IN THE MATTER OF: RUSSELL R. ROBY, M.D. BEFORE THE TEXAS STATE BOARD OF MEDICAL EXAMINERS

BOARD ORDER

On the _13th_ day of __June__, 1989, came on to be heard for final action by the Texas State Board of Medical Examiners (hereinafter "the Board"), duly in session, the matter of Russell R. Roby, M.D., of Austin, Texas, Respondent herein. The Board was represented by Mr. Roger Schultz and Respondent was represented by Mr. Michael Sharp. A second-amended complaint filed with the Board alleged that Respondent had violated Sections 3.08 (3), (4), (4)(A), (4)(E), (4)(H), (4)(I), and (18) of Article 4495b, V.T.C.S. (1988), also known as the Texas Medical Practice Act (hereinafter "the Medical Practice Act"). The matter was heard in public hearing on February 21-22, February 27-28, and March 7 and 9, 1989, before Connie Ode', Hearing Examiner duly appointed by the Board, sitting in Austin, Travis County, Texas.

After consideration of the Proposal for Decision submitted to the Board by the Hearing Examiner and having heard the arguments of the parties, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent holds Texas medical license number E-1255. He currently has a private allergy practice in Austin, Texas.

2. Respondent's Texas medical license was previously revoked and cancelled by the Board on June 10, 1983, as a result of Respondent's drug and alcohol abuse. His license was reinstated on December 1, 1984, in accordance with the terms of probation reflected in an Order of the Board dated December 11, 1984. The terms of probation are generally as follows:

   a. That the period of probation shall be for ten (10) years;
b. Respondent shall not apply for a controlled substances license without first obtaining approval of the Board;

c. Respondent shall participate regularly in an Alcoholics Anonymous program with regular reports to the Board;

d. Respondent shall continue under the care and treatment of a qualified psychiatrist, who shall make regular reports to the Board;

e. Respondent shall make regular appearances before the Board;

f. Respondent shall not be found guilty of habits of intemperate use of alcohol and/or habit-forming drugs; and

g. Respondent shall otherwise comply with the Texas Medical Practice Act, the Texas Dangerous Drug Act, and the Texas Controlled Substances Act.

3. Previously, Respondent's license to practice medicine in California was revoked as a result of Respondent's drug and alcohol abuse. That license has not been reinstated.

4. On several occasions, Marilyn Grandy, a nurse employed by Respondent for six months during 1986, administered allergy and steroid injections to Respondent's patients while Respondent was absent from the office.

5. It is not a deviation from the standard of care for an allergist to permit his nurse(s) to administer injections in his absence.

6. Trisch Fryer, a patient of Respondent, understood that Respondent forwarded the cellophane blotter, rubbed on her back during allergy testing, to a lab for analysis. However, she was never billed for such lab work and in all likelihood misunderstood this procedure.

7. Respondent's normal allergy testing procedure involves three series of tests, during which the patient is checked for airborne, food and tobacco allergies. The patient receives his or her results at the conclusion of the series and is billed from $1,200.00 to $1,500.00. Respondent also advises his patients with respect to
nutrition, vitamin therapy, exercise and spirituality.

8. Respondent typically prepares an allergy take-home kit for each patient, based on the results of the patient's scratch tests. Each take-home kit contains five or more vials, consisting of dilutions of the primary vial.

9. Upon each patient's receipt of his or her take-home kit, Respondent or his staff instructs the patient on the injection procedure and each patient receives an initial injection that is monitored in Respondent's office.

10. Respondent's patient charts reflect general test results; they do not reflect welt-size measurements or details of the patient's specific allergy formula. With respect to patient histories and physicals, Respondent notes only positive results that have a bearing on his allergy treatments.

11. While some of Respondent's patients and staff have found him difficult to locate on occasion, Respondent has many satisfied patients who have not had trouble contacting him and who have received better results from his treatment than from other allergists.

12. Prior to and including 1987, it was Respondent's practice to ignore certain allergy test results, inasmuch as Respondent felt that people generally are allergic to tobacco, milk, and eggs. Unless a patient's results to these three tests were clearly negative, Respondent noted a positive reaction.

13. After this practice was discussed with the Travis County Medical Society Mediation and Ethics Committees, Respondent changed his practice in 1987 so that patient reactions to these tests are now accurately reflected.

