#### TEXAS MEDICAL BOARD MINUTES OF THE DISCIPLINARY PROCESS REVIEW COMMITTEE August 27, 2015

Chair Julie K. Attebury, called the meeting to order at 10:30 a.m. Other members present were, Allan Shulkin, M.D., Karl W. Swann, M.D., Surendra K. Varma, M.D., Stanley Wang, M.D., and George Willeford III, M.D. Committee Members Michael Arambula, M.D., Pharm.D, Margaret C. McNeese, M.D., David Baucom, James "Scott" Holliday, D.O., and Manuel Guajardo, M.D., were 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 certain cases in PHP's current caseload to the DPRC for possible referral back to the Board and requested guidance.

Dr. Varma moved, and Dr. Wang seconded that PHP Case #1 remain under the management of PHP. Motion carried.

Case #2 for committee review was withdrawn by PHP.

Dr. Varma moved, and Dr. Willeford seconded that PHP Case #3 remain under the management of PHP. Motion carried.

Dr. Wang moved, and Willeford seconded that PHP Case #4 be returned to the jurisdiction of the Texas Medical Board. Motion carried.

Dr. Varma moved, and Dr. Wang seconded that PHP Case #5 be returned to the jurisdiction of the Texas Medical Board. Motion carried.

Dr. Willeford moved, and Dr. Wang seconded that for PHP Case 15-0233 the committee accept the interim referrals made returning the case to the jurisdiction of the Texas Medical Board for action prior to this meeting. Motion carried.

**Agenda Item #3.** Discussion, recommendation, and possible action regarding increased level of testing of probationer's who are transferred from PHP. (Ms. Robinson)

The committee directed staff to increase level to same line of Texas Medical Board participants.

Agenda Item #4. Discussion and possible action regarding Soberlink waiver requests. (Ms. Robinson)

The committee directed staff to continue current process.

Agenda Item #5. Discussion, recommendation, and possible action regarding renewals involving impaired licensees and an appeal process of decisions made. (Ms. Robinson)

Dr. Varma moved, and Dr. Wang seconded that Licensee #1 and Licensee #2 be informed that their options are either to agree to change their license status to retired, emeritus retirement, administrative, oversight with PHP, or to enter the investigation process, and if there is proof of impairment, proceed to ISC. Motion carried.

**Agenda Item #6.** Reports and discussion regarding the Investigation, Litigation, and Compliance Departments.

Ms. Robinson presented the Enforcement Report for July 2015, a copy of which is attached. This was an informational item only and no vote was necessary.

Agenda Item #7. 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 165, Medical Records,
  - §165.6 Medical Records Regarding an Abortion on an Unemancipated Minor.
- B. Chapter 178, Complaints,
  - §178 Complaint Procedure Notification.
- C. Chapter 187, Procedural Rules,
  - §187.35 (Subchapter D) Presentation of Proposal for Decision,
  - §187.37 (Subchapter D) Final Decisions and Orders,
  - §187.38 (Subchapter D) Motions for Rehearing,
  - §187.61 (Subchapter F) Ancillary Proceeding,
  - §187.85 (Subchapter J) Purpose and Construction,
  - §187.86 (Subchapter J) Scope,
  - §187.87 (Subchapter J) Definitions,
  - §187.88 (Subchapter J) Complaint Process and Resolution,
  - §187.89 (Subchapter J) Notice of Availability of Mandatory Mediation.
- D. Chapter 189, Compliance Program,
  - §189.16 Monitoring, Proctoring, or Supervising Physician/Professional's Recommendation for Competency Assessment (new section).
- E. Chapter 195, Pain Management Clinics,
  - §195.1 Definitions,
  - §195.2 Certification of Pain Management Clinics.
- F. Chapter 197, Emergency Medical Service,
  - §197.1 Purpose,

- §197.2 Definitions,
- §197.7 Physician Supervision of Emergency Medical Technician-Paramedic or Licensed Paramedic Care Provided in a Health Care Facility Setting (new section).
- G. Chapter 198, Standards for Use of Investigation Agents,
  - §198.1 Purpose,
  - §198.3 Practice Guidelines for the Use of Investigational Agents,
  - §198.4 Use of Investigational Agents for Patients with Terminal Illnesses.
- H. Chapter 200, Standards for Physicians Practicing Complementary and Alternative Medicine,
  - §200.3(7) Practice Guidelines for the Provision of Complementary and Alternative Medicine.

