Texas medical license, due to providing false or misleading information to the Board.** Factors contributing to this recommendation include the committee's determination that the falsification was not intentional. **The applicant will be allowed to file a new application in which the correct information is provided. Dr Pascua Lim seconded the motion.**

Ms. Raggette offered a substitute motion that the Committee recommend to the full Board that the applicant be granted an unrestricted Texas medical license. Dr. Price seconded the substitute motion.

The substitute motion was considered. **Mr. Miles, Dr. Oswalt, Dr. Price, and Ms. Raggette voted in favor of the substitute motion. Ms. Attebury, Dr. Benavides, Ms. Fredricks, Dr. Guajardo, and Dr. Pascua-Lim, were opposed. The substitute motion failed.**

The original motion was then considered. **Ms. Attebury, Dr. Benavides, Ms. Fredricks, Dr. Guajardo, Mr. Miles and Dr. Pascua-Lim voted in favor. Dr. Oswalt, Dr. Price, and Ms. Raggette were opposed. The motion passed.**

Applicant #509 appeared before the Committee in executive session on referral by Informal Settlement Conference Panel (ISC). **Ms. Attebury moved to recommend to the full board that the Respondent's physician in training permit be subject to an administrative penalty in the amount of \$1000 and be subject to the following requirements 24 hours of formal CME that include: 8 hours of risk management, 8 hours of Ethics, and 8 hours of medical record keeping. Respondent has 12 months to complete the requirements. The Respondent will be allowed to withdraw the physician licensure application but may not reapply until completion of the order. The order will expire upon completion of all requirements.** This recommendation is due to falsification of applications. Factors contributing to this recommendation include the committee's determination that the falsification was intentional. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant # 502 appeared before the Committee in executive session after referral by the Executive Director. In open session, **Ms. Fredricks moved to recommend to the full board that the applicant be granted a Physician-In Training Permit. Dr. Pascua-Lim seconded the motion.** Ms. Fredricks then stated for the record that she would like to admonish the applicant for the applicant's inappropriate attitude displayed to a Board member. The applicant needs to be reminded that the Board is not only interested in clinical competence of physicians, but also their professionalism. The Board members in general do not particularly enjoy the task of questioning applicants but the job has to be done in order to ensure adequate rehabilitation of physicians, and in turn, protection of the public. **All voted in favor. The motion passed.**

Applicant # 508 appeared before the Committee with counsel in executive session after referral by the Executive Director. In open session, **Dr. Oswalt moved to recommend to the full board that the applicant be granted re-licensure in Texas 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 Mood Disorder, which has been predominantly depressive in symptomatology and features of personality dysfunction, aggravated by the concomitant presence of an active Mood Disorder. Factors contributing to this recommendation include a report from the Board's consultant stating that the applicant is at high risk for relapse of the Mood Disorder and should comply with a suitable medication regimen to minimize that risk, as long as the applicant intends to practice medicine, and that the applicant is unlikely to present unacceptable impairment in the applicant's ability to practice medicine safely and reliably. **Ms. Raggette seconded the motion. All voted in favor. The motion passed.**

Applicant #497 appeared before the Committee with counsel in executive session after referral by the Executive Director. In open session, **Ms. Attebury moved to recommend to the full board that the applicant be granted a Telemedicine license subject to an administrative penalty in the amount of \$1000.** This recommendation is due to practicing without a license. Factors contributing to this recommendation include previously ignoring the licensure laws of the state of Texas. **Ms. Fredricks seconded the motion.** Dr. Pascua-Lim stated for the record that the applicant did initiate corrective action prior to appearance before the Board.

Dr. Price offered a substitute motion that the Committee recommend to the full Board that the applicant be granted an unrestricted Telemedicine license. Dr. Oswalt seconded the substitute motion. Dr. Oswalt noted that the Board was only aware of one case in which the applicant had practiced medicine in Texas without a license; that the applicant had no foreknowledge of breaking the law, and that as soon as the applicant became aware, the applicant took corrective action. Ms. Raggette stated that physicians who engage in Telemedicine are obligated to know where their patients are and that it is inherent in the practice of telemedicine to know this information.

The substitute motion was considered. **Dr. Oswalt and Dr. Price voted in favor of the substitute motion. Ms. Attebury, Dr. Benavides, Ms. Fredricks, Dr. Guajardo, Mr. Miles, Dr. Pascua-Lim, and Ms. Raggette were opposed. The substitute motion failed.**

The original motion was then considered. **Ms. Attebury, Dr. Benavides, Ms. Fredricks, Dr. Guajardo, Mr. Miles, Dr. Pascua-Lim, and Ms. Raggette voted in favor. Dr. Oswalt and Dr. Price were opposed. The motion passed.** (Note - the Full Board later unanimously voted to allow this applicant to withdraw the application for Telemedicine license and refer this applicant to the Attorney General's Office for the practice of medicine without a license.)

