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2000 Medical Board Meeting Minutes

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October 20, 2000

The meeting was called to order at 11:01 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.; Edward S. Hicks, Sr.; Thomas D. Kirksey, M.D.; Eddie J. Miles, Jr.; Larry Price, D.O.; Joyce A. Roberts, M.D.; Nancy M. Seliger; Paulette B. Southard; and R. Russell Thomas, Jr., D.O. Staff members present were F.M. Langley, D.V.M., M.D., J.D., Executive Director; Bruce A. Levy, M.D., J.D., former Executive Director; Jerry Walker, Chief Operating Officer; Michele Shackelford, J.D., General Counsel; Jennifer Soffer, J.D., Assistant General Counsel; and various other staff.

Agenda item #2, regarding executive session, was next. Dr. Thomas moved, Dr. Fleming seconded, and the motion passed to go into executive session at 11:02 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 11:52 a.m. and it was announced that no action was taken during executive session. A certified agenda was made.

Agenda item #3, regarding consideration of a request for extended time to present oral argument, was considered. Bruce S. Hinkley, M.D. appeared with his attorney, David McCue to make the request. Following discussion and brief presentation by Mr. McCue, Dr. Fleming moved, Dr. Thomas seconded, and the motion passed to deny the request and that the board adhere to the accepted procedure followed in the past.

Agenda item #4, regarding board briefings, was next. Dr. Anderson asked Denise Meyer, Manager of Physician Licensure, to present information regarding the licensure process. Mrs. Meyer introduced her licensure staff and made a presentation, highlighting reasons that delays may occur during the process and updated the board on statistical information regarding the number of licenses issued during the last fiscal year.

The Board members presented a gift to William H. Fleming III, M.D., immediate past President of the Board and expressed their appreciation for his dedicated service as President. A letter of appreciation to Dr. Fleming from Governor George W. Bush was also read.

Dr. Thomas moved, Mrs. Angelo seconded, and the motion passed to recess the meeting at 12:22 p.m.

The Board meeting resumed at 1:35 p.m.

Agenda item #5, regarding a proposal for decision on Bruce S. Hinkley, M.D., was considered. Dr. Hinkley appeared with his attorney, David McCue. Katherine L. Smith was the Administrative Law Judge and Steve White, Director of Litigation, represented the Board. Judge Smith gave her report and recommended revocation of Dr. Hinkley's license. Mr.

McCue and Mr. White made presentations and Board members asked questions of Judge Smith. Dr. Price moved, Dr. Fleming seconded, and the motion passed to adopt the recommendation of the administrative law judge and revoke Dr. Hinkley's license.

Discussion item #1, regarding the Executive Director's report, was next. Dr. Langley reported on his first three months with the Board, stating that he had made some minor organizational changes. He also expressed his appreciation for the hard-working staff at the Board. Dr. Langley introduced Jerry Walker, Chief Operating Officer, and Michele Shackelford, General Counsel, and asked them to present some updates. Mr. Walker updated the Board on recent

changes that have been implemented as a result of the KPMG report and stressed that the agency is ready to step up to the next level of competency and meet new challenges. He stated that two of the goals the agency has are to improve communication, both internally and externally, and better identify our customers in order to promote improved customer service. Mrs. Shackelford reported that she and Dr. Langley have spent some time identifying the duties of the General Counsel and making reassignments. In addition, the Litigation Department has been strengthened.

Discussion item #2, regarding approval of the August 24-26, 2000 Board meeting minutes, was considered. Dr. Thomas moved, Mr. Miles seconded, and the motion passed to approve the minutes.

Discussion item #3, regarding approval of the September 15, 2000 Disciplinary Panel meeting minutes, was considered. Dr. Fleming moved, Mr. Hicks seconded, and the motion passed to approve the minutes.

Discussion item #4, regarding appointment of a representative to the Accreditation Council for Continuing Medical Education's Accreditation Review Committee, was considered. Dr. Fleming explained the responsibilities of the committee. Dr. Thomas moved, Mr. Hicks seconded, and the motion passed to recommend Dr. Fleming to serve as member of the committee.

