### TEXAS MEDICAL BOARD

## MINUTES OF THE

#### DISCIPLINARY PROCESS REVIEW COMMITTEE

June 15, 2017

Chair Margaret C. McNeese, M.D., called the meeting to order at 11:13 a.m. Other members present were 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. Committee Members Julie K. Attebury, Stanley Wang, M.D., and George Willeford III, M.D. were not present. Ms. Marible De Ponce, PA., Physican Assistant Board liaison attended the meeting.

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. Holliday moved, and Dr. Varma seconded that PHP Case #1 remain under the management of PHP with the understanding that there is zero tolerance for all aspects of the TXPHP agreement for any future infractions. If any further violations occur the case will be returned to the jurisdiction of the Texas Medical Board for further action. Motion carried.
- Dr. Holliday moved, and Dr. Varma seconded that PHP Case #2 be returned to the jurisdiction of the Texas Medical Board for an Informal Settlement Conference. If we do not here from Respondent within 30 days Board staff is instructed to evaluate for a temporary suspension. Motion carried.
- Dr. Varma moved, and Dr. Holliday seconded that PHP Case #3 remain under the management of PHP. Motion carried.
- Dr. Holliday moved, and Dr. Zaafran seconded that PHP Case #4 remain under the management of PHP. Motion carried.
- Dr. Varma moved, and Dr. Holliday seconded that PHP Case #5 remain under the management of PHP. Motion carried.
- Dr. Holliday moved, and Dr. Varma seconded that PHP Case #6 be returned to the jurisdiction of the Texas Medical Board for an Informal Settlement Conference. If Respondent not compliant then Board staff is instructed to evaluate for a temporary suspension. Motion carried.
- Dr. Holliday moved, and Dr. Varma seconded that PHP Case #7 be returned to the jurisdiction of the Texas Medical Board. The entire PHP file is to be flagged and associated with his or her individual identification number and in the event of any kind of

request for a license, permit or certificate, the entire issue will be available and brought before a committee. Motion carried.

Dr. Varma moved, and Ms. Morgan seconded that PHP Case #8 remain under the management of PHP. Motion carried.

Dr. Varma moved, and Dr. Luna seconded that PHP Case #9 be returned to the jurisdiction of the Texas Medical Board. Motion carried.

Dr. Varma moved, and Ms. Morgan seconded that PHP Case #10 be returned to the jurisdiction of the Texas Medical Board. The entire PHP file is to be flagged and associated with his or her individual identification number and in the event of any kind of request for a license, permit or certificate, the entire issue will be available and brought before a committee. Motion carried.

Dr. Varma moved, and Ms. Morgan seconded that PHP Case #11 be returned to the jurisdiction of the Texas Medical Board. Motion carried.

Dr. Varma moved, and Ms. Morgan seconded that PHP Case #12 be returned to the jurisdiction of the Texas Medical Board for an Informal Settlement Conference as soon as possible. Motion carried.

It was announced by Michael Torres that PHP Case #13 be withdrawn from the agenda.

Dr. Holliday moved, and Dr. Varma seconded that the emergent referral of PHP Case #14 be accepted. Motion carried.

Dr. Varma moved, and Dr. Holliday seconded that the emergent referral of PHP Case #15 be accepted. Motion carried.

Dr. Holliday moved, and Dr. Varma seconded that the emergent referral of PHP Case #16 be accepted. Motion carried.

**Agenda Item #3.** Reports and discussion regarding Texas Physician Health Program. David Henry Karney, M.D. was introduced as the TXPHP applicant recommended for the TXPHP Executive Medical Director. This was an informational item only and no vote was necessary.

**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.** Discussion, recommendation, and possible action regarding DPRC kickbacks.

Dr. Holliday moved, and Ms. Morgan seconded; the motion passed at 12:21 p.m. to go into Executive Session for 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 12:39 p.m., and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Direction was given to staff to make the recommended changes related to the DPRC minutes in order to comply with Tex. Occ. Code 164.0032.

**Agenda Item #6.** Discussion, recommendation, and possible action regarding Board policies reference positive drug tests.

Direction was given to staff to continue the current procedure.

