

**TEXAS MEDICAL BOARD  
BOARD MEETING MINUTES  
June 27, 2008**

The meeting was called to order June 27, 2008 at 8:07 a.m. by Board President, Roberta Kalafut, D.O. Board members present were Michael Arambula, M.D.; Julie Attebury; Jose M. Benavides, M.D.; Patricia S. Blackwell; Melinda S. Fredricks; Melinda McMichael, M.D.; Margaret McNeese, M.D.; Charles Oswalt, M.D.; Larry Price, D.O.; Annette Raggette; Allan Shulkin, M.D.; Paulette Southard; Timothy J. Turner; and Timothy Webb, J.D. Board staff present were Donald W. Patrick, M.D., J.D., Executive Director; Robert Simpson, J.D., General Counsel; Jane McFarland, Chief of Staff; Mari Robinson, Director of Enforcement; Jaime Garanflo, Director of Customer Affairs; and various other staff.

Dr. Patrick 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 gave a report on the increasing number of scheduled informal settlement conferences and mediations requiring board member participation. Dr. Kalafut gave a report on the status of the boards search for the position of Executive Director.

**Agenda item #3, Executive Directors report.** Jane McFarland gave a report on the status of the Legislative Appropriations Request due the end of July.

Ms. Robinson gave a report on past and future Town Hall meetings scheduled to provide input and feedback about regulations of the medical profession. Ms. Robinson also gave a report on the overwhelming work number of complaints processed by Enforcement and the ramifications to the agency as an increasing numbers of complaints continue to be received.

Ms. Garanflo gave a report on the licensing seminars scheduled to assist entities in streamlining the process for applicants and to minimize application errors. Ms. Garanflo gave a report on the reduction in the licensure application processing time, and the elimination of the licensing backlog. After Ms. Garanflos report, the board directed staff to prepare a press release that the board exceeded the goal established by the Texas

Legislature. The board directed staff to provide a demonstration at the next board meeting of the webbase LIST system that was set up to provide online communication and application status to applicants.

After a discussion of the disciplinary review process, Dr. Kalafut appointed two addition committee members, Dr. Guajardo and Dr. McMichael, to the Disciplinary Process Review Committee. In order to provide the board the opportunity to review all the patients involved initially in a complaint, the board directed staff to provide all documentation regarding multiple patients for a standard of care case at Informal Settlement Conferences, even those for whom the expert panel found no standard of care violations.

After discussion, the board approved the strict enforcement of the statutory deadline for filing rebuttal material for Informal Settlement Conferences. The board also directed staff to send advanced notification of the boards policy decision of strict compliance with the statutory deadline for respondents to provided rebuttal material at least five business days before a scheduled ISC.

**Agenda item #4, Discussion and possible action regarding administrative policy for dismissal information at Informal Settlement Conferences.** After discussion, an Ad Hoc Committee for the Disciplinary Process was formed to study the affects of the overwhelming caseload and to propose options for an administrative policy for dismissal information for Informal Settlement Conferences.

**Agenda item #5, Discussion and possible action regarding authority of the Executive Committee to designate a person to act in the absence of the Executive Director.** After discussion, Mr. Fredricks moved, Ms. Southard seconded, and the motion passed to approve the Executive Committee to designate an acting Executive Director.

**Agenda item #6, Discussion and possible action regarding possible issues during the 81<sup>st</sup> Legislature.** Ms. Robinson advised the board of the current confusing regulations regarding prescription delegation. The board directed staff not to address any changes to the statutes regarding prescription delegation.

Ms. Garanflo reviewed statutory requirements and board rules regarding education and licensure of international medical graduates, including demonstration of substantial equivalence of medical education. After discussion, the board directed staff to draft proposed statutory and rule changes that would result in further streamlining without compromising licensing standards.

**Agenda item #7, Discussion and possible action regarding current litigation.** Mr. Simpson gave a report on pending litigation concerning laser rules, subpoenaed medical records, and a complaint at the State Office of Administrative Hearings.

**Agenda item #8, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination request of Non-Public Rehabilitation Orders.** Mr. Turner moved, Dr. Oswalt seconded, and the motion passed to approve Non-Public Rehabilitation Order #504; Modification Granted of Rehabilitation Order #358; and Non-Public Rehabilitation Order #505.

After discussion, Ms. Raggette moved, Ms. Southard seconded, and the motion passed to approve Termination Granted of Rehabilitation Order #291.