14. Respondent does not typically bill his patients or their insurance carriers for tests that have not been performed. In those instances when patients have been billed for tests or for services not performed, the patient or insurance company has been reimbursed accordingly.

15. In October, 1988, Respondent treated patient J.A. for allergic rhinitis. While he took a physical and discussed the
patient's history, there is no indication of such in J.A.'s patient chart. Proper charting requires documentation of all examination and test results, as well as extensive documentation of the patient's specific problems.

16. Respondent prescribed approximately forty tablets of Dexamethasone for treatment of J.A.'s allergic rhinitis, and renewed some blood-pressure and anti-depression medication until J.A. found another physician.

17. Allergic rhinitis is a common condition that is more properly treated with antihistamines, nasal sprays and decongestants.

18. Dexamethasone is a long-acting corticosteroid with the following side effects: Cushing Syndrome, depression, and immunosuppression. Prescription of this medication requires adequate instructions and extensive follow-up. "As dir." or "as directed" are not adequate instructions.

19. In January, 1987, Respondent requested that Dr. Wooten Brown, an opthalmologist practicing in the same building, write out a prescription for twelve Tylenol No. 3 tablets. Respondent asked his nurse to fill this prescription, which he needed for low-back pain.

20. Respondent discussed this prescription with his psychiatrist. It in no way affected his medical practice.

21. Currently, Respondent is actively involved with the Travis County Physicians Health and Rehabilitation Committee as a committee member, several AA groups, and other counseling groups. He is sober and limits the hours of his practice in order to avoid the pressures that led to his problems earlier.

22. Respondent has generally complied with the terms of his probation, as ordered by the Board on December 11, 1984.

CONCLUSIONS OF LAW

1. Section 4.01 of the Medical Practice Act provides in relevant part:

... the board may cancel, revoke, or suspend the license of any practitioner of medicine or impose any other authorized means of disci-
pline upon proof of the violation of the Act in any respect or for any cause for which the board is authorized to refuse to admit persons to its examination and to issue a license and renewal license.

2. Pursuant to Section 4.12 of the Medical Practice Act, if the Board finds "any person to have committed any of the acts set forth in Section 3.08 of [the] Act," it shall enter an order imposing one or more of the following:

(a) deny the person's application for a license or other authorization to practice medicine;
(b) administer a public reprimand;
(c) suspend, limit, or restrict the person's license or other authorization to practice medicine, including limiting the practice of the person to or by the exclusion of one or more specified activities of medicine or stipulating periodic board review;
(d) revoke the person's license or other authorization to practice medicine;
(e) require the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for the initial, continued, or renewal of a license or other authorization to practice medicine;
(f) require the person to participate in a program of education or counseling prescribed by the Board;
(g) require the person to practice under the direction of a physician designated by the Board for a specific period of time; or
(h) require the person to perform public service considered appropriate by the Board.

3. Marilyn Grandy's administration of allergy and steroid injections outside of Respondent's presence is neither a violation of Section 3.08(4)(H) of the Medical Practice Act--"failing to supervise adequately the activities of those acting under the supervision of the physician," nor a violation of Section 3.08(4)(I) of the Act--"delegating professional medical responsibility or acts to a person if the delegating physician knows or has reason to know that the person
is not qualified by training, experience, or licensure to perform the responsibility or acts."

4. Respondent's allergy testing procedures are generally consistent with those administered by other area allergists. His treatment is therapeutic in both nature and the manner in which administered, as required by Section 3.08(4)(E) of the Medical Practice Act.

5. Respondent's allergy treatment kits are custom-blended for each patient, thus constituting treatment that is therapeutic in both nature and manner of administration, as required by Section 3.08(4)(E) of the Medical Practice Act.

6. Respondent's patient charts are often incomplete and sometimes inaccurate, constituting a professional failure to practice medicine in an acceptable manner consistent with public health and welfare, as provided by Section 3.08(18) of the Medical Practice Act.

7. Respondent and his staff properly monitor new patient injections. His procedures in this regard do not amount to a professional failure to practice medicine in an acceptable manner consistent with public health and welfare, as set out in Section 3.08(18) of the Medical Practice Act.

8. Respondent's admissions to the Travis County Medical Society Mediation and Ethics committees -- that he sometimes reflected positive test results when the actual test results were not conclusive -- concerned conduct that is unprofessional or dishonorable and that is likely to deceive or defraud the public, as provided by Section 3.08(4) of the Medical Practice Act.

