

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
February 4, 2010

Chair Melinda McMichael, M.D., called the meeting to order at 11:16 a.m. Other members present were Julie K. Attebury, David Baucom, Patricia S. Blackwell, Pat J. Crocker, D.O., Manuel Guajardo, M.D., Margaret C. McNeese, M.D., Charles Oswalt, M.D., Allan Shulkin, M.D., George Willeford III, M.D., and Irvin E. Zeitler, Jr., D.O.

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

Dr. Zeitler moved, and Mr. Baucom seconded; the motion passed at 11:17 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 2:44 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: 08-5959, 08-6077, 09-0073, 09-1504, 09-1741, 09-1782, 09-1783, 09-1906, 09-2210, 09-2407, 09-2764, 09-2899, 09-2989, 09-3070, 09-3099, 09-3293, 09-3915, 09-3925, 09-5185, 09-6507, 09-6881, ii. Legal Files: 09-0441 (08-4869), 09-0457 (09-0747), 09-0553 (09-1486), 09-0570 (08-5769), 09-0604 (09-0014); B. Jurisdictional Not Filed Complaints: 09-4345, 09-6208, 10-0041, 10-0112, 10-0338, 10-0343, 10-0450, 10-0484, 10-0570, 10-0609, 10-0670, 10-0683, 10-0693, 10-0696, 10-0839, 10-0853, 10-0979, 10-1296, 10-1339, 10-1366, 10-1382, 10-1391, 10-1464, 10-1488, 10-1489, 10-1597; and C. Non-Jurisdictional Complaints: 10-1130.

Dr. Oswalt moved, and Dr. McNeese seconded that the appeal of Item 2.A., Log #09-1504 be denied and that a custom letter be sent to the Respondent emphasizing the importance of effective communication with patients and/or family members. Motion carried.

Dr. McNeese moved, and Dr. Oswalt seconded that the appeal of Item 2.A., Log #09-3070 be denied. Motion carried.

Ms. Blackwell moved, and Ms. Attebury seconded that the appeal of Item 2.A., Log #09-0553 (09-1486) be granted and that the case be continued for further investigation. Motion carried.

Dr. Zeitler moved, and Dr. McNeese seconded that the appeal of Item 2.A., Log #09-0570 (08-5769) be denied and that a custom letter be sent to the Respondent emphasizing the importance of effective communication with patients and/or family members and clearly informing patients about their evaluation and examination. Motion carried. Motion carried.

Dr. McNeese moved, and Dr. Oswalt seconded that the appeal of Item 2.B., Log #09-6208 be denied. Motion carried.

Dr. Zeitler moved, and Ms. Blackwell seconded that the appeal of Item 2.B., Log #10-0450 be denied. Motion carried.

Agenda Item #3. Discussion, recommendation and possible action regarding referrals and reports from the Texas Physician Health Program.

The Presiding Officer, Dr. John Jackson, and the Executive Director, Dr. Lloyd Garland, of the newly established Texas Physician Health Program were introduced and presented their foresight and vision of this new entity and the responsibility of current and future personnel. Potential compliance/non-compliance issues were discussed in various scenarios and how the Texas Physician Health Program would handle each incident on a case-by-case basis.

Dr. Zeitler moved, and Mr. Baucom seconded; the motion passed at 3:15 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 3:46 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

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

Dr. McMichael moved, and Dr. Willeford seconded that the appeal of Item 2.B., Logs #10-1488 and 10-1489 be denied. Motion carried.

Dr. Willeford moved, and Dr. Oswalt seconded that the appeal of Item 2.A.i., Log #08-5959 be granted and that a new expert report be obtained. Motion carried.

It was announced by Mari Robinson that Agenda Item 2.A.i., Log #09-6507 would be moved to the April 2010 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 April 2010 whether the Complainant personally appears before the committee or not.

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

Agenda Item #4. Discussion, recommendation, and possible action regarding routine follow-up on investigative files, previously referred from the DPRC for follow-up action, specifically including: 08-0018, 08-0022, 08-1362, 08-1363, 08-4583, 09-1347, 09-1463, and 09-2420.

Dr. Oswalt moved, and Ms. Blackwell seconded that Log #09-1463 be dismissed and that a custom letter be sent to the Respondent recommending reconsideration of current billing policies. Motion carried

Dr. Willeford moved, and Dr. McNeese seconded that all routine follow-up files under Item 4 not specifically granted above be dismissed. Motion carried.

Agenda Item #5. Reports and discussion regarding the Investigation, Litigation and Compliance Departments. Ms. Robinson presented the Enforcement Report for December 2009, a copy of which is attached. This was an informational item only and no vote was necessary.

Agenda Item #6. Discussion, recommendation and possible action regarding proposed changes to the following chapters in Title 22 of the Texas Administrative Code:

- A. Chapter 187, Procedural Rules, Subchapters 187.43, 187.83, 187.84, 187.85-89
- B. Chapter 189, Compliance Program, Subchapters 189.2, 189.3, and 189.8
- C. Chapter 190, Disciplinary Guidelines, Subchapter 190.14
- D. Chapter 192, Office-Based Anesthesia Services and Pain Management Clinics, Subchapters 192.1-192.7
- E. Chapter 195, Pain Management Clinics, Subchapters 195.1-195.4
- F. Chapter 198, Unlicensed Practice, Subchapters 198.1-198.6

Dr. Zeitler moved, and Dr. Shulkin seconded that Agenda Item 6.A. be accepted for publication in the Texas Register. Motion carried.

Dr. Zeitler moved, and Ms. Blackwell seconded that Agenda Item 6.B. be accepted for publication in the Texas Register. Motion carried.

Mr. Baucom moved, and Dr. Zeitler seconded that Agenda Item 6.C. be accepted for publication in the Texas Register. Motion carried.

Dr. Oswalt moved, and Dr. Willeford seconded that Agenda Item 6.D. be accepted for publication in the Texas Register and that it would not be a requirement to register, but participants would have to have the necessary Level I equipment readily available. Motion carried.

Dr. Willeford moved, and Dr. Zeitler seconded that Agenda Item 6.E. be accepted for publication in the Texas Register. Motion carried.

Dr. Willeford moved, and Dr. Crocker seconded that Agenda Item 6.F. be accepted for publication in the Texas Register. Motion carried.

Agenda Item #7. Discussion and possible direction regarding group or institutional settings requirement in orders.

Dr. Oswalt moved, and Dr. Shulkin seconded that the group/institutional practice setting requirements discussed in open session be accepted as presented. Motion carried.

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

The committee unanimously moved that all waivers on Agenda Item #8 be granted. Motion carried.

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

Dr. Guajardo moved, and Dr. Oswalt seconded that the appointments to the Expert Physician Panel on Agenda Item 9 be approved. Motion carried.

Dr. Zeitler moved, and Dr. Oswalt seconded; the motion passed at 5:09 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 5:43 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. Review, discussion, and possible action regarding selected files and cases.

Dr. Willeford and Dr. McNeese departed the Boardroom at 5:41 p.m., a quorum still remained.

Discussion was had related to Log#09-0896. The Committee directed to staff that the subject licensee of this investigation should no longer be approved to act as a monitoring or treating psychiatrist for board probationers.

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 #11. Adjourn.

Dr. Oswalt moved, and Ms. Blackwell seconded that the meeting adjourn. Motion carried at 5:45 p.m.