

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
June 2, 2011

Acting Chair Irvin E. Zeitler, Jr., D.O., called the meeting to order at 10:31a.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., Allan Shulkin, M.D., and Stanley S. Wang, M.D. Committee Members Melinda McMichael, M.D. and George Willeford III, M.D. were not present.

Also present was Mari Robinson, Executive Director, Medical Director Linda Gage-White, M.D., and various other staff.

Agenda Item #2. Discussion, recommendation, and possible action regarding referrals and reports from the Texas Physician Health Program.

Acting Executive Director Dr. John Jackson introduced the new Executive Director Dr. Bill Nemeth to the DPRC. This change was effective June 1, 2011. Dr. Jackson presented the status of the PHP's current caseload and discussed three specific cases the Texas Physician Health Program is currently working and requested further guidance on, a copy of which is attached.

Dr. McNeese moved, and Dr. Crocker seconded that case #11-0188 continue to be monitored by the TX PHP. Motion carried.

Mr. Baucom moved, and Dr. Crocker seconded that case #11-0147 continue to be monitored by the TX PHP. Motion carried.

Dr. Crocker moved, and Ms. Blackwell seconded that the respondent in case #10-0363 can continue to be monitored by the TX PHP so long as the respondent signs a cessation of practice order with the PHP no later than Monday, June 6, 2011, 3:00pm, if not, this case will be returned to the TMB for further action. Motion carried.

On behalf of the TMB and the DPRC, Medical Director Linda Gage-White, M.D., thanked Dr. Jackson for his work as the Acting Executive Director of the TX PHP.

Ms. Attebury moved, and Ms. Blackwell seconded; the motion passed at 11:14a.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 11:28a.m., it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Agenda Item #9. Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from DPRC for follow-up action.

Ms. Attebury moved, and Dr. Crocker seconded that Log #10-3914 be consolidated with the entire complaint history of this respondent and that a new panel be assigned to investigate the potential pattern of misconduct by this respondent and that if needed an ISC be scheduled after this panel review is completed. Motion carried.

Dr. McNeese moved, and Ms. Blackwell seconded that Log #10-6950 be closed and that a custom letter be sent to the respondent in this case. Motion carried.

Dr. McNeese moved, and Ms. Attebury seconded that Log #10-7294 be continued with a custom letter to the complaint warning that this is the fourth and last contact they will receive from the TMB to supply needed information to investigate this case. Motion carried.

Ms. Attebury moved and Ms. Blackwell seconded that all routine follow-up files under Agenda Item 9 not specifically granted above be dismissed. Motion carried.

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

Ms. Robinson presented the Enforcement Report for April 2011, a copy of which is attached. This was an informational item only and no vote was necessary.

Agenda Item #4. Review, discussion, and possible action regarding review of probationer's appearances.

Ms. Attebury moved, and Dr. Guajardo seconded that the waiver list on Agenda Item 4 be approved. Motion carried.

Agenda Item #5. Consideration and approval of membership of the Expert Physician Panel.

The committee unanimously moved that the memberships to the Expert Physician Panel on Agenda Item 5 be approved. Motion carried.

Agenda Item #6. 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 440 investigations that fall under this category; approximately 300 cases are pending expert panel review and the remainder being SOAH cases. This was an informational item only and no vote was necessary.

Agenda Item #7. Review, discussion, and possible action regarding the definition of friends and immediate family as related to Board Orders.

Dr. Guajardo moved, and Dr. Crocker seconded that for the purposes of board orders that the definition of *family member* be accepted as follows: a *family member* is one's parents, step-parents, siblings, spouse, ex-spouse, children, step-children, foster children, in-laws,

sibling in-laws, grandparents, great grandparents, step-great grandparents, grandchildren, aunts, uncles, cousins, nieces, and nephews. Motion carried.

A lunch recess was taken at 12:00p.m., and the committee returned at 12:34p.m.

Ms. Attebury moved, and Ms. Blackwell seconded; the motion passed at 12:35p.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 5:15p.m., and it was announced that no action was taken during executive session. A certified agenda of the executive session was made. Dr. Zeitler recused himself from any discussion and decision regarding Log #11-4162; Ms. Attebury performed the duty of Chair during the discussion of this case.