9. Respondent's treatment of J.A. in October and November, 1988, amounted to a professional failure to practice medicine in an acceptable manner consistent with public health and welfare, as follows:

   a. Respondent failed to properly document J.A.'s condition and treatment; and

   b. Patient was prescribed a medication with inadequate instructions.
This conduct is proscribed by Section 3.08(18) of the Medical Practice Act.

10. Respondent's request in January, 1987, for twelve Tylenol No. 3 tablets for low-back pain does not constitute the intemperate use of a drug that can endanger the life of a patient, as provided by Section 3.08(3) of the Medical Practice Act.

IT IS ACCORDINGLY ORDERED AND DECREED that the terms of Respondent's probation, as reflected in this Board's order of December 11, 1984, be continued, and that the following additional terms of probation be imposed:

(a) Respondent's patient charts reflect all results, both positive and negative, and physical examinations performed by Respondent or his staff;

(b) Respondent's patient charts accurately reflect the results of any allergy tests performed by Respondent;

(c) Respondent's patient charts accurately reflect the allergy formulas prescribed or prepared for a patient; and

(d) Respondent complete, within the twelve-month period following this order, no fewer than fifty (50) hours of continuing medical education with 20 of the 50 hours to be in the areas of allergy and immunology.

These additional terms of probation shall be subject to verification upon reasonable notice by the Board, and shall continue through December 11, 1994.

Upon full compliance with the terms and conditions set forth, and upon expiration of the term of probation, the license of Russell R. Roby, M.D., shall have full privileges, free and clear of the terms of probation herein imposed; provided, however, in the event Russell R. Roby, M.D., violates or fails to comply with any of the terms or conditions of this order during the period of probation, the Board, upon notice and hearing, may immediately and forthwith terminate the probation and direct that the medical license of Russell R. Roby, M.D., be immediately revoked and cancelled.
SIGNED this the 28th day of July, 1989.

Robert L.M. Hilliard, M.D.
President, Texas State Board of Medical Examiners
IN THE MATTER OF THE COMPLAINT

RUSSELL R. ROBY, M.D.,

RESPONDENT

BEFORE THE

TEXAS STATE BOARD

OF MEDICAL EXAMINERS

SECOND AMENDED COMPLAINT

TO THE HONORABLE TEXAS STATE BOARD OF MEDICAL EXAMINERS:

COMES NOW, the Texas State Board of Medical Examiners (the "Board"), by and through its Hearings Division, making this Complaint against Russell R. Roby, M.D. (the "Respondent"), concerning his violation of the Medical Practice Act (the "Act"), Article 4495b of the Revised Civil Statutes of the State of Texas. This relief is necessary to protect the health of the citizens of the State of Texas as mandated by Section 1.02 of the Act, and in support thereof would show the following:

I

The Respondent was previously issued a Texas medical license, number E-1255, by the Texas State Board of Medical Examiners, which was in full force and effect at all times relevant to this proceeding. The Respondent's Texas medical license was placed on probationary status on December 1, 1984, for 10 years until December 11, 1994. (A copy of which is attached hereto and incorporated herein for any and all purposes.)

II

The Texas State Board of Medical Examiners is informed and believes, and upon such information and belief, charges and alleges that:

Count I

The Respondent had an vocational nurse, M.G., administer injections of steriod medications or allergy immunizations when he was not present in violation of Section 3.08(4)(H) of the Act by his failure to supervise adequately the activities of those acting under the supervision of the physician, or alternatively, Section 3.08(4)(I) of the Act delegating professional medical responsibility or acts to a person if the delegating physician knows that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.
Count II

A

The Respondent used allergy testing procedures of rubbing cellophane lined paper over a previously pin pricked area of the patient's back instead of a test that reproducibly detects antigen-specific IgE, or intradermal testing for antigenic specific IgE, in violation of Section 3.08(4)(E) of the Act by administering a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is administered.

B

The Respondent fraudulently manufactured allergy treatment kits by using the same allergin solution for each patient regardless of the patient's allergy instead of compounding a custom blend of allergins specifically for each patient's allergies, in violation of Section 3.08(4)(E) of the Act by administering a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is administered.