Dr. Holliday moved, and Ms. Morgan seconded; the motion passed at 12:53 p.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 4:02 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: 15-5447, 16-4374, 16-5100, 16-5288,16-5906, 16-6000, 16-6066, 16-6226, 16-6347, 16-7105, 16-7363, 16-7833, 17-0151, 17-1218; ii. Legal Files: 16-0941 (16-5646) B. Jurisdictional-Not-Filed Complaints: 17-0402, 17-0761, 17-0950, 17-1575, 17-2184, 17-2714, 17-2715, 17-2789, 17-2899, 17-3166, 17-3209, 17-3296, 17-3333, 17-3458, 17-3493, 17-3510, 17-3620, 17-3691, 17-3790, 17-3883, 17-3890, 17-3982, 17-4016, 17-4091, 17-4105, 17-4255, 17-4256, 17-4327, 17-4400, 17-4501,17-4560, 17-4607, 17-4719, 17-4738, 17-4838, 17-4840, 17-4850, 17-4857, 17-4936, 17-5095, 17-5330.

Dr. Swann moved, and Dr. Zaafran seconded that the appeal of Item 11.A.i, Log # 16-5288 be denied. Motion carried.

Dr. Holliday moved, and Dr. Zaafran seconded that the appeal of Item 11.A.i, Log # 16-6347 be denied but a custom letter be sent to the Respondent regarding better communication with patient and importance of follow up care. Motion carried.

Dr. Swann moved, and Dr. Varma seconded that the appeal of Item 11.A.i, Log # 16-7833 be denied. Motion carried.

Dr. Swann moved, and Dr. Varma seconded that the appeal of Item 11.A.i, Log #17-2715 be granted and an investigation opened. Motion carried.

Dr. Varma moved, and Dr. Holliday seconded that the appeal of Item 11.A.i, Log #17-3620 be granted and an investigation opened. Motion carried.

Dr. Zaafran moved, and Dr. Varma seconded that the appeal of Item 11.A.i, Log #17-4256 be granted and an investigation opened. Motion carried.

Dr. Zaafran moved, and Dr. Varma seconded that the appeal of Item 11.A.i., Log #15-5447 be denied. However, open an investigation on the subsequent treating physician for chronic pain related to response on treatment plan. Motion carried.

Dr. Zaafran moved, and Dr. Holliday seconded that the appeal of Item 11.A.i., Log #16-5100 be granted and an investigation opened. Motion carried.

Dr. Holliday moved, and Dr. Zaafran seconded that the appeal of Item 11.A.i., Log #16-7105 be granted and another set of expert panelist review, to answer question of recognition and intervention of fourteen days plus postoperative. Motion carried.

Dr. Holliday moved, and Dr. Varma seconded that all other appeals under Agenda Item 9.A.i. be denied. Motion carried.

Ms. Morgan moved, and Dr. Varma seconded that the appeal of item 11.A.ii., #16-0941 (16-5646) be denied. Motion carried.

Ms. Morgan moved, and Dr. Holliday seconded that the appeal of item 11.B., Log #17-3883 be granted for further investigation. Motion carried.

Dr. Varma moved, and Dr. Holliday seconded that the appeal of item 11.B., Log #17-3982 be granted. Motion carried.

Dr. Varma moved, and Dr. Holliday seconded that the appeal of item 11.B., Log #17-4607 be granted and open for another 45 day period to get a response from the Respondent. Motion carried.

Dr. Zaafran moved, and Dr. Holliday seconded that the appeal of item 11.B., Log #17-4838 be granted and open for another 45 day period to get a response from the Respondent. Motion carried.

Dr. Luna moved, and Dr. Holliday seconded that the appeal of item 11.B., Log #17-4850 be granted and open for another 45 day period to get a response from the Respondent. Motion carried.

Dr. Zaafran moved, and Ms. Morgan seconded that the appeal of item 11.B., Log #17-5330 be granted and open for another 45 day period to get a response from the Respondent. Motion carried.

Dr. Holliday moved, and Dr. Varma seconded that all other appeals under Agenda Item 11.B. 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: 16-5272, 16-8010, 17-0486, 17-4137 and 17-0200 (16-4895).

Dr. Holliday moved, and Ms. Morgan seconded that follow-up file #16-5272 with the recommendation of sending back to investigations to have the second set of Expert panelists opine if the signed informed consent for anesthesia was appropriate for the anesthesia given, that the care and patient monitoring followed the anesthesia rules and administration of fentanyl. Motion carried.

Dr. Holliday moved, and Dr. Varma seconded that follow-up file #16-8010 be dismissed and a custom letter sent reminding Respondent of importance of diligence and informed consent. Motion carried.

Dr. Varma moved, and Dr. Holliday seconded that follow-up file #17-0486 be dismissed and a custom letter sent reminding Respondent about the use of a chaperone upon examination of patients, when appropriate. Motion carried.

