

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-
TEXAS MEDICAL LICENSE NO. L-6256

IN THE MATTER OF THE
COMPLAINT AGAINST

LISA DIANE ALLOJU-FAIRWEATHER, D.O.

BEFORE THE

TEXAS MEDICAL BOARD

COMPLAINT

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

COMES NOW, the Staff of the Texas Medical Board (the "Board"), and files this Complaint against Lisa Diane Alloju-Fairweather, D.O., ("Respondent"), based on Respondent's alleged violations of the Medical Practice Act ("the Act"), Title 3, Subtitle B, Texas Occupations Code, 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

1. Respondent is a Texas Physician and holds Texas Medical License No. L-6256, that was originally issued on June 6, 2003. Respondent's license was in full force and effect at all times material and relevant to this Complaint.
2. Respondent received notice of the Informal Settlement Conference ("ISC") and appeared at the ISC, which was conducted in accordance with §2001.054(c), GOV'T CODE and §164.004 of the Act. All procedural rules were complied with, including but not limited to, Board Rules 182 and 187, as applicable.
3. No agreement to settle this matter has been reached by the parties.
4. All jurisdictional requirements have been satisfied.

III. FACTUAL ALLEGATIONS

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

PRIOR BOARD ORDERS:

Respondent has a long history of substance abuse that has been the subject of multiple Board orders. Specifically:

1. On May 17, 2002, the Board entered an Agreed Order ("2002 Order") restricting Respondent's Institutional Permit License and placing Respondent on probation under several terms and conditions for the duration of her permit. The Board's action was based upon Respondent's arrests for driving while intoxicated and possession of controlled substances. This 2002 Order has expired.
2. On April 15, 2003, the Board entered another Agreed Order ("2003 Order") granting Respondent a medical license (contingent on passing the Jurisprudence Examination) and restricting Respondent's license for a period of seven years. The 2003 Order also required Respondent to: continue care and treatment with a treating psychiatrist; participate in Alcoholics Anonymous ("AA") on a regular basis of at least three meetings per week; and participate in the activities of the Texas Osteopathic Medical Association's (TOMA) Physician Health and Rehabilitation Committee ("PHRC"). The Board's action was based upon Respondent's history of alcohol and controlled substance abuse. Relevant to the complaint herein, Ordering Paragraph No. 1 of the 2003 Order requires Respondent to abstain from consuming alcohol and other prohibited substances and also requires Respondent to report substances prescribed to her under a doctor's care within 48 hours of receiving such substances. Ordering Paragraph No. 2 of the 2003 Order provides that Respondent's license may be immediately revoked due to a positive screen for drugs or alcohol consumed in violation of the terms of the 2003 Order.
3. On April 11, 2008, the Board entered a third Agreed Order ("2008 Order") that suspended Respondent's license for a period of one month and among other terms and conditions, required Respondent to attend and complete an intensive outpatient program of at least 30 days duration related to substance abuse. Additionally, the 2008 Order:

issued a public reprimand of Respondent; increased the frequency of AA meetings required under the 2003 Order to five meetings per week; required Respondent to attend 90 AA meetings in 90 days; required Respondent to pay an administrative penalty of \$5,000; and required Respondent to perform 120 hours of community service providing counseling/psychiatric services related to substance abuse. The Board's action was based upon the Respondent's failure to submit to a urine drug screening as requested by the Board.

4. On October 16, 2009, the Board entered a subsequent Agreed Order ("2009 Order") giving the Respondent a public reprimand. Additionally, the 2009 Order: extended the probation period under the 2003 Order by three years; imposed a restriction on Respondent's certification to prescribe Schedule II, III and IV drugs; assessed a \$10,000 administrative penalty to be paid within one year; and significantly modified provisions of the 2003 Order requiring drug testing, continuing psychiatric treatment and AA participation. The 2009 Order was based upon Respondent's demonstrated tendency to relapse, an ineffective support system and significant issues regarding earlier trauma that had not been addressed adequately.

VIOLATIONS OF THE 2003 ORDER as amended by the 2009 Order (hereinafter referred to as the 2003 Order):

5. The orders relevant to this Complaint are the 2003 Order which remains in effect at the time of this Complaint.

6. Respondent is in violation of Ordering Paragraphs Nos. 1 and 2 of the modified 2003 Order that require her to abstain from certain drugs and alcohol and to timely inform the Board if she is taking a prescription drug under the supervision of a physician. On or about May 19, 2009, Respondent tested positive for a drug, Meprobamate, for which she had not given Board staff notice that she was taking. Respondent was required under the terms of the 2003 Order to provide Board Staff with timely advance notice if she was taking this drug.

