

# TEXAS MEDICAL BOARD

## MINUTES OF THE DISCIPLINARY PROCESS REVIEW COMMITTEE

February 7, 2008

Chairman Lawrence Anderson, M.D., called the meeting to order at 9:38 a.m. Other members present were Patricia S. Blackwell, Amanullah Khan, M.D., Margaret C. McNeese, M.D., Charles Oswalt, M.D., Larry Price, D.O., and Allan Shulkin, M.D. Committee members Melinda S. Fredricks and Annette P. Ragette were not present.

Also present was Executive Director Donald Patrick, M.D., J.D., Jane McFarland, Chief of Staff, and Mari Robinson, J.D., Director of Enforcement, and various other staff.

**Ms. Blackwell moved, and Dr. Price seconded; the motion passed at 9:43 a.m. to go into executive session for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, GOVERNMENT CODE, §551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, §§152.009, 155.058, 160.006, and 164.007; and Attorney Generals Opinion No. H-484.** Open session resumed at 11:08 a.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

**Dr. Khan moved, and Dr. McNeese seconded; that the appeal of Item 2.B., Log #08-1028 be denied with a custom letter sent to the Respondent. Motion carried.**

**Dr. McNeese moved, and Dr. Shulkin seconded; that the appeal of Item 2.A., Log #07-0918 be denied with a second custom letter sent to the Respondent. Motion carried.**

**Dr. Shulkin moved, and Dr. Oswalt seconded; that the appeal of Item 2.A., Log #07-3135 be denied. Motion carried.**

**Dr. Price moved, and Dr. Khan seconded; the motion passed at 11:18 a.m. to go into executive session for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, GOVERNMENT CODE, §551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, §§152.009, 155.058, 160.006, and 164.007; and Attorney Generals Opinion No. H-484.** Open session resumed at 12:08 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 #2.** Review, discussion and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: Log # 05-1307, Log # 06-3170, Log # 06-3619, Log # 07-0358, Log # 07-0451, Log # 07-0791, Log # 07-0904, Log # 07-1073, Log # 07-1189, Log # 07-1210, Log # 07-1403, Log # 07-1416, Log # 07-1500, Log # 07-1578, Log # 07-1625, Log #

07-1712, Log # 07-1757, Log # 07-2138, Log # 07-2222, Log # 07-2515, Log # 07-3035, Log # 07-3331, Log # 07-3555, Log # 07-4006, and Log # 07-6339; and B. Jurisdictional-Not-Filed Complaints: Log # 06-1490, Log # 06-3658, Log # 07-3718, Log # 07-6143, Log # 07-6252, Log # 07-6342, Log # 07-6376, Log # 08-0013, Log # 08-0493, Log # 08-0559, Log # 08-0621, Log # 08-0667, Log # 08-0746, Log # 08-1041, and Log # 08-1413; and C. Non-Jurisdictional Complaints: Log # 07-3100, Log # 07-5968, and Log # 08-0683. **Dr. Lawrence recused himself from any discussion and decisions regarding Log #06-1490.**

It was announced by Mari Robinson that Agenda Item 2.A., Log #07-2515 would be moved to the April DPRC 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 April 2008 whether the Complainant personally appears before the committee or not.

It was announced by Mari Robinson that Agenda Item 2.A., Log #07-0358 not be considered at this meeting because this case was erroneously put on the agenda. This is a case to be heard before the Physicians Assistant Board.

**Dr. Khan moved, and Dr. McNeese seconded; that the appeal of Item 2.A., Log #07-0358 not be considered at this time; and that a new PDD file be opened against the doctor who supervised the physician assistants pertaining to this case number. Motion carried.**

**Dr. Oswalt moved and Dr. McNeese seconded that the appeal of Item 2.A., Log #07-0451 be granted and that there be an additional panel review to include the culture and antibiotic use that potentially pertain to this case. Motion carried.**

**Dr. Khan moved and Dr. Oswalt seconded that the appeal of Item 2.A., Log #07-1500 be granted and that there be an additional panel review to include the appropriate oversight and follow up needed on a patient suffering from breast cancer. Motion carried.**

**Ms. Blackwell moved and Dr. Shulkin seconded that the appeal of Item 2.A., Log #07-1578 be denied with a custom letter sent to the respondent concerning proper maintenance of medical records. Motion carried.**

**Dr. McNeese moved and Dr. Shulkin seconded that the appeal of Item 2.A., Log #07-3035 be granted and that more information be gathered and submitted back to the expert panel for additional review. Motion carried.**

**Dr. Oswalt moved and Ms. Blackwell seconded that the appeal of Item 2.B., Log #07-6143 be denied; and that a new PDD file be opened reference the release of medical records.**

