

**TEXAS MEDICAL BOARD**  
**MINUTES OF THE**  
**DISCIPLINARY PROCESS REVIEW COMMITTEE**  
June 3, 2010

Chair Melinda McMichael, M.D., called the meeting to order at 1:17 p.m. Other members present were Julie K. Attebury, David Baucom, Patricia S. Blackwell, Pat J. Crocker, D.O., Manuel Guajardo, M.D., Margaret C. McNeese, M.D., Charles Oswalt, M.D., Allan Shulkin, M.D., George Willeford III, M.D., and Irvin E. Zeitler, Jr., D.O.

Also present was Medical Director Alan T. Moore, M.D., Mari Robinson, Executive Director, and various other staff.

**Dr. Zeitler moved, and Dr. McNeese seconded; the motion passed at 1:18 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 2:57 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 #2.** Review, discussion and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 09-1905, 09-1911, 09-2717, 09-4449, 09-4451, 09-5224, 09-5983, 09-6489, 09-6800, 09-7312, 09-7314, 10-0032, 10-0075, ii. Legal Files: 10-0044 (09-4272), and 10-0104 (09-4812); and B. Jurisdictional-Not-Filed Complaints: 09-5178, 10-0434, 10-0898, 10-1109, 10-1111, 10-1665, 10-2230, 10-2306, 10-2368, 10-2442, 10-2814, 10-3145, 10-3229, 10-3279, 10-3303, 10-3304, 10-3327, 10-3426, 10-3511, 10-3602, 10-3612, 10-3730, 10-3762, 10-3847, 10-3930, 10-4041, 10-4043, 10-4083, 10-4344, 10-4552, and 10-4592; and C. Non-Jurisdictional Complaints: 10-1692 and 10-4076.

**Dr. Crocker moved, and Dr. Shulkin seconded that the appeal of Item 2.A.i., Log #09-1905 be denied. Motion carried.**

**Dr. Zeitler moved, and Ms. Blackwell seconded that the appeal of Item 2.A.i., Log #09-7314 be denied and that a custom letter be sent to the Respondent emphasizing the importance of complete documentation of the doctor/patient visit and effective communication concerning treatment and potential drug side effects with the patient and the patients family members/guardian, particularly when its the care of a minor child. Motion failed.**

**Dr. Zeitler moved, and Dr. Crocker seconded that the appeal of Item 2.A.i., Log #09-7314 be granted and that the case be sent back for further investigation. Motion carried.**

**Dr. Oswalt moved, and Dr. Crocker seconded that the appeal of Item 2.A.i., Log #10-0075 be denied. Motion carried.**

**Ms. Attebury moved, and Dr. Zeitler seconded that the appeal of Item 2.B., Log #10-2306 be granted and that an investigation be opened. Also, that a custom letter be sent to the**

hospital named in this case to request that the correct information is given to patients about the payment assistance program(s) available at the hospital. Motion carried.

Dr. Guajardo moved, and Dr. McNeese seconded that the appeal of Item 2.A.i., Log #09-4451 be granted and that the case be returned to the original panel to evaluate the alleged inappropriate sexual contact in this case. Motion carried.

Dr. Zeitler moved, and Dr. McNeese seconded that all other appeals under Agenda Item 2.A.i. not specifically granted above be denied. Motion carried.

Dr. Oswalt moved, and Dr. Willeford seconded that the appeal of Agenda Item 2.A.ii., Logs #10-0044 (09-4272) and #10-0104 (09-4812) be denied. Motion carried.

Dr. Zeitler moved, and Dr. Oswalt seconded that the appeal of Item 2.B., Logs #10-1109 and #10-1111 be granted and that an investigation be opened. Motion carried.

Dr. McNeese moved, and Dr. Zeitler seconded that the appeal of Item 2.B., Log #10-3426 be granted and that an investigation be opened. Motion carried.

Dr. McNeese moved, and Dr. Crocker seconded that the appeal of Item 2.B., Log #10-3511 be granted and that an investigation be opened. Motion carried.

Mr. Baucom moved, and Ms. Attebury seconded that the appeal of Item 2.B., Log #10-4041 be granted and that an investigation be opened. Motion carried.

Dr. Shulkin moved, and Dr. Oswalt seconded that the appeal of Item 2.B., Log #10-4043 be granted and that an investigation be opened. Motion carried.

Dr. Willeford moved, and Dr. Zeitler seconded that all other appeals under Agenda Item 2.B. not specifically granted be denied. Motion carried.

Dr. Willeford moved, and Mr. Baucom seconded that the appeal of Item 2.C., Log #10-1692 be granted and that an investigation be opened. Motion carried.

