

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
November 29, 2012

Chair Melinda McMichael, M.D., called the meeting to order at 11:19 a.m. Other members present were Julie K. Attebury, Patricia S. Blackwell, James Scott Holliday, D.O., Margaret C. McNeese, M.D., Allan Shulkin, M.D., and Stanley S. Wang, M.D. Committee Members David Baucom, Manuel Guajardo, M.D., George Willeford III, M.D., and Irvin E. Zeitler, Jr., D.O. were not present.

Also present was Mari Robinson, Executive Director, Medical Director Robert Bredt, M.D., and various other staff.

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

The Executive Director, Dr. Bill Nemeth discussed different circumstances of cases the Texas Physician Health Program is currently working and requested additional guidance on.

PHP Case #11-0250 had an interim referral and was returned to the jurisdiction of the Texas Medical Board for action prior to this meeting. This was an informational item only and no vote was necessary.

Ms. Attebury moved and Dr. Holliday seconded; the motion passed at 11:25a.m to go into Executive Session deliberations concerning private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-client privilege under the authority of the Open Meetings Act Section 551.071, Government Code. Open session resumed at 11:33a.m., and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

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

Dr. Holliday moved, and Ms. Blackwell seconded that PHP Case #12-0258 be returned to the jurisdiction of the Texas Medical Board and that an immediate cancellation of the Respondents provisional license be issued. Motion carried.

PHP Case #11-0137 is still under the management of the PHP. This was an informational item only and no vote was necessary.

PHP Case #12-0153 is still under the management of the PHP. This was an informational item only and no vote was necessary.

Dr. Holliday moved, and Dr. McNeese seconded that PHP Case #12-0191 remain under the management of the PHP and that the Respondent considers changing his practice once completing treatment. Motion carried.

Ms. Attebury moved, and Dr. McNeese seconded that PHP Case #12-0264 remain under the management of the PHP. Motion carried.

Dr. Wang moved, and Dr. Holliday seconded that PHP Case #12-0185 remain under the management of the PHP. Motion carried.

Dr. Holliday moved, and Ms. Blackwell seconded that PHP Case #12-0200 be returned to the jurisdiction of the Texas Medical Board and that the Respondent be scheduled for an ISC and also that the PA in this case be brought before the Physician Assistant Board for further action. Motion carried.

Dr. Holliday moved, and Ms. Blackwell seconded that PHP Case #12-0292 remain under the management of the PHP. Motion carried.

Dr. Wang moved, and Ms. Attebury seconded that PHP Case #12-0303 remain under the management of the PHP. Motion carried.

Dr. Holliday moved, and Ms. Blackwell seconded that PHP Case #10-0222-A remain under the management of the PHP with the understanding that there is zero tolerance for any future infractions, if so, the case will be returned to the jurisdiction of the Texas Medical Board for further action. Motion carried.

Staff was directed that any future cases involving an infraction of a Respondent with a provisional license be issued a cancellation of that provisional license.

A lunch recess was taken at 12:20 p.m. and the committee returned at 12:35 p.m.

Agenda Item #3. Reports and discussion regarding the Investigation, Litigation and Compliance Departments.

Ms. Robinson presented the Enforcement Report for October 2012, and fiscal years 2012 and 2011 a copy of which is attached. This was an informational item only and no vote was necessary.

Agenda Item #4. Discussion, recommendation, and possible action regarding Rule Review and proposed changes to Chapter 187, Procedural Rules in Title 22 of the Texas Administrative Code:

A. Section 187.44. Probationer Show Compliance Proceedings

Dr. McNeese moved, and Ms. Attebury seconded that Agenda Item 4.A. be accepted for publication in the Texas Register. Motion carried.

Agenda Item #5. Review, discussion, and possible action regarding review of probationers appearances.

Dr. Wang moved, and Ms. Attebury seconded that the waiver list on Agenda Item 5 be approved. Motion carried.

Agenda Item #6. Discussion and possible direction regarding neurosurgeon expert panel reviewers.

Dr. Wang moved, and Ms. Blackwell seconded that due to the critical shortage of neurosurgery expert panel reviewers and the likelihood that a second expert would not find a standard of care violation, that logs #11-4072, #11-6697, #12-0568 be dismissed; log #11-6044 be closed with a custom letter to the respondent regarding documentation; and log #12-0141 be closed and the actions of the ENT in this case be reviewed. Motion carried.

Agenda Item #7. Discussion and possible direction regarding the Jurisdictional-Not-Filed Complaints Quality Control (JNF QC) review process.

Staff was directed to divide 5% of the JNF QC files among all DPRC members for the February DPRC and also be informed of the statistics for the outcome of JNF appeals that have been granted by the DPRC in the past 30 months.

Agenda Item #8. Consideration and approval of membership of the Expert Physician Panel.