**Dr. Khan moved and Ms. Blackwell seconded that the appeal of Item 2.B., Log #08-0013 be denied against the Hospice Doctor; and that a new PDD file be opened against the two primary doctors in this case. Motion carried.**

**Dr. McNeese moved and Ms. Blackwell seconded that the appeal of Item 2.B., Log #08-0621 be granted and the case be returned for further investigation to the Investigation Division. Motion carried.**

**Dr. Oswalt moved and Dr. Khan seconded that all other appeals not specifically granted above be denied. Motion carried.**

**Dr. Price moved, and Dr. Khan seconded; the motion passed at 11:18 a.m. to go into executive session for private consultation and advice of counsel concerning pending or contemplated litigation, deliberations concerning licensure applications, and/or possible disciplinary action under the authority of the Open Meetings Act, GOVERNMENT CODE, §551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, §§152.009, 155.058, 160.006, and 164.007; and Attorney Generals Opinion No. H-484. Open session resumed at 12:08 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 #3.** Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from DPRC for follow-up action, specifically including: Log # 07-2450.

**Ms. Blackwell moved and Dr. Khan seconded that Log #07-2450 be dismissed. Motion carried.**

A lunch recess was taken at 12:20 p.m. and the committee returned at 12:52 p.m.

**Agenda Item #4.** Reports and discussion regarding the Investigation, Litigation and Compliance Departments. Ms. Robinson presented the Enforcement Report for January 2008, 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: (Presented by Jennifer Kaufman).

- A. Discussion, recommendation and possible action regarding rule review of Chapter 164, **Physician Advertising**, to include changes to Section 164.3. Misleading or Deceptive Advertising.
- B. Discussion, recommendation and possible action regarding rule review of Chapter 196, **Voluntary Relinquishment or Surrender of A Medical License**, to include changes to Subchapter 196.1.
- C. Discussion, recommendation and possible action regarding Laser Rule Memorandum, dated 22 February 2008.

**Dr. Oswalt moved and Dr. Price seconded that Agenda Item 5.A. be accepted for publication in the Texas Register except that rule review was not necessary as it had been done at a previous meeting. Motion carried.**

**Dr. Price moved and Ms. Blackwell seconded that Agenda Item 5.B. be accepted for publication in the Texas Register except that rule review was not necessary as it had been done at a previous meeting. Motion carried.**

**Agenda Item 5.C. was pulled from the agenda.**

**Dr. Khan moved, and Dr. Oswalt seconded; the motion passed at 1:35 p.m. to go into executive session for private consultation and advice of counsel with respect to legal matters under the authority of the Open Meetings Act, Government Code, §551.071. Open session resumed at 1:46 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 #6.** Discussion and possible direction regarding prescriptive medical devices. (Presented by Ms. Robinson).

Ms. Robinson presented to the committee a brief report concerning a meeting held between board staff, the Office of the Inspector General, and the Office of the Attorney General. A discussion was had with the committee concerning the supervision requirements related to prescriptive medical devices. The question was posed to the board as to whether a maximum radius should be imposed related to which physicians should be allowed to supervise and delegate the use of prescriptive devices to unlicensed personnel at this time. The Committee determined that this was a difficult area and they did not want set any rules related to this area.

**The Committee unanimously agreed to direct staff to propose a repeal of 193.11 pertaining to prescriptive medical devices, specifically Laser Hair Removal, to be presented at the April board meeting.**

**Dr. Oswalt moved and Dr. McNeese seconded; the motion passed at 1:55 p.m. to go into Executive Session for consideration of possible rehabilitation orders under the authority of the Open Meetings Act, GOVERNMENT CODE, §551.071; and the Medical Practice Act, TEXAS OCCUPATIONS CODE ANNOTATED, §§152.009, 160.006, 164.007, and 164.203; and Attorney Generals Opinion No. H-484. Open session resumed at 3:27 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 #7.** Review, discussion and possible action regarding review of probationers appearances. (Presented by Ms. Robinson).

**Dr. Oswalt moved and Dr. Khan seconded that all waivers on Agenda Item 7 be accepted. Motion carried.**

**Dr. Price moved and Dr. Oswalt seconded that the pending action(s) pertaining to Log #07-0919 be dismissed. Motion carried.**

**Agenda Item #8.** Consideration and approval of appointments to the Expert Physician Panel.

**Dr. Shulkin moved and Dr. McNeese seconded to approve the appointments to the Expert Physician Panel. Motion carried.**

**Agenda Item #9.** Review, discussion, and possible action regarding selected files and cases.

**Dr. 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.**

**Dr. Shulkin moved, and Dr. Price seconded that the meeting adjourn. Motion carried at 3:40 p.m.**