

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
February 3, 2011

Due to the inclement weather in and around Austin, Texas, and in accordance with Texas Government Code section 551.125, the Disciplinary Process Review Committee met via teleconference.

Chair Melinda McMichael, M.D., called the meeting to order at 10:04 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., George Willeford III, M.D., and Irvin E. Zeitler, Jr., D.O. Allan Shulkin, M.D., joined the conference call at 10:07 am.

Also present was Medical Director, Linda Gage-White, M.D., 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 presented the status of the PHPs current caseload to the DPRC. To date, 364 cases have been referred to the PHP. Dr. Garland discussed four cases that the Texas Physician Health Program is currently working and requested additional guidance on.

Dr. Zeitler moved, and Dr. Shulkin seconded that TX PHP case #10-0221 remains under the management of the Texas Physician Health Program. Motion carried.

Dr. Zeitler moved, and Dr. Crocker seconded that TX PHP case #10-0212 remains under the management of the Texas Physician Health Program. Motion carried.

Mr. Baucom moved, and Dr. McNeese seconded that TX PHP case #10-0259 be returned to the jurisdiction of the Texas Medical Board and the Respondent be scheduled for an ISC. Motion carried.

Dr. Zeitler moved, and Dr. Crocker seconded that TX PHP case #11-0119 be returned to the jurisdiction of the Texas Medical Board and the Respondent be scheduled for an ISC. Motion carried.

Dr. Garland departed the conference call.

Agenda Item #3. Reports and discussion regarding the Investigation, Litigation and Compliance Departments. Alternate way for sign off of selected files.

Ms. Robinson presented a consolidated MSWord document that the committee members would use to record their decisions on selected files and cases versus what is currently used as an alternate way for the committee members to sign off selected files they have reviewed for the DPRC meetings.

Staff was directed to incorporate the use of the document presented for future DPRC meetings.

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

Agenda Item #4. Discussion, recommendation and possible action relating to amendments to Title 22 of the Texas Administrative Code:

- A. Chapter 187 Procedural Rules: 187.14 Informal Resolution of Disciplinary Issues Against a Licensee, 187.70 Purposes and Construction, 187.71 Hearing before a Panel of Board Representatives, 187.72 Decision of the Panel
- B. Chapter 196 Voluntary Relinquishment or Surrender of a License: 196.1 Relinquishment of License, 196.3 Surrender Associated with Impairment

Dr. Oswalt moved, and Dr. McNeese seconded that the revisions presented to the committee that pertain to Agenda Item 4.A. be approved for publication. Motion carried.

Dr. Zeitler moved, and Dr. Crocker seconded that the revisions presented to the committee that pertain to Agenda Item 4.B. be approved for publication. Motion carried.

Agenda Item #5. Review, discussion and possible action regarding review of probationers appearances.

Dr. Oswalt moved, and Dr. Crocker seconded that the waiver list on Agenda Item 5 be approved. Motion carried.

Agenda Item #6. Consideration and approval of membership of the Expert Physician Panel.

Dr. Crocker moved, and Dr. Zeitler seconded that the memberships to the Expert Physician Panel on Agenda Item 6 be approved. Motion carried.

Agenda Item #7. 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. A detailed report was presented to the committee. This was an informational item only and no vote was necessary.

Agenda Item #8. Discussion and possible direction regarding denied Chart Monitor application.

Staff was directed to send the applicant a thank you letter for their interest and that they would be considered for acceptance in the future if needed.

Agenda Item #9. Review, discussion and possible action regarding probationers that request at home leisure waivers.

The committee unanimously agreed to deny the approval of any at home leisure waivers [for probationers that stay at home] because the intended purpose of the waiver is for those who are away from their home location and drug testing facility. Motion carried.

Agenda Item #10. Review, discussion and possible action regarding defining the term immediate family as used in orders.

The committee directed staff to either draft a rule or a paragraph that may be used in a Board Order that would clarify the term immediate family for respondents who are practicing under a board order. This issue will be revisited at a later date.

