

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-05-_____
LICENSE NO. G-8538

IN THE MATTER OF THE
COMPLAINT AGAINST
LEWIS RAVENET GOTTLIEB, 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 Lewis Ravenet Gottlieb, 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 2004), 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 G-8538, issued by the Board on August 23, 1985, 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 November 16, 2004, which was conducted in accordance with §2001.054(c), GOV'T CODE and §164.004 of the Act. The Board representatives, including at least one physician, ("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 signed certificates of medical necessity ("CMN") and wrote prescriptions authorizing Medicare/Medicaid beneficiaries to receive power wheelchairs in exchange for a kickback. When Respondent signed the CMN he knew such services and equipment were not medically necessary. As result of this action Respondent was indicted on criminal charges.

2. On April 1, 2004, Respondent signed a plea agreement with the United States Attorney for the Southern District of Texas and plead guilty to: conspiracy to commit health care fraud and receive kickbacks, in violation of Title 18, United States Code, Section 371, and health care fraud, in violation of Title 18, United States Code, Section 1347.

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 164.007(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 164.007(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)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a Board Rule 190.8(2)(J)(S)(iii)(v)(6).
2. 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.
3. Section 164.051(a)(2) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's conviction of a felony or misdemeanor involving moral turpitude.

4. Sections 164.052(a)(5) and 164.053(a)(1) of the Act authorize the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine.
5. Sections 164.052(a)(5) and 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.

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. Chapter 165, Subchapter A of the Act sets forth statutory requirements for the amount and basis of an administrative penalty.
3. 22 TEX. ADMIN. CODE § 187.39 authorizes the Board to assess, in addition to any 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 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; prior misconduct; disciplinary history; 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.

VI. NOTICE TO RESPONDENT

IF YOU DO NOT FILE A WRITTEN ANSWER TO THIS NOTICE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 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(a)(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, pursuant to § 164.001 and § 165.003 of the Act and Board Rules 187.30, 187.39, 190.8, 190.14, 190.15 and 190.16, enter an Order imposing any and all sanctions or disciplinary measures necessary to protect health and public welfare, including the imposition on Respondent of SOAH hearing costs and an administrative penalty.

Respectfully submitted,

TEXAS STATE BOARD OF MEDICAL EXAMINERS

By: Scott M. Freshour

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THE STATE OF TEXAS

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COUNTY OF TRAVIS

SUBSCRIBED AND SWORN to before me by the said Scott Freshour on 17 day of August, 2005.



Bonnie Kaderka
Notary Public, State of Texas

Filed with the Texas State Board of Medical Examiners on 17 day of August, 2005.

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