

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
June 26, 2014

Chair Margaret C. McNeese, M.D. called the meeting to order at 10:43 am. Other members present were Julie K. Attebury, James “Scott” Holliday, D.O., Allan Shulkin, M.D., Karl W. Swann, M.D., George Willeford III, M.D., David Baucom, Stanley Wang, M.D. and Irvin E. Zeitler, Jr., D.O. Committee Member Manuel Guajardo, M.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 PHP’s current caseload to the DPRC. Dr. Fitzwater discussed the different circumstances of cases the Texas Physician Health Program is currently working and requested additional guidance.

Dr. Zeitler moved, and Dr. Holliday seconded that PHP Case #10-0307 remain under the management of PHP. Motion carried.

Ms. Attebury moved, and Dr. Zeitler seconded that PHP Case #12-0278 remain under the management of PHP. Motion carried.

Dr. Holliday moved, and Dr. Willeford seconded that PHP Case #14-0202 be returned to the jurisdiction of the Texas Medical Board. Motion carried.

Dr. Zeitler moved, and Ms. Attebury seconded that PHP Case #11-0220 remain under the management of PHP. Motion carried.

Dr. Zeitler moved, and Ms. Attebury seconded that PHP Case #13-0275 remain under the management of PHP. Motion carried.

Mr. Baucom moved, and Dr. Wang seconded that PHP Case #13-0252 be returned to the jurisdiction of the Texas Medical Board for further action. Motion carried.

PHP Case #12-0170 was presented as a follow up from the May 1 DPRC meeting. This was an informational item only and no vote was necessary.

Agenda Item #3. Discussion, recommendation, and possible action regarding renewals involving impaired licensees.

It was announced by Ms. Robinson that there weren’t any renewal cases to be presented to the DPRC for consideration under Agenda Item 3.

Agenda Item #4. Reports and discussion regarding the Investigation, Litigation and Compliance Departments.

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

Agenda Item #5. 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 182, Use of Experts, §182.8. Expert Physician Reviewers
- B. Chapter 195, Pain Management Clinics, §195.2. Certification of Pain Management Clinics

Dr. Zeitler moved, and Mr. Baucom seconded that Agenda Item 5.A. §182.8 be approved for publication. Motion carried.

Dr. Wang moved, and Mr. Baucom seconded that Agenda Item 5.B. §195.2 be approved for publication. Motion carried.

Agenda Item #6. Discussion and possible direction regarding waivers for PHP transfers who are on an Interim Agreement. (Ms. Robinson)

The committee directed staff to deny waivers for vacation in general, but other extraordinary or compelling circumstances, such as bereavement leave, will be taken into consideration and left to the discretion of the Executive Director.

Agenda Item #7. Consideration and possible direction over the evaluation of expert panelist applications. (Dr. Bredt)

Dr. Bredt presented the proposed policy and procedure related to evaluating expert panelist applications involving medical malpractice claim settlement payments. For medical malpractice claims with aggregate payouts over \$100,000, the applicant will be asked to provide a written explanation. For payouts over \$100,00 but less than or equal to \$250,000, the Medical Director will have the discretion to determine whether the applicant is eligible based upon the applicant's explanation, remediation and timeframe of the paid claim. If the physician's portion of the payment is over the amount of \$250,000, the applicant will be determined ineligible for a panelist position. This will allow the Board to ensure that the most qualified experts are selected using an efficient but thorough process. The board also directed staff that should there be shortages of specialty experts in the future, they would be willing to reconsider this policy.

The committee directed staff to implement that presented policy and procedure, and to report back on any problems with the process encountered

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

Dr. Willeford moved, and Ms. Attebury seconded that the waiver list on Agenda Item 8 be approved. Motion carried.

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

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

Agenda Item #10. 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 #12. Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the DPRC for follow-up action, specifically including: 13-0432, 13-6107, 14-1118, and 14-3936.

Dr. Willeford moved, and Dr. Zeitler seconded that all follow-up files under Agenda Item 12 be dismissed. Motion carried.

