

TEXAS STATE BOARD OF MEDICAL EXAMINERS

BOARD MEETING MINUTES

February 3, 2006

The meeting was called to order on February 3, 2006 at 9:03 a.m. by Board President, Roberta Kalafut, D.O. Board members present were Lawrence L. Anderson, M.D.; Julie Attebury; Jose M. Benavides, M.D.; Melinda S. Fredricks; David E. Garza, D.O.; Manuel G. Guajardo, M.D.; Amanullah Khan, M.D.; Eddie J. Miles, Jr.; Keith E. Miller, M.D.; Elvira Pascua-Lim, M.D.; John W. Pate, Jr., M.D.; Larry Price, D.O.; Annette P. Raggette; Paulette Southard; and Timothy J. Turner. Board staff present were Donald W. Patrick, M.D., J.D., Executive Director; Jerry T. Walker, M.P.H., Deputy Executive Director; Michele Shackelford, J.D., General Counsel; Robert Simpson, J.D., Assistant General Counsel; and various other staff. Ms. Blackwell read the Texas Medical Board Mission into the minutes.

pur Board's mission is to protect and enhance the public's 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 #3, Executive Session. Dr. Price moved, Dr. Garza seconded, and the motion passed to go into Executive Session at 9:05 a.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 General's Opinion No. H-484. Open session resumed at 9:21 a.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #13, Reconsideration of Final Order on Remand from Third Court of Appeals after District Court Order PHarold Granek, M.D. Joseph Pitner, Office of the Attorney General, reported on the recent decision of the Reconsideration of Final Order on Remand from Third Court of Appeals after District Court Order PHarold Granek, M.D. After discussion, Dr. Price moved, Mr. Miles seconded, and the motion passed to approve to re-adopt the

Conformed Final Order on Harold Granek, M.D., that was adopted at the December 9, 2005 Board meeting.

Agenda item #4, Consideration and Approval of Agreed Board Orders. After discussion, Dr. Price moved, Ms. Southard seconded, and the motion passed to approve the agreed orders en masse with the exception of agreed orders for Alexander Orlov, D.O.; Giancarlo R. Ferruzzi, M.D.; Cartrell J. Cross, M.D.; Perry C. Lewis, M.D.; Armando Chavez, M.D.; Najah M. Al-Shalchi, M.D.; Pablo L. Xiques, M.D.; Leo J. Borrell, M.D.; Robert M. Hein, M.D.; and Francis X. Burch, M.D. Agreed orders were approved for the following: Martin Kram, M.D.; Dorothy V. B. Martin, M.D.; Phillip R. Adams, M.D.; Remedios R. Cabasag, M.D.; Gail I. Johnson, M.D.; Mohamad A. Ghraawi, M.D.; George S. Massingill, M.D.; Joseph A. Quintana, Jr., M.D.; Dennis E. Rose, M.D.; Milagros Sy Keh, M.D.; Bill Alexander, M.D.; Tom A. Tarkenton, M.D.; David L. Liland, M.D.; Robert J. Pate, M.D.; Alexander Zaks, M.D.; Kenneth W. Dott, D.O.; Michael D. Williams, D.O.; Glenda S. Roefer, D.O.; David B. Sanford, M.D.; and Emmanuel Coroneos, M.D.

After discussion, Dr. Anderson moved and Dr. Khan seconded the motion to deny the agreed order for Alexander Orlov, D.O., as written. The motion failed. Ms. Fredricks moved, Dr. Khan seconded, and the motion passed to table the agreed order for Alexander Orlov, D.O., to allow staff to rewrite the Findings of Fact and Conclusions of Law and present at the next Board meeting. The action was based on concerns that the Findings of Fact did not adequately specify the violation of the Medical Practice Act.

After discussion, Dr. Miller moved, Dr. Pascua-Lim seconded, and the motion passed to approve the agreed order for Giancarlo R. Ferruzzi, M.D., as written.

