

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
May 1, 2014

Chair Margaret C. McNeese, M.D. called the meeting to order at 9:31 a.m. Other members present were Julie K. Attebury, James “Scott” Holliday, D.O., Allan Shulkin, M.D., Karl W. Swann, M.D., George Willeford III, M.D., Manuel Guajardo, M.D., David Baucom, Stanley Wang, M.D. and Irvin E. Zeitler, Jr., D.O.

Staff members present were Mari Robinson, Executive Director, Robert Bredt, M.D., Medical Director, and various other staff.

Agenda Item #2. Discussion, recommendation, and possible action regarding referrals and reports from the Texas Physician Health Program (PHP).

The Executive Director, Dr. John B. Fitzwater, presented the status of PHP’s current caseload to the DPRC. Dr. Fitzwater discussed the different circumstances of cases the Texas Physician Health Program is currently working and requested additional guidance.

Dr. Zeitler moved, and Dr. Willeford seconded that PHP Case #13-0286 remain under the management of PHP and that PHP to request Respondent to obtain a neuropsychological evaluation and to produce to PHP the lacking reports, if the evaluation is not completed within 30 days of the request, the case will be returned to the jurisdiction of the Texas Medical Board for further action. Motion carried.

Dr. Willeford moved, and Dr. Zeitler seconded that PHP Case #12-0170 be tabled until next meeting, for consideration of additional information regarding the case. Motion carried.

Dr. Guajardo moved, and Dr. Zeitler seconded that for PHP Case #13-0283 the committee accept the interim referral made returning the case to the jurisdiction of the Texas Medical Board for action prior to this meeting. Motion carried.

Dr. Guajardo moved, and Mr. Baucom seconded that for PHP Case #13-0244 the committee accept the interim referral made returning the case to the jurisdiction of the Texas Medical Board for action prior to this meeting. Motion carried.

Dr. Zeitler moved, and Dr. Willeford seconded that for PHP Case #13-0345 the committee accept the interim referral made returning the case to the jurisdiction of the Texas Medical Board for action prior to this meeting. Motion carried.

Agenda Item #3. Discussion, recommendation, and possible action regarding renewals involving impaired licensees.

Dr. Willeford moved, and Dr. Wang seconded that licensee number 01 under Agenda Item 3 be sent an impairment packet. Motion carried.

Dr. Guajardo moved, and Dr. Zeitler seconded that licensee number 02 under Agenda Item 3 be sent an impairment packet. Motion carried.

Dr. Zeitler moved, and Dr. Willeford seconded that licensee number 03 under Agenda Item 3 be sent an impairment packet. Motion carried.

Agenda Item #4. Reports and discussion regarding the Investigation, Litigation and Compliance Departments.

Ms. Robinson presented the Enforcement Report for March 2014, 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 184, Surgical Assistants, §184.16. Discipline of Surgical Assistants
- B. Chapter 187, Procedural Rules, §187.26. Service in SOAH Proceedings, §187.28. Discovery, §187.29. Mediated Settlement Conferences
- C. Chapter 190, Disciplinary Guidelines, §190.8. Violation Guidelines, §190.14. Disciplinary Sanction Guidelines

Dr. Zeitler moved, and Mr. Guajardo seconded that Agenda Item 5.A. §184.16 be approved for publication. Motion carried.

Dr. Guajardo moved, and Mr. Baucom seconded that Agenda Item 5.B. §187.26 be approved for publication. Motion carried.

Dr. Zeitler moved, and Dr. Willeford seconded that Agenda Item 5.B. §187.28 be approved for publication. Motion carried.

Dr. Wang moved, and Dr. Holliday seconded that Agenda Item 5.B. §187.29 be approved for publication. Motion carried.

Dr. Willeford moved, and Dr. Zeitler seconded that Agenda Item 5.C. §190.8 be approved for publication. Motion carried.

Dr. Zeitler moved, and Dr. Holliday seconded that Agenda Item 5.C. §190.14 be approved for publication. Motion carried.

Agenda Item #6. Discussion and possible direction regarding a positive breath alcohol level.