After discussion, Ms. Fredricks moved, Ms. Southard seconded, and the motion passed to deny the Modification Granted of Rehabilitation Order #416, due to respondent as a resident needed the infrastructure of his current order to keep his sobriety.

After discussion, Dr. Price moved, Ms. Southard seconded, and the motion passed to approve the Modification Granted of Rehabilitation Order #419 with the clerical correction to see a psychiatrist twice a month instead of weekly.

After discussion, Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve Non-Public Rehabilitation Order #506 with the modification adding a \$10,000 penalty.

**Agenda item #9, Consideration and Approval of Agreed Board Orders.** Ms. Southard moved, Ms. Raggette seconded, and the motion passed to approve Agreed Orders for the following: Morris Creedon-McVean, D.O.; Howell E. Davis, D.O.; Lucy Dossett, M.D.; Ravikumar Kanneganti, M.D.; Clarence McClure, M.D.; Arnold W. Mech, M.D.; Stephen, Miller, M.D.; Joseph Nightingale, M.D.; Raymond Potterf, M.D.; Patrick K. Riggs, M.D.; Luis Rios, Jr., M.D.; Romeo Rojas-Walsson, M.D.; Roger C. Sessions, M.D.; Mark D. Stoeckel, M.D.; Roosevelt Taylor, Jr., M.D.; Eric Walker, M.D.; Robert Frank White, M.D.; Ronald L. Fraser, M.D.; Kanubhai Patel, M.D.; Harold J. Wall, M.D.; Ernest J. Gregory, Jr., M.D.; Joseph C. Lampley, D.O.; Diane A. McMains, M.D.; Rick G. Lorentz, M.D.; Gary D. Wolf, D.O.; David L. Hoblit, M.D.; Billy H., Puryear, D.O.; Dennis D. Roberts, M.D.; and Gullapalli R. Rao, M.D.

After discussion, **Dr. Benavides moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for David John Findlay, M.D. with the modification to add ten (10) years of continuing medical education in pain management per year due to the issue of non-therapeutic prescribing.**

After discussion, **Ms. Raggette moved and Dr. McNeese seconded the motion to approve an Agreed Order for Dr. Stella Kirby, M.D., with the modification to add a mini-residency program or K-Star program to the one hundred (100) hours of continuing medical education due to out of practice since 1997. Dr. Oswalt made a friendly amendment, Dr. McNeese seconded, and the motion passed to amend Ms. Raggettes motion to modify the one hundred (100) hours to fifty (50) hours of continuing medical education and a mini-residency program or K-Star. The motion passed to approve the Agreed Order for Stella Kirby, M.D. with the modification to modify the one hundred (100) hours to fifty (50) hours of continuing medical education in addition to K-Star or a mini-residency program approved by the Executive Director.**

After discussion, **Ms. Raggette moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Dr. Suraphandhu Srivathanakul, M.D. with the modification to add a \$1,000 administrative penalty for violation of a board order.**

After discussion, **Ms. Fredricks, moved, Mr. Turner seconded, and the motion passed to approve the Agreed Order for John S. Truitt, M.D., as written.**

After discussion, **Ms. Raggette moved, Ms. Blackwell seconded, and the motion passed to approve the Agreed Order for Benjamin Ybarra, D.O., with the modification to require eight (8) hours of continuing medical education in record keeping and eight (8) hours in pain management due to prescribing of narcotics and patient overdose.**

**Ms. Raggette moved, Ms. Blackwell seconded, and the motion passed to approve the Agreed Order for Peter C. Okose, M.D., as written.**

After discussion, **Dr. Oswalt moved, Mr. Webb seconded, and the motion passed to go into Executive Session at 11:25 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 Generals Opinion No. H-484. Dr. Shulkin was recused. Open session resumed at 11:30 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Ms. Raggette moved, Ms. Blackwell seconded, and the motion passed to approve the Agreed Order for David Provost, M.D., as written.** Dr. Shulkin was recused.

