

TEXAS MEDICAL BOARD

MINUTES OF THE DISCIPLINARY PROCESS REVIEW COMMITTEE

April 12, 2007

The meeting was called to order at 10:15 a.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., John Pate, Jr, M.D., Irwin E. Zeitler, Jr, D.O., Patricia S. Blackwell and Annette P. Raggette. Melinda S. Fredricks was not in attendance. Staff members present were Robert Simpson, General Counsel, Mari Robinson, Director of Enforcement, Nancy Leshikar, Manager of the Litigation Department, and various other staff.

Agenda Item # 3 was presented by Mr. Simpson to discuss the proposed amendments to the following chapters:

- A. Chapter 164, **Physician Advertising**, to include amendments to §164.4, Board Certification, to set forth requirements for advertising a medical specialty;
- B. Chapter 165, **Medical Records**, to include amendments to §§165.1, Medical Records, and 165.5, Transfer and Disposal of Medical Records, to place the burden of notification to patients of the departure of a physician on the custodian of the medical records rather than on the physician and provide better guidance for destruction of medical records;
- C. Chapter 182, **Use of Experts**, to include amendments to §182.5, Expert Panel, to add the American Board of Oral and Maxillofacial Surgery to subparagraph (2)(B) and to provide for removal from the Expert Panel if a panelist repeatedly provides unreliable reports;
- D. Chapter 187, **Procedural Rules**, to add a new subchapter G, Suspension by Operation of Law, to provide a procedure for mandatory suspension or revocation of license upon incarceration under §164.058 of the Medical Practice Act;
- E. Chapter 190, **Disciplinary Guidelines**, to include amendments to §190.8, Violation Guidelines, to set standards for making "medical necessity" decisions, providing on-call back-up by person who is not licensed or does not have training or experience, and prohibition against physician subject to an investigation from contacting a complainant or witness for purpose of intimidation;
- F. Chapter 196, **Voluntary Surrender of Medical License**, to change the title of the chapter and include amendments to §196.1 and 196.4, to change the term for voluntary surrender that is not involved in disciplinary action or impairment to "Relinquishment;"
- G. Chapter 198, **Unlicensed Practice**, to include amendments to §§198.1 - 198.7, to establish a procedure for cease and desist orders.

Ms. Blackwell moved, Ms. Raggette seconded and the motion passed to approve the proposed amendments to Chapter 164, Physician Advertising, specifically to §164.4, Board Certification, setting forth requirements for advertising a medical specialty, with the following changes: to use "Texas Medical Board" when referring to the agency and to use equal type face font to denote special certification.

Staff was directed by the Committee regarding Chapter 165, **Medical Records**, to include amendments to §§165.1, Medical Records, and 165.5, Transfer and Disposal of Medical Records, to send the recommended amendment back to a stakeholders' meeting to gather more information

with the need to identify the custodial responsibility specifically at academic institutions, large multi-specialty groups, and/or 501A organizations.

Dr. Kalafut moved, Dr. Zeitler seconded and the motion passed to recommend amendments to Chapter 182, Use of Experts, to include amendments to §182.5, Expert Panel, to add the American Board of Oral and Maxillofacial Surgery to subparagraph (2)(B) and to provide for removal from the Expert Panel if a panelist repeatedly provides unreliable reports, for publication as presented.

Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to recommend for publication as presented, the amendments to Chapter 187, Procedural Rules, specifically to add a new subchapter G, Suspension by Operation of Law, to provide a procedure for mandatory suspension or revocation of license upon incarceration under §164.058 of the Medical Practice Act.

Dr. Kalafut moved, Dr. McNeese seconded and the motion passed to recommend for publication as presented, the amendments to Chapter 190, Disciplinary Guidelines, to include amendments to §190.8, Violation Guidelines, to set standards for making "medical necessity" decisions, providing on-call back-up by person who is not licensed or does not have training or experience, and prohibition against physician subject to an investigation from contacting a complainant or witness for purpose of intimidation;

Ms. Raggette moved, Dr. Zeitler seconded and the motion passed to recommend for publication as presented, the amendments to Chapter 196, Voluntary Surrender of Medical License, to change the title of the chapter and include amendments to §196.1 and 196.4, to change the term for voluntary surrender that is not involved in disciplinary action or impairment to "Relinquishment."

Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to recommend for publication as presented, the amendments to Chapter 198, Unlicensed Practice, to include amendments to §§198.1 - 198.7, to establish a procedure for cease and desist orders.

