

**TEXAS MEDICAL BOARD
BOARD MEETING MINUTES
December 12, 2008**

The meeting was called to order December 12, 2008 at 8:02 a.m. by Roberta Kalafut, D.O., Board President. Board members present were Michael Arambula, M.D.; Julie Attebury; David Baucom; Jose M. Benavides, M.D.; Manuel Guajardo, M.D.; Melinda McMichael, M.D.; Margaret McNeese, M.D.; Charles Oswalt, M.D.; Larry Price, D.O.; Annette Raggette; Allan N. Shulkin, M.D.; Paulette Southard; Timothy J. Turner; Timothy Webb, J.D.; George Willeford, M.D.; and Irvin E. Zeitler, Jr., D.O. Board staff present were Mari Robinson, Interim Executive Director; Alan Moore, M.D.; Robert Simpson, J.D., General Counsel; Jane McFarland, Chief of Staff; Jaime Garanfio, Director of Customer Affairs; and various other staff.

Dr. Kalafut 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 announced that the meeting would be recorded.

Agenda item #3, Executive Directors Report. Ms. Robinson gave a report on a recent Attorney Generals decision that any planned remarks for discussion must be listed on the agenda to meet the open meetings requirements.

Ms. Robinson gave a report on the completed job classification survey and salary comparison study with other state regulatory agencies. Ms. Robinson reported that the Legislative Appropriations Request will be amended to include this data and to request additional funding to bring the staff salary range comparable with other state regulatory agencies. The board discussed the employee turnover rate and directed staff to update the turnover rate in the LAR.

Ms. Robinson gave an enforcement report on the increasing number of complaints received and the backlog of cases in legal. She reported that the backlog will continue without additional enforcement staff.

Agenda item #2, Board Member Report. Dr. Kalafut gave a report on the letter from the Federation of State Medical Boards requests for voting delegates for the annual meeting April 30 May 2, 2009 in Washington, D.C. After discussion, the board directed staff to draft a proposed resolution to the Federation of State Medical Boards regarding the reporting of license application withdrawals.

Dr. Kalafut announced and read her letter of resignation from the Medical Board, and announced her appointment to the District Review Committee. Dr. Kalafut also announced that Dr. Zeitler had accepted the governors offer to serve as the new board president.

Agenda item #4, Report on Town Hall meetings was deferred to later in the meeting.

Agenda item #5, Discussion regarding the history of the use of guidelines by the Texas Medical Board. Ms. Robinson gave a history of the past use of guidelines to clarify that the guidelines are withdrawn from the website.

Agenda item #6, Discussion and possible action regarding current litigation. Mr. Simpson discussion pending litigation.

Consent Agenda, Item #1. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting. Ms. Raggette moved, Dr. Price seconded, and the motion passed to approve the October 10, 2008 Board Meeting Minutes; the revised October 9, 2008 DPRC Minutes; the October 27, 2008 Disciplinary Panel Minutes regarding Harold Clay Henderson, M.D., Temporary Suspension Without Notice; the October 27, 2008 Disciplinary Panel Minutes regarding Donald Delmer Pope, M.D., Temporary Suspension With Notice; and the November 14, 2008 disciplinary Panel Minutes regarding Eli T. Anderson, M.D., Temporary Suspension With Notice.

Agenda item #7, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders. Dr. Kalafut was recused for consideration of Non-Public Rehabilitation Order #551. Ms. Attebury moved, Ms. Raggette seconded, and the motion passed to approve the Non-Public Rehabilitation Orders #551, #552, #553, #555, #557, #559, #560, and #561; and Modification Granted of Rehabilitation Order #361. After discussion, Dr. Zeitler moved, Mr. Turner seconded, and the motion passed to approve the Non-Public Rehabilitation Order #554.

Agenda item #8, Consideration and Approval of Agreed Board Orders. Dr. Kalafut was recused for consideration of Agreed Board Orders for Jose Guerra, M.D. and Luke R. Hinshaw, M.D. Dr. McNeese moved, Ms. Southard seconded, and the motion passed to approve the Agreed Board Orders for Joe D. Allen, M.D.; Harold Bafitis, D.O.; Robert Bernauer, M.D.; Gregory B. Cartwright, M.D.; Euenio Chavez-Rice, M.D.; Clement Chow, M.D.; Julia De Hoyos, D.O.; Gregory J. Estlund, M.D.; Ray Fulp, III, D.O.; Jose Guerra, M.D.; Jeffrey Heitkamp, M.D.; Luke R. Hinshaw, M.D.; Thomas A. Hoyt, M.D.; Juan F. Loya, M.D. Gary E. Meyerrose, M.D.; Catherine U. Okonji, M.D.; Narendra Punjabi, M.D.; Michael Ruggiero, D.O.; Ihsan Shanti, M.D.; Elliot Trester, M.D.; Brent H. Wallace, M.D.; Ulysses Watkins, Jr., M.D.; Tim Werner, D.O.; Joseph Abou-Sleiman, M.D.; Paul E. McLean, II, M.D.; James E. Redfield, Jr., M.D.; James Y. Shin, M.D.; Luis F. Tschen, M.D.; Hoa D. Tran, M.D.; Stephen C. White, M.D.; Fernando Arzola, M.D.; and Albert Dalley, M.D.

After discussion, Ms. Raggette moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Felice F. Crowder, D.O. with a clerical correction deleting a duplicitous Findings of Fact #11.

After discussion, Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for David Donnel, M.D. with the following modifications: delete O.P #5 of the order, and add that all other provisions of prior order remain unchanged; add that if Respondent leaves practice specialty from current emergency room to another, he must come before the Board for approval; the original terms of the reference O.P. #2, #3 and #6 will not apply if he remains doing Emergency Room work; however, if he changes type of practice, the original

terms will apply; and the order must be for the full term of five years of previous order dated April 8, 2005, due to concerns that the respondent could return to inappropriate prescribing.

Mr. Turner moved, Dr. Zeitler seconded, and the motion passed to recess at 8:40 a.m. for the Executive Committee to reconvene for Senator Armbristers presentation.

The board reconvened at 9:44 a.m. Dr. Oswalt was absence.

After discussion, **Ms. Attebury moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for William Fonteno, M.D., with at typographical correction to change the penalty amount from \$50,000 to \$5,000.**

After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for James Henderson, M.D., with the modification to a three year order with a \$5,000 administration penalty and a chart monitor, and that the Respondent cannot supervise mid-level staff. Modifications were due to the boards concerns for the lack of supervision of the nurse practitioner and the lack of documentation that the doctor saw the patient. The board directed staff to refer information concerning the nurse practitioner to the Board of Nursing.**

After discussion, **Mr. Turner moved, Ms. Attebury seconded, and the motion passed to approve the Agreed Order for Rebecca Borders, M.D., as written.**

After discussion, **Ms. Southard moved, Mr. Turner seconded, and the motion passed to approve the Agreed Order for Cecil A. Childers, Jr., M.D., as written.**

After discussion, **Ms. Raggette moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Wendell V. Gabier, M.D., as written.**

After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Carlos Gutierrez, M.D., with the modification to clarify the Findings of Fact to explain the violation of prescribing a controlled substance for more than 72 hours to a family member.**

Agenda item #9, Consideration and Approval of Administrative Orders. Dr. Kalafut was recused for the consideration of the Administrative order for Mark R. Hughes, M.D. **Mr. Turner moved, Dr. Price seconded, and the motion passed to approve the Administrative Orders for Mark R. Hughes, M.D., and Alan B. Mickish, M.D., as written.**

Agenda item #10, Consideration and Approval of Modification Request/Termination Request Orders. Dr. Zeitler was recused for the consideration of Modification Request Order for Marc W. Wimpee, M.D. **Dr. Price moved, Mr. Turner seconded, and the motion passed to approve the Termination Request Denied Orders for John W. Dorman, M.D., and Fortunato Sunio, M.D.; Termination Request Granted Orders for Edward C. Juarez, M.D., Paul L. Rodriguez, M.D., and Juan Serrano, M.D.; the Modification Request Granted Orders for Kevin B. Lane, D.O., and Marc Wimpee; and the Modification Request Denied Order for Dileep Bhateley, M.D.**

Agenda item #11, Consideration and Approval of Nunc Pro Tunc Orders. Ms. Raggette moved, Ms. Southard seconded, and the motion passed to approve the Nunc Pro Tunc Orders for Stephen A. Barnes, M.D.; Todd W. Hancock, M.D.; and Joseph Osei, Ph.D.

Agenda item #12, Consideration and Approval of Mediated Settlement Agreed Orders. Ms. Raggette moved, Ms. Southard seconded, and the motion passed to approve the Mediated Settlement Agreed Orders for Michael Blackwell, M.D., and George M. Beasley, D.O.

Agenda item #13, Consideration and Approval of Termination of Suspension Orders. Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the Termination of Suspension Orders for Hans A. Langsjoen, M.D.; Rex D. Poole, M.D.; and Ernesto Rhodes, M.D.

There were no items for Agenda item #14, Report of Suspension by Operation of Law.

Agenda item #15, Report on Temporary Suspensions. A report was given on the Temporary Suspensions for Eli T. Anderson, M.D., and John E. Perry, III, M.D.

Agenda item #16, Report on Automatic Orders. A report was given on the Automatic Orders for Todd M. McCarty, M.D.

Agenda item #17, Consideration and approval of cease and desist orders. Mr. Turner moved, Ms. Raggette seconded, and the motion passed to approve the cease and desist orders for Liz Baughman.

Agenda item #18, Consideration and approval of Approval of Determinations of Default. The agenda item was pulled.

There were no items for Agenda item #19, Consideration and Approval of Proposal for Decision.

Agenda item #4, Report on Town Hall meetings. Ms. Robinson gave a report on the thirteen Town Hall meetings held in fourteen weeks in 2008 and reported that the meeting ideas and notes were available on the website. Ms. Robinson reported on ideas presented at the Town Hall meetings and the plan to continue to establish better communicate in the future and to take an active approach in educating the medical community and the public. The board directed staff to draft and bring to back to the board a potential educational article for publication regarding rules for prescribing a controlled substances for 72 hours to a family member.

Consent Agenda, 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. Benavides seconded, and the motion passed to approve the Executive Committee minutes and action items.**

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

Agenda item #20, Discussion, recommendation and possible action regarding proposed rules.

- a. **Chapter 163 Licensure, amendments to**
 - *163.5, Licensure Documentation.*

No written comments were received and no one signed up to present oral comments. **Dr. Price moved, Ms. Southard seconded, and the motion passed to adopt the proposed amendments to Chapter 163, Licensure, 163.5, Licensure Documentation**

- b. **Chapter 165 Medical Records**, amendments to
- 165.1, Medical Records
 - 165.5, Transfer and Disposal of Medical Records

No written comments were received and no one signed up to present oral comments. **Dr. Benavides moved, Ms. Raggette seconded, and the motion passed to adopt the proposed amendments to Chapter 165 Medical Records, 165.1, Medical Records and 165.5, Transfer and Disposal of Medical Records, as published.**

- c. **Chapter 166 Physician Registration**, with amendments to
- 166.2, Continuing Medical Education; and
 - 166.6 Exemption from Registration Fee for Retired Physician Providing Voluntary Charity Care.

No written comments were received and no one signed up to present oral comments. **Mr. Baucom moved, Mr. Webb seconded, and the motion passed to adopt the amendments with non-substantive changes and to re-publish the adopted rule.**

- d. **Chapter 169 Authority of Physicians to Supply Drugs**, amendments to
- 169.7, Record Keeping.

No written comments were received and no one signed up to present oral comments. **Ms. Raggette moved, Ms. Attebury seconded, and the motion passed to adopt the amendments to 169.7, Record Keeping, as published.**

- e. **Chapter 173 Physician Profiles**, with amendments to
- 173.1, Profile Contents

No written comments were received and no one signed up to present oral comments. **Ms. Raggette moved, Ms. Attebury seconded, and the motion passed to adopt the amendments to 173.1, Profile Contents, as published.**

- f. **Chapter 178 Complaints**, Rule Review with amendments to
- 178.1, Purpose and Scope.

No written comments were received and no one signed up to present oral comments. **Ms. Raggette moved, Ms. Southard seconded, and the motion passed to adopt the rule review with amendments to 178.1, Purpose and Scope, as published.**

- g. **Chapter 179 Investigations**, Rule Review with amendments to
- 179.1, Purpose and Scope.
 - 179.4, Request for Information and Records from Physicians.
 - 179.6, Time Limits.

