

TEXAS MEDICAL BOARD

MINUTES OF THE DISCIPLINARY PROCESS REVIEW COMMITTEE

June 7, 2007

The meeting was called to order at 10:13 a.m., by Chairman Lawrence Anderson, M.D. Other committee members present were Roberta Kalafut, D.O., Amanullah Khan, M.D., Melinda McMichael, M.D., Margaret C. McNeese, M.D., Irwin E. Zeitler, Jr, D.O., Patricia S. Blackwell, Melinda S. Fredricks and Annette P. Raggette. Staff members present were Robert Simpson, General Counsel, Mari Robinson, Director of Enforcement, Jennifer Kaufman, Assistant General Counsel, Nancy Leshikar, Manager of the Litigation Department, and various other staff.

Agenda Item # 4 was presented by Mr. Simpson and Ms. Kaufman to discuss the proposed amendments to the following chapters:

A. Chapter 176, **Health Care Liability Lawsuits and Settlements**, to include amendments that update statutory references to 176.1 Definitions; 176.2 Reporting Responsibilities; 176.4 Timeframes and Attachments; 176.6 Penalties; 176.8 Board Review of Health Care Liability Lawsuits and Settlements; and 176.9 Reporting Form;

B. Chapter 191, **District Review Committees**, to include amendments to; 191.4 Activities and Scope of Authority to require that DRC members who participate in ISCs relating to medical competency have the qualifications of an expert panel, and that DRC members will not be utilized to review medical competency complaints during the investigative process; and

C. Chapter 182, **Use of Experts**, 182.8 Expert Physician Reviewers (b) Selection of Reviewers in Cases of Utilization Review.

Dr. McNeese moved, Ms. Blackwell seconded, and the motion passed to approve for publication the proposed amendments to Chapter 176, Health Care Liability Lawsuits and Settlements, to include amendments that update statutory references to 176.1 Definitions; 176.2 Reporting Responsibilities; 176.4 Timeframes and Attachments; 176.6 Penalties; 176.8 Board Review of Health Care Liability Lawsuits and Settlements; and 176.9 Reporting Form.

Ms. Raggette moved, Ms. Blackwell seconded, and the motion passed to approve for publication the proposed amendments to Chapter 191, District Review Committees, with suggested changes to include that DRC members be allowed to participate in mediation and that the selection criteria under board rule 182.8 for expert panelist not be applied to DRC members, as well as to include amendments to 191.4 Activities and Scope of Authority.

Dr. Kalafut moved, Ms. Raggette seconded, and the motion passed at 10:34 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. Discussion was held regarding Chapter 182, **Use of Experts**, specifically 182.8 Expert Physician Reviewers (b) Selection of Reviewers in Cases of Utilization Review. Open session resumed at 11:11 and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Ms. Fredricks moved, Dr. Khan seconded, and the motion passed recommending approving for publication the proposed amendments 182.8 Expert Physician Reviewers (b) Selection of Reviewers in Cases of Utilization Review with the modification that the section be removed to 182.9 and that references to expert panelists be removed. Ms. Raggette opposed the motion.

Agenda Item # 2, regarding review, discussion and possible action on appeals of dismissed complaints: A. Jurisdictional Complaints: Log # 06-3108, Log # 06-3372, Log # 07-0253, Log # 05-2070, Log # 06-0028, Log # 06-1331 and Legal Case # 06-0460, Log # 06-2506, Log # 06-3772 and # 06-3773, Log # 07-0073, Log # 07-0093, Log # 07-0173, Log # 07-0234, Log # 07-0526, Log # 07-0581, Log # 07-0757; B. Jurisdictional-Not-Filed (JNF) complaint files: File # 07-2391 and File # 07-2448; and C. Non-Jurisdictional (NJ) Complaint File # 06-6065; Agenda Item # 5 regarding review, discussion and possible action of probationers appearances; and Agenda Item # 7, regarding executive session to review selected files and cases recommended for dismissal by Informal Settlement Conferences/Show Compliance Proceedings or staff review were considered.

Dr. McNeese moved, Ms. Blackwell seconded, and the motion passed at 11:23 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; 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 1:27 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Ms. Robinson announced that the appeal of Jurisdictional Log # 06-3108 was deferred until the August 23, 2007 meeting at the request of the complainant.

Staff was directed by the Committee to implement a policy regarding the appeal process to allow an appeal be rescheduled once and under extenuating circumstances.

Dr. Kalafut moved, Dr. Khan seconded, and the motion passed to deny the appeals of Jurisdictional Complaints, Log # 06-3372, Log # 05-2070, Log # 06-0028, Log # 06-3772 and # 06-3773, Log # 07-0073, Log # 07-0093, Log # 07-0173, Log # 07-0234, Log # 07-0526 and Log # 07-0581.

Dr. Kalafut moved, Ms. Raggette seconded, and the motion passed to deny the appeal of Log # 07-0253 and its deferment to the August 23, 2007 meeting.

Dr. Kalafut moved, Dr. McNeese seconded, and the motion passed to grant the appeal of Log # 06-1331 and Legal Case # 06-0460, recommending a second Informal Settlement Conference, because the issue involved a knee fracture which was diagnosed late, with no documentation of vascular findings, which was accompanied by vascular compromise of the popliteal artery, resulting in an adverse outcome.

Dr. Kalafut moved, Ms. Fredricks seconded, and the motion passed to refer Legal Case # 07-0115 to a second ISC because the residency director did not notify the Board that the respondent was on fentanyl abuse within the 7-day time limit of learning of the impairment; and his failure to notify the Board of a resident being out of the program for 21 days.

Dr. Kalafut moved, Ms. Raggette seconded, and the motion passed to send Legal Case # 07-0203 to a second ISC due to the respondents continued use of the patients credit card on file to charge for services without the patients approval.

Ms. Fredricks moved, Dr. Kalafut seconded, and the motion passed to send Legal Case # 07-0236 to a second ISC because the respondent failed to report three arrests on his original application and has had no disciplinary action for doing so.

Dr. Khan moved, Dr. Zeitler seconded, and the motion passed to grant the appeal and to send Log # 06-2506 back to Investigations for another expert review.

Dr. Khan moved, Dr. Zeitler seconded, and the motion passed to grant the appeal and to send Log # 07-0757 back to Investigations for additional review.

Dr. Kalafut moved, Dr. McNeese seconded, and the motion passed to deny the appeal of JNF Files # 07-2391 and # 07-2448.

Dr. Khan moved, Dr. McNeese seconded, and the motion passed to deny the appeal of NJ File # 06-6065.

Ms. Raggette moved, Ms. Blackwell 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 # 3 regarding reports and discussion on the Investigation, Litigation and Compliance Departments: Ms. Robinson presented the Enforcement Report for May 2007, a copy of which is attached. This was an informational item only and no vote was necessary.

Agenda Item # 6 was presented regarding the discussion, possible action and approval of appointments to the Expert Physician Panel.

Following discussion, **Ms. Raggette moved, Ms. Blackwell seconded and the motion passed to approve the twelve (12) recommended appointees to the Expert Physician Panel as attached to the Board minutes.**

Regarding previously dismissed and appealed investigations, Log # 06-1843, Log # 06-1844 and Log # 06-1845 on Agenda Item # 7, **Ms. Fredricks moved, Ms. Raggette seconded, and the motion passed to take no further action on these files.**

Ms. Raggette moved, Dr. Khan 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.

There being no further business, **Ms. Fredricks moved, Ms. Raggette seconded, and the motion passed to adjourn the meeting at 1:59 p.m.**