Dr. Varma moved, and Dr. Willeford seconded that the amendments to rules §165.6 under Agenda Item 7.A. be approved for publication. Motion passes.

Dr. Willeford moved, and Dr. Wang seconded that the amendments to rule §178 under Agenda Item 7.B. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Willeford seconded that the amendments to rule §187.35 under Agenda Item 7.C. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Willeford seconded that the amendments to rule §187.37 under Agenda Item 7.C. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Willeford seconded that the amendments to rule §187.38 under Agenda Item 7.C. be approved for publication. Motion carried.

Dr. Wang moved, and Dr. Swann seconded that the amendments to rule §189.16 under Agenda Item 7.D. be approved for publication with additional language requiring approval by the Chair of DPRC of the chart monitor's recommendation for a competency evaluation. Motion carried.

Dr. Varma moved, and Dr. Wang seconded that the amendments to rule §187.61 under Agenda Item 7.C. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Wang seconded that the amendments to rule §187.85 under Agenda Item 7.C. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Wang seconded that the amendments to rule §187.86 under Agenda Item 7.C. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Wang seconded that the amendments to rule §187.87 under Agenda Item 7.C. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Wang seconded that the amendments to rule §187.88 under Agenda Item 7.C. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Wang seconded that the amendments to rule §187.89 under Agenda Item 7.C. be approved for publication. Motion carried.

Dr. Swann moved, and Dr. Varma seconded that the amendments to rule §195.1 under Agenda Item 7.E. be approved for publication. Motion carried.

Dr. Swann moved, and Dr. Varma seconded that the amendments to rule §195.2 under Agenda Item 7.E. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Swann seconded that the amendments to rule §197.1 under Agenda Item 7.F. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Swann seconded that the amendments to rule §197.2 under Agenda Item 7.F. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Swann seconded that the amendments to rule §197.7 under Agenda Item 7.F. be approved for publication. Motion carried.

Dr. Willeford moved, and Dr. Wang seconded that the amendments to rule §198.1 under Agenda Item 7.G. be approved for publication. Motion carried.

Dr. Willeford moved, and Dr. Wang seconded that the amendments to rule §198.3 under Agenda Item 7.G. be approved for publication. Motion carried.

Dr. Willeford moved, and Dr. Wang seconded that the amendments to rule §198.4 under Agenda Item 7.G. be approved for publication with removal of last sentence in subsection D. Motion carried.

Dr. Shulkin moved, and Dr. Wang seconded that the amendments to rule §200.3(7) under Agenda Item 7.H. be approved for publication. Motion carried.

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

Dr. Varma moved, and Dr. Wang seconded that the waiver list on Agenda Item #6 be approved. Motion carried.

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

Dr. Wang moved, and Dr. Shulkin seconded that the appointments of members to 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 followup on investigative files previously referred from the DPRC for follow-up action, specifically including: 14-5720, 14-6360.

Dr. Willeford moved, and Dr. Varma seconded that follow-up file #14-5720 be dismissed. Motion carried.

Ms. Attebury moved, and Dr. Willeford seconded that follow-up file #14-6360 be dismissed. Motion carried.

Ms. Attebury moved, and Dr. Willeford seconded; the motion passed at 12:34 p.m. to go into Executive Session for 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), Texas 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.

**Agenda Item #11**. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 14-2562, 14-5456, 15-0901, 15-1072, 15-1201, 15-1453, 15-1915, 15-2174, 15-3071, 15-3159, 15-3959; ii. Legal Files: 14-0811 (14-0822), 14-0831 (14-3457), 15-0009 (14-2911), 15-0019 (14-4129). B. Jurisdictional-Not-Filed Complaints: 15-2193, 15-2797, 15-2869, 15-2907, 15-2934, 15-3294, 15-3385, 15-3418, 15-3445, 15-3640, 15-3762, 15-4053, 15-4311, 15-5099, 15-5276, 15-5440, 15-5505, 15-5534, 15-5552, 15-5624, 15-5817, 15-5820, 15-5923, 15-5927, 15-6071, 15-6089, 15-6093, 15-6094, 15-6106, 15-6509. C. Non-Jurisdictional Complaints: 15-1245.

Dr. Shulkin moved, and Dr. Wang seconded that the appeal of Item 11.A.i., Log #14-2562 be granted, specifically additional investigation regarding the communication between the potentially accepting hospital and the emergency room. Motion carried.

