

**DISCIPLINARY PROCESS REVIEW COMMITTEE (DPRC) & DECISIONS**

**Texas Physician Health Program**      (Probationer/Licensee Violated PHP Agreement & Cases of Concern)

February 6, 2014

New Cases for Discussion			
	REMAIN WITH PHP	TMB ACCEPTED	CONTINUE
<p><b>1. 11-0322</b></p> <p>License Type: M.D.</p> <p>(Emergency Medicine)</p> <p><u>Background:</u></p> <ul style="list-style-type: none"><li>• Referral Type: Self</li><li>• Agreement Term: 3/15/2012 – 3/14/2017</li><li>• Referral Reason: Substance</li><li>• Sobriety Date: 6/6/2011</li><li>• Drug(s) of Choice: Alcohol, Marijuana and Lunesta</li></ul> <p><u>Issue(s):</u></p> <p>11/13/2013: "Positive" PEth test result (55 ng/mL).</p> <p>11/22/2013: Participant submitted the following response:</p> <p><i>Rosalind,</i></p> <p><i>There are two things I need to tell you. First, I have to test today and I don't leave the hospital till 3 pm, so I will test immediately after.</i></p>	<p><b>X</b></p> <p>With the understanding that there is zero tolerance for any future infractions, if so, the case will be returned to the jurisdiction of the Texas Medical Board for possible temporary suspension.</p>		

<p><i>Regarding the positive test, I did consume alcohol moderately for two days while on vacation. Those two days were approximately Oct 30 and 31. My husband and I both had a few gin and tonics. This is very embarrassing, I did it because I didn't think I would get caught and now we know otherwise. So much for requesting a travel waiver. I do apologize."</i></p> <p>11/22/2013: TXPHP Medical Director recommended that the participant undergo a relapse evaluation.</p> <p>The participant's CMS Recovery Monitor was notified of the violation.</p> <p>12/3/2013: Participant met with Eugene Degner, MD for a relapse evaluation and it was recommended that the participant meet with a LCDC counselor and attend 90 meetings in 90 days. In addition, it was reported that the participant did not have a full-blown relapse.</p> <p>Participant's TXPHP Monitoring and Assistance Agreement was modified to include these recommendations.</p>			
	<b>REMAIN WITH PHP</b>	<b>TMB ACCEPTED</b>	<b>CONTINUE</b>
<p><b>2. 13-0335</b></p> <p>License Type: M.D.</p> <p>(Internal Medicine)</p> <p><u>Background:</u></p> <ul style="list-style-type: none"> <li>• Referral Type: TMB</li> <li>• Agreement Term: 10/1/2013 – 8/27/2014</li> <li>• Referral Reason: Substance</li> <li>• Sobriety Date: Unknown</li> <li>• Drug(s) of Choice: Alcohol</li> </ul> <p><u>Issue(s):</u></p> <p>11/8/2013: Received a letter from the Harris County Medical</p>		<p><b>X</b></p> <p>ISC to be scheduled</p>	

<p>Society whereby they denied the participant's enrollment in their program as they felt the participant was not "in recovery."</p> <p>11/13/2013: Test resulted in "dilute" specimen (8.6 mg/dL; SG: 1.002).</p> <p>In addition, the participant submitted the following regarding the ingestion of vanilla extract:</p> <p><i>"Hello Ms. Bridgewater,</i></p> <p><i>As we discussed on the phone, I ingested about 4 sugar cookies from Tiff's Treats yesterday. I have contacted their Houston Greenway Plaza store today and they have told me there is vanilla extract in their cookies but would not tell me how much. After checking with you, I am concerned about a false positive.</i></p> <p><i>With regard to my abstinence from consuming alcohol, I have not consumed ANY as per my agreement with TXPHP. Thank you. Sincerely."</i></p> <p>11/18/2013: Participant submitted the following response:</p> <p><i>"Hi Miriah,</i></p> <p><i>I believe I know how I came back dilute. Was in a rush to get to work and couldn't go when I got to the testing center. I ended up drinking a lot of water prior to submitting urine sample. I'll be happy to submit blood sample tomorrow.</i></p> <p><i>Thank you."</i></p> <p>11/19/2013: "Positive" PEth test result (40 ng/mL).</p> <p>11/26/2013: Participant submitted the following response regarding the "positive" PEth test result:</p> <p><i>"This is ridiculous. Are you sure this is me? Can you please check again?"</i></p>			
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*I have a great desire to put the Public Intoxication situation behind me and comply with this monitoring agreement. As a result, this whole drug testing thing had made me vigilant and maybe even paranoid to watch out for the thousands of products that contain ethanol. I'm really tired of doing this. This is why I disclosed my intake of cookies made with vanilla extract from Tiff's Treats 2 weeks ago which sounded silly to me but now maybe not. Because I felt silly, I continued to eat them after the date I emailed you. Another thing have found, since being tested for PETH, is that my soy lecithin dietary supplement has phosphatidylcholine, which may cross-react with the PETH test? I'm not sure. I have been taking this for several weeks as a supplement for cholesterol. Additionally, I have recently discovered my ProAir (albuterol) inhaler for asthma has ethanol in it. I disclosed my use of this medication since August and you will find it in my pharmacy records. I checked the possible content in generic albuterol on the internet and it has ranged from 10-20%. I wanted to confirm with an MRO. Since the weather change, I have been using it a lot. Two puffs 6 times a day every day. This has not been enough to relieve my asthma. So, I have also been using QVar (2 puffs twice a day) which I also discovered has ethanol - samples from work. I was thinking to submit a new med list and ask about the ProAir and QVar regarding ethanol content but honestly thought I was being paranoid as asthma inhalers were not disclosed in the informed consent for drug testing among the many things that were, so I dismissed it. Now I understand I have to be paranoid which really upsets me because the drug monitoring is causing more problems for me than helping me. Again, I respectfully state that I have NOT had a single drop of alcohol from any beverage since the agreement in October and that will always be the case until this monitoring agreement is completed. Thank you."*

