

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-04-
LICENSE NO. H-3160

IN THE MATTER OF THE
COMPLAINT AGAINST:
PRADEEP KUMAR ROY, M.D.

BEFORE THE
TEXAS STATE BOARD OF
MEDICAL EXAMINERS

COMPLAINT

TO THE HONORABLE TEXAS STATE BOARD OF MEDICAL EXAMINERS AND THE
HONORABLE ADMINISTRATIVE LAW JUDGE TO BE ASSIGNED:

COMES NOW, the Staff of the Texas State Board of Medical Examiners ("the Board"), and files this Complaint against Pradeep Kumar Roy, M.D., ("Respondent"), based on Respondent's alleged violations of the Medical Practice Act ("the Act"), TEX. OCC. CODE ANN., Title 3, Subtitle B, Chapters 151-165 (Vernon's 2002), and would show the following:

I. Introduction

The filing of this Complaint and the relief requested are necessary to protect the health and public interest of the citizens of the State of Texas, as provided in Section 151.003 of the Act.

II. Legal Authority and Jurisdiction

Respondent is a Texas Physician and holds Texas Medical License Number H-3160, issued by the Board on December 1, 1987, which was in full force and effect at all times material and relevant to this Complaint. All jurisdictional requirements have been satisfied.

III. Procedural Background

1. The Board received information that Respondent may have violated the Act and, based on that information, conducted an investigation. The investigation compiled

evidence that support allegations of a violation.

2. Respondent was invited to attend an Informal Show Compliance Proceeding and Settlement Conference ("ISC"), held on May 15, 2003, which was conducted in accordance with §2001.054(c), GOV'T CODE and §164.004 of the Act. The Board representatives, Lee S. Anderson, M.D. and Nancy Seliger ("Panel"), reviewed and considered evidence from the investigation, as well as any information presented by Respondent. The Panel determined that Respondent had not shown compliance with all requirements of the Act.

3. In an attempt to resolve this matter informally, the Panel offered Respondent a proposed Agreed Order, setting forth certain terms and conditions. Respondent failed and/or refused to agree to the proposed settlement offer and no agreement to settle this matter has been reached by the parties.

IV. Factual Allegations

Board Staff has received information and on that information believes that Respondent has violated the Act. Based on such information and belief, Board Staff alleges:

1. Respondent saw Patient C.T. initially on May 20, 1999, with a chief complaint of depressed mood. Patient C.T. reported being drunk once a month, but reported no drug dependency. There was a positive family history of drug dependency, depression, and anxiety. On May 27, 1999, Patient C.T. informed Respondent that she takes Fiorinal for headaches. Respondent prescribed Robaxin and Klonopin. On June 17, 1999, Patient C.T.'s husband complained about Patient C.T.'s excessive use of medication over the years. Despite this significant history Respondent began and continued Patient C.T. on narcotic/controlled substance therapy.

2. On July 9, 1999, Patient C.T. advised Respondent she had been taking more than the daily-prescribed amounts of narcotics, explaining that she had a high tolerance for medication.

3. On August 31, 1999, Patient C.T. saw a therapist. The therapist noted that the patient seemed to be medication/drug seeking.

4. On September 13, 1999, Respondent prescribed Oxycontin 20 mg twice a day (b.i.d) for severe headaches. On November 10, 1999, Respondent diagnosed the patient with major depressive disorder with psychosis.

5. On March 15, 2000, Respondent limited Patient C.T.'s Oxycontin to no more than ten per week and the patient was restricted to two weeks supply.

6. On June 8, 2000, Patient C.T. reported two episodes of bizarre behavior to Respondent. Respondent limited Patient C.T. to no more than one Oxycontin per day. Respondent prescribed thirty (30) Oxycontin on June 29, 2000, which was a thirty-day supply. On July 20, 2000, Patient C.T. reported she was out of Oxycontin. This means the patient ran out of the Oxycontin 9 days early. Respondent refilled the patient's Oxycontin. Despite a number of indications of drug seeking/abuse behavior by Patient C.T. Respondent continued to prescribe narcotics/controlled substances.

