

LICENSE NO. G-7837

IN THE MATTER OF
THE LICENSE OF
ALAN DAVID KOENIGSBERG, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

MEDIATED AGREED ORDER

On the 4th day of June, 2010, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Alan David Koenigsberg, M.D. ("Respondent").

On March 26, 2009, Respondent appeared in person, with counsel W. Richard Ellis, III, at an Informal Show Compliance Proceeding and Settlement Conference ("ISC") in response to a letter of invitation from the staff of the Board. The Board's representatives were George Willeford, III, M.D., and David Baucom, both members of the Board. Sarah Tuthill represented Board staff.

The matter did not initially settle and was transferred to Elaine Snow who filed a complaint at the State Office of Administrative Hearings ("SOAH"). Prior to the matter going to trial, the parties agreed to mediate. A mediation conference was held on May 7, 2010. Respondent appeared with legal counsel W. Richard Ellis, III. The Board's representative was Timothy Webb. Elaine Snow represented Board Staff. As a result of the mediation, a settlement was reached.

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 the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the "Act") or the Rules of the Board.

2. Respondent currently holds Texas Medical License No. G-7837. Respondent was originally issued this license to practice medicine in Texas on June 9, 1985.

3. Respondent is primarily engaged in the practice of psychiatry. Respondent is board certified by the American Board of Psychiatry and Neurology, a member of the American Board of Medical Specialties.

4. Respondent is 56 years of age.

5. Respondent has previously been the subject of disciplinary action by the Board.

6. On August 25, 2006, the Board entered an Agreed Order imposing a \$250 administrative penalty based upon Respondent's failure to timely respond to multiple Board requests made over a six-month period for continuing medical education ("CME") documentation. The 2006 Order terminated upon the payment of the administrative fee.

7. In approximately 1995, an individual ("Patient") first presented to the Respondent. Respondent ultimately diagnosed the Patient with paranoia. The Patient implored the Respondent not to provide any information about the Patient or release the Patient's medical records to anyone. The Respondent agreed.

8. The Patient later filed a complaint with the Board against another physician, unrelated to the Respondent. In the course of conducting the investigation, the Board subpoenaed the Patient's records from the Respondent. The Board sent the subpoena for the Patient's records to the Respondent on May 15, 2008. The Respondent received the subpoena at his office on May 16, 2008.

9. Because of the Respondent's earlier assurances to the Patient, the Respondent was concerned about releasing the Patient's records and attempted to contact the Patient to secure permission. The Respondent was unable to contact the Patient for several months. Moreover, due to his wife's impending pregnancy and a failure by his office to properly handle calls from the Board about the records, the Respondent forgot about the subpoena. When the Respondent finally was able to contact the Patient, the Patient consented to the release of the Patient's medical records. The Respondent provided the records to the Board on October 7, 2008.

10. The Respondent accepts responsibility for his failure to promptly provide the requested records.

11. The Respondent has since taken serious corrective measures to ensure he is promptly and consistently aware of any Board communications.

12. Respondent has cooperated in this investigation of the allegations related to the Mediated Agreed Order. Respondent's cooperation, through consent to this Mediated 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 Mediated 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)(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.
3. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against a person based upon a person's unprofessional conduct that is likely to deceive the public, as further defined by Board Rule(s): 190.8(2)(B), failing to comply with a Board subpoena or request for information or action; 190.8(2)(D), failing to cooperate with the Board.
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.
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 Respondent shall be subject to the following terms and conditions:

1. Respondent shall pay an administrative penalty in the amount of \$500 within 90 days of the date of the entry of this Order. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas Medical Board and shall be

submitted to the Board for routing so as to be remitted to the Comptroller of Texas for deposit in the general revenue fund. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

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

3. 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.

4. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within 10 days of the address change. This information shall be submitted to the Registration Department and the Compliance Department of 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. Respondent agrees that 10 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 the 30-day notice requirement provided by §164.003(b)(2) of the Medical Practice Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code §187.44(4).

5. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, or to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

6. Respondent shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants.

7. This Order shall automatically terminate upon the successful completion of the requirements in Ordering Paragraph. 1.

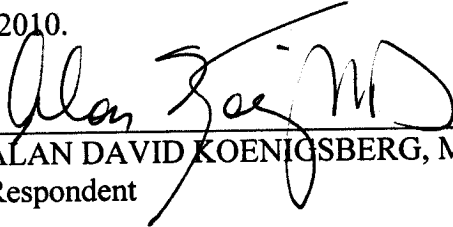
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

SIGNATURE PAGE(S) FOLLOW

I, ALAN DAVID KOENIGSBERG, 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: May 7, 2010.


ALAN DAVID KOENIGSBERG, M.D.
Respondent

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this

4th day of June, 2010.



Irvin E. Zeitler, Jr., D.O., President
Texas Medical Board