Agenda Item # 2, regarding review, discussion and possible action on appeals of dismissed complaints:

A. Jurisdictional Complaints: Log # 06-3108, Log # 06-3708, Log # 07-0253, Log # 05-0039, Log # 06-1525 and Legal Case # 07-0089, Log # 06-2775, Log # 06-3185, Log # 06-3259, Log # 06-3449, Log # 06-3515 and NJ #07-2030, Log # 06-3541, Log # 06-3614, Log # 06-3749, Log # 06-3796, Log # 07-0063, Log # 07-0149, Log # 07-0179, Log # 07-0486;

B. Jurisdictional-Not-Filed (JNF) complaint files: File # 07-1264, File # 06-3179, File # 07-0420, File # 07-0710, Files # 07-0952 and 07-0953, File # 07-1184, File # 07-1377 and 07-1534, File # 07-1606, File # 07-1876, File # 07-1916, File # 07-2151, and

C. Non-Jurisdictional (NJ) Complaint File # 03-6514.

Ms. Robinson announced that the appeals of Jurisdictional Log # 06-3108 and Log # 07-0253 were deferred until the June 7, 2007 meeting at the request of the complainants.

Dr. Kalafut moved, Ms. Raggette seconded and the motion passed at 11:09 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. Complainants appeared in appeal of

Jurisdictional complaint file, Log # 06-3708 and JNF complaint File # 07-1264. Open session resumed at 1:22 a.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Dr. Khan moved, Dr. Pate seconded and the motion passed to deny the appeal of Log # 06-3708 and directed staff to send a custom letter to the licensee to have in-depth discussions with patients to elaborate the issues, consequences and risks of procedures.

Dr. Zeitler moved, Ms. Blackwell seconded and the motion passed to take no further action on JNF File # 07-1264.

Agenda Item # 4 regarding reports and discussion on the Investigation, Litigation and Compliance Departments: Ms. Robinson presented the Enforcement Report for March 2007, a copy of which is attached. This was an informational item only and no vote was necessary.

The DPRC directed staff to authorize time extensions regarding CME requirements under board orders in the compliance department, giving a 10-day time limit for the licensee to submit proof of attendance following the completion of the CME.

Agenda Item # 6 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 thirteen recommended appointees to the Expert Physician Panel as attached to the Board minutes.**

Agenda Item # 5 regarding review, discussion and possible action of probationers' Appearances; Agenda Item # 7 regarding previously dismissed and appealed investigations, Log # 06-1862, Log # 06-1863, Log # 06-1865 and Log # 06-1866; the remaining appeals on Agenda Item #2, and 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 were considered.

Ms. Raggette moved, Ms. Blackwell seconded and the motion passed at 1:44 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; 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 3:52 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Dr. Khan moved, Dr. Pate seconded, and the motion passed to grant the appeal and to send Log # 06-3185 back to Investigations for another expert review.

Dr. Kalafut moved, Dr. McNeese seconded and the motion passed to deny the appeal on Log # 06-3541 and to send the complainant a custom letter about the proper way to request medical records.

Ms. Raggette moved, Dr. Kalafut seconded and the motion passed to send Log # 07-0063 back to Investigations for additional review by a coding consultant.

Dr. McNeese moved, Ms. Raggette seconded and the motion passed regarding Log # 07-0179 to grant the appeal to re-open the investigation to recommend a \$2,000 administrative penalty to the respondent in violation of mandatory reporting of child abuse.

Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to take no further action on the following Jurisdictional Complaint Files: Log # 05-0039, Log # 06-1525 and Legal Case # 07-0089, Log # 06-2775, Log # 06-3259, Log # 06-3449, Log # 06-3515 and NJ #07-2030, Log # 06-3614, Log # 06-3749, Log # 06-3796, Log # 07-0149, Log # 07-0486; and the following Jurisdictional-Not-Filed complaint files: File # 06-3179, File # 07-0420; File # 07-0710; and Files # 07-0952 and # 07-0953, File # 07-1184, Files # 07-1377 and # 07-1534, File # 07-1606, File # 07-1876, File # 07-1916, and File # 07-2151.

Dr. Kalafut moved, Dr. McNeese seconded and the motion passed to take no further action on Non-Jurisdictional File # 03-6514.

Following discussion, Ms. Raggette moved, Dr. Kalafut 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; except for William S. Blessing and Philip J. Leonard.

Dr. Khan moved, Dr. Pate seconded and the motion passed to take no further action on previously dismissed and appealed investigations, Log # 06-1862, Log # 06-1863, Log # 06-1865 and Log # 06-1866.

Dr. Khan 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, Ms. Blackwell moved, Dr. Zeitler seconded, and the motion passed to adjourn the meeting at 3:58 p.m.