Discussion item #5, regarding Call for Resolutions for the Federation of State Medical Boards' Annual Meeting, was considered. Dr. Fleming moved, Mrs. Southard seconded, and the motion passed to review the materials and discuss the issue at the December Board meeting.

Discussion item #7, regarding appointment of Disciplinary Panels, was considered. Dr. Anderson appointed the following to the January-March 2001 Panel: Mrs. Turner, Chair; Dr. Benavides; Dr. Thomas; Mrs. Southard; and Dr. Roberts, alternate. Dr. Anderson also appointed the following to the April-June 2001 Panel: Dr. Price, Chair; Mr. Hicks; Dr. Chang; Mrs. Seliger; and Dr. Kirksey, alternate.

Discussion item #6, regarding nominations for the Federation of State Medical Boards' Annual Meeting, was considered. Dr. Fleming moved, Dr. Thomas seconded, and the motion passed to nominate Dr. Kirksey to run for Vice President of the Federation. Dr. Fleming moved, Mrs. Southard seconded, and the motion passed to nominate Dr. Thomas to run for the Board of Directors of the Federation.

Discussion item #8, regarding approval of Board meeting dates for 2002, was considered. Dr. Thomas moved, Mr. Hicks seconded, and the motion passed to approve the following dates: February 7-9, March 21-23, May 16-18, August 15-17, October 3-5, and December 12-14.

Discussion item #9, regarding the reassignment of the former Executive Director, was considered. Dr. Thomas moved, Mrs. Angelo seconded, and the motion passed to reaffirm the reassignment of Bruce A. Levy, M.D., J.D.

Agenda item #6, regarding adoption of proposed board rules, was considered. A public hearing was held to consider comments on the proposed rules.

Agenda item #6(a), regarding Chapter 162, Supervision of Medical School Students, was next. The Board considered adoption of a proposed amendment to ' 162.2 relating to exemptions.

There was no one present to comment and no written comments were received. Mr. Hicks moved, Dr. Benavides seconded, and the motion passed to approve the proposed rule as published.

Agenda item #6(c), regarding Chapter 165, Medical Records, was next. The Board considered a proposed amendment to ' 165.2, regarding the time frame for release of medical records. No one was present to comment and no written comments were received. Dr. Fleming moved, Dr. Garza seconded, and the motion passed to approve the rule as published.

Agenda item #6(d), regarding Chapter 170, Authority of Physician to Prescribe for the Treatment of Pain, was next. The Board considered the review of the chapter with no recommended changes. There was no one present to comment and no written comments were received. Mrs. Angelo moved, Dr. Thomas seconded, and the motion passed to approve the rule as published.

Agenda item #6(e), regarding Chapter 171, Institutional Permits, was next. The Board considered proposed amendments to ' 171.2 and 171.3 regarding postgraduate resident permits and institutional permits. There was no one present to comment and no written comments were received. Dr. Fleming moved, Mrs. Seliger seconded, and the motion passed

comments were received. Dr. Fleming moved, Mrs. Seliger seconded, and the motion passed to approve the rule as published.

Agenda item #6(f), regarding Chapter 174, Telemedicine, was next. The Board considered the rule review and proposed amendments to ' 174.13 regarding home health orders and ' 174.15 regarding fees. There was no one present to comment and no written comments were received. Dr. Price moved, Mr. Hicks seconded, and the motion passed to approve the rule as published.

Agenda item #6(g), regarding Chapter 175, Fees, Penalties, and Applications, was next. The Board considered proposed amendments to ' 175.1 regarding fees for late non-profit recertification applications and office-based anesthesia registration. There was no one present to comment and no written comments were received. Mr. Hicks moved, Dr. Price seconded, and the motion passed to approve the proposed rule as published.

Agenda item #6(h), regarding Chapter 177, Certification of Non-Profit Health Organizations, was next. The Board considered rule review and proposed amendments to ' 177.1-177.2, 177.6-177.8, 177.11, 177.13, 177.15-177.16 regarding the time frame for submission of applications and reports, fees for late non-profit recertification applications, and correction of cites to the Texas Occupations Code Annotated. There was no one present to comment and no written comments were received. Following discussion, Mrs. Southard moved, Mrs. Angelo seconded, and the motion passed to withdraw the proposed rule and allow the Non-Profit Health Organizations Committee to further review it.

