

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
June 26, 2008

Acting Chairman Larry Price, D.O., called the meeting to order at 11:20a.m. Other members present were Patricia S. Blackwell, Melinda S. Fredricks, Margaret C. McNeese, M.D., Charles Oswalt, M.D., Annette P. Raggette, and Allen Shulkin, M.D. Committee Members Lawrence Anderson, M.D. and Amanullah Khan, M.D. were not present.

Also present was Executive Director Donald Patrick, M.D., J.D., Jane McFarland, Chief of Staff, and Mari Robinson, Director of Enforcement, and various other staff.

Agenda Item #5. Discussion, recommendation and possible action regarding proposed new rules:

- A. 168.1 Billing for Treatment
- B. 168.2. Billing for Laboratory Tests
- C. 168.3. Billing for Anatomic Pathology Services

Based on comments received by stakeholders, it was determined that additional work would be needed on the rule. No action was taken.

Ms. Fredricks moved, and Ms. Raggette seconded; the motion passed at 11:30 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 1:55 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: 07-1578, 07-1937, 07-2225, 07-2900, 07-3230, 07-3622, 07-3664, 07-4002, 07-4049, 07-4198, 07-4530, 07-4893, 07-5622, 07-5671, 07-6256, 07-6315, 08-0057, 08-0179, 08-0710, 08-0770, 08-0879; and B. Jurisdictional-Not-Filed Complaints: 08-1042, 08-2275, 08-2535, 08-2562, 08-2617, 08-2825, 08-2830, 08-2833, 08-2841, 08-2871, 08-3563, 08-3568, 08-3733, 08-3881, 08-4063, and 08-4294.

Ms. Raggette moved, and Dr. Shulkin seconded that the appeal of Item 2.A.i, Log #07-1578 be denied. Motion carried. Dr. McNeese moved, and Ms. Raggette seconded that the appeal of Item 2.A.i, Log #07-1578 should also include a custom letter to the Respondent regarding the vigilance of correct and complete documentation and effective communication. Motion carried.

Dr. McNeese moved, and Ms. Fredricks seconded that the decision of appeal Item 2.A.i, Log #07-1937 be suspended pending the review of this case by an oncologist. Dr. Oswalt moved, and Dr. McNeese seconded to amend the appeal of Item 2.A.i, Log #07-1937 to also

include the review of this case by a radiation therapist, and that Complaint of appeal Item 2.A.i, Log #07-1937 be added as a complainant in cases Log #08-0018 and Log # 08-0022. Both motions carried.

Ms. Raggette moved, and Ms. Blackwell seconded that the appeal of Item 2.A.i, Log #07-3622 be denied and that a custom letter be sent to the Respondent regarding proper communication, treatment, and respect of the patient and to remind the Respondent to be mindful of HIPAA guidelines. Motion carried.

Dr. Oswalt moved, and Dr. Shulkin seconded that the appeal of Item 2.A.i, Log #08-0179 be denied and that a custom letter be sent to the Respondent emphasizing the importance of vigilant documentation and communication with patient family members. Motion carried.

It was announced by Mari Robinson that Agenda Item 2.B., Log #08-3881 would be moved to the August 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 August 2008 whether the Complainant personally appears before the committee or not.

A recess was taken at 2:04 p.m. and the committee returned at 2:34 p.m.

Dr. Oswalt moved, and Ms. Fredricks seconded that the appeal of Item 2.A.i, Log #08-0710 be granted and that a new expert panel review be obtained, specifically to consider the medical records concerning the care rendered in this case. Motion carried.

Dr. Oswalt moved, and Ms. Fredricks seconded that the appeal of Item 2.B., Log #08-2830 be granted and that a new PDD be initiated to investigate the Respondents timely release of medical records. Motion carried.

Dr. McNeese moved, and Dr. Oswalt seconded that the appeal of Item 2.B., Log #08-2871 be granted and that a new PDD be initiated to investigate the billing practices of the licensee named in this complaint. Motion carried.

Agenda Item #4. Reports and discussion regarding the Investigation, Litigation and Compliance Departments. Ms. Robinson presented the Enforcement Report for May 2008, a copy of which is attached. This was an informational item only and no vote was necessary.

