

IN THE MATTER OF  
THE COMPLAINT AGAINST  
RUSSELL R. ROBY, M.D.

BEFORE THE  
TEXAS STATE BOARD OF  
MEDICAL EXAMINERS

AGREED ORDER

On the 10 day of December, 2004, came on to be heard before the Texas State Board of Medical Examiners ("the Board" or "the Texas Board"), duly in session, the matter of the license of Russell R. Roby, M.D. ("Respondent").

On July 9, 2004, Respondent appeared in person, with counsel, Tony Cobos, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. Karrie Key represented Board staff. The Board's representatives were Roberta Kalafut, D.O., a member of the Board, and Janet Tornelli-Mitchell, M.D., a member of the District Review Committee.

Upon the recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order.

FINDINGS OF FACT

The Board finds that:

1. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under TEX. OCC. CODE ANN. Title 3, Subtitle B (Vernon's 2002) (the "Act") or the Rules of the Board.
2. Respondent currently holds Texas Medical License No. E-1255. Respondent was originally issued this license to practice medicine in Texas on January 19, 1974. Respondent is not licensed to practice in any other state.
3. Respondent is primarily engaged in the practice of allergy and immunology. Respondent is not board certified in this specialty.

4. Respondent does not supervise physician assistants.
5. Respondent is 63 years of age.
6. Respondent has previously been the subject of disciplinary action by the Board.
7. Patient K.J. entered into Respondent's care in September of 2002 and remained until May of 2003.
8. Respondent chose to treat K.J. with dilute tetanus toxoid injections for the treatment of an ongoing bacterial infection. On November 26, 2002, K.J. received an injection. K.J. received injections weekly until January 23, 2003. K.J. received a total of 15 injections.
9. Respondent failed to receive informed consent from K.J. before administering the injections.
10. Mitigating factors are: (a) single instance of this therapy and (b) Respondent was candid and forthcoming with the Board representatives.
11. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent's cooperation, through consent to this Agreed Order, pursuant to the provisions of Section 164.002 the Act, will save money and resources for the State of Texas. To avoid further investigation, hearings, and the expense and inconvenience of litigation, Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions.

#### CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.
2. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice medicine in an acceptable professional manner consistent with public health and welfare.
3. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a rule adopted under this Act. Respondent violated Rule 200.3(2), concerning standards for physicians practicing

complementary and alternative medicine; specifically, Respondent violated the rule regarding informed consent.

4. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

5. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

### ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that:

1. This Agreed Order shall constitute a PUBLIC REPRIMAND of Respondent, and Respondent is hereby reprimanded.

2. For a period of 12 months from the date this Order is signed by the President of the Board, Respondent's practice shall be monitored by a physician ("monitor"), in accordance with §164.001(b)(7) of the Act. The Compliance Division of the Board shall designate the monitor and may change the monitor at any time for any reason. The monitor shall have expertise in a similar specialty area as Respondent. The Compliance Division shall provide a copy of this Order to the monitor, together with other information necessary to assist the monitor.

a. As requested by the Compliance Division, Respondent shall prepare and provide complete legible copies of selected patient medical and billing records ("selected records"). The Compliance Division shall select records for at least thirty patients seen by Respondent during each three-month period following the last day of the month of entry of this Order ("reporting period"). The Compliance Division may select records for more than thirty patients, up to ten percent of the patients seen during a reporting period.

b. The monitor shall perform the following duties:

1) Personally review the selected records;

2) Prepare written reports documenting any perceived deficiencies and any recommendations to improve Respondent's practice of medicine or assist in

the ongoing monitoring process. Reports shall be submitted as requested by the Compliance Division; and

3) Perform any other duty that the Compliance Division determines will assist the effective monitoring of Respondent's practice.

c. The Compliance Division shall provide to Respondent a copy of any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division.

d. The monitor shall be the agent of the Board, but shall be compensated by the Respondent through the Board. Such compensation and any costs incurred by the monitor shall be paid by Respondent to the Board and remitted by the Board to the monitor. Respondent shall not charge the compensation and costs paid to the monitor to any patients.

3. Within 30 days from the date this Order is signed by the President of the Board, Respondent shall present a revised informed consent form to the Executive Director of the Board. Respondent shall become familiar with and comply with all requirements of Chapter 200.1-200.3 of the Board Rules, concerning Standards for Physicians Practicing Complementary and Alternative Medicine.

4. The time period of this Order shall be tolled if (a) Respondent subsequently resides or practices outside the State of Texas, (b) Respondent's license is subsequently canceled for nonpayment of licensure fees, or (c) this Order is stayed or enjoined by Court Order. If Respondent leaves Texas to live or practice elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. When the period of tolling ends, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of tolling.

5. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent's practice.

6. Respondent shall fully cooperate with the Board and the Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigation, review, or monitoring associated with

Respondent's compliance with this Order. Failure to fully cooperate shall constitute a violation of this order and a basis for disciplinary action against Respondent pursuant to the Act.

6. Respondent shall inform the Board in writing of any change of Respondent's mailing or practice address within ten days of the address change. This information shall be submitted to the Permits Department and the Director of Compliance for the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

7. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, and to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act. Respondent agrees that ten days notice of a Probationer Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent waives all notice requirements under Section 164.003 of the Medical Practice Act related to informal proceedings, and Section 2001.054(c) of the Administrative Procedure Act.

8. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following entry of this Order. If, after the passage of the 12-month period, Respondent wishes to seek amendment or termination of these conditions, Respondent may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition without further appeal or review. Petitions for modifying or terminating may be filed only once a year thereafter.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, RUSSELL R. ROBY, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I

SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 11/8, 2004.

Russell R Roby MD  
RUSSELL R. ROBY, M.D.  
RESPONDENT

STATE OF Texas  
COUNTY OF Tarrant

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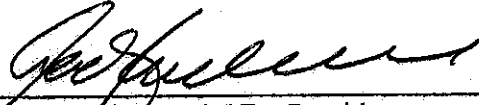
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public,  
on this 7<sup>th</sup> day of November, 2004.

Becky A Van Eenenaam  
Signature of Notary Public

(Notary Seal)

Becky A. Van Eenenaam  
Printed or typed name of Notary Public  
My commission expires:  
June 3, 2008

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical  
Examiners on this 10 day of December, 2004.



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Lee S. Anderson, M.D., President  
Texas State Board of Medical Examiners