**Agenda item #10, Consideration and Approval of Administrative Orders.** After discussion, **Ms. Raggette moved, Ms. Southard seconded, and the motion passed to approve the Administrative Order for Bonnie J. Baldwin, M.D., as written.**

**Agenda item #11, Consideration and Approval of Modification Request/Termination Request Orders.** After discussion, **Dr. Price moved, Dr. Oswalt seconded, and the motion passed to approve the order granting the Termination Request order for Margarita G. Hammeke, D.O.; the Modification Request order for Mark Hatch, M.D.; the Termination Request order for Stephen Ladner, M.D.; the Modification Request order for Charles Moore, M.D.; the Modification Request order for George Walters, M.D.; the Modification Request order for Mark Wilson, M.D.; the Termination Request order for Edward Spencer, M.D.; and the order Denying Termination Request for Dr. Ronald Woods, Jr., M.D.**

**Agenda item #12, Consideration and Approval of Nunc Pro Tunc Orders.** After discussion, **Mr. Webb moved, Ms. Blackwell seconded, and the motion passed to approve the Nunc Pro Tunc Order for Thomas Konjoyan, M.D., as written.**

**Agenda item #13, Consideration and Approval of Mediated Settlement Agreed Orders.** After discussion, **Dr. Oswalt moved, Ms. Raggette seconded, and the motion passed to approve the Mediated Settlement Agreed Orders for Lauren M. Curtis, M.D.; Vivek Kushwaha, M.D.; James J. Mahoney, D.O.; Garry W. Stubbs, M.D.; Syed Zaheer, M.D.; Nancy L. Anderson, M.D.; and Jack F. Hardwick, M.D., as written.**

**Agenda item #14, Consideration and Approval of Termination of Suspension Orders.** After discussion, **Ms. Raggette moved, Dr. Oswalt seconded, and the motion passed to approve the Termination of Suspension order for Robert B. Warr, M.D., as written.**

There were no items for Agenda item #15.

**Agenda item #16, Report on Temporary Suspensions.** Ms. Leshikar gave a report.

**Agenda item #17, Report on Automatic Orders.** Ms. Leshikar gave a report.

**Agenda item #18, Consideration of dismissal recommendations from Informal Settlement Conference panels.** After discussion, **Dr. Price moved, Mr. Turner seconded, and the motion passed to approve the dismissal recommendations from Informal Settlement Conference panels except for #7, 16, 19, 21, and 35.**

After discussion, **Dr. Price moved, Ms. Blackwell seconded, and the motion passed to approve the dismissal recommendation for #7.**

After discussion, **Mr. Turner moved, Dr. Arambula seconded, and the motion passed to approve the dismissal recommendation for #16. Dr. Kalafut was recused.**

After discussion, **Dr. McNeese moved, Ms. Raggette seconded, and the motion passed to deny the dismissal recommendation for #19 due to the urine screen for lead substance in a child was not sufficient for the diagnosis. It should have been a blood test. The case was referred back for a second Informal Settlement Conference.**

After discussion, **Mr. Turner moved, Dr. Price seconded, and the motion passed to approve the dismissal recommendation for #21 due to mitigating factors of the physicians efforts.**

After discussion, **Ms. Southard moved, Ms. Raggette seconded, and the motion passed to approve the dismissal recommendation for #35.**

**Agenda item #19, Consideration and approval of cease and desist orders.** After discussion, **Mr. Turner moved, Ms. Fredricks seconded, and the motion passed to approve the cease and desist orders for Derrick Carroll; and Jessica Gonzalez, M.D.**

There were no items for Agenda Items #20 and #21.

**Agenda item #22, Discussion, recommendation, and possible action regarding rule reviews and possible adoption of proposed rule changes:**

After discussion, the board directed staff to withdraw amendments to 193.6 and Chapter 182.

- a. **Chapter 161, General Provisions.** Rule review with amendments to 161.6, Committees of the Board, updates the duties of the Licensure Committee; 161.8, Deputy Executive Director, to update the name of Deputy Executive Director to Chief of Staff. No written comments were received. Shirley Pigott, M.D., presented oral comments. After discussion, **Mr. Turner moved, Ms. Raggette seconded, and the motion passed to adopt the proposed rule regarding Title 22, Texas Administrative Code, Chapter 161, as published in Texas Register, on April 22, 2008, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.**
- b. **Chapter 163, Licensure.** Rule review with amendments to 163.4, Procedural Rules for Licensure Applicants, to specify instances under statute and Board rule when the Executive Director may determine applicants ineligible for licensure and not have staff process an applicant's entire application before review by the Licensure committee; 163.5, Licensure Documentation, clarifies when an applicant must submit documentation regarding inpatient treatment, and modifies language regarding alcohol/substance disorder and physical illness that did or could have impaired an applicant's ability to practice medicine; 163.6, Examinations Accepted for Licensure, provides an exception to the three-attempt limit to conform to statutory requirements adopted by the Legislature in 2007; 163.10, Relicensure, updates requirements to conform to previous rule changes to require that Jurisprudence Examination be taken only once; 163.11, Active Practice of Medicine, deletes passage of SPEX examination as a stated remedy for applicants who cannot demonstrate that they have been in the active practice of medicine, 163.14, Interpretation of 1.51(d), Senate Bill 419, repeals emergency and temporary provision regarding interpretation of three-attempt rule. After written comments were received and reviewed. No one signed up to present oral comments. **Dr. Price moved, Ms. Blackwell**

