

TEXAS MEDICAL BOARD
LICENSURE COMMITTEE MEETING MINUTES

June 26, 2008

The meeting was called to order at 11:20 a.m. by Chair, Michael Arambula, M.D. Committee members present were, Julie Attebury, Jose M. Benavides, M.D., Roberta Kalafut, D.O., Melinda McMichael, M.D., Paulette B. Southard, Timothy J. Turner, and Timothy Webb.

Agenda Item 10 - Discussion, recommendation, and possible action regarding **administrative penalty guidelines**. Ms. Garanflo presented a report on the administrative penalty guidelines approved by the Board. The item most likely to occur with licensure applicants is failure to report accurate information on an application, which under the guidelines is a penalty of \$2000. The Committee discussed whether the penalty would be assessed per instance of falsification, per question, or per application.

The Committee discussed adding language to the application form to inform applicants that the Board conducts criminal history background checks; to advise applicants in doubt regarding when to respond to answer yes to criminal history questions; to advise applicants that the administrative penalty guidelines call for a \$2000 penalty if an applicant fails to report accurate information on an application and that penalties are assessed through a public order; and to advise applicants that disclosing certain events truthfully does not necessarily prevent an applicant from getting a license or result in a public order. The Committee directed staff to propose changes to the application questions for the Committees review at the next Licensure Committee meeting in August.

Agenda Item 2 - Discussion, recommendation, and possible action regarding applicants for licensure, permits, and certification.

Dr. Benavides moved, **Mr. Webb** seconded, that the Committee close the meeting to the public and continue in Executive Session for deliberations concerning licensure applications. The motion passed. Dr. Arambula announced that the meeting would be closed for deliberations at 11:45 AM concerning licensure applications and the character and fitness of applicants under the authority of The Medical Practice Act Sections 152.009 and 155.058, Occupations Code, and that while in executive session, the Board would not take any action, make any decision, or vote with regard to any matter that may be considered or discussed. A certified agenda of any executive session will be made.

The executive session ended at 3:45 p.m.

Item 2a Applicants appearing concerning eligibility

The Licensure Committee conducted hearings to review applicants appearing concerning eligibility. The hearings were conducted in Executive Session. Following the hearings, the Committee reconvened and considered the applications.

1. Physician Licensure Applicants

Applicant #664 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that the applicant be determined ineligible for a Texas medical license.** This recommendation is due to not having actively practiced medicine full-time for one of the two years preceding the date of application; discipline by peers; and submission of false or misleading statement on application for licensure. Factors contributing to this recommendation include that the applicant has not actively practiced medicine since completing an anesthesiology residency in June 2005; disciplinary action taken by a residency program during the first two years of training that include placement on probation and monitoring for issues of honesty and competence; failure to report placement on probation during residency on physician licensure application and the committees determination that the falsification was intentional. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #671 appeared, with counsel, 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 relicensure, due to providing false or misleading information to the Board.** Factors contributing to this recommendation include the committees determination that the submission of inaccurate information on the applicants application for relicensure was not intentional. The applicant will be allowed to file a new application in which the correct information is provided. **Ms. Attebury seconded the motion. All voted in favor. The motion passed.**

Applicant #668 appeared, with counsel, 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 a Texas medical license, subject to an administrative penalty in the amount of \$2000.** 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 of the application was intentional. **Dr. McMichael seconded the motion. All voted in favor. The motion passed.**

Applicant #666 appeared before the Committee, 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, subject to an administrative penalty in the amount of \$2000.** 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 on the application was intentional. **Dr. Kalafut seconded the motion. All voted in favor. The motion passed.**

Applicant #675 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 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 submission of inaccurate information on the application was not intentional. The applicant will be allowed to file a new application in which the correct information is provided. **Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Applicant #659 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, subject to an administrative penalty in the amount of \$2000.** 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 of the application was intentional. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #669 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 a decision on this application for licensure be deferred and application expiration dates and fees be extended for 6 months to allow the applicant time to complete an independent psychiatric evaluation and psychological testing by a consultant approved by the Executive Director. Upon completion of this**

evaluation the applicant will be required to reappear before the Licensure Committee for consideration of licensure and possible restriction to a group practice and other action if a license were to be granted. This recommendation is due to failure to practice medicine in a professional manner consistent with public health and welfare, and discipline by peers. Factors contributing to this recommendation include repeated warnings and placement on a three-month probation during residency training for dishonesty, professionalism breaches and negligence of duty. **Ms. Attebury seconded the motion. All voted in favor. The motion passed.**

Applicant #667 appeared with counsel, 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. Dr. McMichael seconded the motion. All voted in favor. The motion passed.**

Applicant #670 appeared before the Committee, 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 determined ineligible for a Texas medical license.** This recommendation is due to failure to practice medicine in a professional manner consistent with public health and welfare; and, repeated or recurring meritorious health care liability claims that evidence professional incompetence likely to injure the public. Factors contributing to this recommendation include multiple medical malpractice suits with payment regarding care provided between 1988 and 2003; and eight complaints, related to standard of care and inadequate supervision of delegates, filed with the Florida Medical Board from 1988 through 2006, with letters of guidance issued relating to four of the complaints. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #661 appeared, with counsel, before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. McMichael 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 of the application was not intentional. The applicant will be allowed to file a new application in which the correct information is provided. **Ms. Attebury seconded the motion. All voted in favor. The motion passed.**

Applicant #658 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Ms. Southard moved to recommend to the full Board that the applicant be**

granted a Telemedicine license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.

