

**TEXAS MEDICAL BOARD**  
**MINUTES OF THE**  
**DISCIPLINARY PROCESS REVIEW COMMITTEE**  
November 5, 2009

Chair Melinda McMichael, M.D., called the meeting to order at 10:07 a.m. Other members present were Julie K. Attebury, David Baucom, Patricia S. Blackwell, Manuel Guajardo, M.D., Charles Oswalt, M.D., Allan Shulkin, M.D., George Willeford III, M.D., and Irvin E. Zeitler, Jr., D.O.. Committee Members Pat J. Crocker, D.O. and Margaret C. McNeese, M.D. were not present.

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

**Dr. Oswalt moved, and Dr. Shulkin seconded; the motion passed at 10:09 a.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 2:07 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: 07-5877, 08-4185, 08-5110, 08-5119, 08-6090, 08-6556, 08-6633, 08-6634, 09-0120, 09-0339, 09-0405, 09-0406, 09-0419, 09-1066, 09-1149, 09-1241, 09-1456, 09-1496, 09-1504, 09-1520, 09-1742, 09-1782, 09-1783, 09-1836, 09-1957, 09-2019, 09-2210, 09-2869, 09-3097, 09-3169, 09-3186, 09-3315, 09-4247, and ii. Legal Files: 08-0506 (08-0306), 09-0289 (08-6410), 09-0304 (09-0309), 09-0375 (08-6346); and B. Jurisdictional Not-Filed Complaints: 07-3996, 09-1460, 09-2922, 09-2923, 09-3354, 09-3579, 09-4023, 09-4827, 09-5398, 09-5705, 09-5730, 09-5866, 09-6112, 09-6396, 09-6794, 09-6831, 09-7095, 09-7469, 10-0128, 10-0202; and C. Non-Jurisdictional Complaints: 09-3738.

**Dr. Oswalt moved, and Dr. Zeitler seconded that the appeal of Item 2.A., Log #09-1520 be denied and that a custom letter be sent to the Respondent reprimanding their poor communication skills with the patient in this case. Motion carried. This motion was amended to include that the Respondent seek medical education on improving communication skills. Motion carried.**

**Dr. Oswalt moved, and Dr. Shulkin seconded that the appeal of Item 2.A., Log #09-3186 be granted and that the case be continued to specifically investigate how the Respondent solicited the Complainants personal information. Motion carried.**

**Dr. Zeitler moved, and Dr. Shulkin seconded that the appeal of Item 2.A., Log #09-3315 be granted and a new panel review be obtained. Motion carried.**

**Dr. McMichael moved, and Dr. Guajardo seconded that the appeal of Item 2.A., Log #09-4247 be denied. Motion carried.**

**Dr. Guajardo moved, and Dr. Zeitler seconded that the appeal of Item 2.A Log #08-0506 (08-0306) be granted and that the case be forwarded to an ISC. Motion carried. This motion also includes the request that the panelist be a gastroenterologist.**

**Dr. Oswalt moved, and Ms. Blackwell seconded that the appeal of Item 2.B., Log #10-0202 be granted and that an investigation be opened. The reviewer of this case is will also make a recommendation about any possible investigation against the anesthesiologist involved in this case. Motion carried.**

**Dr. McMichael moved, and Dr. Zeitler seconded that the appeal of Item 2.B., Log #09-4023 be denied and that a custom letter be sent to the Respondent emphasizing the importance of accurately addressing correspondence sent from the office will ensure proper delivery of any information being mailed. Motion carried.**

**Dr. Guajardo moved, and Dr. Oswalt seconded that the appeal of Item 2.A., Log #08-6556 be denied. Motion carried.**

**Dr. Zeitler moved, and Dr. Shulkin seconded that the appeal of Item 2.A., Logs #09-0405 and #09-0406 be denied. Motion carried.**

**Dr. McMichael moved, and Dr. Oswalt seconded that the appeal of Item 2.A., Log #09-1241 be denied. Motion carried.**

It was announced by Mari Robinson that Agenda Items 2.A., Log numbers 09-1504, 09-1782, 09-1783, and 09-2210 would be moved to the February DPRC Agenda as a courtesy to the complainants. A custom letter will be sent to each Complainant to notify them that a decision will be made on their case in February 2010 whether the Complainant personally appears before the committee or not.