Agenda Item #11. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 08-3656, 09-5707, 12-6038, 13-6223, 13-6504, 13-6858, 13-6977, 14-0597, 14-0611, 14-0666, 14-1166, 14-1411, 14-2764; ii. Legal Files: 13-0878 (13-2335), 13-0944 (13-3885), 14-0150 (13-4465), 14-0160 (13-5524), 14-0230 (13-5314), 14-0334 (13-6493). B. Jurisdictional-Not-Filed Complaints: 13-1024, 13-2966, 14-0459, 14-0881, 14-2547, 14-2768, 14-3114, 14-3166, 14-3310, 14-3323, 14-3637, 14-3814, 14-3844, 14-3994, 14-4006, 14-4150, 14-4155, 14-4289, 14-4390, 14-4469, 14-4493, 14-4605. C. Non-Jurisdictional Complaints: 13-2967.

Dr. McNeese moved, and Dr. Willeford seconded that the appeal of Item 11.A.i., Log 13-6858 be denied and a custom letter sent. Motion carried.

Dr. Willeford moved, and Ms. Attebury seconded that the appeal of Item 11.A.ii., Log 14-0160 be granted and sent to a new expert panel. Motion carried.

Dr. Zeitler moved, and Dr. Swann seconded that the appeal of item 11.A.ii., Log 14-0230 be granted and additional information gathered and sent back to the original expert panel. Motion carried.

Dr. McNeese moved, and Dr. Shulkin seconded that the appeal of item 11.A.ii., Log 13-0878 be granted and have additional appeal documentation sent back to expert panel, if violations are found, send snt back to ISC to include the additional information that was sent with the appeal. Motion carried.

Dr. Willeford moved, and Dr. Zeitler seconded that all other appeals under Agenda Item 11.A.i. not specifically granted be denied, with the exception of Logs 09-5707, 13-6223, and 13-6504 which were scheduled to appear. Motion carried.

Mr. Baucom moved, and Ms. Attebury seconded that all other appeals under Agenda Item 11.A.ii. not specifically granted be denied. Motion carried.

Dr. Wang moved, and Dr. Zeitler seconded that the appeal of item 11.B., Log 14-3637 be granted and that an investigation be opened. Motion carried.

Dr. McNeese moved, and Ms. Attebury seconded that the appeal of item 11.B., Log 14-0881 be granted and that an investigation be opened to obtain the autopsy report of the patient. Motion carried.

Dr. McNeese moved, and Dr. Wang seconded that the appeal of item 11.B., Log 14-3323 be granted and that an investigation be opened. Motion carried.

Dr. Wang moved, and Dr. Zeitler seconded that all other appeals under Agenda Item 11.B. not specifically granted be denied, with the exception of Logs 14-4150, 14-4289, 14-4469, and 14-4493 which are scheduled to appear, and Log 14-2768 which has been moved to the August 2014 board meeting as a courtesy to the complainant. Motion carried.

Dr. McNeese moved, and Dr. Zeitler seconded that the appeal of item 11.C., Log 13-2967 be denied. Motion carried.

Dr. Zeitler moved, and Dr. Holliday seconded; the motion passed at 1:02 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) Occupations Code. Open session resumed at 4:30 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Dr. Zeitler moved, and Dr. Shulkin seconded that the appeal of Item 11.A.i., Log 09-5707 be denied. Motion carried.

Dr. Shulkin moved, and Mr. Baucom seconded that the appeal of Item 11.A.i., Log # 13-6223 be granted and sent to back to the same expert panel to consider the appropriateness of the environment where the exam was performed, whether there is adequate equipment and tools to complete the exam and what is the nature of the physician/patient relationship. Motion carried.

Dr. Swann moved, and Dr. Zeitler seconded that the appeal of Item 11.A.i., Log 13-6504 be granted and to obtain subsequent treating provider records. Motion carried.

Dr. Willeford moved, and Dr. Holliday seconded that the appeal of Item 11.B., Log 14-4150 be denied. Motion carried.

Dr. Shulkin moved, and Ms. Attebury seconded that the appeal of Item 11.B., Log 14-4289 be granted to address the appropriateness of the preop evaluation and the physician's understanding of physiology of the procedure. Motion carried.

Dr. Wang moved, and Dr. Holliday seconded the appeal of Item 11.B., Log 14-4469 be granted and that an investigation be opened.

Dr. McNeese moved, and Dr. Zeitler seconded the appeal of Item 11.B., Log 14-4493 be granted to obtain medical and prescribing records from all treating providers and pharmacies involved to determine if there was inappropriate patient termination.

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

Dr. McNeese recused herself from Log No. 14-2562. Dr Wang moved, and Dr. Willeford 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 #14. Adjourn.

Dr. Willeford moved, and Dr. Holliday seconded that the meeting adjourn. Motion carried at 4:40 p.m.