A recess was taken at 11:38 a.m. and the committee returned at 12:19 p.m.

Dr. Guajardo returned to the conference call at 12:24 p.m.

Dr. Shulkin returned to the conference call at 12:28 p.m.

Agenda Item #12. Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the DPRC for follow-up action, specifically including: 09-0221, 10-3722, 10-3724, and 10-3857.

Dr. Willeford moved, and Dr. Crocker seconded that Log #09-0221 be dismissed. Motion carried.

Dr. Crocker moved, and Dr. Shulkin seconded that Log #10-3722, 10-3724, and 10-3857 be dismissed. Motion carried. Ms. Blackwell recused herself from any discussion and decision regarding Log #10-3722 and 10-3724.

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

Mr. Baucom moved, and Dr. Zeitler 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. Review, discussion, and possible action regarding appeals of dismissed complaints: A. Jurisdictional Complaints: i. Investigations: 08-4329, 09-3345, 09-4597, 09-5723, 09-5740, 09-5911, 09-5918, 09-5919, 09-6448, 09-6674, 09-6827, 09-7336, 10-0129, 10-1811, 10-2180, 10-2354, 10-2603, 10-2993, 10-4794, ii. Legal Files: 10-0339 (09-4766). B. Jurisdictional-Not-Filed Complaints: 10-4285, 10-4886, 10-5539, 10-5540, 10-5541, 10-6027, 10-7064, 10-7139, 10-7163, 10-7190, 10-7191, 10-7200, 10-7427, 11-0092, 11-0119, 11-0184, 11-0250, 11-0270, 11-0388, 11-0443, 11-0482, 11-0519, 11-0579, 11-0626, 11-0696, 11-0873, 11-0939, 11-0974, 11-1038, 11-1198, 11-1341, 11-1428, 11-1719, 11-2079, and 11-2092.

Due to the inclement weather in and around Austin, Texas, the personal appearances of any appellants before the committee was cancelled and rescheduled to appear before the DPRC in April 2011. This decision affects the following appeals: 11.A. Jurisdictional Complaints: i., Log #09-5723, 09-5740, 09-6674, 10-0129, 10-2603, 11.B. Jurisdictional-Not-Filed Complaints: Log #10-5539, 10-5540, 10-5541, 10-7200, 11-0270, 11-0626, and 11-2079. After being contacted by staff with the option to present their appeal at the April 2011 DPRC, the following Complainants waived their option to personally appear and elected to have the committee make a final decision on their appeal in their absence: 11.A. Jurisdictional Complaints: i., Log # 09-5911, 09-5918, 09-5919, 11.B. Jurisdictional-Not-Filed Complaints: Log #10-4285, 11-0939, and 11-1341.

Dr. Oswalt moved, and Dr. Guajardo seconded that the appeal of Item 11.A.i., Log #09-3345 be granted and returned to the Enforcement Division for further investigation. Motion carried.

Dr. McMichael moved, and Dr. Zeitler seconded that the appeal of Item 11.A.i., Log #10-1811 be denied and that a custom letter be sent to the Complainant requesting additional information in order for a new case to possibly be opened. Motion carried.

Dr. Guajardo moved, and Dr. Oswalt seconded that the appeal of Item 11.A.i., Log #10-2180 be granted and the Enforcement Division for further investigation. Motion carried.

Dr. Guajardo moved, and Dr. Shulkin seconded that the appeal of Item 11.B., Log #10-4886 be granted and that an investigation be opened. Motion carried.

Mr. Baucom moved, and Dr. McMichael seconded that the appeal of Item 11.B., Log #10-7139 be granted and that an investigation be opened. Motion carried.

Dr. McNeese moved, and Dr. Crocker seconded that the appeal of Item 11.B., Log #11-1719 be granted and that an investigation be opened. Motion carried. Dr. Guajardo recused himself from any discussion and decision regarding this case.

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

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

Agenda Item #14. Adjourn.

Dr. Zeitler moved, and Ms. Attebury seconded that the meeting adjourn. Motion carried at 1:57 p.m.