

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
February 6, 2014

Chair Margaret C. McNeese, M.D. called the meeting to order at 10:11 a.m. Other members present were Julie K. Attebury, James “Scott” Holliday, D.O., Allan Shulkin, M.D., Karl W. Swann, M.D., George Willeford III, M.D., Manuel Guajardo, M.D., and Irvin E. Zeitler, Jr., D.O. David Baucom arrived at 10:55 a.m. Stanley Wang, M.D., arrived at 11:00 a.m. Committee members Julie Attebury and Manuel Guajardo, M.D. were present by teleconference in accordance with Texas Government Code section 551.125, due to inclement weather.

Staff members present were Mari Robinson, Executive Director, Robert Bredt, M.D., Medical Director, and various other staff.

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

The Executive Director, Dr. Bill Nemeth, presented the status of PHP’s current caseload to the DPRC. Dr. Nemeth discussed the different circumstances of cases the Texas Physician Health Program is currently working and requested additional guidance.

Dr. Holliday moved, and Dr. Zeitler seconded that PHP Case #11-0322 remain under the management of PHP with the understanding that there is zero tolerance for any future infractions. If any further violations occur the case will be returned to the jurisdiction of the Texas Medical Board for further action. Motion carried.

Dr. Willeford moved, and Dr. Holliday seconded that PHP Case #13-0335 be returned to the jurisdiction of the Texas Medical Board for further action and that should another positive drug screen occur, the case should be evaluated for a possible temporary suspension. Motion carried.

Dr. Holliday moved, and Dr. Zeitler seconded that PHP Case #13-0265 be returned to the jurisdiction of the Texas Medical Board for further action and that staff offer an agreed suspension order that would suspend the licensee’s practice until such time as she returns to the board and shows evidence that she is safe to practice. Motion carried.

Dr. Willeford moved, and Dr. Zeitler seconded that PHP Case #12-0186 be returned to the jurisdiction of the Texas Medical Board for a possible temporary suspension. Motion carried.

The committee discussed PHP Case # 11-0168, which was referred back to the jurisdiction of the Texas Medical Board at the December 2013 meeting. The Committee took no further action with the case.

The committee presented Dr. Nemeth with a plaque in appreciation of his service to the Boards.

Agenda Item #3. Discussion, recommendation, and possible action regarding renewals involving impaired licensees.

Dr. Holliday moved, and Dr. Zeitler seconded that licensee number 01 under Agenda Item 3 be referred to PHP for evaluation. Motion carried.

Dr. Willeford moved, and Dr. Holliday seconded that licensee number 02 under Agenda Item 3 be referred to PHP for evaluation. Motion carried.

Dr. Holliday moved, and Dr. Willeford seconded that licensee number 03 under Agenda Item 3 be offered the option of retiring his license through PHP, and that the offer be made by a letter informing the licensee that once retired he may seek to have his license reinstated to an active status, if not accepted, then the case is to be referred to PHP. Motion carried.

Agenda Item #4. Reports and discussion regarding the Investigation, Litigation and Compliance Departments.

Ms. Robinson presented the Enforcement Report for December 2013, a copy of which is attached. This was an informational item only and no vote was necessary.

Agenda Item #5. 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 187, Procedural Rules, §187.35. Presentation of Proposal for Decision
- B. Chapter 187, Procedural Rules, §187.37. Final Decisions and Orders
- C. Chapter 187, Procedural Rules, §187.38. Motions for Rehearing

Dr. Zeitler moved, and Mr. Baucom seconded that the proposed amendments presented by staff that pertain to Agenda Item 5 be approved for publication. Motion carried.

Dr. Zeitler moved, and Dr. Willeford seconded; the motion passed at 11:16 a.m. to go into Executive Session for 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 12:35 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made. **Dr. McNeese recused herself from any discussion and decision, regarding Log 13-6592, Dr. Zeitler served as the chair for this case.**

Agenda Item #11. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 11-8197, 11-8198, 13-2638, 13-4364, 13-5018, 13-5118, 13-5251, and 13-6029, ii. Legal Files: 13-0915 (13-2260). B. Jurisdictional Not Filed Complaints: 13-2054, 13-4310, 13-5398, 13-6592, 13-6743, 14-0066, 14-0589, 14-0764, 14-0847, 14-0848, 14-0849, 14-0850, 14-0851, 14-0852, 14-0853, 14-0854,

14-0855, 14-0856, 14-0857, 14-0858, 14-0859, 14-0860, 14-0861, 14-0862, 14-0863, 14-0899, 14-0982, 14-1101, 14-1368, 14-1372, 14-1374, 14-1452, 14-1458, 14-1566, 14-1576, 14-1730, 14-1767, 14-1902, 14-1962; and C. Non-Jurisdictional Complaints: 03-5609 and 13-6486.

