TEXAS MEDICAL BOARD MINUTES OF THE DISCIPLINARY PROCESS REVIEW COMMITTEE February 12, 2015

Chair Margaret C. McNeese, M.D., called the meeting to order at 11:02 am. Other members present were Julie K. Attebury, David Baucom, Manuel Guajardo, M.D., James "Scott" Holliday, D.O., Allan Shulkin, M.D., Karl W. Swann, M.D., Surendra K. Varma, M.D., Stanley Wang, M.D., and George Willeford III, M.D. Committee Member Michael Arambula, M.D., Pharm.D was not present.

Staff members present were Mari Robinson, Executive Director, Robert Bredt, M.D., Medical Director, and various other staff.

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

The Executive Director, Dr. John B. Fitzwater, presented the status of certain cases in PHP's current caseload to the DPRC for possible referral back to the Board and requested guidance.

Dr. Guajardo moved, and Dr. Varma seconded that PHP Case #1 remain under the management of PHP with the understanding that any future positive tests will result in an automatic referral to the Texas Medical Board for further action. Motion carried.

Mr. Baucom moved, and Dr. Guajardo seconded that PHP Case #2 be returned to the jurisdiction of the Texas Medical Board. Motion carried.

Dr. Varma moved, and Mr. Baucom seconded that PHP Case #3 remain under the management of PHP. Motion carried.

Agenda Item #3. Discussion and possible direction regarding Soberlink and remote alcohol monitoring. (Dr. Bredt)

The committee directed staff to institute the proposed procedure.

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

Dr. Willeford moved, and Mr. Baucom seconded that Licensee #1 be informed that their options are either to agree to change their license status to retired or administrative, or to enter the investigation process, and if there is proof of impairment, proceed to ISC. Motion carried.

Dr. Willeford moved, and Dr. Holliday seconded that no further action be taken on Licensee #2. Motion carried.

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

Ms. Robinson presented the Enforcement Report for December 2014, a copy of which is attached. This was an informational item only and no vote was necessary.

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 176 Health Care Liability Lawsuits and Settlements, §176.1 Definitions.

Dr. Varma moved, and Dr. Holliday seconded that Agenda Item 6.A. §176.1 be approved for publication. Motion carried.

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

Dr. Holliday moved, and Dr. Guajardo seconded that the waiver list on Agenda Item #7 be approved. Motion carried.

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

Dr. Wang moved, and Mr. Baucom seconded that the appointments and denial of members to the Expert Physician Panel be accepted as noted in the attachment. 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, 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 #11. Discussion, recommendation, and possible action regarding routine followup on investigative files previously referred from the DPRC for follow-up action, specifically including: 14-3445, 14-3834. Dr. Varma moved, and Ms. Attebury seconded that follow-up file #14-3445 be dismissed. Motion carried.

Mr. Baucom moved, and Dr. Guajardo seconded that follow-up file #14-3834 be dismissed. Motion carried.

Dr. McNeese moved , and Dr. Shulkin seconded; the motion passed at 12:02 pm 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 12:43 pm, 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.

Dr. Varma moved, and Dr. Shulkin seconded that legal case #13-0853 be dismissed and a letter be sent to the Respondent stating that the only reason it was dismissed was for procedural reasons and that any future infraction will be prosecuted. Staff is to refer the nurse involved in the case to the Nursing Board. Motion carried.

Dr. Willeford moved, and Dr. Wang seconded that legal case #14-0856 be dismissed and a letter sent to the Respondent notifying of such dismissal, but clarifying that it is the position of the Board that Texas law prohibits a physician from delegating the practice of acupuncture to an individual who is not licensed to practice acupuncture. Motion carried.

A lunch recess was taken at 12:55 pm, and the committee returned at 1:25 pm.

Dr. McNeese moved , and Dr. Holliday seconded; the motion passed at 1:26 pm 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 5:46 pm 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: 99-0109, 12-4932, 14-0198, 14-1165, 14-1868, 14-2247, 14-3213, 14-3375, 14-3710, 14-4499, 14-4693, 14-4746, 14-5298, 14-5858, 14-6368, 14-6369, 14-6370, 14-6371, 14-6372; ii. Legal Files: 14-0206 (13-5470), 14-0530 (14-2049), 14-0746 (14-2601), 14-0765 (14-1570). B. Jurisdictional-Not-Filed Complaints: 14-3847, 14-4361, 14-6093, 14-6357, 14-6412, 14-6920, 14-6964, 15-0141, 15-0402, 15-0428, 15-0447, 15-0576, 15-0605, 15-0732, 15-0785, 15-0881, 15-0951, 15-1008, 15-

1015, 15-1029, 15-1086, 15-1087, 15-1088, 15-1154, 15-1217, 15-1227, 15-1234, 15-1279, 15-1332, 15-1361, 15-1416, 15-1527, 15-1792, 15-1808, 15-1820, 15-1824, 15-1929, 15-1946, 15-2003, 15-2073, 15-2180. C. Non-Jurisdictional Complaints: 13-5387, 15-0403.

