

**TEXAS MEDICAL BOARD**  
**MINUTES OF THE**  
**DISCIPLINARY PROCESS REVIEW COMMITTEE**  
May 28, 2009

Chair Melinda McMichael, M.D., called the meeting to order at 9:54 a.m. Other members present were Julie K. Attebury, David Baucom, Patricia S. Blackwell, Pat J. Crocker, D.O., Charles Oswalt, M.D., Allan Shulkin, M.D., George Willeford III, M.D., and Irvin E. Zeitler, Jr., D.O. Committee Members Margaret C. McNeese, M.D. and Manuel Guajardo, M.D. were not present.

Also present was Medical Director Alan T. Moore, M.D., Jane McFarland, Chief of Staff, and Mari Robinson, Executive Director, and various other staff.

It was announced by Mari Robinson that Agenda Item 2.A.i., Logs #08-5148 and #08-4030 would be moved to the August 2009 DPRC Agenda as a courtesy to the Complainants. A letter will be sent to the Complainants to notify them that a decision will be made on their case in August 2009 whether the Complainant personally appear before the committee or not.

**Dr. Zeitler moved, and Mr. Baucom seconded; the motion passed at 9:57 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 11:41 a.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: 08-2261, 08-2647, 08-2960, 08-3699, 08-4754, 08-4920, 08-4988, 08-5125, 08-5421, 08-5770, 08-5876, 09-0031, 09-0062, and 09-2454, ii. Legal Files: 07-0209 (06-3550), and 08-0351 (07-5994). B. Non-Jurisdictional Complaints: 08-3978, 09-1452, 09-1724, 09-2342, 09-2453, 09-2705, 09-2918, 09-3117, 09-3236, 09-3375, 09-3552, 09-3777, 09-3784, 09-3801, and 09-4331.

**Ms. Attebury moved, and Ms. Blackwell seconded that the appeal of Item 2.A.i., Log #08-5876 be denied and that the case be referred to the nursing board to investigate the nurses behavior and the amount of medication that was administered to the complainant. This investigation should also look at the nurses possible coercion of the patient regarding the type and form of the medication that was administered. Motion carried.**

**Dr. Shulkin moved, and Mr. Baucom seconded that the appeal of Item 2.A.i., Log #09-0031 be denied and that a custom letter be sent to the Respondent regarding the proper disclosures for insertion of a feeding tube. Motion carried. Dr. Zeitler moved, and Dr. Shulkin seconded that the appeal of Item 2.A.i., Log #09-0031 be sent back to the Investigation Division to find out the date the funeral home received the death certificate.**

**Motion carried. Dr. McMichael and Dr. Willeford recused themselves from any discussion and decision related to this case.**

**Dr. Willeford moved, and Dr. Shulkin seconded that the appeal of Item 2.B., Log #08-3978 be denied. The point was made in open session that by law a doctor is required to report any suspicion of abuse. Motion carried.**

**Dr. Willeford moved, and Mr. Baucom seconded that the appeal of Item 2.A.i., Log #08-2647 be granted and that a new expert panel opinion be obtained on whether or not a CT scan should have been done when the patient initially presented to the Respondent in this case. Motion carried.**

**Dr. Zeitler moved, and Dr. Shulkin seconded; the motion passed at 12:05 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 12:14 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.**

**Dr. Oswalt moved, and Mr. Baucom seconded that the appeal of Item 2.A.ii., Log #08-0351 (07-5994) be granted and a consultant who specializes in billing issues be obtained to report on the issues concerning the billing in the case. Also, if the selected consultant does not agree with the previous reviewer, then a third consultant with billing review experience will automatically be assigned to review this case prior to the case being returned to the committee for final action. Motion carried.**

**Dr. Zeitler moved, and Dr. Shulkin seconded that the appeal of Item 2.A.i., Log #08-4988 be denied and that a custom letter be sent to the Respondent regarding following proper infectious prevention methods, such as washing hands and wearing gloves when appropriate and also at the request of the patient. Motion carried.**

**Dr. Oswalt moved, and Dr. Zeitler seconded that all other jurisdictional appeals not specifically granted above be denied. Motion carried.**

**Dr. Zeitler moved, and Ms. Blackwell seconded that all other jurisdictional not filed appeals not specifically granted above be denied. Motion carried. Dr. McMichael recused herself from any discussion and decision regarding Log #09-2705.**

**A lunch recess was taken at 12:19 p.m. and the committee returned at 2:08 p.m.**

**Agenda Item #3. Discussion, recommendation, and possible action regarding routine follow-up on investigative files, previously referred from the DPRC for follow-up action, specifically including: 06-1148.**

**Dr. Oswalt moved, and Dr. Willeford seconded that Log #06-1148 be dismissed. Motion carried.**

**Agenda Item #4.** Reports and discussion regarding the Investigation, Litigation and Compliance Departments. Ms. Robinson presented the Enforcement Report for April 2009, a copy of which is attached. This was an informational item only and no vote was necessary.

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

**Dr. Oswalt moved, and Ms. Blackwell seconded that the eight waivers on Agenda Item 5 be granted. Motion carried.**

**Agenda Item #6.** Consideration and approval of appointments to the Expert Physician Panel.

**Dr. Oswalt moved, and Ms. Blackwell seconded to approve the five appointments to the Expert Physician Panel. Motion carried.**

**Dr. Zeitler moved, and Dr. Oswalt seconded; the motion passed at 2:41 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 2:50 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 #7.** Review, discussion, and possible action regarding selected files and cases.

**Dr. Zeitler moved, and Dr. Oswalt 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, with the exception of the Administrative Penalty Orders. Motion carried.**

**Dr. Oswalt moved, and Ms. Blackwell seconded that all Administrative Penalties be resolved as noted and that they be listed along with each resolution as part of the minutes of this Committee. Motion carried.**

**Ms. Attbury moved, and Ms. Blackwell seconded that Log #09-1396 be dismissed. Motion carried.**

**Mr. Baucom moved, and Ms. Blackwell seconded that Log #09-3490 be dismissed. Motion carried.**

**Agenda Item #8.** Adjourn.

**Dr. Zeitler moved, and Dr. Oswalt seconded that the meeting adjourn. Motion carried at 3:23 p.m.**