**Discussion continued on Agenda Item #2.** Review, discussion and possible action regarding appeals of dismissed complaints.

**Dr. Shulkin moved, and Dr. Oswalt seconded that the appeal of Item 2.A., Log #08-4185 be granted and that a new investigation be opened against the psychiatrist in this case. Motion carried.**

**Dr. Willeford moved, and Ms. Attebury seconded that the appeal of Item 2.A., Log #09-1957 be granted and that the original panel review the use of the EMR system as it relates to this case. Motion carried.**

**Dr. Oswalt moved, and Dr. Guajardo seconded that the appeal of Item 2.A., Log #09-0339 be granted and that a new panel review be obtained to evaluate the possible fraudulent billing issues in this case. Motion carried.**

**Ms. Attebury moved, and Dr. Oswalt seconded that the appeal of Item 2.A Log #09-0304 (09-0309) be granted and that the case be forwarded to an ISC. Motion carried.** Dr. Shulkin and Dr. McMichael recused themselves from any discussion and decision regarding this case. Dr. Zeitler acted as chair for the review of this item.

**Dr. Willeford moved, and Dr. Guajardo seconded that the appeal of Item 2.A, Logs #08-6633 and 08-6634 be granted and that a new panel review be obtained to investigate how the patients problem should have been resolved and the approach taken by the Respondent to correct the medical dilemma. Motion carried.** Dr. McMichael recused herself from any discussion and decision regarding this case. Dr. Zeitler acted as chair for the review of this item.

**Dr. Oswalt moved, and Dr. Willeford seconded that all other appeals under Item 2.A. not specifically granted above be denied. Motion carried.**

**Mr. Baucom moved, and Ms. Attebury seconded that all other appeals under Item 2.B. not specifically granted above be denied. Motion carried.**

**Dr. McMichael moved, and Dr. Zeitler seconded that the appeal of Item 2.C., Log #09-3738 be denied. Motion carried.**

**Agenda Item #3.** Discussion, recommendation, and possible action regarding routine follow-up on investigative files, previously referred from the DPRC for follow-up action, specifically including: 05-2068, 07-6398, 09-2851, and 09-2968.

**Dr. Willeford moved, and Ms. Blackwell seconded that Log #05-2068 be dismissed. Motion carried.**

**Dr. Guajardo moved, and Dr. McMichael seconded that Log #07-6398 be dismissed. Motion carried.**

**Dr. Willeford moved, and Ms. Attebury seconded that Log #09-2851 be dismissed. Motion carried.**

**Dr. Willeford moved, and Dr. Zeitler seconded that Log #09-2968 be dismissed. Motion carried.**

**Agenda Item #4.** Reports and discussion regarding the Investigation, Litigation and Compliance Departments. Ms. Robinson presented the Enforcement Reports for August, September, and October 2009, copies of which is attached. This was an informational item only and no vote was necessary.

**Agenda Item #5.** Discussion and possible direction regarding the processing of potentially minor compliance violations or compliance violations with mitigating factors.

**Dr. Willeford moved, and Ms. Attebury seconded that any minor compliance violations or compliance violations with mitigating factors can be handled internally by staff via a brief note/record of the incident versus a full report that the DPRC would later approve; this action will be monitored by the Manager of Compliance and Executive Director. Motion carried.**

**Agenda Item #6.** Review, discussion and possible action regarding review of probationers appearances. (Presented by Ms. Robinson).

**Ms. Attebury moved, and Dr. Shulkin seconded that all waivers on Agenda Item 6, except for the waiver of Order #09-176 be approved. Motion carried.**

**Agenda Item #7.** Consideration and approval of appointments to the Expert Physician Panel.

**Ms. Blackwell moved, and Dr. Shulkin seconded that the appointments to the Expert Physician Panel on Agenda Item 7 be approved. Motion carried.**

**Dr. Zeitler moved, and Ms. Attebury seconded; the motion passed at 3:11 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 3:59 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 #8.** Review, discussion, and possible action regarding selected files and cases.

**Dr. Zeitler moved, and Ms. Blackwell 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 #9.** Adjourn.

**Dr. Guajardo moved, and Dr. Zeitler seconded that the meeting adjourn. Motion carried at 4:00 p.m.**