

**TEXAS MEDICAL BOARD**  
**MINUTES OF THE**  
**DISCIPLINARY PROCESS REVIEW COMMITTEE**  
October 28, 2010

Chair Melinda McMichael, M.D., called the meeting to order at 10:55 a.m. Other members present were Julie K. Attebury, David Baucom, Pat J. Crocker, D.O., Manuel Guajardo, M.D., Charles Oswalt, M.D., Allan Shulkin, M.D., and George Willeford III, M.D.. Patricia S. Blackwell and Margaret C. McNeese, M.D. arrived at 10:58 a.m. Committee Member Irvin E. Zeitler, Jr., D.O. was 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. Lloyd Garland introduced the new Presiding Officer, Dr. Allison Jones and presented the status of the PHP's current caseload to the DPRC. To date, 316 cases have been referred to the PHP. Details of the TX PHP report was presented, a copy of which is attached. This was an informational item only and no vote was necessary.

Dr. Garland also discussed three specific cases that the Texas Physician Health Program wanted to bring to the attention of the DPRC.

**Dr. Crocker moved, and Ms. Attebury seconded that TX PHP case #10-0221 remain under the management of the Texas Physician Health Program. Motion carried.**

**Dr. Willeford moved, and Dr. McNeese seconded that TX PHP case #10-0212 remain under the management of the Texas Physician Health Program, that the Respondent attend the currently scheduled evaluation, and that the DPRC be updated on the Respondents progress/decline at the next DPRC meeting in February 2011. Motion carried.**

The TX PHP has been having trouble with the submission of samples to First Advantage for drug testing because not all respondents are able to submit a sample by 3 p.m. on the day that they are notified of the drug test. Staff is directed to reconsider the current rule that says drug testing samples must be submitted by 3 p.m. and possibly extend the time of submission of these samples until the laboratorys close of business on the same day that the respondent is notified that they need to be tested.

**Agenda Item #3.** Reports and discussion regarding the Investigation, Litigation and Compliance Departments.

Ms. Robinson presented the Enforcement Report for August 2010, a copy of which is attached. This was an informational item only and no vote was necessary.

A recess was taken at 12:12 p.m. and the committee returned at 12:22 p.m.

**Agenda Item #4.** Discussion, recommendation and possible action regarding Rule Review and proposed changes to Chapter 187, Procedural Rules, in Title 22 of the Texas Administrative Code:

- A. Subchapter A, 187.8. Subpoenas
- B. Subchapter B, 187.14. Informal Resolution of Disciplinary Issues Against a Licensee
- C. Subchapter C, 187.27. Written Answers in SOAH Proceedings and Default Orders
- D. Subchapter F, 187.55. Purpose, and 187.59. Evidence
- E. Subchapter G, 187.70. Purposes and Construction, 187.71. Hearing before a Panel of Board Representatives, and 187.72. Decision of the Panel

**Ms. Attebury moved, and Ms. Blackwell seconded that the revisions presented to the committee that pertain to Agenda Items 4.A. thru 4.D. above be accepted for publication in the Texas Register. Motion carried.**

**Dr. Oswalt moved, and Dr. Willeford seconded that the revisions presented to the committee that pertain to Agenda Item 4.E. above not be accepted for publication. Motion carried.**

**Ms. Attebury moved, and Ms. Blackwell seconded; the motion passed at 1:03 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 3:45 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made. Dr. McMichael recused herself from any discussion and decision regarding Log #10-5440.**

**Agenda Item #12.** Review, discussion and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 09-4651, 09-4810, 09-5184, 09-5485, 09-6344, 09-7212, 10-1809, 10-1810, 10-3780, 10-3999, 10-5234, ii. Legal Files: 10-0140 (08-6787), and 10-0439 (09-4937). B. Jurisdictional-Not-Filed Complaints: 10-4145, 10-5066, 10-5178, 10-5211, 10-5435, 10-5439, 10-5440, 10-5479, 10-5487, 10-5902, 10-5905, 10-6159, 10-6160, 10-6170, 10-6236, 10-6238, 10-6245, 10-6321, 10-6378, 10-6545, 10-6546, 10-6574, 10-6584, 10-6593, 10-6636, 10-6671, 10-6791, 10-6838, 10-7192, and 11-0016.