Dr. Willeford moved, and Dr. Wang seconded that the appeal of Item 11.A.i., Log #14-5456 be granted and sent to a new expert reviewing the appropriateness of the interventional radiologist accepting a referral from a non-physician, and not conducting a physical exam, or other evaluation prior to recommending or administering treatment. Motion carried.

Direction given to staff, regarding non-physician referrals that generate diagnostic and therapeutic studies from non-physicians to physicians.

Dr. Shulkin moved, and Ms. Wang seconded that the appeal of Item 11.A.i., Log #15-0901 be granted and referred for expert evaluation by an anesthesiologist, regarding medications utilized during the procedure. Motion carried.

Dr. Varma moved, and Dr. Wang seconded that the appeals of Item 11.A.i., Logs #15-1072 be denied and that a custom letter be sent. Motion carried.

Dr. Varma moved, and Dr. Willeford seconded that the appeals of Item 11.A.i., Logs #15-1201 be denied. Motion carried.

Dr. Varma moved, and Dr. Willeford seconded that the appeals of Item 11.A.i., Logs #15-2174 be denied. Motion carried.

Dr. Shulkin moved, and Dr. Varma seconded that the appeals of Item 11.A.i., Logs #15-3159 be denied. Motion carried.

Dr. Wang moved, and Dr. Willeford seconded that all other appeals under Agenda Item 11.A.i. not specifically granted above be denied. Motion carried.

Dr. Wang moved, and Dr. Varma seconded that the appeal of Item 11.A.ii. #15-0009 (14-2911) be denied. Motion carried.

Dr. Varma moved, and Dr. Wang seconded that all other appeals under Agenda Item 11.A.ii. not specifically granted above be denied. Motion carried.

Dr. Wang moved, and Dr. Varma seconded that the appeals of Item 11.B, Logs #15-2797 be denied. Motion carried.

Dr. Wang moved, and Dr. Varma seconded that the appeals of Item 11.B, Logs #15-4053 be denied. Motion carried.

Dr. Swann moved, and Dr. Varma seconded that the appeal of Item 11.B., Log #15-6106 be granted, specifically staff to gather appropriate records and submit for expert review. Motion carried.

Dr. Willeford moved, and Dr. Wang seconded that the appeal of Item 11.B., Log #15-3294 be granted and an investigation be opened for evaluation. Motion carried.

Dr. Wang moved, and Dr. Varma seconded that all other appeals under Agenda Item 11.B. not specifically granted above be denied. Motion carried.

Dr. Wang moved, and Dr. Varma seconded that all appeals under Agenda Item 11.C. be denied. Motion carried.

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

Dr. Varma 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.

Dr. Wang recused from consideration of Log 15-5873.

Agenda Item #14. Adjourn.

Dr. Wang moved, and Dr. Varma seconded that the meeting adjourn.

Motion carried at 4:09 p.m..

### TMB - Disciplinary Process Review Committee (DPRC) TXPHP - Participant Case Review August 27, 2015

Case #	Remain with PHP	TMB Accepted	Continue
1	X		
2	Retracted		
3	X		
4		Х	
5		Х	

### Expert Panel Members for Board Approval August 2015

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LAST	FIRST	LIC #	CITY	SPECIALTY
Amos	Joseph	N9340	Houston	PM&R/Pain Medicine
Browniee	John	J5713	Corpus Christi	Pediatric Cardiology
Bungo	Michael	F8814	Houston	Cardiovascular Diseases/Internal Medicine
Gonzalez	Domingo	G5099	Houston	Cardiovascular Diseases
Loyalka	Pranav	L4542	Houston	Cardiovascular Diseases/Interventional Cardiology
Massin	Edward	D8028	Houston	Cardiovascular Diseases/Internal Medicine
Nguyen	Tuyen	P7170	Houston	Thoracic Cardiovascular Surgery
Preti	Hector	J5191	Houston	Oncology/Internal Medicine
Shurmur	Scott	Q0702	Lubbock	Cardiology/Cardiovascular Diseases
Zinn	Philip	G3931	San Antonio	Cardiovascular Diseases/Internal Medicine

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### Interim Approval

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Removal

## DISCIPLINARY COMMITTEE & DECISIONS REGARDING COMPLAINTS REVIEWED ISC PANEL RECOMMENDATIONS – Texas Medical Board August 27, 2015

# **ISC Dismissal's**

CASE #	Close	Continue	To ISC
150727	Х		
14-0904	Х		
15-0691	Х		
15-0637	Х		
15-0742	Х		
15-0599	Х		
15-0662	Х		
15-0634	Х		
15-0547	Х		
15-0711	Х		
15-0654	Х		
15-0660	Х		
15-0589	Х		
15-0714	Х		
12-0154	Х		
15-0684	Х		
15-0638	Х		
15-0630	Х		
15-0700	Х		
14-0937	Х		
15-0689		Х	
15-0616	Х		
15-0206	Х		
15-0531	Х		
15-0404	Х		
15-0657	Х		
15-0524	Х		
15-0635	Х		
15-0560	Х		
15-0716	Х		
15-0608	Х		

15-0506	X	
15-0229	X	
15-0719	X	
15-0434	X	
15-0661	X	
15-0459	X	
15-0368	X	
15-0355	Х	1
15-0602	Х	
15-0717	Х	
15-0577	Х	
15-0583	Х	
15-0526	Х	
15-0576	Х	
15-0713	X	
15-0597	Х	
15-0610	Х	
15-0645	Х	
15-0537	Х	
15-0759	Х	
15-0525	Х	
15-0706	Х	
14-0764	Х	
15-0517	X	
15-0651	Х	
15-0738	Х	
15-0419	Х	
Total - 50		

Total = 58

#### COMPLAINTS REVIEWED PURSUANT TO STAFF

CASE # C	LOSE	CONTINUE TO ISC
15-0734	X	
15-0718	X	
15-0421	X	
15-0663	X	
15-0652	X	
15-0705	X	
15-0787	X	
15-0593	X	
15-0769	X	
15-0640	X	
14-0861	X	
15-0788	X	
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Total = 12

SOAH Case Dismissals (To be reviewed by full committee) Also, to have Formal comple

CASE # C	LOSE	CONTINUE TO ISC
14-0396	X	
15-0066	X	
Total = 2		

## **PHP Resolved Dismissals**

CASE # C	CLOSE	CONTINUE TO ISC
15-0528	X	
14-0789	X	
Total = 2		

### Disciplinary Committee Decisions Regarding Complaints Reviewed Pursuant to Staff or ISC Panel Recommendation (Physicians)

Total : 243

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	164.053(A)(8)					the second se
	164.052(A)(5)					
154859				_		· · · · · · · · · · · · · · · · · · ·
154860						
	164.053(A)(1)					
	164.053(A)(1)	V				
	164.051(A)(6)	11				
	164.052(A)(5)	1				
	101.351					×
	164.051(A)(6)					
	164.052(A)(5)	$\bigvee$	- x	201		
	164.051(A)(6)	V				
	164.052(A)(5)	$\int$				
	164.051(A)(4)(C)	V				
	164.052(A)(5)					
	164.051(A)(6)					
	164.052(A)(5)					
155053	164.053(A)(1)	1				
155075	164.052(A)(4)	1				
155102		<b>1</b>				
155105	151.002(A)(13)	5	·			
	151.002(A)(13)	$\bigvee$				
	164.051(A)(4)(B)	1				
	164.052(A)(5)	V				
155250	164.052(A)(5)	1				
155254		$\sim$				
	164.053(A)(6)					
	164.052(A)(5)	$\checkmark$				
155314	101.351					

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Log Number	Allegation	Close	Continue	ISC	Hold	Name
155330	164.052(A)(5)	V				
155374	164.052(A)(5)		1.1			
155380	164.053(A)(1)	V		-		
155433	164.052(A)(5)	$\bigvee$			3	8
155524	164.053(A)(8)					
155576	151.002(A)(13)	$\bigvee$				
155598	164.053(A)(1)	$\checkmark$	1			
155606	164.052(A)(5)	$\checkmark$			-	
155633	164.052(A)(4)	V				
155704	164.053(A)(8)	11		13 10 10		
155765	164.052(A)(4)	11				
155840	164.052(A)(5)	$\checkmark$				
155873	164.051(A)(3)	1				
155966	164.051(A)(7)		12			
155992	56.003	$\bigvee$		0.00		
156063	151.002(A)(13)					
156102	164.052(A)(5)	$\overline{}$			1	

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