12/3/2013: MRO Report Notes the following:

*"8:06 a.m, Called 832-314-7075. Spoke to donor. He denied any alcohol use. He had not consumed any nonalcoholic beer or wine. He had not consumed any over-the-counter medications containing alcohol. He does not use hand sanitizers and he does not use a mouthwash that contains alcohol. He had been using Proair inhaler frequently and he had been using Qvar steroid*

*inhaler twice a day or more. Both of these inhalers contain a small amount of alcohol. He had been taking a multivitamin that contains phosphatidylcholine. He wondered if the phosphatidylcholine would cause any cross reactivity with the test. He had consumed Italian food 2 days prior to this test. The Italian food may have been prepared with alcohol. He had consumed a Monster Energy Drink. He uses hair gels and shampoos that contain non-ethyl alcohols. No other known alcohol exposure. According to MedTox Laboratories Phosphatidylethanol levels in excess of 20 ng/mL are considered evidence of moderate to heavy alcohol consumption but the possibility remains that an individual elevated Phosphatidylethanol level may result from incidental (or unintentional) ethanol exposure. Phosphatidylethanol may be detected in blood for up to 14 days after sobriety. Positive for Phosphatidylethanol. H MS/”*

12/4/2013: Participant acquired legal representation from Leichter Law Firm, P.C. and submitted the following letter to the TXPHP Medical Director:

*“Dear Dr. Nemeth:*

*Per my text to you, I have been retained by the participant to represent him in matters pertaining to the alleged breach of his Texas Physician Health Program (“PHP”) contract through the submission of a positive PETH test result of 40 (nml <20). Please direct future communications regarding this file through me. I have reviewed all material associated with the participant’s PHP participation, the referral to PHP and his participation since the inception of his contract. I have also spoken with the participant at length multiple times, interviewed him in a thorough fashion and have reviewed various literature sources concerning the PETH test and dilute specimens. Of note is the fact that the participant has a 21 month old daughter and a wife whose health is compromised by lupus. As such, the participant is responsible for increased care-taking functions of his daughter as well as his wife when she suffers from flare-ups due to her autoimmune disease. The participant maintains he has not violated his PHP agreement and discussions with Dr. Skipper indicate the PETH test has not been peer reviewed adequately to determine if the*

*participant's explanations regarding his albuterol use for his asthma condition could have caused this result. The LCDC evaluation upon which you premised the participant's participation in PHP opines the participant does not have an addictive disorder and is not a risk to the public through his continued practice of medicine. Moreover, the public intoxication charges are in the process of being expunged. Therefore, I suggest there is a more appropriate way to handle the participant's situation than subjecting him to a 96 hour evaluation which would cause great burden on his family as well as the group in which he practices. At this juncture, therefore, I propose you allow the participant to continue with the 1 year sobriety challenge with increased drug screening frequency and additional monitoring requirements perhaps the addition of SoberLink and some basic AA meetings to prophylactically educate the participant regarding the disease of addiction. Dr. Nemeth, I look forward to your thoughts and opinions regarding this file, my thoughts and postures, and resolving this situation in a fair and reasonable way for all parties involved while continuing to ensure the public safety. Thank you in advance for your consideration of these matters.*