Agenda Item #6. Discussion and possible action concerning administrative penalty guidelines

Dr. Oswalt moved, and Ms. Fredricks seconded that cases involving failure to properly terminate care may be considered under the Administrative Penalty process with the option of imposing a fine of Two Thousand Dollars (\$2000.00). Motion carried.

Ms. Raggette moved, and Dr. Oswalt seconded that cases involving minor HIPAA violations may be considered under the Administrative Penalty process with the option of imposing a fine of Five Hundred Dollars (\$500.00). Motion carried.

Agenda Item #8. Consideration and approval of appointments to the Expert Physician Panel.

Ms. Raggette moved, and Dr. Oswalt seconded to approve all appointments to the Expert Physician Panel. Motion carried.

Ms. Raggette moved, and Dr. Oswalt seconded; the motion passed at 3:00 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.

Agenda Item #2. Review, discussion and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 07-1578, 07-1937, 07-2225, 07-2900, 07-3230, 07-3622, 07-3664, 07-4002, 07-4049, 07-4198, 07-4530, 07-4893, 07-5622, 07-5671, 07-6256, 07-6315, 08-0057, 08-0179, 08-0710, 08-0770, 08-0879; and B. Jurisdictional-Not-Filed Complaints: 08-1042, 08-2275, 08-2535, 08-2562, 08-2617, 08-2825, 08-2830, 08-2833, 08-2841, 08-2871, 08-3563, 08-3568, 08-3733, 08-3881, 08-4063, and 08-4294.

Agenda Item #3. Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the Disciplinary and Ethics Committee for follow-up action, specifically including: 07-4888, 07-4929 and 08-0124.

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

Open session resumed at 3:40 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. Shulkin moved, and Dr. McNeese seconded that the appeal of Item 2.A.i, Log #07-4002 be granted and that a new expert review be obtained specifically to address the potential pattern of violations committed by the Respondent and to determine whether or not a plastic surgeon will need to be used as a reviewer of this case. Motion carried.

Ms. Raggett moved, and Ms. Fredricks seconded that the appeal of Item 2.B., Log #08-1042 be denied and that a custom letter be sent to the Respondent admonishing the writing of personal views and opinions in patients records. Motion carried.

Ms. Fredricks moved, and Dr. Oswalt seconded that the appeal of Item 2.A.i, Log #08-2825 be denied. Motion carried.

Dr. Oswalt moved, and Ms. Raggette seconded that all other appeals not specifically granted above be denied. Motion carried.

Discussion continued on Agenda Item #3. Review, discussion and possible action regarding appeals of dismissed complaints.

Dr. Oswalt moved, and Ms. Blackwell that Logs #07-4888, #07-4929, #08-0214 be dismissed. Motion carried.

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

Ms. Raggette moved, and Ms. Blackwell seconded that all waivers on Agenda Item #7 be granted. Motion carried.

Ms. Raggette moved, and Ms. Fredricks seconded that all Administrative Penalties be accepted as written and attached. Motion carried.

A 3:50 p.m. Dr. Price departed the DPRC meeting and Ms. Fredricks assumed the duties of Acting Chair.

Ms. Ragette moved, and Dr. McNeese seconded; the motion passed at 3:51 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 4:46 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 #9. Review, discussion, and possible action regarding selected files and cases.

Dr. McNeese moved, and Ms. Raggette seconded that Log #07-3269 be closed and that a custom letter be sent to the Respondent concerning proper delegation. Motion carried.

Ms. Blackwell moved, and Ms. Raggette seconded that Log #07-2419 be closed and that a custom letter be sent to the Respondent emphasizing the importance of vigilant record documentation. Motion carried.

Ms. Blackwell moved, and Ms. Raggette seconded that Log #08-0132 be closed and that a custom letter be sent to the Respondent emphasizing the importance of vigilant record documentation. Motion carried.

Ms. Blackwell moved, and Ms. Raggette seconded that Log #08-1529 be closed and that a custom letter be sent to the Respondent emphasizing the importance of vigilant record documentation. Motion carried.

Agenda Item #10. Adjourn.

At 4:49 p.m., Ms. Fredricks announced the meeting was adjourned, as there were no objections.