

HEARING CONDUCTED BY THE  
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS  
SOAH DOCKET NO. 503-12- 8054 .MD  
TEXAS MEDICAL LICENSE NO. E-1255

IN THE MATTER OF THE  
COMPLAINT AGAINST  
RUSSELL ROBY, 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 Russell Roby, M.D., ("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. PROCEDURAL BACKGROUND**

1. Respondent is a Texas physician and holds Texas Medical License No. E-1255, issued by the Board on January 19, 1974. Respondent's license was in full force and effect at all times material and relevant to this Complaint.
2. Respondent received notice of a number of Informal Settlement Conferences ("ISC"). The Board complied with all procedural rules, 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 based on that information believes that Respondent has violated the Act. Based on such information and belief, Board Staff alleges:

Summary of Allegations- Respondent is the subject of a Mediated Agreed Order entered by the Board on August 24, 2007 (2007 Order). The 2007 Order contains a number of terms and conditions. The issue in the Complaint at bar concerns Respondent's failure to comply with the provision contained in the 2007 Order that requires Respondent to implement the recommendations of the chart monitor regarding recording/documenting an adequate patient medical history and physical findings. Respondent has failed to implement the recommendations of the chart monitor.

*These actions, more fully described below, constitute violations of the Act. Specifically, See, IV. Statutory Violation Nos. 1, 2, 3, and 4.*

1. Respondent is the subject of a Mediated Agreed Order entered by the Board on August 24, 2007.

2. Under the heading, *Order*, in the 2007 Order, there is Paragraph No. 4 that requires Respondent to be subject to a chart monitor of his medical records.

3. Under the heading, *Order*, in the 2007 Order there is Paragraph No. 5 that Respondent is required to implement recommendations of the chart monitor concerning his medical record keeping, as directed by the Compliance Division of the Board.

3. The chart monitor recommended on several occasions that Respondent needed to improve his record keeping related particularly to patient medical histories and physical findings. The recommendations were made a number of times between the entry of 2007 Order and December of 2011. The recommendations have not been implemented as required.

3. Under the heading, *Order*, in the 2007 Order, there is Paragraph No. 18 that states any violation of the terms and conditions of the 2007 Order constitutes unprofessional conduct.

### **IV. STATUTORY VIOLATIONS**

The actions of Respondent specified above violate one or more of the following provisions of the 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 Rule(s): Specifically, Board Rule 165.1, requiring a physician to maintain adequate medical records; and Board Rule 189.3 related to compliance with the terms of an order.

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, generally, and as further defined by Board Rules: 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(1)(G), failure to disclose reasonably foreseeable side effects of a procedure or treatment; 190.8(1)(H), failure to disclose reasonable alternative treatments to a proposed procedure or treatment; and 190.8(1)(I), failure to obtain informed consent.

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 further defined by, Board Rule 190.8(2)(A), violation of a Board order

**Aggravating Factors:**

Under Texas Administrative Code, Title 22, Part 9, Board Rule 190.15(a), in any disciplinary action, the following may be considered as aggravating factors that warrant more severe or restrictive action by the Board. This case includes the following aggravating factors:

1. harm to one or more patients;
2. severity of patient harm;
3. one or more violations that involve more than one patient;
4. increased potential harm to the public;
5. intentional, premeditated, knowing, or grossly negligent act constituting a violation.
6. prior similar violations;
7. previous disciplinary action by the board; and
8. violation of a board order.

## V. APPLICABLE STATUTES, RULES AND AGENCY POLICY

The following Statutes, Rules, and Agency Policy are applicable to the procedures for conduct of the hearing this matter:

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, 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 et. seq. 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 COMPLAINT WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHING 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.**

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,

By: Scott M Freshour

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THE STATE OF TEXAS

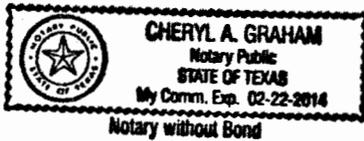
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COUNTY OF TRAVIS

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SUBSCRIBED AND SWORN to before me by the said Scott M. Freshour on this 24<sup>th</sup> day of August, 2012.



Cheryl A Graham  
Notary Public, State of Texas

Filed with the Texas Medical Board on this 23 day of August, 2012.

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