



TEXAS RADIATION ADVISORY BOARD

Minutes of the February 9, 2008 Board Meeting

Department of State Health Services (DSHS), Moreton Building, Room M 739

1100 West 49th Street, Austin, Texas

Scheduled to Convene at 9:00 a.m.

1. Call to order

Michael Ford, C.H.P., Chair, called the meeting to order at 9:07 a.m. Members present for the meeting were: Rick Jacobi, P.E.; Troy Marceleno, P.E.; Rosana Moreira, Ph. D.; Ian Hamilton, Ph.D.; Mitchell Lucas; Bradley Bunn, Kevin Raabe, W. Kim Howard, M.D.; Odis Mack, Darlene Metter, M.D.; Nora Janjan, M.D. and Earl Erdman (participated via Speaker Phone).

Members not present: Bruce Matson, D.D.S.; Anna Cleveland, Ph. D.; Bob Haley and Michael Walsh.

Department of State Health Services (DSHS) staff present: Richard Ratliff, P.E.; Debbie Peterson; Julie Loera; Cindy Cardwell; Ruben Cortez; Tommy Cardwell; Robert Free; Scott Kee; Jo Turkette; Carolyn Wright; Julie Davis.

Texas Commission of Environmental Quality (TCEQ) staff present: Susan Jablonski, P.E.; DeVane Clark.

Texas Railroad Commission (TRC) staff present: Judy Fabela.

2. Introduction of guests

Guest present: Annette Glass, Rep. self; George Fitzgerald, Rep. self; Jep Hill, Rep. self; Paul Moore, M.D., Rep. Austin Diagnostic Clinic, Bob Preley, Rep. Austin Diagnostic Clinic; Joe Volpe, Rep. Austin Diagnostic Clinic; Thomas Blevins, M.D., Rep. Texas Diabetes and Endocrinology; Mark Worman, Rep. Texas Department of Insurance; Geri Cooley, Rep. Lotus LLC; Eddie Selig, ARDT.

3. Minutes of the October 13, 2007 meeting

Minutes of the October 13, 2007 Quarterly TRAB Meeting were submitted for approval. On motion and second, the board approved the minutes.

4. Member absences for calendar year 2007

Michael Ford discussed TRAB member 2007 calendar year absences: Nora Janjan, M.D. She has communicated with members on quorums for dates she was not available; and Bruce Matson, D.D.S. His wife has had some significant health issues and he has not been able to attend because he is her primary caregiver; Dr. Matson is tendering his resignation with the board. Motion to approve both board members' absences and second, the board approved member absences for calendar year 2007.

5. Meeting of the *Ad Hoc* Committee on Financial Assurance, Mr. Mack, Chair

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- a. Status Report: Financial Assurance and insurance policies. Smaller players do not have the means of taking on responsibility; can't control severity. Proposing product with \$5M umbrella to see if any companies are interested in taking on the risk.

Mr. Mack invited Mark Worman, rep. Texas Department of Insurance to address issues regarding financial assurance. "We're getting a lot of media centered on financial assurance and vendors approached only three carriers: AIG, Zoric and XL Group," said Mr. Worman. He discussed that he was originally contacted by Mr. Mike Ford and Mr. Rick Jacobi in the summer of 2005, regarding the need for insurance companies and policies that limits loss. He stated that a new insurance product needs to be created. Insurance companies' underwriters are highly concentrated in the market and limitations and severity are the challenges that insurance companies take responsibility for monetary losses. Recommendation to set up meeting with Odis Mack, Rick Jacobi and Mark Worman to explore concepts for energy solutions and nuclear field cycles and to discuss companies to come in on clean-ups.

6. Meeting of the Medical Committee, Dr. Howard, Chair

- a. Status Report: NRC's position regarding Compatibility Category B and whether Texas can maintain a more stringent set of requirements due to patient safety concerns.

Mike Ford discussed that TRAB is still in the process of drafting a letter to Dr. Klein and the Commissioner of Health, Dr. Lakey. He met with Kathy Perkins and DSHS staff on 2/08/2008, to discuss the issue. Concerns were the historical actions the agency has taken that might have been perceived as in conflict with what TRAB is trying to do now, so he wanted to discuss and make sure TRAB and DSHS are on the same page in the status of adoption of 10CFR Part 35 changes in the state regulations. DSHS activity is on hold pending outcome of TRAB's efforts with NRC. Still pressing forward, recommend getting letter to medical committee for their review within next couple of weeks; with a review by Dr. Lakey. Main concerns are the changes NRC has proposed in training.

- b. Review of training for physicians (Thomas Blevins, M.D. and Paul Moore, M.D.) as authorized users on radioactive material licenses

Dr. Kim Howard introduced Thomas Blevins and stated that the committee would review the applications for authorized users on radioactive material licenses and go over Dr. Blevins' application. Dr. Blevins discussed his training as an endocrinologists and application as an authorized user under the State of Texas rules. Dr. Metter questioned Dr. Blevins on his outline in the application and pointed out that the application did not meet the standards of the State of Texas. She expressed concern as a physician that TRAB must ensure public safety and the safety of our patients. She stated that Dr. Blevins' application was incomplete and needed additional appropriate information. Dr. Metter questioned Dr. Blevins on how the American Association of Endocrinologists meets the criteria? How does a separate entity involving Dr. Volpe meet the standards of ACGME? Dr. Janjan also questioned Dr. Blevins regarding 80 hours of didactic training and pointed out that there was actually 74.25 hours of didactic training not 80.25 hours of training. Dr. Janjan was concerned with this as a scope of practice issue. Dr. Volpe, rep. self, retired from Austin Diagnostic Clinic at North Austin Medical Center, spoke on Dr.