After discussion, Dr. Pascua-Lim moved, Ms. Raggette seconded, and the motion passed to approve the agreed order for Cartrell J. Cross, M.D., with a non-substantial change in formatting to Category I to clarify the requirement for additional continuing medical education.

After discussion, Dr. Miller moved, Ms. Southard seconded, and the motion passed to approve the agreed order for Perry C. Lewis, M.D., as written.

After discussion, Dr. Miller moved, Ms. Southard seconded, and the motion passed to approve the agreed order for Armando Chavez, M.D., as written.

After discussion, Ms. Southard moved, Dr. Miller seconded, and the motion passed to approve the agreed order for Najah M. Al-Shalchi, M.D., as written.

After discussion, Ms. Southard moved, Ms. Ragette seconded, and the motion passed to approve the agreed order for Pablo L. Xiques, M.D., with clarification of the name of the listed panel member.

After discussion, Dr. Pascua-Lim moved, Dr. Price seconded, and the motion passed to approve the agreed order for Leo J. Borrell, M.D., as written.

After discussion, Dr. Anderson moved, Ms. Southard seconded, and the motion passed to approve the agreed order for Robert M. Hein, M.D., as written.

After discussion, Ms. Southard moved, Dr. Price seconded, and the motion passed to approve the agreed order for Francis X. Burch, M.D., with the addition of a public reprimand, an administrative penalty of \$1,000, and 15 additional hours of continuing medical education in ethics.

Agenda item #15, Consideration and Approval of Proposals for Decision - Rick Lorentz, M.D. Paul D. Keeper, J.D., Administrative Law Judge, gave a report and recommendation. Dr. Lorentz, M.D., appeared with his wife. Scott Freshour, staff attorney, appeared representing the Board. After discussion, Dr. Pate moved, Dr. Garza seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law as proposed by the Administrative Law Judge with the exception of Conclusions of Law No. 14 and 15 that are not deemed proper conclusions of law because they are recommendations by the Administrative Law Judge; and to adopt the proposed order of Board staff as presented. The order shall include the following: suspension of the Respondent's license with suspension

immediately stayed; three years probation, during which time Respondent shall comply with bylaws and regulations at all facilities where he holds privileges or may obtain privileges; completion of a forensic psychiatric evaluation in the time period specified; a chart monitor; 10 additional hours of CME in ethics in the time period specified; obtain 20 additional hours of CME in risk management in the time period specified; complete a course in Medical malpractice, Risk Management and Communication from the Oregon Medical Association in the time period specified, and pay a \$40,000.00 administrative penalty. Ms. Raggette and Mr. Turner opposed the motion.

Consideration and Approval of Proposals for Decision - Robert C. Kuhne, M.D. Paul D. Keeper, J.D., Administrative Law Judge, gave a report and recommendation. Dr. Kuhne did not appear. Sherry Statman, staff attorney, appeared representing the Board. Ms. Statman gave a presentation. After discussion, Dr. Garza moved and Ms. Southard seconded the motion to adopt the Findings of Fact and Conclusions of Law as proposed by the Administrative Law Judge with the exception of Finding of Fact No. 26 and Conclusion of Law No. 9, which are not deemed proper findings or conclusions of law and to adopt the proposed order of Board staff that was presented and which is generally reflective of the recommendations of the ALJ. The Order shall include the following: A Public Reprimand; Respondent shall write a letter of apology to patient D.G. for his actions, specifically acknowledging that his behavior was improper; and Respondent shall enroll in and successfully complete a Continuing Education Course for Physicians who Cross Sexual Boundaries presented by the Center for Professional Health at the Vanderbilt Medical Center within one year. After discussion, Dr. Garza moved to call the vote. The motion passed. Dr. Guajardo and Ms. Raggette opposed the motion.