Dr. Holliday moved, and Dr. Varma seconded that follow-up file #17-4137 be dismissed and a custom letter sent reminding Respondent of importance of diligence and informed consent. Motion carried.

Dr. Holliday moved, and Dr. Varma seconded that follow-up file #17-0200 (16-4895) be dismissed and a custom letter sent, regarding consent language and disclosure of ownership interest of the business which provides billing for other providers services. Motion carried.

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

Dr. Varma moved, and Ms. Morgan seconded that SOAH dismissal 16-0881 be approved for dismissal. Motion carried.

Dr. Zaafran moved, and Dr. Varma seconded that SOAH dismissal 11-0465 be approved for dismissal with a custom letter sent. Motion carried.

Dr. Varma moved, and Ms. Morgan seconded that SOAH dismissal 15-0422 be approved for dismissal. Motion carried.

Dr. Zaafran moved, and Dr. Holliday seconded that all other files for review be resolved as noted on the individual sign-off sheets. Motion carried.

**Agenda Item #7.** Reports and discussion regarding the Investigation, Litigation, and Compliance Departments.

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

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

It was announced by Mr. Freshour that there were no probationer appearances for review to be presented to the DPRC under Agenda Item #4.

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

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

Agenda Item #10. 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. 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.

Agenda Item #14. Adjourn.

Dr. Swann moved, and Dr. Varma seconded that the meeting adjourn. Motion carried at 5:12 p.m.

TMB - Disciplinary Process Review Committee (DPRC) TXPHP - Participant Case Review June 15, 2017

Case #	Remain with PHP	TMB Accepted	Continue
1	X		
2		X	
3	X		
4	X		
5	X		
6		X	
7		X	
8	X		
9		X	
10		X	
11		X	
12		X	
13	WITHDRAWN		
14		X	
15		X	
16		X	

## **Expert Panel Members for Board Approval June 2017**

LAST	FIRST	LIC#	CITY	SPECIALTY
Asar	Batool	N1788	Houston	Family Medicine
Bamiro	Olulana	RCP00075988	Aubrey	Respiratory
Booth	Stephanie	M1029	Austin	Rheumatology
Brien	James	H1047	Temple	Pediatric Infectious Disease
De Loach	George	H9881	Livingston	Orthopedic Surgery
Fan	Yijun	L1570	Dallas	Rheumatology
Gada	Elan	P9191	Dallas	Internal Medicine
Graves	Michael	Q3000	Austin	Dermatology
Hancock	Robert	M2971	Grapevine	Emergency Medicine
Khan	Rizwan	L6463	Robinson	Anesthesiology/Pain Management
Liu	Yan	Q6534	Austin	Cardiovascular Disease
Mares	Adolph	H7323	Harker Heights	Cardiovascular Disease
Morris	David	E2752	Austin	Cardiovascular Disease
Steffen	Randy	RCP00074352	San Antonio	Respiratory
Thornton	Michael	L6673	Mansfield	Cosmetic Surgery/General Surgery
Wallace	Neil	FPF00000131	Fort Worth	Perfusionist
Waller	Philip	J3933	Houston	Rheumatology

## Interim Approval

Jafri	Syed	P7931	Houston	Hematology/Oncology
Rowe	Julie	N9948	Houston	Oncology
Spiegel	Gary	Q6792	Houston	Interventional Neuroradiology

## DISCIPLINARY COMMITTEE & DECISIONS REGARDING COMPLAINTS REVIEWED

<u>ISC PANEL RECOMMENDATIONS</u> Texas Medical Board June 15, 2017

# **ISC Dismissal's**

CASE #	CLOSE	CONTINUE TO ISC
17-0252	X	
17-0408	X	
17-0536		X
17-0474	X	
17-0251	X	
17-0265	X	
17-0250	X	
17-0004	X X	
17-0331	X	
17-0423	X	
17-0302	X	
17-0491	X	
17-0494	X	
17-0518	X	
17-0514	X	
17-0322	X X	
17-0495	X	
17-0389	X	
17-0439	X	
17-0276	X	
17-0277	X	
17-0361	X	
17-0550	X	
16-0796	X	
17-0424	X	
17-0420	X	
17-0169	X	
17-0237	X	
17-0469	X	
17-0407	X	

17-0355	X	
17-0363	X	
17-0353	X	
17-0446	X	
17-0249	X	
17-0054	X	
17-0382	X	
17-0348	X	
17-0485	X	
17-0490	X	
17-0243	X	
17-0200	X	

