

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
December 11, 2008

Chairman Larry Price, D.O., called the meeting to order at 9:50 a.m. Other members present were David Baucom, Melinda McMichael, M.D., Margaret C. McNeese, M.D., Charles Oswalt, M.D., Allan Shulkin, M.D., and George Willeford, III, M.D. Committee Members Patricia S. Blackwell, Amanullah Khan, and Annette P. Raggette were not present. Committee Member Manuel Guajardo, M.D. arrived at 12:37 p.m.

Also present was Mari Robinson, Director of Enforcement/Interim Executive Director, and various other staff.

Dr. Oswalt moved, and Dr. Shulkin seconded; the motion passed at 9:52 a.m. to go into Executive Session deliberations concerning disciplinary action, investigative information, peer review information, and rehabilitation orders under the authority of The Medical Practice Act Sections 152.009, 160.006 through .008, 164.007(c), and 164.202 & .203, Occupations Code. Open session resumed at 12:03 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Agenda Item #2. Review, discussion and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 06-2206, 07-0789, 07-2466, 07-4935, 07-5732, 08-1208, 08-2294, 08-2527, 08-3619, 08-3735, 08-4145, 08-4218, 08-6402; B. Non-Jurisdictional Complaints: 08-1722, 08-2054, 08-5301, 08-5912, 08-5939, 08-6188, 08-6418, 09-0036, 09-0079, and 09-0515.

It was announced by Mari Robinson that the Complainant for Agenda Item 2.A.i., Log #08-2294, was previously granted a one-time reschedule for his appearance before the Board. The Complainant informed staff that he was unable to appear before the Board but understood that a final decision would be made on his appeal in his absence.

Dr. Shulkin moved, and Dr. Oswalt seconded that the appeal of Item 2.A.i., Log #08-2527 be denied. Motion carried.

Dr. McMichael moved, and Dr. Oswalt seconded that the appeal of Item 2.A.i., Log #08-3619 be granted and that a new panel review be obtained to evaluate the original SOC issue in this case; also, the appeal documentation submitted by the Complainant and the issue of possible unprofessional conduct. Motion carried.

Dr. Oswalt moved, and Dr. Shulkin seconded that the appeal of Item 2.A.i., Log #08-4145 be denied. Motion carried.

Dr. Shulkin moved, and Dr. McNeese seconded that the appeal of Item 2.A.i., Log #08-3735 be denied. Motion carried.

Dr. Oswalt moved, and Dr. McMichael seconded that the appeal of Item 2.B., Log #08-5301 be granted and that an investigation be opened. Motion carried.

Dr. Oswalt moved, and Dr. Shulkin seconded that the appeal of Item 2.B., Log #09-0515 be denied. Motion carried.

A lunch recess was taken at 12:10 p.m. and the committee returned at 12:43 p.m.

Agenda Item #4. Reports and discussion regarding the Investigation, Litigation and Compliance Departments. Ms. Robinson presented the Enforcement Report for October 2008, a copy of which is attached. This was an informational item only and no vote was necessary.

Agenda Item #5. Discussion, recommendation and possible action regarding Rule Review and proposed changes to the following chapters in Title 22 of the Texas Administrative Code.

- A. Discussion, recommendation and possible action regarding rule review of Chapter 189, Compliance Program.
- B. Discussion, recommendation and possible action regarding amendment to Section 190.8 (L) by adding a new subsection (iii).

Dr. Oswalt moved, and Dr. McMichael seconded that the revisions presented to the committee that pertain to Agenda Item 5.A. be approved for publication in the Texas Register. Motion carried.

Dr. Oswalt moved, and Dr. McMichael seconded that the amendment presented to the committee that pertains to Agenda Item 5.B. be approved for publication in the Texas Register. Motion carried.

Agenda Item #7. Consideration and approval of appointments to the Expert Physician Panel.

Dr. McMichael moved, and Dr. McNeese seconded that the appointments and the removal of members to and from the Expert Physician Panel be accepted as noted in the attachment. Motion carried.

