

TEXAS MEDICAL BOARD
DISCIPLINARY PROCESS REVIEW COMMITTEE MINUTES
February 15, 2007

The meeting was called to order at 12:48 p.m. by Chairman Lawrence Anderson, M.D. Other committee members present were Roberta Kalafut, D.O., Amanullah Khan, M.D., Margaret C. McNeese, M.D., Irwin E. Zeitler, Jr, D.O., Patricia S. Blackwell, and Melinda S. Fredricks. John Pate, Jr, M.D., and Annette P. Raggette were 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 was discussed regarding appeals of dismissed complaints:

A. Jurisdictional Complaint Files: Log # 06-1151 and Legal Case # 06-0443; Log # 06-1230; Log # 06-1593; Log # 06-2628; Log # 06-2678; Log # 06-2933 and Case # 06-3081; Log # 06-3257; and Log # 06-3279;

B. Jurisdictional-Not-Filed (JNF) complaint files: Log # 07-0498; Log # 07-0878 and Log # 07-0879; Log # 07-0081 and Log # 07-0552; Log # 07-0765; Log # 07-0819; Log # 07-0952 and 07-0953; and

C. Non-Jurisdictional (NJ) Complaint File # 07-5119.

Dr. Kalafut moved, Dr. McNeese 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 Jurisdictional complaint file, Log # 06-1151 and Legal Case # 06-0443; and JNF complaint files, Log # 07-0498, Log # 07-0878 and Log # 07-0879. Open session resumed at 1:55 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 JNF Files # 07-0952 and # 07-0953 was deferred until the April 2007 at the request of the complainant.

Dr. Zeitler moved, Ms. Blackwell seconded and the motion passed to refer Log # 06-1151 and Case # 06-0443 for further investigation to address the issues of billing and coding.

Ms. Fredricks moved, Dr. McNeese seconded and the motion passed to take no further action on Jurisdictional-Not-Filed File # 07-0498.

Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to take no further action Jurisdictional-Not-Filed Files # 07-0878 and 07-0879.

Dr. Kalafut moved, Dr. Zeitler seconded and the motion passed at 1:59 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 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 to take no further action on the following Jurisdictional complaint files: Log # 06-1230; Log # 06-1593; Log # 06-2628; Log # 06-2678; Log # 06-2933; Log # 06-3081; Log # 06-3257; and Log # 06-3279.

Dr. Kalafut moved, Dr. Khan seconded and the motion passed to take no further action on the following Jurisdictional-Not-Filed complaint files: Log # 07-0081 and Log # 07-0552; Log # 07-0765; and Log # 07-0819. The appeal of Jurisdictional-Not-Filed complaint files Log # 07-0952 and Log # 07-0953 was pulled from consideration based on the request of the person appealing.

Ms. Blackwell moved, Dr. Khan seconded and the motion passed to take no further action on Non-Jurisdictional File # 07-5119.

Agenda Item # 3 was presented on the discussion, possible action and approval regarding routine follow-up on investigative files, previously referred from DPRC for follow-up action; specifically including Log # 05-2028; Log # 05-2068; Log # 06-1037; Log # 06-2075; Log # 06-2414; Log # 06-2432; and Log # 06-2864.

Dr. Khan moved, Ms. Blackwell seconded and the motion passed directing staff to send a custom letter to the subject of File # 05-2068 requesting a plan of corrective action on wrong-site surgery.

Dr. McNeese moved, Dr. Zeitler seconded and the motion passed to send File # 06-2432 back to Investigations for further review concerning the issue of proper supervision of the Nurse Practitioner involved in the complaint.

Dr. Khan moved, Ms. Blackwell seconded and the motion passed to take no further action on Log # 05-2028; Log # 06-1037; Log # 06-2075; Log # 06-2414; and Log # 06-2864.

Discussion was held on Agenda Item # 4 regarding color change requests within the Compliance Department. Ms. Robinson led the discussion and the action was deferred to the April 2007 meeting to develop the beginnings of a plan. The committee did direct Ms. Robinson to consider the percentage of successful completion of an agreed order when determining whether to grant a color change request for a given probationer.

Agenda Item # 5: Regarding reports and discussion regarding Investigation, Litigation and Compliance Departments: Ms. Robinson presented the Enforcement Report for January 2007, a copy of which is attached. This was an informational item only and no vote was necessary.

Agenda Item # 6 regarding review, discussion and possible action of probationers' appearances, was presented.

Dr. Kalafut moved, Dr. Zeitler seconded, and the motion passed at 2:52 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 2:54 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. McNeese 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 # 7 was presented regarding the discussion, possible action and approval of appointments to the Expert Physician Panel.

Following discussion, **Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to approve the four recommended appointees to the Expert Physician Panel as attached to the Board minutes.**

Agenda Item # 8, regarding executive session to review selected files and cases recommended for dismissal by Informal Settlement Conferences/Show Compliance Proceedings or staff review was considered.

Ms. Fredricks moved, Dr. Zeitler seconded and the motion passed to go into executive session at 3:03 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 5:24 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Ms. Fredricks moved, Ms. Blackwell seconded and the motion passed not to accept Case # 07-0155 for closure, and to add the matters in the investigation to other pending matters being referred to SOAH on this licensee. This action was taken because the Committee was concerned about the drug testing results of the subject, the subject's AA logs not being submitted in the specified time, concerns noted by the subject's compliance officer, and the provision of a late drug testing specimen by the subject.

Dr. Khan moved, Ms. Blackwell seconded and the motion passed not to accept Case # 06-0122 for dismissal, and to send the case back for a second Internal Settlement Conference. This action was taken due to the Committee's concern about the violations identified within the expert panelist's reports associated with the case.

Dr. Khan moved, Dr. Zeitler seconded and the motion passed directing staff to open an investigation on the radiologist concerned in Log # 05-2068, a follow-up item in Agenda Item # 3.

Dr. Kalafut 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.

There being no further business, **Dr. Kalafut moved, Ms. Blackwell seconded, and the motion passed to adjourn the meeting at 5:30 p.m.**