

TEXAS MEDICAL BOARD
BOARD MEETING MINUTES
June 7-8 2007

The meeting was called to order on June 7, 2007 at 3:10 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; Melinda McMichael, M.D.; Margaret C. McNeese, M.D; Keith E. Miller, M.D.; Larry Price, D.O.; 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. Benavides 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 #2, Board member report. Dr. Kalafut recognized Mr. Eddie J. Miles for his years many of service as a board member. Dr. Kalafut presented Mr. Miles a plaque in appreciation of his ten years on the board. Mr. Miles made a statement thanking the board members and staff. Dr. Kalafut next read the inscription on the plaque made in honor of former board member John Pate, Jr., M.D. in appreciation for serving as a board member for several years. Dr. Kalafut concluded her remarks by welcoming new board member Timothy Webb, J.D.

Ms. Southard provided a public information report concerning the media contacts made since the April board meeting.

Ms. Fredricks provided a Legislative Report. Ms. Fredricks thanked staff for their hard work this legislative session.

Dr. Patrick introduced several new members of the Investigations and Compliance Departments.

Jaime Garanflo provided an update concerning the Licensure Division. Ms. Garanflo indicated the department continues to see an increased number of applications as compared to the past few years. Ms. Garanflo explained that the recently received grant money was able to pay for the hiring of temporary employees as well as to pay overtime to licensure staff. Ms. Garanflo said the Legislature has appropriated funds for six new Licensure Division full-time employee positions.

Robert Simpson, J.D. discussed the Informal Settlement Conference (ISC) process. Mr. Simpson explained that the board members may want to consider enforcing the current statute which states that all documentation for an ISC must be received by the board at least five days prior to the ISC date. The board members agreed and directed staff to begin enforcing the statute beginning September 1, 2007.

Agenda item #4, Executive Session. Dr. Price moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 4:15 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 4:47 p.m. and it was announced that no action was taken. A certified agenda was made.

Dr. Kalafut recognized Ms. Margaret Bentley, the new Presiding Officer for the Texas Physician Assistant Board who was in attendance.

Agenda item #4, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders.

After discussion, **Ms. Blackwell moved, Dr. Arambula seconded, and the motion passed to approve Non-Public Rehabilitation Order #434 with discussed comments deleted.**

After discussion, **Dr. Miller moved, Ms. Raggette seconded and the motion passed to approve the order for #431 as a public agreed order.**

After discussion, **Dr. Miller moved, Ms. Raggette seconded a motion to approve the order #225 as a public agreed order. Dr. Price, Ms. Fredricks, Dr. Anderson, Dr. Khan, Dr. McNeese, Ms. Attebury, Ms. Southard, Ms. Blackwell, Dr. Guajardo, Mr. Turner, and Dr. Zeitler all voted against the motion. The motion failed.**

Dr. Price moved, Ms. Southard seconded, and the motion passed to approve the Non-Public Rehabilitation Order for #225.

Dr. Price moved, Mr. Turner seconded, and the motion passed to approve the remaining Non-Public Rehabilitation Orders as written with the exception of #433 which was pulled by staff and the termination of #383.

The meeting recessed for the day at 4:53 p.m. and reconvened on Friday, June 8, at 8:05 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.; Keith E. Miller, M.D.; Larry Price, D.O.; 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 #5, Consideration and Approval of Agreed Board Orders. After discussion, **Mr. Turner moved, Dr. Price seconded, and the motion passed to approve the Agreed Order for Beauford Basped, D.O.**

After discussion, **Ms. Southard moved, Dr. Price seconded, and the motion passed to approve the Agreed Order for Robert D. Campbell, III, M.D.**

After discussion, **Dr. Anderson moved, Dr. Miller seconded and the motion passed to approve the Agreed Order for William R. Gulledge, Jr., M.D. once the FOF is changed to reflect it was a medical practice act violation, section #11 is deleted, and a public reprimand is included.**

After discussion, **Dr. Benavides moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Guy R. Fogel, M.D. once the following provisions are added, a public reprimand, administrative penalty of \$10,000, and chart monitor.**

After discussion, **Dr. McNeese moved, Dr. Benavides seconded, and the motion passed to approve the Agreed Order for Juan A. Montelongo, M.D. once the following changes have been made; a public reprimand is added, the administrative penalty is removed, thirty hours of CME is added, and passage of ER Boards or SPEX examination if the board exam cannot be taken within 24 months.**

After discussion, **Dr. Anderson moved, Ms. Blackwell seconded, and the motion passed to approve the Agreed Order for Richard B. Patt, M.D. once the language of the order is changed to limit Dr. Patts practicing setting to either a pre-op or academic setting only and the sentence concerning restrictions is removed.**

