

TEXAS MEDICAL BOARD
BOARD MEETING MINUTES
November 29-30, 2007

The meeting was called to order on November 29, 2007 at 4:30 p.m. by Board President, Roberta Kalafut, D.O. Board members present were Lawrence L. Anderson, M.D.; Michael Arambula, M.D.; Julie Attebury; Jose M. Benavides, M.D.; Patricia S. Blackwell; Melinda S. Fredricks; Amanullah Khan, M.D.; Melinda McMichael, M.D.; Margaret McNeese, M.D.; Charles E. Oswalt, III, M.D.; Larry Price, D.O.; Annette Raggette; Timothy J. Turner; Timothy Webb, J.D.; and Irvin E. Zeitler, Jr., D.O. Board staff present were Donald W. Patrick, M.D., J.D., Executive Director; Robert Simpson, J.D., General Counsel; Jane McFarland, Chief of Staff; and various other staff. Dr. Price read the Texas Medical Board Mission 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 #4, Executive Directors report. Dr. Patrick introduced Bruce Malone, M.D., Chair of the Texas Medical Associations Board of Trustees and Howard Marcus, M.D., Chair, Texas Association for Patient Access. Both physicians appeared in order to voice their organizations support of the board. Dr. Malone said it is TMAs belief that a strong board benefits both physicians and patients.

Dr. Price moved, Dr. Anderson seconded, and the motion passed to go into Executive Session at 4:45 p.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 5:00 p.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #2, Appearance to speak before board. Dr. John Kohlhaas appeared to discuss his opposition to the dismissal of a complaint he filed against his sons physician. The board members thanked Dr. Kohlhaas for his remarks.

Agenda item #5, Presentation and discussion regarding physician health and rehabilitation programs. Mari Robinson discussed some of the physician health and rehabilitation programs available in other states. Ms. Robinson explained that in several states, the physician rehabilitation programs function separately from the state medical board, but remain under the control of the medical board. Ms. Robinson said some of the benefits of a separate rehabilitation program are increased physician participation. Board staff explained that a statutory change would be needed in order for a separate rehabilitation program to be created in Texas. The board members instructed board staff to continue researching the matter and report back at a later meeting.

The meeting recessed for the day at 5:58 p.m. and reconvened on Friday, November 30th at 8:04 a.m. Members present were Board President Roberta Kalafut, D.O.; Lawrence L. Anderson, M.D.; Michael Arambula, M.D.; Julie Attebury; Jose M. Benavides, M.D.; Patricia S. Blackwell; Melinda S. Fredricks; Melinda McMichael, M.D.; Margaret C. McNeese, M.D.; Charles Oswalt, M.D.; Larry Price, D.O.; Annette Raggette; Timothy J. Turner; Timothy Webb, J.D.; and Irvin E. Zeitler, Jr., D.O. Board staff present were Donald W. Patrick, M.D., J.D., Executive Director; Robert Simpson, J.D., General Counsel; Jane McFarland, Chief of Staff; and various other staff.

Agenda Item #7, Executive Session. Dr. Price moved, Dr. Anderson seconded, and the motion passed to go into Executive Session at 8:08a.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 10:18 a.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #9, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders.

After discussion, **Mr. Turner moved, Ms. Blackwell seconded, and the motion passed to approve all of the Non-Public Rehabilitation Orders as written. Dr. Kalafut recused herself from the voting in regards to Order #364.**

Agenda Item #19, Consideration of dismissal recommendations from Informal Settlement Conference panels. After discussion, **Mr. Turner moved, Dr. Arambula seconded and the motion passed to accept the dismissal of case #06-4074.**

After discussion, **Mr. Turner moved, Dr. Benavides seconded and the motion passed to refer case # 06-2690 for a second ISC.**

After discussion, **Mr. Turner moved, Dr. Benavides seconded and the motion passed to refer case #06-3888 for a second ISC.**

After discussion, **Mr. Turner moved, Dr. McNeese seconded and the motion passed to refer case # 07-0205 for a second ISC.**

After discussion, **Mr. Turner moved, Dr. Benavides seconded and the motion passed to refer case #07-0501 for a second ISC.**

After discussion, **Mr. Turner moved, Ms. Fredricks seconded and the motion passed to refer case #07-0625 for a second ISC.**

After discussion, **Mr. Turner moved, Ms. Raggette seconded and the motion passed to accept the dismissal of case #06-1158. Board staff was directed to send a letter of clarification to the Accreditation Council for Graduate Medical Education (ACGME).**

After discussion, **Mr. Turner moved, Dr. Oswalt seconded and the motion passed to defer discussion of case #05-1870 until the next board meeting.**

After discussion, **Mr. Turner moved, Ms. Blackwell seconded a motion to refer case # 07-0482 back for a second ISC. Dr. Benavides, Ms. Raggette, and Dr. McNeese voted in favor of the motion. The remaining board members voted against the motion. The motion failed.**

After discussion, **Dr. Oswalt moved, Dr. Zeitler seconded, and the motion passed to accept the dismissal of case # 07-0482.**

After discussion, **Dr. McMichael moved, Dr. McNeese seconded and the motion passed to refer case #06-3042 for a second ISC.**

After discussion, **Ms. Raggette moved, Dr. Anderson seconded and the motion passed to accept the dismissal of case #07-0545.**

After discussion, **Dr. Anderson moved, Dr. Zeitler seconded and the motion passed to refer case #07-0513 for a second ISC.**

After discussion, **Dr. Price moved, Dr. Oswalt seconded and the motion passed to accept the dismissal of case #07-0431.**

Mr. Turner moved, Ms. Raggette seconded and the motion passed to approve the remaining cases for dismissal.