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Blevins' behalf. Bob Presley, rep. In-house Counsel for Austin Diagnostic Clinic, also spoke and addressed the issue of the preceptorship not being performed at an ACGME facility. Patient safety is a priority at ADC. Dr. Kim Howard concluded that TRAB needed more information on license L50646, to see if they really are and authorized for the treatment of cancer since this is still in question; The Medical Committee needs upgraded preceptor statements for Dr. Moore and agreements between UT San Antonio and ADC.

7. Meeting of the Waste & Industrial Committee, Mr. Erdmann, Chair

a. DSHS Status report:

- i. Impacts on Licensees from NRC's final rule on expanded definition of radioactive byproduct material

Richard Ratliff relayed to TRAB and Mr. Erdmann (on speaker phone) that there is no impact to DSHS licensees. No change in the DSHS NORM rules. Only in discreet NORM for non-agreement states with licensees using discreet radium sources or positron emissions isotopes or accelerator produced materials. Cindy Cardwell said we will make a few tweaks in rule for language purposes.

- ii. Impacts on Licensees and Authorized Users from new finger-printing requirements.

Richard Ratliff discussed the impacts on NRC fingerprinting. By June 5, 2008, the program must be completed by DSHS. Once NRC approves the license condition, DSHS will amend licenses and licensees will have 90 days to implement process of having their trustworthy and reliable official approved. DSHS is out of loop with regard to fingerprint submission. Licensee sends fingerprint form and fee to the NRC, the NRC sends the card to the FBI for background check. The FBI sends the results to NRC, who in turn sends them to the licensee. State will check the licensee's basis for determining an employee can have unescorted access during routine inspections. The State is up to date on annual increased control inspections and is performing the three year inspections currently.

b. Public Comment on Recent NRC Orders and associated impacts

No public comments.

c. Status report and agency actions needed for TRAB recommendation regarding path forward for alternative disposal, regarding review of 25 TAC §289.202 and DSHS (now TCEQ) recognition of NRC approvals of applications for alternative disposal made under 10 CFR 20.2002.

Susan Jabolanski, rep. TCEQ stated that nothing is pending with TCEQ. Senate Bill 1604: added flexibility for TCEQ and TCEQ has done rulemaking to allow consideration of such requests.

d. Repeal of and Adoption of new 25 TAC 289.257, Packaging and Transportation of Radioactive Material

e. Adoption of 25 TAC 289.228, Radiation Safety Requirements for Analytical and Other Industrial Radiation Machines

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- f. Adoption of 25 TAC 289.258, Licensing and Radiation Safety Requirements for Irradiators

On motion and second, the board approved items 7.d, 7.e and 7.f for ratification.

- g. Proposed Repeal of 25 TAC 289.254, Licensing of Radioactive Waste Processing and Storage Facilities
- h. Proposed Repeal of 25 TAC 289.260, Licensing of Uranium Recovery and Byproduct Material Disposal Facilities

Mike Ford recommended to TRAB the approval of proposed repeal of 25 TAC 289.254 and 25 TAC 289.260, contingent on the passage of equivalent rules at TCEQ.

8. Meeting of the Committee of the Whole

- a. Public Comment – None.
- b. Adoption of Repeal of 25 TAC 289.3, Control of Infrasonic, Sonic, and Ultrasonic Radiation
- c. Adoption of 25 TAC 289.130, Radiation Advisory Board
- d. Adoption of 25 TAC 289.205, Hearing and Enforcement Procedures
- e. Adoption of 25 TAC 289.251, Exemptions, General Licenses, and General License Acknowledgements
- f. Adoption of 25 TAC 289.252, Licensing of Radioactive Material
- g. Action by the full Board on considerations and recommendations of all committees.

Cindy Cardwell recommended for adoption repeal of 8 b., and the adoption of 8 c., 8 d., 8 e. and 8 f. A comment on 25 TAC 289.252 stated that a physical inventory would require sources to be moved from storage. DSHS did not feel sources had to be moved and a physical inventory was critical to verify source was accounted for. Cindy commented that rule would be back open in six months. Mike Ford discussed with TRAB the need for container to be tamper-proof and to check seals. Rick Jacobi asked about exposures. Cindy replied, "other options such as remote handling tools or video surveillance that would incorporate the principles of time, distance and shielding can meet requirements rather than moving sources from storage." Mr. Ford suggested a high resolution camera, and Mr. Bradley Bunn commented the need for an RFD tag. Mike Ford asked TRAB for any other questions or suggestions. Mike Ford recommended items 8 b., 8 c., 8 d., 8 e., 8 f. for ratification. On motion and second, the board approved the ratification.

Mike Ford entertained a motion on 8 g. by the TRAB Board on consideration and recommendations of all committees. One motion and second, the board approved 25 TAC 289.228; 25 TAC 289.257; 25 TAC 289.258; 25 TAC 289.254 and 25 TAC 289.260.

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9. Program reports

- a. Railroad Commission of Texas
- b. Department of State Health Services
- c. Texas Commission on Environmental Quality

Program reports are attached.

10. Board member requests for agenda items for next meeting

General discussions on nuclear power; advancements addressed in third or fourth TRAB meeting; performance based licensing addressed by Rick Jacobi and NRC; Texas patient safety and public safety; adopt TFC requirements; reciprocity issues from physicians with other states.

11. Public comment

Education of public (Austin) who might consider backing out of new nuclear power plants and go to coal-fired plants.

12. Next meeting date

The next meeting date was proposed as May 3rd or an alternative date. Board members will be queried on their preferred date.

13. Adjourn

The meeting adjourned at 12:57 p.m.