Total = 42

# COMPLAINTS REVIEWED PURSUANT TO STAFF CASE # CLOSE CONTINUE TO ISC

17-0163	X	
17-0510	X	
16-0088	X	
16-0958	X	
17-0724	X	
17-0564	X	
16-0896	X	
16-0620		X
17-0305	X	
16-0960	X	
17-0291	X	
17-0130	X	
17-0670	X	
17-0484	X	
17-0486	X	
17-0738	X	
17-0638	X	
16-0901	X	
17-0531	X	
16-0838	X	

Total = 20

# Pre-Approved for Submission/COMPLAINTS REVIEWED PURSUANT TO STAFF CASE # CLOSE CONTINUE TO ISC

17-0561	X	
17-0472	X	
17-0558	X	

Total = 3

SOAH Case Dismissals (To be reviewed by full committee) Also, to have Formal complaint in LF CASE # CLOSE CONTINUE TO ISC

16-0881	X	
11-0465	X	
15-0422	X	

Total = 3

## **TXPHP Dismissals**

CASE # CLOSE CONTINUE TO ISC

		 ,
17-0107	X	
16-0817	X	
16-0926	X	
17-0270	X	
17-0493	X	

Total = 5

### DPRC JUNE 2017

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

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167990	164.051(A)(6)	Χ				
168010	164.052(A)(5)	Χ				
168037	164.051(A)(6)	Х				
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	151.002(A)(13)	X				
	105.002(B)	X				
<del></del>	164.052(A)(5)	X				
+	164.051(A)(6)	Х				
-	164.052(A)(4)	Х				
-	164.051(A)(6)	Х				
	164.051(A)(6)	Х				
	164.052(A)(5)	Х				
-	164.051(A)(6)	Х				
	101.201		Х			
	164.051(A)(6)	Х				
	164.051(A)(6)	Х				
	164.052(A)(5)	Х				
	105.002(B)	Х				
<del></del>	102.001	Х				
172706	164.051(A)(6)	Х				
172712	164.053(A)(1)	Х				
172786	164.051(A)(3)	Х				
172788	159.006	Х				
172805	164.053(A)(6)	X				
172822	164.051(A)(6)	X				
172827	164.053(A)(6)	Х				
172828	164.053(A)(6)	X				
172832	164.051(A)(6)	X				
172834	164.051(A)(6)	Х				
172895	164.052(A)(5)	Х				
172911	164.051(A)(3)	Х				
172921	164.053(A)(9)	Х				
172932	164.052(A)(5)			Χ		
172952	164.051(A)(6)	Х				
172953	164.053(A)(1)	Х				
172960	164.051(A)(6)	Χ				
172992	164.053(A)(1)	Х				
172999	164.052(A)(5)	Х				
173032	159.002	Х				
173036	164.053(A)(6)	Х				
173122	164.052(A)(5)	Х				
	164.053(A)(5)	Х				
	164.052(A)(5)	Х				
	164.053(A)(1)			Х		
-	164.052(A)(5)	Х				
	164.052(A)(4)	Х				
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Log Number	Allegation	dlose	Continue	IS C	Hold	Name
173294	164.052(A)(5)	Х				
173327	105.002(B)	Х				
173328	164.051(A)(6)	Х				
173343	164.051(A)(6)	Х				
173429	164.052(A)(5)	Х				
173430	164.052(A)(5)	Х				
173456	164.051(A)(6)	X				
173457	164.051(A)(6)	Х				
173490	164.052(A)(5)	Х				
173497	164.052(A)(5)	X				
173506	159.006	Х				
173527	164.053(A)(6)	X				
173537	164.053(A)(1)	X				
173640	164.052(A)(5)		х			
173641	164.052(A)(5)	Х				
173652	164.052(A)(5)	Х				
173653	164.053(A)(1)	X				
173662	164.053(A)(1)	Х				
173722	164.051(A)(4)(B)	X				
173726	164.051(A)(9)	X				
173731	164.052(A)(5)	Х				
173815	164.052(A)(5)	Х				
173878	164.052(A)(5)	Х				
173900	164.052(A)(4)	X				
174032	164.052(A)(5)			Χ		
174033	164.052(A)(5)	X				
174072	164.052(A)(5)	Х				
174137	164.052(A)(5)	Х				
174195	164.052(A)(5)	Х				
174279	164.052(A)(4)	Х				
174323	164.051(A)(4)(B)	X				
174482	164.052(A)(5)	X				
174565	56.003	Х				
174566		Х				
174567		Х				
174673	164.051(A)(3)	Х				
174728	105.002(B)			Χ		