

TEXAS STATE BOARD OF MEDICAL EXAMINERS
BOARD MEETING MINUTES

April 7, 2006

The meeting was called to order on April 7, 2006 at 9:11 a.m. by Board President, Roberta Kalafut, D.O. Board members present were Lawrence L. Anderson, M.D.; Jose M. Benavides, M.D.; Patrica Blackwell; Melinda S. Fredricks; David E. Garza, D.O.; Manuel G. Guajardo, M.D.; Amanullah Khan, M.D.; Eddie J. Miles, Jr.; Elvira Pascua-Lim, M.D.; John W. Pate, Jr., M.D.; Larry Price, D.O.; Annette P. Raggette; Paulette Southard; and Timothy J. Turner. Board staff present were Donald W. Patrick, M.D., J.D., Executive Director; Jerry T. Walker, M.P.H., Deputy Executive Director; Michele Shackelford, J.D., General Counsel; Robert Simpson, J.D., Assistant General Counsel; and various other staff. Ms. Blackwell read the Texas Medical Board Mission into the minutes.

pur 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.

Agenda item #2, Executive Session. Dr. Price moved, Dr. Garza seconded, and the motion passed to go into Executive Session at 9:13 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 10:06 a.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #13, Consideration and Approval of Proposals for Decision: Robert C. Kuhne, M.D. Ms. Southard was recused. Paul D. Keeper, J.D., Administrative Law Judge, gave a report and recommendation. Dr. Kuhne appeared with his attorneys, Frank B. Walker and Mark J. Hanna. Nancy Leshikar, staff attorney, appeared representing the Board. Ms. Leshikar

gave a presentation. Mr. Walker gave a presentation. Dr. Kuhne gave a statement. After discussion, Dr. Price moved, Dr. Garza seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, with the exception of Finding of Fact No. 26 and Conclusion of Law No. 9 that are deleted because they are recommendations regarding the appropriate sanction, and to approve the Final Order filed by Board staff with the sanctions to require a written letter of apology to the patient; the successful completion within six months of baintaining Professional Boundaries and Managing Difficult and Frustrating Patients course offered by Texas Medical Association; and the successful completion within one year of a Continuing Education Course for Physicians Who Cross Sexual Boundaries presented by Vanderbilt Medical Center. Dr. Khan, Dr. Pate, and Dr. Anderson opposed the motion. Ms. Southard was recused.

Agenda item #14, Consideration and Approval of Determination of Default: Robert Womack, M.D. Robert D. Simpson, appeared representing the Board. Dr. Womack did not appear. Mr. Simpson gave a presentation. Dr. Price moved, Dr. Garza seconded, and the motion passed to approve the Motion for Default Judgment to revoke the license of Robert Womack, M.D.

Agenda item #3, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders. Dr. Price moved, Dr. Garza seconded, and the motion passed to go into Executive Session at 11:05 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and deliberation concerning licensure applications, disciplinary action, and private rehabilitation orders, or matters involving personnel 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, 164.007, and 164.203; and Attorney General's Opinion No. H-484. Open session resumed at 11:29 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, Dr. Kalafut moved, Dr. Garza seconded, and the motion passed to approve the Non-Public Rehabilitation Order #383 with discussed comments deleted.

Dr. Price moved, Ms. Blackwell, seconded, and the motion passed to approve the Non-Public Rehabilitation Orders #255, #380, #381, #382, #384, #385, and Termination of Non-Public Rehabilitation Order #240.

