

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
April 9, 2015

Chair Margaret C. McNeese, M.D., called the meeting to order at 9:00 am. Other members present were Julie K. Attebury, David Baucom, James “Scott” Holliday, D.O., 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 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. Holliday moved, and Dr. Willeford seconded that PHP Case #1 remain under the management of PHP with the understanding that any future positive tests will result in an automatic referral to the Texas Medical Board for further action. Motion carried.

Agenda Item #3. Discussion, recommendation, and possible action regarding renewals involving impaired licensees. (Ms. Robinson)

It was announced by Ms. Robinson that there weren’t any renewal cases to be presented to the DPRC for consideration under Agenda Item 3.

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

Ms. Robinson presented the Enforcement Report for February 2015, 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 the following chapters in Title 22 of the Texas Administrative Code:

- A. Chapter 170, Pain Management, §170.1. Purpose, §170.2. Definitions, §170.3.Guidelines

- B. Chapter 180, Texas Physician Health Program and Rehabilitation Orders, §180.4. Operation of the Program
- C. Chapter 187, Procedural Rules, §187.43. Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders, §187.61. Ancillary Proceeding, §187.70. Purposes and Construction, §187.72. Decision of the Panel, §187.73. Termination of Suspension
- D. Chapter 189, Compliance Program, §189.7. Modification/Termination Hearings
- E. Chapter 190, Disciplinary Guidelines, §190.14. Disciplinary Sanction Guidelines,
- F. Chapter 197, Emergency Medical Service, §197.4. Online Medical Direction

Dr. Varma moved, and Dr. Swann seconded that the amendments to rules §170.1 and §170.2 under Agenda Item 5.A. be approved for publication. The amendment to rule §170.3 was approved for publication with amendments as proposed, with the exception of section §170.3(4)(C) which will undergo further stakeholder input, and the exception of §170.3(4)(D), which should include the phrases “patient designated” and “for chronic pain management” clarifying that the limitation on one pharmacy pertains to treatment for chronic pain and that the pharmacy may be chosen by the patient. Dr. Willeford opposed. Motion passes.

Dr. Varma moved, and Dr. Willeford seconded that the amendments to rule §180.4 under Agenda Item 5.B. be approved for publication with a change clarifying that the referrals at issue must be public and through a board action. Motion carried.

Dr. Varma moved, and Dr. Swann seconded that the amendments to rule §187.43 under Agenda Item 5.C. be approved for publication. Motion carried.

Dr. Wang moved, and Dr. Swann seconded that the amendments to rule §187.61 under Agenda Item 5.C. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Willeford seconded that the amendments to rule §187.70 under Agenda Item 5.C. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Willeford seconded that the amendments to rule §187.72 under Agenda Item 5.C. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Willeford seconded that the amendments to rule §187.73 under Agenda Item 5.C. be approved for publication. Motion carried.

Dr. Varma moved, and Dr. Holliday seconded that the amendments to rule §189.7 under Agenda Item 5.D. be approved for publication. Motion carried.

It was announced by Ms. Robinson that Agenda Items 5.E. §190.14 and 5.F. §197.4 be stricken from the agenda.

Agenda Item #6. Review, discussion, and possible action regarding review of probationer's appearances.

Dr. Holliday moved, and Dr. Varma 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. Varma moved, and Mr. Baucom seconded that the appointments of members to the Expert Physician Panel be accepted as noted in the attachment. 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, 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 #10. Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the DPRC for follow-up action, specifically including: 14-5380.

Dr. Wang moved, and Mr. Baucom seconded that follow-up file #14-5380 be dismissed and a letter sent to the Respondent notifying of such dismissal. The custom letter should address the concerns of the Board and state that ordering an echo would have been an appropriate action in this case. Motion carried.