*Sincerely,*

*Leichter Law Finn, PC"*

12/18/2013: Subsequently, the participant's attorney submitted the following letter to the TXPHP Medical Director:

*"Dear Dr. Nemeth:*

*I write concerning the participant pursuant to our last phone conference. I am sorry for the delay in this letter, but we have had IT issues which rendered access to our data difficult. During our discussions I proposed that the participant attend an Intensive Outpatient Program ("IOP") as an alternative to the evaluation proposed in your recent correspondence to him. You thought this would be a good idea as it would familiarize the participant with 12-Step recovery and give him the opportunity to avail himself to the spiritual principles inherent in Alcoholics Anonymous. Moreover, as the underlying PETH result is*

<p><i>questionable and the participant's criminal history is in the process of being expunged, this seems like a fair and equitable way to satisfy the needs of all parties concerned and amply and adequately protect the public. The participant will agree to this as well as finishing out his current agreement with the Texas Physician Health Program ('PHP') The participant is the father of a 21 month old baby girl and his wife is debilitated with lupus. This requires the participant's full time attention, and as such he vehemently denies that alcohol is behind the positive PETH result or that alcohol in any way poses a problem in his life, lie desires to complete the IOP and finish out his contract with PHP in a good faith demonstration of his personal integrity and professional competence.</i></p> <p><i>Please confirm with me in writing or via e-mail that this solution is still acceptable.</i></p> <p><i>Thank you for your attention to this matter.</i></p> <p><i>Sincerely,</i></p> <p><i>Louis Leichter"</i></p> <p>1/3/2014: The TXPHP Medical Director recommended that the participant begin using the Soberlink device (twice per day) and attend weekly 12-Step meetings.</p>			
	<b>REMAIN WITH PHP</b>	<b>TMB ACCEPTED</b>	<b>CONTINUE</b>
<p><b>3. 13-0265</b></p> <p>License Type: M.D.</p> <p>(Anesthesiology)</p> <p><u>Background:</u></p> <ul style="list-style-type: none"> <li>Referral Type: Self</li> <li>1<sup>st</sup> Agreement Term: 10/16/2013 – 10/15/2018</li> </ul>		<p><b>X</b></p> <p>For an ISC; until the ISC is scheduled, staff will offer an Agreed Order of Temporary Suspension.</p>	

- 2<sup>nd</sup> Agreement Term: 1/9/2014 – 10/15/2018
- Referral Reason: Physical (Chronic Low Back Pain and Coccydynia)
- Sobriety Date: Unknown
- Drug(s) of Choice: Fentanyl patch and Percocet

Issue(s):

10/21/2013: Participant missed check-in (did not provide test specimen).

10/29/2013: Participant missed check-in (did not provide test specimen).

11/6/2013: Tested “positive” (expected) for Oxycodone (232 ng/mL) and Oxymorphone (3832 ng/mL).

11/13/2013: Tested “positive” (expected) for Oxycodone (1580 ng/mL) and Oxymorphone (2417 ng/mL).

11/13/2013: TXPHP Medical Director received the following email from the PHR Committee Chairman of the Bexar County Medical Society:

*“Bill, this email is to inform you of steps recently taken re: Participant with whom you have a contract. The participant met with my committee Thursday, Oct 31st, but was not forthcoming with documentation on her previous evaluations by Dr Chris Tichnor, and the Betty Ford clinic. The participant will not sign releases for these evaluations, and because of this and other problems, could not be offered a contract by my committee. The participant met with her group, Star Anesthesia prior to the PHR committee meeting and I was present. At that time great concern was raised over her health and medications.*

*Last Friday I informed Star Anesthesia of the uncooperative nature of the Oct PHR meeting with the participant and our subsequent inability to offer a contract given the lack of supportive data from the participant. Tuesday afternoon Nov 11th, I was invited to another meeting of the Star Anesthesia selected members (4), and the participant was suspended from*



*all work with Star Anesthesia indefinitely pending compliance with their and my requests for documentation on which to base any further action.*

*I will be happy to discuss this further by phone anytime.*

*Sincerely,*

*Oliver H. Johnson, Jr MD  
Chmn PHR committee  
BCMS San Antonio”*

11/15/2013: TXPHP Medical Director recommended that participant undergo a 96-hour evaluation.

11/20/2013: Participant missed check-in and missed test. Participant contacted TXPHP and notified that she was hospitalized due to food poisoning and therefore could not provide a test specimen. In addition, participant indicated that she will be reporting to The Arbor in Georgetown, TX on 12/2/2013 for treatment.

