

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
August 26, 2010

Chair Melinda McMichael, M.D., called the meeting to order at 8:37a.m. Other members present were Julie K. Attebury, David Baucom, Patricia S. Blackwell, Pat J. Crocker, D.O., Manuel Guajardo, M.D., Charles Oswalt, M.D., Allan Shulkin, M.D., and George Willeford III, M.D.. Committee Members Margaret C. McNeese, M.D. and Irvin E. Zeitler, Jr., D.O. were not present.

Also present was Mari Robinson, Executive Director, and various other staff.

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

The Presiding Officer, Dr. John Jackson, and Executive Director, Dr. Lloyd Garland presented the status of the Texas Physician Health Programs current caseload to the DPRC. As of August 20, 2010, 264 cases have been referred to the PHP. Dr. Jackson and Dr. Garland discussed the different types of referrals and the status of the cases the PHP has worked since February 2010 to present.

The TX PHP asked for guidance from the DPRC reference a case that involved the supervisor of a Respondent that cooked a meal that contained alcohol and the Respondent unknowing ate the meal and had a positive EtG test result.

Dr. Oswalt moved, and Dr. Crocker seconded that at this time the case described above, case #0221, will remain under the management of the TX PHP versus being returned to the DPRC for disciplinary action. Motion carried.

Non-disciplinary agreed ordered cases where the Respondent is in 100% compliance can be switched from the TMB program to the TX PHP, but in order to do this a termination order must be first approved by the board. In order to increase efficiency within this process, the DPRC will ask the board to delegate authority to Dr. McMichael and Dr. Zeitler to review and decide on these type of cases on behalf of the DPRC.

Staff is directed to allow staff members working with Ms. Robinson to make the decision on behalf of the DPRC to go forward with board disciplinary actions when the Respondent relapses while a participant in the Texas Physician Health Program.

It was announced that Dr. John Jackson has stepped down as the Presiding Officer of the TX PHP, but will continue as a member of the TX PHP staff. The new Presiding Officer will be Dr. Allison Jones.

Agenda Item #3. Discussion recommendation, and possible action regarding routine follow-up on investigative files previously referred from DPRC for follow-up action, specifically including:

07-0757, 08-5959, 08-6633, 09-0901, 09-1486, 09-1957, 09-2932, 09-4451, 09-7314, 10-0499 (07-5994), and 10-1932.

Ms. Blackwell moved, and Dr. Crocker seconded that Log #07-0757 be dismissed. Motion carried.

Ms. Attebury moved, and Dr. Guajardo seconded that Log #08-5959 be dismissed. Motion carried.

Dr. Willeford moved, and Mr. Baucom seconded that Log #08-6633 be dismissed. Motion carried.

Dr. Oswalt moved, and Dr. Willeford seconded that Log #09-0901 be dismissed. Motion carried.

Dr. Willeford moved, and Dr. Guajardo seconded that Log #09-1486 be dismissed. Motion carried.

Mr. Baucom moved, and Ms. Blackwell seconded that Log #09-1957 be dismissed. Motion carried.

Dr. Oswalt moved, and Dr. Crocker seconded that Log #09-2932 be dismissed. Motion carried.

Ms. Blackwell moved, and Dr. Willeford seconded that Log #09-4451 be dismissed. Motion carried.

Dr. Oswalt moved, and Dr. Shulkin seconded that Log #09-7314 be dismissed. Motion carried.

Dr. Willeford moved, and Ms. Blackwell seconded that Log #10-0499 (07-5994) be granted and the case be referred to an ISC. Motion carried.

Dr. Willeford moved, and Dr. Guajardo seconded that Log #10-1932 be dismissed. Motion carried.

Agenda Item #4. Discussion and possible direction regarding proposed testing protocol changes.

Staff was directed to incorporate the Blood Phosphatidyl ethanol test as a confirmation level test in addition to the other testing procedures that are currently in place. This test will be utilized after there has been a total of three positive EtS and/or EtG alcohol test results.

A recess was taken at 10:25 a.m. and the committee returned at 10:37 a.m.

Ms. Attebury moved, and Dr. Oswalt seconded; the motion passed at 10:38 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 2:28 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 #13. Review, discussion and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 08-4290, 09-5293, 09-5320, 09-5688, 09-5872, 09-5873, 09-6484, 09-7190, 10-1268, ii. Legal Files: 08-0349 (07-3658), 09-0746 (09-1142). B. Jurisdictional Not Filed Complaints: 07-3859, 08-0661, 10-1266, 10-1267, 10-1467, 10-1829, 10-2409, 10-2411, 10-2412, 10-2413, 10-2414, 10-2415, 10-2416, 10-2919, 10-3029, 10-3148, 10-3649, 10-3778, 10-3909, 10-3963, 10-4011, 10-4117, 10-4122, 10-4184, 10-4188, 10-4590, 10-4607, 10-4704, 10-4903, 10-5066, 10-5221, 10-5251, 10-5290, 10-5339, 10-5483, 10-5607, 10-5679, 10-5728, 10-5753, 10-5854, 10-5878, 10-6406, 10-6407; and C. Non-Jurisdictional Complaints: 07-2933, 10-5448, 10-5486, and 10-6526. **Dr. Oswalt recused himself from any discussion and decision regarding Log #09-5293. Dr. McMichael recused herself from any discussion and decision regarding Log #10-1829.**

Dr. Willeford moved, and Mr. Baucom seconded that the appeal of Item 13.A.i., Log #09-5688 be denied and that a custom letter be sent to the Respondent requesting that they explain to the parent(s) the treatment that was given to the minor child involved in this case and that at a later date, (after the Respondent received the custom letter), the family might arrange a face-to-face meeting with the Respondent. Motion carried.