No written comments were received and no one signed up to present oral comments. **Ms. Southard moved, Ms. Raggette seconded, and the motion passed to adopt the rule review with amendments to 179.1, Purpose and Scope; 179.4, Request for Information and Records from Physicians; and 179.6, Time Limits.**

- h. **Chapter 180**, Rule Review with amendments to

- *180.1, Rehabilitation Orders.*

No written comments were received and no one signed up to present oral comments. **Dr. Zeitler moved, Ms. Southard seconded, and the motion passed to adopt the rule review with amendments to 180.1, Rehabilitation Orders, as published.**

i. **Chapter 182 Use of Experts**, Rule Review with amendments to

- *182.1, Purpose.*
- *182.5, Expert Panel.*
- *182.8, Expert Physician Reviewers.*

No written comments were received. Elizabeth Naugle presented oral comments. **Mr. Turner moved, Ms. Southard seconded, and the motion passed to adopt the rule review with amendments as published.**

j. **Chapter 187.18 Procedural Rules**

- *187.3, Computation of Time.*
- *187.4, Agreement to be in Writing.*
- *187.13, Informal Board Proceedings Relating to Licensure Eligibility.*
- *187.14, Informal Resolution of Disciplinary Issues Against a Licensee.*
- *187.18, Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearances.*
- *187.24, Pleadings.*
- *187.29, Mediated Settlement Conferences.*
- *187.59, Evidence.*
- *187.70, Purposes and Construction.*
- *187.71, Hearing Before Panel of Board Representatives.*
- *187.72, Decision of the Panel.*
- *187.73, Termination of Suspension*

No written comments were received and no one signed up to present oral comments. **Ms. Southard moved, Mr. Turner approved, and the motion passed to approve the rule review with amendments to 187.3, Computation of Time; 187.4, Agreement to be in Writing; 187.13, Informal Board Proceedings Relating to Licensure Eligibility; 187.14, Informal Resolution of Disciplinary Issues Against a Licensee; 187.18, Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearances; 187.24, Pleadings; 187.29, Mediated Settlement Conferences; 187.59, Evidence; 187.70, Purposes and Construction; 187.71, Hearing Before Panel of Board Representatives; 187.72, Decision of the Panel; and 187.73, Termination of Suspension, as published.**

k. **Chapter 190 Disciplinary Guidelines**, Rule Review with amendments to

- *190.1, Purpose.*
- *190.8, Violation Guidelines.*
- *190.14, Disciplinary Sanction Guidelines.*

Written comments were received. No one signed up to present oral comments. **Ms. Raggette moved, Ms. Southard seconded, and the motion passed to adopt the rule review with all the amendments to 190.1, Purpose and 190.14, Disciplinary Sanction**

Guidelines, as published. Ms. Attebury moved, Mr. Baucom seconded, and the motion passed to pull amends to 190.8, **Violation Guidelines**, which are neither adopted or rejected, to receive additional stakeholder group input.

1. **Chapter 192 Office Based Anesthesia**, Rule Review with amendments to
 - 192.2, **Provision of Anesthesia Services in Outpatient Settings**.

No written comments were received and no one signed up to present oral comments. **Dr. Shulkin moved, Dr. McNeese seconded, and the motion passed to adopt the rule review with amendments to 192.2, Provision of Anesthesia Services in Outpatient Settings with a non-substantive change deleting premeasured doses of and to re-published the adopted rule.**

Consent Agenda, Item #2, Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting. (continued)

Ms. Attebury gave a report of the Finance Committee. **Ms. Attebury moved, Mr. Webb seconded, and the motion passed to adopt the Finance Committee minutes and action items.**

Agenda item #21, Persons requesting to speak before the board with topic. Shirley Pigott, M.D., spoke before the board regarding Some causes for medical errors. Elizabeth Naugle spoke before the board regarding Lack of fair due process for physicians harms Texas patients: Need for transparency to insure good faith in TMB peer review process.

Consent Agenda, Item #2, Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting. (continued)

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

Agenda item #8, Consideration and Approval of Agreed Board Orders. (continued) After discussion, **Dr. Price moved, Dr. Oswald seconded, and the motion passed to go into Executive Session at 12:14 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 12:27 p.m. and it was announced that no action was taken. A certified agenda was made.

Dr. Oswald moved, Mr. Webb seconded, and the motion passed to refer #11 back for a second Informal Settlement Conference for clarification of all of the Findings of Facts. The board directed staff to draft a memo to panel members concerning the need for further details for the Findings of Fact.

There being no further agenda items the meeting adjourned at 12:30 p.m.