Agenda item #4, Consideration and Approval of Agreed Board Orders. Dr. Price moved, Ms. Southard seconded, and the motion passed to approve the agreed orders en masse with the exception of agreed orders for Beau L. McCrory, M.D.; Rogelio Trevino, M.D.; Cesar E. Maldonado, M.D.; Jesus A. Caquias, M.D.; Nafees F. Saifee, M.D.; Aurelio A. Ortiz, M.D.; Kevin W. Finley, D.O.; Cynthia E. Harris, M.D.; Barbara D. Marino, M.D.; Oscar Ghelber, M.D.; Alexander Orlov, D.O.; Juan H. Serrano, M.D.; and Clay Gruesbeck, M.D. Agreed orders were approved for the following: Gary R. Clayton, M.D.; Patrick T. Conner, M.D.; Mark Pucek, M.D.; Gwenevere E. Williams, M.D.; Ricky A. Siewert, M.D.; Iris S. Poinger, M.D.; Steven C. Dilsaver, M.D.; Leroy I. MeHarry, M.D.; Paul L. Rodriguez, M.D.; J. Mark McBath, M.D.; Isaac M. Jalfon, M.D.; Jerome F. Schrapps, M.D.; Damon S. Pierce, M.D.; Venkat R. Akkanti, M.D.; Hrishi K. Maewal, M.D.; Harrypersad Singh, M.D.; Ronald L. Bear, Jr., M.D.; Erika I. Zimmerman, M.D.; Avi T. Deshmukh, M.D.; Randolph W. Rountree, M.D.; Jeffrey J. Heinemann, M.D.; Luis Enrigue Linan, M.D.; Ronald A. Woods, Jr., M.D.; Danny L. Dubberly, M.D.; James H. Demberg, M.D.; Barbara J. Willows, D.O.; Thomas C. Platt, M.D.; Susan D. Delaney, M.D.; Randall G. Kessler, D.O.; Maureen L. Adair, M.D.; Paul P. Harris, M.D.; James M. Long, M.D.; Ronald G. Corley, M.D.; Christopher W. Duncan, M.D.; Hyon-HomeOwner Shin, M.D.; Clyde V. Henshaw, Jr., D.O.; James D. Luecke, M.D.; Luis E. Duarte, M.D.; Nasiha Ahmad, M.D.; Sarah E. Andrews, M.D.; and Charles M. Von Henner, M.D.

After discussion, Ms. Fredricks moved, Dr. Garza seconded, and the motion passed to approve the agreed order for Beau L. McCrory, M.D. with a clerical correction on page 6, item #3.

After discussion, Dr. Pascua-Lim moved, Ms. Fredricks seconded, and the motion passed to approve the agreed order for Rogelio Trevino, M.D., as written.

After discussion, Dr. Garza moved, Ms. Blackwell seconded, and the motion passed to approve the agreed order for Cesar E. Maldonado, M.D., as written.

After discussion, Ms. Fredricks moved, Dr. Benavides seconded, and the motion passed to approve the agreed order for Jesus A. Caquias, M.D., contingent upon respondent's signature after the removal of statement on signature page.

After discussion, Dr. Pascua-Lim moved, Ms. Raggette seconded, and the motion passed to approve the agreed order for Nafees F. Saifee, M.D., as written.

After discussion, Ms. Fredricks moved, Dr. Garza seconded, and the motion passed to approve the agreed order for Aurelio A. Ortiz, M.D., as written.

After discussion, Dr. Garza moved, Dr. Pate seconded, and the motion passed to approve the agreed order for Kevin W. Finley, D.O., as written. Dr. Kalafut was recused.

After discussion, Ms. Blackwell moved, Dr. Benavides seconded, and the motion passed to approve the agreed order for Cynthia E. Harris, M.D., with a clerical correction.

After discussion, Ms. Fredricks moved, Ms. Southard seconded, and the motion passed to approve the agreed order for Barbara D. Marino, M.D., as written.

After discussion, Ms. Fredricks moved, Ms. Southard seconded, and the motion passed to approve the agreed order for Oscar Ghelber, M.D., as written.

After discussion, Ms. Southard moved, Ms. Raggette seconded, and the motion passed to approve the agreed order for Alexander Orlov, D.O., as written.

