

**TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE**

August 30, 2012

Chair Melinda McMichael, M.D., called the meeting to order at 10:15a.m. Other members present were Julie K. Attebury, David Baucom, Patricia S. Blackwell, Manuel Guajardo, M.D., James Scott Holliday, D.O., Margaret C. McNeese, M.D., Stanley S. Wang, M.D., and Irvin E. Zeitler, Jr., D.O. Committee Member George Willeford III, M.D. arrived late at approximately 11:00a.m. and Committee Member Allan Shulkin, M.D. arrived late at approximately 11:46a.m.

Also present was Mari Robinson, Executive Director, Medical Director Robert Bredt, M.D., (arriving at 11:03am) and various other staff.

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

Dr. Nemeth discussed the different circumstances of eleven cases the Texas Physician Health Program is currently working and requested additional guidance on.

Dr. McNeese moved, and Dr. Wang seconded that PHP Case #11-0250 remain under the management of the PHP and to raise the testing levels of this respondent, if the raised testing levels is not agreed to, then the case will be returned to the jurisdiction of the Texas Medical Board. Motion carried.

Mr. Baucom moved, and Dr. Holliday seconded that PHP Case #12-0139 be returned to the jurisdiction of the Texas Medical Board and that the Respondent be scheduled for an ISC and that Dr. Nemeth be present at the ISC. Motion carried.

Dr. Zeitler moved, and Dr. Holliday seconded that PHP Case #11-0215 remain under the management of the PHP and that the request by the respondent to return to work on September 1, 2012, be granted. Motion carried.

Dr. Zeitler moved, and Ms. Blackwell seconded that PHP Case #10-0278 remain under the management of the PHP and that the respondent be sent to a 96-Hour evaluation. Motion carried.

Dr. Zeitler moved, and Ms. Blackwell seconded that PHP Case #10-0302 remain under the management of the PHP with an update of the respondents progress at the November DPRC. Motion carried.

Dr. Zeitler moved, and Ms. Blackwell seconded that PHP Case #10-0321 remain under the management of the PHP. Motion carried.

Ms. Attebury moved, and Dr. Guajardo seconded that PHP Case #11-0102 remain under the management of the PHP and that the respondent be sent for a 96-Hour evaluation. Motion carried.

Dr. Zeitler moved, and Ms. Attebury seconded that PHP Case #11-0242 remain under the management of the PHP so long as the respondent agrees to go for a 96-hour evaluation, if refused, the case will be returned to the jurisdiction of the Texas Medical Board and the Respondent be scheduled for an ISC. Motion carried.

PHP Case #11-0341 will be referred to the Texas Physicians Assistant Board Discipline and Ethics committee for further action.

Any decision regarding PHP Case #12-0137 is deferred until the November DPRC meeting.

Any decision regarding PHP Case #12-0153 is deferred until the November DPRC meeting.

Dr. Zeitler moved, and Ms. Blackwell seconded that PHP Case #12-0237 be returned to the jurisdiction of the Texas Medical Board and that the Respondent be scheduled for an ISC. Motion carried.

A recess was taken at 11:33a.m., and the committee returned at 11:42a.m.

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

Ms. Robinson presented the Enforcement Report for July 2012, 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:³

- A. Chapter 180, Texas Physician Health Program, 180.4., Operation of Program
- B. Chapter 190, Disciplinary Guidelines, 190.8., Violation Guidelines
- C. Chapter 190, Disciplinary Guidelines, 190.14., Disciplinary Sanction Guidelines
- D. Chapter 197, Emergency Medical Service, 197.1., Purpose
- E. Chapter 197, Emergency Medical Service 197.3., Off-line Medical Director

Dr. Holliday moved, and Dr. Guajardo seconded that the revisions presented to the committee that pertain to Agenda Item 4.A. with the following substitution (3) After receiving the report, and an approved referral action by the DPRC, the agency shall schedule an ISC for a review of the individuals interactions with the program or words to

that effect, on page 1 of the proposed changes, paragraph 180.4., Operation of Program, (d)(3), be approved. Motion carried.

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

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

Dr. Zeitler moved, and Ms. Attebury seconded that Agenda Item 4.D & E. be accepted for publication with the following substitutions: 197.3.(b)(15) excludes the words implement and ensure all EMS personnel follow protocols that prohibit the back-signing of transfer orders; with the following substitution An Emergency Medical Director may not sign for any care or activity at the time they were not employed by the group, or words to that effect; and changes to 197.3.(b)(17) be clarified that the CME be in the area of EMS medical direction. Motion carried.

A lunch recess was taken at 12:20p.m., and the committee returned at 12:39p.m.

Dr. Zeitler moved, and Dr. Guajardo seconded; the motion passed at 12:49 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 2:55p.m., and it was announced that no action was taken during executive session. A certified agenda of the executive session was made. Dr. Holliday recused himself from any discussion and decision regarding Log #12-2344.

