

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
February 7, 2013

Chair Melinda McMichael, M.D., called the meeting to order at 10:57 a.m. Other members present were Julie K. Attebury, David Baucom, Manuel Guajardo, M.D., James “Scott” Holliday, D.O., Margaret C. McNeese, M.D., and Stanley S. Wang, M.D., M.D. Committee Member Allan Shulkin, M.D., arrived late at approximately 10:58 a.m. Committee Member George Willeford III, arrived late at approximately 10:59 a.m. Committee Members Patricia S. Blackwell and Irvin E. Zeitler, Jr., D.O. were not present.

Also present was Mari Robinson, Executive Director, Medical Director Robert Brecht, M.D., 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. Bill Nemeth discussed the different circumstances of cases the Texas Physician Health Program is currently working and requested additional guidance on.

Dr. Willeford moved, and Dr. McNeese seconded that PHP Case #12-0303 be returned to the jurisdiction of the Texas Medical Board for immediate action against the Respondent. Motion carried.

Dr. Holliday moved, and Mr. Baucom seconded that PHP Case #11-0246 remain under the management of the PHP. Motion carried.

Dr. Willeford moved, and Dr. Shulkin seconded that PHP Case #12-0280 be returned to the jurisdiction of the Texas Medical Board and that the Respondent be scheduled for an ISC. Motion carried.

Dr. McNeese moved, and Dr. Wang seconded that PHP Case #11-0251 be returned to the jurisdiction of the Texas Medical Board and that the Respondent be scheduled for an ISC. Motion carried.

Agenda Item #3. Reports and discussion regarding the Investigation, Litigation and Compliance Departments.

Ms. Robinson presented the Enforcement Report for December 2012, 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 regarding Rule Review and proposed changes to in Title 22 of the Texas Administrative Code:

A. Chapter 187, Procedural Rules, §187.57 Charge of the Disciplinary Panel

B. Chapter 196, Voluntary Relinquishment or Surrender of Medical License, §196.2
Surrender Associated with Disciplinary Action

Dr. Wang moved, and Dr. Guajardo seconded that Agenda Item 4.A. be accepted for publication in the Texas Register. Motion carried.

Dr. McNeese moved, and Dr. Wang seconded that Agenda Item 4.B. be accepted for publication in the Texas Register with the following correction; that the letter “I” be inserted correcting the word to read “investigation” on §196.2 (c) be approved. Motion carried.

Agenda Item #5. Reports and discussion regarding outcome of JNF appeals granted and previously returned files for the past 30 months.

Ms. Robinson presented statistics regarding the percentage of the outcome of JNF appeals granted over the past 30 months. The question is how would the DPRC like to handle future JNF auditing; increase the amount of cases audited, or incorporate new/additional options for the cases reviewed. The DPRC reserved making any decision on this matter until Agenda Item #11.

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

Dr. Guajardo moved, and Ms. Attebury 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. McNeese moved, and Mr. Baucom seconded that the memberships to the Expert Physician Panel on Agenda Item 7 be approved. 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, there are approximately 700 investigations that fall under this category; the majority being SOAH cases and cases in the Litigation department. 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: 11-5336, 12-0869, 12-0870, 12-0871, 12-3540, and 12-6662. **Dr. McMichael and Dr. Wang each recused them self from any discussion and decision regarding Log #12-0869, 12-0870, and 12-0871.**

Dr. McNeese moved, and Dr. Holliday seconded that Log #11-5336 be dismissed with a letter to the Respondent recommending that wrong site surgery be a complication included on the Respondent’s consent form if it isn’t already. Motion carried.

Dr. Holliday moved, and Dr. McNeese seconded that Log #12-0869, 12-0870, and 12-0871 be dismissed with a letter to the Respondent stating that the care given in these cases was the bare minimum and it is recommended that the Respondent obtain additional medical training

and/or learn new techniques. Motion carried. Ms. Attebury amended this motion to include that a new PDD be opened against the other doctor who was working with this Respondent and mentioned in each of the final panel reports. The committee unanimously agreed.

Ms. Attebury moved, and Dr. McNeese seconded that Log #12-3540 be dismissed. Motion carried.

