

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
December 7, 2017

Margaret C. McNeese, M.D. called the meeting to order at 10:08 a.m. Other members present were Julie K. Attebury, James “Scott” Holliday, D.O., Jeffrey Luna, M.D., LuAnn Morgan, Karl W. Swann, M.D., Surendra K. Varma, M.D., and Sherif Z. Zaafran, M.D.

Staff members present were Scott Freshour, Interim Executive Director, Robert Bredt, M.D., Medical Director, and various other staff.

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

Dr. Varma moved, and Dr. Zaafran seconded that PHP Case #1 be returned to the jurisdiction of the Texas Medical Board and not referred back to TX PHP. Motion carried.

Dr. Varma moved, and Dr. Holliday seconded that PHP Case #2 be returned to the jurisdiction of the Texas Medical Board and not referred back to TX PHP. Motion carried.

Dr. Varma moved, and Dr. Holliday seconded that PHP Case #3 be returned to the jurisdiction of the Texas Medical Board. Motion carried.

Dr. Varma moved, and Dr. Morgan seconded that PHP Case #4 be returned to the jurisdiction of the Texas Medical Board. Motion carried.

It was announced by Dr. Karney that PHP Case #5 be stricken from the agenda.

Dr. Varma moved, and Ms. Morgan seconded that PHP Case #6 be returned to the jurisdiction of the Texas Medical Board and not referred back to TX PHP. Motion carried.

Dr. Varma moved, and Ms. Morgan seconded that PHP Case #7 remain under the management of TXPHP upon completion of Maryland’s Physician Health Program contract. Motion carried.

Ms. Attebury moved, and Dr. Morgan seconded that PHP Case #8 be emergently returned to the jurisdiction of the Texas Medical Board. Motion carried.

Agenda Item #3. Reports and discussion regarding Texas Physician Health Program. (Dr. Karney)

This was an informational item only and no vote and no action was taken.

Agenda Item #4. Discussion, recommendation, and possible action regarding renewals involving impaired licensees.

It was announced by Mr. Freshour that there were no impaired renewals to be presented to the DPRC under Agenda Item #4.

Agenda Item #5. Reports and discussion regarding the Investigation, Litigation, and Compliance Departments.

Mr. Freshour presented the Enforcement Report for October 2017, a copy of which is attached. This was an informational item only and no vote and no action was taken.

Agenda Item #6. 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 170, Pain Management
 - §§170.4 - 170.8 – Opioid antagonists
- B. Chapter 177, Business Organizations and Agreements,
 - §177.18 – (Subchapter E) Physician call coverage medical services
 - §177.19 – Definitions
 - §177.20 – Call Coverage Minimum Requirements
- C. Chapter 187, Procedural Rules
 - §187.21 – Procedural Rules – Subchapter B- Informal Board Proceedings – Board and District Review Committee Members Participation
 - §187.44 – Procedural Rules – Subchapter E – Proceedings Related to Probationers – Probationer Show Compliance Proceedings
 - §187.70 – Procedural Rules – Subchapter G – Suspension by Operation of Law – Purposes and Construction
 - §187.76 – Procedural Rules – Subchapter H – Imposition of Administrative Penalty – Notice of Intention to Impose Administrative Penalty; Response
 - §187.78 – Procedural Rules – Subchapter H – Imposition of Administrative Penalty - Written Response
 - §187.79 – Procedural Rules – Subchapter H – Imposition of Administrative Penalty – Personal Appearance at an Informal Meeting
 - §187.80 – Procedural Rules – Subchapter H – Imposition of Administrative Penalty – Imposition of Administrative Penalty
 - §187.85 – Procedural Rules – Subchapter J – Procedures Related to Out-Of-Network Health Benefit Claim Dispute Resolution - Purpose and Construction