7. On January 11, 2001, Respondent noted that he was aware that the patient had an opioid dependency problem. On May 14, 2001, Respondent noted that Patient C.T. was taking six Vicodin instead of three. However, despite knowing Patient C.T. was abusing narcotics/controlled substances Respondent continued to prescribe narcotics/controlled substances.

8. On June 6, 2001, Patient C.T.'s sister called Respondent's office indicating Patient C.T. disappeared for several hours at a time and returned with slurred speech, thick tongue, and needle-like pupils. Further, Respondent issued a prescription for 180 Vicodin not to exceed six per day but the patient took them in six days. The family planned to do an intervention. Despite the complaints of the family and the behavior of Patient C.T. Respondent continued to provide narcotics/controlled substances.

9. On March 25, 2002, Patient C.T. stated she would stop taking Vicodin and would take Oxycontin when her pain was unmanageable. Respondent provided the Oxycontin. On April 4, 2002, Respondent advised Patient C.T. not to mix Vicodin and Oxycontin.

10. On April 29, 2002, Patient C.T. was admitted to Park Plaza Specialty Hospital with a diagnosis of headache. The patient had been on Vicodin ES 8 to 10 daily for at least 3 to 4 years. Assessment revealed a diagnosis of status migraines, narcotic rebound headache, and history of depression and anxiety. Patient C.T. underwent severe and acute withdrawal. Patient C.T. was discharged on May 6, 2002 and was off of Vicodin.

11. On May 9, 2002, the Patient C.T. wrote to Respondent that she wished to be restarted on Vicodin for her headaches. Patient C.T. understood that the Vicodin was addictive and that she could become physiologically dependent. Respondent provided Vicodin to Patient C.T. despite the fact she was only three (3) days of out rehabilitation.

12. On August 28, 2002, Respondent admitted Patient C.T. to Kingwood Health Center with a diagnosis of opioid dependence and withdrawal syndrome, major depression, pain disorder with physical and psychological features, and chronic headaches. On September 18, 2002, Patient C.T. agreed to enter residential treatment for her prescription addiction.

13. The Respondent prescribed narcotics/controlled substances to a patient without adequate medical records, and/or objective medical indications. Respondent failed to comply with the provisions of Board Rule 170 regarding his treatment of a chronic pain patient. Respondent provided large amounts of narcotics/controlled substances to a patient with a history of prescription abuse; Respondent prescribed narcotics/controlled substances despite Patient C.T.'s admitting she used larger daily amounts than the Respondent had prescribed; Respondent continued prescribing narcotics after Patient C.T went into rehabilitation; and was diagnosed as drug dependent. Respondent prescribed narcotics/controlled substances to a known abuser. All these actions are violations of the Medical Practice Act.

V. Applicable Statutes, Rules, and Agency Policy

Respondent's conduct, as described above, constitutes grounds for the Board to revoke or suspend Respondent's Texas medical license or to impose any other authorized means of discipline upon the Respondent. The following Statutes, Rules, and Agency Policy are applicable to this matter:

A. PROCEDURES FOR THE CONDUCT OF THIS HEARING:

1. Section 164.007(a) of the Act requires that the Board adopt procedures governing formal disposition of a contested case before the State Office of Administrative Hearings.
2. 22 TEX. ADMIN. CODE, Chapter 187 sets forth the procedures adopted by the Board under the requirement of Section 165.007(a) of the Act.
3. 1 TEX. ADMIN. CODE §155.3(c) provides that the procedural rules of the state agency on behalf of which the hearing is conducted govern procedural matters that relate to the hearing as required by law, to wit: Section 165.007(a) of the Act, as cited above.
4. 1 TEX. ADMIN. CODE, CHAPTER 155 sets forth the rules of procedure adopted by SOAH for contested case proceedings.