After discussion, **Dr. McNeese moved, Dr. Anderson seconded, and the motion passed to approve the Agreed Order for Francisco B. Saucedo, M.D. once the provision concerning successful completion of a clinical mini-residency is added.**

After discussion, **Dr. Anderson moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for David W. Spinks, D.O. once the following changes are made, a period of two years is added to the length of the order, the addition of a chart monitor for the first year, a personal board appearance following the third chart review.**

After discussion, **Dr. Price moved, Ms. Ragette seconded and the motion passed to approve the Agreed Order for Benjamin H. Thurman, M.D. as written.** Dr. Zeitler was recused. Dr. Price also directed staff to launch a further investigation concerning all of the patients with a diagnosis of mercury toxicity.

Dr. Kalafut recognized Joe Pitner, J.D., Deputy Assistant Attorney General from the Office of the Attorney General, and thanked him for his guidance. Mr. Pitner said it has been a pleasure working closely with the board and introduced his replacement at the Office of the Attorney General, Mike Crowley, J.D.

Dr. Price moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 9:23 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 General's Opinion No. H-484. Open session resumed at 9:30 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. Anderson moved, Mr. Turner seconded and the motion passed to approve the Agreed Order for Kimberly A. Zabal, M.D. once a drug testing provision is included.**

Dr. Price moved, Dr. Khan seconded and the motion passed to approve the Agreed Orders for the following: Douglas F. Bahr, M.D.; Alex Birman, M.D.; Walter E. Brady, M.D.; Robert B. Brunken, M.D.; Gregory Cartwright, M.D.; Charles T. Clayton, M.D.; Steven Howard Farber, M.D.; Robert L. Gardner, M.D.; Callie Hall-Herpin, M.D.; Cynthia Lee Ketterer, M.D.;

Hans A. Longsjoen, M.D.; Don M. O'Neal, M.D.; Michael F. Ruggiero, D.O.; Novarro C. Stafford, M.D.; Mark A. Workman, M.D.; Charles T. Marrow, M.D.; Lisa C. Routh, M.D.; Erik R. Sloman-Moll, M.D.; Teresa Trumble Guerrero, M.D.

Agenda item #9, Consideration and Approval of Administrative Orders. After discussion, **Dr. Anderson moved, Ms. Southard seconded, and the motion passed to approve the Administrative Order for Robert C. Asselstine, M.D. as written.**

After discussion, **Dr. Anderson moved, Ms. Raggette seconded, and the motion passed to approve the Administrative Order for Daniel Luczkow, M.D. once the Order includes a provision which would require Dr. Luczkow to personally appear before a panel of the board before he practices in Texas.**

After discussion, **Dr. McNeese moved, Ms. Southard seconded and the motion passed to approve the Administrative Order for Kerfoot Walker, Jr., M.D. once the FOF includes a paragraph concerning medical waste in a dumpster.** Dr. Anderson was recused.

After discussion, **Ms. Southard moved, Dr. Zeitler seconded and the motion passed to approve the Administrative Order for Robert Hernandez, Jr., M.D. once information is added indicating the Respondent has since cooperated in terms of and working on and completing his CME requirement.**

Dr. Price moved, Ms. Southard seconded, and the motion passed to approve the Administrative Orders for the following: Hector Castro, M.D.; Augusto Chiriboga, M.D.; Pieter De Wet, M.D.; William P. Kalchoff, M.D.; Milton G. Mullanax, M.D.; Jose E. Rodriguez, M.D.; Philip S. Czekaj, M.D.; and Ronald E. Sims, M.D.

Agenda item #10, Consideration and Approval of Modification Request/Termination Request Orders. **Dr. Price moved, Ms. Raggette seconded, and the motion passed to approve the Modification Request/Termination Request Orders as**

written for the following: Randy Ramahi, M.D.; Arthur Hernandez, M.D.; and John Wesley Dorman, M.D.

There were no items for Agenda items #11 and # 12.

Agenda item #13, Consideration and Approval of Mediated Settlement Agreement Orders. Dr. Price moved, Ms. Raggette seconded, and the motion passed to approve the Mediated Settlement Agreement Order for the following: Avi T. Deshmukh, M.D.; Oscar M. Reichert, M.D.; and Paul K. Blissard, M.D.

Agenda Item #14, Consideration and Approval of Termination of Suspension Orders. Dr. Price moved, Ms. Raggette seconded, and the motion passed to approve the termination of the suspension order for Richard P. Wikoff, M.D.

There were no items for Agenda items #15, #16, and #17.

Agenda Item #18, Report on Temporary Suspensions Orders. Nancy Leshikar gave a report on Temporary Suspensions for the following: Stephen Curtis White, M.D.; Horace B. Halbert, M.D.; Armando Chavez, M.D.; Ramiro Hernandez, M.D.; Edmundo Cano, M.D.