- §187.86 – Subchapter J – Procedures Related to Out-Of-Network Health Benefit Claim Dispute Resolution - Scope
 - §187.87 – Subchapter J – Procedures Related to Out-Of-Network Health Benefit Claim Dispute Resolution - Definitions
 - §187.88 – Subchapter J – Procedures Related to Out-Of-Network Health Benefit Claim Dispute Resolution - Complaint Process and Resolution
 - §187.89 – Subchapter J – Procedures Related to Out-Of-Network Health Benefit Claim Dispute Resolution - Notice of Availability of Mandatory Mediation
- D. Chapter 189, Compliance Program
- §189.11 – Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings
- E. Chapter 190, Disciplinary Guidelines
- §190.8 (6)(B) Misdemeanors– Violation Guidelines
 - §190.14 – Disciplinary Guidelines – Subchapter C – Sanctions Guidelines – Disciplinary Sanction Guidelines

Dr. Holliday moved, and Dr. Varma seconded that the amendments to rule §§170.4 - 170.8 under Agenda Item 6.A. be approved for publication and comment. Motion carried.

Dr. Holliday moved, and Dr. Luna seconded that the amendments to rule §177.18 and §177.19 under Agenda Item 6.B. be approved as written for publication and comment, however §177.18 c. be stricken. Motion carried.

Dr. Varma moved, and Ms. Attebury seconded that the amendments to rule §§187.21 – 187.44, 187.76, 187.78, 187.79 and 187.80 under Agenda Item 6.C. be approved for publication and comment. Motion carried.

Agenda Item 6.C §§187.70, 187.85,-187.89 were pulled from the agenda and no action was taken.

Dr. Holliday moved, and Ms. Attebury seconded that the amendments to rule §189.11 under Agenda Item 6.D. be approved for publication and comment. Motion carried.

Ms. Attebury moved, and Dr. Zaafran seconded that the amendments to rule §190.8 (6) (B) under Agenda Item 6.E. be approved for publication and comment. Motion carried.

Ms. Morgan moved, and Ms. Attebury seconded that the amendments to rule §190.14 under Agenda Item 6.E. be approved for publication and comment. Motion carried.

Agenda Item #7. Review, discussion, and possible action regarding review of probationer's appearances

Dr. Varma moved, and Ms. Morgan seconded that the waiver list on Agenda Item #7 be approved. Motion carried

Agenda Item #8. Discussion, recommendation and possible action regarding Expert Panelists for the advisory boards and committees.

Dr. Varma moved, and Ms. Attebury seconded that the appointments of members to the Expert Panel be accepted as noted in the attachment. Motion carried.

Agenda Item #9. Reports and discussion regarding cases over one year old.

Mr. Freshour presented to the DPRC the current status of cases that are over one year old. This was an informational item only and no vote was necessary.

Agenda Item #10. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 16-4401, 17-1800, 17-1809, 17-2224, 17-2319, 17-3231, 17-4365, 17-4366, 17-6298; ii. Legal Files: 17-0243 (16-5863) & (16-5792), 17-0591 (17-0727); B. Jurisdictional-Not-Filed Complaints: 17-4179, 17-4458, 17-6806, 17-6817, 17-7326, 17-7552, 17-7553, 17-7555, 17-7567, 17-7568, 17-7691, 17-7810, 17-8042, 17-8044, 17-8142, 17-8183, 17-8270, 17-8435, 18-0003, 18-0008, 18-0046, 18-0080, 18-0081, 18-0082, 18-0084, 18-0136, 18-0159, 18-0224, 18-0289, 18-0325, 18-0538, 18-0666, 18-1026, 18-1281

Dr. Luna moved, and Ms. Attebury seconded that the appeal of Item 10.A.i, Log #16-4401 be granted. Motion carried.

Dr. Zaafran moved, and Ms. Attebury seconded that the appeal of Item 10.A.i, Log #17-1800 be granted. Motion carried.

Dr. Zaafran moved, and Ms. Morgan seconded that the appeal of Item 10.A.i, Log #17-2224 be granted. Motion carried.

Dr. Swann moved, and Dr. Varma seconded that the appeal of Item 10.A.i, Log #17-2319 be granted. A new expert who is a Neurosurgeon is to be provided with all MRI hard copy scans for further review. Motion carried.