Applicant #657 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 granted a Texas medical license, subject to an administrative penalty in the amount of \$ 6000.** 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, and that three applications were falsified with five instances of falsification. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Applicant #651 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. Kalafut moved to recommend to the full Board that the applicant be granted a Texas medical license under a non-public, non-disciplinary rehabilitation order for 8 years restricting the applicant from practicing anesthesiology and other requirements specified in the Rehabilitation Checklist that has been distributed to the members of the committee.** This recommendation is due to the applicants self-report of intemperate use of drugs and alcohol. Factors contributing to this recommendation include that the applicant self-reported drug addiction in 2006 while under a Physician in Training permit and compliance with a private rehabilitation order entered in December 2006. Terms of that order included drug screens, psychiatric treatment, Alcoholics Anonymous, and Caduceus. The applicant also successfully completed inpatient treatment in 2006. **Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #649 appeared before the Committee, in executive session, on referral by the Executive Director. In open session, **Dr. McMichael moved to recommend to the full Board that the applicant be granted an unrestricted license. Dr. Benavides seconded the motion. All voted in favor. The motion passed.**

Applicant #660 appeared, with counsel, before the Committee, 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, subject to an administrative penalty in the amount of \$2000.** 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 of the

application was intentional. **Ms. Southard seconded the motion. All voted in favor. The motion passed.**

2. Physician in training permit applicants

Applicant #665 appeared with counsel, 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 a Physician in Training Permit under a public, non-disciplinary 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 inability to practice medicine with reasonable skill and safety due to excessive use of drugs, failure to practice medicine in a professional manner consistent with public health and welfare, discipline by peers, submission of a false or misleading statement on application for licensure, and unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public. Factors contributing to this recommendation include placement on probation during residency training due to failure to demonstrate reliability, professionalism and personal responsibility; substance abuse (Vicodin/Oxycodone) from 2001 through 2006 during medical school and residency training with multiple relapses; disciplinary action by Oregon Medical Board in October 2006 whereby the applicant surrendered the applicants license while under investigation for substance abuse issues; the applicants failure to disclose training probation on the PIT application. Mitigating factors include demonstrated sobriety since September 2006, successful completion with inpatient and outpatient treatment in August 2007, negative screens with TMA drug screening program since enrollment in September 2007, compliance with PHR contract with Tarrant County (screens, AA, Caduceus), and residency program director aware of applicants substance abuse history. **Further, Ms. Attebury moved to recommend to the full board that the applicant be assessed an administrative penalty in the amount of \$2000.** 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 the motion. All voted in favor. The motion passed.**

3. Acudetox certification applicants There were none.

4. Surgical assistant licensure applicants There were none.

Item 2b Applicants appearing for rehearing concerning eligibility.

1. Physician Licensure Applicants There were none.

2. Physician in training permit applicants There were none.

3. Acudetox certification applicants There were none.
4. Surgical assistant licensure applicants - There were none.

Item 2c Proposed orders offered by the Executive Director.

1. Physician Licensure Applicants - Mr. Simpson reported on four orders offered by the Executive Director. **Dr. Kalafut moved to recommend to the full Board that all three orders be approved. Mr. Webb seconded. All voted in favor and the motion passed.**
2. Physician in training permit applicants - Mr. Simpson reported on five orders offered by the Executive Director. **Dr. Kalafut moved to recommend to the full Board that all six orders be approved. Mr. Webb seconded. All voted in favor and the motion passed.**
3. Acudetox certification applicants - There were none.
4. Surgical assistant licensure applicants - There were none.

Item 2d Applicants determined by staff to meet eligibility requirements.

1. Physician Licensure Applicants - There were 843 applicants who met all requirements to be considered for permanent licensure by the full Board. **Ms. Attebury moved to recommend to the full board that all 843 applicants for permanent licensure be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**
2. Acudetox certification applicants There were none.
3. Surgical assistant licensure applicants - There were 4 surgical assistant licensure applicants to be considered for approval. **Dr. Kalafut moved to recommend to the full board that all 4 surgical assistant licensure applicants be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Agenda Item 3 Discussion, recommendation, and possible action regarding applicant requests:

Item 3a Requests for Rehearing Applicant #616's request for rehearing was considered. **Dr. Kalafut moved to recommend to the full board that the request for rehearing be denied.** This recommendation is due to no significant new information being presented to the Board. **Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Item 3b Request for Waiver of Acupuncture License Requirements There were none.

