

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-16-0891.MD
LICENSE NO. G-5951

IN THE MATTER OF THE § BEFORE THE
COMPLAINT AGAINST §
CONSTANTINE A. KOTSANIS, M.D. § TEXAS MEDICAL BOARD

COMPLAINT

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

COMES NOW, the Staff of the Texas Medical Board (Board), and files this Complaint against Constantine A. Kotsanis, M.D. (Respondent), based on Respondent's alleged violations of the Medical Practice Act (Act), 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-5951 that was originally issued on December 6, 1983.
2. Respondent's license was in full force and effect at all times material and relevant to this Complaint.

3. Respondent received notice of an Informal Settlement Conference (ISC). The Board complied with all procedural rules, including but not limited to, Board Rules 182 and 187, as applicable.

4. No agreement to settle this matter has been reached by the parties.

5. All jurisdictional requirements have been satisfied.

III. FACTUAL ALLEGATIONS

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

A. General Allegations:

Respondent failed to meet the standard of care for care and treatment for two patients. Respondent prescribed alternative cancer therapies that lacked proven efficacy and/or therapeutic validity. In addition, Respondent's therapies failed to provide a reasonable potential for therapeutic gain and did not have a favorable risk/benefit ratio.

B. Specific Allegations:

1. Patient 1:

a. Patient 1 had a history of breast cancer in 2004 that was successfully treated with chemotherapy, a lumpectomy, and radiation. In April 2013, Patient 1 had a recurrence of her breast cancer and was diagnosed with stage IV, triple negative breast cancer, with metastases to the lymph nodes, lungs, and chest wall.

b. On May 15, 2014, Patient 1 first began treatment with Respondent for integrative cancer treatment because she felt "Western" treatment had not worked.

c. Patient 1 had stopped all conventional medical therapy for cancer and her other standard medications, including blood pressure medication, aspirin, and cholesterol medication.

- d. On June 3, 2014, Respondent treated Patient 1 for fatigue with an injection of glutathione, Methyl B12, and NAC (n-acetyl-cysteine). During or immediately after the injection Patient 1 became hypotensive, with a blood pressure of 70/40, short of breath, chest pain, and had nausea and dry heaves.
 - e. Respondent treated the post-injection symptoms with IV fluids and IM Benadryl and referred her to the hospital.
 - f. Patient 1 was admitted to the hospital on the same date and was noted to have improved symptoms on admission. The hospital discharge summary notes that Patient 1 had an allergic reaction to probably her medications.
 - g. Respondent's medical record documentation for Patient 1 lacked sufficient details regarding Respondent's assessment and treatment plans.
2. Patient 2:
- a. Patient 2 had a history of an unresectable stage II squamous cell carcinoma of the head and neck with a large right neck mass for the last four years. Patient 2 had declined conventional cancer therapy to preserve his voice.
 - b. Patient 2 sought alternative treatment from Respondent, which included low dose chemotherapy, nutritional support, and oxidative therapies.
 - c. On June 2, 2014, Respondent treated Patient 2 with low dose chemotherapy and an injection of Ozone directly into Patient 2's tumor.
 - d. After the injection, Patient 2 began to feel dizzy, light-headed, and nauseated – like he was going to pass out. Patient 2 went to the emergency room where he was found to be bradycardic and near syncopal.
 - e. Respondent's medical record documentation for Patient 2 lacked sufficient details regarding Respondent's assessment and treatment plans.
3. In the care of Patients 1 and 2, Respondent failed to adhere to the Board's guidelines for the provision of complementary and alternative medicine, including:

- a. Respondent failed to present documented therapeutic validity demonstrating the medical, scientific or other theoretical principles connected with the cancer treatment that he provided to the patient; and
 - b. Respondent failed to provide a treatment that: had a favorable risk/benefit ration compared to other treatments for the same condition; was based upon a reasonable expectation that it will result in a favorable patient outcome, including preventive practices; and was based upon the expectation that a greater benefit for the same condition will be achieved than what can be expected with no treatment.
4. Respondent's ineffective treatment of Patients 1 and 2 constitutes violations of the Act and Board rules as specified in Section V below.

