

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-08-_____
TEXAS MEDICAL LICENSE NO. F-8525

IN THE MATTER OF THE
COMPLAINT AGAINST

ALFRED RAYMOND JOHNSON, 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 Alfred Raymond Johnson, 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

Respondent is a Texas physician and holds Texas Medical License No. F-8525, issued by the Board on December 3, 1980, which was in full force and effect at all times material and relevant to this Complaint. All jurisdictional requirements have been satisfied. Respondent received notice of the Informal Settlement Conference (ISC) and appeared at the ISC. All procedural rules were complied with, including but not limited to, Board Rules 182 and 187, as applicable.

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 supported allegations of a violation.

2. Respondent was invited to attend an Informal Show Compliance Proceeding and Settlement Conference ("ISC"), held on May 22, 2007, which was conducted in accordance with §2001.054(c), TEX. GOV'T CODE and §164.004 of the Act. The Board representatives, ("Panel"), including one physician and one public member, 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. The Panel offered an Agreed Order. Respondent did not accept the proposed Agreed Order and this matter has not settled.

IV. 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:

Respondent has violated the standard of care related to a single patient, R.L. Respondent treated R.L. for sensitivity/toxic exposure to benzene and homologues. The treatment consisted of injections of diesel fuel and car exhaust fumes extract to allegedly de-sensitize R.L. to the materials. Respondent's action related to the diagnosis, treatment and billing of R.L. is below the standard of care for the following reasons:

1. Respondent failed to perform an appropriate assessment of R.L.'s complaints. The inadequate assessment includes the failure to rule in/rule out common causes/etiologies for R.L.'s presenting symptoms. Respondent's medical decision-making lacks any proven medical basis.
2. The Respondent's use of allergy testing for "benzene, homologues, diesel and car fume exhaust" sensitivity is below the standard of care. There is no scientific basis for using skin testing to establish a diagnosis of an "allergy" to these products. These products are chemical irritants and are a known to cause an irritation reaction to the skin. Any

“positive” result is meaningless because the reactions caused are not allergic reactions and they cannot be treated by de-sensitization.

3. Respondent demonstrates a substandard knowledge of basic immunology. Respondent’s use and interpretation of tests and diagnostic conclusions demonstrate an obvious lack of understanding of basic immunology.
4. Respondent misled patients, including R.L., into believing they have either an autoimmune or immunologic basis for their complaints.
5. Respondent’s treatments for R.L. were inappropriate; not based on any evidence; not based on any physiologic correlation; and nonsensical. The treatment can be harmful. Injections of diesel fuel and car exhaust fume are a dangerous practice, are medically unsupported, and are unreasonable. These types of injections lack any generally accepted scientific basis.
6. Respondent’s treatment of R.L. not generally accepted in the scientific or medical community. When making a medical diagnosis or to reach medically unreasonable conclusions regarding a diagnosis by relying on unproven “science,” testing and treatment that is not recognized or generally accepted in the medical and scientific community is below the standard of care.
7. There is no scientific support, peer-reviewed studies, or generally accepted medical studies, literature or testing that has demonstrated that the use of diesel fuel and car exhaust fume extract creates a de-sensitization to benzene and homologues.
8. The testing and treatment utilized by Respondent do not qualify as experimental, complementary, or alternative medicine. There are no reputable studies from peer review journals that confirm the use of diesel fuel or car fume exhaust extract as a treatment in a clinical practice.
9. The Patient consent utilized by Respondent does not inform the patients regarding the unproven nature of the therapies and testing recommended.
10. Respondent’s determinations and/or diagnosis are not supported by peer-reviewed studies or established science. Respondent’s medical decision-making, including treatment with diesel fuel and/or car exhaust fumes extract, is based on theories, opinions and analysis that have not been sufficiently tested. His diagnosis and treatment is not generally

accepted in the medical community, and is not supported by established scientific evidence.

11. Respondent's billing for these office visits, testing, and treatment is false and fraudulent because there is no generally accepted medical or scientific basis for his actions.

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. 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.

