

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
October 19, 2017

Margaret C. McNeese, M.D. called the meeting to order at 9:30 a.m. Other members present were Sherif Z. Zaafran, M.D., James “Scott” Holliday, D.O., Jeffrey Luna, M.D., and LuAnn Morgan. Committee members Julie K. Attebury, Karl W. Swann, M.D., and Surendra K. Varma, M.D. were not present.

Staff members present were Scott Freshour, Interim Executive Director, Robert Bredt, M.D., Medical Director, and various other staff.

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

It was announced by Dr. McNeese that there were no PHP referrals to be presented to the DPRC under Agenda Item #2. It was requested by DPRC Board members that even if there are no PHP agenda items, PHP staff be present at future meetings in the event the Board has questions.

Agenda Item #3. Reports and discussion regarding Texas Physician Health Program. (Dr. Karney)

DPRC Board members gave staff direction to develop a set of performance measures for PHP to present at future meetings.

Agenda Item #4. Discussion, recommendation, and possible action regarding renewals involving impaired licensees.

It was announced by Mr. Freshour that there were no impaired renewals to be presented to the DPRC under Agenda Item #4.

Agenda Item #5. Reports and discussion regarding the Investigation, Litigation, and Compliance Departments.

Mr. Freshour presented the Enforcement Report for August 2017, a copy of which is attached. This was an informational item only and no vote was necessary.

Agenda Item #6. Review, discussion, and possible action regarding billing complaints needing referral to the Office of Inspector General.

Direction was given to staff that once we receive billing complaints more than \$500.00, we will investigate and also refer the complaint over to the Texas Department of Insurance to have parallel investigations for billing issues.

Agenda Item #7. Review, discussion, and possible action regarding Medical Practice Act Sec. 160.004(b) – Report Regarding Certain Impaired Physicians and the time frame required to report.

Direction was given to staff to address this topic in the TMB newsletter.

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

Dr. Zaafran moved, and Dr. Holliday 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. Morgan seconded that the appointments of members to the Expert Panel be accepted as noted in the attachment. Motion carried. Direction was also given to staff that physicians with prior remedial plans for administrative violations are allowed to serve as an Expert Panelist and any physicians with a prior remedial plan for a single standard of care violation be reviewed at DPRC. Further direction was given that if there is a management note in an ISC report regarding a concern on an expert panelist, staff is to review and act accordingly. If a panelist gets two management notes, that individual is to be brought before DPRC for possible action.

Agenda Item #10. Reports and discussion regarding cases over one year old.

Mr. Freshour presented to the DPRC the current status of cases that are over one year old. To date, all investigations over one year are in criminal courts for a resolution and the majority of the litigation cases are at SOAH. This was an informational item only and no vote was necessary.

Committee broke at 11:02 am and reconvened at 11:44 am.

Dr. Zaafran moved, and Ms. Morgan seconded; the motion passed at 11:45 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), Texas Occupations Code. Open session resumed at 1:31 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 appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 17-1408, 17-1549, 17-1873, 17-1952, 17-4118; ii. Legal Files: 16-0628 (16-1700), 16-0958 (16-4169), 17-0243 (16-5792) B. Jurisdictional-Not-Filed Complaints: 16-6751, 17-4475, 17-4784, 17-5154, 17-5709, 17-6046, 17-6085, 17-6123, 17-6343, 17-6371, 17-6482, 17-6483, 17-6675, 17-6686, 17-6797, 17-6887, 17-6888, 17-7212, 17-7559, 17-7671, 17-7681, 17-7735

Dr. Zaafran moved, and Dr. Holliday seconded that the appeal of Item 11.A.i, Log #17-4118 be granted and look at standard of care before and after surgery as well. Motion carried

Dr. Holliday moved, and Dr. Zaafran seconded that all other appeals under Agenda Item 11.A.i. not specifically granted above be denied. Motion carried.

Dr. Luna moved, and Dr. Holliday seconded that the appeal of Item 11.A.ii, Case #16-0958 (16-4169) be granted and be sent back to expert panelists with request to see if the infectious etiology of the hypotension was properly worked up. Motion carried.

Dr. McNeese moved, and Ms. Morgan seconded that the appeal of Item 11.A.ii, Case #17-0243 (16-5792) be granted and be sent for expert panelist review. Motion carried, with Dr. Dr. Luna voting against.