Dr. Shulkin moved, and Dr. Wang seconded that the memberships to the Expert Physician Panel on Agenda Item 8 be approved. Motion carried.

Agenda Item #9. 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, there are approximately 430 investigations that fall under this category; the majority being SOAH cases. This was an informational item only and no vote was necessary.

Agenda Item #11. Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the DPRC for follow-up action, specifically including: 11-6425, 11-8395, and 12-3198.

Dr. Wang moved, and Dr. McNeese seconded that Log #11-6425 be dismissed. Motion carried.

Dr. Wang moved, and Dr. McNeese seconded that Log #11-8395 be dismissed. Motion carried.

Dr. Wang moved, and Dr. McNeese seconded that Log #12-3198 be continued and that another panel review this case. Motion carried.

Ms. Attebury moved, and Dr. McNeese seconded; the motion passed at 1:20 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), and 164.202 & .203, Occupations Code. Open session resumed at 3:24 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 #10. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 11-3845, 11-6749, 11-6809, 11-7733, 12-3594, 12-3631, 12-3971, 12-4418, and 12-4937; ii. Legal Files: 12-0828 (11-6193); and B. Jurisdictional Not Filed Complaints: 11-5425, 12-1639, 12-2815, 12-3780, 12-3781, 12-5771, 12-5781, 12-5782, 12-6629, 12-6814, 12-6952, 12-7079, 12-7145, 12-7264, 12-7287, 12-7296, 12-7320, 12-7350, 12-7485, 12-7716, 12-7723, 12-7764, 13-0042, 13-0085, 13-0111, 13-0179, 13-0192, 13-0334, 13-0354, 13-0387, 13-0420, 13-0421, 13-0601, 13-0838, 13-0976, 13-1143, and 13-1186; and C. Non-Jurisdictional Complaints: 12-5783. **Dr. Shulkin recused himself from any discussion and decision regarding Log #13-0838.**

Dr. Holliday moved, and Ms. Blackwell seconded that the appeal of Item 10.A.ii., Log #12-0828 (11-6193) denied. Motion carried.

Dr. Wang moved, and Dr. McNeese seconded that the appeal of Item 10.B., Log #13-0334 be denied. Motion carried.

Dr. McNeese moved, and Dr. Wang seconded that the appeal of Item 10.B., Log #13-0838 be granted and the case be returned to a pending determination status for an additional 45-days while waiting for a response from the Respondent in this case. Motion carried. Dr. Shulkin recused himself from any discussion and decision regarding Log #13-0838.

Ms. Attebury moved, and Ms. Blackwell seconded that all other appeals under Agenda Item 10.A.i. not specifically granted above be denied. Motion carried.

Dr. McMichael moved, and Dr. Wang that the appeal of Item 10.B., Log #11-5425 be granted and the case be returned to a pending determination status for an additional 45-days while waiting for a response from the Respondent in this case. Motion carried.

Dr. Holliday moved, and Ms. Blackwell seconded that the appeal of Item 10.B., Log #12-6952 be granted and that an investigation be opened. Motion carried.

Dr. McMichael moved, and Dr. Wang seconded that the appeal of Item 10.B., Log #12-7079 be granted and that an investigation be opened. Motion carried.

Dr. McMichael moved, and Ms. Blackwell seconded that the appeal of Item 10.B., Log #12-7296 be granted and that an investigation be opened. Motion carried.

Dr. Wang moved, and Ms. Attebury seconded that the appeal of Item 10.B., Log #13-0111 be granted and that an investigation be opened. Motion carried.

Dr. McMichael moved, and Dr. Wang seconded that the appeal of Item 10.B., Log #13-0192 be granted and that an investigation be opened. Motion carried.

Dr. Wang moved, and Dr. McMichael seconded that the appeal of Item 10.B., Log #13-0420 be granted and that an investigation be opened. Motion carried.

Dr. Wang moved, and Dr. McMichael seconded that the appeal of Item 10.B., Log #13-0421 be granted and that an investigation be opened. Motion carried.

Ms. Attebury moved, and Ms. Blackwell seconded that all other appeals under Agenda Item 10.B. not specifically granted above be denied. Motion carried.

Ms. Blackwell moved, and Ms. Attebury seconded that the appeal of Item 10.C., Log #12-5783 be denied. Motion carried.

Ms. Attebury moved, and Ms. Blackwell seconded; the motion passed at 3:40 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), and 164.202 & .203, Occupations Code. Open session resumed at 4:07 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 #12. Review, discussion, and possible action regarding selected files and cases.

Ms. Blackwell moved, and Dr. McNeese 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. Holliday recused himself from any discussion and decision regarding file #12-1033.

Dr. Wang recused himself from any discussion and decision regarding files #12-1021 and #12-6402.

Agenda Item #13. Adjourn.

Ms. Attebury moved, and Dr. Shulkin seconded that the meeting adjourn. Motion carried at 4:08 p.m.