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March 30, 2001

The meeting was called to order at 1:03 p.m. by Lee S. Anderson, M.D., Board President. 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.; Edward S. Hicks, Sr.; Eddie J. Miles, Jr.; Elvira Pascua-Lim, M.D.; Larry Price, D.O.; Joyce A. Roberts, M.D.; Vernon L. Ryan, M.D.; Nancy M. Seliger; Paulette B. Southard; R. Russell Thomas, Jr., D.O.; Janet Tomelli-Mitchell, M.D.; and Teddy 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 recognized Dr. Fleming, former President of the Board, and announced that he now holds several new offices, including President of the Texas Neurological Society, President-elect of the Harris County Medical Society, and Vice-Speaker of the Texas Medical Association's House of Delegates.

Agenda item #2, regarding executive session, was next. Dr. Tomelli-Mitchell moved, Mr. Hicks seconded, and the motion passed to go into executive session at 1:05 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 1:32 p.m. and it was announced that no action was taken during executive session. A certified agenda was made.

Agenda items #3 and #4, regarding Board Briefings relating to rehabilitation orders, were next. Dr. Langley, Mrs. Shackelford, Ms. Soffer, Steve White, Director of Litigation, and Jon Porter, Director of Compliance, presented information relating to the legislative history of the rehabilitation order, current standards and trends toward offering rehabilitation orders, and compliance difficulties relating to confidentiality. The board discussed these issues extensively and summed up by stating that the board will work with staff to better define impairment and review again at the next board meeting.

Agenda item #5, regarding a public hearing and consideration of adoption of proposed rule change concerning Chapter 183, Acupuncture, was next. It was announced that no written comments were received and no one was present to present oral comments. Dr. Tomelli-Mitchell moved, Mr. Hicks seconded, and the motion passed to approve the amendments contingent upon not receiving any negative comments by the end of business on April 2 in order to allow the 30-day comment period to expire.

Agenda item #6, regarding cancellation of licenses, was next. It was announced that there were 369 licenses to be cancelled for nonpayment and 327 to be cancelled by request. Dr. Tomelli-Mitchell moved, Ms. Southard seconded, and the motion passed to approve the lists for cancellation.

Agenda item #7, regarding consideration and approval of non-public rehabilitation orders and modification request/termination request of non-public rehabilitation orders, was next. Dr. Tomelli-Mitchell moved, Dr. Fleming seconded, and the motion passed to go into executive session at 2:37 p.m. for consideration of possible rehabilitation orders under the authority of the Open Meetings Act, Government Code, ' 551.071; 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 2:54 p.m. and it was announced that no action was taken during executive session. A certified agenda was made. Dr. Thomas moved, Dr. Tomelli-Mitchell seconded, and the motion passed to approve rehabilitation orders #146, 147, 148, 149, 150, 151, 152, and 153 and termination

passed to approve rehabilitation orders #170, 171, 176, 177, 190, 191, 192, and 193 and termination of rehabilitation order #107.

Agenda item #8, regarding consideration and approval of agreed board orders, was next. Dr. Fleming moved, Dr. Tomelli-Mitchell seconded, and the motion passed to approve the orders en masse with the exception of Barry M. Brown, M.D. and to correct the error on Dr. McCall's order. The approved orders included Carl J. Ulbrich, D.O.; Randal A. Cary, D.O.; William J. Lupinacci, M.D.; Timothy A. Scroggins, M.D.; Eddie L. Cerday, M.D.; Horace B. Halbert, Jr., M.D.; Pablo L. Xiques, M.D.; David B. Burgess, M.D.; Sumant A. Kumar, M.D.; Arthur Hernandez, M.D.; Robert L. Campbell, D.O.; Cabe M. Owens, M.D.; Nat B. Baumer, M.D.; Scott E. Kasden, M.D.; Ronald S. Fleischmann, M.D.; Allen Childs, M.D.; Jack F. Hardwick, M.D.; Rodney N. Dotson, M.D.; Richard G. Buch, M.D.; Norman J. McCall, M.D.; Richard D. Triplett, M.D.; and Nancy Sellars, D.O.

The Board members discussed the order on Barry M. Brown, M.D. Dr. Fleming moved, Dr. Thomas seconded, and the motion passed to approve the order.

Agenda item #9, regarding consideration and approval of modification request/termination request orders, was next. Mrs. Angelo moved, Dr. Tomelli-Mitchell seconded, and the motion passed to approve the orders en masse with the exception of Ira Mark Levin, M.D. The approved orders included Charles C. Bittle, Jr., M.D.; Gregory B. Cartwright, M.D.; Allan J. McCorkle, M.D.; Kennard L. Kollaus, M.D.; Charles D. Chamberlain Jr., M.D.; Dennis M. King, M.D.; James C. Womack, M.D.; and Thomas J. Brown, M.D.

The Board members discussed the order on Ira Mark Levin, M.D. Mrs. Turner moved, Dr. Tomelli-Mitchell seconded, and the motion passed to approve the order with a correction of the error on Finding of Fact #11 and additional language that a violation of the order would constitute immediate automatic suspension.