Agenda Item #8. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 09-5042, 09-5852, 10-0129, 10-2862, 10-2889, 10-3427, 10-5424, 10-5969, 10-6255, 10-6355, 10-6405, 10-6601, 10-6670, 10-7356, 10-7450, ii. Legal Files: 10-0301 (09-4171), 10-0835 (10-0568). B. Jurisdictional Not Filed Complaints: 06-0904, 10-5539, 10-5540, 10-5541, 10-7200, 11-0165, 11-1342, 11-2915, 11-3202, 11-3491, 11-3686, 11-3999, 11-4001, 11-4002, 11-4052, 11-4139, 11-4159, 11-4254, 11-4316, 11-4320, 11-4336, 11-4466, 11-4518, 11-4519, 11-4547, 11-4789, 11-5047, 11-5054; and C. Non-Jurisdictional Complaints: 11-1343, 11-2581, and 11-4162.

It was announced by Mari Robinson that Agenda Items 8.B., Log #11-0165, 11-1342 and 8.C., Log #11-1343 be moved to the August DPRC Agenda as a courtesy to the complainants. A custom letter will be sent to each Complainant to notify them that a decision will be made on their case in August 2011 whether the Complainant personally appears before the committee or not.

Dr. Crocker departed the board room at 2:08p.m., a quorum still remained.

The fire alarm sounded at 3:10pm and the building was evacuated, the meeting resumed at 3:25p.m.

Dr. Shulkin moved, and Ms. Blackwell seconded that the appeal of Item 8.A.i., Log #09-5852 be granted and that the case be returned to enforcement support for further investigation to include a new expert review. Motion carried.

Dr. McNeese moved, and Dr. Shulkin seconded that the appeal of Item 8.A.i., Log #10-0129 be granted and that a new panel review this case. Motion carried.

Dr. Guajardo moved, and Dr. Shulkin seconded that the appeal of Item 8.A.i., Log #10-5424 be denied. Motion carried.

Dr. Shulkin moved, and Ms. Attebury seconded that the appeal of Item 8.A.i., Log #10-5969 be denied. Motion carried.

Dr. Shulkin moved, and Dr. Guajardo seconded that all other appeals under Agenda Item 8.A.i not specifically granted above be denied. Motion carried.

Dr. McNeese moved, and Mr. Baucom seconded that the appeal of Item 8.A.ii., Log #10-0301 (09-4171) be granted and investigated further with the possibility of an ISC after the additional investigation is completed. Motion carried.

Dr. Shulkin moved, and Dr. Guajardo seconded that the appeal of Item 8.A.ii., Log #10-0835 (10-0568) be denied. Motion carried.

Ms. Blackwell moved, and Dr. Guajardo second that the appeal of Item 8.B., Log #06-0904 be denied. Motion carried.

Dr. Shulkin moved, and Ms. Attebury seconded that the appeals of Item 8.B., Log #10-5539, 10-5540, and 10-5541 be granted and that an investigation be opened. Motion carried.

Ms. Attebury moved, and Dr Guajardo seconded that the appeal of Item 8.B., Log #10-7200 be denied. Motion carried.

Dr. McNeese moved, and Dr. Shulkin seconded that the appeal of Item 8.B., Log #11-4159 be granted and that an investigation be opened. Motion carried.

Dr. Shulkin moved, and Dr. Guajardo seconded that the appeal of Item 8.B., Log #11-5047 be granted and that an investigation be opened. Motion carried.

Dr. Guajardo moved, and Ms. Blackwell seconded that the appeal of Item 8.B., Log #11-2915 be granted and that an investigation be opened. Motion carried.

Dr. McNeese moved, and Dr. Guajardo seconded that the appeal of Item 8.B., Log #11-3491 be granted and that an investigation be opened. Motion carried.

Dr. Guajardo moved, and Ms. Blackwell seconded that all other appeals under Agenda Item 8.B. not specifically granted above be denied. Motion carried.

Dr. Guajardo moved, and Ms. Blackwell seconded that all other appeals under Agenda Item 8.C. not specifically granted above be denied. Motion carried.

Ms. Attebury moved, and Dr. McNeese 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. Adjourn.

At 5:49p.m., Dr. Zeitler announced the meeting was adjourned, there were no objections.