2001 Medical Board Meeting Minutes

February 2, 2001

The meeting was called to order at 10:40 a.m. by Board President, Lee S. Anderson, M.D. Board members present were: Lee S. Anderson, M.D.; Penny Angelo; Jose M. Benavides, M.D.; William H. Fleming III, M.D.; David E. Garza, D.O.; Thomas D. Kirksey, M.D.; Eddie J. Miles, Jr.; Elvira Pascua-Lim, M.D.; Larry Price, D.O.; Joyce A. Roberts, M.D.; Nancy M. Seliger; Paulette B. Southard; R. Russell Thomas, Jr., D.O.; Janet Tornelli-Mitchell, M.D.; and Teddy T. Turner, J.D. Staff members present were: F.M. Langley, D.V.M., M.D., J.D., Executive Director; Jerry Walker, Chief Operating Officer; Michele Shackelford, J.D., General Counsel; Jennifer Soffer, J.D., Assistant General Counsel; and various other staff.

Dr. Anderson introduced a new board member, Elvira Pascua-Lim, M.D., and welcomed her to the board.

Agenda item #2, regarding executive session, was next on the agenda. Dr. Tornelli-Mitchell moved, Dr. Thomas seconded, and the motion passed to go into executive session at 10:42 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, 160.006, 164.007, and 164.203; and Attorney General�s Opinion No. H-484. Open session resumed at 11:17 a.m. and it was announced that no action was taken during executive session. A certified agenda was made.

Agenda item #3, regarding the board order on Pairoj Pratumrat, M.D., was considered. Mrs. Shackelford explained the order to the board and stated that the court has ordered the board to dismiss the charges against Dr. Pratumrat. Dr. Tornelli-Mitchell moved, Dr. Fleming seconded, and the motion passed to accept the proposed order regarding Pairoj Pratumrat, M.D.

Agenda item #4, regarding a request for reinstatement of the license of Jonel Leonard Brown II, M.D., was considered. Dr. Brown appeared without counsel; Jon Porter, Director of Compliance, represented the board. Mr. Porter made a brief presentation and reviewed the facts of the original revocation of Dr. Brown�s license. Dr. Brown made a presentation, outlining the things he has done to keep up to date with medicine, such as obtaining continuing medical education, completing a family practice review course, and attending Alcoholics Anonymous meetings. Following questions, Dr. Thomas moved and Dr. Price seconded the motion to grant licensure to Dr. Brown upon passage of the jurisprudence examination. Dr. Thomas amended his motion to add passage of the SPEX examination within three attempts. The motion passed.

Agenda item #5, regarding a proposal for decision on George Gross, D.O., was next. Dr. Gross was not present and was not represented by counsel. Steve White, Director of Litigation, represented the board. The administrative law judge was not required to be present because the case was a default judgment. Mr. White stated that Dr. Gross did not appear at the hearing before the administrative law judge, but had recently sent an e-mail to Mr. White requesting additional time to respond to the proposal for decision. Following discussion, Dr. Kirksey moved, Dr. Tornelli-Mitchell seconded, and the motion passed to adopt the recommendation of the administrative law judge and cancel Dr. Gross�s license.

Discussion item #2, regarding board member report, was next. Mrs. Southard reported that she had attended a meeting regarding medical error reporting.

Discussion item #4, regarding the December 8, 2000, Disciplinary Panel meeting minutes, was next. Dr. Thomas moved, Dr. Tornelli-Mitchell seconded, and the motion passed to approve the minutes.

Discussion item #5, regarding the January 22, 2001, Disciplinary Panel meeting minutes, was next. Dr. Tornelli-Mitchell moved, Mr. Miles seconded, and the motion passed to approve the minutes.

Discussion item #6, regarding the January 24, 2001, Disciplinary Panel meeting minutes, was next. Dr. Tornelli-Mitchell moved, Dr. Kirksey seconded, and the motion passed to approve the minutes.

Discussion item #7, regarding Call for Resolutions for the Federation of State Medical Boards� Annual Meeting, was next. Dr. Thomas explained his proposed resolution to the board members and asked for their approval to submit it for consideration at the Federation�s annual meeting. Dr. Thomas moved, Dr. Kirksey seconded, and the motion passed to submit the proposed resolution.

Discussion item #9, regarding committee assignments, was next. Dr. Anderson reviewed his recommendations for committee assignments and added Dr. Thomas to the Telemedicine Committee. Dr. Fleming moved, Dr. Tornelli-Mitchell seconded, and the motion passed to approve the list with the addition of Dr. Thomas to the Telemedicine Committee.

Discussion item #1, regarding the Executive Director�s report, was next. Dr. Langley gave his report, which included a discussion of legislative activities, pending legislation, and an update on the Texas Medical Foundation meeting that he and Mrs. Shackelford attended. Dr. Langley�s report was continued later in the meeting.

Discussion item #8, regarding the appointment of the Voting Delegate for the Federation of State Medical Boards� Annual Meeting, was next. Dr. Fleming moved, Dr. Tornelli-Mitchell seconded, and the motion passed to approve Dr. Anderson as the voting delegate. It was announced that several board members are running for Federation offices.

The board recessed at 12:04 p.m. and reconvened at 1:07 p.m.

Agenda item #6, regarding Board Briefings, was next. Judge Nancy Lynch, State Office of Administrative Hearings, made a presentation regarding alternative dispute resolution. The board reviewed handouts regarding the mediation process and Judge Lynch answered questions. Dr. Anderson thanked Judge Lynch for her presentation.

Dr. Tornelli-Mitchell moved, Dr. Thomas seconded, and the motion passed to go into executive session at 2:05 p.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, 160.006, 164.007, and 164.203; and Attorney General�s Opinion No. H-484. Open session resumed at 3:29 p.m. and it was announced that no action was taken during executive session. A certified agenda was made.

Agenda item #8, regarding a public hearing and consideration of adoption of proposed rule changes, was next. The board reviewed written comments regarding the proposed new ' 164.4, relating to advertising board certification. The board also heard an oral comment from Wolfgang Schmidt-Nowara, M.D. Following discussion of the comments, Dr. Fleming moved, Dr. Tornelli-Mitchell seconded, and the motion passed to adopt the rule as published.

The board reviewed the proposed amendment to ' 175.1 regarding fees for biennial non-profit health organization applications and fees for filing late applications. There were no written comments and no one was present to comment during the public hearing. Dr. Tornelli-Mitchell moved, Dr. Fleming seconded, and the motion passed to adopt the rule as published.

The board reviewed the proposed amendments to ' 177.1-.2, .4-.13, and .15-.16 regarding updates to the Occupations Code cites, administrative procedures regarding late filing of biennial applications and insufficient reports, and fees. There were no written comments and no one was present to comment during the public hearing. Dr. Tornelli-Mitchell moved, Mrs. Seliger seconded, and the motion passed to adopt the rule as published.

Agenda item #9, non-public rehabilitation orders and modification request/termination request of non-public rehabilitation orders, was considered. Dr. Thomas moved, Dr. Kirksey seconded, and the motion passed to approve the orders en masse, with the exception of orders #136, 140, 142, and 145. The board approved the following orders: orders #139, 141, 143, and 144; and modification of orders #22 and 101.

The board considered rehabilitation order #140. Mrs. Turner moved, Dr. Tornelli-Mitchell seconded, and the motion passed to deny rehabilitation order #140. Dr. Pascua-Lim was seconded, and the motion passed to deny rehabilitation order #140. Dr. Pascua-Lim was recused. Mrs. Turner moved and Dr. Tornelli-Mitchell seconded the motion to offer a public agreed order. Dr. Thomas proposed a friendly amendment to send the case to an expedited informal settlement conference if the physician does not sign the agreed order. Mrs. Turner accepted and the motion passed.

The board considered rehabilitation order #142. Mrs. Turner moved, Dr. Tornelli-Mitchell seconded, and the motion passed to grant conditional approval of the order with the removal of the words, "emotional condition," in Finding of Fact #5.

The board considered rehabilitation order #145. Dr. Tornelli-Mitchell moved and Dr. Fleming seconded the motion, contingent upon agreement by the physician, to grant conditional approval of the rehabilitation order with additional language that would include specific information in the Findings of Fact. Following discussion, the motion failed 5-7. Mrs. Turner moved, Mrs. Angelo seconded, and the motion passed to deny the rehabilitation order and offer a public agreed order with additional Findings of Fact; and if not signed, the case would be referred for mediation.

The board considered rehabilitation order #136. Dr. Kirksey moved, Dr. Tornelli-Mitchell seconded, and the motion passed to deny rehabilitation order #136. Dr. Kirksey moved, Dr. Tornelli-Mitchell seconded, and the motion passed to approve a public agreed order with the same terms.