Applicant #501 appeared before the Committee with counsel in executive session after referral by the Executive Director. In open session, **Dr. Pascua-Lim 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 mental impairment - Bipolar Disorder. Factors contributing to this recommendation include the treating physician's assessment that the applicant is at risk for further episodes of illness, but that if the applicant continues to receive medication management, improvement may continue. **Dr. Oswalt seconded the motion.** Dr. Pascua-Lim

emphasized to this applicant, and all applicants that the Board does not stigmatize mental illness. The Board is proactive in identifying physicians with impairments amenable to rehabilitation. This applicant has a severe diagnosis however the physician seems to have performed quite well in the practice of medicine and this recommendation is not punitive, but a support for continuing success. **All voted in favor. The motion passed.**

Applicant # 507 appeared before the Committee in executive session after referral by the Executive Director. In open session, **Dr. Oswalt 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 specified in the Rehabilitation Checklist that has been distributed to the members of the committee.** This recommendation is due to a diagnosis of Dysthymia and Major Depressive Disorder, severe, recurrent. Factors contributing to this recommendation include the recommendation of the Board consultant that the applicant is able to practice medicine safely and reliably so long as the applicant is compliant with treatment. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Agenda Item 16 - Update on questions regarding medical liability documentation. Ms. Garanflo reported that staff has begun the collection of data and expects to be able to collect enough data to report back to the Committee next spring.

Agenda Item 3 - Discussion, recommendation, and possible action regarding applicants appearing for rehearing concerning eligibility - There were none.

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

Item 4a - Requests for Rehearing - Applicant #486's request for rehearing was considered. **Dr. Pascua Lim moved to recommend to the full board that the request for rehearing be approved. 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:

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Item 5a - Proposed orders for restriction of physician licensure and physician in training permit applicants - There were none.

Item 5b - Approvals by the Executive Director of physician licensure applicants who are graduates of medical schools from which the Board has not previously licensed -Ms. Garanflo presented a report on two applicants who graduated from two different medical schools; Gondar College of Medical Sciences, Ethiopia, and The Universidad San Francisco de Quito, Ecuador. The applicants' medical educations have been reviewed by the Executive Director and staff and found to meet appropriate board rules and statute.

Item 5c -Letters of eligibility of physician licensure applicants - One letter from the Swedish National Board of Health and Welfare was presented.

Item 5d - 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 23, 2006 through October 5, 2006.

Item 5e - Physician licensure process statistics - Ms. Garanflo presented the October 2, 2006 Customer Affairs Workload Report. Of note was the fact that the dramatic increase in the number of applications received during the past twelve months has created a backlog of applications to process and significant delays are occurring. The delays in processing create more communication from applicants and their representatives, which results in even longer processing times per application. Dr. Patrick noted that the staff members are performing well; the issue is the increase in applications. He advised the committee that a request for additional staff for licensure is part of the agency's legislative appropriations request for the FY 08-09 biennium.

Agenda Item 6 - Discussion, recommendation, and possible action regarding unsigned orders from previous meetings. Mr. Simpson reported on the status of orders the committee has voted to offer to applicants during the past two fiscal years.

Agenda Item 7 - Discussion, recommendation, and possible action regarding applicants to be considered for licensure, permits, or certification:

Item 7a - Physician licensure applicants - There were 315 applicants who met all requirements to be considered for permanent licensure by the full Board. **Dr. Benavides moved to recommend to the full board that all 315 applicants for permanent licensure be approved. Ms. Attebury seconded the motion. All voted in favor. The motion passed.**

Item 7b - Acudetox certification applicants - There were 2 Acudetox applicants to be considered for approval. **Dr. Oswalt moved to recommend to the full board that the 2 Acudetox applicants be approved. Mr. Miles seconded the motion. All voted in favor. The motion passed.**

Item 7c - Surgical assistant licensure applicants - There were 3 Surgical Assistant applicants to be considered for approval. **Ms. Raggette moved to recommend to the full board that the 3 Surgical Assistant applicants be approved. Ms. Fredricks seconded the motion. All voted in favor. The motion passed.**

Agenda Item 8 - Discussion, recommendation, and possible action regarding licensee requests:

Item 8a - Request of physician for activation of canceled physician licenses -There were none.

Item 8b - Request of physician to return to Active Status from Texas Retired Status - There were none.

Agenda Item 9 - Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration.

Item 9a - Surgical Assistants - There were none.

Item 9b - Acudetox - There were none.

Agenda Item 10 - Discussion, recommendation, and possible action regarding Nonprofit Health Organizations:

Item 10a - Applicants for initial certification - There were 4 applications for initial certification as a Nonprofit Health Organization for approval. **Ms. Fredricks moved to recommend to the full board**

that the requests for initial certification as a Nonprofit Health Organization be approved. Ms. Raggette seconded the motion. All voted in favor. The motion passed.

Item 10b - Requests for biennial recertification - There were 25 applications for biennial recertification as a Nonprofit Health Organization for approval. **Ms. Attebury moved to recommend to the full board that the requests for biennial recertification as a Nonprofit Health Organization be approved. Mr. Miles seconded the motion. All voted in favor. The motion passed.**

Item 10c - Cancellation of organizations certified as Nonprofit Health Organizations - There was one application to be canceled by request as a Nonprofit Health Organization. **Ms. Raggette moved to recommend to the full board that the request for cancellation as a Nonprofit Health Organization be approved. Ms. Fredricks seconded the motion. All voted in favor. The motion passed.**

Agenda Item 17 - There being no further business, **Ms. Raggette moved to adjourn the meeting. Ms. Fredricks seconded the motion. All voted in favor. The motion passed. The meeting adjourned at 7:05 p.m.**