The committee directed staff to draft a protocol that at a minimum requires licensees using Soberlink to retest within four hours upon submitting an initial breath sample positive for any level of alcohol, and if the retest sample is also positive for alcohol at any level, the probationer be required to appear before an ISC Panel of the Board.

Agenda Item #7. Discussion and possible direction regarding probationers and practice setting protocols.

The committee directed staff to disapprove practice settings in which a probationer is related to the monitoring practitioners by blood or marriage within two degrees of relationship.

Agenda Item #8. Review, discussion, and possible action regarding review of probationer's appearances.

Dr. Willeford moved, and Dr. Zeitler seconded that the waiver list on Agenda Item 8 be approved. Motion carried.

Agenda Item #9. Consideration and approval of membership of the Expert Physician Panel.

Discussion was held, regarding criteria of membership of the Expert Physician Panelist. The committee directed staff to bring more information related to threshold criteria to the next meeting.

Dr. Zeitler moved, and Dr. Holliday seconded that the memberships to the Expert Physician Panel on Agenda Item 9 minus the high payouts be approved. Motion carried.

Agenda Item #10. Reports and discussion regarding cases over one year old.

Ms. Robinson presented to the DPRC the current status of cases that are over one year old. To date, all investigations over one year are in criminal courts for a resolution and the majority of the litigation cases are at SOAH. This was an informational item only and no vote was necessary.

Ms. Attebury moved, and Dr. Holliday seconded; the motion passed at 11:40 a.m. to go into Executive Session for 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), Texas Occupations Code. Open session resumed at 1:26 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 #11. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 13-0432, 13-1517, 13-3454, 13-4027, 13-5272, 13-6505, and 14-0078, ii. Legal Files: 12-0672 (11-6728), 13-0878 (13-2335), 13-0917 (13-0862), 14-0092 (13-5040). B. Jurisdictional Not Filed Complaints: 12-2855, 12-6163, 13-6592, 14-0673, 14-0865, 14-0866, 14-0881, 14-0894, 14-1343, 14-1415, 14-1593, 14-1767, 14-1839, 14-1938, 14-1939, 14-2033, 14-2152, 14-2153, 14-2154, 14-2283, 14-2583, 14-2647, 14-2738, 14-2743, 14-2754, 14-2767, 14-2803, 14-2820, 14-2859, 14-2912, 14-3115, 14-

3349, 14-3351, 14-3359, 14-3406, 14-3436, 14-3504, 14-3506, 14-3653; and C. Non-Jurisdictional Complaints: 12-6008, 14-2284, 14-3020, 14-3200, 14-3388, and 14-3390.

Dr. Shulkin moved, and Dr. Guajardo seconded that the appeal of Item 11.A.i., Log #14-0078 be denied. Motion carried. Dr. Wang recused himself from any discussion and decision regarding 14-0078.

Dr. Swann moved, and Dr. Guajardo seconded that the appeal of Item 11.B., Log #13-6592, 14-0865 and 14-0866 be granted and that an investigation be opened. Motion carried.

Dr. McNeese recused herself from any discussion and decision, regarding Log #13-6592, 14-0865 and 14-0866, Dr. Zeitler served as the chair for these cases.

Dr. Guajardo moved, and Dr. Zeitler seconded that the appeal of Item 11.B, Log #14-1938 and 14-1939 be denied. Motion carried.

Agenda Item #11. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 13-0432, 13-1517, 13-3454, 13-4027, 13-5272, 13-6505, and 14-0078, ii. Legal Files: 12-0672 (11-6728), 13-0878 (13-2335), 13-0917 (13-0862), 14-0092 (13-5040). B. Jurisdictional Not Filed Complaints: 12-2855, 12-6163, 13-6592, 14-0673, 14-0865, 14-0866, 14-0881, 14-0894, 14-1343, 14-1415, 14-1593, 14-1767, 14-1839, 14-1938, 14-1939, 14-2033, 14-2152, 14-2153, 14-2154, 14-2283, 14-2583, 14-2647, 14-2738, 14-2743, 14-2754, 14-2767, 14-2803, 14-2820, 14-2859, 14-2912, 14-3115, 14-3349, 14-3351, 14-3359, 14-3406, 14-3436, 14-3504, 14-3506, 14-3653; and C. Non-Jurisdictional Complaints: 12-6008, 14-2284, 14-3020, 14-3200, 14-3388, and 14-3390.