Dr. Wang recused himself from any discussion and decision regarding Logs #14-3375 and 14-6920.

Dr. Willeford moved, and Dr. Guajardo seconded that the appeal of Item 10.A.i., Log #99-0109 be denied due to lack of admissible records. Motion carried.

Dr. Holliday moved, and Ms. Attebury seconded that the appeal of Item 10.A.i., Log #12-4932 be denied. Motion carried.

Dr. Swann moved, and Dr. Varma seconded that the appeal of Item 10.A.i., Log #14-3375 be granted and sent to a new expert panel to specifically address issues of surgical management of ligament as opposed to ankle fracture and management of immediate post-op symptoms. Motion carried.

Ms. Attebury moved, and Dr. Varma seconded that the appeals of Item 10.A.i., Logs #14-6368, 14-6369, 14-6370, 14-6371, and 14-6372 be denied. Staff is to ascertain if the Respondent in Log No. 14-6368 is still employed in Texas under the FTL. Motion carried.

Dr. Willeford moved, and Dr. Holliday seconded that the appeal of Item 10.A.ii. #14-0530 (14-2049) be denied and a letter sent urging the Respondent to be more vigilant in the future when interacting with a radiology department and to understand the limitations of that department. Staff is to evaluate what the Board can do to try to impact and understand how protocols in hospitals are formed so the Board can try to prevent similar future tragedies.

Dr. Holliday moved, and Dr. Wang seconded to amend the previous motion of the appeal of Item 10.A.ii. #14-0530 (14-2049) to include a referral to the Department of State Health Services. Motion carried. A vote was then held on the motion as amended. Motion carried.

Mr. Baucom moved, and Dr. Varma seconded that the appeal of Item 10.A.ii. #14-0206 (13-5470) be denied. Motion carried.

Dr. Guajardo moved, and Ms. Attebury seconded that the appeal of Item 10.B., Log #14-6093 be granted and an investigation opened solely for the issue of the pre-signed prescriptions and legal consent form issues. As the complainant provided no patient names, attempts should be made to obtain medical records from a five-consecutive-day period, for treatment provided after the year 2008, in the course of the Board's investigation. Motion carried.

Dr. Wang moved, and Mr. Baucom seconded that the appeal of Item 10.B., Log #15-0428 be granted and an investigation opened. Motion carried.

Dr. Holliday moved, and Dr. Shulkin seconded that the appeal of Item 10.B., Log #15-1929 be denied. Motion carried.

Mr. Baucom directed staff to review the appeal of Item 10.B., Log #15-0141 to see if investigations need to be opened on the other licensees involved.

Dr. Varma moved, and Mr. Baucom seconded that all remaining appeals under Agenda Item 10.A.i. be denied. Motion carried.

Dr. Varma moved, and Dr. Willeford seconded that all remaining appeals under Agenda Item 10.A.ii. be denied. Motion carried.

Dr. Holliday moved, and Dr. Guajardo seconded that the appeal of Item 10.B., Log #15-1808 be granted and opened for further investigation. Motion carried.

Dr. Shulkin moved, and Dr. Guajardo seconded that the appeal of Item 10.B., Log #15-1792 be granted and opened to investigation and medical records be obtained. Motion carried.

Mr. Baucom moved, and Ms. Attebury seconded that the appeal of Item 10.B., Log #15-1527 be granted to investigate the issue of no explanation having been provided for the late submission of copies of records requested. Motion carried.

Dr. McNeese moved, and Dr. Guajardo seconded that the appeal of item 10.B., Log #15-1154 be granted, that an investigation be opened, and records from MD Anderson records be obtained. Motion carried.

Dr. Guajardo moved, and Dr. Willeford seconded that all remaining appeals under Agenda Item 10.B. be denied. Motion carried.

Dr. Holliday moved, and Ms. Attebury seconded that all appeals under Agenda Item 10.C. be denied. Motion carried.

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

Dr. Wang recused himself from any discussion and decision regarding Logs #14-6114, 14-6259, and 15-0074.

Dr. Varma moved, and Dr. Guajardo 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 #13. Adjourn.

Dr. Guajardo moved, and Dr. Wang seconded that the meeting adjourn. Motion carried at 6:15 pm.