Consideration and Approval of Proposals for Decision - Dennis R. Flores, M.D. Charles Homer III, J.D., Administrative Law Judge, gave a report and recommendation. Dr. Flores appeared with his attorney, Jean DeLoach. Scott Freshour, staff attorney, appeared representing the Board. Mr. Freshour gave a presentation. Dr. Flores made a brief statement. Ms. DeLoach gave a presentation. Ms. Southard moved and Ms. Blackwell seconded a motion to adopt all the Findings of Fact and only Conclusions of Law 1-4 as proposed by the ALJ in the Original Proposal for Decision, and further that the Board adopt new Conclusions of Law 5-9 as recommended by the ALJ in his letter ruling of November 14, 2005; and to adopt the

proposed order of Board staff that was presented. The order shall include the following: a Public Reprimand; and a \$12,000 administrative penalty. The basis of the administrative penalty is based on the Finding of Fact that Respondent did not file tax returns for two different years (1995 and 1996). The standard sanction is \$2,000 for conviction of moral turpitude, but because there were two separate and distinct violations underlying the conviction the total fine would be \$4,000. The violation continued for three years after the date the policy became effective until the violation terminated by Respondent filing the tax returns. Therefore, the fine is \$4,000 for each violation for an administrative penalty of \$12,000.

After discussion, Dr. Garza moved, Ms. Southard seconded, and the motion passed to approve an amendment to the motion to reduce the administrative penalty to \$1,200 due to Respondent's bankruptcy. Ms. Fredricks opposed the motion to amend the motion.

After discussion, Dr. Anderson moved, Dr. Khan seconded, and the motion passed to approve an amendment to the motion to delete the public reprimand due to Respondent's reliance on inaccurate legal advice by former I.R.S. employee. Dr. Miller, Dr. Pascua-Lim, and Dr. Price opposed the motion to amend the motion.

Ms. Southard restated the motion and the motion passed to approve to adopt all the Findings of Fact and only Conclusions of Law 1-4 as proposed by the ALJ in the Original Proposal for Decision, and new Conclusions of Law 5-9 as recommended by the ALJ in his letter ruling of November 14, 2005; and to adopt the proposed order of Board staff that was presented with and an administrative penalty of \$1,200. Dr. Pascua-Lim opposed the motion as amended.

Agenda item #15, Consideration and Approval of Proposal for Decision - Robert C. Kuhne, M.D. After discussion, Dr. Garza moved, Ms. Blackwell seconded, and the motion passed to approve reconsideration of the Proposal for Decision for Robert C. Kuhne, M.D. due to his appearance at 11:00 a.m. as set out in the notice letter from Board staff. Dr. Kalafut read the recusal statement and urged any Board member that felt they could not hear the case without prejudice from the earlier presentation and discussion to recuse themselves. No Board member requested to be recused. Paul D. Keeper, J.D., Administrative Law Judge, gave a review of the report and recommendation. Mark J. Hanna and Mr. Walker, Dr. Kuhne's attorneys,

reported that the Respondent was outside the room taking an emergency call. The Chair announced that the Board would continue with the other regular business on the agenda until Dr. Kuhne had time to confer with his attorneys. .

Dr. Price moved, Ms. Southard seconded, and the motion passed to go into Executive Session at 11:40 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, 155.058, 160.006, 164.007, and 164.203; and Attorney General's Opinion No. H-484. Open session resumed at 11:55 a.m. and it was announced that no action was taken. A certified agenda was made.

Agenda item #3, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, Dr. Price moved, Ms. Blackwell seconded, and the motion passed to approve the Non-Public Rehabilitation Order and Modification Request/Termination Request of Non-Public Rehabilitation Orders.

Continued Agenda item #15, Consideration and Approval of Proposal for Decision - Robert C. Kuhne, M.D. Dr. Kuhne did not appear. Mr. Walker requested dismissal due to prejudice that a decision had already been determined. The Board urged Dr. Kuhne's participation in the meeting. Ms. Statman restated her previous presentation. Judge Keeper answered Board member questions. After discussion, Dr. Garza moved and Ms. Raggette seconded the motion to adopt the Findings of Fact and Conclusions of Law as proposed by the Administrative Law Judge; with the exception of Finding of Fact No. 26 and Conclusion of Law No. 9, which are not deemed proper findings or conclusions of law; and to adopt the proposed order of Board staff that was presented, which is generally reflective of the recommendations of the ALJ. The Order shall include the following: A Public Reprimand; Respondent shall write a letter of apology to patient D.G. for his actions, specifically acknowledging that his behavior was improper; and Respondent shall enroll in and successfully complete a Continuing Education Course for Physicians who Cross Sexual

Boundaries presented by the Center for Professional Health at the Vanderbilt Medical Center within one year; and a \$5,000 administrative penalty. After discussion, Dr. Garza withdrew the motion.

