

TEXAS MEDICAL BOARD
DISCIPLINARY PROCESS REVIEW COMMITTEE MINUTES

June 1, 2006

The meeting was called to order at 12:48 p.m. by Chairman David E. Garza, D.O. Other committee members present were Roberta Kalafut, D.O., Margaret C. McNeese, M.D., Keith Miller, M.D., Patricia S. Blackwell, Paulette B. Southard, and Timothy Turner. Amanullah Khan, M.D. and Lawrence Anderson, M.D. were not in attendance. Mark Mayberry, M.D., District Review Committee member, was in attendance. Staff members present were Jerry Walker, Deputy Executive Director, Michele Shackelford, General Counsel; Mari Robinson, Manager of the Investigation and Compliance Departments; Dewey Helmcamp, Manager of the Litigation Department, and various other staff.

Agenda Item #2, Review, discussion and possible action regarding appeals of dismissed complaints. Discussion was held concerning the appeal of Jurisdictional Complaint Files: Log # 05-1857; Log # 05-1860; Log # 05-2020 and Jurisdictional-Not-Filed Files: Log # 06-1562, Log # 06-1572, Log # 06-2514 and Log # 06-2544. **Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed at 12:50 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.** Complainants appeared in appeal of Log # 05-1860 and Log # 05-2020. Open session resumed at 1:37 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Dr. Miller moved, Mr. Turner seconded and a motion passed to take no further action regarding Log # 05-1857 and directed staff to send a custom letter to the respondent.

Mr. Turner moved, Ms. Blackwell seconded and a motion was approved regarding Log # 05-1860 directing staff to send the file for additional expert review.

Mr. Turner moved, Dr. Kalafut seconded, and the motion passed to go into executive session at 1:40 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. The complainant appeared in appeal of Log # 05-2020. Open session resumed at 2:00 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, Ms. Blackwell seconded and the motion was approved to take no further action regarding Log # 05-2020 and to send a custom letter to the respondent. Dr. Miller did not vote for the motion.

Mr. Turner moved, Ms. Blackwell seconded and the motion passed to go into executive session at 2:02 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. The complainant appeared in appeal of Log # 06-1562; # 06-1572; # 06-2514; Open session resumed at 2:24 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed take no further action on the Jurisdictional-Not-Filed Files: Log # 06-1562; # 06-1572; # 06-2514; # 06-2544.

Discussion was held regarding the following Jurisdictional Complaint Files: Log # 05-1658; Log # 05-2219; Log # 05-2238; Log # 06-0209. Discussion was held regarding the following Jurisdictional-Not-Filed Files: Log # 06-1222; Log # 06-1484; Log # 06-1748; Log # 06-1939; Log # 06-2217; Log # 06-2283; Log # 06-2319; and Log # 06-2522.

Dr. Kalafut moved, Ms. Blackwell seconded, and the motion passed to go into executive session at 2:39 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 3:07 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Dr. Kalafut moved, Mr. Turner seconded and the motion passed to take no further action on Log # 05-1658, Log # 05-2219 and Log # 06-0209.

Dr. Kalafut moved, Ms. Southard seconded and the motion passed that Log # 05-2238 remain closed and directed staff to send a custom letter to respondent.

Dr. Kalafut moved, Dr. Miller seconded and the motion passed to take no further action on Jurisdictional-Not-Filed Files, Log # 06-1222, Log # 06-1484, Log # 06-1939, Log # 06-2217, Log # 06-2319, and Log # 06-2522.

Dr. Kalafut moved, Mr. Turner seconded and the motion passed to open a formal investigation on Log # 06-1748 and Log # 06-2283.

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 Log # 05-1903, Log # 05-1898; and Log # 05-1291. Dr. Kalafut moved, Dr. Miller seconded to take no further action regarding Log # 05-1903 and Log # 05-1898. Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to send Log # 05-1291 to a third expert review.

Agenda item #4, Reports and discussion regarding the Investigation, Litigation and Compliance Departments. Ms. Robinson and Mr. Helmcamp presented the enforcement and activity report for their perspective departments. A copy of the April 2006 Enforcement Report is attached. This was an informational item only and no vote was necessary.

Agenda item #5, Review, discussion and possible action regarding review of probationers' appearances. Dr. Miller moved, Ms. Blackwell seconded, and the motion passed at 3:37 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 OCCUPATIONS CODE ANNOTATED, "152.009, 160.006, 164.007, and 164.203; and Attorney General's Opinion No. H-484. Open session resumed at 3:38 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made. Following discussion Dr. Kalafut moved, Mr. Turner 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.

Agenda item #6, Review, discussion and possible action regarding the request for approval of proposed practice setting for probationer, Robert Nicholas Berezoski, M.D. Attorney for Robert Nicholas Berezoski, M.D. submitted a letter withdrawing the request for approval of proposed practice setting for probationer.

Agenda item #7, Discussion, recommendation, and possible action regarding adoption process and proposed new Chapter 179.8, Alcohol and Drug Screening During Investigations for Substance Abuse. Ms. Shackelford presented the new chapter regarding alcohol and drug screening during an investigation for substance abuse. Dr. Miller moved Ms. Southard seconded, and the motion passed recommending for publication the proposed new Section 179.8: Alcohol and Drug Screening During Investigations for Substance Abuse.

Agenda Item # 8, Discussion on adopting a Board policy regarding DPRC review or action on cases reviewed by Informal Settlement Conference panel. Ms. Shackelford presented the proposed Board policy that requires the inclusion in the DPRC minutes of the reason for action taken to send a case back for another Informal Settlement Conference (ISC) that was recommended for dismissal by an ISC panel.

Agenda item # 9 Executive session to review selected files and cases recommended for dismissal. Ms. Blackwell moved, Mr. Turner seconded, and the motion passed to go into executive session at 4:06 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 6:59 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 #10, Review, discussion and possible action regarding selected files and cases. Dr. Kalafut moved, Mr. Turner 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.

Discussion was held regarding cases recommended for a second ISC. **Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to move for a second ISC on Case # 06-0243 based on the following: 1) A Dilute negative raises the level of suspicion of a positive finding; 2) A positive EtG finding of 222 raises concerns; 3) Failure to call in raises level of concern.**

Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to move for a second ISC on Case # 06-0252 based on the following: 1) File indicates ample evidence to suggest that there was failure to supervise and oversee the use of the prescriptive medical devices.

Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to move for a second ISC on Case # 06-0255 based on the following: 1) File indicates enough doubt as to the appropriateness of a colonoscopy performed on the 90-year old asymptomatic woman.

There being no further business, **Dr. Kalafut moved, Ms. Blackwell seconded, and the motion passed to adjourn the meeting at 7:04 p.m.**