

LICENSE NO. D7122

IN THE MATTER OF
THE COMPLAINT AGAINST
DENNIS MAURICE KING, M.D.

BEFORE THE
TEXAS STATE BOARD
OF MEDICAL EXAMINERS

FINAL ORDER

During open meeting at Austin, Texas, the Texas State Board of Medical Examiners finds that after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge of the Texas State Office of Administrative Hearings ("SOAH") who made and filed a proposal for decision containing the Administrative Law Judge's proposed findings of fact and conclusions of law. The proposal for decision was properly served on all parties, and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Texas State Board of Medical Examiners, after review and due consideration of the proposal for decision, and exceptions filed, adopts the following proposed findings of fact and conclusions of law of the Administrative Law Judge ("ALJ"), with noted changes. All proposed findings of fact and conclusions of law not specifically adopted herein are hereby denied.

FINDINGS OF FACT

The Board Finds That:

1. The Texas State Board of Medical Examiners (Board) issued medical license No. D7122 to Dr. King on August 15, 1970.
2. On January 14, 1994, the Board and Dr. King entered into an Agreed Order suspending Dr. King's Texas Medical License, but staying the suspension and placing Dr. King on probation under various terms and conditions for five years..
3. Findings of Fact in the January 14, 1994 Order included the following:

Respondent has had alcohol, marijuana and cocaine problems (including IV cocaine usage). Respondent was treated at Talbott Marsh Recovery

System in Georgia. Respondent's treating physicians do not recommend re-entry into medical practice at this time.

4. On March 4, 1995, Dr. King's license to practice medicine was suspended pursuant to an Agreed Order.
5. The Board suspended Dr. King's physician's license on March 4, 1995, because he had alcohol, marijuana, and cocaine problems.
6. On April 29, 1997, Dr. King submitted himself to the COPAC treatment center in Mississippi for an outpatient evaluation.
7. The evaluation of the COPAC treatment center resulted in a recommendation that the suspension of Dr. King's physician's license should continue for at least six months and then be reevaluated.
8. On January 15, 1998, Dr. King requested the Board to probate the suspension of his physician's license.
9. On February 7, 1998, Dr. King entered into an Agreed Order with the Board, by which the suspension of his physician's license was probated for ten years.
10. Among the terms and conditions of his probation under the Agreed Order of February 7, 1998, Dr. King agreed to the following:

4. Respondent shall abstain from the consumption of alcohol, dangerous drugs, or controlled substances in any form unless prescribed by another physician to Respondent for a legitimate and therapeutic purpose."

Respondent shall immediately report by telephone to Respondent's compliance officer, the Director of Compliance, or the Assistant Administrator of Hearings and Compliance of the Board, to be followed by a letter within twenty-four (24) hours, an explanation of any incident in which Respondent ingests any alcohol, controlled substances, or dangerous drugs in any manner not prescribed by another physician for a legitimate medical purpose."

Respondent shall submit himself for appropriate examinations, including screening for alcohol or drugs either through a urine, blood, or hair specimen, at the request of a representative of the Board, without prior notice, to determine chemically through laboratory analysis that Respondent is free of prohibited drugs and alcohol. Respondent shall pay for the costs of these chemical analyses. A positive screen for drugs or alcohol consumed in violation of the terms of this Agreed Order, or a refusal to submit to random screenings shall constitute a violation of this

Agreed Order and may result in further disciplinary action pursuant to Sections 4.01(a) and 3.08 of the Medical Practice Act.

11. In December 2000, Dr. King drank alcohol.
12. Dr. King did not immediately notify the Board that he drank alcohol in December 2000.
13. In the summer of 2001 Dr. King drank alcohol at least 40 times, and occasionally drank alcohol while he was on call for patient treatment.
14. Dr. King did not immediately notify the Board when he drank alcohol in the summer of 2001.
15. Dr. King's use of alcohol created an increased potential for harm to the public.
16. During the period from December 31, 2000 to October 31, 2001, Dr. King concealed his alcohol use from his psychiatrist, his alcohol counselor, his Alcohol Anonymous Sponsor, and his medical colleagues.
17. In October 20 and 27, 2001, Dr. King used cocaine.
18. Dr. King did not immediately notify the Board that he had used cocaine in October 2001.
19. On October 22, 2001, Dr. King submitted to a drug screen for the Travis County Medical Society's Physician Health and Rehabilitation Committee that showed that Dr. King had ingested cocaine.
20. On October 29, 2001, Dr. King was directed by Lisa Garza, a Compliance Officer of the Board, to submit to a drug screen, but he failed to comply with that request.
21. On October 31, 2001, Dr. King admitted to Lisa Garza that he had ingested cocaine in October 2001.
22. Dr. King submitted to a drug screen on October 31, 2001, which showed a dilute specimen of cocaine.
23. Dr. King voluntarily admitted himself on November 5, 2001, to COPAC treatment center in Brandon, Mississippi, for treatment of drug and alcohol addiction. He was discharged on January 4, 2002.
24. Dr. King had a number of relapses in his drug and alcohol addiction between 1994 and October 2001.
25. Since January 2002, Dr. King has submitted to regular drug screens, up to three drug screens per week.