Dr. Varma moved, and Dr. Luna seconded that the appeal of Item 10.A.i, Log #17-3231 be denied. Motion carried.

Dr. Swann moved, and Dr. Varma seconded that the appeal of Item 10.A.ii, Case #17-0591 (17-0727) be granted. Motion carried.

Dr. Zaafran moved, and Ms. Attebury seconded that the appeal of Item 10.B, Log #17-4179, #17-8042, #17-8270, and #18-0666 be granted. Motion carried.

Dr. Zaafran moved, and Ms. Attebury seconded that the appeal of Item 10.B, Log #17-7552 be granted. Motion carried.

Dr. Zaafran moved, and Dr. Varma seconded that the appeals of Item 10.B, Log #17-7553 be granted. Motion carried.

Dr. Zaafran moved, and Dr. Luna seconded that the appeal of Item 10.B, Log #17-7810 be denied. Motion carried.

Ms. Morgan moved, and Dr. Luna seconded that the appeal of Item 10.B, Log #17-7567 be granted. Motion carried.

Ms. Morgan moved, and Dr. Zaafran seconded that the appeal of Item 10.B, Log #17-7568 be granted. Motion carried.

Dr. McNeese moved, and Dr. Varma seconded that the appeal of Item 10.B, Log #18-0289 be denied but with custom letter stating that when Respondent or a Patient terminates the medical care, that the patient is to be notified of termination as soon as practical. Motion carried.

Dr. McNeese moved, and Dr. Varma seconded that the appeal of Item 10.B, Log #17-8142 be denied. Motion carried.

Dr. Varma moved, and Dr. Luna seconded that all other appeals under Agenda Item 10.A.i not specifically granted above be denied. Motion carried

Dr. Varma moved, and Dr. Luna seconded that the appeal of Item 10.A.ii, Case #17-0243 (16-5863) & (16-5792) be denied. Motion carried.

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

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: Legal 16-0958 (16-4169).

Dr. Varma moved, and Ms. Morgan seconded follow-up file Legal 16-0958 (16-4169) be dismissed. Motion Carried.

Direction was given to staff going forward to bring all appeal Jurisdictional Not Filed files granted for appeal, back to DPRC for review and final consideration.

Agenda Item #12. Review, discussion, and possible action regarding selected files and cases.

Dr. Varma moved, and Dr. Zaafran seconded that SOAH file 16-0648 be approved for dismissal. Motion carried.

Dr. Zaafran moved, and Ms. Attebury seconded that SOAH file 15-0533 be approved for dismissal. Motion carried.

Ms. Attebury moved, and Dr. Varma seconded that the QA rejected NSOC files be resolved as noted on the individual sign-off sheets. Motion carried.

Dr. Varma moved, and Dr. Zaafran seconded that the QA rejected SOC files be resolved as noted on the individual sign-off sheets. Motion carried.

Dr. McNeese moved, and Dr. Varma seconded that Legal file 17-0976 (17-1030) be denied for closure and a second ISC scheduled. Ms. Morgan opposed. Motion carried.

Dr. Varma moved, and Ms. Morgan seconded that Log #17-2377 be denied for closure due to boundary violation issues. Motion carried.

Dr. Varma moved, and Dr. Zaafran seconded that Log #17-6348 be denied for closure and to have a new Expert Panel review file. Motion carried.

Dr. Zaafran moved, and Ms. Morgan seconded that Log # 17-7784 be denied for closure and an ISC scheduled. Motion carried. Dr. Varma recused himself from any discussion on this file.

Ms. Attebury moved, and Ms. Morgan seconded that all other files under Agenda Item 12 for review be resolved as noted on the individual sign-off sheets. Motion carried.

Agenda Item #13. Adjourn.

There being no further agenda items, the meeting adjourned at 5:39 p.m.

