

TEXAS MEDICAL BOARD
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May 18, 2001

The meeting was called to order at 8:45 a.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.; Peter Chang, M.D.; William H. Fleming III, M.D.; David E. Garza, D.O.; Edward S. Hicks, Sr.; 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.; and Janet Tornelli-Mitchell, M.D. Staff members present were Jerry T. Walker, Interim Executive Director; Michele Shackelford, J.D., General Counsel; Jennifer Soffer, J.D., Assistant General Counsel; and various other staff.

Discussion item #6, regarding ratification of Jerry T. Walker as Interim Executive Director, was considered. Dr. Tornelli-Mitchell moved, Dr. Garza seconded, and the motion passed to ratify the action of the Board President to accept the resignation of Frank M. Langley, D.V.M., M.D., J.D., and appoint Jerry T. Walker as Interim Executive Director effective May 11, 2001.

Dr. Anderson thanked the staff for their support in continuing the smooth operation of the agency and continuation of the initiatives that have been started. Dr. Anderson also announced that he had appointed a Search Committee to seek a new Executive Director that included the following members: Dr. Anderson, Dr. Tornelli-Mitchell, Mr. Hicks, Dr. Price, Dr. Kirksey, Dr. Garza, and Mrs. Seliger. Dr. Anderson stated that the committee would proceed on a timely basis and he would keep the board members informed of its progress.

Dr. Anderson announced that several board members were elected to offices in the Federation of State Medical Boards: Dr. Kirksey, Vice President; Dr. Thomas, Board of Directors; Dr. Garza, Editorial Committee; and Dr. Anderson, Nominating Committee.

Agenda item #2, regarding executive session, was next. Dr. Tornelli-Mitchell moved, Dr. Benavides seconded, and the motion passed to go into executive session at 9:52 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 10:45 a.m. and it was announced that no action was taken during executive session. A certified agenda was made.

Agenda item #3, regarding testimonials used in advertising, was next. Mrs. Shackelford gave an update on the Attorney General Opinion regarding testimonials used in advertising that upheld the current board rule prohibiting testimonials in advertising. She also stated that complaints would be looked at on a case-by-case basis to determine if it meets the definition of the rule. The board directed staff to publish its position in the *Medical Board Report*, as well as through an insert in the physician annual registration notice.

Agenda item #4, Executive Director's Report, was next. Mr. Walker presented a mission statement, core values, and two examples of a vision statement prepared by staff for the board's review. Following discussion, board staff was directed to prepare several samples of a mission statement for board consideration. Mr. Walker also presented some information prepared by the Talbot Center in Atlanta taken from a presentation relating to drug and alcohol abuse at the recent Administrators in Medicine meeting.

Discussion item #1, Board Member Report, was considered. Dr. Roberts reported that she had attended a symposium regarding end of life issues and stated that the board is perceived as a barrier to appropriate pain management. She stated that the board was encouraged to better communicate these issues to their licensees. Dr. Kirksey also reported that he had made a presentation regarding pain management at the recent Texas Medical Association annual meeting. Following discussion, the consensus of the board was that better education was needed and it was suggested that this could possibly be incorporated into the annual medical school visits.

The board returned to agenda item #4 regarding the Executive Director's Report for a brief discussion of the Federation's Disciplinary report.

The board recessed at noon and reconvened at 1:05 p.m.

Agenda item #5, regarding the consequences of Informal Settlement Conference decisions, was next. Mr. Charles Bonney, Director of Enforcement, made a presentation regarding the process of Informal Settlement Conferences and decisions to refer cases to the State Office of Administrative Hearings. Mr. Bonney urged the board to assist in crafting orders that will encourage the signing of agreed orders. Mr. Mike Sharp from the law firm of Sharp and Cobos presented a perspective from the defense attorney and the physician, outlining risks and benefits. The board members held a brief discussion and thanked the presenters.