Agenda Item 4 Discussion, recommendation and possible action regarding unsigned orders from previous meetings.

Ms. Garanflo reported that of the six orders offered at the April 2008 Board meeting, two have been accepted. One applicant has withdrawn. One applicant has requested a rehearing. Two orders remain pending. In addition, two orders are still pending from previous meetings.

Agenda Item 5 Reports on:

Item 5a 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 April 3, 2008 through June 17, 2008.

Item 5b Physician licensure process statistics Ms. Garanflo presented a report on various statistics related to the Licensure and Customer Affairs Division. There are still large numbers of applicants for licensure with just under 4000 estimated for this year. The average number of days to process physician licensure applications has decreased from 100 days to 40 days during this fiscal year. The amount of time applications are waiting to be screened has dramatically improved from 90 days to 2 days since February 2008. Applicants who signed agreements to treat Medicare and Medicaid patients were processed and completed in an average of 23 days.

Agenda Item 6 Discussion, recommendation, and possible action regarding licensee requests:

Item 6a - Request of physician for activation of canceled physician licenses There were none.

Item 6b - Request of physician to return to Active Status from Texas Retired Status There were none.

Agenda Item 7 - Discussion, recommendation, and possible action regarding cancellation of licenses by request for incomplete registration.

Item 7a Surgical Assistants There were none.

Item 7b Acudetox There were none.

Agenda Item 8 Discussion, recommendation, and possible action regarding Nonprofit Health Organizations:

Item 8a - Applicants for initial certification - There were 7 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. Ms. Southard seconded the motion. All voted in favor. The motion passed.**

Item 8b - Requests for biennial recertification - There was one application for biennial recertification as a Nonprofit Health Organization for approval. **Mr. Turner moved to recommend to the full board that the request for biennial recertification as a Nonprofit Health Organization be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Item 8c - Cancellation of organizations certified as Nonprofit Health Organizations - There was one request for decertification as a Nonprofit Health Organization for approval. **Mr. Turner moved to recommend to the full board that the request for decertification as a Nonprofit Health Organization be approved. Mr. Webb seconded the motion. All voted in favor. The motion passed.**

Agenda Item 9 - Discussion, recommendation, and possible action regarding proposed additions and modifications to **board rules:**

Item 9a Texas Medical Board Rules There were none.

Item 9b Texas Physician Assistant Board Rules. There were none.

Item 9c Texas State Board of Acupuncture Examiners Rules. There were none.

Agenda Item 11 - Discussion, recommendation, and possible action regarding **expanding the authority of the Executive Director to offer orders with administrative penalties.** The Committee directed that, upon agreement of the full board, the scope of the executive directors authority be expanded to include offering public orders with administrative penalties for cases of falsification. The Committee directed that the Executive Director, in consultation with the Chair of the Licensure Committee, determine whether the falsification of an application was intentional. If it is determined that the falsification was not intentional,

the Executive Director may offer the applicant the opportunity to withdraw the application and reapply, submitting correct answers. If the falsification is determined to be intentional, the Committee authorized the Executive Director to offer a public order with an administrative penalty.

Agenda Item 12 - Discussion, recommendation, and possible action regarding policy change and possible rule change regarding using **board certification to demonstrate substantial equivalence**. Ms. Garanflo reviewed several of the statutory requirements and board rules regarding education and licensure of international medical graduates (IMGs), including demonstration of substantial equivalence of the applicants medical education, disapproval of an applicants medical school by another state licensing board, medical education performed by IMGs in the United States, and eligibility to practice medicine in the country in which the medical school is located.

Ms. Garanflo advised the committee that many streamlining features had been enacted by the board by rule in the past two years and there might be some statutory changes that would result in further streamlining without compromising licensing standards. The committee agreed that deficiencies in an applicants medical education that were currently addressed by requiring demonstration of substantial equivalence of an applicants medical education and not allowing the disapproval of an applicants medical school by another state licensing board (unless certain conditions were met) could be remedied in a simpler manner by requiring ABMS or BOS specialty board certification.

The committee discussed the statutory requirements for all medical education performed in the United States as it related to IMGs. Statue requires that all medical education done by students in the United States be done as a regular or visiting student in a medical school unless one of two exceptions is met. The committee agreed that simplification of the statutory requirement to perhaps allow only specialty board certification as an exception would be worthy of consideration.

The committee also discussed the statutory requirement regarding eligibility to practice medicine in the country in which the medical school is located. The committee agreed that while this requirement has been helpful in assuring quality medical education in the past, it now may be preventing good physicians from being licensed in Texas. The committee discussed the possibility of changing the requirement to ensure that medical schools in other countries are duly authorized by the appropriate authorities to issue medical degrees as a way of ensuring the quality medical education. The committee then considered whether there was a need for the requirement at all, in light of the licensing examination and postgraduate medical education requirements, and agreed that it might not be necessary any longer.

Agenda Item 13 - There being no further business, Dr. Arambula adjourned the meeting at 5:00 p.m.