Dr. Willeford moved, and Dr. Oswalt seconded; the motion passed at 1:02 p.m. to go into Executive Session deliberations concerning disciplinary action, investigative information, peer review information, and rehabilitation orders under the authority of The Medical Practice Act Sections 152.009, 160.006 through .008, 164.007(c), and 164.202 & .203, Occupations Code.

Agenda Item #2. Review, discussion and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 06-2206, 07-0789, 07-2466, 07-4935, 07-5732, 08-1208, 08-2294, 08-4218, 08-6402; B. Non-Jurisdictional Complaints: 08-1722, 08-2054, 08-5912, 08-5939, 08-6188, 08-6418, 09-0036, 09-0079, and 09-0515.

Agenda Item #3. Discussion, recommendation, and possible action regarding routine follow-up on investigative files, previously referred from DPRC for follow-up action, specifically including: 07-1937, 07-5716, 07-5820, 08-0278, and 08-0965.

Agenda Item #6. Review, discussion and possible action regarding review of probationers appearances. (Presented by Ms. Robinson).

Agenda Item #8. Review, discussion, and possible action regarding selected files and cases.

Open session resumed at 3:23 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Discussion continued on Agenda Item #2. Review, discussion and possible action regarding appeals of dismissed complaints.

Mr. Baucom moved, and Dr. Oswalt seconded that the appeal of Item 2.A.i., Log #08-6402 be granted and that the Respondent be offered an Administrative Penalty order. Motion carried.

Dr. McMichael moved, and Dr. Oswalt seconded that the appeal of Item 2.B., Log #08-1722 be granted and that an investigation be opened. Motion carried.

Mr. Baucom moved, and Dr. McNeese seconded that the appeal of Item 2.B., Log #08-6188 be denied and that a custom letter be sent to the Complainant notifying them of the actions that the Respondent had taken with this particular employee. Motion carried.

Dr. Oswalt moved, and Dr. McMichael seconded that all other appeals not specifically granted above be denied. Motion carried.

Discussion continued on Agenda Item #3. Review, discussion and possible action regarding appeals of dismissed complaints.

Dr. Oswalt moved, and Dr. McMichael seconded that all follow-up actions under Agenda Item #3, be dismissed. Motion carried.

Discussion continued on Agenda Item #6. Review, discussion and possible action regarding review of probationers appearances. (Presented by Ms. Robinson).

Dr. Oswalt moved, and Mr. Baucom seconded that all waivers on Agenda Item 6 be granted. Motion carried.

Discussion continued on Agenda Item #8. Review, discussion, and possible action regarding selected files and cases.

Dr. McMichael moved, and Dr. McNeese seconded that Log #08-2898 be forwarded to an ISC. Motion carried.

Dr. Oswalt moved, and Dr. Guajardo seconded that Log #08-3461 be forwarded to an ISC or that the case be resolved via Administrative Penalty procedures. Motion carried.

Dr. Shulkin moved, and Dr. Oswalt seconded that Log #08-3572 be handled via a waiver disciplinary order and the Respondent write a letter of apology to the Complainant in this case. Once the Respondent provides proof that this letter was delivered to the Complainant, this waiver will terminate. Motion carried.

Mr. Baucom moved, and Dr. Oswalt seconded that Log #08-3654 be closed and that a custom letter be sent to the Respondent admonishing them of the importance of vigilant surgical procedures in order to avoid circumstances that led to the initiation of this complaint. Motion carried.

Dr. McNeese moved, and Dr. Oswalt seconded that Log #08-3799 be forwarded to an ISC. Motion carried.

Dr. McMichael moved, and Dr. Oswalt seconded that the investigations and cases reviewed by the committee be resolved as noted and that they be listed along with each resolution as part of the minutes of this Committee. Motion carried.

Agenda Item #9. Adjourn.

At 3:51 p.m., Dr. Price announced the meeting was adjourned; there were no objections.