2. 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: to wit, Board Rule 165, requiring a physician to maintain adequate medical records; and Board Rule 200, related to the requirements for practicing Complementary and Alternative Medicine.
3. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice medicine in an acceptable professional manner consistent with public health and welfare. Board Rule §190.8(A), (B), (D), and (I) define failure to practice medicine in an acceptable professional manner as, but not limited to: failure to treat a patient according to the generally accepted standard of care; negligence in performing medical services; failure to safeguard against potential complications; and failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments or procedures.
4. Section 164.052(a)(5) and 164.053 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. Board Rule §190.8(2)(J) defines unprofessional or dishonorable conduct as, but not limited to, providing medically unnecessary services to a patient.
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.
6. Respondent has committed a prohibited act or practice within the meaning of Chapter 105.002(a)(2) of the Tex. Occ. Code by Respondent's knowingly preparing, making, or subscribing to any writing, with the intent to present or use the writing, or to allow it to be prepared or used in support of a false or fraudulent claim under an insurance policy.
7. Respondent has committed a prohibited act or practice within the meaning of Section 3.08(4)(G) of TEX. REV. CIV. STAT. ANN. art. 4495(b) by violating

section 311.0025 of the Texas Health and Safety Code, which provides that a health care professional may not submit to a patient or a third party payor a bill for a treatment that professional knows was not provided or knows was improper, unreasonable, or medically or clinically unnecessary.

8. Respondent has committed a prohibited act or practice within the meaning of Sections 164.052(a)(5) and 164.053(a)(7) of the Act by violating Section 311.0025 of the Texas Health & Safety Code, which provides that a health care professional may not submit to a patient or a third party payor a bill for a treatment that professional knows was not provided or knows was improper, unreasonable, or medically or clinically unnecessary.
9. Respondent has committed a prohibited act or practice, and is subject to discipline pursuant to Sections 101.203 of the Act, which provides that a health care professional may not violate Section 311.0025 of the Health and Safety Code.

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 Chapter 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. 22 TEX. ADMIN. CODE Chapter 190.15 provides the authority for this Board to consider aggravating factors in this case. This practice demonstrates a potential for patient harm, economic harm to the patients or entity, increased potential to harm the public through this continuing pattern of practice, attempted concealment of the conduct, the conduct was premeditated, intentional conduct, and was motivated for enrichment of Respondent with a disregard for patient well-being, this pattern shows likelihood of similar future conduct, all of which increase the potential harm and seriousness of the violations.

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 MEDICAL BOARD.

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 MEDICAL BOARD

By: Scott M Freshour

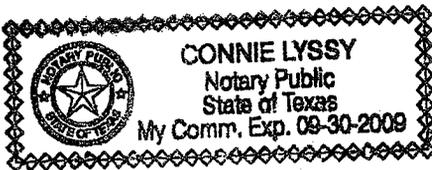
Scott M. Freshour
Bar No. 00789299
333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701
Telephone: (512) 305-7096
Fax: (512) 305-7007

THE STATE OF TEXAS

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COUNTY OF TRAVIS

SUBSCRIBED AND SWORN to before me by the said Scott M. Freshour on the 22nd day of OCTOBER, 2007.



Connie Lyssy
Notary Public, State of Texas

Filed with the Texas Medical Board on October 22, 2007.

Donald W. Patrick

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

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of October 2007, a true and correct copy of this document has been served on the following individuals in the manner indicated below:

~~XXXXXXXXXXXXXXXXXXXX~~ **Via Hand Delivery** FACSIMILE TRANSFER

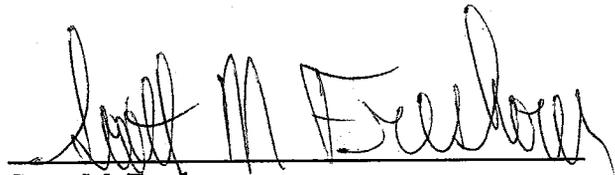
Docket Clerk
State Office of Administrative Hearings
William P. Clements Bldg.
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

Via Certified First Class Mail, Return Receipt Requested AND FACSIMILE TRANSFER

Mike Sharp
Tony Cobos
Sharp & Cobos
4705 Spicewood Springs Road #100
Austin, Texas 78759

Via Hand-Delivery

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



Scott M. Freshour