- seconded, and the motion passed to adopt the proposed rule regarding Title 22, Texas Administrative Code, Chapter 163, as published in Texas Register, on April 22, 2008, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.
- c. **Chapter 166, Registration**, with amendments to 166.1, Physician Registration, updates rule to conform with biennial registration; 166.2, Continuing Medical Education, updates rule to conform with biennial registration and amends provisions related to administrative penalties to be consistent with provisions under Chapter 190 related to disciplinary guidelines; 166.5, Relicensure, clean-up of language; 166.6, Exemption from Registration Fee for Retired Physician Providing Voluntary Charity Care, updates rule to conform with biennial registration. No written comments were received. No one signed up to present oral comments. After discussion, **Mr. Turner moved, Ms. Raggette seconded, and the motion passed to adopt the proposed rule regarding Title 22, Texas Administrative Code, Chapter 166, as published in Texas Register, on April 22, 2008, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.**
  - d. **Chapter 169, Authority of Physicians to Supply Drugs**, with amendments to 169.2, Definitions, updates name of Texas Medical Board. No written comments were received. No one signed up to present oral comments. After discussion, **Ms. Southard moved, Ms. Raggette seconded, and the motion passed to adopt the proposed rule regarding Title 22, Texas Administrative Code, Chapter 169, as published in Texas Register, on April 22, 2008, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.**
  - e. **Chapter 171, Postgraduate Training Permits**, with amendments to 171.3, Physician-in-Training Permits, updates the name of the Texas Medical Board, extends period for submitting an application from 90 days to 120 days from the expected start date of the training program, specifies instances under statute and Board rule when the Executive Director may determine applicants ineligible for licensure and not have staff process an applicant's entire application before review by the Licensure committee, modifies language regarding alcohol/substance disorder and physical illness that did or could have impaired an applicant's ability to practice medicine; 171.4, Board-Approved Fellowships, repeals expired provisions for fellowships approved before September 1, 2007; 171.5, Institutional Permits, repeals expired provisions related to Institutional Permits and replaces with new rule regarding the Duties of PIT Holders to Report; 171.6, Duties of Program Directors to Report, extends from 7 days to 30 days for program directors to report certain matters to the Board, requires reporting of all participants in



the training programs, and deletes requirement for annual reports by program directors. No written comments were received. No one signed up to present oral comments. After discussion, **Mr. Turner moved, Ms. Raggette seconded, and the motion passed to adopt the proposed rule regarding Title 22, Texas Administrative Code, Chapter 171, as published in Texas Register, on April 22, 2008, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.**

- f. **Chapter 172, Temporary and Limited Licenses**, with amendments to 172.1, Purpose, adds citation of Medical Practice Act to clarify authority for the chapter; 172.2, Construction and Definitions, specifies instances under statute and Board rule when the Executive Director may determine applicants ineligible for licensure and not have staff process an applicant's entire application before review by the Licensure committee; 172.3 Distinguished Professor Temporary License, 172.6 Visiting Professor Temporary License, and 172.8 Faculty Temporary License , refers to medical schools that are accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education, instead of listing each medical school; and 172.13, Conceded Eminence , clarifies that medical school applying on behalf of the physician must be accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education. No written comments were received. No one signed up to present oral comments. After discussion, **Mr. Turner moved, Ms. Raggette seconded, and the motion passed to adopt the proposed rule regarding Title 22, Texas Administrative Code, Chapter 172, as published in Texas Register, on April 22, 2008, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.**
- g. **Chapter 182, Use of Experts.** Withdrawn.
- h. **Chapter 184, Surgical Assistants**, with amendments to 184.1, Purpose, adds reference to Medical Practice Act and Surgical Assistants Act, authorizing rules; 184.2, Definitions, updates name of the Texas Medical Board; 184.4, Qualifications for Licensure, clarifies what is an acceptable registered nurse first assisting program and a surgical physician assistant program, deletes surgical assistant programs that are not CAAHEP accredited from being acceptable for purposes of licensure, and updates name of LCC-ST; 184.5, Procedural Rules for Licensure Applicants, deletes obsolete provision regarding an applicant who applied prior to September 1, 2002; 184.6, Licensure Documentation, updates reference to alcohol/substance disorders; 184.8, Licensure Renewal , clarifies the rule by setting forth requirements that an applicant must furnish

supplemental explanations on renewal applications and prohibiting a Surgical Assistant from using the identification as a Licensed Surgical Assistant after a license is expired; 184.9, Relicensure, provides that a license shall be considered to be cancelled if expired more than one year, unless an investigation is pending; 184.18, Administrative Penalties, updates rule to refer to rules regarding imposition of an administrative penalty under chapter 187; 184.19, Complaint Procedure Notification, updates references to other Board rules; 184.20, Investigations, deletes misplaced reference to licensure procedure; and 184.26, Voluntary Relinquishment or Surrender of a License, corrects title of Chapter 196 of the Board Rules. No written comments were received. No one signed up to present oral comments. After discussion, **Mr. Turner moved, Ms. Raggette seconded, and the motion passed to adopt the proposed rule regarding Title 22, Texas Administrative Code, Chapter 184, as published in Texas Register, on April 22, 2008, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.**

- i. **Chapter 193 Standing Delegation Orders**, with amendments to 193.1, Purpose, updates name of Texas Medical Board; 193.2, Definitions, updates name of Texas Physician Assistant Board; 193.4, Scope of Standing Delegation Orders, clean-up language; 193.6, Delegation of the Carrying Out or Signing of Prescription Orders to Physician Assistants or Advance Practice Nurses, clarifies physician supervision at medically-underserved areas and alternate physician practice sites; 193.7, Delegated Drug Therapy Management, updates reference to the Texas Pharmacy Act; 193.8, Delegated Administration of Immunizations or Vaccinations by a Pharmacist Under Written Protocol, updates reference to the Texas Medical Practice Act; 193.9, Pronouncement of Death, updates reference to the Texas Medical Practice Act; 193.10, Collaborative Management of Glaucoma, updates reference to the Texas Optometry Act and the name of the Texas Medical Board; and 193.11, Use of Lasers, repeals this section. Written comments were received. Jennifer Riggs gave oral testimony. No one signed up to present oral comments. After discussion, **Dr. Oswalt moved, Ms. Blackwell seconded, and the motion passed to adopt the proposed rule regarding Title 22, Texas Administrative Code, Chapter 193, as published in Texas Register, on April 22, 2008, except to withdraw 193.6 and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.**

**Discussion item #1. Mr. Turner moved, Ms. Southard seconded, and the motion pass to approve:**

- A. Consideration and approval of the April Board Meeting Minutes;**
- B. Consideration and approval of the April 28, 2008 Disciplinary Panel Minutes regarding Dennis D. Roberts, M.D., Temporary Suspension With Notice;**
- C. Consideration and approval of the April 28, 2008 Disciplinary Panel Minutes regarding Roberto Zayas, Jr., M.D., Temporary Suspension With Notice;**
- D. Consideration and approval of the May 23, 2008 Disciplinary Panel Minutes regarding Edward Emile Louis, M.D., Temporary Suspension Without Notice;**
- E. Consideration and approval of the May 23, 2008 Disciplinary Panel Minutes regarding Khanh Nguyen Vu, D.O., Temporary Suspension Without Notice;**
- F. Consideration and approval of the June 12, 2008 Executive Committee Minutes;**
- G. Consideration and approval of the June 13, 2008 Disciplinary Panel Minutes regarding Charles Massey, Jr., M.D., Temporary Suspension Without Notice; and**
- H. Consideration and approval of the June 19, 2008 Disciplinary Panel Minutes regarding Edward Emile Louis, M.D., Temporary Suspension With Notice.**

**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. McMichael 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, Dr. Oswalt seconded, and the motion passed to approve the Finance Committee meeting minutes and action items.**

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

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

Dr. Price gave a report of the Disciplinary Process Review Committee. **Mr. Turner moved, Dr. McNeese seconded, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items.**

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

There being no further agenda items the meeting was adjourned.