Dr. Holliday moved, and Dr. McNeese seconded that Log #12-6662 be dismissed with a letter to the Respondent recommending that the Respondent receive additional training and exercise more post-operative vigilance with his patients. Motion carried.

A recess was taken at 11:55 a.m. and the committee returned at 12:04 p.m.

Dr. McNeese moved, and Dr. Holliday 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 2:20 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 appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 08-1392, 12-2876, 12-3987, 12-5808, 12-5906, and 12-6740, ii. Legal Files: 12-0742 (12-1091), and 12-1121 (12-4942). B. Jurisdictional Not Filed Complaints: 12-3471, 12-4654, 13-0269, 13-0675, 13-0820, 13-0833, 13-0990, 13-1021, 13-1268, 13-1269, 13-1589, 13-1628, 13-1852, 13-2064, 13-2156; and C. Non-Jurisdictional Complaints: 13-0346, and 13-0347.

Dr. Wang moved, and Dr. Holliday seconded that the appeal of Item 9.A.i., Log #08-1392 be denied and that a custom letter be sent to the Respondent admonishing the use of negative personal opinion in operative notes, and the use of effective and respectful communication with a patient's family member(s). Motion carried.

Ms. Attebury moved, and Dr. Guajardo seconded that the appeal of Item 9.A.i., Log #12-2876 be denied and the charts of this Respondent who is currently under a Board Order be reviewed by a second chart monitor. Motion carried. Dr. Holliday amended this motion to include that based on the evaluation of the second chart monitor if those reports are not favorable then this Respondent will be scheduled for an ISC. The committee unanimously agreed.

Dr. Willeford moved, and Dr. Shulkin seconded that the appeal of Item 9.A.ii., Log #12-0742 (12-1091) be granted and that a new panel review the case regarding the non-surgical care of this patient. Motion carried.

A lunch recess was taken at 2:33 p.m. and the committee returned at 2:53 p.m.

Agenda Item #9. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 08-1392, 12-2876, 12-3987, 12-5808, 12-5906, and 12-6740, ii. Legal Files: 12-0742 (12-1091), and 12-1121 (12-4942). B. Jurisdictional Not Filed Complaints: 12-3471, 12-4654, 13-0269, 13-0675, 13-0820, 13-0833, 13-0990, 13-1021, 13-1268, 13-1269, 13-1589, 13-1628, 13-1852, 13-2064, 13-2156; and C. Non-Jurisdictional

Complaints: 13-0346, and 13-0347. **Dr. McMichael recused herself from any discussion and decision regarding Log #12-5906.**

Mr. Baucom moved, and Ms. Attebury seconded that all other appeals under Agenda Item 9.A.i not specifically granted above be denied. Motion carried.

Ms. Attebury moved, and Dr. Holliday seconded that the appeal of Item 9.A.ii., Log #12-1121 (12-4942) be denied. Motion carried.

Dr. Holliday moved, and Dr. Guajardo that the appeal of Item 9.B., Log #13-0833 be granted and that an investigation be opened. Motion carried.

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

Dr. Wang moved, and Ms. Attebury seconded that all other appeals under Agenda Item 9.C. not specifically granted above be denied. Motion carried.

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

Ms. Attebury moved, and Dr. Holliday seconded; the motion passed at 3:16 p.m. to go into Executive Session for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-client privilege under the authority of the Open Meetings Act Section 551.071, Government Code. Open session resumed at 3:35 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 #11. Review, discussion, and possible action regarding selected files and cases.

Dr. Ms. McNeese moved, and Dr. Shulkin 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. Ms. Attebury recused herself from any discussion and decision regarding Log #12-7411. Dr. Wang recused himself from any discussion and decision regarding Log #12-6128 and 12-7459.

Agenda Item #5. Reports and discussion regarding outcome of JNF appeals granted and previously returned files for the past 30 months.

Staff is directed to draft a possible solution other than the appeal process being the only way to reactivate a JNF file that has been closed in the initial 45-days. The proposed resolution will be presented at the April 2013 DPRC.

Agenda Item #12. Adjourn.

Ms. Attebury moved, and Dr. Shulkin seconded that the meeting adjourn. Motion carried at 3:47 p.m.