26. Dr. King has not had a drug or alcohol relapse since October 31, 2001.
27. Dr. King receives regular counseling from a drug counselor and a psychiatrist, and he attends Alcoholics Anonymous on a regular basis.
28. Dr. King cannot guarantee that he will not relapse again.
29. No patient harm resulted from Dr. King's relapses that are the subject of this proceeding.
30. Dr. King is presently in private practice of child psychiatry at the Cedar Crest Clinic in Killeen and the Cedar Crest Child and Adolescent Psychiatric Hospital in Belton.
31. Dr. King is a competent child psychiatrist who is liked and respected by his colleagues and patients.
32. Most of Dr. King's patients are from a low socioeconomic background.
33. A shortage of child psychiatrists exists in the Killeen-Belton-Temple area of central Texas.
34. Revocation of Dr. King's medical license would exacerbate the shortage of child psychiatrists in the area where he practices and would result in some patients going without needed mental healthcare.
35. A reasonable estimate of the cost of prosecution of this case by the Board against Dr. King is \$6,885.00.
36. The reasonable and necessary cost for the transcript of the hearing of this proceeding is \$1,284.00

CONCLUSIONS OF LAW

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

1. The Texas State Board of Medical Examiners ("Board") has jurisdiction to discipline its licensees pursuant to the Texas Medical Practice Act (Act), TEX. OCC. CODE ANN., Chapters 151-165.
2. The State Office of Administrative Hearings has jurisdiction to hear this matter and issue a proposal for decision, including findings of fact and conclusions of law, pursuant to TEX. OCC. CODE ANN., §164.007(a) and TEX. GOV'T CODE ANN., Chapter 2003.
3. All parties received adequate and timely notice of hearing in this matter and appeared or were represented at the hearing, which commenced on January 15, 2003 and concluded on January 17, 2003.

4. Dr. King's consumption of alcohol in December 2000 violated the Agreed Order, dated February 7, 1998.
5. Dr. King's failure to immediately notify the Board that he drank alcohol in December 2000 violated the Agreed Order, dated February 7, 1998.
6. Dr. King's consumption of alcohol in the summer of 2001 violated the Agreed Order, dated February 7, 1998.
7. Dr. King's failure to immediately notify the Board that he drank alcohol in the summer of 2001 violated the Agreed Order, dated February 7, 1998.
8. Dr. King's consumption of cocaine in October 2001 violated the Agreed Order, dated February 7, 1998.
9. Dr. King's failure to immediately notify the Board that he used cocaine in October 2001 violated the Agreed Order, dated February 7, 1998.
10. Dr. King's failure to comply with the request of the Compliance officer for a drug screen violated the Agreed Order of February 7, 1998.
11. Section 164.001 of the Act authorizes the Board to revoke or suspend, or probate a license or place a licensee on probation or reprimand a licensee on determining a violation of the Act or a Board Order.
12. Under the 1998 Agreed Order, 22 TEX. ADMIN. CODE §189.8(b), and 22 TEX. ADMIN. CODE §190.1(c)(2), Dr. King's violation of the 1998 Agreed Order constituted unprofessional or dishonorable conduct likely to deceive or defraud the public or injure the public.
13. Dr. King has committed unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.
14. Section 164.052(a)(5) of the Act authorizes the Board to discipline a physician who commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.
15. Dr. King has used alcohol or drugs in an intemperate manner that could endanger a patient's life.
16. Section 164.052 (a)(4) of the Act authorizes the Board to discipline a physician who uses alcohol or drugs in an intemperate manner that, in the Board's opinion, could endanger a patient's life.
17. Section 165.001 of the Act authorizes the Board to impose upon Respondent an administrative penalty for a violation of the Act or rule or order of the Board.

