

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

November 29, 2007

The meeting was called to order at 10:44 a.m. by Chair, Michael Arambula, M.D. Committee members present were, Julie Attebury, Jose M. Benavides, M.D., Charles Oswalt, M.D., Larry Price, D.O., Timothy J. Turner, and Timothy Webb.

Agenda Item 12 - Presentation regarding Texas A&M Health Science Center, Rural and Community Health Institutes Knowledge, Skills, Training, Assessment, & Research (KSTAR) program by Dr. Joane Baumer and Kathy Mechler. Dr. Baumer and Ms. Mechler presented an overview of the KSTAR physician retraining project.

Executive Session was considered. Dr. Price moved, Dr. Benavides seconded, and the motion passed at 11:21 a.m. 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 Generals Opinion No. H-484.

There was no final action, decision, or vote with regard to any matter considered or discussed in executive session. The executive session ended at 11:29 a.m. A certified agenda of the executive session was made.

Agenda Item 13 Discussion, recommendation, and possible action regarding board approved fellowships:

- UT M.D. Anderson Cancer Center - Advanced Pediatric Hematology and Oncology -
- b. Vicki Tabor, Associate Director, Trainee and Alumni Affairs, appeared to discuss the request for approval of the second year of this fellowship program.
- c. UT M.D. Anderson Cancer Center - Head and Neck Surgery - Vicki Tabor, Associate Director, Trainee and Alumni Affairs, appeared to discuss the request for approval of the third year of this fellowship program.
- UT M.D. Anderson Cancer Center - Urologic Oncology - Vicki Tabor, Associate Director, Trainee and Alumni Affairs, appeared to discuss the request for approval of the third year of this fellowship program.

Dr. Oswalt moved to recommend to the full board that all three requests for approval of additional fellowship years be approved. Dr. Price seconded the motion. Following discussion, all voted against. The motion failed. The Committee directed staff to inform the program directors that a clear progression education during the additional postgraduate training years must be demonstrated.

Texas Cardiac Arrhythmia Institute Cardiac Pacing and Electrophysiology this request was deferred until the fellowship program staff can appear before the Licensure Committee.

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Agenda Item 15 - Discussion, recommendation, and possible action regarding elimination of program director and physician in training annual reports, and the addition of reporting by physicians in training triggered by the occurrence of certain events. Ms. Garanfio presented a plan to eliminate these reports, and replace them with event-triggered reports required to be made by physician in training permit holders. The program directors already have event-triggered reporting requirements, which would be left as is. The Committee directed staff to implement the proposed plan immediately and present the proposal at the next stakeholder meeting for rule development.

Agenda Item 14 - Discussion, recommendation, and possible action regarding expansion of the authority delegated to the Executive Director to offer restricted licenses and permits to applicants with mental and physical impairments. The Committee directed that, upon agreement of the full board, that the scope of the executive directors authority to recommend and offer restricted licenses and permits to applicants be expanded to include applicants with mental health, substance abuse, or physical health issues. The Committee further directed that the Executive Director consult with the Chair of the Licensure Committee prior to offering such orders to applicants.

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

Item 11a Texas Medical Board Rules. Mr. Simpson presented the following recommendations:

- i. **Chapter 161, General Provisions**, to include changes to 161.7 Executive Director.
- ii. **Chapter 166, Physician Registration**, to include changes to 166.4 Expired Registration Permits.
- iii. **Chapter 167, Reinstatement and Reissuance**, to include changes to 167.1 Reinstatement or Reissuance of Medical License Following Suspension or Revocation, 167.3 Application for Reissuance of a Revoked License, 167.4 Best

Interest of a Physician, 167.5 Best Interest of the Public, and 167.8. Certain Persons Ineligible for Reinstatement or Reissuance of License.

- iv. **Chapter 177, Certification of Non-Profit Organizations**, to include changes to 177.1. Definitions, 177.3. Qualifications for Certification as a 162.001(b) Health Organization, 177.4. Applications for Certification as a 162.001(b) Health Organization, 177.6. Biennial Reports for 162.001(b) Health Organizations, and 177.9. Migrant, Community or Homeless Health Centers.

Mr. Turner moved to recommend to the full board that the rules be published as proposed in the Texas Register for public comment. Ms. Attebury seconded. All voted in favor and the motion passed.

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

Item 11c Texas State Board of Acupuncture Examiners Rules. There were none.

Agenda Item 2 - Discussion, recommendation, and possible action regarding applicants appearing concerning eligibility.

Executive Session was considered. Mr. Turner moved, Ms. Attebury seconded, and the motion passed at 12:29 p.m. 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 Generals Opinion No. H-484.

There was no final action, decision, or vote with regard to any matter considered or discussed in executive session. The executive session ended at 4:00 p.m. A certified agenda of the executive session was made.