7. Additionally, on June 15, 2009, Respondent reported to the Board that she had taken Soma pills that had been prescribed to her husband without being prescribed for her

by a physician. At that time, Respondent entered into an inpatient treatment program for substance abuse and was discharged on September 21, 2009.

8. Respondent is in violation of Ordering Paragraph No. 17, of the 2003 Order, constituting a basis for disciplinary action due to her violation of other provisions of the 2003 Order. By the provisions of that paragraph, Respondent exhibited unprofessional conduct, likely to deceive, defraud, or injure the public.

PROVISIONS VIOLATED:

9. The actions of Respondent as specified above violate one or more of the following provisions of the Medical Practice Act:

a. Respondent is subject to disciplinary action pursuant to Section 164.051(a)(1) of the Act based on Respondent's commission of an act prohibited under Section 164.052 of the Act.

b. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's committing or attempting to commit a direct violation of a rule adopted under this subtitle, either as principal, accessory or accomplice. Specifically, Respondent violated of Board Rule 189.3, by failing to comply with all terms of a Board Order.

c. Section 164.051(a)(4) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's inability to practice medicine with reasonable skill and safety to patients because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or another substance, or as a result of any mental or physical condition.

d. Section 164.052(a)(4) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's use of alcohol or drugs in an intemperate manner that, in the opinion of the Board, could endanger the lives of patients.

e. 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, as defined by Board Rule(s): 189.8(c)(1), failure to comply with a term or condition in an order; and 190.8(2)(A), violation of a Board Order.

10. This case involves increased potential for harm to the public, prior similar violations of the Act, Board rules and Board orders, previous Board orders, and intentional conduct.

IV. APPLICABLE STATUTES AND RULES FOR THE CONTESTED CASE PROCEEDING

The following statutes, rules, and agency policy are applicable to the conduct of the contested case:

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, CHAPTER 155 sets forth the rules of procedure adopted by SOAH for contested case proceedings.
4. 1 TEX. ADMIN. CODE, CHAPTER 155.507, requires the issuance of a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law.
5. Section 164.007(a) of the Act, Board Rule 187.37(d)(2) and Board Rule 190 et. seq., provides the Board with the sole and exclusive authority to determine the charges on the merits, to impose sanctions for violation of the Act or a Board rule, and to issue a Final Order.

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 ADJUDICATIVE HEARING WAS MAILED, A DEFAULT ORDER 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 ALSO 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 MEDICAL BOARD.

IF YOU FAIL TO ATTEND THE HEARING, THE ADMINSTRATIVE LAW JUDGE MAY PROCEED WITH THE HEARING AND ALL THE FACTUAL ALLEGATIONS LISTED IN THIS NOTICE CAN BE DEEMED ADMITTED, AND THE RELIEF SOUGHT IN THIS NOTICE MIGHT BE GRANTED.

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, and issue a Proposal for Decision ("PFD") containing Findings of Fact and Conclusions of Law necessary to support a determination that Respondent violated the Act as set forth in this Complaint.

Respectfully submitted,
TEXAS MEDICAL BOARD

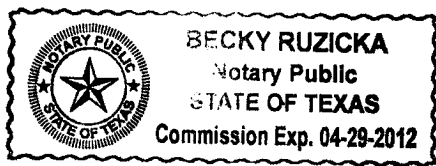
By: *Lee Bukstein*
Lee Bukstein, Staff Attorney
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333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701

THE STATE OF TEXAS

COUNTY OF TRAVIS

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SUBSCRIBED AND SWORN to before me by the said Lee Bukstein on this 2nd day of March, 2010.



Becky Ruzicka
Notary Public, State of Texas

Filed with the Texas Medical Board on this 2nd day of March, 2010.



Mari Robinson, J.D.
Executive Director
Texas Medical Board

SERVICE LIST

On this 2nd day of March 2010, I certify that a true and correct copy of this Complaint has been served on the following individuals at the locations and the manner indicated below, in accordance with TEX. GOV'T CODE §2001.052, 22 TEX. ADMIN. CODE §187.26, and 1 TEX. ADMIN. CODE §155.103:

BY CERTIFIED FIRST CLASS MAIL, RETURN RECEIPT REQUESTED and FIRST CLASS MAIL:

Lisa Diane Alloju-Fairweather, D.O.
1221 WOODVALE DR.
BEDFORD, TX 76021

BY FAX TRANSMISSION TO: (512) 445-4995

Timothy E Weitz
MCDONALD MACKAY & WEITZ LLP
1411 WEST AVENUE, SUITE 200
AUSTIN, TX 78701

BY FAX TRANSMISSION TO: (512) 475-4994

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

BY HAND DELIVERY:

Sonja Aurelius
Hearings Coordinator
Texas Medical Board
333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701



Lee Bukstein, Staff Attorney