Agenda item #6(i), regarding Chapter 186, Supervision of Physician Assistant Students, was next. The board considered the rule review and extensive rewrite of the chapter. There was no one present to comment and no written comments were received. Mr. Hicks moved, Dr. Garza seconded, and the motion passed to approve the rule as published.

Agenda item #6(k), regarding Chapter 193, Standing Delegation Orders, was next. The Board considered the rule review and proposed amendments regarding cites to Texas Occupations Code Annotated. There was no one present to comment and no written comments were received. Dr. Thomas moved, Mrs. Southard seconded, and the motion passed to approve the rule as published.

Agenda item #6(l), regarding Chapter 194, Non-Certified Radiologic Technicians, was next. The Board considered the rule review and proposed amendments regarding the cites to Texas Occupations Code Annotated. There was no one present to comment and no written comments were received. Mr. Miles moved, Dr. Fleming seconded, and the motion passed to approve the rule as published.

Agenda item #6(j), regarding Chapter 192, Office-Based Anesthesia, was next. The Board considered proposed amendments to ' 192.4 regarding site-based registration. There was no one present to comment and no written comments were received. Mr. Hicks moved, Dr. Garza seconded, and the motion passed to approve the rule as published.

Agenda item #7, regarding the rehearing of a proposal for decision on Jacques S. Jaikaran, M.D., was deferred until the next Board meeting.

Agenda item #6(b), regarding Chapter 164, Physician Advertising, was next. The Board considered proposed new ' 164.4 regarding advertising board certification. The Board reviewed written comments and heard several oral comments regarding the proposed rule. Following discussion, Dr. Thomas moved and Mrs. Seliger seconded the motion to withdraw the proposed rule and refer it to the Disciplinary Process Review Committee for further review of the comments. Dr. Fleming moved, Mrs. Angelo seconded, and the motion passed to go into executive session at 3:29 p.m. for private consultation and advice of counsel concerning pending or contemplated litigation 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 3:50 p.m. and it was announced that no action was taken during executive session. A certified agenda was made. Dr. Thomas withdrew his motion. Dr. Fleming moved, Dr. Kirksey seconded, and the motion passed to amend proposed ' 164.4 by substitution. Dr. Fleming read the proposed rule into the record.

Agenda item #8, regarding approval of non-public rehabilitation orders and modification request/termination request of non-public rehabilitation orders was next. Dr. Thomas moved, Mrs. Southard seconded, and the motion passed to approve the rehabilitation orders en masse, with the exception of #136. The following orders were approved: rehabilitation orders #130, 131, 132, 133, 134, and 135; and modification of rehabilitation orders #20, 32, 38, and 54. Dr. Fleming moved, Mr. Hicks seconded, and the motion passed to go into executive session at 4:14 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

the Open Meetings Act, Government Code, Section 54957, 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 4:25 p.m. and it was announced that no action was taken during executive session. A certified agenda was made. Dr. Fleming moved, Mr. Hicks seconded, and the motion passed to approve rehabilitation order #136.

Agenda item #9, regarding approval of Agreed Orders, was considered. Dr. Fleming moved, Mrs. Angelo seconded, and the motion passed to approve the order en masse. The approved orders included: Rodney L. Smith, M.D.; Kevin D. Slusher, M.D.; Khairi R. Mubarak, C.A.S.; John E. Beaumont, M.D.; Bradley M. Leonard, M.D.; Nandlal M. Patel, M.D.; Walter D. Gregory, M.D.; Rafael Armendariz, D.O.; Edward G. Reichelt, M.D.; James Mark Murphy, M.D.; Lawrence A. Schaeffer, M.D.; Dhiren B. Patel, D.O.; Anselmo F. Unite, M.D.; Ruth M. Atlas, M.D.; Jorge A. Martinez, M.D.; William E. Prater, Jr., M.D.; Brian M. Blicher, M.D.; and Howard A. Offenbach, M.D.

