

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-
TEXAS MEDICAL LICENSE NO. G-7837

IN THE MATTER OF THE
COMPLAINT AGAINST
ALAN DAVID KOENIGSBERG, M.D.

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 Alan David Koenigsberg, 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, 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. G-7837, that was originally issued on June 9, 1985. 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 on based that information believes that Respondent has violated the Act. Based on such information and belief, Board Staff alleges:

1. On May 15, 2008, Board Staff mailed Respondent a subpoena, requesting the medical records for one of Respondent's patients. Respondent was instructed to provide these records to the Board by the designated deadline of May 29, 2008.

2. Respondent received the subpoena on May 16, 2008 as shown by a signed certified return receipt requested slip.

3. Respondent did not respond to the Board, provide the requested records or in any way comply with the subpoena by the May 29, 2008 deadline.

4. Subsequent to the subpoena deadline, Board Staff attempted to contact Respondent by phone on four separate occasions: August 15, 2008; August 18, 2008; August 21, 2008; and August 22, 2008. Each time, Board Staff received Respondent's voicemail, and each time, Board Staff left a message for Respondent to return the call as well as a phone number at which to return the call.

5. Respondent did not return any of these calls.

6. The actions of the Respondent as specified above violate one or more of the following provisions of the Act. The Act authorizes the Board to take disciplinary action based on Respondent's:

- a. violation of Section 164.051(a)(1) of the Act which 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.
- b. violation of Section 164.052(a)(5) of the Act based upon Respondent'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 and 190.8(2)(D), failing to cooperate with the Board.

7. This case involves an intentional, premeditated, knowing or grossly negligent act constituting a violation and a Respondent who has been the subject of a prior Board order for failing to timely respond to a request for information from the Board. Additionally, Respondent's actions potentially threatened the health of the patient whose records the Board was attempting to obtain as the Board could not make a standard of care determination without the records. Respondent's actions also affected the Board's ability to effectively regulate the practice of medicine in Texas.

II. 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 SOAH.
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., provide 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.

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 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.

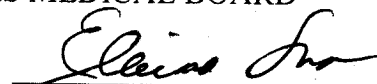
IF YOU FAIL TO ATTEND THE HEARING, THE ADMINISTRATIVE LAW JUDGE MAY PROCEED WITH THE HEARING AND ALL THE FACTUAL ALLEGATIONS LISTED IN THIS NOTICE CAN BE DEEMED ADMITTED, AND THE RELIEF SOUGHT IN THIS NOTICE MIGHT BE GRANTED.

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:



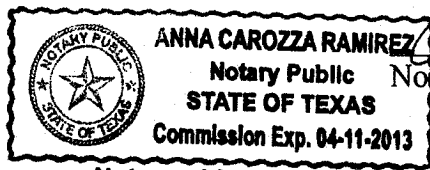
Elaine Snow, Staff Attorney
Texas State Bar No. 18809200
Telephone: (512) 305-7088
FAX # (512) 305-7007
333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701

THE STATE OF TEXAS

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§
§

COUNTY OF TRAVIS

SUBSCRIBED AND SWORN to before me by the said Elaine Snow on
September 2, 2009.



Anna Carozza Ramirez
Notary Public, State of Texas

Filed with the Texas Medical Board on Sept. 1, 2009.

Mari Robinson

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

SERVICE LIST

On this 2 day of September, 2009, 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 MAIL RETURN RECEIPT REQUESTED NO.
and FIRST CLASS MAIL**

Alan David Koenigsberg, M.D.
1700 COIT ROAD
210
Plano, TX 75075-6138

**BY FAX TRANSMISSION TO: (512) 474-8582
And FIRST CLASS MAIL**

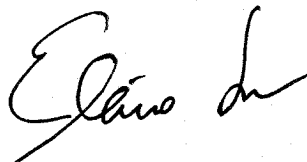
W Richard Ellis, III
CHAMBERLAIN MCHANEY
301 CONGRESS AVENUE 21ST FLOOR
Austin, TX 78701

BY FAX TRANSMISSION TO: 475-4994

Docket Clerk
State Office of Administrative Hearings
300 West 15th #504
Austin, Texas 78701

BY HAND DELIVERY:

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



Elaine Snow
Senior Staff Attorney