Dr. Willeford moved , and Dr. Holliday seconded; the motion passed at 10:13 am 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 2.34 pm, and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Agenda Item #9. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 13-4489, 14-1869, 14-1898, 14-2843, 14-3073, 14-4661, 14-4690, 14-4691, 14-4692, 14-5186, 14-5242, 14-5464, 14-5504, 14-5538, 14-5822, 14-5853, 14-6037, 14-6360, 14-6416, 15-0139, 15-0140, 15-0142, 15-0529; ii. Legal Files: 12-0154 (11-4712), 13-0969 (13-1066), 14-0766 (14-1897). B. Jurisdictional-Not-

Filed Complaints: 15-0043, 15-0523, 15-0707, 15-0822, 15-1451, 15-1455, 15-1456, 15-1924, 15-1954, 15-2203, 15-2238, 15-2293, 15-2368, 15-2447, 15-2454, 15-2498, 15-2503, 15-2583, 15-2610, 15-2623, 15-2644, 15-2764, 15-3256. C. Non-Jurisdictional Complaints: 15-0160.

It was announced by Ms. Robinson that Agenda Item 9.B., Log #15-2644 would be moved to the June 2015 DPRC Agenda as a courtesy to the Complainants. A custom letter will be sent to the Complainants notifying them that a decision will be made on their case in June 2015, whether they personally appear before the committee or not.

Dr. Willeford moved, and Dr. Wang seconded that the appeal of Item 9.A.i., Log #14-2843 be granted and sent to a new expert panel to specifically find out when the echo was done and whether or not that information would have made an impact on the outcome. Motion carried.

Dr. Willeford moved, and Ms. Attebury seconded that the appeal of Item 9.A.i., Log #14-3073 be denied and to refer the information regarding the nursing care provided that day to the Nursing Board. Motion carried.

Dr. Swann moved, and Dr. Shulkin seconded that the appeals of Item 9.A.i., Logs #14-4690, 14-4691, and 14-4692 be denied. Motion carried.

Dr. Wang moved, and Dr. Holliday seconded that the appeals of Item 9.A.i., Logs #14-5242, 14-6037, and 15-0140 be denied. Motion carried.

Mr. Baucom moved, and Dr. Willeford seconded that the appeal of Item 9.A.i., Log #14-5822 be denied. Motion carried.

Dr. Varma moved, and Dr. Holliday seconded that the appeal of Item 9.A.i., Log #14-6360 be granted and sent to a new expert panel to ascertain if testing for other conditions were ordered and evaluate whether any retinal problems existed prior to cataract surgery. Motion carried.

Dr. Varma moved, and Dr. Shulkin seconded that the appeal of Item 9.A.i., Log #15-0529 be denied. Motion carried.

Dr. Holliday moved, and Dr. Varma seconded that the appeal of Item 9.A.ii. #12-0154 (11-4712) be granted and that an ISC be scheduled. Dr. Holliday requested that a member of the DPRC committee serve on the ISC panel . Motion carried.

Dr. Varma moved, and Mr. Baucom seconded that the appeal of Item 9.A.i., Log #14-5504 be granted to continue the investigation and sent to a new expert panel. Motion carried.

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

Dr. McNeese moved, and Dr. Shulkin seconded that the appeal of Item 9.A.ii. #14-0766 (14-1897) be denied and that a custom letter sent urging the Respondent to improve his documentation. Motion carried.

Dr. Varma moved, and Dr. Wang seconded that all other appeals under Agenda Item 9.A.ii. not specifically granted above be denied. Motion carried.

Dr. Holliday moved, and Dr. Wang seconded that the appeal of Item 9.B., Log #15-2454 be granted and that an investigation be opened. Motion carried.

Mr. Baucom moved, and Dr. Holliday seconded that the appeal of Item 9.B., Log #15-2203 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. McNeese moved, and Dr. Holliday seconded that the appeal of Item 9.B., Log #15-2623 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, specifically to ascertain why the medical records were not released. Motion carried.

Dr. Varma moved, and Dr. Shulkin seconded that all other appeals under Agenda Item 9.B. not specifically granted above be denied. Motion carried.

Dr. Varma moved, and Mr. Baucom seconded that all appeals under Agenda Item 9.C. be denied. Motion carried.

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

Dr. Varma moved, and Dr. Holliday 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.

Dr. Varma moved, and Dr. Holliday seconded that the meeting adjourn. Motion carried at 2:54 pm.

