

**TEXAS MEDICAL BOARD  
BOARD MEETING MINUTES  
December 8, 2006**

The meeting was called to order on December 8, 2006 at 8:35 a.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 G. Guajardo, M.D.; Margaret C. McNeese, M.D.; Eddie J. Miles, Jr.; Keith E. Miller, M.D.; John W. Pate, Jr., M.D.; Larry Price, D.O. Annette P. Raggette; Timothy J. Turner; and Irvin E. Zeitler, Jr., D.O. Board staff present were Donald W. Patrick, M.D., J.D., Executive Director; Michele Shackelford, J.D., General Counsel; Jane McFarland, Chief of Staff; Robert Simpson, J.D., Assistant General Counsel; and various other staff. Dr. Benavides read the Texas Medical Board Mission into the minutes.

*"Our Board's mission is to protect and enhance the public's 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."*

Dr. Kalafut welcomed as a new member to the Board, Dr. Michael Arambula.

**Agenda item #3, Presentation on Open Government Training.** Mr. Joe James, Assistant Attorney General with the Office of the Attorney General, Open Records Division made a presentation concerning the release of public information.

**Agenda item #2, Executive Session.** Dr. Price moved, Mr. Miles seconded, and the motion passed to go into Executive Session at 9:00 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and deliberation concerning licensure applications, and/or disciplinary action under the authority of the Open Meetings Act, Government Code, §§551.071 and 551.074; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, §§152.009, 155.058, 160.006, and 164.007, and 164.203; and Attorney General's Opinion No. H-484. Open session resumed at 10:24 a.m. and it was announced that no action was taken. A certified agenda was made.

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

After discussion, Dr. Anderson moved, Dr. Miller seconded and the motion passed to approve the order for #412 contingent upon the additional requirement that the Order stay in effect for as long as the physician holds a Texas license.

After discussion, Dr. Pate moved, Ms. Raggette seconded and the motion passed to approve the Non-Public Rehabilitation order for #410 contingent upon the modification to a ten year Order.

After discussion, Dr. Price moved, Dr. Miller seconded and the motion passed to approve the Non-Public Order vacating prior Rehabilitation Order #395 and the Non-Public Rehabilitation Order #409.

**Agenda item #5, Consideration and Approval of Agreed Board Orders.** After discussion, **Ms. Blackwell moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Isam Balat, M.D.**

After discussion, **Ms. Fredricks moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Robert Andelman, M.D.**

After discussion, **Dr. Miller moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Tod Heldridge, M.D.**

After discussion, **Ms. Blackwell moved, Dr. Miller seconded, and the motion passed to approve the Agreed Order for David Liao, M.D.**

After discussion, **Ms. Fredricks moved, Dr. Miller seconded, and the motion passed to approve the Agreed Order for Donald Samuel, M.D.**

After discussion, **Dr. Oswald moved, Dr. Miller seconded, and the motion passed to approve the Agreed Order for Aung Thein, M.D.**

After discussion, **Ms. Southard moved, Dr. Miller seconded, and the motion passed to approve the Agreed Order for Susan Trese, M.D. once the language of the Order specifies Dr. Trese cannot prescribe to family members.**

After discussion, **Dr. Anderson moved, Ms. Blackwell seconded, and the motion passed to deny the Agreed order for Merrimon Baker, M.D. and refer the case to SOAH for revocation.**

After discussion, **Dr. Miller moved, Ms. Raggette seconded, and the motion passed to approve the Agreed Order for Warner Massey, M.D., as presented with the following modification that Dr. Massey must surrender his DEA prescribing authority.**

After discussion, **Dr. Price moved, Ms. Raggette seconded, and the motion passed to approve the Agreed Orders for the following:** Robert Battle, M.D.; Ralph Coleman, M.D.; Stephen Elston, M.D.; Anthony Gioia, M.D.; John Hemphill, M.D.; Malathi Koli, M.D.; Joseph Lampley, M.D.; Hrishu Maewal, M.D.; Jose Newman, M.D.; Ralph Rittenhouse, M.D.; Sanjoy Sundaresan, M.D.; Hugh Tadlock, M.D.; Peyton Thompson, M.D.; Jo Ann Travis, M.D.; Qaiser Yusuf, M.D.; Joseph Bellomo, M.D.; Nina Cahan, M.D.; Stephanie Kong, M.D.; Enrique Leal, M.D.; Jaime Lim, M.D.; Jeffrey Mays, M.D.; Omar Shadman, M.D.; and Carlos Venegas, M.D.

**Agenda item #6, Consideration and Approval of Administrative Orders.** After discussion, **Mr. Turner moved, Dr. Anderson seconded, and the motion passed to approve the Administrative Orders for the following:** Shah N. Afridi, M.D.; Robert T. Angel, M.D.; Susan Garton, D.O.; Scott M. Lloyd, M.D.; Sergio Maggi, M.D.; Leisa S. Youel, M.D.