Agenda Item #9. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 09-3619, 09-6584, 10-7328, 11-1996, 11-3153, 11-7091, 11-8343, 12-0072, 12-2344, 12-2400, 12-3633, ii. Legal Files: 12-0208 (11-2388). B. Jurisdictional Not Filed Complaints: 11-1995, 12-3132, 12-3319, 12-3404, 12-4234, 12-4265, 12-4266, 12-4651, 12-4687, 12-4696, 12-4721, 12-4769, 12-4858, 12-4900, 12-4911, 12-5104, 12-5129, 12-5178, 12-5229, 12-5259, 12-5406, 12-5529, 12-5538, 12-5751, 12-5778, 12-5780, 12-5939, 12-6022, 12-6158, 12-6288, and 12-6646.

Dr. Zeitler moved, and Dr. Willeford seconded that the appeal of Item 9.A.i., Log #12-2344 be denied and that a custom letter be sent to the Respondent. Motion carried. Dr. Holliday recused himself from any discussion and decision regarding Log #12-2344.

Dr. McNeese moved, and Dr. Shulkin seconded that the appeal of Item 9.A.ii., Log #12-0208 (11-2388) be denied and that a custom letter be sent to the Respondent. Motion carried.

Mr. Baucom moved, and Dr. Wang seconded that all other appeals under Agenda Item 9.A.i not specifically granted above be denied. Motion carried.

Ms. Attebury moved, and Dr. McNeese seconded that the appeal of Item 9.B., Log #12-3404 be granted and that an investigation be opened. Motion carried.

Dr. Zeitler moved, and Ms. Blackwell seconded that the appeal of Item 9.B., Log #12-4651 denied and that a custom letter be sent to the Respondent. Motion carried.

Dr. Zeitler moved, and Dr. Guajardo seconded that the appeal of Item 9.B., Log #11-1995 be granted and that an investigation be opened. Motion carried.

Dr. Wang moved, and Dr. Zeitler seconded that the appeal of Item 9.B., Log #12-4900 be granted and that an investigation be opened. Motion carried.

Dr. Shulkin moved, and Dr. Wang seconded that the appeal of Item 9.B., Log #12-5104 be granted and that an investigation be opened. Motion carried.

Dr. Zeitler moved, and Dr. Wang seconded that the appeal of Item 9.B., Log #12-5229 be granted and that an investigation be opened. Motion carried.

Dr. Zeitler moved, and Dr. Shulkin seconded that the appeal of Item 9.B., Log #12-5259 be granted and that an investigation be opened. Motion carried.

Dr. Guajardo moved, and Ms. Blackwell seconded that the appeal of Item 9.B., Log #12-5529 be granted and that an investigation be opened. Motion carried.

Dr. McNeese moved, and Dr. Willeford seconded that the appeal of Item 9.B., Log #12-5780 be granted and that an investigation be opened. Motion carried.

Dr. Shulkin moved, and Ms. Blackwell seconded that all other appeals under Agenda Item 9.B. not specifically granted above be denied. Motion carried.

Agenda Item #5. Discussion and possible direction regarding the Jurisdictional-Not-Filed Complaints / Non-Jurisdictional Complaints Quality Control (JNF/NJ QC) review process.

Staff was directed to divide 20% of the Jurisdictional-Not-Filed Complaints Quality Control cases equally among the medical DPRC members.

Agenda Item #6. Review, discussion, and possible action regarding review of probationers appearances.

Dr. Zeitler moved and Ms. Attebury seconded that all waivers on Agenda Item #6 be granted. Motion carried.

Agenda Item #7. Consideration and approval of membership of the Expert Physician Panel.

Ms. Attebury moved, and Dr. McNeese seconded that the memberships to the Expert Physician Panel on Agenda Item 7 be approved. Motion carried.

Agenda Item #8. 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, there are approximately 850 investigations that fall under this category; the majority being SOAH cases and pending expert panel review. This was an informational item only and no vote was necessary.

Agenda Item #10. Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the DPRC for follow-up action, specifically including: 11-4893, 11-6899, and 11-8315. **Dr. Wang recused himself from any discussion and decision regarding Log #11-8315.**

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

Dr. Zeitler moved, and Dr. Shulkin seconded; the motion passed at 3:26 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 4:12 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 #11. Review, discussion, and possible action regarding selected files and cases.

Dr. Willeford moved, and Ms. Blackwell seconded that Log #12-0751 be scheduled for a second ISC and specifically two Board members will be on the ISC panel and the previous witness will be allowed to provide written or taped statement of facts limited to the occurrences of the event in question. Motion carried.

Dr. McNeese moved, and Dr. Zeitler 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 #12. Adjourn.

Dr. Shulkin moved, and Dr. Willeford seconded that the meeting adjourn. Motion carried at 4:20 p.m.