11/26/2013: Tested “positive” (expected) for Oxycodone (1364 ng/mL) and Oxymorphone (1848 ng/mL).

12/2/2013: Tested “positive” (expected) for Oxycodone (403 ng/mL) and Oxymorphone (1209 ng/mL).

12/9/2013: Tested “positive” (expected) for Oxycodone (2299 ng/mL), Oxymorphone (7565 ng/mL), and Ethanol, urine (.031 g/dL). Glucose was reported as “negative.”

12/13/2013: Tested “positive” (expected) for Oxycodone (1005 ng/mL), Oxymorphone (6142 ng/mL), and EtG (907 ng/mL). EtS was reported as “negative.”

12/16/2013 – 12/18/2013: Participant underwent a 72-hour evaluation at The Gabbard Center in Houston, TX.

12/27/2013: Tested “positive” (expected) for Oxycodone (1364 ng/mL).

1/2/2014: Participant missed check-in and missed test.

1/8/2014: The multi-disciplinary evaluation report from The Gabbard Center was received and the following was recommended:

*"We do not recommend that the participant work as a physician until these cognitive findings can be clarified, treated, and resolved. We appreciate that she is anxious to get back to practice, but at this point we recommend that she take her time, figure out what is causing the cognitive changes, and work under the supervision of the her physicians and with the support of the PHP to evaluate and treat the problems.*

*We are in agreement with Dr. Schulz and we recommend that she first address the medications that may be impacting her cognition. The primary medications that we are concerned about are the Topamax, Fentanyl, Percocet, and Trazodone. She feels that she needs the level of Fentanyl that she is taking to manage her pain. We recommend that she work under the supervision of her pain management physician and her neurologist to decrease and perhaps discontinue medications that could contribute to her cognitive problems. She expressed that she is concerned that she needs the current level of pain medications. Hence, we recommend that she gradually decrease and perhaps eventually discontinue Topamax and Trazodone and minimize the amount of opiate medications that she is taking, such that she in on as little as necessary to control her pain.*

*We have recommended that she only make medication changes under physician supervision. We recommended that she not make abrupt changes of multiple medications at one time, so as to prevent withdrawal symptoms or seizures, and instead titrate medications gradually in order to watch for cognitive improvement, as well as to prevent worsening of her pain. She may need to consider additional strategies to assist in managing the pain, in consultation with her physician, and perhaps another migraine prophalaxis medication can be used that does not cause cognitive problems. She feels a sense of urgency about wanting to get back to work, and she communicated to us after*

*the evaluation that she had already begun to decrease medications. We recommended that she slow down and only make changes under physician supervision.*

*Once her physicians think that she has been sufficiently stabilized on her medications after the gradual decrease and/or discontinuation, it would be important to reassess her cognitive functioning. A psychologist will be able to repeat some of the neurocognitive testing, or use similar tests that assess the areas of concern, in order to assess her cognitive improvements. Dr. Schulz indicated that one possibility for further assessment is to get a FDG pet scan, but he cautioned that if a patient is on medication, it can lead to false positives for dementia. If she is able to discontinue the medications that affect her cognition, a FPG pet scan off medications that does not show evidence of dementia would be a valuable source of information.*

*In addition to the repeat neuropsychological testing, once she is cognitive improved, another assurance of her ability to function cognitively in an clinical setting would be a competence-based practice assessment. Programs such as PACE in California offer evaluations of clinical competence and simulations, an such a program might be reassuring to the participant that she is able to return to the practice of medicine.*

*Finally, we strongly encourage the participant to release Dr. Schulz' full neurological evaluation to the Texas PHP. We feel his input is an integral component of this evaluation, and the resulting recommendations.*

*The findings of this report were based on the information available to the assessment team at the time of the evaluation. If new data emerge, this report may no longer be valid."*

1/10/2014: Participant missed check-in and missed test due to hospitalization. A copy of the discharge summary is on file.