Dr. Swann moved, and Dr. Shulkin seconded that the appeal of Item 11.B., Log 13-6592 be deferred for decision until the May 1st, 2014, committee meeting, to gather additional information for decision. The committee directed staff to request that the complainant provide records related to treatment provided after care at issue.

A lunch recess was taken at 12:42 p.m., the committee returned at 1:15 p.m.

Agenda Item #6. Discussion and possible direction regarding the draft of customized impairment packet letters.

The committee approved the proposed drafts pertaining to Agenda Item 6, with one change: add contact information that may be used for the licensee's inquiries, if any. The committee directed staff to implement change and begin using the letters when sending impairment packets to licensees reporting impairments.

Agenda Item #7. Discussion and possible direction regarding physicians on Board Orders and the option to retire.

The committee directed staff to prohibit licensees under Board Orders from retiring their licenses and to draft a policy outlining that direction.

Agenda Item #8. Review, discussion, and possible action regarding review of probationer's appearances.

Dr. Zeitler moved, and Dr. Willeford seconded that the waiver list on Agenda Item 8 be approved. Motion carried.

Agenda Item #9. Consideration and approval of membership of the Expert Physician Panel.

Dr. Holliday moved, and Dr. Zeitler seconded that the interim memberships to the Expert Physician Panel on Agenda Item 9 be approved. Motion carried.

Agenda Item #10. 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, the majority are SOAH cases and multiple cases involving the same respondents, with the number of cases being significantly reduced since the previous year. The Committee was pleased with the results and complimented the Enforcement and Litigation Divisions on a job well done. This was an informational item only and no vote was necessary.

Agenda Item #11. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 11-8197, 11-8198, 13-2638, 13-4364, 13-5018, 13-5118, 13-5251, and 13-6029, ii. Legal Files: 13-0915 (13-2260). B.

Jurisdictional Not Filed Complaints: 13-2054, 13-4310, 13-5398, 13-6592, 13-6743, 14-0066, 14-0589, 14-0764, 14-0847, 14-0848, 14-0849, 14-0850, 14-0851, 14-0852, 14-0853, 14-0854, 14-0855, 14-0856, 14-0857, 14-0858, 14-0859, 14-0860, 14-0861, 14-0862, 14-0863, 14-0899, 14-0982, 14-1101, 14-1368, 14-1372, 14-1374, 14-1452, 14-1458, 14-1566, 14-1576, 14-1730, 14-1767, 14-1902, 14-1962; and C. Non-Jurisdictional Complaints: 03-5609 and 13-6486.

Dr. McNeese recused herself from any discussion and decision regarding Log 11-8197 and #11-8198 under Agenda Item 11.A.i.

It was announced by Mari Robinson that Agenda Item 11.B., Log #14-1767 be moved to the May DPRC Agenda as a courtesy to the complainant. A custom letter will be sent to the complainant to notify that a decision will be made on the case in May 2014 regardless of whether the complainant personally appears before the committee or not.

Mr. Baucom moved, and Dr. Wang seconded that all appeals under Agenda Item 11.A.i. be denied. Motion carried.

Dr. Wang moved, and Dr. Zeitler seconded that all appeals under Agenda Item 11.A.ii. be denied. Motion carried.

Dr. Wang moved, and Dr. Zeitler seconded that the appeal of Item 11.B., Log #14-1576 be granted and that an investigation be opened. Motion carried.

Dr. Zeitler moved, and Dr. Holliday seconded that the appeal of Item 11.B., Log #14-1368 be granted and that an investigation be opened. Motion carried.

Dr. Holliday moved, and Mr. Baucom seconded that the appeal of Item 11.B., Log #14-1458 be granted and the case be returned to a pending determination status for an additional 45-days and that the entire medical record be obtained from Respondent. Motion carried.

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

Dr. Willeford moved, and Dr. Zeitler seconded that all appeals under Agenda Item 11.C. be denied. Motion carried.

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: 13-0333, 13-3604, 13-4565, 13-4567, 13-4621, 13-5272, 13-5506, 13-5958, and 13-6022. Dr. Holliday recused himself from any discussion and decision regarding Log #13-0333 and Dr. Zeitler recused himself from any discussion and decision regarding Log #13-5506.

Dr. Wang moved, and Dr. Willeford seconded that Log #13-6022 be continued and that expert panel be asked for an opinion on a specific question related to the standard of care. Motion carried.

Mr. Baucom moved, and Dr. Holliday seconded that all other routine follow-up files under Agenda Item 12 be dismissed. Motion carried.

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

Dr. Zeitler moved, and Dr. Willeford seconded; the motion passed at 1:53 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 2:32 p.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 Dr. Willeford 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 #14. Adjourn.

Dr. Zeitler moved, and Dr. Holliday seconded that the meeting adjourn. Motion carried at 2:33 p.m.