Agenda Item #19, Report on Automatic Orders. Nancy Leshikar gave a report on the Automatic Order for Douglas W. Wheeler, M.D.

Agenda Item #23, Election of Officers. Dr. Kalafut announced the first candidate for the Secretary/Treasurer office, Ms. Fredricks, who then addressed the other board members explaining why she would like to become Secretary/Treasurer. Dr. Kalafut next introduced the second candidate, Mr. Tim Turner. Mr. Turner also addressed the board members regarding his qualifications for the position of Secretary/Treasurer.

Dr. Kalafut next introduced the three candidates interested in serving as Vice President of the board, Dr. Anderson, Dr. Arambula, and Dr. Price. All three candidates made brief remarks explaining why they are interested in the office. Following a secret ballot vote, Dr. Kalafut announced that Mr. Turner was elected Secretary/Treasurer and Dr. Price was re-elected as Vice President.

Dr. Miller moved, Dr. Khan seconded, and the motion passed to go into Executive Session at 12:20 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 1:18 p.m. and it was announced that no action was taken. A certified agenda was made.

Agenda Item #21, Consideration and Approval of Proposals for Decision. Andrew W. Campbell, M.D. Paul D. Keeper, Administrative Law Judge, gave a report and recommendation. Dr. Campbell appeared with his attorney, Ace Pickens. Scott Freshour, staff attorney, appeared representing the Board. Mr. Freshour gave a presentation. Mr. Pickens gave a presentation. After discussion, **Dr. Khan moved, Ms. Fredricks 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 #187 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 a public reprimand Dr. Campbell, suspension of his license until February 8, 2008, administrative penalty, and a five year period of probation once the suspension period ends.**

Tone Johnson, Jr., M.D. Shannon Kilgore, Administrative Law Judge, gave a report and recommendation. Dr. Johnson was not present for the proceeding. Dr. Johnsons attorney, Joe Flores, filed a written brief on behalf of his client. Scott Freshour, staff attorney, appeared

representing the Board. Mr. Freshour gave a presentation. After discussion, **Dr. Miller moved, Ms. Blackwell 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 conclusion of law # 9, 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 reprimanding Dr. Johnson and suspending his license for one year with the suspension immediately stayed under various terms and conditions.**

Shyam Anand Jha, M.D. Shannon Kilgore and Carol S. Birch, Administrative Law Judges, gave a report and recommendation. Dr. Jha also appeared. Scott Freshour, staff attorney, appeared representing the Board. Mr. Freshour gave a presentation. Dr. Jha addressed the board. **After discussion, Ms. Raggette moved, Dr. Miller seconded and the motion was denied except Conclusion of Law # 6 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 dismissing the complaint against Dr. Jha.** Dr. McMichael was recused.

Agenda Item #22, Consideration and Approval of Determination of Default. Default Judgment Elizabeth Anne Rohr, M.D. Scott Freshour, staff attorney, appeared representing the Board. The Dr. Rohr failed to respond to the complaint filed at the State Office of Administrative Hearings. **Dr. Price moved, Ms. Blackwell seconded, and the motion passed to approve the Default Judgment and to revoke the license of Elizabeth Anne Rohr, M.D.**

Agenda item #20, Public Hearing, Consideration, and possible action regarding Adoption of Proposed Rule Changes.

1. Chapter 161, General Provisions, proposed amendments to 161.3, Organization and Structure regarding guidelines for conduct of board members. No one signed up to present oral comments. No written comments were received. **Ms. Southard moved, Dr. Anderson seconded, and the motion passed to pull and republish the proposed amendments.**

2. Chapter 163. Licensure, proposed amendment to 163.1, Definitions and 163.2, Full Texas Medical License, 163.4, Procedural Rules for Licensure Applicants, 163.6, Examinations Accepted for Licensure, 163.7; 163.6, Examinations Accepted for Licensure, adding a new 163.7 (e) (4) adding a new 163.7, Ten Year Rule to include the provisional previously included 163.6(e); adding a new 163.8, Authorization to Take Professional Licensing Examination, as provided in 61.303, Texas Education Code, and adding a new 163.9, Only One License. No one signed up to present oral comments. No written comments were received. **Ms. Fredricks moved, Ms. Raggette seconded and the motion passed to adopt the proposed amendments to Chapter 163 Licensure, proposed amendment to 163.1, Definitions and 163.2, Full Texas Medical License, regarding recognition of Texas Higher Education Coordinating Board; 163.4, Procedural Rules for Licensure Applicants, regarding processing of applications determined to be ineligible to allow appeal to the Licensure Committee on one issue, without spending staff time to process the rest of the application: 163.6, Examinations Accepted for Licensure, to delete subparagraph (e) (10 year Rule) and make it a new 163.7; 163.6, Examinations Accepted for Licensure, adding a new 163.7 (e) (4) eliminating requirements to retake the jurisprudence examination adding a new 163.7, Ten Year Rule to include the provisional previously included 163.6(e); adding a new 163.8, Authorization to Take Professional Licensing Examination, as provided in 61.303, Texas Education Code, and adding a new 163.9, Only One License, to provide that any outstanding license or permit is canceled upon issuance of another license.**

