

**TEXAS MEDICAL BOARD**  
**MINUTES OF THE**  
**DISCIPLINARY PROCESS REVIEW COMMITTEE**  
August 28, 2008

Chairman Larry Price, DO, called the meeting to order at 10:03a.m. Other members present were Patricia S. Blackwell, Manuel Guajardo, M.D., Amanullah Khan, M.D., Melinda McMichael, M.D., Margaret C. McNeese, M.D., Charles Oswalt, M.D., Annette P. Raggette, and Allan Shulkin, M.D. Committee Member Melinda S. Fredricks was not present.

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

**Ms. Raggette moved, and Dr. Shulkin seconded; the motion passed at 10:04a.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 11:58a.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: 06-3020, 07-1335, 07-1336, 07-1646, 07-2128, 07-4525, 07-5721, 07-6419, 08-0211, 08-0632, 08-0888, 08-1607, 08-2340, 08-2680 and 08-4582; and B. Jurisdictional-Not-Filed Complaints: 08-2851, 08-3440, 08-3881, 08-4255, 08-4744, 08-4755, 08-4834, 08-4861, 08-5137, 08-5222, 08-5337, 08-5641, and 08-5642; and C. Non-Jurisdictional Complaint: 08-1784.

**Dr. Oswalt moved, and Dr. Khan seconded that the appeal of Item 2.A., Log #07-2128 be granted and that a new panel review be obtained to evaluate the preoperative indications for the care given as well as the postoperative care in this case. Motion carried.**

**Dr. McNeese moved, and Ms. Raggette seconded that the appeal of Item 2.A., Log #08-0211 be granted and that a new panel review be obtained to evaluate the delegation and supervision of the Physician Assistant and the home health care involved in this case; and to also make appropriate referrals to other agencies. Motion carried.**

**Dr. Guajardo moved, and Ms. Raggette seconded that the appeal of Item 2.A., Log #08-0888 be granted and that a new expert panel review be obtained, and that the scope of the investigation be expanded to investigate the application of office procedures, release of records, and potential forgery of documents at the facility involved in this case. Motion carried.**

**Dr. McMichael moved, and Dr. Khan seconded; the motion passed at 12:08p.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: 06-3020, 07-1335, 07-1336, 07-1646, 07-4525, 07-5721, 07-6419, 08-0632, 08-1607, 08-2340, 08-2680 and 08-4582; and B. Jurisdictional-Not-Filed Complaints: 08-2851, 08-3440, 08-3881, 08-4255, 08-4744, 08-4755, 08-4834, 08-4861, 08-5137, 08-5222, 08-5337, 08-5641, and 08-5642; and C. Non-Jurisdictional Complaint: 08-1784.

**Agenda Item #3.** Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the Disciplinary and Ethics Committee for follow-up action, specifically including: 07-1500, 07-2852, 07-3035, 07-3779, 07-5704, and 07-6380.

**Open session resumed at 12:35 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.

**Dr. McNeese moved, and Dr. Shulkin seconded that the appeal of Item 2.B., Log #08-2851 be granted and that an investigation be opened. Motion carried.**

**Dr. Khan moved, and Ms. Raggette seconded that the appeal of Item 2.B., Log #08-3440 be denied and that a custom letter be sent to the Complainant informing them that while the case against the Physician Assistant was dismissed, the Complainant does have the right to appeal the decision of the PA Board. Motion carried. A copy of this letter will be provided to the PA Board.**

**Dr. McNeese moved, and Ms. Raggette seconded that the appeal of Item 2.B., Log #08-4834 be granted and that an investigation be opened against the Doctor named in this complaint to include the additional information received as a part of the appeal packet pertaining to this case. Motion carried.**

**Ms. Raggette moved, and Ms. Blackwell seconded that the appeal of Item 2.B., Log #08-5337 be denied and that a custom letter be sent to the Respondent recommending an apology to the Complainant in this case and that in the future the Respondent should improve communications with patients in these types of situations. Motion carried.**

**Dr. Shulkin moved, and Dr. Oswalt seconded that the appeal of Item 2.B., Log #08-5641 be granted and that an investigation be opened. Motion carried.**

**Dr. Shulkin moved, and Dr. Oswalt seconded that the appeal of Item 2.B., Log #08-5642 be granted and that an investigation be opened. Motion carried.**

**The committee unanimously moved that all other appeals under Item 2 not specifically granted above be denied. Motion carried.**

**Discussion continued on Agenda Item #3.** Review, discussion and possible action regarding routine follow-up in investigative files previously referred from DPRC to follow-up action.