TEXAS MEDICAL BOARD
Disciplinary Process Review Committee
TXPHP - Participant Case Review
December 7, 2018

Case #	Remain with PHP	TMB Accepted	Continue
1		X	
2		X	
3		X	
4		X	
5	Stricken		
6		X	
7	X		
8		X	

Expert Panel Members for Board Approval December 2017

LAST	FIRST	LIC #	CITY	SPECIALTY
Dave	Nilesh	M3511	Dallas	Pulmonary & Critical Care Medicine
Elmore	Ellen	P2852	Austin	Family Medicine
McHugh	Ryan	P2493	Port Neches	Anesthesiology/Pain Management
McNeely	Andrew	PA08754	Edinburg	Physician Assistant
Polk	Jonathan	N0372	Nacogdoches	General Surgery
Shenava	Rajesh	N4091	Houston	Nephrology

Interim Approval

DISCIPLINARY COMMITTEE & DECISIONS REGARDING COMPLAINTS REVIEWED**ISC PANEL RECOMMENDATIONS –** Texas Medical Board December 7, 2017**ISC Dismissal's****CASE #** **CLOSE** **CONTINUE** **TO ISC**

17-1065	X		
17-1016	X		
17-1048	X		
17-0458	X		
17-0917	X		
17-0889	X		
17-1097	X		
17-1087	X		
17-0923	X		
17-0949	X		
17-0663	X		
17-0758	X		
17-1019	X		
17-1058	X		
17-0586	X		
17-0986	X		
17-0884	X		
17-1117	X		
17-0871	X		
17-1017	X		
17-0874	X		
17-1068	X		
17-0856	X		
17-0976			X
17-0883	X		
17-0947	X		
17-0877	X		
17-0997	X		
17-1054	X		
17-0794	X		
17-0885	X		

17-0994	X		
17-0992	X		
18-0046	X		
17-0882	X		
17-0847	X		
17-0985	X		
17-0954	X		
17-1031	X		

Total = 39

COMPLAINTS REVIEWED PURSUANT TO STAFF

CASE # CLOSE CONTINUE TO ISC

17-1120	X		
17-0990	X		
18-0060	X		
18-0138	X		
17-1030	X		
17-1056	X		

Total = 6

Pre-Approved for Submission/COMPLAINTS REVIEWED PURSUANT TO STAFF

CASE # CLOSE CONT. TO ISC

18-0030	X		
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Total = 1

SOAH CASE DISMISSALS

CASE # CLOSE CONTINUE TO ISC

16-0648	X		
15-0533	X		

Total = 2

TXPHP Dismissals

CASE # CLOSE CONTINUE TO ISC

17-0519	X		
17-0381	X		
17-0285	X		

Total = 3

DECEMBER 2017 DPRC

Disciplinary Committee Decisions Regarding Complaints Reviewed Pursuant to Staff or ISC Panel Recommendation
(Physicians)

Total : 130

Log Number	Allegation	Close	Continue	ISC	Hold	Name
163105	164.052(A)(5)	X				
166752	164.051(A)(6)	X				
167027	164.052(A)(5)	X				
172210	164.053(A)(1)	X				
172377	164.052(A)(5)			X		
172441	164.052(A)(5)	X				
172847	164.051(A)(6)	X				
172859	164.051(A)(6)	X				
173100	164.053(A)(5)	X				
173334	164.053(A)(6)	X				
173556	164.051(A)(6)	X				
173732	164.051(A)(6)	X				
174426	164.053(A)(5)	X				
174530	164.053(A)(6)	X				
174532	164.051(A)(7)	X				
174677	164.051(A)(6)	X				
174697	164.051(A)(6)	X				
174747	164.051(A)(4)(D)	X				
174776	164.053(A)(5)	X				
174811	164.051(A)(6)	X				
174823	164.051(A)(6)	X				
174922	164.051(A)(6)	X				
174938	164.052(A)(5)	X				
174941	164.052(A)(5)	X				
175065	164.052(A)(5)	X				
175078	159.002	X				
175220	164.053(A)(6)	X				
175268	164.051(A)(6)	X				
175300	164.051(A)(6)	X				
175301	164.052(A)(17)	X				
175328	151.002(A)(13)	X				
175367	164.051(A)(6)	X				
175451	105.002(B)	X				
175466	164.051(A)(6)	X				
175468	164.052(A)(5)	X				
175474	164.051(A)(6)	X				
175509	164.052(A)(5)	X				
175531	164.051(A)(6)	X				
175532	164.051(A)(6)	X				
175598	164.051(A)(6)	X				
175629	164.051(A)(6)	X				
175657	164.051(A)(6)	X				

