

**TEXAS MEDICAL BOARD**  
**MINUTES OF THE**  
**DISCIPLINARY PROCESS REVIEW COMMITTEE**  
June 7, 2012

Chair Melinda McMichael, M.D., called the meeting to order at 9:51 a.m. Other members present were, Manuel Guajardo, M.D., James Scott Holliday, D.O., Margaret C. McNeese, M.D., Allan Shulkin, M.D., Stanley S. Wang, M.D., George Willeford III, M.D. and temporary public committee member Timothy Webb. Committee Members Julie K. Attebury, David Baucom, Patricia S. Blackwell 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 Executive Director, Dr. Bill Nemeth presented four cases that the Texas Physician Health Program is currently working and requested additional guidance on.

**Dr. Holliday moved, and Mr. Webb seconded that PHP Case #11-0176 be returned to the jurisdiction of the Texas Medical Board and that the Respondent be scheduled for an ISC. Motion carried.**

**Dr. Holliday moved, and Mr. Webb seconded that PHP Case #12-0162 be returned to the jurisdiction of the Texas Medical Board and that the Respondent be scheduled for an ISC. Motion carried.**

**Dr. McNeese moved, and Dr. Wang seconded that PHP Case #11-0215 remain under the management of the PHP and that the DPRC be updated on the Respondents progress at the August 2012 DPRC. At that time the possibility of the Respondent returning to practice sooner than six months from the last day of treatment will be decided based on the progress report received. Motion carried.**

**A report was given on PHP Case #12-0212 but no action was needed at this time.**

**Agenda Item #3.** Discussion and possible direction regarding resolution of cases referred by Texas Physician Health Program.

Staff was directed that in cases where the DPRC sends a case to an ISC based on a referral from the PHP, a public Board Order is the appropriate remedy when a violation is found. The Executive Director of the TX PHP will be available for testimony at these types of ISCs either in person or via telephone. The current TX PHP cases that have been directed back to PHP as a private referral will be scheduled and reheard at an ISC.

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

Ms. Robinson presented the Enforcement Report for April 2012, 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 chapters in Title 22 of the Texas Administrative Code:

A. Chapter 187, Procedural Rules, Section 187.83. Proceedings for Cease and Desist Orders

B. Chapter 189, Compliance Program

**Dr. McNeese moved, and Dr. Shulkin seconded that Agenda Item 5.A. be accepted for publication in the Texas Register. Motion carried.**

**Dr. Guajardo moved, and Dr. McNeese seconded that Agenda Item 5.B. be accepted for publication in the Texas Register. Motion carried.**

**Agenda Item #6.** Review, discussion, and possible action regarding review of probationers appearances.

**Dr. Shulkin moved, and Dr. Guajardo seconded that the waiver list on Agenda Item 6 be approved. Motion carried.**

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

**Dr. Wang moved, and Dr. McNeese seconded that the memberships to the Expert Physician Panel on Agenda Item 7 be approved. Motion carried.**

**Agenda Item #8.** 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, approximately 100 investigations cases and 800 legal cases which are pending at SOAH that fall under this category. This was an informational item only and no vote was necessary.

**Agenda Item #10.** Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from DPRC for follow-up action.

**Dr. Guajardo moved, and Dr. Wang seconded that Log #09-2765 be dismissed. Motion carried.**

A recess was taken at 10:57 a.m. and the committee returned at 11:08 a.m.

**Agenda Item #11.** Review, discussion, and possible action regarding selected files and cases.

**Dr. McNeese moved, and Mr. Webb seconded; the motion passed at 11:09 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 3:32 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made. Dr. Holliday recused himself from any discussion and decision regarding Log #12-1325, 12-1326 and 12-4050.**

**Agenda Item #9.** Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 10-1151, 11-3153, 11-4003, 11-5021, 11-5143, 11-8395, 12-0104, 12-0257, 12-1424, 12-1787, and 12-2086, ii. Legal Files: 11-1100 (11-1187). B. Jurisdictional Not Filed Complaints: 11-5002, 11-5005, 12-1325, 12-1326, 12-1617, 12-2031, 12-2032, 12-2610, 12-2717, 12-2769, 12-2770, 12-2940, 12-2941, 12-3132, 12-3358, 12-3904, 12-3984, 12-4012, 12-4050, 12-4525, 12-4838, and 12-5131.