**TMB - Disciplinary Process Review Committee
(DPRC) TXPHP - Participant Case Review
April 9, 2015**

Case #	Remain with PHP	TMB Accepted	Continue
1	X		

Expert Panel Members for Board Approval April 2015

LAST	FIRST	LIC #	CITY	SPECIALTY
Edmondson	Steven	G8830	Round Rock	Ob/Gyn
Lukose	Biju	M7387	Vernon	General Surgery

Interim Approval

Flores	Hector	N7539	El Paso	Thoracic Cardiovascular Surgery
Goldberg	Leonard	G0416	Houston	Dermatology/ MOHS Surgery

DISCIPLINARY COMMITTEE & DECISIONS REGARDING COMPLAINTS REVIEWED
ISC PANEL RECOMMENDATIONS – Texas Medical Board April 9, 2015

ISC Dismissal's

CASE # **Close** **Continue** **To ISC**

15-0294	X		
15-0167	X		
15-0233	X		
15-0212	X		
15-0125	X		
15-0114	X		
15-0146	X		
15-0209	X		
15-0217	X		
14-0160	X		
15-0147	X		
15-0103	X		
15-0363	X		
15-0109	X		
14-0846	X		
15-0232	X		
15-0113	X		
14-0854	X		
15-0187	X		
15-0075	X		
15-0009	X		
15-0069	X		
15-0307	X		
14-0790	X		
15-0172	X		
15-0110	X		
14-0869	X		
15-0184	X		
14-0832	X		
15-0188	X		
15-0328	X		

14-0849	X		
15-0299	X		
15-0102	X		

Total = 34

COMPLAINTS REVIEWED PURSUANT TO STAFF

CASE # CLOSE CONTINUE TO ISC

15-0411	X		
14-0164	X		
15-0345	X		
15-0532	X		
15-0078	X		
15-0367	X		
13-0918	X		
15-0305	X		
15-0245	X		
15-0400	X		
15-0424	X		
15-0242	X		
15-0243	X		
15-0347	X		

Total =14

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

CASE # CLOSE CONTINUE TO ISC

14-0176	X		
13-0233	X		

Total =2

PHP Resolved Dismissals

CASE # CLOSE CONTINUE TO ISC

15-0014	X		
15-0050	X		

Total = 2

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

Total : 150

Log Number	Allegation	Close	Continue	ISC	Hold	Name
144090	164.051(A)(6)	✓				
144652	164.051(A)(7)	✓				
145074	164.051(A)(6)	✓				
145095	164.052(A)(5)	✓				
145123	164.051(A)(6)	✓				
145380	164.052(A)(5)	✓				
145996	164.051(A)(6)	✓				
146094	164.053(A)(8)	✓				
146107	164.052(A)(5)	✓				
146448	164.051(A)(6)	✓				
146453	164.051(A)(6)	✓				
146493	151.002(A)(13)	✓				
146503	164.051(A)(6)			✓		
146566	164.051(A)(6)	✓				
146593	164.051(A)(6)	✓				
146648	164.051(A)(6)	✓				
146709	164.051(A)(6)	✓				
146773	164.051(A)(6)	✓				
146799	164.051(A)(6)	✓				
146821	164.051(A)(3)	✓				
146831	164.051(A)(6)	✓				
146934	101.351	✓				
146978	101.351	✓				
146986	164.053(A)(6)	✓				
147001	164.052(A)(5)	✓				
150014	164.052(A)(17)	✓				
150072	164.051(A)(6)	✓				
150102	164.051(A)(6)	✓				
150114	159.002	✓				
150115	164.051(A)(6)	✓				
150134	164.051(A)(6)	✓				
150166	164.051(A)(6)	✓				
150171	164.051(A)(6)	✓				
150207	164.053(A)(8)	✓				
150251	164.051(A)(6)	✓				
150255	164.051(A)(6)	✓				
150278	151.002(A)(13)	✓				
150323	164.051(A)(6)	✓				
150359	56.003	✓				
150363	164.051(A)(6)	✓				
150419	164.051(A)(6)	✓				
150439	164.051(A)(6)	✓				