Dr. Shulkin moved, and Dr. Crocker seconded that the appeal of Item 13.A.i., Log #10-1268, along with companion files appeal Items 13.B., Log #10-1266 and Log#10-1267, be denied. Motion carried.

Dr. Oswalt moved, and Dr. Guajardo seconded that the appeal of Item 13.A.ii., Log #08-0349 (07-3658) be denied. Motion carried.

Dr. Oswalt moved, and Mr. Baucom seconded that the appeal of Item 13.A.ii., Log #09-0746 (09-1142) be denied and that a custom letter be sent to the Respondent informing them that the DPRC believes the Complainant in this case and that this case isnt currently being pursued because over three decades has elapsed since the allegation; but, if another complaint of this nature is made against this Respondent in the future, it will be considered a potential pattern of misconduct/practice and the details of this case will be revealed at that time in conjunction with the new case. A memorandum of record summarizing the information that will be contained in the custom letter sent to the Respondent will be provided to the Complainant. Motion carried.

Dr. Crocker moved, and Ms. Blackwell seconded that the appeal of Item 13.B., Log #10-4184 be granted and that an investigation be opened to review the possibility of a pattern of practice in this case and the accusations of the other two cases that are associated with this complaint. Motion carried.

Dr. Willeford moved, and Dr. Crocker seconded that the appeal of Item 13.B., Log #10-4188 be granted and that an investigation be opened. Motion carried.

Dr. Oswalt moved, and Dr. McMichael seconded that the appeal of Item 13.B., Log #10-4122 be granted and that an investigation be opened. Motion carried.

Dr. Crocker moved, and Dr. Willeford seconded that the appeal of Item 13.B., Log #10-4011 be granted and the case be returned to a pending determination status for an additional 30-days while waiting for a response from the Respondent in this case. Motion carried.

Dr. McMichael moved, and Ms. Attebury seconded that the appeal of Item 13.B., Log #10-4903 be granted and the case be returned to a pending determination status for an additional 30-days while waiting for a response from the Respondent in this case. Motion carried.

Dr. McMichael moved, and Dr. Willeford seconded that the appeal of Item 13.B., Log #10-5221 be granted and that an investigation be opened. Motion carried.

Dr. Willeford moved, and Ms. Attebury seconded that the appeal of Item 13.B., Log #10-5854 be granted and the case be returned to a pending determination status for an additional 30-days while waiting for a response from the Respondent in this case. Motion carried.

Mr. Baucom moved, and Ms. Blackwell seconded that the appeal of Item 13.C., Log #10-6526 be granted and the case be returned to a pending determination status for an additional 30-days while waiting for a response from the Respondent in this case. Motion carried.

Dr. Willeford moved, and Dr. Crocker seconded that all other appeals under Agenda Item 13.A. not specifically granted above be denied. Motion carried.

Dr. Willeford moved, and Dr. Shulkin seconded that all other appeals under Agenda Item 13.B. not specifically granted above be denied. Motion carried.

Mr. Baucom moved, and Dr. Crocker seconded that all other appeals under Agenda Item 13.C. not specifically granted above be denied. Motion carried.

It was announced by Mari Robinson that Agenda Item 13.B., Log #10-5066 would be moved to the October DPRC Agenda as a courtesy to the complainant. A custom letter will be sent to the Complainant to notify them that a decision will be made on their case in October 2010 whether the Complainant personally appears before the committee or not.

A recess was taken at 3:07 p.m. and the committee returned at 3:15 p.m.

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

Agenda Item #6. Discussion and possible direction regarding custom letter pertaining to appeal of Log #10-2306 that was previously reviewed June 3, 2010.

The Committee accepted the draft of the letter as presented for mailing to the designated party.

Agenda Item #7. Consideration and approval of the June 3, 2010, Disciplinary Process Review Committee Meeting Minutes.

Ms. Blackwell moved, and Dr. Crocker seconded to approve the June 3, 2010, DPRC Meeting Minutes and Action Items summary. Motion carried.

Agenda Item #8. Review, discussion and possible action regarding review of probationers appearances.

Ms. Attebury moved, and Dr. Crocker 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 Ms. Blackwell seconded that the memberships to the Expert Physician Panel on Agenda Item 9 be approved. Motion carried.

Agenda Item #11. Discussion and possible direction related to dismissal of investigative files between scheduled Board Meetings.

The Committee directed staff to make arrangements that will allow committee members to dismiss cases between Board meetings. Final approval of these dismissals will be during the next scheduled Board meeting. A proposed solution will be presented at the October 2010 Board meeting.

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

Dr. Willeford moved, and Dr. Crocker 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.

The committee unanimously agreed that all Administrative Penalties be accepted as written and attached.

Ms. Attebury moved, and Dr. Shulkin seconded; the motion passed at 3:50 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 4:03 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 #10. Discussion and possible direction related to transition of care.

Dr. Snoots informed the DPRC that there is a problem with the transition of patients medical records from the emergency room back to the patients primary care physician, or from doctor to doctor, for example.

The Committee directed staff to gather information and determine the need to possibly create a rule and/or subcommittee to address this issue of transition of care and present the scenario at the October 2010 Board meeting.

Agenda Item #14. Adjourn.

Dr. Willeford moved, and Dr. Oswalt seconded that the meeting adjourn. Motion carried at 4:54 p.m.