IV. STATUTORY VIOLATIONS

The acts or omissions of Respondent as specified above violate one or more of the following provisions of the Medical Practice Act:

1. Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action 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 Rules: 165.1, requiring a physician to maintain adequate medical records; and 200.3, guidelines for the practice of complimentary or 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, as defined by Board Rule(s): 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(B), negligence in performing medical services; 190.8(1)(C), failure to use proper diligence in one's professional practice; 190.8(D), failure to safeguard against potential complications; 190.8(1)(I), failure to obtain informed consent; and 190.8(1)(K), prescription or

administration of a drug in a manner that is not in compliance with Board Rule 200, relating to the standards for practicing complementary and alternative medicine.

4. 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 provided by §164.053.

5. Section 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 non-therapeutic in nature or non-therapeutic in the manner the drug or treatment is administered or prescribed.

6. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's prescribing, administering, or dispensing in a manner inconsistent with public health and welfare.

V. AGGRAVATING FACTORS

Board Rule 190.15 provides that aggravating factors may be considered by the Board in reaching a determination of sanctions. Aggravating factors applicable in this case are: harm to one or more patients and a previous disciplinary action by the Board, specifically, Respondent entered into an Order Imposing Administrative Penalty. That Order required Respondent to pay a \$500 administrative penalty. The Order was based upon Respondent using a misleading advertising statement in his practice.

VI. APPLICABLE STATUTES, RULES, AND AGENCY POLICY

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. 22 TEX. ADMIN. CODE, CH. 190 sets forth aggravating factors that warrant more severe or restrictive action by the Board.

4. 1 TEX. ADMIN. CODE, CHAPTER 155 sets forth the rules of procedure adopted by SOAH for contested case proceedings.

5. 1 TEX. ADMIN. CODE, CHAPTER 155.507, requires the issuance of a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law.

6. 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.

VII. NOTICE TO RESPONDENT

IF YOU DO NOT FILE A WRITTEN ANSWER TO THIS COMPLAINT WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS AFTER THE DATE OF RECEIPT, 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. A COPY OF ANY ANSWER YOU FILE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS SHALL ALSO BE PROVIDED TO THE HEARINGS COORDINATOR OF THE TEXAS MEDICAL BOARD.

VIII. PRAYER

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

CHRISTOPHER M. PALAZOLA
Litigation Manager

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Supervising Attorney

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Austin, Texas 78701

THE STATE OF TEXAS

COUNTY OF TRAVIS

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SUBSCRIBED AND SWORN to before me by the said Claudia Kirk, J.D., on this
23rd day of October, 2015.



[Signature]
Notary Public, State of Texas

Filed with the Texas Medical Board on this 23 day of Oct, 2015.

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

CERTIFICATE OF SERVICE

I certify that on the 26th day of October 2015, a true and correct copy of the foregoing document has been served as follows:

VIA EMAIL: docketing@soah.state.tx.us

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

VIA CERTIFIED MAIL/RRR No. AND FIRST CLASS MAIL: 7008 2810 0000 1415 8289

Constantine A. Kotsanis
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Texas Medical Board
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Claudia Kirk, J.D.

SOAH DOCKET NO. 503-16-0891.MD
TEXAS MEDICAL LICENSE NO. G-5951

TEXAS MEDICAL BOARD,
Petitioner

v.

CONSTANTINE A. KOTSANIS, M.D.,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER NO. 4
GRANTING MOTION TO DISMISS

On December 5, 2016, the staff of the Texas Medical Board (Board) filed a motion to dismiss (Motion) the above-captioned case. The Motion states that the Board approved a settlement of this matter on December 2, 2016, and the underlying matters at issue have been resolved.

The Motion has merit and is **GRANTED**. The telephonic prehearing conference scheduled to convene on June 16, 2017, and the hearing on the merits scheduled to convene June 20-23, 2017, are **CANCELED** and this matter is **DISMISSED** from the docket of the State Office of Administrative Hearings.

SIGNED December 7, 2016.



PRATIBHA J. SHENOY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS