

TEXAS MEDICAL BOARD
BOARD MEETING MINUTES

August 23-24, 2007

The meeting was called to order on August 23, 2007 at 3:25 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; Manuel Guajardo, M.D.; Amanullah Khan, M.D.; Melinda McMichael, M.D.; Keith E. Miller, M.D.; Charles E. Oswalt, III, M.D.; Larry Price, D.O.; Ms. Paulette Southard; 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. Ms. Southard 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, Executive Directors report. Jaime Garanflo provided an update concerning the new fingerprinting process to be implemented by the board October 1, 2007. Ms. Garanflo reported that the board plans to use the same vendor currently utilized by the Department of Public Safety. Ms. Garanflo indicated that this process would begin with licensure applicants.

Jane McFarland provided an update concerning recent legislative inquiries received by the board. Ms. McFarland reported that the majority of inquiries pertained to the licensure process.

Mari Robinson, Director of Enforcement, informed the board members that all defense attorneys that have previously appeared before the board have been sent a letter regarding the deadline for the submission of items for Informal Settlement Conferences (ISCs). Ms. Robinson

then discussed the large number of ISCs held the past fiscal year and explained a process is needed in order to make sure there is consistency in terms of what cases go to an ISC panel. Board staff was directed to proceed with the development of this process.

Dr. Price moved, Dr. Anderson seconded, and the motion passed to go into Executive Session at 3:35 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 4:12 p.m. and it was announced that no action was taken. A certified agenda was made.

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

The meeting recessed for the day at 4:14 p.m. and reconvened on Friday, August 24, 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.; 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 #6, Executive Session. Dr. Price moved, Dr. Anderson seconded, and the motion passed to go into Executive Session at 8:09a.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 9:02 a.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #7, 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 Non-Public Rehabilitation Order #323. Dr. Kalafut recused herself from the vote.**

After discussion, **Mr. Turner moved, Dr. Benavides seconded and the motion passed to approve the order for #441 once it is amended to indicate there can be no early termination of the Order.**

Mr. Turner moved, Ms. Blackwell seconded, and the motion passed to approve the remaining Non-Public Rehabilitation Orders as written.

Agenda item #8, Consideration and Approval of Agreed Board Orders. After discussion, **Dr. Price moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Anthony M. Deep, M.D. as written.**

After discussion, **Dr. Anderson moved, Mr. Webb seconded, and the motion passed to approve the Agreed Order for Gregory E. Hyde, M.D. as written.**

After discussion, **Dr. Anderson moved, Dr. Miller seconded and the motion passed to approve the Agreed Order for Herbert W. Lindley, M.D. once requirement of a chaperone present in the room is added to the terms of the Order.**

After discussion, **Ms. Attebury moved, Dr. Anderson seconded, and the motion passed to approve the Agreed Order for William M. Mania, M.D. as written.**

After discussion, **Ms. Blackwell moved, Ms. Attebury seconded, and the motion passed to approve the Agreed Order for Albert H. Olivencia-Yurvati, M.D. once the noted spelling error in the Order is corrected.**

After discussion, **Mr. Turner moved, Ms. Fredricks seconded, and the motion passed to approve the Agreed Order for Gregory A. Ward, M.D. once a Public Reprimand is added to the Order.**

After discussion, **Dr. Benavides moved, Dr. Arambula seconded, and the motion passed to approve the Agreed Order for Donald Gibson, II, M.D. once the provision requiring re-certification is removed from the terms of the Order and the ability to prescribe Schedule 2 and Schedule 3 drugs is prohibited.**

After discussion, **Mr. Turner moved, Ms. Attebury seconded, and the motion passed to approve the Agreed Order for Marshal J. Dyke, M.D. once the noted spelling error is corrected.**

After discussion, **Ms. Blackwell moved, Mr. Turner seconded and the motion passed to approve the Agreed Order for Aurelio A. Ortiz, M.D. as written.**

Dr. Price moved, Ms. Blackwell seconded and the motion passed to approve the Agreed Orders for the following: Wayne L. Bell, M.D.; Andrew Blinkov, M.D.; William M. Bond, M.D.; Gary L. Bryan, M.D.; David W. Carlson, M.D.; June-Chieh Chang, M.D.; Dick O. Creamer, M.D.; Gregory J. Elders, M.D.; Alberto Francis, M.D.; Richard L. Hodzic, M.D.; Susan B. Kern, M.D.; James D. Key, M.D.; Nasim F. Khan, M.D.; Rabia A. Khan, M.D.; Benjamin J. Leeah, M.D.; Charles E. Longmoor, M.D.; David Marrack, M.D.; Warner B. Massey, M.D.; Bruce B. McDonald, M.D.; Morris K. Patteson, M.D.; William H. Peterek, M.D.; Pushpa R. Rana, M.D.; Thomas B. Raper, M.D.; Peter B. Rojas, M.D.; Sonali Sarkar, M.D.; Vinita B. Schroeder, M.D.; David A. Slater, M.D.; Luis C. Trigo, III, M.D.; Gary R. Tylock, M.D.; Isidoro Wiener, M.D.; Felecia G. Williams, M.D.; Mark L. Wright, M.D.; Dean A. Cabansag, M.D.; Jennifer L. Davis, M.D.; Fathi G. Fam, M.D.; William Gordon, Jr., M.D.; Peter

C. Okose, M.D.; Sergio Silva, M.D.; Ravikumar P. Vemuru, M.D.; Seth C. Maxwell, **M.D.**; Juan A. Montelongo, M.D.; W. Keith Conner, D.O.

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:** Marissa I. Aguirre, M.D.; Carlos Arroyo, M.D.; Celestino Avila, M.D.; William Black, M.D.; Dale J. Bradley, M.D.; Howard Thomas Douglas, III, M.D.; Robert L. Edwards, M.D.; Jesse G. Garcia, M.D.; Barton E. Giesel, M.D.; Carlos A. Gutierrez, M.D.; James M. Hurley, M.D.; Arifa Ilahi, M.D.; Robert W. Jackson, M.D.; Jeanne M. Jogler, M.D.; Harold E. Johnson, D.O.; Robert I. Kaminsky, M.D.; Bernadette Kohn, M.D.; Terri L. Major-Kincade, M.D.; Steven McNutt, M.D.; Ramesh R. Parikh, M.D.; Eric Peden, M.D.; Arlette N. Pharo, D.O.; Albert M. Rogers, M.D.; Andrew T. Shimer, M.D.; Susan Van De Water, M.D.; Eric J. Venegas, M.D.; William G. Williams, M.D.; Larry L. Zhou, M.D.; Gary R. Albertson, D.O.; John Berman, M.D.; Patrick J. Dean, M.D.; Jerry K. Johnson, M.D.; Robert M. Lambert, M.D.; David Mosig, M.D.; Shahrokh Safarimaryaki, M.D.; Abbass Sekhavat, M.D.

Agenda item #10, Consideration and Approval of Modification Request/Termination Request Orders. Ms. Southard moved, Ms. Fredricks seconded, and the motion passed to approve the Modification Request/Termination Request Orders as written for the following: Robert N. Berezoski, Jr., M.D.; Dean E. Wade, M.D.; Daniel P. Logan, M.D.; Dora B. Crandall, M.D.; Virginia McDougall, M.D.; Darrel Wells, M.D.

Agenda item #11, Consideration and Approval of Nunc Pro Tunc Orders. Dr. Benavides moved, Ms. Southard seconded and the motion passed to approve the Nunc Pro Tunc Order as written for Christi E. Obukofe, M.D.

Agenda item #12, Consideration and Approval of Mediated Settlement Agreed Orders. Dr. Price moved, Mr. Turner seconded and the motion passed to approve the

Mediated Settlement Agreement Orders for the following: Shirley P. Pigott, M.D.; Russell R. Roby, M.D.; and Jeffrey S. Smith, M.D.

There were no items for agenda items #13-15.

Agenda Item #16, Report of Suspension by Operation of Law. Nancy Leshikar gave a report on the following Suspensions by Operation of Law: Anant Mauskar, M.D., and Stephen P. Miller, M.D.

Agenda Item #17, Report on Temporary Suspensions Orders. Nancy Leshikar gave a report on Temporary Suspensions for the following: Susan Kern, M.D.; Maurice S. Conte, M.D.; John Woodward, M.D.; David M. McClellan, M.D.

Agenda Item #18, Report on Automatic Orders. Nancy Leshikar gave a report on the Automatic Order for Hans Alfred Langsjoen, M.D.; Cesar E. Maldonado, M.D.

Agenda Item #19, Report on Order of Limited Remand. Nancy Leshikar gave a report on the Order of Limited Remand for Michael Brown, M.D.

Dr. Price moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 9:35 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. Open session resumed at 12:03 p.m. and it was announced that no action was taken. A certified agenda was made.

