

# TEXAS MEDICAL BOARD

## MINUTES OF THE DISCIPLINARY PROCESS REVIEW COMMITTEE

November 29, 2007

Chairman Lawrence Anderson, M.D., called the meeting to order at 10:40 a.m. Other members present were Patricia S. Blackwell, Melinda S. Fredricks, Roberta Kalafut, D.O., Amanullah Khan, M.D., Melinda McMichael, M.D., Margaret C. McNeese, M.D., Irwin E. Zeitler, Jr., D.O. and Annette P. Raggette.

Also present was Jane McFarland, Chief of Staff, and Mari Robinson, J.D., Director of Enforcement, and other various staff members.

**Dr. Kalafut moved and Ms. Blackwell seconded, and the motion passed at 10:42 a.m. that the committee go into Executive Session 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 Generals Opinion No. H-484.** Open session resumed at 12:04 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 recused herself from all discussions and decisions associated with Agenda Item 2.A.14, Log #07-1407 and Agenda Item 2.A.15, Log #07-1530.**

**Agenda Item #2.** Review, discussion and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: Log # 06-2487, Log # 06-2963, Log # 06-3077, Log # 06-3600, Log # 06-3619, Log # 07-0144, Log # 07-0384, Log # 07-0602, Log # 07-0829, Log # 07-0885, Log # 07-0970, Log # 07-1400, Log # 07-1405, Log # 07-1407, Log # 07-1530, Log # 07-1578, Log # 07-1776, Log # 07-1802, Log # 07-1880, Log # 07-2313, Log # 07-2437, and Log # 07-6183, and B. Jurisdictional-Not-Filed Complaints: Log # 07-1207, Log # 07-1791, Log # 07-4050, Log #07-4711, Log # 07-4975, Log #07-5666, Log #07-5710, and C. Non-Jurisdictional Complaints: Log # 05-8513, Log # 07-2002, and Log # 07-5971.

It was announced by Mari Robinson that Agenda Item 2.A.5., Log #06-3619 would be moved to the February DPRC Agenda at the request of the complainant.

It was announced by Mari Robinson that Agenda Item 2.A.16., Log #07-1578 would be moved to the February DPRC Agenda at the request of the complainant.

**Dr. Kalafut moved and Dr. McNeese seconded that the appeal of item 2.A.10, Log #07-0885 be sent back to the Investigations Division to examine the issue of the release of medical records to the patient. Motion carried.**

**Ms. Fredricks moved and Dr. Zeitler seconded that the appeal of Agenda Item 2.A.20, Log #07-2313 be denied with the stipulation that a revised letter be sent to the complainant. Motion carried. Ms. Raggette moved and Ms. Fredricks seconded that a revised letter also be sent to the Respondent of Agenda Item 2.A.20, Log #07-2313. Motion carried.**

**Ms. Raggette moved and Dr. McNeese seconded that the appeal of item 2.B.5, Log #07-4975 be granted and a new PDD file be opened. Motion carried.**

**Ms. Raggette moved that the appeal of item 2.B.7, Log #07-5710 be granted, but failed for lack of a second.**

**Dr. Kalafut moved and Ms. Fredricks seconded that all other appeals not specifically granted above be denied. Motion carried.**

A lunch recess was taken at 12:18 p.m. and the committee returned at 12:25 p.m.

**Dr. McNeese moved and Ms. Blackwell seconded, and the motion passed at 12:26 p.m. that the committee go into Executive Session 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 Generals Opinion No. H-484. Open session resumed at 2:27 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 #3.** Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from DPRC for follow-up action, specifically including: Log # 06-0025, Log # 06-0217, Log # 06-1151, Log # 06-2432, Log # 06-2557, Log # 06-3185, Log # 07-0063, Log # 07-0813, Log # 07-1077. Log # 07-1704, Log # 07-1854, and Log # 07-4162.

**Dr. Kalafut stated that she recused herself from all discussions and decisions associated with Agenda Item 3.12., Log #07-4162.**

**Dr. McMichael stated that she recused herself from all discussions and decisions associated with Agenda Item 3.1. , Log #06-0025.**

**Ms. Fredricks moved and Ms. Raggette seconded that all routine follow-up files be closed. Motion carried.**

**Agenda Item #4.** Reports and discussion regarding the Investigation, Litigation and Compliance Departments. Mari Robinson presented the Enforcement Report for October 2007, 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: (presented by Ms. Robinson).

- A. Discussion, recommendation, and possible action regarding rule review of Chapter 170, **Pain Management**.
- B. Discussion, recommendation, and possible action regarding rule review and proposed amendments to Chapter 192, **Office Based Anesthesia Services**, to include changes to 192.2 Provisions of Anesthesia Services in Outpatient Settings.
- C. Discussion, recommendation and possible action regarding proposed rule Chapter 187, Subchapter 187.75-187.81 Imposition of Administrative Penalty.

**Dr. Kalafut moved and Ms. Blackwell seconded that Agenda Item 5.A. be accepted for publication in the Texas Register. Motion carried.**

**Dr. Khan moved and Dr. McNeese seconded that Agenda Item 5.B. be returned to the stakeholders to look at the level 1 requirement regarding oral medications. Motion carried.**

**Dr. Khan moved and Ms. Blackwell seconded the approval to publish the actions regarding Agenda Item 5.C. in the Texas Register with the requested typographical corrections to 187.78(b), 187.78(c), 187.79(3) that were previously discussed. Motion carried.**

A recess was taken at 2:50 p.m. and the committee returned at 3:04 p.m.

**Dr. Kalafut moved and Ms. Blackwell seconded, and the motion passed at 3:47p.m. that the committee go into Executive Session 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 Generals Opinion No. H-484. Open session resumed at 3:57p.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 and Ms. Raggette seconded, and the motion passed at 3:58 p.m. that the committee go into Executive Session for executive session reason for executive session 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 Generals Opinion No. H-484. Open session**

resumed at 4:00 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 #6.** Discussion regarding drug testing for ER physicians. (Presented by Ms. Robinson). Staff was instructed to add ER physicians to the existing exception policy allowing drug screens at a facility where they are employed.

**Agenda Item #7.** Review, discussion and possible action regarding review of probationers appearances. (Presented by Ms. Robinson).

**Dr. Kalafut moved and Dr. Khan seconded that all waivers on Agenda Item 7, except for the waiver of Dr. Phillip Leonard, be accepted. Motion carried.**

**Agenda Item #8.** Consideration and approval of appointments to the Expert Physician Panel.

**Dr. Khan moved and Dr. Kalafut seconded to approve the appointments to the Expert Physician Panel. Motion carried.**

**Dr. Kalafut moved and Dr. Khan seconded to direct Staff to draft a policy detailing the guidelines for completing a death certificate. Motion carried.**

**Agenda Item #9 & 10. Review, discussion, and possible action regarding selected files and cases.**

**Dr. Zeitler stated that he recused himself from all discussions and decisions associated with Log #07-4008 in Agenda Item 10.**

**Dr. Kalafut 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 #11. Adjourn.**

**Dr. Kalafut moved and Dr. Khan that the meeting be adjourned. Motion carried at 4:01 p.m.**