**Agenda item #7, Consideration and Approval of Modification Request/Termination Request Orders.** After discussion, **Mr. Turner moved, Ms. Raggette seconded, and the motion passed to approve the Order Granting Modification for William C. Brown, M.D.**

After discussion, **Mr. Turner moved, Ms. Raggette seconded and the motion passed to approve the Termination of Orders for Erik W. Felton, M.D.; and Nandlal Patel, M.D.**

After discussion, **Mr. Turner moved, Ms. Raggette seconded, and the motion passed to deny the Modification Request/Termination Request Orders for: Francisco I. Pena, M.D.; and Alfredo Santibanez, M.D.**

**There were no items for Agenda item #8.**

**Agenda item #9, Consideration and Approval of Nunc Pro Tunc Orders.** After discussion, **Ms. Raggette moved, Ms. Blackwell seconded, and the motion passed to approve the Nunc Pro Tunc Orders for Christie E. Obukofe, M.D.**

After discussion, **Ms. Raggette moved, Ms. Blackwell seconded to approve the Nunc Pro Order for Damaso Oliva, Jr., M.D. as presented with the modification that the terms of the Order will terminate upon successful completion of the terms.**

**Agenda item #10, Consideration and Approval of Mediated Settlement Agreement Orders.** After discussion, **Dr. Miller moved, Ms. Fredricks seconded, and the motion passed to approve the Mediated Settlement Agreement Order for Craig McMullen, M.D. as presented once it is corrected to indicate Dr. McMullen is not board certified but board eligible.**

After discussion, **Dr. Guajardo moved, Ms. Southard seconded, and the motion passed to approve the Order for Bharat Gandhi, M.D.**

After discussion, **Dr. Price moved Ms. Blackwell seconded, and the motion passed to approve the Order for Rodney Franklin, M.D. as presented once it is corrected to indicate the Compliance Dept will monitor Dr. Franklin's charts for the period of one month.**

After discussion, **Ms. Attebury moved, Ms Raggette seconded, and the motion passed to approve the Mediated Settlement Agreement Order for Evan S. Bates, M.D.; and John W. Dorman, M.D.**

**Agenda item #11, Consideration and Approval of Termination of Suspension Orders.** After discussion, **Ms. Blackwell moved, Mr. Turner seconded, and the motion passed to approve the termination of the suspension order for Christopher W. Duncan, M.D. once the misprint in the order is corrected.**

After discussion, **Dr. Miller moved, Ms Fredricks seconded, and the motion passed to approval the termination of the suspension orders for Samson Adegbite, M.D.; James S. Jones, M.D; and Randall D. Walker, M.D.; and Raul Rivera, M.D.**

There were no items for Agenda item #12

**Agenda Item #13, Consideration and Approval of Stipulated Board Orders.** After discussion **Dr. Price moved, Ms. Southard seconded and the motion passed to pull the order for Forney W. Fleming, M.D. for further review.**

**Agenda item #14, Report on Temporary Suspensions Orders.** Nancy Leshikar gave a report on Temporary Suspensions for the following: Robert J. Byrnes, D.O.; Merrimon W. Baker, M.D.; William D. Littlejohn, M.D.

There were no items for Agenda item #15 and #16.

**Discussion item #2, Board Member report.** Dr. Kalafut asked the board members to let her know if they have an interest in an particular committee assignment. Dr. Kalafut also recognized Dr. Oswalt and Dr. Anderson as being named one of the state's "Super Doctors" by Texas Monthly Magazine.

Dr. Kalafut announced the Federation of State Medical Boards request for applications from board members for nominations and committee appointments for the Federation.

**Discussion item #1, Executive Director's Report.** Ms. McFarlane provided an update concerning the Board's most recent Legislative Appropriations Requests.

Jaime Garanfio, Director of Customer Affairs, provided an update regarding the recent changes made by the Licensure Division to streamline their process.

**Mary Herring, J.D. of Texas A&M Health Science Center** appeared before the Board to discuss the research proposal she submitted requesting she be allowed to utilize physician disciplinary records and licensure application records including education, experience, and practice specialty among other criteria in order to determine if any of these may serve as an indicator of future disciplinary problems. Ms. Herring explained that this would be a records search funded by Texas A&M. Ms. Herring said if her request is approved, she would work closely with the Board's senior management team and that the confidentiality of each individual would be maintained. After further discussion, **Dr. Price moved, Mr. Miles seconded and the motion passed to approve Ms. Herring's research proposal.**

**Agenda item #17, Demonstration on Laserfiche log in system for review of meeting materials.** Mari Robinson, Enforcement Manager, gave a demonstration on the use of the Laserfiche system that is being implemented for the review of board meeting materials by Board members.

There were no items for Agenda item #18.

**Dr. Price moved, Ms. Raggette seconded, and the motion passed to go into Executive Session at 12:23 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 General's Opinion No. H-484.** Open session resumed at 12:58 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. Price moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 1:00 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 General's Opinion No. H-484.** Open session resumed at 1:24 p.m. and it was announced that no action was taken. A certified agenda was made.

**Agenda item #19, Public Hearing, Consideration, and possible action regarding Adoption of Proposed Rule Changes.**

After discussion, **Ms. Raggette moved, Dr. Anderson seconded and the motion passed to accept the proposed rule changes for Chapter 163, Licensure, to amend 163.2, Definitions, to correct a reference; 163.5, Licensure Documentation to eliminate the requirement for all applicants to present certain documents to the Board, and 163.6, Examinations Accepted to Licensure regarding the Jurisprudence Examination.**

After discussion, **Dr. Anderson moved, Dr. Miller seconded and the motion passed to repeal Chapter 17, Authority of Physician to Prescribe for the Treatment of Pain and to approve new Chapter 170, Pain Management to substantially rewrite the current rule.**

After discussion, **Ms. Southard moved, Ms. Blackwell seconded and the motion passed to amend Acupuncture, 183.2 Definitions to allow licensing of an applicant who graduated from an acupuncture school that was in candidacy status at the time of graduation; 183.4 Licensure to allow a showing of English proficiency by attending an acceptable approved school of acupuncture in the United States or Canada; 183.5 Annual Renewal of License to provide for the automatic cancellation of a license that has been expired for more than one year; 183.15 Use of Professional Titles to delete the requirement to include the title; and 183.20, Continuing Acupuncture Education to delete references to "informal" CAE.**

After discussion, **Ms. Raggette moved, Dr. Anderson seconded and the motion passed in regards to Chapter 187, Procedural Rules to amend 187.28, Discovery, to set forth a procedure for identification of expert witnesses who may testify in cases before the State Office of Administrative Hearings.**

**Jared Wolf, Executive Director of the Texas Association of Health Plans appeared accompanied by Penny Hobbs, J.D., legal counsel for Humana, to discuss proposed rule changes to Chapter 172, Temporary and Limited Licenses which may soon include a provision for the practice of Administrative Medicine. Mr. Wolf expresses his association's concern regarding the proposed rule. Mr. Wolf explained it is the Texas Association of Health Plans belief that physicians working in the capacity of a Medical Director for a health plan do not make medical necessity decisions and that their work is administrative in nature. Several board members indicated they disagreed with Mr. Wolf's position that it is possible for a physician to make medical coverage decisions without using their medical training. Several board members**

expressed their opinion that any decision regarding medical treatment can be classified as the practice of medicine.

After further discussion regarding the issue of medical necessity versus medical coverage, the possible amendment of Chapter 190, Disciplinary Guidelines, to amend 190.8 Violation Guidelines was discussed. Mr. Wolf indicated that the Texas Association of Health Plans believes that any disciplinary matters and utilization reviews concerning medical directors should be under the jurisdiction of the Texas Department of Insurance.

Ms Hobbs then discussed the recent Supreme Court decisions regarding medical administrators and whether or not they can be subject to a lawsuit. It was suggested by board staff that taking out the term medical necessity and using the term medical coverage instead could eliminate some problems.

After discussion, **Mr. Miles moved, Dr. Benavides seconded, and the motion passed to go into Executive Session at 2:15 p.m., for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and deliberation concerning licensure applications, and/or disciplinary action under the authority of the Open Meetings Act, Government Code, §§551.071 and 551.074; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, §§152.009, 155.058, 160.006, and 164.007, and 164.203; and Attorney General's Opinion No. H-484.** Open session resumed at 2:25 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. Miller moved, Mr. Miles seconded and the motion passed to defer making a decision regarding both proposed rule changes to Chapters 172 and 190 until additional information regarding the definition of medical necessity and medical coverage under the ERISA act.**

Mari Robinson provided a report concerning investigations over a year old. Ms. Robinson indicated a number of the cases involve repeat offenders with a good portion currently being adjudicated in court.

**Discussion item #4, 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. **Ms. Fredricks moved, Ms. Blackwell seconded, and the motion passed to approve the Executive Committee minutes and action items.**

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

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

Dr. Pate gave a report of the Licensure Committee meeting. **Dr. Pate moved, Dr. Benavides seconded, and the motion passed to approve the Licensure Committee meeting**

Dr. Miller gave a report of the Disciplinary Process Review Committee. **Dr. Miller moved, Ms. Blackwell seconded, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items.**

The Standing Orders and Public Information Committees meeting did not meet.

There being no further items the meeting adjourned at 2:45 p.m.