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 Generals Opinion No. H-484. Following the hearings, the Committee reconvened and considered the applications.

Item 2a Physician licensure and Physician in Training permit

Applicant #586 appeared before the Committee 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 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 action is due to the applicants history of alcohol abuse and disciplinary action by residency program. Factors contributing to this recommendation include that an independent psychiatric evaluation was favorable if appropriate controls and treatment are in place. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #607 appeared before the Committee with counsel in executive session on appeal of a determination that the applicant would be allowed to withdraw the application and reapply with correct answers. In open session, **Dr. Oswalt moved to recommend to the full Board that the applicant be allowed to withdraw the application for a Physician in Training permit, due to providing false or misleading information to the Board.** Factors contributing to this recommendation include the committees 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. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #581 appeared before the Committee with counsel 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 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 that the applicant responded well to treatment and returned to a residency program in January 2004 after a leave of absence; that the applicants remaining symptoms resolved; the applicant has remained stable since that time; and an independent psychiatric evaluation recommended continued treatment. **Dr. Oswalt seconded the motion. All voted in favor. The motion passed.**

Applicant #499 appeared before the Committee with counsel in executive session on appeal regarding the length of the agreed order offered 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 non-public, non-disciplinary rehabilitation order in the form of the rollover order offered by the Executive Director with a term of 9 years. This recommendation is due to the applicants history of alcohol abuse.** Factors contributing to this recommendation include the applicants compliance for one year with the order granting a physician-in-training permit; and the applicants reported four years of sobriety. **Dr. Oswalt seconded the motion. All voted in favor. The motion passed.**

Applicant #298 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 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 the applicants history of mental impairment, and history of alcohol abuse.** Factors contributing to this recommendation include that an independent psychiatric evaluation found that the applicants mental impairment is stable and well treated, and that the alcohol abuse is in remission. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #604 appeared before the Committee with counsel 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 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 applicants history of alcohol abuse, and a mental condition that may affect the practice of medicine.** Factors contributing to this recommendation include that the alcohol dependence is in early full remission, per evaluating physician; and per evaluating physician, applicant does not have personality characteristics or disorders that present or are likely to present an unacceptable impairment in judgment, interpersonal skills, or ethical or professional conduct. **Dr. Oswalt seconded the motion. All voted in favor. The motion passed.**

Applicant #605 appeared before the Committee with counsel in executive session on referral by the Executive Director. In open session, **Dr. Oswalt moved to recommend to the full Board that the applicant be allowed to withdraw the application for a Physician-In-Training Permit, due to:**

providing false or misleading information to the Board. Factors contributing to this recommendation include the committees determination that the falsification was not intentional. The applicant will be allowed to file a new application in which the correct information is provided. **Mr. Turner seconded the motion. After some discussion, the motion was withdrawn.**

Applicant #597 appeared before the Committee with counsel in executive session on referral by the Executive Director. In open session, **Dr. Oswalt 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 the recommendation of the Boards evaluating physician that that applicant needs continued psychiatric treatment, including medication management, in order to practice safely. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #584 appeared before the Committee with counsel in executive session on appeal of determination of ineligibility. In open session, **Ms. Attebury 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 \$3000. 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. **Mr. Webb seconded. All voted in favor. The motion passed.**

Applicant #600 appeared before the Committee with counsel in executive session on appeal of determination of ineligibility. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be determined ineligible for licensure due to applicants failure to meet the examination attempt limits set out in 155.056 of the Medical Practice Act.** Factors contributing to this recommendation include that meeting the examination attempt limits is a statutory requirement for licensure. **Dr. Price seconded the motion. All voted in favor. The motion passed.**

Applicant #594 appeared before the Committee with counsel in executive session on appeal of determination of ineligibility. In open session, **Mr. Webb moved to recommend to the full Board that the applicant be determined ineligible for licensure due to the applicants inability to practice medicine with reasonable skill and safety because of substance abuse, and not having actively practiced medicine full-time for one of the two years preceding the date of application.** Factors

contributing to this recommendation include: a long history of substance abuse, including inpatient treatments in 1990, 1996 and 2004; not actively practicing medicine since 1997; following multiple participations in the Oregon Health Professional Program, Oregon medical license inactivated by request and in lieu of possible action on 12/2/98. **Further, Mr. Webb moved to recommend to the full Board that upon receipt of a request for a physician-in-training permit for no less than one year, the physician-in-training permit may be granted by the Executive Director 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. In addition, the applicant must appear before the Licensure Committee before being granted a physician license.** Factors contributing to this recommendation include a positive evaluation from the applicants treating psychiatrist and the applicants steps to update clinical skills. **Ms. Attebury seconded. All voted in favor. The motion passed.**