Agenda Item #20, Consideration of dismissal recommendations from Informal Settlement Conference panels. After discussion, **Dr. Miller moved, Ms. Blackwell seconded and the motion passed to refer case #07-0288 for a second Informal Settlement Conference (ISC).**

After discussion, **Mr. Turner moved, Dr. Zeitler seconded and the motion passed to refer case # 07-0305 for a second ISC.**

After discussion, **Dr. McMichael moved, Ms. Fredricks seconded and the motion passed to refer case #07-0399 for a second ISC and a second opinion from an expert panelist.**

After discussion, **Dr. Miller moved, Ms. Fredricks seconded and the motion passed to accept the dismissal of case # 06-0122 provided a custom letter be send to the Respondent regarding endoscopies.**

After discussion, **Dr. Zeitler moved, Ms. Blackwell seconded and the motion passed to refer case #07-0326 for a second ISC.**

After discussion, **Dr. Price moved, Dr. Anderson seconded and the motion passed to accept the dismissal of case # 07-0197 provided a custom letter be sent to the Respondent.**

After discussion, **Ms. Fredricks moved, Ms. Blackwell seconded and the motion passed to refer case #07-0058 to a second ISC.**

After discussion, **Mr. Webb moved, Dr. Guajardo seconded and the motion passed to accept the dismissal of case #07-0186 provided a custom letter be sent to the Respondent.**

After discussion, **Mr. Turner moved, Dr. Miller seconded and the motion passed to accept the remaining dismissal recommendations.**

Agenda Item #21, Consideration and Approval of cease and desist orders. After discussion, Mr. Turner moved, Dr. Anderson seconded and the motion passed to approve the cease and desist orders for Charles Francis Richter and Burnett Armstrong.

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

- a. **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.

- c. **Chapter 176**, Health Care Liability Lawsuits and Settlements, to include rule review and amendments to 176.1 Definitions; 176.2 Reporting Responsibilities; 176.4 Timeframes and attachments; 176.6 Penalty; 176.8 Board Review of Healthcare Liability Lawsuits and Settlements; and 176.9 Reporting Form. Provides statutory references to Chapter 74 of the Texas Civil Practices and Remedies Code and Chapters 82 and 1910 of the Insurance Code, and updates of the Texas Medical Board. No one signed up to present oral comments. No written comments were received.

- d. **Chapter 181**. Contact Lens Prescriptions, to include rule review and amendments to 181.2 Definitions; 181.3 Release of Contact Lens Prescription; and 181.6 Physicians Prescriptions: Delegation, relating to establishing that the verification of a contact lens prescription may substitute for an original signature to create a valid contact lens prescription. No one signed up to present oral comments. No written comments were received.

- g. **Chapter 191**. District Review Committees, to include rule review of 191.191.5, and amendments to 191.4 Activities and Scope of Authority. Deletes provision that allows District Review Committee (DRC) members to evaluate medical competency of physicians under investigation. Establishes DRC members are allowed to participate

in mediation and requires DRC members to have the same qualifications as expert panel members. No one signed up to present oral comments. No written comments were received.

- h. **Chapter 194**, Non-Certified Radiologic Technicians, to include rule review of 194.1-194.11 and amendments to 194.2 Definitions; 194.3 Registration; 194.4 Annual Renewal; 194.5 Non-Certified Technicians Scope of Practice; 194.6 Suspension, Revocation of Nonrenewal of Registration. Provides updates regarding the names of the Texas Medical Board and Department of State Health Services, and clarifies that NCT registration that are not renewed within 90 days will be considered and expired. No one signed up to present oral comments. No written comments were received.
- i. **Chapter 197**, Emergency Medical Service, to include rule review 197.1-197.6 and amendments to 197.1 Purpose; 197.2 Definitions; 197.3 Off-line Medical Director; and 197.4 On-Line Medical Director. Provides updates regarding the names of Texas Medical Board and Department of State Health Services, requires that EMS medical directors report to the board the names and license numbers of all emergency medical personnel who work under a medical directors supervision, and removes the requirement that on-line physicians be familiar with the capabilities of the pre-hospital providers, as well as local EMS operational policies and regional critical care referral protocols. No one signed up to present oral comments. No written comments were received.
- j. **Chapter 200**, Standards for Physicians Practicing Complimentary and Alternative Medicine, to include rule review. No proposed changes. No one signed up to present oral comments. No written comments were received.

Mr. Turner moved, Dr. Price seconded, and the motion passed to approve the proposed changes as written.

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. Anderson 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. Southard 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, Ms. Blackwell seconded, and the motion passed to approve the Public Information minutes.**

Dr. Miller gave a report of the Licensure Committee meeting. After discussion, **Dr. Miller moved and Mr. Turner 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. Southard 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.

Agenda Item #23, Consideration and Approval for Proposal for Decision
Robert C. Kuhne, M.D. Paul D. Keeper, Administrative Law Judge, gave a report and recommendation. Dr. Kuhne appeared with his attorney, Frank Walker. Roger Calhoun, staff attorney, appeared representing the Board. Mr. Calhoun gave a presentation. Mr. Walker gave a presentation.

Dr. Price moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 1:55 9.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 2:02 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, Mr. Webb moved, Ms. Southard seconded and the motion passed to adopt the Findings of Fact, Conclusions of Law, and sanctions recommended by the Administrative Law Judge in the Proposal for Decision, and approve the suggested Final Order filed in this matter by Board Staff.

There were no items for agenda #24.

There being no further items the meeting adjourned at 2:10 p.m.