Dr. Zaafran moved, and Dr. Luna seconded that the appeal of Item 11.A.ii, Case #16-0628 (16-1700) be denied Motion carried. Dr. Holliday recused himself from this case

Dr. Luna moved, and Dr. Zaafran seconded that the appeal of Item 11.B, Log #17-4784 be denied. Motion carried.

Dr. Holliday moved, and Dr. Zaafran seconded that the appeal of Item 11.B, Log #17-6343 be denied but that a custom letter be sent to the Respondent stating the importance of using diligence in photographing surgical procedures and following hospital policies and protocols for photography. Also instruct the Respondent that any photographs taken of a surgical procedure need to be made a part of the medical record that is kept. Motion carried.

Dr. Zaafran moved, and Dr. Holliday seconded that the appeal of Item 11.B, Log #16-6751 be granted. Motion carried.

Dr. Holliday moved, and Dr. Luna seconded that the appeal of Item 11.B, Log #17-6085 be granted and an investigation be opened. Motion carried.

Dr. Zaafran moved, and Dr. Holliday seconded that the appeal of Item 11.B, Log #17-6608 be granted. Motion carried.

Dr. Holliday moved, and Dr. Zaafran seconded that all other appeals under Agenda Item 11.B not specifically granted above 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: 17-2976, 17-4979, 17-4995, 17-6822

Ms. Morgan moved, and Dr. Holliday seconded that follow-up file #17-2976 be dismissed. Motion carried.

Dr. Holliday moved, and Ms. Morgan seconded that follow-up file #17-4979 be dismissed. Motion carried.

Dr. Holliday moved, and Ms. Morgan seconded that follow-up file #17-4995 be dismissed. Motion carried.

Dr. Zaafran moved, and Ms. Morgan seconded; the motion passed at 1:59 p.m. I move 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). Open session resumed at 2:09 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 #12. Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the DPRC for follow-up action, specifically including: 17-2976, 17-4979, 17-4995, 17-6822

Dr. Holliday moved, and Ms. Morgan seconded that follow-up file #17-6822 be dismissed and the file be referred to the Texas Department of Insurance and the Office of Inspector General with specific delineation of the concerns articulated by the Board members. Motion carried.

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

Ms. Morgan moved, and Dr. Luna seconded that SOAH dismissals 16-0173 and 16-0526 be approved for dismissal. Motion carried.

Dr. Holliday moved, and Ms. Morgan seconded that all other files for review be resolved as noted on the individual sign-off sheets. Motion carried.

Agenda Item #14. Discussion, recommendation, and possible action regarding proposed changes to the following chapters in Title 22 of the Texas Administrative Code:

- A. Chapter 177, Business Organizations and Agreements,
 - §177.18 – (Subchapter E) Physician call coverage medical services
 - §177.19 – Definitions
 - §177.20 – Call Coverage Minimum Requirements
- B. Chapter 182, Use of Experts,
 - §182.8 – Expert Physician Reviewers
- C. Chapter 189, Compliance Program,
 - §189.15 – Determination of Successful Completion of an Order
- D. Chapter 193, Standing Delegation Orders,

- §193.8 – Prescriptive Authority Agreements: Minimum Requirements
- E. Chapter 195, Pain Management Clinics,
 - §195.3 – Inspections

It was announced that there were no proposed changes for rules §177.18 and 177.19 under Agenda Item 14.A..

Dr. Holliday moved, and Dr. Luna seconded that the amendments to rule §177.20 be published with the provision that staff draft language regarding covering licensing physicians section 2. Dr. Luna withdrew his second, and Dr. Holliday withdrew his motion.

Dr. Holliday moved, and Dr. Luna seconded that the amendments to rule §177.20 be published for public comment with the change to the language that the covering physician has the duty and responsibility to report patient encounters to the patient's primary physician. Motion carried.

Dr. Holliday moved, and Ms. Morgan seconded that the amendments to rules §182.8 under Agenda Item 14.B. be approved for publication and comment. Motion carried.

Dr. Holliday moved, and Dr. Zaafran seconded that the amendments to rules §189.15 under Agenda Item 14.C. be approved for publication and comment. Motion carried.

Dr. Zaafran moved, and Ms. Morgan seconded that the amendments to rules §193.8 under Agenda Item 14.D. be approved for publication and comment. Motion carried.