C

The Respondent failed to properly and completely chart and document in the medical records the patient's condition and treatment, or, the Respondent ficticiously created the allergies each patient supposedly had, in violation of Section 3.08(18) of the Act as being a professional failure to practice medicine in an acceptable manner consistent with public health and welfare.

D

The Respondent failed to monitor new patient injection reaction to antigen and failed to teach new patients how to self inject the antigen in violation of Section 3.08(18) of the Act as being a professional failure to practice medicine in an acceptable manner consistent with public health and welfare.

Count III

The Respondent's admissions to the Mediation Committee of the Travis County Medical Society that he had fraudulently billed insurance companies for allergy treatments not performed on the patient in violation of Section 3.08(4) of the Act is unprofessional or dishonorable conduct that is likely to deceive or defraud the public and in violation of Section 3.08(4)(A) of the Act, committing an act that is in violation of laws of the State of Texas, if the act is in connection with the physician's practice of medicine.
Count IV

The Respondent treated J.A., a prior allergy patient of the Respondent's, on October 22, 27, and November 9, 1988, in the following improper manner:

a. Performed no physical examination nor took any history of the patient's condition at the time and poorly documented the patient's treatment;

b. Prescribed a medication, Dexamethasone, a powerful steroid drug with a half life of over 24 hours, without a medical reason;

c. Prescribed a medication, Dexamethasone, which was inappropriate to the patient's condition, in the following particulars:
   1. the dosage, 100 mg, was inappropriate,
   2. the nature of the therapy was inappropriate,
   3. the directions to the patient as to how to take the medication were incorrect,
   4. follow-up care of the patient after taking the medication was inadequate; and

d. Prescribed blood pressure and antidepressant medications for the patient without a diagnostic reason for any of the medications on October 27, 1988; in violation of Section 3.08(18) of the Act a professional failure by the Respondent to practice medicine in an acceptable manner consistent with public health and welfare.

Count V

The Respondent took a controlled substance, Tylenol 43, with codeine, on January 15, 1987, in the presence of a patient, in violation of Section 3.08(3) of the Act, intemperate use of a drug by the Respondent that in the opinion of the Board could endanger the life of a patient.

III

The Respondent's violations of Sections 3.08(3), 3.08(4), 3.08(4)(A), 3.08(4)(E), 3.08(4)(H), 3.08(4)(I), and 3.08(18) of the Act are grounds for the Board to rescind the Respondent's probationary status and suspend, cancel or revoke the Respondent's medical license pursuant to section 4.11(b) of the Act.

The Respondent's violations of Sections 3.08(3), 3.08(4), 3.08(4)(A), 3.08(4)(E), 3.08(4)(H), 3.08(4)(I), and 3.08(18) of the Act are grounds for the Board to cancel, revoke or suspend the Respondent's license to practice medicine in the State of Texas pursuant to Section 4.01 of the Act.
The Respondent's violations of Sections 3.08(3), 3.08(4), 3.08(4)(A), 3.08(4)(E), 3.08(4)(H), 3.08(4)(I), and 3.08(18) of the Act are grounds for the Board to enter an order imposing other means of discipline upon the Respondent pursuant to Section 4.12 of the Act.

WHEREFORE, PREMISES CONSIDERED, it is prayed that a hearing on this complaint be held before the Texas State Board of Medical Examiners and that the Board (1) cancel, revoke or suspend the Respondent's medical license; (2) rescind the probationary status of the Respondent's Texas medical license; or (3) enter an order imposing other means of disciplining.

Respectfully submitted,

[Signature]
Arnoldo G. Garza
Director of Hearings

THE STATE OF TEXAS
COUNTY OF TRAVIS

SUBSCRIBED AND SWORN to before me by the said Arnoldo G. Garza on this the 15th day of February, 1989.