Dr. Garza moved, Dr. Price seconded and the motion passed to approve to adopt the Findings of Fact and Conclusions of Law as proposed by the Administrative Law Judge; with the exception of Finding of Fact No. 26 and Conclusion of Law No. 9, which are not deemed proper findings or conclusions of law; and to adopt the proposed order of Board staff that was presented, which is generally reflective of the recommendations of the ALJ. The Order shall include the following: A Public Reprimand; Respondent shall write a letter of apology to patient D.G. for his actions, specifically acknowledging that his behavior was improper; and Respondent shall enroll in and successfully complete a Continuing Education Course for Physicians who Cross Sexual Boundaries presented by the Center for Professional Health at the Vanderbilt Medical Center within one year. Dr. Anderson, Dr. Guajardo, and Dr. Pate opposed the motion.

Agenda item #5, Consideration and Approval of Modification Request/ Termination Request Orders. Dr. Price moved, Ms. Southard seconded, and the motion passed to approve the Modification Request/Termination Request Orders for Leo L. Altenberg, M.D.; AnnMarie Ledley-Lewis, M.D.; Howell E. Davis, D.O.; Robert P. Kauffman, M.D.; Harold R. Lewis, M.D.; Randal L. Fielder, M.D.; and Steven W. Fath, M.D., as written.

There were no items for Agenda items #6-7.

Agenda item #8, Consideration and Approval of Mediated Settlement Agreement Orders. Dr. Price moved, Ms. Southard seconded, and the motion passed to approve the Mediated Settlement Agreement Orders for Josie A. Cigarroa, M.D., and Tony T. Bui, M.D.

Agenda item #9, Consideration and Approval of Termination of Suspension Orders. Dr. Benavides moved, Ms. Raggette seconded, and the motion passed to approve the Termination of Suspension Orders for Phil A. Aitken, M.D.; Michael A. Barley, M.D.; John E. Garner, D.O.; Stephen A. Barnes, M.D.; and Stephen R. Neece, M.D.

There were no items for Agenda items #10-#12.

Agenda item #14, Consideration and Approval of Motion for Rehearing to set aside Default Judgment for Reuben A. Isern, M.D. Agenda item #14 was deferred.

Discussion item #2, Board Member Report. Dr. Kalafut announced Dr. Garza's appointment to the National Board of Medical Examiners Board and Ms. Attebury being named as the Amarillo Globe News's Woman of the Year. Dr. Kalafut introduced and welcomed Manuel Guajardo, M.D., to the Texas Medical Board. Dr. Kalafut encouraged all Board members to participate in Informal Settlement Conferences.

Discussion item #1, Executive Directors Report. Kurt Budke introduced new Compliance Department staff. Dr. Patrick announced the resignations of Dr. Canterbury and Dr. Kirksey from the Board. Ms. Shackelford reported the Open Government Training as required by state law as of January 1, 2006 was available from staff and online.

Discussion items #3-#5, Consideration and Approval of the December 7, 2005 Disciplinary Panel Minutes, the December 8-9, 2005 Board Meeting minutes and Appointments to the Expert Physician Panel. Dr. Miller moved, Dr. Pascua-Lim seconded, and the motion passed to approve December 7, 2005 Disciplinary Panel Minutes, the December 8-9, 2005 Board Meeting Minutes and Appointments to the Expert Physician Panel. The Expert Physician Panel appointees were Pankaj Pasricha, M.D.; Neil Grieshop, M.D.; Mehmet Cilingiroglu, M.D.; David Briones, M.D.; and Michael Rensch, M.D.