3. Chapter 164, Physician Advertising, proposed amendments to 164.4, Board Certification. Written comments were received from a Palliative Care medical group. **Ms. Raggette moved, Ms. Blackwell seconded and the motion passed to adopt the rules as published.**

4. Chapter 166, Physician Registration, proposed amendments to 166.5, relicensure, to refer to provisions of Chapter 196 for cancellation upon nonpayment, relinquish, or surrender. No comments were received. No one signed up to present oral comments.

Ms. Southard moved, Ms. Fredricks seconded and the motion passed to adopt the amendments as written.

5. Chapter 172, Temporary and Limited Licenses, proposed amendments to 172.5, Visiting Physician Temporary Permit, and adding a new 172.14, Limited License for Administrative Medicine as authorized by SB 419. Daniel Martinez from the Texas Association of Community Health Centers was present to comment on the proposed amendments. Mr. Diaz stated that this proposal would be challenging for his health center. Mr. Diaz suggested that the permit be called a license instead in order to bring in providers that will remain in the state. After discussion, Ms Southard moved, Dr. Price seconded and the motion passed to approve the amendments as written.

6. Chapter 173, Physician Profiles, to include amendments to 173.3, Physician Initiated Updates. No one signed up to present oral comments. No written comments were received. Ms. Southard moved, Ms Blackwell seconded, and the motion passed to approve the proposed amendments as written

7. Chapter 182, Use of Experts, proposed amendments to 182.5, Expert Panel. No one signed up to present oral comments. No written comments were received. Ms. Southard moved, Ms. Blackwell seconded and the motion passed to approve the proposed amendments as written.

8. Chapter 184, Surgical Assistants, proposed amendments to 184.4, Qualifications for Licensure; 184.8, License Renewal, and a new 184.26, Voluntary Relinquishment or Surrender of a license. No one signed up to present oral comments. No written comments were received. Ms. Southard moved, Ms. Raggette seconded and the motion passed to approve the proposed amendments as written.

9. Chapter 187, Procedural Rules, to add to new Subchapter G, Suspension by Operation of Law under 164.058 of the Medical Practice Act. No one signed up to

present oral comments. No written comments were received. **Ms. Southard moved, Ms. Raggette seconded and the motion passed to approve the proposed amendments as written.**

10. Chapter 190, Disciplinary Guidelines, proposed amendments to 190.8, Violation Guidelines. No one signed up to present oral comments. No written comments were received. **Dr. Price moved, Ms. Southard seconded and the motion passed to republish the proposed amendments.**

11. Chapter 196, Voluntary Surrender of Medical Licenses. No written comments were received. No one signed up to present oral comments. **Ms. Raggette moved, Ms. Southard seconded and the motion passed to approve the proposed amendment as written.**

12. Chapter 198, Unlicensed Practice. No written comments were received. No one signed up to present oral comments. **Ms. Blackwell moved, Ms. Raggette seconded and the motion passed to approve the proposed amendments as written.**

Discussion item #1, Consent Agenda. Dr. Miller moved, Ms Raggette seconded, and the motion passed to approve Consent Agenda items A-E.

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. Price moved, Ms. Blackwell seconded, and the motion passed to approve the Executive Committee minutes and action items.**

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

Ms. Southard gave a report of the Public Information Committee meeting. **Ms. Southard moved, Dr. Benavides seconded, and the motion passed to approve the Public Information minutes.**

Ms. Raggette gave a report of the Standing Orders Committee. **Ms. Raggette moved, Dr. Benavides seconded, and the motion passed to approve the Standing Orders Committee minutes and action items.**

Dr. Miller gave a report of the Licensure Committee meeting. After discussion, **Dr. Price moved and Mr. Turner seconded a motion to revisit the matter of Licensure Applicant # 553. Dr. Price and Dr. Arambula voted in favor of the motion. The remainder of the board members voted against the motion. The motion failed.**

Dr. Miller moved, Dr. Anderson seconded, and the motion passed to approve the Licensure Committee meeting minutes and action items.

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 Public Information Committees did not meet.

There being no further items the meeting adjourned at 2:36 p.m.