

## TEXAS MEDICAL BOARD

### MINUTES OF THE DISCIPLINARY PROCESS REVIEW COMMITTEE

October 5, 2006

The meeting was called to order at 11:19 a.m. by Chairman Keith E. Miller, M.D. Other committee members present were Lawrence Anderson, M.D., Roberta Kalafut, D.O., Margaret C. McNeese, M.D., Irvin E. Zeitler, Jr., D.O., Patricia S. Blackwell, and Timothy Turner. Amanullah Khan, M.D. arrived after the meeting started. Paulette Southard was not in attendance. Staff members present were Mari Robinson, Director of Enforcement, Nancy Leshikar, Manager of the Litigation Department, and various other staff.

Agenda Item #2, Review, Discussion and possible action regarding appeals of dismissed complaints:

A. Jurisdictional Complaint Files: Log # 06-2642; Log # 05-2132; Log # 06-1136; Log # 06-1573; Log # 06-1673, 06-1674, 06-1675; Log # 06-1863; Log # 06-1900; Log # 06-2209; Log # 06-2721; and Log # 06-2489;

B. Jurisdictional-Not-Filed complaint files: Log # 06-3684; Log # 06-2516 Log # 06-1439, # 06-1440, # 06-1441; Log # 06-2130; Log # 06-2217; Log # 06-2849; Log # 06-3508; Log # 06-4057; and Log # 06-4063; and

C. Non-Jurisdictional File # 05-8537.

**Dr. Zeitler moved, Ms. Blackwell seconded and the motion passed at 11:20 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, Government Code, § 551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, §§152.009, 155.058, 160.006, and 164.007; and Attorney General's Opinion No. H-484.** Complainants appeared in appeal of Jurisdictional Complaint File, Log # 06-2642, JNF Log # 06-2516 and JNF Log # 06-3684. Open session resumed at 12:02 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

**Dr. Anderson moved, Dr. Kalafut seconded and a motion passed to take no further action regarding Log #06-2642 and JNF File # 06-2516.**

**Dr. Anderson moved, Ms. Blackwell seconded and the motion passed to take no further action regarding JNF file # 06-3684.**

**Mr. Turner moved, Ms. Blackwell seconded and the motion passed at 12:10 p.m. for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, Government Code, § 551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, §§152.009, 155.058, 160.006, and 164.007; and Attorney General's Opinion No. H-484.** Open session resumed at 12:52 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

**Mr. Turner moved, Dr. McNeese seconded and the motion passed directing staff to send Log # 05-2132 for an additional panelist review.**

**Dr. Kalafut moved, Dr. McNeese seconded and the motion passed to take no further action regarding Log # 06-1136.**

**Dr. Kalafut moved, Dr. Khan seconded and the motion passed to take no further action regarding Log # 06-1573.**

**Dr. Anderson moved, Ms. Blackwell seconded and the motion passed to take no further action regarding Log # 06-1673, # 06-1674 and # 06-1675.**

**Dr. Zeitler moved, Ms. Blackwell seconded and the motion passed to take no further action regarding Log # 06-1863.**

**Dr. McNeese moved, Dr. Anderson seconded and the motion passed to take no further action regarding Log # 06-1900.**

**Dr. Anderson moved, Mr. Turner seconded and the motion passed to take no further action regarding Log # 06-2209 and directed staff to send a custom letter to the respondent concerning professional conduct, and also send a custom letter to the complainant explaining the billing processes in this case.**

**Dr. McNeese moved, Ms. Blackwell seconded and the motion passed to take no further action regarding Log # 06-2721 and directed staff to send a custom letter to the respondent concerning conducting thorough physical examinations.**

**Mr. Turner moved, Ms. Blackwell seconded and the motion passed to take no further action regarding Log # 06-2489 and directed staff to send a custom letter to the respondent regarding Board Rule 164 on Advertising.**

**Dr. Kalafut moved, Mr. Turner seconded and the motion passed that JNF Files # 06-1439, # 06-1440 and # 06-1441 remain closed.**

**Dr. McNeese moved, Ms. Blackwell seconded and the motion passed to take no further action regarding JNF File # 06-2130.**

**Dr. Kalfut moved, Dr. Anderson seconded and the motion passed to take no further action regarding JNF File # 06-2217.**

**Dr. Kalafut moved, Dr. Khan seconded and the motion passed to take no further action regarding JNF File # 06-2849.**

**Mr. Turner moved, Dr. Khan seconded and the motion passed to open a formal investigation on JNF File # 06-3508.**

**Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to take no further action regarding JNF File # 06-4057.**

**Dr. Anderson moved, Dr. McNeese seconded and the motion passed to take no further action regarding JNF File # 06-4063.**

**Ms. Blackwell moved, Dr. Anderson seconded and the motion passed to take no further action on Non-Jurisdictional File # 05-8537 and directed staff to send a custom letter to the complainant requesting the identification of the other treating physicians involved in this case.**

Agenda Item # 3: Regarding routine follow-up on investigative files, previously referred from DPRC for follow-up action, specifically including Log # 05-2168.

**Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to take no further action on Log # 05-2168.**

Agenda Item # 4: Regarding reports and discussion regarding Investigation, Litigation and Compliance Departments: Ms. Robinson presented the Enforcement Report for August 2006, a copy of which is attached. This was an informational item only and no vote was necessary. Additionally, a discussion was held on year-end issues of the investigations department. The staff raised the issue of how to proceed when additional investigative information is received on a case that has been dismissed. The Committee directed staff to present that information to the chair of DPRC to obtain direction as to whether additional investigation should occur based on the information received.

Agenda Item # 6: Regarding the discussion, recommendation and possible action on proposed amendments to Chapter 164, **Physician Advertising** to include amendments to §164.4 Board Certification relating to the advertisement of a medical specialty and discuss possible direction to staff regarding current advertising requirements. Ms. Shackelford presented the issues.

Agenda Item # 7: Regarding discussion, recommendation and possible action on proposed amendments to Chapter 165, **Medical Records** to include amendments to §§165.1 Medical Records and 165.5 Transfer and Disposal of Medical Records to establish the custodian of records has the responsibility to notify patients of the departure of a physician and to provide better guidance on the destruction of medical records. Ms. Shackelford presented the issues.

**The Committee directed staff to form a Focus Group to consider possible changes to Chapter 164 and 165. Dr. Miller appointed a DPRC Ad Hoc Committee to include Dr. Miller, Dr. Kalafut, Dr. Anderson, Dr. Khan and Mr. Turner to work with staff on possible changes to these rules.**

Agenda Item # 8: Discussion, recommendation and possible action regarding proposed amendments to Chapter 187, **Procedural Rules** to include amendments to §187.28 Discovery relating to testifying expert witnesses.

**Dr. Anderson moved, Ms. Blackwell seconded and the motion passed to recommend amendments to §187.28 Discovery relating to testifying expert witnesses for publication as presented.**

Agenda Item # 9 regarding the discussion, recommendation and possible action regarding proposed amendments to Chapter 190.8, Violation Guidelines, concerning expert testimony that is determined by peer review action to be false or misleading.

The Committee directed staff to develop a draft of an addition to Rule 190.8 that sets out the requirement for a peer review action in order for a complaint of misleading or fraudulent testifying to be reviewed by the Board as unprofessional conduct.

Agenda Item # 10: Regarding discussion, recommendation and possible action regarding the use of Cease and Desist Orders. Ms. Shackelford presented the information.

The Committee authorized staff to include language in each Cease and Desist Order stating that a hearing is available on the matter and unless a request for a hearing is made, the Order shall become effective.

Agenda Item # 11: Regarding discussion, recommendation and possible action on Administrative Orders. Ms. Shackelford and Ms. Robinson presented the discussion.

**Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to authorize staff to consider an Administrative Confidential Rehabilitation Order for impairment in the following types of cases: physical or mental impairment with no Standard-of-Care (SOC) issues; and drug or alcohol impairment with no issues relating to SOC or alleged violation of state law or Board Rules.**

Agenda Item # 5: Regarding review, discussion and possible action of probationersuppearances was presented.

Agenda Item # 12: Review of selected files and cases recommended for dismissal.

**Dr. Zeitler moved, Ms. Blackwell seconded and the motion passed to go into executive session at 2:05 p.m. for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, Government Code, § 551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, §§152.009, 155.058, 160.006, and 164.007; and Attorney General's Opinion No. H-484; And 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 ANNOTATED, §§152.009, 160.006, 164.007, and 164.203; and Attorney General's Opinion No. H-484.** Open session resumed at 4:36 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

**Mr. Turner moved, Dr. Khan seconded and the motion passed to waive probation appearances for the probationers determined to be in full compliance and identified on the list attached to the Board minutes, with the exception of License # E8662.**

**Dr. Khan moved, Dr. Anderson seconded and the motion passed to take no further action on Legal Case # 06-0255.**

**Regarding review, discussion and possible action regarding selected files and cases, Dr. Zeitler moved, Ms. Blackwell seconded, and the motion passed to recommend the investigations and cases reviewed by this committee be resolved as noted and that they be listed along with each resolution as part of the minutes of this committee.**

**Mr. Turner moved, Ms. Blackwell seconded, and the motion passed to adjourn the meeting at 4:38 p.m.**