B. VIOLATIONS WARRANTING DISCIPLINARY ACTION:

1. Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act prohibited under Section 164.052 of the Act.
2. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for committing a direct or indirect violation of a rule adopted under this Act, either as a principal, accessory, or accomplice; to wit, failing to keep adequate medical records pursuant to Board Rule 165; and failing to comply with documentation requirements under Board Rule 170.
3. 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. Board Rule 190 provides guidelines as to acts, practices and conduct, which is presumed to be practice inconsistent with the public health and welfare. Board Rule 190.8(1) defines a failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to: (A) failure to treat a patient according to the generally accepted standard of care; (B) negligence in performing medical services; (C) failure to use proper diligence in one's professional practice; (D) failure to safeguard against potential complications.
4. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public. Board Rule 190 provides guidelines as to acts, practices and conduct, which is presumed to be unprofessional and dishonorable conduct.

5. Sections 164.052(a)(5) and 164.053(a)(3) of the Act authorize the Board to take disciplinary action against Respondent based on Respondent writing prescriptions for or dispensing to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs or to a person who the physician should have known was an abuser of the narcotic drugs, controlled substances, or dangerous drugs.
6. Sections 164.052(a)(5) and 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing, administering, or dispensing in a manner inconsistent with public health and welfare, dangerous drugs as defined by Chapter 483, Health and Safety Code; or controlled substances scheduled in Chapter 481 Health and Safety Code; or controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. § 801 et seq.).

C. SANCTIONS THAT MAY BE IMPOSED:

1. 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.
2. Section 165.003 of the Act sets forth statutory requirements for the amount and basis of an administrative penalty. 22 TEX. ADMIN. CODE § 187.40 and 22 TEX. ADMIN. CODE §190.1(f) set forth the Board's requirements for assessing an administrative penalty.
3. 22 TEX. ADMIN. CODE § 187.39 authorizes the Board to assess, in addition to penalty imposed, costs of the investigation and administrative hearing in the case of a default judgment or upon adjudication that Respondent is in violation of the Act after a trial on the merits.

4. 22 TEX. ADMIN. CODE Chapter 190 provides disciplinary guidelines intended to provide guidance and a framework of analysis for administrative law judges in the making of recommendations in contested licensure and disciplinary matters and to provide guidance as to the types of conduct that constitute violations of the Act or board rules.
5. When considering the allegations and conduct of the Respondent's in regard to this Complaint and pursuant to Chapter 190 the following should be considered as aggravating factors: patient harm and the severity of patient harm; increased potential for harm to the public; intentional misconduct; failure to implement remedial measures to correct or mitigate harm from the misconduct; lack of rehabilitative potential or likelihood for future misconduct of a similar nature; and relevant circumstances increasing the seriousness of the misconduct.

V. NOTICE TO RESPONDENT

IF YOU DO NOT FILE A WRITTEN ANSWER TO THIS NOTICE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHING 20 DAYS OF THE DATE NOTICE OF SERVICE WAS MAILED, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU, WHICH MAY INCLUDE THE DENIAL OF LICENSURE OR ANY OR ALL OF THE REQUESTED SANCTIONS INCLUDING THE REVOCATION OF YOUR LICENSE. IF YOU FILE A WRITTEN ANSWER, BUT THEN FAIL TO ATTEND THE HEARING, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU, WHICH MAY INCLUDE THE DENIAL OF LICENSURE OR ANY OR ALL OF THE REQUESTED SANCTIONS INCLUDING THE REVOCATION OF YOUR LICENSE. A COPY OF ANY RESPONSE YOU FILE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS SHALL ALSO BE PROVIDED TO THE HEARINGS COORDINATOR OF THE TEXAS STATE BOARD OF MEDICAL EXAMINERS.

PURSUANT TO 22 TEX. ADMIN. CODE § 187.27(2), A WRITTEN ANSWER SHALL SPECIFICALLY ADMIT OR DENY EACH FACTUAL ALLEGATION MADE AGAINST THE RESPONDENT.