Agenda item #10, Consideration and Approval of Agreed Board Orders. Ms. Fredricks moved, Dr. Zeitler seconded and the motion passed to approve the Agreed Orders for the following: Bruce J. Alexander, M.D.; Edmund N. Cano, S.A.; Michael Ference, III, M.D.; David A. Green, M.D.; Rajeev Gupta, M.D.; Nhue A. Ho, M.D.; Carlos J. Jimenez, M.D.; Dwight J. Johnson, M.D.; Kenneth M. Kippels, M.D.; Kenneth N. Korsah, M.D.; James M. LaRose, M.D.; Sung Lee, M.D.; John F. Michiels, M.D.; John C. Peyton, M.D.; Joseph N. Piper, D.O.; Janice R. Powells, M.D.; G.K. Ravichandran, M.D.; Courtney P. Ridley, M.D.; Marci Roy, M.D.; Dane D. Simons, M.D.; David Suominen, M.D.; Jill A. Taylor, M.D.; Trevor E. Treasure, DDS, M.D.; Barrett D. Whitefield, M.D.; William A. Andrews, M.D.; Alfredo Hickman, M.D.; Glover Johnson, Jr., M.D.; Wayne E. Fortson, M.D.; Raul A. Marquez, M.D.; Dirk I. Rodriguez, M.D.; Edward C. Juarez, M.D.; Julia J. Lunberry, M.D.; Bruce R. McFarland, M.D.; Michael D. Smith, M.D.; Lorenzo Spratt, M.D.; Luis F. Tschén, M.D.; Alan C. Nelsen, M.D.; Thomas W. Grahm, M.D.;

After discussion, **Dr. Anderson moved, Ms. Raggette seconded and the motion passed to approve the Agreed Order for Armando Chavez, M.D. once it is amended to prohibit supervision or delegation of prescriptive authority to physician assistants and advanced nurse practitioners.**

After discussion, **Mr. Turner moved, Dr. Anderson seconded, and the motion passed to approve the Agreed Order for Robert N. Crabtree, M.D. as written.**

After discussion, **Dr. Price moved, Mr. Turner seconded and the motion passed to approve the Agreed Order for Thomas R. Konjoyan, D.O. once a CME requirement is added to the terms of the Order.**

Agenda Item #22, Consideration and Approval for Proposal for Decision
Merrimon Baker, M.D. Suzanne Marshall, Administrative Law Judge, gave a report and recommendation. Dr. Baker appeared with his attorney, Jim Edwards. Scott Freshour, staff

attorney, appeared representing the Board. Mr. Freshour gave a presentation. Mr. Edwards gave a presentation.

Dr. Price moved, Mr. Turner seconded, and the motion passed to go into Executive Session at 11:40a.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 12:38p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. Price moved, Mr. Turner 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 including the revocation of Dr. Bakers license, and a fee assessment of \$1514.00 for transcript costs.**

Agenda item #10, Consideration and Approval of Agreed Board Orders. After discussion, Dr. Oswalt moved, Dr. Anderson seconded, and the motion passed to approve the Agreed Order for Nelson P. Chambless, M.D. as written.

After discussion, **Dr. Price moved, Dr. Benavides seconded and the motion passed to approve the Agreed Order for William R. Francis, M.D. as written.**

After discussion, **Dr. Anderson moved, Ms. Raggette seconded and the motion passed to approve the Agreed Order for Bret F. Craytor, M.D. once a Public Reprimand is added to the Order.**

Agenda item #9, Consideration and Approval of Administrative Orders. After discussion, Dr. Price moved, Ms. Southard seconded, and the motion passed to approve the

Administrative Orders as written for the following: John D. Bray, M.D.; Jerry F. Castilleja, M.D.; Hector J. Castro, M.D.; Charles R. Gobert, M.D.; Brian E. Harris, M.D.; Philip Holzknecht, M.D.; Ramiro Leal, M.D.; J. Michael Long, M.D.; Mila Q. McManus, M.D.; Joseph A. Quintana, M.D.; James R. Race, M.D.; Anthony F. Valdez, M.D.; John P. Young, M.D.; William A. Booth, M.D.; Kamal A. Syed, M.D.; George R. Walters, M.D.

Agenda item #12, Consideration and Approval of Modification

Request/Termination Request Orders. After discussion, **Mr. Turner moved, Dr. Anderson seconded, and the motion passed to approve the Modification Request/Termination Request Orders as written for the following:** Blanchard T. Hollins, M.D.; Henry C. McKowen, M.D.; Roger S. Yim, M.D.; Patrick H. Wilson, M.D.; Ronald A. Woods, M.D.