**Ms. Raggette moved, and Dr. McNeese seconded that the follow-up action of Item 3, Log #07-1500 be denied and that the case be closed. Motion carried.**

**Dr. McNeese moved, and Ms. Blackwell seconded that the follow-up action of Item 3., Log #07-2852 be denied and that the case be closed with a custom letter be sent to the Respondent informing them that their membership in a non board certified association should not be used when advertising their medical practice because it is misleading to the public. Motion carried.**

**Ms. Blackwell moved, and Dr. Khan seconded that Item 3., Log #07-3035 be dismissed. Motion carried.**

**Dr. Khan moved, and Dr. McNeese seconded that Item 3., Log #07-3779 be granted and the case be forwarded to an ISC. Motion carried.**

**Ms. Blackwell moved, and Dr. Oswalt seconded that Item 3., Log #07-5704 be dismissed. Motion carried.**

**Ms. Raggette moved, and Ms. Blackwell seconded that Item 3., Log #07-6380 be dismissed. Motion carried.**

**Agenda Item #4.** Reports and discussion regarding the Investigation, Litigation and Compliance Departments. Ms. Robinson presented the Enforcement Report for July 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. Chapter 165, Medical Records
- B. Chapter 169, Authority of Physicians to Supply Drugs
- C. Chapter 178, Complaints
- D. Chapter 179, Investigations
- E. Chapter 180, Rehabilitation Orders
- F. Chapter 182, Use of Experts
- G. Chapter 187, Procedural Rules
- H. Chapter 190, Disciplinary Guidelines
- I. Chapter 192, Office-Based Anesthesia Services

**Ms. Raggette moved, and Dr. Oswalt seconded that the revisions presented to the committee that pertain to Agenda Item 5.A. be approved. Motion carried.**

**Ms. Raggette moved, and Ms. Blackwell seconded that the revisions presented to the committee that pertain to Agenda Item 5.B. be approved. Motion carried.**

**Ms. Blackwell moved, and Ms. Raggette seconded that the revisions presented to the committee that pertain to Agenda Item 5.C. be approved. Motion carried.**

**Dr. Guajardo moved, and Ms. Raggette seconded that the revisions presented to the committee that pertain to Agenda Item 5.D. be approved. Motion carried.**

**Dr. Oswalt moved, and Ms. Raggette seconded that the revisions presented to the committee that pertain to Agenda Item 5.E. be approved. Motion carried.**

**Ms. Raggette moved, and Ms. Blackwell seconded that the revisions presented to the committee that pertain to Agenda Item 5.F. be approved. Motion carried.**

**Dr. McMichael moved, and Ms. Blackwell seconded that the revisions presented to the committee that pertain to Agenda Item 5.G. with the exclusion of the words and a sentence enforced on page 28. Motion carried.**

**Ms. Raggette moved, and Ms. Blackwell seconded that the revisions presented to the committee that pertain to Agenda Item 5.H. with the following substitution (J) termination of patient care without providing reasonable notice to the patient of at least 30 days or otherwise obtaining the patient's consent to termination of care. on page 2, paragraph J, be approved. Motion carried.**

**Dr. Oswalt moved, and McNeese seconded that the revisions presented to the committee that pertain to Agenda Item 5.I. be approved. Motion carried.**

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

**Dr. Oswalt moved, and Ms. Blackwell seconded that the three appointments on Agenda Item 6 be accepted to the Expert Physician Panel. Motion carried.**

**Dr. McMichael moved, and Ms. Raggette seconded; the motion passed at 2:12pm 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 4:35 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.**

A recess was taken at 2:12p.m. and the committee returned at 2:25p.m.

The Complainant in Item 2.B., Log #08-3881 appeared after the DPRC made a recommendation on the case, but the committee still allowed the Complainant to present his appeal in person.

**Agenda Item #6.** Review, discussion and possible action regarding review of probationers appearances.

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

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

**Dr. Oswalt moved, and Ms. Blackwell 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.

**Ms. Raggette moved, and Dr. Oswalt seconded that Item 8, Log #08-3649 be forwarded to an ISC hearing. Motion carried.**

**Ms. Raggette moved, and Dr. Oswalt seconded that Item8, Log # 08-3903 be closed and that a custom letter be sent to the Respondent emphasizing the need to make clearer payment arrangements with patients and to also reassess his postoperative care policy in regard to patients that are not financially affluent. Motion carried.**

**Dr. Khan moved, and Ms. Blackwell 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.

**Ms. Raggette moved, and Dr. Khan seconded that the meeting adjourn. Motion carried at 4:40p.m.**