WHEREFORE, PREMISES CONSIDERED, Board Staff requests that an administrative law judge employed by the State Office of Administrative Hearings conduct a contested case hearing on the merits of the Complaint, in accordance with Section 164.007(a) of the Act. Upon final hearing, Board Staff requests that the Honorable Administrative Law Judge issue a Proposal for Decision ("PFD") that reflects Respondent's violation of the Act as set forth in this Complaint. Following issuance of the PFD, Board Staff requests that the Board enter an Order to revoke or suspend Respondent's medical license or that other means of discipline be imposed.

In the event that the Board determines to stay any revocation or suspension and grant probation in this case or to impose restrictions on Respondent's license, Board Staff requests that the following restrictions be considered:

1. Probation should continue for an appropriate period of time.
2. Respondent should be restricted from practicing medicine in Texas until Respondent requests permission in writing to resume the practice of medicine in Texas, personally appears before the Board to orally petition for permission to resume such practice, and provides sufficient evidence and information that, in the discretion of the Board, adequately indicates that Respondent is physically, mentally, and otherwise competent to safely practice medicine, or such other restrictions as may be found to be appropriate.
3. Respondent should be required to complete additional hours of Continuing Medical Education each year during the probationary period.
4. Respondent should be required to maintain patient medical and billing records in accordance with 22 TEX. ADMIN. CODE, Chapter 165.
5. Respondent's patient medical and billing records should be monitored by a physician designated by the Executive Director of the Board.
6. Respondent should be required to perform public service.

Board Staff further requests that the Board impose an administrative penalty against Respondent in an appropriate amount for each violation and for each day the violation continues, based on the seriousness of the violations, the economic harm to property or the environment caused by the violation, the history of previous violations, the amount necessary to deter a future

violation, efforts to correct the violation, the estimated cost of the investigation and prosecution of the case, and the estimated cost of any future monitoring of the licensee.

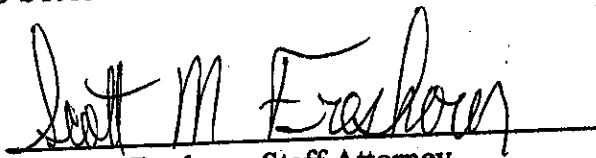
Board Staff further requests that the Board assess, in addition to the administrative penalty imposed, the costs of the Administrative hearing.

Board Staff further requests that Respondent be reprimanded for his violations of the Act.

Respectfully submitted,

TEXAS STATE BOARD OF MEDICAL EXAMINERS

By:

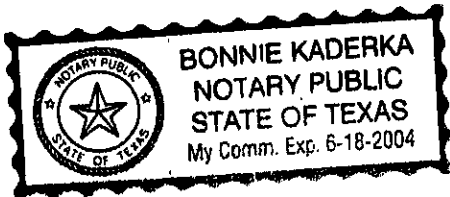


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THE STATE OF TEXAS
COUNTY OF TRAVIS

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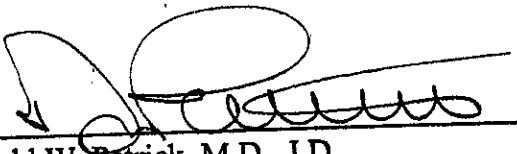
SUBSCRIBED AND SWORN to before me by the said Scott M. Freshour on December
22, 2003.



Bonnie Kaderka

Notary Public, State of Texas

Filed with the Texas State Board of Medical Examiners on December 22, 2003.



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

CERTIFICATE OF SERVICE

I certify that on the 22nd day of December, 2003, 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:

BY FACSIMILE TRANSFER 1-713-669-1095 and FIRST CLASS MAIL

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BY CMRR 7001 0360 0002 7394 0307

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BY COURIER DELIVERY:

Docket Clerk
State Office of Administrative Hearings
William P. Clements Bldg.
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Texas State Board of Medical Examiners
333 Guadalupe, Tower 3, Suite 610
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Scott M. Freshour
Staff Attorney