TMB - Disciplinary Process Review Committee (DPRC) TXPHP - Participant Case Review February 12, 2015

Case #	Remain with PHP	TMB Accepted	Continue
1	X		
2		Х	
3	Х		

DISCIPLINARY PROCESS REVIEW COMMITTEE (DPRC) & DECISIONS

Texas Impaired Licensee Renewals (Concerns regarding Licensee(s) reporting Impairment to the Registrations Department)

February 12, 2015

	REQUEST ADDITIONAL INFORMATION	SEND LICENSEE IMPAIRMENT PACKET	NO FURTHER ACTION	COMMENTS
1. ID# 63223		N7		
Licensee Type: M.D.		X		
(Head & Neck Surgery/Facial Plastic Surgery)				
Background:				
 Referral Reason: Impairment reported on registration Renewal Date: 8/03/2014 Impairment(s) Reported: Diagnosed with cervical disc herniation spinal stenosis and osteo arthritis. 				
<u>lssue(s)</u> :				
8/03/2014: Licensee reported impairment on registration renewal application				
8/12/2014: TMB mailed the Registration Mental and Physical Health form				
9/02/2014: TMB received a response to the Registration Mental and Physical Health form. Licensee reported being diagnosed with cervical disc herniation spinal stenosis and osteo arthritis in September 2012. Surgery was performed the same month and the licensee experienced complications from the surgery which delayed healing. Licensee is currently on disability and withdrew from his medical group in September 2012.				
10/23/2014: TMB received a letter from the treating physician who reported keeping the licensee out of work since the surgery because the cervical corpectomy and fusion had not yet completely fused. The treating physician states that a repeat				

CAT scan is planned once the licensee recovers from a rotator cuff surgery.				
	REQUEST ADDITIONAL INFORMATION	SEND LICENSEE IMPAIRMENT PACKET	NO FURTHER ACTION	COMMENTS
2. ID# 461185			X 7	
Licensee Type: M.D.			X	
(Pediatrics)				
Background:				
 Referral Reason: Impairment initially reported on application in 2005. Impairment(s) Reported: Bipolar disorder 				
<u>lssue(s)</u> :				
5/28/2014: TMB mailed the Registration Mental and Physical Health form				
6/18/2014: TMB received a response to the Registration Mental and Physical Health form. Licensee reported being diagnosed with Bipolar disorder which is well controlled. The prognosis is excellent with a treatment plan of medication and cognitive behavioral therapy once a week and no effect on the Licensee's ability to practice medicine.				
11/6/2014: DPRC requested letters from licensee's treating physicians				
11/25/2014: TMB received a letter from the treating psychologist stating that the licensee has been treated using cognitively based therapy and that the licensee's ability to practice medicine has never been affected by the disorder.				
12/2/2014: TMB received a letter from the treating psychiatrist stating that the licensee has been compliant with treatment and				

is stable on medication. The psychiatrist recommends that the		
licensee continue to work full time as a pediatrician.		

Total = 2

Expert Panel Members for Board Approval February 2015

LAST	FIRST	LIC #	CITY	SPECIALTY
Haque	Ikram	Q1161	Houston	Pediatrics
O'Connor	David	K8389	Austin	Child/Adolescent Psychiatry
Williams-Brown	Marian	N0554	Houston	OB/GYN/GYN Oncology
ID#460878			Austin	Otology/Neutotology
Interim Approval Allison Ehsan	Scott Alex	M6013 M6595	The Woodlands Sherman	Diagnostic Radiology/ Vascular and Interventiional Radiology Internal Medicine/Oncology

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<u>DISCIPLINARY COMMITTEE & DECISIONS REGARDING COMPLAINTS REVIEWED</u> <u>ISC PANEL RECOMMENDATIONS –</u> Texas Medical Board February 12, 2015

ISC Dismissal's

CASE # Close Continue To ISC

CASE #	Close	Continue	10150
14-0774	Х		
15-0098	Х		
14-0938	Х		
15-0010	Х		
15-0178	Х		
14-0230	Х		
15-0021	Х		
14-0873	Х		
15-0023	Х		
15-0037	Х		
15-0082	Х		
15-0019	Х		
15-0032	Х		
15-0001	X		
15-0218	Х		
15-0022	Х		
15-0084	Х		
15-0033	Х		
15-0003	Х		
14-0775	Х		
14-0776	Х		
14-0777	Х		
15-0013	Х		
14-0773	Х		
15-0086	Х		
15-0118	Х		
14-0772	Х		
15-0071		X	
14-0880	Х		
15-0020		X	
15-0065	Х		
15-0099	Х		
15-0006	Х		
15-0043	Х		
14-0872	Х		
15-0031	Х		
14-0560	Х		
15-0116	Х		
15-0027	Х		
15-0163	Х		
14-0856	Х		
Total = 4	1		

SOAH Case Dismissals (To be reviewed by full committee) Also, to have Formal

complaint in LF

CASE # CLOSE CONTINUE TO ISC

13-0853 X

Total = 1

COMPLAINTS REVIEWED PURSUANT TO STAFF

CASE #	CLOSE	CONTINUE	TO ISC
15-0093	X		
15-0156	X		
15-0274	X		
15-0024	X		
15-0150	X		
15-0025	X		
14-0026	X		
15-0149	X		
15-0015	X		
15-0034	X		
14-0812	X		
15-0068	X		
14-0456	X		
15-0064	X		
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Total = 14

PHP Resolved Dismissals

CASE # 0	CLOSE	CONTINUE	TO ISC
14-0631	X		
14-0797	X		
14-0439	Х		
14-0623	X		
14-0804	Х		
14-0662	X		
14-0008	Х		
Total - 7	-		

Total = 7

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

Total : 297

Log Number	Allegation	Close	Continue	ISC	Hold	Name
105736	105.002(B)	\checkmark				
136448	164.051(A)(9)	\checkmark				
140788	164.053(A)(1)	\checkmark				
143049	164.052(A)(5)					
143167	164.051(A)(7)					
143168	164.051(A)(7)	\checkmark				
143445	164.051(A)(6)	1				
143718	101.201	1				
143834	164.051(A)(6)	\checkmark				
144368	164.051(A)(6)	\checkmark				
144455	164.051(A)(6)	J				
144579	164.051(A)(6)	1				
144641	164.051(A)(6)	\checkmark				
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	64.053(A)(6)	\checkmark							
	64.052(A)(5)								
	64.052(A)(5)	\checkmark							
	64.051(A)(6)	\checkmark							
	64.053(A)(1)	\checkmark							
150187 16	64.052(A)(5)	\checkmark							
150202 10	01.201	\checkmark							
150215 16	64.052(A)(4)	\checkmark							· · · ·
150220 10	01.351	1							
150228 10	01.351	\checkmark							
150229 16	64.053(A)(1)	\checkmark							
	64.052(A)(5)	\sim							
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	54.051(A)(6)	$\overline{\checkmark}$						· · · · · · · · · · · · · · · · · · ·	
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	64.053(A)(5)					-		•	
	54.051(A)(4)(D)	/							,
150328 56		./							
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150330 56									
		<u>v</u>	L						

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150332		\checkmark				
150333						
150334	56.003	\checkmark				
150339	56.003	\checkmark				
150340	56.003					
150341	56.003	\mathbf{x}				
150342	56.003			-		
150344	56.003					· · · · · · · · · · · · · · · · · · ·
150345	56.003	- V				
150346					· · · · · · · · · · · · · · · · · · ·	
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150349			. <u></u>			
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150354			· · · · · · · · · · · · · · · · · · ·			
150361		V			· · ·· ·	
	164.053(A)(1)					
	151.002(A)(13)					
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	164.051(A)(6)					
	164.052(A)(4)	V				
	164.053(A)(4)					
150507		\checkmark				
	164.053(A)(8)	\sim				
	164.051(A)(6)	\sim				· · · · · · · · · · · · · · · · · · ·
	164.051(A)(6)	\sim				
150534	164.052(A)(5)	\checkmark				
150540	164.052(A)(5)	\checkmark				
150592	164.051(A)(4)(C)	\checkmark			-	
	164.052(A)(5)	\checkmark				
	164.052(A)(4)					
	164.051(A)(4)(C)	\checkmark				
	164.051(A)(6)					
	164.051(A)(4)(C)	\checkmark				
150756 1	164.052(A)(5)	\checkmark				
150758 1	101.201					
150792	164.051(A)(3)	\checkmark				
150808 1						
150809 1	164.052(A)(5)	\checkmark				
	164.052(A)(5)					
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150893 1						
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Log Number	Allegation	Close	Continue	ISC	Hold	Name
150959	164.052(A)(4)	\checkmark				
151007	164.052(A)(5)					
151019	164.053(A)(1)	\checkmark				
151053	164.052(A)(5)	\checkmark				
	164.051(A)(4)(C)	\checkmark				
151076	164.051(A)(6)	\checkmark				
151089	164.052(A)(5)	\checkmark				
	159.006					
151148	164.051(A)(4)(C)	\checkmark				
151253	101.351					
	101.201	\sim				
151336	151.002(A)(13)					
	164.051(A)(7)	\sim				
	164.051(A)(9)	\sim				
151421	164.052(A)(5)					
	164.052(A)(5)					
151593	164.051(A)(4)(A)	\sim				
	164.053(A)(5)					
	164.052(A)(4)	\checkmark				
	164.052(A)(4)					
	164.052(A)(4)	\sim				
	164.052(A)(4)	\checkmark		-		
	164.052(A)(5)	\sim	· · · · · · · · · · · · · · · · · · ·			
	164.052(A)(4)	\checkmark				
	164.051(A)(4)(D)	\checkmark				
152154	164.051(A)(7)	\checkmark				

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