It was announced by Mari Robinson that Agenda Item 9.A.i. Log #11-3153 and 12-3132 would be moved to the August 2012 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 August 2012 whether they personally appear before the committee or not.

A lunch recess was taken at 12:46 p.m. and the committee returned at 1:12 p.m.

**Dr. Shulkin moved, and Dr. Willeford seconded that the appeal of Item 9.A.i., Log #11-8395 be granted for further investigation concerning the patients allergy. Motion carried.**

**Dr. Guajardo moved, and Dr. Shulkin seconded that the appeal of Item 9.A.i., Log #12-0257 be granted to evaluate the medical treatment of all the children of this family by this Respondent, and to review the prescriptions written to the nurse in this case. Motion carried.**

**Dr. McNeese moved, and Dr. Holliday seconded that all other appeals under Agenda Item 9.A.i not specifically granted above be denied. Motion carried.**

**Dr. Willeford moved, and Dr. McNeese seconded that the appeal of Item 9.A.ii., Log #11-1100 (11-1187) be denied and that a custom letter be sent to the Respondent in regards to effective communication, treatment, and respect of the patient and the patients family members. Motion carried.**

**Dr. Shulkin moved, and Dr. Wang seconded that the appeal of Item 9.B., Log #12-1325 and 12-1326 be granted and that an investigation be opened to include a review of the performance of the PA mentioned in these two cases. Motion carried. Dr. Holliday recused himself from any discussion and decision regarding Log #12-1325 and 12-1326.**

**Dr. Willeford moved, and Dr. Guajardo seconded that the appeal of Item 9.B., Log #12-1617 be denied. Motion carried.**

**Dr. Wang moved, and Dr. Shulkin seconded that the appeal of Item 9.B., Log #12-2031 and 12-2032 be granted and that an investigation be opened. Motion carried.**

**Dr. McNeese moved, and Dr. Holliday seconded that the appeal of Item 9.B., Log #12-2769 and 12-2770 be granted and that an investigation be opened to specifically examine the response time to the nurse pages in each case. Motion carried.**

**Dr. Guajardo moved, and Dr. Shulkin seconded that the appeal of Item 9.B., Log #12-4012 be denied. Motion carried.**

**Dr. Wang moved and then withdrew his motion to deny the appeal of Item 9.B., Log #12-4050. Dr. Willeford moved, and Dr. Wang seconded that the appeal of Item 9.B., Log #12-4050 be case be granted and returned to a pending determination status for an additional 45-days while waiting for a response from the Respondent in this case. Motion carried. Dr. Holliday recused himself from any discussion and decision regarding Log #12-4050.**

**Mr. Webb moved, and Dr. Willeford seconded that the appeal of Item 9.B., Log #12-4525 be granted and the case be returned to a pending determination status for an additional 45-days while waiting for a response from the Respondent in this case. Motion carried.**

**Dr. Willeford moved, and Dr. Wang seconded that the appeal of Item 9.B., Log #12-5131 be granted and that an investigation be opened. Motion carried.**

**Mr. Webb moved, and Dr. Guajardo seconded that all other appeals under Agenda Item 9.B. not specifically granted above be denied. Motion carried.**

**Discussion continued on Agenda Item #11. Review, discussion, and possible action regarding selected files and cases.**

**Dr. McNeese 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 #12. Adjourn.**

**At 3:50 p.m., Dr. McMichael announced the meeting was adjourned, there were no objections.**