Applicant #587 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 allowed to withdraw the application for a Texas medical license. 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 not intentional. The applicant will be allowed to file a new application in which the correct information is provided. **Ms. Attebury seconded. All voted in favor. The motion passed.**

Applicant #593 appeared before the Committee in executive session on referral by the Executive Director. In open session, **Ms. Attebury moved to recommend to the full Board that the applicant be granted an unrestricted license . Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #601 appeared before the Committee with counsel in executive session on referral by the Executive Director. In open session, **Ms. Attebury 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 committees determination that the falsification was not intentional. The applicant will be allowed to file a new application in which the correct information is provided. Further, **Ms. Attebury moved to recommend that upon submission of an application with truthful answers, the applicant be granted an unrestricted license.** Factors contributing to this recommendation include that the applicant has been

in a private consulting practice in occupational and environmental medicine since January 1984; the applicants passage of the Special Purpose Examination in 2005; the applicants specialty board certification in Occupational Medicine; and the applicants unrestricted licensure in 46 other states. **Mr. Turner seconded the motion. All voted in favor. The motion passed.**

Applicant #606 appeared before the Committee with counsel 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 \$3000. 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. **Mr. Turner seconded. All voted in favor. The motion passed.**

Applicant #603 appeared before the Committee in executive session on referral by the Executive Director. In open session, **Dr. Price moved to recommend to the full Board that the applicant be granted an unrestricted license upon passage of the Special Purpose Examination or specialty board certification within 12 months. Ms. Attebury seconded the motion. All voted in favor. The motion passed.**

Applicant #605 appeared before the Committee with counsel in executive session on referral by the Executive Director. In open session, **Dr. Oswalt moved to recommend to the full Board that the applicant be allowed to withdraw the application for a Physician-In-Training Permit, due to: providing false or misleading information to the Board.** Factors contributing to this recommendation include the committees determination that the falsification was not intentional. The applicant will be allowed to file a new application in which the correct information is provided. **Further, Dr. Oswalt moved to recommend to the full Board that upon submission of an application with truthful answers, 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 mental condition that may affect the practice of medicine.** Factors contributing to this recommendation include that the applicants mental condition has improved and treating physicians report that the applicants prognosis is very good. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Item 2b Acudetox certification - There were none.

Item 2c Surgical assistant licensure - There were none.

Agenda Item 3 Discussion, recommendation, and possible action regarding applicants appearing for rehearing concerning eligibility:

Item 3a Physician licensure and physician in training permit There were none.

Item 3b Acudetox certification - There were none.

Item 3c Surgical assistant licensure - There were none.

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

Item 4a Requests for Rehearing There were none.

Item 4b Request for Waiver of Acupuncture License Requirements There were none.

Agenda Item 5 Reports on:

Item 5a Proposed orders for restriction of physician licensure and physician in training permit applicants Ms. Garanflo reported on one order to be offered restricting the physicians practice to administrative medicine.

Item 5b 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 14, 2007 through November 13, 2007.

Item 5c Physician licensure process statistics Ms. Garanflo presented a report on various statistics related to the Licensure and Customer Affairs Division.

Agenda Item 6 Discussion, recommendation, and possible action regarding unsigned orders from previous meetings. Ms. Garanflo reported that of the nine orders offered at the August 2007 Board meeting, seven have been accepted. Two orders remain pending. In addition, two orders are still pending from previous meetings.

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 683 applicants who met all requirements to be considered for permanent licensure by the full Board. There were 17 applicants who met all requirements to be considered for Telemedicine licensure by the full Board. **Ms. Attebury moved to recommend to the full board that all 683 applicants for permanent licensure and all 17 applicants for Telemedicine licensure be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Item 7b - Acudetox certification applicants - There were 3 Acudetox certification applicants to be considered for approval. **Dr. Benavides moved to recommend to the full board that the 3 Acudetox certification applicants be approved. Dr. Oswalt seconded the motion. All voted in favor. The motion passed.**

Item 7c - Surgical assistant licensure applicants - There were 2 surgical assistant licensure applicants to be considered for approval. **Mr. Turner moved to recommend to the full board that the 2 surgical assistant licensure applicants be approved. Mr. Webb 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 6 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. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Item 10b - Requests for biennial recertification - There were 44 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. Attebury seconded the motion. All voted in favor. The motion passed.**

Item 10c - Cancellation of organizations certified as Nonprofit Health Organizations - There were 2 cancellations of organizations certified as Nonprofit Health Organizations to be considered. **Mr. Turner moved to recommend to the full board that Nonprofit Health Organizations be decertified. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Agenda Item 16 - There being no further business, Dr. Arambula adjourned the meeting at 4:20 p.m.