Agenda item #10, regarding consideration and approval of reinstatement request orders, was next. There were no orders to be considered.

Agenda item #11, regarding consideration and approval of nunc pro tunc orders, was next. Dr. Benavides moved, Mrs. Turner seconded, and the motion passed to approve the order on Paul E. McLean II, M.D.

Agenda item #12, regarding a report on the temporary suspension/automatic orders/automatic actions, was next. Mr. Bonney reported on the order relating to Rafael F. Garcia, M.D.

Agenda item #13, regarding consideration and approval of termination of suspension orders, was next. The Board discussed the order on Cynthia Lee Ketterer, M.D. Dr. Thomas moved, Dr. Tomelli-Mitchell seconded, and the motion passed to approve the order.

The Board discussed the order on Jack Dunn III, M.D. Dr. Tomelli-Mitchell reported that she had participated in the mediation process and explained her reasons for recommending termination of suspension of his license. Dr. Dunn was present and was allowed to make a short statement. Following discussion, Dr. Price moved and Dr. Tomelli-Mitchell seconded the motion to approve the termination of the suspension of Dr. Dunn's license. The vote was tied 7-7. The Board took a brief recess. When the Board reconvened, Dr. Fleming moved, Dr. Tomelli-Mitchell seconded, and the motion passed to go into executive session at 3:27 p.m. for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, Government Code, ' 551.071; and the Medical Practice Act, Texas Occupations Code Annotated, ' 152.009, 160.006, and 164.007; and Attorney General's Opinion No. H-484. Open session resumed at 3:35 p.m. and it was announced that no action was taken during executive session. A certified agenda was made. The Chair announced that he was taking a recount on the original motion regarding Dr. Dunn's case, as there may have been a miscount of the votes. The votes were recounted and the motion failed 6-9. Mrs. Turner moved, Dr. Thomas seconded, and the motion passed to deny Dr. Dunn's request for termination of his suspension.

Agenda item #14, regarding consideration and approval of mediated settlement agreements, was next. Dr. Tomelli-Mitchell moved, Mr. Hicks seconded, and the motion passed to approve the order on James T. Parsons, M.D.

Discussion item #1, regarding the Executive Director's report, was next. Dr. Langley gave the Executive Director's report, which included a discussion of the following:

P The upcoming Federation of State Medical Boards annual meeting.

P Report on the board member retreat and senior managers' retreat.

- P Reorganization in Central Administration and introduction of new secretarial assistant, Courtney Hargrove.
- P Reorganization in the Enforcement Division.
- P Legislative activities.
- P Announcement that the Ethics Commission financial statements are due on April 30.
- P Update on medical school visits.

Dr. Tomelli-Mitchell moved, Dr. Price seconded, and the motion passed to go into executive session at 3:48 p.m. to discuss matters involving the appointment, employment, evaluation, or dismissal of a public officer or employee, or to hear complaints or charges against such officer or employee under the authority of the Open Meetings Act, Government Code, '551.074. Open session resumed at 3:56 p.m. and it was announced that no action was taken during executive session. A certified agenda was made. Dr. Langley continued his report and introduced the Board's newest attorney, Mari Robinson.

Discussion item #2, regarding board member report, was next. No one had anything to report.

Discussion item #3, regarding consideration and approval of February 2, 2001 Board meeting minutes, was next. Dr. Tomelli-Mitchell moved, Mr. Hicks seconded, and the motion passed to approve the minutes.

Discussion item #4, regarding consideration and approval of March 20, 2001 Disciplinary Panel meeting minutes, was next. Mr. Hicks moved, Dr. Tomelli-Mitchell seconded, and the motion passed to approve the minutes.

Discussion item #5, regarding the procedure for handling licensure reinstatement, was next. Mrs. Shackelford, Mr. Hurwitz, and Mr. Bonney explained the current process of reinstatement of a suspended license and reissuance of a revoked license. Staff made a proposal for amending the process and answered the Board members' questions. Dr. Tomelli-Mitchell moved, Mrs. Angelo seconded, and the motion passed to direct staff to draft rules regarding reinstatement and reissuance of licenses; and, in addition, to draft rules to address the requests to return to active status from retired status and route these requests through the Licensure Committee.

Agenda item #6, regarding consideration and approval of committee minutes, was next. Dr. Fleming moved and Mr. Hicks seconded the motion to approve the minutes and action items of the following committees that met on March 30-31: Non-Profit Health Organizations Committee, Joint meeting of Legislative/Long Range Planning Committee and Telemedicine Committee, Public Information/Profile Committee, Licensure Committee, Disciplinary Process Review Committee, Executive Committee, Ad Hoc Committee to Study Integrative and Complementary Medicine, Standing Orders Committee, and Finance Committee. Dr. Tomelli-Mitchell requested a friendly amendment to the motion to amend the Licensure Committee minutes regarding Dr. Kumar's case to clarify that the fellowship was approved only for the years of 1990-1991.

There being no further business, the meeting adjourned at 4:15 p.m.

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