

## TEXAS MEDICAL BOARD

### MINUTES OF THE DISCIPLINARY PROCESS REVIEW COMMITTEE December 7, 2006

The meeting was called to order at 11:20 a.m. by Chairman Keith E. Miller, M.D. Other committee members present were Lawrence Anderson, M.D., Roberta Kalafut, D.O., Margaret C. McNeese, M.D., Patricia S. Blackwell, Paulette Southard and Timothy Turner. Amanullah Khan, M.D., and Irwin E. Zeitler, Jr, D.O., 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 # 11, on discussion, recommendation and possible action to proposed amendments to Chapter 164, **Physician Advertising**, and to Chapter 165, **Medical Records**: Ms. Shackelford presented the discussion stating that the DPRC Ad Hoc Committee met with the stakeholders group to discuss recommended options on possible changes to these rules. Staff was directed by the committee to prepare options in a written format for review at the February 15, 2007 DPRC meeting.

Agenda Item #2, Review, Discussion and possible action regarding appeals of dismissed complaints:

A. Jurisdictional Complaint Files: Log # 05-1623; Log # 06-2007; Log # 06-2075; Log # 06-0283; Log # 06-0761; Log # 06-0836 and Case # 06-0347; Log # 06-1243; Log # 06-12693; Log # 06-1366 and # 06-1367; Log # 06-1371; Log # 06-1725; and Log # 06-1872; Log # 06-2086; Log # 06-2104; Log # 06-2326; Log # 06-2411; Log # 06-2910; and Log # 06-3327;  
B. Jurisdictional-Not-Filed complaint files: Log # 07-0504; Log # 06-0316 and Log # 07-0355; Log # 06-3158, # 06-3314; # 07-0130; Log # 07-0131; Log # 07-0269; Log # 07-0282; and Log # 07-0457; and  
C. Non-Jurisdictional File # 07-5230.

**Mr. Turner moved, Ms. Blackwell seconded and the motion passed at 11:34 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 # 06-2075 and JNF complaint file, Log # 07-0504. Open session resumed at 1:10 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 and Mr. Turner recused themselves from discussion and voting on Log # 07-0504.

**Ms. Southard moved, Ms. Blackwell seconded and the motion passed to open an investigation on the original surgeon in Log # 07-0504 and the subsequent treating physician.**

**Dr. Anderson moved, Mr. Turner seconded and a motion passed to send Log #06-2075 to another expert to address specific issues regarding the excessive attempts to stent the**

patient; a physician's continual attempt to pass a blocked artery, and 3) the cause of death on the patient's death certificate.

**Dr. Anderson moved, Ms. Blackwell seconded and the motion passed to take no further action regarding the following appeals of:**

**A. Jurisdictional files: Log # 05-1623; Log # 06-2007; Log # 06-0283; Log # 06-0761; Log # 06-0836 and Case # 06-0347; Log # 06-1243; Log # 06-1269; Log # 06-1366 and # 06-1367; Log # 06-1371; Log # 06-1725; and Log # 06-1872; Log # 06-2086; Log # 06-2104; Log # 06-2326; Log # 06-2411; Log # 06-2910; and Log # 06-3327;**

**B. Jurisdictional-Not-Filed files: Log # 06-0316 and Log # 07-0355; Log # 06-3158, # 06-3314; # 07-0130; Log # 07-0131; Log # 07-0269; Log # 07-0282; and Log # 07-0457; and**

**C. Non-Jurisdictional file # 07-5230.**

**Mr. Turner moved to amend the motion and moved to open an investigation of JNF file # 07-0131. No one seconded Mr. Turner's motion and the motion to dismiss the appealed files carried.**

Agenda Item # 9 was presented on the discussion, possible action and approval regarding the Summary of Allegations (SOA) and the TMB staff attorneys' presentations at Informal Settlement Conferences (ISC). Ms. Leshikar lead the discussion, requesting guidance on the format of the SOA and the type of presentations recommended by the DPRC for the ISCs.

The Committee authorized staff to revise the format of the SOA to include biographical issues, references to tabs and a list of violations on the first page of the SOA. The Committee directed staff to present fully each case at the Informal Settlement Conferences.

Agenda Item # 4: Regarding reports and discussion regarding Investigation, Litigation and Compliance Departments: Ms. Robinson presented the Enforcement Report for October 2006, a copy of which is attached. This was an informational item only and no vote was necessary.

Agenda Item # 6 regarding discussion, possible action and approval of policy regarding CME protocol for use and approval in the compliance department. Ms. Robinson presented issues of requirements and acceptability and non-acceptability.

**Dr. Kalafut moved, Ms. Blackwell seconded and the motion passed to approve the policy regarding CME Protocol, with the amended 20-day time limit, as stated in the attachment to the Committee Agenda.**

Agenda Item # 7 regarding the discussion, possible action and approval of the policy on expert panel appointment and removal.

**Ms. Southard moved, Mr. Turner seconded and the motion passed to approve the policy as stated in the attachment to the agenda.**

Agenda Item # 8 regarding the discussion, possible action and approval of policy on drug testing waivers for leisure travel effective January 1, 2007.

**Ms. Southard moved, Dr. Anderson seconded and the motion passed to approve the policy as stated in the attachment to the Agenda.**

Agenda Item # 10 was addressed regarding the discussion, possible action and approval of policies regarding assignment of cases for DPRC review. This was a discussion item only and no vote was necessary.

**Ms. Southard moved, Dr. Kalafut seconded and the motion passed to go into executive session at 2:55 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 4:35 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: Regarding routine follow-up on investigative files, previously referred from DPRC for follow-up action, specifically including Log # 04-0312; Log # 04-0896; Log # 05-0276; Log # 05-0380; Log # 05-0455; Log # 05-1665; and Log # 05-2077.

**Ms. Southard moved, Dr. McNeese seconded and the motion passed to refer Log # 05-0380 to an Informal Settlement Conference.**

**Dr. Anderson moved, Ms. Southard seconded and the motion passed to refer Log # 05-0455 to an Informal Settlement Conference.**

**Dr. Kalafut moved, Dr. Anderson seconded and the motion passed to dismiss Log # 04-0312; Log # 04-0896; Log # 05-0276; Log # 05-1665; and Log # 05-2077.**

Agenda Item # 5: Regarding review, discussion and possible action of probationers' appearances was presented.

**Mr. Turner moved, Dr. Anderson 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 # 12: Discussion, possible action and approval of policy regarding practice site approval.

**Ms. Southard moved, Dr. Kalafut seconded and the motion passed to approve the policy regarding practice site approval as presented and attached.**

Agenda Item # 13: Review of selected files and cases recommended for dismissal.

**Ms. Southard moved, Mr. Turner 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.**

**Mr. Turner moved, Dr. Kalafut seconded, and the motion passed to adjourn the meeting at 4:36 p.m.**