Agenda item #6, 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 Meeting. Dr. Kalafut moved, Ms. Southard seconded, and the motion passed to approve the Executive Committee Meeting minutes and action items with a clerical correction.

Mr. Turner gave a report of the Telemedicine Committee Meeting. Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the Telemedicine Committee Meeting minutes and action items.

Ms. Fredricks gave a report of the Legislative Committee Meeting. Ms. Fredricks moved, Dr. Benavides seconded, and the motion passed to approve the Legislative Committee Meeting minutes and action items.

Dr. Benavides gave a report of the Finance Committee Meeting. Dr. Benavides moved, Ms. Blackwell seconded, and the motion passed to approve the Finance Committee Meeting minutes and action items.

Dr. Garza gave a report of the Disciplinary Process Review Committee Meeting. Dr. Garza moved, Dr. Benavides seconded, and the motion passed to approve the Disciplinary Process Review Committee Meeting minutes and action items.

Ms. Raggette gave a report of the Ad Hoc Scope of Practice Committee Meeting. Dr. Miller moved, Dr. Pate seconded, and the motion passed to approve the Ad Hoc Scope of Practice Committee Meeting minutes and action items.

Dr. Pate gave a report of the Licensure Committee Meeting. Ms. Raggette moved, Dr. Miller seconded, and the motion passed to approve the Licensure Committee Meeting minutes and action items.

Dr. Pascua-Lim gave a report of the Standing Orders Committee Meeting. Dr. Pascua-Lim moved, Ms. Blackwell seconded, and the motion passed to approve the Standing Orders Committee Meeting minutes and action items.

Agenda item #16, Public Hearing and Consideration of Adoption of Proposed Rule Changes. Discussion and recommendation and possible action regarding proposed amendments to Chapter 165, Medical Records, to include amendments to 165.1 Medical Records and the addition of 165.6, Medical Records Regarding an Abortion on an

Unemancipated Minor. *Written comments were reviewed. Testimony was presented by the following: State Representative Phil King; State Representative Bryan Hughes; Dr. Sharilyn Stanley, self and as representative of State Representative Dawnna Dukes Uoffice; Dorothy Browne, representative of State Representative Elliott Naishtat & office; Paul M. Fine, M.D., Planned Parenthood of Houston & Southeast Texas; Peggy Romberg, Women & Health and Family Planning Association of Texas; Tama Chunn, Life Adovcates; Judy Vatterott, Life Advocates; Elaine Morley, Foundation for Life/Life Advocates; Carol Barger, Jane & Due Process; Kyleen Wright, Texans for Life Coalition; Joe Pojman, Texas Alliance for Life, Inc.; William A. Crowden, Planned Parenthood of Waco Family Planning and Surgical Services; Dr. Julianna Gonzales, Whole Woman & Health of Texas; Brent Haynes, Texas Alliance for Life; Jonathan Saenz, Free Market Foundation; Dr. V. Friedwald; Dr. Roger Schwarts; Dr. Herbert Brown; Stacy Emick, Texas Right to Life; Dr. Linda Flower, Texas Physician Resource Council; and Dr. Betty Nichols.*

Dr. Price moved, Ms. Raggette seconded, and the motion passed to go into Executive Session at 2:58 p.m. for private consultation and advice of counsel with respect to legal matters under the authority of the Open Meetings Act, GOVERNMENT CODE, 551.071. Open session resumed at 3:20 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, the Board directed staff to pull down the current rule, Chapter 165, Medical Records, to include amendments to 165.1 Medical Records and the addition of 165.6, Medical Records Regarding an Abortion on an Unemancipated Minor, and bring to next Board meeting a simpler new form including the following changes: definition of emancipated minor; require parental consent in person or a notarized signature; have parent/guardian initial each page; provide official translation forms; remove consent for anesthesiology; remove language referencing tissue disposal; review additional check boxes of procedure; spell out D&C; due diligence is vague; and delete reference to risks of pregnancy.

There being no further business the meeting adjourned at 3:55 p.m.