**Dr. Oswalt moved, and Dr. Shulkin seconded that the appeal of Item 12.A.ii., Log #10-0140 (08-6787) be denied. Motion carried.**

**Dr. Willeford moved, and Dr. McNeese seconded that the appeal of Item 12.B., Log #10-5066 be denied. Motion carried.**

**Dr. Willeford moved, and Dr. Crocker seconded that the appeal of Item 12.B., Log #10-6584 be denied. Motion carried. Dr. McMichael opposed this motion.**

**Dr. Guajardo moved, and Ms. Blackwell seconded that the appeal of Item 12.B., Log #10-5440 be denied. Motion carried. Dr. McMichael recused herself from the decision in this matter.**

**Dr. Crocker moved, and Dr. Oswalt seconded that the appeal of Item 12.B., Log #10-5487 be denied with a custom letter to be sent to the physicians involved in this case. Motion carried.**

**Dr. McNeese moved, and Dr. Crocker seconded that the appeal of Item 12.B., Log #10-6671 be granted and that an investigation be opened. Motion carried.**

**Dr. Shulkin moved, and Dr. McNeese seconded that the appeal of Item 12.B., Log #10-6838 be granted and that an investigation be opened. Motion carried. Dr. Oswalt opposed this motion.**

**Dr. Willeford moved, and Dr. Crocker seconded that the appeal of Item 12.A.ii., Log #10-0439 (09-4937) be granted and that a new ISC be scheduled. Motion carried.**

**Dr. Oswalt moved, and Ms. Attebury seconded that the appeal of Item 12.A.i., Log #09-4651 be granted and that a new expert review be obtained. Motion carried.**

**Ms. Attebury moved, and Dr. McNeese seconded that all other appeals under Agenda Item 12.A.i not specifically granted above be denied. Motion carried.**

**Dr. McMichael moved, and Ms. Blackwell seconded that the appeal of Item 12.B., Log #10-5178 be returned to a pending determination status for an additional 30-days while waiting for a response from the Respondent and the medical records associated with this case. Motion carried.**

**Ms. Blackwell moved, and Dr. Oswalt seconded that the appeal of Item 12.B., Log #11-0016 be granted and that an investigation be opened. Motion carried.**

**Dr. Oswalt moved, and Ms. Blackwell seconded that all other appeals under Agenda Item 12.B. not specifically granted above be denied. Motion carried.**

**Agenda Item #6.** Review, discussion and possible direction regarding policy for drug testing level/color change after a positive test result and an ISC has been held.

**Ms. Attebury moved, and Ms. Blackwell seconded that after an ISC is held the drug testing color/level change of the respondents status should be raised up to three levels if a finding that a violation occurred is entered by the board. Motion carried.**

**Agenda Item #5.** Discussion and possible direction regarding proposed testing protocol changes.

**Dr. Oswalt moved, and Dr. Guajardo seconded that the current TMB testing protocol be amended to allow a Probationer to elect to be observed by an opposite-sex observer. Motion carried.**

**Agenda Item #7.** Review, discussion and possible action regarding review of probationers appearances.

**Dr. Oswalt moved, and Ms. Blackwell 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. McNeese moved, and Ms. Blackwell seconded that all memberships on Agenda Item 8, except for the membership of License #N0733, be accepted. 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, there are approximately 700 investigations that fall under this category; the majority being SOAH cases and then the backlog of FY 2009 cases that are pending expert panel review. This was an informational item only and no vote was necessary.

**Agenda Item #10.** Discussion and possible direction regarding Office Based Anesthesia.

Staff was directed to have cases of this nature reviewed by the incoming Medical Director.

**Agenda Item #11.** Discussion and possible direction related to transition of care.

Staff was directed to delay making a rule regarding transition of care until a final decision has been made by the Joint Accreditation Commission.

**Agenda Item #13.** Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from DPRC for follow-up action.

**Dr. Willeford moved, and Dr. Crocker seconded that Log #06-2506 be dismissed. Motion carried.**

**Dr. Willeford moved, and Dr. McNeese seconded that Log #09-0440 be dismissed. Motion carried.**

**Dr. Willeford moved, and Dr. Crocker seconded that Log #09-5849 be dismissed. Motion carried.**

**Dr. Willeford moved, and Ms. Blackwell seconded that Log #09-6584 be dismissed and that a custom letter be sent to the Respondent. Motion carried.**

**Ms. Attebury moved, and Dr. McNeese seconded; the motion passed at 4:53 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 5:28 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 #14.** Review, discussion, and possible action regarding selected files and cases. **Ms. Blackwell moved, and Dr. McNeese 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 #15.** Adjourn.

**Ms. Blackwell moved, and Dr. McNeese seconded that the meeting adjourn. Motion carried at 5:29 p.m.**