

III.

Factual Allegations

Board Staff has received information which indicates that Respondent may have violated the Act. Upon the basis of such information and belief, Board Staff files this Complaint and thereby charges and alleges that:

1. On December 29, 1994, the Respondent was notified by the Board that a complaint had been filed against him regarding patient D.C., alleging that the Respondent misdiagnosed D.C. with Mercury poisoning and referred her to a "special" dentist to have her silver fillings removed. On January 3, 1995, Board staff requested by certified mail that the Respondent provide the medical records relating to patient D.C. The return receipt evidences that the Respondent's office received Board staff's request on January 6, 1995. On January 17, 1995, Respondent requested an extension in time for providing the records. Respondent was granted an extension to January 30, 1995. To this date, Board staff has not received the medical records requested.

2. On July 10, 1996, Board Staff informed the Respondent that the Board had received another complaint concerning his medical care and treatment of patient M.M. The letter requested that he provide a certified true copy of patient M.M.'s medical record. The letter also informed the Respondent that this request was authorized pursuant to Board Rule 179.2(a). The Rule specifically provides that upon receipt of a request by Board Staff for copies of patient medical records, a physician must provide the copies within fourteen (14) days of the request. The Respondent failed to furnish the records. On August 1, 1996 Board staff reiterated its previous request. Again the Respondent failed to furnish the records. By letter dated August 12, 1994 (presumed misdated), stated that he would not comply with the Board's request. On August 19, 1996, the Board's Executive Director, pursuant to the authority granted in the Medical Practice Act, TEX. REV. CIV.STAT. ANN., article 4495b (Vernon Supp. Pamphlet 1996), namely section 2.09(i), (now found at section 160.009(b) of TEX. OCC. CODE ANN., Subtitle B (Vernon's 2002), issued a subpoena duces tecum for a copy of M.M.'s medical records and the Respondent failed to produce the documents as subpoenaed. Instead, via letter dated August 23, 1996.

3. On January 18, 2001, the Respondent was notified that a complaint had been opened regarding J.C., who the Respondent treated with an IV of Hydrogen Peroxide, allegedly resulting in a delay of conventional therapy. On February 2, 2001, Board staff requested by certified mail that the Respondent provide the medical records relating to patient JC. On February 12, 2001, Board staff

received a letter from Respondent stating that he is not intending to release the medical records of J.C.

IV.

Applicable Rules, Statutes and Agency Policy

1. It is alleged that the Respondent's conduct, including actions and/or omissions, as described above, individually and collectively, constitute grounds for the Board to revoke or suspend the Respondent's Texas medical license or to impose any other authorized means of discipline upon the Respondent pursuant to Sections 160.009(b), 164.051(a)(1), 164.051(a)(3), 164.052(a)(5), and 164.001 of the Act.

2. Section 160.009(b) of the Act authorizes the Board to discipline a licensed Texas physician who fails to comply with a subpoena issued under Section 160.009(a) of the Medical Practices Act.

3. Section 164.051(a)(1) of the Act authorizes the Board to discipline a licensed Texas physician "who commits an act prohibited under Section 164.052."

4. Section 164.051(a)(3) of the Act authorizes the Board to discipline a licensed Texas physician who "Commits or attempts to commit a direct or indirect violation of a rule adopted under this subtitle, either as a principal, accessory, or accomplice." In this case, the Respondent has violated Board Rule 179.2(a), which requires a licensee to furnish to the Board copies of medical records within two weeks after the date the Board requested the records.

5. Section 164.052(a)(5) of the Act authorizes the Board to discipline a licensed Texas physician who "commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public."

6. Section 164.001 of the Act authorizes the revocation, suspension, limitation, restriction, or probation of a physician's Texas license for a violation of the Act or a rule of the Board or for any cause for which the Board is authorized to refuse to admit persons to its examination and to issue a license or renewal license. Section 164.001 of the Act authorizes a range of disciplinary actions against a licensed Texas physician for committing any of the conduct set forth in Sections 164.051 through 164.054 of the Act.

7. Section 165.001 of the Act authorizes the imposition of an administrative penalty for a violation of the Act or rule of the Board. Section 165.003 of the Act authorizes the amount of the

administrative penalty, which may not exceed \$5,000 for each violation and every day a violation continues or occurs.

8. Respondent's alleged violations of Sections 160.009(b), 164.051(a)(1), 164.051(a)(3), 164.052(a)(5) of the Act, as described above are grounds, individually and collectively, for the Board to enter an Order in regard to Respondent and Respondent's medical license pursuant to Section 164.001 of the Act.

IV.

Relief Requested

WHEREFORE, PREMISES CONSIDERED, the Board requests that a contested case hearing on the merits of this Complaint be held and that upon the trial of the matters asserted herein, and that the Honorable Administrative Law Judge issue a Proposal for Decision ("PFD") which reflects Respondent's violation of the Act as set forth in this Complaint, and that, following issuance of the PFD, the Texas Board enter an Order to revoke Respondent's medical license, and in the event Respondent's medical license is not revoked, it is prayed that other means of discipline be imposed.

Respectfully submitted,

TEXAS STATE BOARD OF MEDICAL EXAMINERS

By: 

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CERTIFICATE OF SERVICE

I certify that on this 12th day of July 2002, a true and correct copy of the foregoing Complaint has been served in compliance with Section 155.25 of the State Office of Administrative Hearings Rules of Procedures on the following individuals at the locations and in the manner indicated below:

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Battle, M.D.
9910 Longpoint
Houston, TX 77055

VIA FACSIMILIE

Docket Clerk
State Office of Administrative Hearings
William P. Clements Bldg.
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

VIA HAND DELIVERY

Hearings Coordinator
Texas State Board of Medical Examiners
333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701



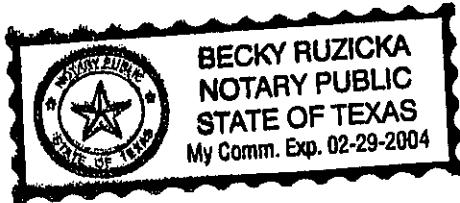
Victoria White
Staff Attorney

THE STATE OF TEXAS

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COUNTY OF TRAVIS

SUBSCRIBED AND SWORN to before me by the said Victoria White on this the 12th day of July, 2002.



Becky Ruzicka
Notary Public, State of Texas

Filed with the Texas State Board of Medical Examiners on this the 12th day of July 2002.

Donald W. Patrick
Donald W. Patrick, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners