

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
August 25, 2011

Chair Melinda McMichael, M.D., called the meeting to order at 11:12a.m. Other members present were Julie K. Attebury, David Baucom, Patricia S. Blackwell, Manuel Guajardo, M.D., James Scott Holliday, D.O., Allan Shulkin, M.D., Stanley S. Wang, M.D., George Willeford III, M.D., and Irvin E. Zeitler, Jr., D.O. Committee Member Margaret C. McNeese, M.D. was not present.

Also present was 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. Bill Nemeth discussed nine cases that the Texas Physician Health Program is currently working and requested additional guidance on.

Dr. Wang moved, and Ms. Blackwell seconded that TX PHP cases #11-0253, 10-0143, 10-0147, 10-0342, and 11-0139, be returned to the jurisdiction of the Texas Medical Board and the Respondents be scheduled for an ISC. Motion carried.

Dr. Willeford moved, and Ms. Blackwell seconded that TX PHP cases #11-0188, 10-0363, and 11-0215 remain under the management of the Texas Physician Health Program. Motion carried.

Dr. Willeford moved, and Dr. Wang seconded that TX PHP case #11-0189 be returned to the jurisdiction of the Texas Medical Board and the Respondent be scheduled for an ISC. Motion carried.

Dr. Zeitler moved, and Ms. Blackwell seconded; the motion passed at 11:47a.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 12:30p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Dr. Zeitler moved, and Ms. Blackwell seconded that the appeal of Item 8.B., Log #11-6441 be granted and the case be returned to a pending determination status for an additional 30-days while waiting for a response from the Respondent in this case. Motion carried.

Dr. Zeitler moved, and Ms. Blackwell seconded; the motion passed at 12:32p.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 3:31p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Agenda Item #8. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 09-6497, 10-2439, 10-3033, 10-5578, 10-5837, 10-7405, 10-7415, 11-0533, 11-0618, 11-0713, 11-1000, 11-1272, 11-1846, ii. Legal Files: 10-0600 (08-5026), 10-0927 (09-1539), 11-0429 (10-6063). B. Jurisdictional Not Filed Complaints: 11-0165, 11-0230, 11-1342, 11-2178, 11-2187, 11-4216, 11-4702, 11-4703, 11-4704, 11-4705, 11-4724, 11-4725, 11-4747, 11-4939, 11-5046, 11-5088, 11-5282, 11-5370, 11-5395, 11-5396, 11-5397, 11-5398, 11-5491, 11-5587, 11-5613, 11-5739, 11-6068, 11-6094, 11-6285, 11-6326, 11-6441, 11-6790, 11-6993; and C. Non-Jurisdictional Complaints: 11-1343.

Dr. Wang recused himself from any discussion and decision regarding Log #11-1846.

It was announced by Mari Robinson that the appeal of Agenda Item 8.B., #11-4747 would be moved to the November 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 November 2011 whether the Complainant personally appears before the committee or not.

Dr. Shulkin moved, and Ms. Attebury seconded that the appeal of Item 8.B., Log #11-0165 be denied with this case and a letter sent to the TDCJ. Motion carried.

Dr. Guajardo moved, and Mr. Baucom seconded that the appeal of Item 8.B., Log #11-1342 and 11-1343 be denied. Motion carried.

Dr. Willeford moved, and Dr. Zeitler seconded that the appeal of Item 8.B., Log #11-5282 be granted and that a 30 day preliminary investigation be opened. Motion carried.

Dr. Willeford moved, and Dr. Guajardo seconded that the appeal of Item 8.B., Log #11-5370 be denied. Motion carried.

Dr. Wang moved, and Mr. Baucom seconded that the appeals of Item 8.B., Log #11-5395, 11-5396, 11-5397, and 11-5398 be denied. Motion carried.

Dr. Holliday moved, and Dr. Willeford seconded that the appeal of Item 8.B., Log #11-6790 be granted and that a 30 day preliminary investigation be opened. Motion carried.

Ms. Attebury moved, and Dr. Zeitler seconded that the appeal of Item 8.A.i., Log #11-0713 be denied and that a custom letter be sent to the Respondent. Motion carried.

Dr. Holliday moved, and Dr. Willeford seconded that the appeal of Item 8.A.ii., Log #08-5026 (10-0600) be granted and that a new ISC be scheduled. Motion carried.