Dr. Anderson announced that he was appointing the following Board members to an Ad Hoc Committee to Study Chapter 187 of Board Rules: Dr. Price, Chair; Mr. Miles; Dr. Kirksey; Dr. Thomas; and Mrs. Southard.

Agenda items #6, #7, and #8, regarding proposed rule changes relating to Chapter 161, General Provisions, Chapter 163, Licensure, Chapter 166, Physician Registration, and Chapter 167, Reinstatement, were considered. Ms. Soffer explained the proposed changes and answered the Board members' questions. **Dr. Thomas moved, Dr. Tornelli-Mitchell seconded, and the motion passed to approve the proposed changes to Chapter 161, Chapter 163, Chapter 166, and Chapter 167, for publication in the Texas Register.**

Agenda item #9, regarding a public hearing and consideration of the cancellation of licenses, was next. Mr. Ivan Hurwitz, Director of Licensure, stated there was one physician to be considered for cancellation due to nonpayment, Arthur Bieganowski, M.D., license #F-2171. **Mrs. Angelo moved, Dr. Kirksey seconded, and the motion passed to approve the cancellation of the license of Arthur Bieganowski, M.D.**

Agenda item #10, regarding Board Staff's Interlocutory Appeal to the Board of the Administrative Law Judge's Order Requiring Written Testimony, was next. Mrs. Shackelford explained the agenda item. Mr. Charles Bonney, Director of Enforcement; Mr. Scott Tatum, Staff Attorney; and Mr. Jerry Stone, attorney for Joseph C. Roell, M.D., were present to make statements and answer questions. Following explanations of the processes followed by the State Office of Administrative Hearings, the history of the case, and the administrative law judge's decision to require written testimony, **Dr. Price moved, Dr. Tornelli-Mitchell seconded, and the motion passed to grant Board staff's request for the Interlocutory Appeal of the Administrative Law Judge's Order Requiring Written Testimony, to go on record stating that the Board's rules support this decision, and to direct staff to draft a letter to be sent to the administrative law judge and the Chief Judge at the State Office of Administrative Hearings.**

Discussion item #2, regarding a follow-up report from the March Board Briefings relating to rehabilitation orders, was next. Mrs. Shackelford reported that staff has no recommendations at this time.

Discussion item #3, regarding approval of the March 29-30, 2001 Board meeting minutes, was considered. Dr. Tornelli-Mitchell moved, Dr. Benavides seconded, and the motion passed to approve the minutes.

Discussion item #4, regarding approval of the April 26, 2001 Disciplinary Panel minutes, was considered. Dr. Tornelli-Mitchell moved, Mrs. Seliger seconded, and the motion passed to approve the minutes.

Discussion item #5, regarding the appointment of a Disciplinary Panel for July-September, 2001, was next. Dr. Anderson appointed the following to the panel: Mrs. Southard, Chairman; Dr. Anderson, Dr. Garza, Dr. Tornelli-Mitchell, and Mr. Miles.

Discussion item #7, regarding committee reports, was next. Dr. Thomas asked that the Licensure Committee report be presented at this time. Dr. Garza gave a report of the meeting. **Mrs. Angelo moved, Dr. Fleming seconded, and the motion passed to approve the minutes, with corrections as discussed, and the action items.**

Dr. Anderson stated that the Executive Committee recommends postponement of the August Board meeting until September 6-8, 2001 and recommends cancellation of the October Board meeting. **Mrs. Southard moved, Dr. Garza seconded, and the motion passed to approve the recommendation.**

Agenda item #11, regarding rehabilitation orders, was considered. Dr. Tornelli-Mitchell moved, Mr. Hicks seconded, and the motion passed to approve the orders en masse, with the exception of #154. The approved orders included rehabilitation orders #155, 156, 157, and 158; modification of rehabilitation order #62; termination of rehabilitation order #80; and denial of the termination of rehabilitation order #77.