Dr. Holliday moved, and Dr. Guajardo seconded that the appeal of Item 11.A.i., Log 13-4027 be denied, however to send a custom letter stating that it is in the best interest of the patient to ensure prescriptions are given in a timely fashion. Motion carried.

Dr. McNeese moved, and Dr. Holliday seconded that the appeal of Item 11.A.i., Log 13-0432 be granted and sent to a new expert panelist. Motion carried.

Dr. Guajardo moved, and Dr. Zeitler seconded that all other appeals under Agenda Item 11.A.i. not specifically granted be denied. Motion carried.

Dr. Guajardo moved, and Dr. Zeitler seconded that all appeals under Agenda Item 11.A.ii. be denied. Motion carried.

Dr. Zeitler moved, and Dr. Holliday seconded that the appeal of Item 11.B., Log 12-2855 be granted and that an investigation be opened. Motion carried.

Dr. Wang moved, and Dr. Holliday seconded that the appeal of Item 11.B., Log 14-1343 be granted and that an investigation be opened. Motion carried.

Dr. Wang moved, and Dr. Guajardo seconded that the appeal of Item 11.B., Log 14-2647 be granted and that an investigation be opened. Motion carried.

Dr. Wang moved, and Dr. Zeitler seconded that the appeal of Item 11.B., Log 14-3115 be granted and that an investigation be opened. Motion carried.

Dr. Guajardo moved, and Dr. Zeitler seconded that the appeal of Item 11.B., Log 14-3406 be granted and that an investigation be opened, to include infant hospital records. Motion carried.

Mr. Baucom moved, and Dr. Zeitler seconded that the appeal of Item 11.B., Log 14-3504 be granted and that an investigation be opened. Motion carried.

Dr. Holliday moved, and Dr. Zeitler seconded that the appeal of Item 11.B., Log 14-2767 be granted and that an investigation be opened. Motion carried. Dr. Wang recused himself from any discussion and decision on this case.

Dr. Holliday moved, and Dr. Wang seconded that the appeal of Item 11.B., Log 14-3436 be denied and that a custom letter be sent, discussing the requirement of professionalism on the part of physicians and specifically referencing 164.052(a)(5). Motion carried.

Ms. Attebury moved, and Dr. Shulkin seconded that the appeal of Item 11.B., log 14-3349 be granted and that an investigation be opened. Motion carried.

Mr. Baucom moved, and Dr. Guajardo seconded that all other appeals under Agenda Item 11.B. not specifically granted above be denied. Motion carried.

Dr. Zeitler moved, and Dr. Guajardo seconded that all appeals under Agenda Item 11.C. be denied. Motion carried.

Agenda Item #12. Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the DPRC for follow-up action, specifically including: 13-4595, 13-4740, 13-4749, 13-6022, 13-6454, 13-6504, 13-6595, and 13-6823.

Dr. Willeford moved, and Dr. Shulkin seconded that all follow-up files under Agenda Item 12 be dismissed. Motion carried.

Agenda Item #13. Review, discussion, and possible action regarding selected files and cases.

Dr. Zeitler moved, and Ms. Attebury seconded; the motion passed at 1:37 p.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) Occupations Code. Open session resumed at 2:15 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Dr. Guajardo moved, and Dr. Zeitler 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.

Dr. Willeford moved, and Dr. Guajardo seconded that legal case #14-1044 be dismissed. Motion carried.

Dr. Willeford moved, and Dr. Zeitler seconded that legal case #13-0268 be dismissed. Motion carried.

Agenda Item #14. Adjourn.

Dr. Holliday moved, and Dr. Shulkin seconded that the meeting adjourn. Motion carried at 2:30 p.m.