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

Dr. Willeford moved, and Mr. Baucom seconded that all other appeals under Agenda Item 8.A.ii. not specifically granted above be denied. Motion carried.

Dr. Guajardo moved, and Dr. Willeford seconded that the appeal of Item 8.B., Log #11-4939 be granted and that an investigation be opened. Motion carried.

Dr. Wang moved, and Dr. Holliday seconded that the appeal of Item 8.B., Log #11-5491 be granted and a 30 day preliminary investigation be opened. Motion carried.

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

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

Ms. Robinson presented the Enforcement Report for July 2011, 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 the following chapters in Title 22 of the Texas Administrative Code:

- A. Chapter 164, Physician Advertising
- B. Chapter 178, Complaints
- C. Chapter 180, Texas Physician Health Program and Rehabilitation Orders
- D. Chapter 187, Procedural Rules
- E. Chapter 189, Compliance Program
- F. Chapter 190, Disciplinary Guidelines
- G. Chapter 195, Pain Management Clinics
- H. Chapter 198, Unlicensed Practice

The committee unanimously agreed that Agenda Item 4.A. be pulled from the agenda and the issue will be revisited at the November 2011 DPRC. Motion carried.

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

Dr. Holliday moved, and Dr. Zeitler seconded that Agenda Item 4.C. be accepted for publication in the Texas Register. Motion carried.

Ms. Attebury moved, and Dr. Shulkin seconded that Agenda Item 4.D. and 4.E. be referred for discussion with the full Board on August 26, 2011. Motion carried.

Ms. Blackwell moved, and Dr. Zeitler seconded that Agenda Item 4.F. be accepted for publication in the Texas Register. Motion carried.

Dr. Zeitler moved, and Ms. Blackwell seconded that Agenda Item 4.G. be accepted for publication in the Texas Register. Motion carried.

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

Agenda Item #5. Review, discussion, and possible action regarding review of probationers appearances. **Dr. Wang recused himself from any discussion and decision regarding case #03-023.**

Ms. Attebury moved, and Dr. Shulkin 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. Wang moved, and Dr. Shulkin 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 in litigation that are over one year old. To date, there are approximately 482 investigations that fall under this category; the majority being SOAH cases and cases pending expert panel review. This was an informational item only and no vote was necessary.

Dr. Zeitler moved, and Ms. Blackwell seconded; the motion passed at 4:55p.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 5:11p.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. Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the DPRC for follow-up action, specifically including: 09-0550, 09-3345, 09-3593, 09-4218, 09-4651, 09-6481, 10-0185, 10-0204, 10-1298, 10-2797, 10-5769, 10-6122, 10-7029, 10-7122, 10-7294, 11-1860, 11-2140, 11-2189, 11-2573, 11-3152, 11-7283, 11-7332, and 503-10-5869. **Dr. Wang recused himself from any discussion and decision regarding Log #09-0550, 09-3593, 09-4218, 09-6481, 10-0185, 10-0204, 10-2797, 10-7122, 11-1860, 11-2140, 11-2189, 11-2573, 11-3152, 11-7283, 11-7332, 503-10-5869.**

Ms. Attebury moved, and Mr. Baucom seconded that any of the following cases 09-0550, 09-3593, 09-4218, 09-6481, 10-0185, 10-0204, 10-2797, 10-7122, 11-1860, 11-2140, 11-2189, 11-2573, 11-3152, 11-7283, 11-7332, 503-10-5869 that were already at SOAH be returned to SOAH for prosecution in addition to any outstanding cases listed above that were not originally at SOAH be sent through the disciplinary process. It was directed that there should be no further mediation on this matter. Motion carried.

Dr. Zeitler moved, and Ms. Blackwell seconded that Log #09-3345 be denied with a letter to the Respondent emphasizing the need to improve written and electronic medical records. Motion carried.

Dr. Zeitler moved, and Ms. Blackwell seconded that the remaining routine follow-up files be dismissed. Motion carried.

Agenda Item #10. Review, discussion, and possible action regarding selected files and cases.
Dr. Wang recused himself from any discussion and decision regarding Log #11-5979.

Dr. Shulkin moved, and Mr. Baucom 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.

Ms. Attebury moved, and Dr. Zeitler seconded that the meeting adjourn. Motion carried at 5:38p.m.