After discussion, Dr. Kalafut moved, Ms. Blackwell seconded, and the motion passed to approve the agreed order for Juan H. Serrano, M.D., with a public reprimand. Dr. Pate opposed the motion.

After discussion, Dr. Pascua-Lim moved, Ms. Raggette seconded, and the motion passed to approve the agreed order for Clay Gruesbeck, M.D., as written.

Agenda item #5, Consideration and Approval of Modification Request/ Termination Request Orders. After discussion, Dr. Price moved, Ms. Southard seconded, and the motion passed to approve the Modification Request Order for Erik T. Shaw, D.O., with a clerical correction on page 7.

Dr. Price moved, Ms. Southard seconded, and the motion passed to approve the Modification Request/Termination Request Orders for the following: David M. McClellan, M.D.; Jeffery E. Illman, M.D.; William A. Bilsing, M.D.; Robert H. Gross, M.D.; Luis E. Zepeda, M.D.; and Gregory S. Vagshenian, M.D.

There were no items for Agenda items #6-#7.

Agenda item #8, Consideration and Approval of Mediated Settlement Agreement Orders. Ms. Raggette moved, Ms. Southard seconded, and the motion passed to approve the Mediated Agreed order for Leonard Gaylon Nepper, D.O., as written.

Agenda item #9, Consideration and Approval of Termination of Suspension Orders. After discussion, Dr. Pascua-Lim moved, Ms. Raggette seconded, and the motion passed to approve the Termination of Suspension order for Juan F. Loya, M.D., as written.

There were no items for Agenda item #10.

Agenda item #11, Report on Temporary Suspensions. Dewey Helmcamp, Manager of Litigation, gave a report on the temporary suspension of Arturo A. Torres, M.D., and Richard B. Patt, M.D.

Agenda item #12, Report on Automatic Orders. Ms. Shackelford gave a report on the automatic order for Michael G. Brown, M.D.

Discussion item #2. Board Member Report. During a working lunch Dr. Garza gave a brief report on the National Board of Medical Examiners meeting held in Philadelphia. Board guest speaker, William Nemeth, M.D., gave a presentation on Chronic Pain and Impaired Providers.

Agenda item #15, Discussion and presentation of new electronic Informal Settlement Conference packets. Mr. Helmcamp gave a presentation on electronic packets using laserfiche for Informal Settlement Conferences that will provide convenient, cost saving documentation.

Agenda item #16, Discussion recommendation and possible action regarding re-proposed amendments to Chapter 165, Medical Records, to include amendments to 165.1 Medical Records and the addition of 165.6, Medical Records Regarding an Abortion on an Unemancipated Minor. After discussion, Ms. Blackwell moved, Ms. Fredricks seconded and the motion passed to publish the proposed amendments to Chapter 165, Medical Records, to include amendments to 165.1 Medical Records and the addition of 165.6 Medical Records Regarding an Abortion on an Unemancipated Minor as distributed.

Agenda item #17, Public Hearing and Consideration of Adoption of Proposed Rule Changes.

1. **Discussion, recommendation and possible action regarding proposed amendments to Chapter 175, Fees, Penalties, and Applications to include amendments to 175.2 Renewal Fees regarding increase in Physician Assistant renewal fee.** No written comments were received. No one signed up to present oral comments. Ms. Southard moved, Dr. Pascua-Lim seconded, and the motion passed to adopt the proposed rules regarding revisions to Title 22, Texas Administrative Code, Chapter 175, as published in Volume 31, Texas Register, on February 24, 2006, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules as soon as the Chapter could be re-opened.
2. **Discussion, recommendation and possible action regarding Chapter 183, Acupuncture, relating to changes mandated by SB419.** No written comments were received. No one signed up to present oral comments. Dr. Garza moved, Ms.

Southard seconded, and the motion passed to adopt the proposed rules regarding revisions to Title 22, Texas Administrative Code, Chapter 183, as published in Volume 31, Texas Register, on February 24, 2006, and that staff be directed to publish the proposed rules in the Texas Register as adopted rules.

