

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
August 20, 2009

Chair Melinda McMichael, M.D., called the meeting to order at 11:13a.m. Other members present were, David Baucom, Patricia S. Blackwell, Pat J. Crocker, D.O., Manuel Guajardo, M.D., Margaret C. McNeese, M.D., Charles Oswalt, M.D., Allan Shulkin, M.D., George Willeford III, M.D., and Irvin E. Zeitler, Jr., D.O. Committee Member Julie K. Attebury was not present.

Also present was Medical Director Alan T. Moore, M.D., Jane McFarland, Chief of Staff, and Mari Robinson, Executive Director, and various other staff.

Dr. Zeitler moved, and Dr. Shulkin seconded; the motion passed at 11:14 a.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 12:42 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: i. Investigations: 01-0276, 07-0853, 08-4030, 08-5141, 08-5148, 08-5243, 08-6016, 09-0259, 09-0518, 09-0970, 09-1007, 09-1023, 09-1432, 09-1433, 09-1463, 09-1559, 09-1795, 09-1987, 09-3991, and 09-4174; and B. Jurisdictional-Not-Filed Complaints: 09-2077, 09-3307, 09-3633, 09-3805, 09-3974, 09-4010, 09-4246, 09-4275, 09-4452, 09-4506, 09-4666, 09-4847, 09-4901, 09-4942, 09-4953, 09-4954, 09-5090, 09-5098, 09-5294, and 09-5538; and C. Non-Jurisdictional Complaints: 06-5780, and 09-4797.

Dr. Oswalt moved, and Dr. Shulkin seconded that the appeal of Item 2.A., Log #09-1463 be granted. Motion carried.

Dr. Oswalt moved, and Dr. Shulkin seconded that all other appeals under Item 2.A. not specifically granted above be denied. Motion carried.

Ms. Blackwell moved, and Dr. McNeese seconded that the appeal of Item 2.B., Log #09-4847 be granted and that an investigation be opened. Motion carried.

Dr. Shulkin moved, and Dr. McNeese seconded that all other appeals under Item 2.B. not specifically granted above be denied. Motion carried.

Dr. Zeitler moved, and Dr. Oswalt seconded that the appeal of Item 2.C., Log #09-4797 be granted and that an investigation be opened. Motion carried.

Dr. Oswalt moved, and Ms. Blackwell seconded that all other appeals under Item 2.C. not specifically granted above be denied. Motion carried.

A lunch recess was taken at 12:53 p.m. and the committee returned at 1:26 p.m.

Agenda Item #3. Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the DPRC for follow-up action, specifically including: 07-2128, 08-2074, 08-3439, 08-3619, 08-3868, 08-3977, 08-4785, 09-0031, and 09-2850.

Dr. Shulkin moved, and Dr. Oswalt seconded that Log #08-3868 be granted and that a new panel review the case, specifically, the billing and standard of care issues. If the new expert panel agrees with the panelist that there was a standard of care violation, then the case will automatically be forwarded to an ISC, if not; then the case will be returned to this committee for final action. This motion also includes that the new expert panelists have pediatric experience. Motion carried.

Dr. Zeitler moved, and Dr. McNeese seconded; the motion passed at 1:34 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 1:43 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 the DPRC for follow-up action, specifically including: 07-2128, 08-2074, 08-3439, 08-3619, 08-3868, 08-3977, 08-4785, 09-0031, and 09-2850.

The committee unanimously moved that Log #08-3439 be granted and the case be referred to an ISC concerning the Respondents unprofessional conduct. Motion carried.

Dr. Willeford moved, and Dr. Crocker seconded that all remaining routine follow-up files be dismissed. Motion carried.

Agenda Item #4. Reports and discussion regarding the Investigation, Litigation and Compliance Departments. Ms. Robinson presented the Enforcement Report for July 2009, 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 167, Regulation of Pain Management Clinics
- B. Chapter 179, Investigations, Subchapter 179.4.
- C. Chapter 187, Procedural Rules, Subchapters 187.25., 187.26., 187.27., and 187.37.
- D. Chapter 190, Disciplinary Guidelines, Subchapters 190.2., and 190.14.

E. Chapter 192, Office Based Anesthesia Services, Subchapters 192.1., 192.4., 192.5., and 192.7.

It was announced by Mari Robinson that Agenda Item 5.A., will not be considered at this meeting because item 5.A. was erroneously put on the agenda.

Dr. Zeitler moved, and Ms. Blackwell seconded that the revisions presented to the committee that pertain to Agenda Item 5.B., be accepted for publication in the Texas Register with the addition of the words unless a temporary suspension is convened added at the end of the last sentence. Motion carried.

Dr. McNeese moved, and Dr. Willeford seconded that the revisions presented to the committee that pertain to Agenda Item 5.C., be accepted for publication in the Texas Register. Motion carried.

Dr. Zeitler moved, and Ms. Blackwell seconded that the revisions presented to the committee that pertain to Agenda Item 5.D., be accepted for publication in the Texas Register. Motion carried.

Dr. McNeese moved, and Dr. Guajardo seconded that the revisions presented to the committee that pertain to Agenda Item 5.E., be accepted for publication in the Texas Register with the addition of the annotation that 10 hours of CME relating to pain management be required. This annotation will be made on 192.7.(e). Motion carried.

Agenda Item #6. Discussion and possible direction regarding Professional Boundaries courses.³

The committee members agreed that it would be at the discretion of the Texas Medical Board Executive Director to determine what courses should be approved to meet the requirements of a board order.

Agenda Item #7. Review, discussion and possible action regarding review of probationers appearances.

Ms. Blackwell moved, and Dr. Willeford seconded that the waiver list on Agenda Item 7 be approved. Motion carried.

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

Dr. Willeford moved, and Dr. McNeese seconded that the appointments to the Expert Physician Panel on Agenda Item 8 be approved. Motion carried.

Dr. Zeitler moved, and Dr. Shulkin seconded; the motion passed at 3:19 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 3:48 p.m. and it was announced that no action was taken during executive session. A certified agenda of the executive session was made.

Dr. Willeford left the Board Room at 4:00 p.m.

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

Dr. McNeese moved, and Ms. Blackwell 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 #10. Adjourn.

Ms. Blackwell moved, and Dr. McNeese seconded that the meeting adjourn. Motion carried at 4:14 p.m.