Dr. Zaafran moved, and Dr. Holliday seconded that the amendments to rules §195.3 under Agenda Item 14.E. be approved for publication and comment. Motion carried.

Dr. Zaafran moved, and Dr. Holliday seconded that the previous motion be amended to state that the rule be approved with the change in section H clarifying that Board staff will amend the language to clarify that the Board shall inspect clinics they suspect should be registered as pain management clinics Motion carried.

Agenda Item #15. Adjourn.

Dr. Holliday moved, and Ms. Morgan seconded that the meeting adjourn.

Motion carried at 3:12 pm.

Expert Panel Members for Board Approval October 2017

LAST	FIRST	LIC #	CITY	SPECIALTY
Arambula	Michael	H4134	San Antonio	Psychiatry/Forensic Psychiatry
Caraballo	Aixa	P2604	Austin	Internal Medicine/Hospitalist
Cutts	Stacey	RCP78218	Dallas	Respiratory Therapist

Interim Approval

Ferriss	James	M5158	Austin	Gynecologic Oncology
Shah	Rakesh	J2321	Amarillo	Neuro-Radiology

DISCIPLINARY COMMITTEE & DECISIONS REGARDING COMPLAINTS REVIEWED

ISC PANEL RECOMMENDATIONS – Texas Medical Board October 19, 2017

ISC Dismissal's

CASE # CLOSE CONTINUE TO ISC

17-0900	X		
17-0714	X		
17-0854	X		
17-0814	X		
16-0777	X		
17-0667	X		
17-0881	X		
17-0844	X		
17-0805	X		
17-0928	X		
17-0908	X		
17-0931	X		
17-0099	X		
17-0751	X		
17-0442	X		
17-0869	X		
17-0934	X		
17-0831	X		
17-0906	X		
17-0834	X		
17-0547	X		
17-0867	X		
17-0932	X		
17-0762	X		
17-0765	X		
17-0878	X		
17-0775	X		

Total = 27

COMPLAINTS REVIEWED PURSUANT TO STAFF

CASE # CLOSE CONTINUE TO ISC

17-0839	X		
17-0988	X		
16-0837	X		
17-0850	X		
17-1105	X		
18-0043	X		
17-0640	X		

Total = 7

Pre-Approved for Submission/COMPLAINTS REVIEWED PURSUANT TO STAFF

CASE # CLOSE CONT. TO ISC

17-0957	X		
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Total = 1

SOAH Case Dismissals (To be reviewed by full committee) Also, to have Formal complaint in LF

CASE # CLOSE CONTINUE TO ISC

16-0173	X		
16-0526	X		

Total = 2

DPRC OCTOBER 2017

Disciplinary Committee Decisions Regarding Complaints Reviewed Pursuant to Staff or ISC Panel Recommendation (Physicians)

Total : 139

Log Number	Allegation	Close	Continue	ISC	Hold	Name
163692	164.052(A)(5)	X				
170146	164.051(A)(6)	X				
171356	164.051(A)(6)	X				
171924	164.053(A)(6)	X				
171975	164.051(A)(6)	X				
171989	164.051(A)(6)	X				
172034	164.052(A)(5)	X				
172093	164.052(A)(5)	X				
172271	164.052(A)(5)	X				
172791	164.051(A)(6)	X				
172868	159.006	X				
172881	164.051(A)(6)	X				
172915	105.002(B)	X				
172916	164.051(A)(6)	X				
172976	164.052(A)(5)	X				
173028	151.002(A)(13)	X				
173076	164.051(A)(6)	X				
173093	164.051(A)(6)	X				
173112	164.051(A)(6)	X				
173229	164.051(A)(6)	X				
173315	164.051(A)(6)	X				
173379	105.002(B)	X				
173395	164.051(A)(6)	X				
173518	164.051(A)(6)	X				
173561	164.052(A)(5)	X				
173585	164.051(A)(6)	X				
173590	164.051(A)(6)	X				
173623	164.051(A)(6)	X				
173657	164.053(A)(8)	X				
173690	164.051(A)(6)	X				
173723	164.051(A)(9)	X				
173760	164.052(A)(5)	X				
173807	164.051(A)(6)	X				
173816	164.051(A)(6)	X				
173836	164.053(A)(6)	X				
173888	164.051(A)(6)	X				
173891	164.051(A)(6)	X				
173892	164.053(A)(5)	X				
173927	164.051(A)(6)	X				
174021	164.053(A)(5)	X				
174086	164.052(A)(5)	X				
174108	164.051(A)(6)	X				

Log Number	Allegation	Close	Continue	ISC	Hold	Name
174174	164.052(A)(5)	X				
174189	164.051(A)(6)	X				
174308	164.051(A)(6)	X				
174311	164.051(A)(6)	X				
174369	164.052(A)(5)	X				
174446	164.051(A)(6)	X				
174453	164.051(A)(6)	X				
174456	164.051(A)(6)	X				
174572	164.051(A)(6)	X				
174577	164.051(A)(6)	X				
174666	164.051(A)(6)	X				
174712	164.051(A)(6)	X				
174717	164.051(A)(6)	X				
174718	164.051(A)(6)	X				
174722	164.051(A)(6)	X				
174774	164.052(A)(5)	X				
174826	164.051(A)(6)	X				
174830	164.051(A)(6)	X				
174844	164.051(A)(6)	X				
174855	164.051(A)(6)	X				
174856	164.052(A)(5)	X				
174879	164.051(A)(6)	X				
174912	164.053(A)(5)	X				
174916	151.002(A)(13)	X				
174917	164.052(A)(5)	X				
174925	105.002(B)	X				
174933	164.051(A)(4)(D)	X				
174979	164.052(A)(5)	X				
174990	164.051(A)(6)	X				
174995	105.002(B)	X				
174996	102.001	X				
174997	102.001	X				
175023	164.051(A)(6)	X				
175026	164.052(A)(5)	X				
175027	164.051(A)(3)	X				
175068	151.002(A)(13)	X				
175069	151.002(A)(13)	X				
175127	164.052(A)(5)	X				
175150	164.051(A)(6)	X				
175151	105.002(B)	X				
175157	164.051(A)(6)	X				
175287	164.051(A)(4)(C)	X				
175299	164.051(A)(6)	X				
175321	164.051(A)(6)	X				
175326	164.051(A)(6)	X				
175405	164.051(A)(6)	X				

Log Number	Allegation	Close	Continue	ISC	Hold	Name
175448	164.052(A)(4)	X				
175472	101.201	X				
175500	164.051(A)(6)	X				
175578	164.052(A)(5)	X				
175586	164.051(A)(6)	X				
175589	164.052(A)(4)	X				
175638	164.051(A)(6)	X				
175658	164.051(A)(6)	X				
175662	164.052(A)(4)	X				
175670	164.051(A)(6)	X				
175687	164.051(A)(6)	X				
175695	164.051(A)(6)	X				
175721	164.051(A)(6)	X				
175773	164.052(A)(5)	X				
175787	164.051(A)(6)	X				
175824	164.051(A)(6)	X				
175920	164.051(A)(6)	X				
175966	164.051(A)(6)	X				
176018	164.051(A)(6)	X				
176080	164.051(A)(6)	X				
176081	164.051(A)(6)	X				
176089	105.002(B)	X				
176092	164.053(A)(6)	X				
176133	105.002(B)		X			
176167	164.051(A)(6)	X				
176258	164.052(A)(5)	X				
176355	164.053(A)(1)	X				
176448	164.052(A)(5)	X				
176479	164.053(A)(1)	X				
176480	164.053(A)(1)	X				
176503	164.052(A)(5)	X				
176509	164.051(A)(9)	X				
176523	159.002	X				
176535	164.052(A)(13)	X				
176616	164.051(A)(9)	X				
176654	164.051(A)(3)	X				
176674	164.051(A)(6)	X				
176822	164.052(A)(5)	X				
176920	164.051(A)(3)	X				
177132	164.052(A)(17)	X				
177195	151.002(A)(13)	X				
177302	164.052(A)(5)	X				
177459	164.053(A)(1)	X				
177486	164.052(A)(5)	X				
177494	164.052(A)(5)	X				
177503	164.052(A)(5)	X				

Log Number	Allegation	Close	Continue	ISC	Hold	Name
177504	164.052(A)(5)	X				
177505	164.052(A)(5)	X				
177672	164.052(A)(5)	X				
177782	164.053(A)(1)	X				
178057	164.052(A)(5)	X				