Agenda item #10, regarding approval of Modification Request/Termination Request Orders, was considered. Dr. Fleming moved, Dr. Kirksey seconded, and the motion passed to approve the orders en masse, with the exception of Edward L. Patten, M.D. The approved orders included: Herbert Kresh, M.D.; Aziz A. Klavon, M.D.; Brandt H. McCorkle, D.O.; Kathy A. Pulliam, M.D.; Robert L. Brusenhan, Jr., M.D.; Paul E. McLean II, M.D.; Jack L. Baker, M.D.; Robert P. Rudy, M.D.; Peter D. Doyle, M.D.; Sudheer Kaza, M.D.; Steven M. Payne, M.D.; Dan W. Parkinson, M.D.; Robert E. Holladay IV, M.D.; Joseph C. Coppola, M.D.; and Michael C. Leath, M.D. The Board members discussed the proposed order on Edward L. Patten, M.D. Following discussion, Dr. Fleming moved, Mr. Miles seconded, and the motion passed to approve the order on Dr. Patten.

Regarding agenda items #11 and #12, it was announced that there were no orders to be considered.

Agenda item #13, regarding a report on Temporary Suspension/Automatic Orders/Automatic Actions, was next. The Board members reviewed the orders on Howard A. Offenbach, M.D.; and Cordell Clark, M.D. No action was necessary, as this was a report only.

Agenda item #14, regarding approval of Termination of Suspension Orders, was considered.

Dr. Thomas moved, Mrs. Angelo seconded, and the motion passed to approve the orders on Shing Y. Pang, M.D.; and Kim I. Muncrief, D.O.

Agenda item #15, regarding approval of Mediated Settlement Agreement Orders, was considered. Mr. Hicks moved, Dr. Thomas seconded, and the motion passed to approve the order on Carl L. Fulton, M.D.

A presentation was made to Helen Wilde who has served the Board for over 20 years as its court reporter.

Dr. Anderson announced that several Board members have suggested that a Board retreat be planned. Dr. Anderson directed staff to work on this project and bring the details to the Board at its next meeting.

Mrs. Angelo gave a report of the Finance Committee meeting. Dr. Fleming moved, Dr. Thomas seconded, and the motion passed to approve the minutes and actions items, with corrections as noted.

Mr. Hicks gave a report of the Legislative/Long Range Planning Committee meeting. Dr. Thomas moved, Mrs. Angelo seconded, and the motion passed to approve the minutes and action items.

Mr. Miles gave a report of the Non-Profit Health Organizations Committee meeting. Dr. Fleming moved, Mr. Hicks seconded, and the motion passed to approve the minutes and action items.

Dr. Anderson gave a report of the Public Information/Profile Committee meeting. Dr. Thomas moved, Mrs. Southard seconded, and the motion passed to approve the minutes and action items, with corrections as noted.

Dr. Thomas gave a report of the Standing Orders Committee meeting. Dr. Fleming moved, Mr. Hicks seconded, and the motion passed to approve the minutes and action items.

Dr. Fleming gave a report of the Transition Committee meeting and moved approval of the minutes and action items. Mr. Hicks seconded the motion, which passed.

Dr. Kirksey gave a report of the Disciplinary Process Review Committee meeting and moved approval of the minutes and action items. Dr. Gage seconded the motion, which passed. Dr.

approval of the minutes and action items. Dr. Garza seconded the motion, which passed. Dr. Kirksey reported that he would arrange for someone from the Federation of State Medical Boards to make a presentation at the next Board meeting regarding the Physician Licensure Assessment Service.

Dr. Garza gave a report of the Licensure Committee meeting and moved approval of the minutes and action items. Dr. Kirksey seconded the motion, which passed.

Dr. Anderson gave a report of the Executive Committee meeting. Dr. Garza moved, Dr. Kirksey seconded, and the motion passed to approve the minutes and action items, with corrections as noted.

There being no further business, Mr. Hicks moved, Dr. Fleming seconded, and the motion passed to adjourn the meeting at 5:35 p.m.

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