Log Number	Allegation	Close	Continue	ISC	Hold	Name
175675	164.051(A)(6)	X				
175727	102.001	X				
175730	164.052(A)(5)	X				
175742	164.051(A)(6)	X				
175806	164.052(A)(5)	X				
175826	164.051(A)(6)	X				
175835	164.051(A)(6)	X				
175899	164.051(A)(6)	X				
175916	164.051(A)(6)	X				
175926	164.051(A)(6)	X				
175928	164.051(A)(6)	X				
175955	164.051(A)(4)(C)	X				
176009	164.052(A)(5)	X				
176013	164.053(A)(5)	X				
176111	164.051(A)(6)	X				
176124	164.051(A)(4)(A)	X				
176133	105.002(B)	X				
176197	164.051(A)(6)	X				
176222	164.051(A)(9)	X				
176225	164.051(A)(6)	X				
176257	164.051(A)(6)	X				
176261	164.052(A)(5)	X				
176262	164.052(A)(5)	X				
176348	164.051(A)(6)			X		
176364	151.002(A)(13)	X				
176365	164.052(A)(5)	X				
176397	164.051(A)(6)	X				
176398	164.051(A)(6)	X				
176400	164.051(A)(6)	X				
176453	164.051(A)(6)	X				
176473	164.051(A)(6)	X				
176486	164.051(A)(6)	X				
176512	164.052(A)(5)	X				
176513	164.051(A)(6)	X				
176570	164.051(A)(7)	X				
176580	164.053(A)(5)	X				
176583	164.052(A)(5)	X				
176636	164.051(A)(6)	X				
176643	164.051(A)(6)	X				
176777	164.051(A)(6)	X				
176800	159.002	X				
176814	159.006	X				
176829	164.052(A)(5)	X				
176867	164.051(A)(6)	X				
176869	164.051(A)(6)	X				
176902	164.052(A)(5)	X				

Log Number	Allegation	Close	Continue	ISC	Hold	Name
176907	164.052(A)(5)	X				
176974	164.051(A)(6)	X				
177048	164.051(A)(6)	X				
177054	164.051(A)(6)	X				
177170	164.051(A)(6)	X				
177180	164.051(A)(6)	X				
177266	164.051(A)(6)	X				
177276	164.051(A)(3)	X				
177279	164.053(A)(1)	X				
177303	164.051(A)(7)	X				
177349	159.006	X				
177350	164.053(A)(5)	X				
177356	105.002(B)	X				
177366	164.052(A)(4)	X				
177441	164.053(A)(9)	X				
177492	164.052(A)(5)	X				
177495	164.052(A)(5)	X				
177523	164.051(A)(6)	X				
177564	164.052(A)(5)	X				
177593	164.051(A)(9)	X				
177642	164.052(A)(5)	X				
177727	105.002(B)	X				
177729	164.051(A)(4)(C)	X				
177741	164.053(A)(1)	X				
177784	164.051(A)(6)			X		
177878	164.051(A)(6)	X				
177903	164.052(A)(13)	X				
177904	164.052(A)(13)	X				
177905	164.052(A)(13)	X				
177906	164.052(A)(13)	X				
177907	164.052(A)(13)	X				
177908	164.052(A)(13)	X				
177941	164.051(A)(9)	X				
177984	164.051(A)(6)	X				
177986	164.053(A)(1)	X				
178103	56.003	X				
178235	101.351	X				
180099	164.051(A)(9)	X				
180234	164.053(A)(1)	X				
180609	164.051(A)(3)	X				
180690	164.051(A)(3)	X				