Agenda item #10, regarding agreed board orders, was considered. Dr. Fleming moved, Dr. Price seconded, and the motion passed to approve the orders en masse, with the exception of Edmundo D. Yrigoyen, M.D. and Dipakkumar D. Patel, M.D. The approved orders included: Marilyn J. Friday, M.D.; Bert M. Avery, M.D.; Katheryn J. Robertson, M.D.; John Samuel Stone, M.D.; C.B. Wallace, M.D.; Frederick P. Cummings, M.D.; Price E. Hale, M.D.; Mohammad Fazil, M.D.; and Erik W. Gunderson, M.D.

The board considered the agreed board order on Edmundo D. Yrigoyen, M.D. Dr. Tornelli-Mitchell moved, Dr. Fleming seconded, and the motion passed to accept the agreed order on Dr. Yrigoyen with the addition that he passes the jurisprudence examination within three attempts. The motion was withdrawn. Dr. Tornelli-Mitchell moved, Dr. Fleming seconded, and the motion passed to approve the order on Dr. Yrigoyen.

The board considered the agreed board order on Dipakkumar D. Patel, M.D. Dr. Price moved, Dr. Garza seconded, and the motion passed to approve the order without Findings of Fact 9, 10, and 14.

The board also considered the agreed board order on Anthony W. Vila, D.O. Dr. Fleming moved, Dr. Tornelli-Mitchell seconded, and the motion passed to approve the order on Dr. Vila.

The board considered the agreed board order on Ricky A. McCorkle, M.D. Dr. Tornelli-Mitchell moved, Dr. Pascua-Lim seconded, and the motion passed to approve the order on Dr. McCorkle.

Agenda item #11, regarding modification request/termination request orders, was next. Dr. Garza moved, Dr. Kirksey seconded, and the motion passed to approve the orders en masse. The approved orders included: Vicki J. Sparks, M.D.; Miguel B. Banta, Jr., M.D.; William D. Todd, M.D.; Avril B. Rush, M.D.; Nelson Brice, M.D.; Mark M. Hemeyer, M.D.; Manuel F. Castaneda, M.D.; David M. Wimberly, M.D.; Earle U. Scharff, Jr., M.D.; John H. Kimmons, Jr., M.D.; Franklin L. Anderson, M.D.; Jeffrey M. Schlueter, D.O.; and Jack M. Thomas, Jr., M.D.

Agenda item #12, regarding reinstatement request orders, was next. There were no orders to consider.

Agenda item #13, regarding nunc pro tunc orders, was next. Dr. Tornelli-Mitchell moved, Mrs. Angelo seconded, and the motion passed to approve the order on Ira Mark Levin, M.D.

Discussion item #1, Executive Director�s report, was continued. Mr. Walker introduced the new Director of Enforcement, Charles Bonney, and discussed the new organizational structure in the Enforcement Division.

Agenda item #14, report on temporary suspension/automatic orders/automatic actions, was next. The board members were given copies of the orders on David B. Burgess, M.D.; Demetris A. Green, M.D.; and David L. Bryson, M.D. No action was necessary, as this was informational only.

Agenda item #15, regarding termination of suspension orders, was considered. Dr. Tornelli-

Mitchell moved, Mrs. Angelo seconded, and the motion passed to approve the orders on Walter D. Gregory, M.D.; and Robert H. Steward, M.D.

Agenda item #16, regarding mediated settlement agreement orders, was considered. Dr. Garza moved, Dr. Tornelli-Mitchell seconded, and the motion passed to approve the orders on James R. Williams, M.D.; Joye Carter, M.D.; and Garry W. Stubbs, M.D.

Discussion item #2, regarding approval of the December 7-8, 2000, board meeting minutes, was considered. Dr. Tornelli-Mitchell moved, Dr. Benavides seconded, and the motion passed to approve the minutes.

Discussion item #10, regarding committee reports and minutes, was next. Dr. Tornelli-Mitchell moved, Dr. Kirksey seconded, and the motion passed to approve the minutes of the following committees: Executive Committee; Telemedicine Committee; Non-Profit Health Organizations Committee; Legislative/Long Range Planning Committee; Standing Orders Committee; Licensure Committee; Disciplinary Process Review Committee; Ad Hoc Committee to Study Integrative and Complementary Medicine (with corrections as noted); Ad Hoc Committee on Optometric Issues; Public Information/Profile Committee; and Finance Committee.

Dr. Anderson asked board staff to designate the subject of private rehabilitation orders under Board Briefings on the agenda for the next board meeting.

There being no further business, Dr. Kirksey moved, Dr. Fleming seconded, and the motion passed to adjourn the meeting at 4:37 p.m.