Following discussion regarding rehabilitation order #154, **Dr. Fleming moved, Dr. Tornelli-Mitchell seconded, and the motion passed to go into executive session at 3:20 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**

GOVERNMENT CODE, CHAPTER 152, 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. **Dr. Price moved, Dr. Tornelli-Mitchell seconded, and the motion passed to approve the order with the following information: reference the fact that Mrs. Turner served on the Informal Settlement Conference Panel and add information relating to the physician's history of alcoholism and 21-year sobriety.**

Agenda item #12, regarding agreed orders, was next. Mrs. Seliger moved, Mrs. Southard seconded, and the motion passed to approve the orders en masse, with the exception of Charles D. Sartor, M.D. The approved orders included Norris D. Buchmeyer, M.D.; Jacques A. Roy, M.D.; Leonard D. Shockey, M.D.; Richard D. Snyder, M.D.; James Goodrich, M.D.; Patrick A. Titus, M.D.; Robert Hennessy, M.D.; Price E. Hale, M.D.; Kim A. Mosley, M.D.; William R. East, M.D.; Thomas W. Mieras, M.D.; Byung Ho Chung, M.D.; Stephen H. Ware III, M.D.; Homer F. Elliot, D.O.; F. Perry Franz, M.D.; Febe Linda Panal Oro, M.D.; Erwin R. Mierisch, M.D.; Lillian V. Blankenship, M.D.; Subhash Batra, M.D.; and Ramiro De Los Santos, M.D.

Following discussion, **Dr. Tornelli-Mitchell moved, Dr. Kirksey seconded, and the motion passed to approve the order on Charles D. Sartor, M.D.**

Agenda item #13, regarding modification request/termination request orders, was next. Mrs. Southard moved, Dr. Fleming seconded, and the motion passed to approve the orders en masse with the exception of Wallace R. Townsend-Parchman, M.D. and Ira M. Levin, M.D.

The members discussed the order regarding Ira M. Levin, M.D. **Dr. Tornelli-Mitchell moved, Dr. Garza seconded, and the motion passed to approve the order on Dr. Levin with a change that one hour of continuing medical education must be in the area of medical ethics.**

The order on Wallace R. Townsend-Parchman, M.D. was discussed. **Dr. Pascua-Lim moved, Dr. Roberts seconded, and the motion passed to approve the order with an amendment that reflects the new language of the standard paragraphs.**

There were no orders to be considered on agenda items #14-16.

Agenda item #17, regarding termination of suspension orders, was next. Dr. Thomas moved, Dr. Kirksey seconded, and the motion passed to approve the orders on John W. Culberson, M.D. and Raul Rivera, M.D.

There were no orders to be considered on agenda item #18.

Discussion item #7, committee reports, continued from earlier in the meeting. Mrs. Seliger gave a report of the Legislative Committee meeting. Dr. Tornelli-Mitchell moved, Mr. Hicks seconded, and the motion passed to approve the report and action items.

Dr. Anderson gave a report of the Search Committee meeting. **Dr. Tornelli-Mitchell moved, Mr. Hicks seconded, and the motion passed to approve the minutes and action items.**

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

Mrs. Southard gave a report of the Public Information/Profile Committee meeting. **Mr. Hicks moved, Dr. Garza seconded, and the motion passed to approve the minutes and action items.**

Dr. Benavides gave a report of the Non-Profit Health Organizations Committee meeting. **Dr. Garza moved, Mrs. Angelo seconded, and the motion passed to approve the minutes and action items.**

Mr. Hicks gave a report of the Finance Committee meeting. **Dr. Tornelli-Mitchell moved, Mrs. Southard seconded, and the motion passed to approve the minutes and action items.**

Dr. Roberts gave a report of the Standing Orders Committee meeting. **Dr. Tornelli-Mitchell moved, Mr. Hicks seconded, and the motion passed to approve the minutes and action items.**

Dr. Anderson gave a report of the Executive Committee meeting. **Mr. Hicks moved, Dr. Kirksey seconded, and the motion passed to approve the minutes and action items.**

There being no further business, **Dr. Kirksey moved, Dr. Fleming seconded, and the motion passed to adjourn the meeting at 3:56 p.m.**

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