Log Number	Allegation	Close	Continue	ISC	Holu	Name
150457	164.052(A)(5)	✓				
150469	101.351	✓				
150480	164.051(A)(6)	✓				
150482	164.051(A)(6)	✓				
150509	164.052(A)(5)	✓				
150572	164.051(A)(6)	✓				
150647	164.053(A)(6)	✓				
150659	164.051(A)(6)	✓				
150711	164.053(A)(6)	✓				
150729	164.052(A)(5)	✓				
150734	164.052(A)(5)	✓				
150737	164.052(A)(5)	✓				
150764	164.052(A)(5)	✓				
150767	164.052(A)(5)	✓				
150784	164.052(A)(5)	✓				
150799	164.052(A)(5)	✓				
150813	159.002	✓				
150835	164.051(A)(6)	✓				
150838	159.006	✓				
150844	164.051(A)(6)	✓				
150850	164.052(A)(5)	✓				
150851	164.052(A)(5)	✓				
150852	164.052(A)(5)	✓				
150853	164.052(A)(5)	✓				
150854	164.052(A)(5)	✓				
150876	164.052(A)(5)	✓				
150894	164.052(A)(5)	✓				
150898	164.051(A)(6)	✓				
150901	164.051(A)(6)	✓				
150929	164.051(A)(6)	✓				
150952	164.051(A)(6)	✓				
150993	151.002(A)(13)	✓				
151011	164.051(A)(6)	✓				
151027	164.052(A)(5)	✓				
151074	164.051(A)(6)	✓				
151132	151.002(A)(13)	✓				
151133	151.002(A)(13)	✓				
151134	151.002(A)(13)	✓				
151143	151.002(A)(13)	✓				
151153	164.051(A)(6)	✓				
151166	164.051(A)(6)	✓				
151179	164.052(A)(5)	✓				
151201	164.051(A)(6)	✓				
151334	101.201	✓				
151349	164.052(A)(5)	✓				
151350	164.051(A)(6)	✓				

Log Number	Allegation	Close	Continue	ISC	Hold	Name
151373	164.051(A)(8)	✓				
151402	164.053(A)(8)	✓				
151409	164.051(A)(6)	✓				
151413	164.051(A)(6)	✓				
151420	164.052(A)(5)	✓				
151431	159.002	✓				
151438	164.051(A)(6)	✓				
151462	164.052(A)(5)	✓				
151471	204.304(A)(8)	✓				
151473	164.051(A)(6)	✓				
151474	164.051(A)(6)	✓				
151484	164.053(A)(6)	✓				
151487	164.051(A)(7)	✓				
151495	164.051(A)(6)	✓				
151520	164.051(A)(6)	✓				
151578	159.008	✓				
151582	164.051(A)(6)	✓				
151583	164.051(A)(6)	✓				
151627	164.051(A)(7)	✓				
151631	164.051(A)(4)(C)	✓				
151645	164.051(A)(6)	✓				
151712	164.053(A)(5)	✓				
151738	164.051(A)(6)	✓				
151744	164.053(A)(1)	✓				
151745	164.051(A)(7)	✓				
151762	164.052(A)(5)	✓				
151798	164.052(A)(5)	✓				
151822	159.006	✓				
151857	164.051(A)(6)	✓				
151878	159.002	✓				
151886	164.051(A)(4)(D)	✓				
151887	164.051(A)(4)(D)	✓				
151927	164.052(A)(5)	✓				
151939	164.052(A)(5)	✓				
151940	164.051(A)(6)	✓				
151971	164.053(A)(8)	✓				
151993	164.051(A)(6)	✓				
152011	164.051(A)(6)	✓				
152019	164.053(A)(1)	✓				
152020	56.003	✓				
152021	56.003	✓				
152022	56.003	✓				
152026	56.003	✓				
152046	164.052(A)(5)	✓				
152104	164.051(A)(9)	✓				
152152	101.351	✓				

Log Number	Allegation	Close	Continue	ISC	Hold	Name
152174	164.051(A)(6)	✓				
152198	164.051(A)(7)	✓				
152226	101.351	✓				
152279	164.051(A)(6)	✓				
152320	164.052(A)(4)	✓				
152321	164.052(A)(5)	✓				
152469	164.053(A)(1)	✓				
152515	164.051(A)(4)(C)	✓				
152516	164.051(A)(4)(C)	✓				
152709	164.052(A)(5)	✓				
152724	164.052(A)(5)	✓				
152734	164.051(A)(3)	✓				
152785	164.053(A)(8)	✓				
152829	164.053(A)(8)	✓				
152962	164.051(A)(9)	✓				
153425	164.053(A)(5)	✓				