

SOAH DOCKET NO. 503-05-3796
LICENSE NO. H-4560

IN THE MATTER OF
THE COMPLAINT AGAINST
ROBY DEAN MITCHELL, M.D.

BEFORE THE
TEXAS STATE BOARD
OF MEDICAL EXAMINERS

FINAL ORDER

During open meeting at Austin, Texas, the Texas State Board of Medical Examiners (the "Board") finds that after proper and timely notice was given to the Respondent, this Final Order of the Board should be entered against the Respondent.

The Board, after review and due consideration of the State Office of Administrative Hearing Proposal for Decision issued by Administrative Law Judge Thomas Walston on July 21, 2005, grants this Final Order. All proposed findings of fact and conclusion of law not specifically adopted herein are hereby denied.

FINDINGS OF FACT

1. Respondent holds Texas medical license number H-4560.
2. All jurisdictional requirements have been satisfied under TEX. OCC. CODE ANN., Title 3, Subtitle B, Medical Practice Act (the "Act"). (Vernon's 2004).
3. Respondent received all notice that may be required by law and by the rules of the Board.
4. The Respondent was issued license H-4560 on December 6, 1988, which was in full force and effect at all times relevant to this proceeding.
5. A Complaint was filed with the State Office of Administrative Hearings, alleging that Respondent had violated the Medical Practice Act and was subject to disciplinary action by the Board. The Complaint alleged the following:
 - a. Respondent entered an agreed order requiring him to have medical records monitored by a physician approved in advance by the Board. Respondent failed to submit names of willing monitors and monitoring was never facilitated.

- b. A Show Compliance hearing was held on September 10, 2004. A panel of Board representatives found that Respondent did not have a monitor as required by the order and had no intention of complying with the Agreed Order.
 - c. On October 27, 2004, a Disciplinary Panel of the Board, after a hearing attended by Respondent and counsel, temporarily suspended Respondent's license to practice medicine in the State of Texas. The panel specifically found that Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.
6. On February 2, 2005, Notice of Adjudicative hearing and a copy of the Complaint was served on Respondent's Defense Counsel by fax and to Respondent by Certified Mail, Return Receipt Requested.
 7. The Notice of Hearing and the Complaint included all language required by 22 TEX. ADMIN. CODE §187.27(b), including "if you do not file a written answer to this notice with the State Office of Administrative Hearing within 20 days of the date notice of service was mailed, a default judgment may be entered against you..."
 8. Respondent filed a late response to the Complaint.
 9. On June 7, 2005, the Board served Respondent's Counsel with the Board's Original Motion for Summary Disposition. The Motion alleged that the Board was entitled to Summary Disposition as a matter of law based upon admissions by the Respondent that he failed to comply with his order and had no intentions of complying with the order in the future. Respondent answered the Board's motion six days late.
 10. On July 21, 2005, Judge Thomas H. Walston, State Office of Administrative Hearings, issued a Proposal for Decision recommending revocation of Respondent's Texas Medical License.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes the following:

1. Title 1 Tex. Admin. Code. § 155.57 (State Office of Administrative Hearings Rules of Procedures, Summary Disposition) states in part:

the ALJ may issue a proposal for decision . . . resolving a contested case without an evidentiary hearing if the pleadings, affidavits, materials

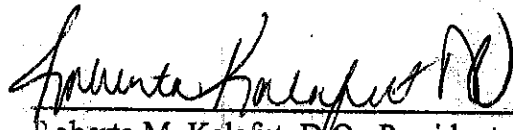
obtained by discovery, admissions, matters officially noticed, stipulations or evidence of record shows there is no material issue of fact and that the moving party is entitled to a decision in its favor as a matter of law.

2. 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.
3. Respondent has committed a prohibited act or practice within the meaning of Section 164.051(a)(6) of the Act based upon failing to practice medicine in acceptable manner consistent with public health and welfare.
4. 22 Tex. Admin. Code, Chapter 190.8 (2)(A) provides that unprofessional and dishonorable conduct that is likely to deceive, defraud or injure the public within the meaning of the Act includes, but is not limited to violating a board order.
5. Respondent has committed a prohibited act or practice within the meaning of Section 164.052(a)(5) of the Act based upon unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.
6. Section 164.001 of the Act authorizes the revocation, suspension, limitation, restriction, or probation of a physician's Texas license for a violation of the Act or a rule of the Board or of any cause for which the Board is authorized to refuse to admit persons to its examination and to issue a license or renewal license. Section 164.001 of the Act authorizes a range of disciplinary actions against a licensed Texas physician for committing any of the conduct set forth in Section 164.051 through 164.054 of the Act.
7. Respondent's alleged violations of the Act, as described above are grounds, individually and collectively, for the Board to enter an Order in regard to Respondent and Respondent's medical license pursuant to Section 164.001 of the Act.
8. 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.
9. Respondent's alleged violations of the Act, as described above are grounds, individually and collectively, for the Board to enter an Order in regard to Respondent and Respondent's medical license pursuant to Section 164.001 of the Act.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent's Texas license is hereby REVOKED.

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 26 day of August, 2005.



Roberta M. Kalafut, D.O., President
Texas State Board of Medical Examiners