

TEXAS MEDICAL BOARD
MINUTES OF THE
DISCIPLINARY PROCESS REVIEW COMMITTEE
April 11, 2013

Chair Melinda McMichael, M.D., called the meeting to order at 10:57 a.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., Allan Shulkin, M.D., Stanley S. Wang, M.D., George Willeford III, M.D., and Irvin E. Zeitler, Jr., D.O.

Also present was Mari Robinson, Executive Director, Medical Director Robert Bredt, M.D., and various other staff.

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

The Executive Director, Dr. Bill Nemeth discussed the different circumstances of cases the Texas Physician Health Program is currently working and requested additional guidance on.

Ms. Blackwell moved, and Dr. McNeese seconded that PHP Case #12-0213 remain under the management of the PHP 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 further action. Motion carried. Dr. Holliday and Dr. Wang opposed this motion.

Dr. Zeitler moved, and Ms. Attebury seconded that PHP Case #12-0136 remain under the management of the PHP 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 further action. Motion carried.

Dr. Willeford moved, and Dr. Shulkin seconded that PHP Case #11-0204 remain under the management of the PHP to include the Respondent going through a 96-hour evaluation and following the recommendations outlined by the 96-hour evaluators as well as the recommendations of the PHP. Motion carried.

Dr. Holliday moved, and Dr. Wang seconded that PHP Case #10-0296 remain under the management of the PHP to include the Respondent going through a 96-hour evaluation and following the recommendations outlined by the 96-hour evaluators as well as the recommendations of the PHP. Motion carried. Motion carried.

Dr. Willeford moved, and Ms. Blackwell seconded that PHP Case #12-0185 be returned to the jurisdiction of the Texas Medical Board for immediate action against this Respondent, specifically a possible temporary suspension. Motion carried.

Dr. Holliday moved, and Dr. Willeford seconded that PHP Case #11-0102 be returned to the jurisdiction of the Texas Medical Board for immediate actions against this Respondent, specifically a possible temporary suspension. Motion carried.

Dr. Willeford applauded the work that the TX PHP is doing and how well the program is working.

Dr. Zeitler moved, and Ms. Blackwell seconded; the motion passed at 11:30a.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 11:42 a.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 renewals involving impaired licensees.

Dr. Willeford moved, and Dr. Guajardo seconded that licensee number one under Agenda Item 3 be sent an impairment packet. Motion carried.

Dr. Holliday moved, and Dr. Zeitler seconded that licensee number two under Agenda Item 3 be sent an impairment packet. Motion carried.

Agenda Item #4. Reports and discussion regarding the Investigation, Litigation and Compliance Departments.

Ms. Robinson presented the Enforcement Report for February 2013, a copy of which is attached. This was an informational item only and no vote was necessary.

Agenda Item #5. Discussion, recommendation, and possible direction regarding the request related to the proposed rulemaking for Chapter 165 in Title 22 of the Texas Administrative Code.

Staff was directed to consider the locum tenens portion of the proposed rule change for Chapter 165 in Title 22 of the Texas Administrative Code by defining the term *locum tenens* as used in the attached proposal and to establish the length of time the locum tenens tenure is, preferably six months, and present this proposed rule change to the stakeholders for consideration.

A lunch recess was taken at 12:38 a.m. and the committee returned at 1:07 a.m.

Dr. Zeitler moved, and Dr. Holliday seconded; the motion passed at 1:09 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 3:28 p.m. and it was announced that no action was

taken during executive session. A certified agenda of the executive session was made. **Dr. Wang recused himself from any discussion and decision regarding Log #12-0570 (12-0215).**

Agenda Item #12. Review, discussion, and possible action regarding appeals of dismissed complaints. A. Jurisdictional Complaints: i. Investigations: 12-4153, 12-4644, 12-4955, 12-6112, 12-6382, 12-6774, 12-6862, 12-7060, 12-7110, 12-7253, 12-7404, 13-1051, ii. Legal Files: 12-0570 (12-0215), 12-0672 (11-6728), 12-0921 (12-1488). B. Jurisdictional Not Filed Complaints: 12-6077, 13-0089, 13-0143, 13-0144, 13-1850, 13-2142, 13-2192, 13-2210, 13-2419, 13-2422, 13-2423, 13-2441, 13-2511, 13-2520, 13-2572, 13-2657, 13-2671, 13-2711, 13-2754, 13-2930, 13-3099, 13-3182, 13-3427, 13-3563; and C. Non-Jurisdictional Complaints: 13-0615, 13-1132, 13-3091, and 13-3568.

It was announced by Ms. Robinson that Agenda Item 12.A.i, Logs #12-4955 and 13-1051 would be moved to the June 2013 DPRC Agenda as a courtesy to the Complainants. A custom letter will be sent to the Complainants notifying them that a decision will be made on their case in June 2013, whether they personally appear before the committee or not.

Dr. Shulkin moved, and committee members unanimously seconded that the appeal of Item 12.A.ii., Log #12-0570 (12-0215) be denied and that a custom letter be sent to the Respondent regarding communicating clear and precise follow-up instructions with patients. Motion carried. Dr. Wang recused himself from any discussion and decision regarding Log #12-0570 (12-0215).

Dr. Zeitler moved, and Dr. McNeese seconded that any decision on the appeal of Item 12.A.ii., Log #12-0672 (11-6728) be deferred until the other investigation involving the complainant and Respondent in this case is resolved. Motion carried.

Dr. Willeford moved, and Ms. Blackwell seconded that the appeal of Item 12.A.ii., Log #12-0921 (12-1488) be denied. Motion carried. During open session the committee discussed that Surgicel is not a sponge but in fact is a blood-clot-inducing material that absorbs excess blood and in 10-14 days will dissolve and is commonly used in a surgical procedure. Surgicel was used on the patient in this case. The surgery performed was in attempt to save the patient's life; the only other option would have been not to operate. Committee member Dr. Holliday explained that a patient with a pulse and a blood pressure, even if it is mechanical, is considered a living patient and that in order to determine brain death a neurologist would have to be consulted and multiple tests performed. The anesthesia team cannot determine if a patient is brain dead or not.

The committee unanimously moved that the appeal of Item 12.A.i., Log #12-7060 be granted and that an investigation be opened. Motion carried.

Dr. McNeese moved, and Dr. Zeitler seconded that the appeal of Item 12.B., Log #13-2210 be granted and the case be returned to a pending determination status for an additional 45-days while waiting for a response from the Respondent in this case. Motion carried.

Dr. McNeese moved, and Dr. Zeitler seconded that the appeal of Item 12.B., Log #13-2422 be granted and the case be returned to a pending determination status for an additional 45-days while waiting for a response from the Respondent in this case. Motion carried.

Dr. Wang moved, and Ms. Blackwell seconded that the appeal of Item 12.B., Log #13-3182 be granted and the case be returned to a pending determination status for an additional 45-days while waiting for a response from the Respondent in this case. Motion carried.

Mr. Baucom moved, and Dr. Guajardo seconded that all other appeals under Agenda Item 12.A.i not specifically granted above be denied. Motion carried.

Ms. Attebury moved, and Dr. Zeitler seconded that all other appeals under Agenda Item 12.B. not specifically granted above be denied. Motion carried.

Dr. Shulkin moved, and Dr. Wang seconded that all other appeals under Agenda Item 12.C. not specifically granted above be denied. Motion carried.

Agenda Item #6. Discussion and possible direction regarding when to switch a Compliance Chart Monitor.

Staff was directed that a compliance chart monitor will not be changed without just cause. If a change of chart monitor is granted, the requesting Respondent will pay the review charges for the second chart monitor to review the report of the first and if the second chart monitor agrees with the findings of the first chart monitor, the Respondent will be continue to be observed by the first chart monitor.

Agenda Item #7. Discussion and possible direction for reactivating a JNF file that has been closed in the initial 45-days, other than the appeal process.

Staff was directed that the appeal process will continue to be the only way to reactivate a JNF file that has been closed in the initial 45-days.

Agenda Item #8. Review, discussion, and possible direction regarding drug testing and CME waivers.

Staff was directed to grant 24-hours per year towards drug testing waivers for CME training, as well as any additional CME required by the Respondent's current Board Order. For any additional waivers, the Respondent will drug test at their CME training travel destination.

Item #9. Review, discussion, and possible action regarding review of probationer's appearances.

Dr. Zeitler moved, and Ms. Attebury seconded that the waiver list on Agenda Item 9 be approved. Motion carried.

Agenda Item #10. Consideration and approval of membership of the Expert Physician Panel.

Dr. Wang moved, and Dr. McNeese seconded that the memberships to the Expert Physician Panel on Agenda Item 10 be approved. Motion carried.

Agenda Item #11. 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 400 investigations that fall under this category; the majority being SOAH cases. This was an informational item only and no vote was necessary.

Agenda Item #13. Discussion, recommendation, and possible action regarding routine follow-up on investigative files previously referred from the DPRC for follow-up action, specifically including: 12-7203.

Dr. Zeitler moved, and Dr. Shulkin seconded that Log #12-7203 be dismissed with a custom letter be sent to the Respondent. Motion carried.

Agenda Item #14. Review, discussion, and possible action regarding selected files and cases.

The committee unanimously moved 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.

Ms. Robinson commended Dr. McMichael for her outstanding performance as the DPRC chair.

Agenda Item #15. Adjourn.

Ms. Attebury moved, and Dr. Zeitler seconded that the meeting adjourn. Motion carried at 4:24 p.m.