1/13/2013: Participant submitted the following hand-written response via fax:

*"Hello Larry -*

<p><i>I have been hospitalized at Methodist Specialist Transplant since late evening January 7. I sustained a severe fall, and am here for repair of a repair of my T12 vertebrae that was fractured. I will keep you updated.</i></p> <p><i>Thank you.”</i></p> <p>1/20/2014: Participant missed check-in and missed test due to hospitalization. A copy of the discharge summary is on file.</p> <p>1/21/2014: Participant submitted the following hand-written response via fax:</p> <p><i>“I was hospitalized on 1-20-14 with 2 broken vertebrae (T-11 and T-12) – <u>unable to test that day</u>. The second fracture of the T-11 was missed by the radiologist and had to be stabilized by a second surgical procedure. Thank you for your consideration. I will keep you updated as healing progresses. Also it was a holiday yesterday (1-20-14) and I did not call in. Sincerely.”</i></p>			
	<b>REMAIN WITH PHP</b>	<b>TMB ACCEPTED</b>	<b>CONTINUE</b>
<p><b>4. 12-0186</b></p> <p>License Type: M.D.</p> <p>(Internal Medicine)</p> <p><u>Background:</u></p> <ul style="list-style-type: none"> <li>• Referral Type: TMB</li> <li>• 1<sup>st</sup> Agreement Term: 2/15/2012 – 5/21/2012</li> <li>• 2<sup>nd</sup> Agreement Term: 5/22/2012 – 5/22/2017</li> <li>• Referral Reason: Physical / Mental (Psychotic episodes / Major Depressive Disorder)</li> <li>• Sobriety Date: Unknown</li> <li>• Drug(s) of Choice: Unknown</li> </ul>		<p><b>X</b></p> <p>ISC to be scheduled with possible temporary suspension</p>	

Issue(s):

Participant has a history of disciplinary action with the TMB since 1996 and his medical license is currently in “delinquent – nonpayment” status, as it expired on 11/30/2013.

2/7/2012: Participant was referred to the TXPHP due to a compliant. It was alleged that the he was recently admitted to Scott and White because of delirium caused by the ingestion of an excessive number of Ativan tablets, which he had prescribed to himself. Furthermore, he previously experienced the same situation back in October 2011, whereby he experienced slurred speech, hallucinations, paranoia and disorganization. Also, he was allegedly reported to have longer standing problems with paranoid thoughts of the FBI coming to get him. Participant also was reported as having difficulty completing tasks, cooking, and house cleaning. In addition, concern was reportedly expressed about the participant having a long history of abusing medications.

7/26/2012: Participant missed check-in (did not provide test specimen).

8/3/2012: Test was “rejected due to fatal flaw” as there was insufficient specimen volume.

8/20/2012: Test was “rejected due to fatal flaw” as there was insufficient specimen volume.

9/24/2012: Participant submitted the following response regarding his “suspended” account status with Recovery Trek:

*“Dear Mr. Torres:*

*When I checked in this morning, I found my testing was suspended due to non-payment by my bank. Apparently, my bank was working on its computer systems and had shut down and my payment was not processed. I have attached a copy of my bank statement showing adequate funds and it mentions that the computers would be down 9/22/12. I provided a sample on the required day and have the receipts and there are no call in*

*dates that have been missed. Please let me know what else I should do.*

*Thanks. Sincerely."*

5/28/2013: Test resulted in "low creatinine" (16.6 mg/dL; SG: 1.005).

8/1/2013: Test resulted in "low creatinine (19.4 mg/dL; SG: 1.035).

October 2013: TXPHP and notified that he had suffered a hypoglycemic episode and was hospitalized. In addition, the participant's daughter (and friend) also contacted TXPHP and provided information.

Participant has not checked-in with Recovery Trek since 10/4/2013 and, as a result, has missed several tests as well.

10/29/2013: Participant's daughter sent the following email regarding her father's current health status:

*"My father has been in the hospital for the last five days. He was also hospitalized a few weeks ago. He is very confused and has suffered what the physicians think is permanent brain damage. He will be discharged to a skilled nursing facility for rehab and likely stay as a permanent nursing home resident. He will not be practicing medicine any longer. Thank you, Allison (daughter)."*

10/30/2013: TXPHP Medical Director recommended that the participant officially "retire" his medical license with the TMB.

12/11/2013: TXPHP staff requested a status update and again provided the participant's daughter with instruction on completing the TMB's licensure retirement process.

12/14/2013: Participant's daughter updated TXPHP with the following information:

*"Michael,*

*Dad is now in a locked memory unit. He will not be practicing medicine anymore. I have a million things to do and filling out your form and getting it notarized is on the bottom of my list. I will do it when I have time.*

*-Allison"*

12/18/2013: TXPHP staff requested a status update from the participant's daughter regarding the retirement of her father's Texas medical license. In addition, that it was stressed that failure to comply would result in a referral to the TMB. No response was received.

1/16/2013: TXPHP staff again requested a status update from the participant's daughter regarding the retirement of her father's medical license.

1/17/2013: Participant's daughter submitted the following response:

*"After your last email, I do not wish to be contacted by you anymore."*

**Total = 4**