Dr. Willeford moved, and Dr. Zeitler seconded that all other appeals under Agenda Item 2.C. not specifically granted be denied. Motion carried.

A recess was taken at 3:25 p.m. and the committee returned at 3:31 p.m.

Dr. Zeitler departed the Board room at 3:45 p.m., a quorum still remained.

**Agenda Item #3.** Discussion, recommendation and possible action regarding referrals and reports from the Texas Physician Health Program.

The Executive Director, Dr. Lloyd Garland presented the status of the PHPs current caseload to the DPRC. To date, 189 cases have been referred to the PHP. Dr. Garland discussed the different circumstances of cases the Texas Physician Health Program is currently working.

**Agenda Item #4.** Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the DPRC for follow-up action, specifically including: 06-3544, 08-4145, 09-3186, 10-0007, 10-0080, 10-0104, 10-0262, and 10-0305.

**Dr. Willeford moved, and Dr. Guajardo seconded that Logs #06-3544, #08-4145, and #09-3186 be dismissed. Motion carried.**

**Agenda Item #9.** Discussion, recommendation and possible action regarding the use of electronic death certificates.

**Dr. McNeese moved, and Dr. Crocker seconded that any complaints received in the investigations division where the offense is a respondent failing to use the Texas Electronic Death Registration (TEDR) System and the offense date is 1 September 2008 through 1 October 2009, this type of case will be resolved with a custom letter to the respondent. Motion carried.**

Staff was directed to check the Administrative Penalty Orders previously adjudicated where the offense for failure to use the TEDR System occurred on 1 September 2008 through 1 October 2009. Any cases found with an offense date during this timeframe will be null and void and the respondents penalty monies will be reimbursed.

**Agenda Item #5.** Reports and discussion regarding the Investigation, Litigation and Compliance Departments. Ms. Robinson presented the Enforcement Report for April 2010, a copy of which is attached. This was an informational item only and no vote was necessary.

**Discussion continued on Agenda Item #4.** Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the DPRC for follow-up action.

**Ms. Blackwell moved, and Dr. Shulkin seconded that Logs #10-0007, #10-0080, #10-0104, #10-0262, and #10-0305 be dismissed. Motion carried.**

**Agenda Item #6.** Discussion, recommendation and possible action relating to amendments to the following chapters in Title 22 of the Texas Administrative Code:

- A. Chapter 165, Medical Records, Section 165.1 Medical Records
- B. Chapter 177, Certification of Nonprofit Organizations, Section 177.13 Complaint Procedure Notification
- C. Chapter 179, Investigations, Section 179.4 Request for Information and Records from Physicians
- D. Chapter 180, Texas Physician Health Program and Rehabilitation Orders, Sections 180.2 Definitions, 180.3 Texas Physician Health Program, and 180.4 Operation of Program

E. Chapter 187, Procedural Rules, Sections 187.27 Written Answers in SOAH Proceedings and Default Orders, and 187.81 Reports of Imposition of Administrative Penalty

F. Chapter 190, Disciplinary Guidelines, Section 190.8 Violation Guidelines

**Dr. Willeford moved, and Dr. Oswalt seconded that the revisions presented to the committee that pertain to Agenda Item 6.A. be approved. Motion carried.**

**Dr. Oswalt moved, and Dr. Crocker seconded that the revisions presented to the committee that pertain to Agenda Item 6.B. be approved. Motion carried.**

**Dr. Crocker moved, and Dr. Willeford seconded that the revisions presented to the committee that pertain to Agenda Item 6.C. be approved. Motion carried.**

**Ms. Attebury moved, and Ms. Blackwell seconded that the revisions presented to the committee that pertain to Agenda Item 6.D. be approved. Motion carried.**

**Dr. McNeese moved, and Ms. Blackwell seconded that the revisions presented to the committee that pertain to Agenda Item 6.E. be approved. Motion carried.**

**Ms. Attebury moved, and Ms. Blackwell seconded that the revisions presented to the committee that pertain to Agenda Item 6.F. be approved. Motion carried.**

**Agenda Item #7.** Review, discussion and possible action regarding review of probationers appearances.

**Dr. Oswalt moved, and Dr. Crocker seconded that the waiver list on Agenda Item 7 be approved. Motion carried.**

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

**Ms. Attebury moved, and Ms. Blackwell seconded that the memberships to the Expert Physician Panel on Agenda Item 8 be approved. Motion carried.**

**Agenda Item #10.** Review, discussion, and possible action regarding selected files and cases.

**Dr. Oswalt moved, and Ms. Attebury 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.**

**Agenda Item #11.** Adjourn.

**Dr. McNeese moved, and Ms. Blackwell seconded that the meeting adjourn. Motion carried at 5:13 p.m.**