Agenda item #13, Consideration and Approval of Nunc Pro Tunc Orders. **Dr. Anderson moved, Mr. Turner seconded and the motion passed to approve the Nunc Pro Tunc Order as written for Susan B. Kern, M.D., and Oscar M. Reichert, M.D.**

Agenda item #14, Consideration and Approval of Mediated Settlement Agreed Orders. **Mr. Turner moved, Dr. Anderson seconded and the motion passed to approve the Mediated Settlement Agreement Orders for the following:** Vladimir Redko, M.D.; Mark R. Rogers, M.D.; Aman A. Shah, M.D.; Daniel H. Kinzie, M.D.

Agenda item #15, Consideration and Approval of Termination of Suspension Orders. **Ms. Fredricks moved, Dr. Anderson seconded and the motion passed to approve the termination of the suspension orders for the following:** John K. Cotter, M.D.; and Maurice D. Asmussen, M.D.

There were no items for Agenda item #16.

Agenda Item #17, Report on Temporary Suspensions Orders. Nancy Leshikar gave a report on Temporary Suspensions for the following: James N. Fontenot, M.D.; David M. McClellan, M.D.; Carlos Arroyo, M.D.

There were no items for Agenda items #18, #20, and #21.

Agenda item #4, Executive Directors Report. Mari Robinson, Director of Enforcement, discussed the new process that was developed in order to reduce the time board staff spends on investigations deemed to be minor or administrative in nature.

Dr. Patrick introduced new District Review Committee member Paul R. Carrozza. Dr. Patrick next discussed the Texas Hospital Association grant that has been approved to go towards IT improvements in the Licensure Division in order to address the current backlog of pending applications.

Jaime Garanflo informed the board that the Licensure Division is working on the 51-day mandate set by the legislature. It was noted that 700 licenses were approved during the November 2007 meeting. The current average processing time for a medical license is 100 days. It was decided a priority should be placed on those applications determined to be low in complexity. Ms. Garanflo indicated the Licensure Division would examine their current procedures to pinpoint where improvements can be made. It was noted that physician applicants have the most questions concerning the JP exam process, requesting their NPDB report, and the FCVS process. Ms. Garanflo indicated the Licensure Division would be reexamining their communication process with applicants concerning the licensure process.

The Honorable Governor Rick Perry called in during the meeting to offer both his thanks and support of the board. Governor Perry thanked both Dr. Kalafut and Dr. Patrick for their leadership and hard work on behalf of the board and the citizens of Texas.

Jack McCarty, D.O. (President, TOMA) appeared to voice his support of the board. Dr. McCarty said TOMA also appreciates the boards effort to shorten the length of time it takes to complete the licensure process.

Jill Wiggins said she is working on a list of medical societies and public interest groups to distribute to board members. Staff and board member interactions with interest groups will be discussed at an upcoming meeting.

Agenda Item #22, Public Hearing, Consideration, and possible action regarding Adoption of Proposed Rule Changes.

1. **Chapter 162**, Supervision of medical school students and 162.2, Physician Supervision of a Student Physician Assistant. No one signed up to present oral comments. No written comments were received.
2. **Chapter 164.1-164.5**, Physician Advertising. No one signed up to present oral comments. No written comments were received.
3. **Chapter 173.1-173.7**. Physician Profiles. No one signed up to present oral comments. No written comments were received.
4. **Chapter 196.1-196.5**, Voluntary Relinquishment or Surrender of a Medical License. No one signed up to present oral comments. No written comments were received.
5. **Chapter 198**, Unlicensed Practice. No one signed up to present oral comments. No written comments were received.
6. **Chapter 199**, Public Information. No one signed up to present oral comments. No written comments were received.

Mr. Turner moved, Mr. Webb seconded, and the motion passed to adopt the proposed changes as written.

Agenda item #4, Executive Directors Report. Mari Robinson, Director of Enforcement, discussed the new process that was developed in order to reduce the time board staff spends on investigations deemed to be minor or administrative in nature.

Discussion item #1, Consent Agenda. Mr. Turner moved, Mr. Webb seconded, and the motion passed to approve Consent Agenda items A-F.

Discussion item #2, 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. **Dr. Kalafut moved, Dr. Arambula seconded, and the motion passed to approve the Executive Committee minutes and action items.**

Ms. Attebury gave a report of the Finance Committee meeting. **Mr. Turner moved, Dr. McMichael seconded, and the motion passed to approve the Finance Committee meeting minutes and action items.**

Mr. Webb gave a report of the Public Information Committee meeting. **Mr. Webb moved, Ms. Blackwell seconded, and the motion passed to approve the Public Information minutes.**

Dr. Arambula gave a report of the Licensure Committee meeting. After discussion, **Dr. Arambula moved and Dr. Benavides seconded and the motion passed to approve the Licensure Committee minutes.**

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

The Legislative and Standing Orders Committees did not meet.

There being no further items the meeting adjourned at 2:52 p.m.