18. 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.

19. The following aggravating factors specified in 22 TEX. ADMIN. CODE § 190.1 apply to Dr. King's violations of the February 7, 1998, Agreed Order and of the Medical Practices Act:

- Increased potential for harm to the public.
- Attempted concealment of misconduct.
- Intentional misconduct in failing to report consumption of alcohol and drugs.
- Prior misconduct.
- Disciplinary history.
- Violation of a board order.

20. The following mitigating factors specified in 22 TEX. ADMIN. CODE § 190.1 apply to Dr. King's violations of the February 7, 1998, Agreed Order and of the Medical Practices Act:

- Absence of patient harm.
- Absence of economic harm to any individual or entity.
- Absence of environmental harm.
- Absence of premeditation to commit misconduct.
- Implementation of remedial measures to correct or mitigate harm from misconduct.
- Rehabilitative potential.
- Present value to the community.

The Board did not include in its Final Order of the Board the ALJ's proposed conclusions of law No. 21, 22, and 23, which stated:

21. *It is reasonable to suspend Dr. King's license for a period of ten years, and to probate such suspension under the same terms and conditions contained in Dr. King's Board Order dated February 7, 1998.*
22. *It is reasonable to assess an administrative penalty against Dr. King as follows: \$200 for each of Dr. King's 41 consumption-of-alcohol incidents and \$200 for each of Dr. King's 41 failure-to-report consumption-of-alcohol incidents; plus \$5,000 for each of Dr. King's two consumption-of-cocaine incidents and \$5,000 for each of Dr. King's two failure-to-report-consumption-of-cocaine incidents; for a grand total administrative penalty of \$36,400.*

23. *It is reasonable to assess costs of the transcript against Dr. King in the amount of \$1,284.*

These proposed Conclusions of Law consist of matters that deal with the sanctions to be applied, which are matters that are subject to the discretion of the Board. The Board is charged with the duty and authority to make the final decision in this matter, and that includes the decision as to the appropriate sanction.

The Board finds that the sanctions recommended by the ALJ are not consistent with the sanctions imposed in other prior decisions of the Board and are too lenient to be effective. A license to practice medicine is a privilege, not a right. Respondent not only violated the terms of the 1998 Agreed Order on numerous occasions, but he concealed the violations for a period of almost 11 months and only disclosed his violations after he tested positive for cocaine under a drug testing program. After weighing the aggravating and mitigating factors that have been found by the ALJ, the Board determines that the potential for rehabilitation and other mitigating factors are far outweighed by the fact that Respondent violated a previous Board Order and attempted to conceal that violation from the Board, rather than seek rehabilitation.

In addition, this Board has, in other previous Orders, applied a policy of zero-tolerance for relapses by an impaired physician while under a Board Order. This Board wants its licensees to understand that an impaired physician is a danger to the public and this Board will not allow an impaired physician to continue in practice. The mitigating factors found by the ALJ do not overcome the need for this Board to apply strict compliance with its Orders regarding impaired physicians.

Also, if the ALJ's recommendation were followed, there would be no real negative consequence flowing from the violations that have been found in this case. Respondent would continue to enjoy the privilege of practicing medicine during the probationary period.

Moreover, other licensees could assume that similar violations would have similar consequences. The ALJ's recommended sanction would therefore be ineffective to deter future violations by this and other licensees.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent's Texas license is hereby REVOKED. Respondent shall immediately cease the practice of medicine in the state of Texas.

It is further ordered that the Respondent shall pay an administrative penalty in the amount of Thirty-Six Thousand Four Hundred Dollars (\$36,400.00) by cashier's checks or money orders


payable to the Texas State Board of Medical Examiners and submitted to the Director of Compliance for the Board for routing so as to be remitted to the comptroller of Texas for deposit in the general revenue fund in accordance with the following payment schedule:

\$600.00 per month for 5 years, the first installment being due and payable within thirty days of this Order becoming administratively final in accordance with TEX. OCC. CODE ANN § 2001.144

In accordance with TEX. GOV'T CODE § 2001.059 (b), the costs of the transcript of the hearing in the amount of \$1,284 shall be assessed against Respondent.

In accordance with TEX. OCC. CODE ANN § 2001.177 and 22 TEX. ADMIN. CODE § 187.39(C), should Respondent appeal this Final Order, the Respondent shall be responsible for payment of all costs of preparation of the original or certified copy of the record of the agency proceedings.

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 24 day of August, 2003.



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