Discussion item #1, Executive Director's Report. Mr. Helmcamp reported on the plan to include additional information in the Findings of Fact section of orders that will more clearly state how the alleged actions violate the statutory requirements.

Dr. Patrick discussed the need to have an interim agreed order or other process to begin early TMB monitoring of physicians who are reported as impaired by drugs or alcohol. Early participation in the TMB drug-testing program would provide much better protection for the public and more information for use by the Board and staff. The Board authorized the Executive Director to sign interim orders or agreements that would place impaired physicians in the TMB testing program as early as possible.

*Ms. Shackelford reviewed the recommendation to accept the settlement proposals in the two 2004 lawsuits styled the Texas Board of Medical Examiners v. the Texas Attorney General concerning the release of information in licensure application files. **Dr. Price moved, Dr. Garza seconded, and the motion passed to accept the settlement proposals as discussed in the two cases.***

Discussion item #3, Consideration and approval of the February 2-3, 2006 Board Meeting Minutes. Mr. Turner moved, Ms. Blackwell seconded, and the motion passed to approve the February 2-3, 2006 Board Meeting Minutes.

Discussion item #4, Consideration and Approval of Appointments to the Expert Physician Panel. Dr. Garza moved, Ms. Southard seconded, and the motion passed to approve the appointments to the Expert Physician Panel. The appointees were Carlton Barnett, Jr., M.D.; John Bertelson, M.D.; Arturo Bravo, M.D.; Mark Collins, M.D.; Robert Dehne, M.D.; Alpesh Desai, M.D.; Patrick Dillawn, M.D.; Martin Grabios, M.D.; Rosemary Kozar, M.D.;

Boyce Oliver, Jr., M.D.; Hoang Pham, M.D.; Ghassan Salman, M.D.; Jay Shapiro, M.D.; Tarek Souryal, M.D.; Gerald Stephenson, Jr., M.D.; J. Scott Thomas, M.D.; and Cheryl Weber, M.D.

Discussion item #5. Consideration and approval of the March 4, 2006 Disciplinary Panel Minutes. Dr. Garza moved, Dr. Benavides seconded, and the motion passed to approve the March 4, 2006 Disciplinary Panel Minutes.

Discussion item #6, Committee reports and the consideration and approval of minutes and action items of committees meeting during the Board meeting.

Dr. Garza gave a report of the Disciplinary Process Review Committee. Dr. Garza moved, Dr. Benavides seconded, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items

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

Ms. Raggette gave a report of the Ad Hoc Committee for Scope of Practice. Ms. Raggette moved, Dr. Pascua-Lim seconded, and the motion passed to approve the Ad Hoc Committee for Scope of Practice minutes and action items with corrections changing the term medical director to administrative medicine.

Dr. Pascua-Lim gave a report of the Standing Orders Committee. Dr. Pascua-Lim moved, Ms. Raggette seconded, and the motion passed to approve the Standing Orders Committee minutes and action items.

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

Dr. Pate gave a report of the Licensure Committee. Dr. Pate moved, Dr. Pascua-Lim seconded, and the motion passed to approve the Licensure Committee minutes and action items.

Mr. Turner gave a report of the Telemedicine Committee. Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the Telemedicine Committee minutes and actions items with a clerical correction.

Dr. Anderson gave a report of the Ad Hoc Committee to Study Chapter 192. Dr. Anderson moved, Dr. Pate seconded, and the motion passed to approve the Ad Hoc Committee to Study Chapter 192 minutes and action items with the addition of clarifying language to 192.1(13)(g).

Dr. Kalafut gave a report of the Executive Committee. Dr. Kalafut moved, Dr. Benavides seconded, and the motion passed to approve the Executive Committee minutes and action items.

There being no further business the meeting adjourned at 1:57 p.m.