[Signature]
Notary Public, State of Texas
Notary's Printed Name: Laurine H. Baltz
Notary's Commission Expires: 8-22-89

Filed with the Texas State Board of Medical Examiners on this the 15th day of February, 1989.
IN THE MATTER OF THE COMPLAINT

RUSSELL R. ROBY, M.D.,
RESPONDENT

BEFORE THE
TEXAS STATE BOARD
OF MEDICAL EXAMINERS

FIRST AMENDED COMPLAINT

TO THE HONORABLE TEXAS STATE BOARD OF MEDICAL EXAMINERS:

COMES NOW, the Texas State Board of Medical Examiners (the "Board"), by and through its Hearings Division, making this Complaint against Russell R. Roby, M.D. (the "Respondent"), concerning his violation of the Medical Practice Act (the "Act"), Article 4495b of the Revised Civil Statutes of the State of Texas. This relief is necessary to protect the health of the citizens of the State of Texas as mandated by Section 1.02 of the Act, and in support thereof would show the following:

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The Respondent was previously issued a Texas medical license, number E-1255, by the Texas State Board of Medical Examiners, which was in full force and effect at all times relevant to this proceeding. The Respondent's Texas medical license was placed on probationary status on December 1, 1984, for 10 years until December 11, 1994. (A copy of which is attached hereto and incorporated herein for any and all purposes.)

II

The Texas State Board of Medical Examiners is informed and believes, and upon such information and belief, charges and alleges that:

Count I

The Respondent had an unlicensed LVN, M.G., administer injections of steriod medications or allergy immunizations when he was not present in violation of Section 3.08(4)(H) of the Act by his failure to supervise adequately the activities of those acting under the supervision of the physician, or alternatively, Section 3.08(4)(I) of the Act delegating professional medical responsibility or acts to a person if the delegating physician knows that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.
Count II

A

The Respondent used allergy testing procedures of rubbing cellophane lined paper over a previously pin pricked area of the patient's back instead of a test that reproducibly detects antigen-specific IgE, or intradermal testing for antigenic specific IgE, in violation of Section 3.04(E) of the Act by administering a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is administered.

B

The Respondent fraudulently manufactured allergy treatment kits by using the same allergin solution for each patient regardless of the patient's allergy instead of compounding a custom blend of allergins specifically for each patient's allergies, in violation of Section 3.04(E) of the Act by administering a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is administered.

C

The Respondent failed to properly and completely chart and document in the medical records the patient's condition and treatment or ficticiously creating the allergies each patient supposedly had, in violation of Section 3.08(18) of the Act as being a professional failure to practice medicine in an acceptable manner consistent with public health and welfare.

D

The Respondent failed to monitor new patient injection reaction to antigen or taught new patients how to self inject the antigen in violation of Section 3.08(18) of the Act as being a professional failure to practice medicine in an acceptable manner consistent with public health and welfare.

Count III

The Respondent's admissions to the Mediation Committee of the Travis County Medical Society that he had fraudulently billed insurance companies for allergy treatments not performed on the patient in violation of Section 3.08(4) of the Act as unprofessional or dishonorable conduct that is likely to deceive or defraud the public and in violation of Section 3.08(4)(A) of the Act as committing an act that is in violation of laws of the State of Texas, if the act is in connection with the physician's practice of medicine.
Count IV

The Respondent treated J.A., a prior allergy patient of the Respondent's, on October 22, 27, and November 9, 1988, in the following improper manner:

a. Performed no physical examination nor took any history of the patient's condition at the time and poorly documented the patient's treatment;

b. Prescribed a medication, Dexamethasone, a powerful steroid drug with a half life of over 24 hours, without a medical reason;

c. Prescribed a medication, Dexamethasone, which was inappropriate to the patient's condition, in the following particulars:
   1. the dosage, 100 $, was inappropriate;
   2. the nature of the therapy was inappropriate;
   3. the directions to the patient as to how to take the medication were incorrect;
   4. follow-up care of the patient after taking the medication was inadequate.

d. Prescribed blood pressure and antidepressant medications for the patient without a diagnostic reason for any of the medications on October 27, 1988, in violation of Section 3.08(18) of the Act as being a professional failure by the Respondent to practice medicine in an acceptable manner consistent with public health and welfare.

Count V

A

The Respondent obtained a controlled substance, Tylenol #3 with codeine, on January 15, 1987, from a physician not the Respondent's treating physician for signs and symptoms not within the prescribing physician's area of expertise in violation of Section 3.08(4) of the Act as being by the Respondent unprofessional or dishonorable conduct likely to deceive or defraud the public or injure the public.

B

The Respondent took a controlled substance, Tylenol #3, with codeine, on January 15, 1987, in the presence of a patient, in violation of Section 3.08(3) of the Act as the intemperate use of a drug by the Respondent that in the opinion of the Board could endanger the life of a patient.

III
The Respondent's violations of Section 3.08(4), 3.08(4)(A), 3.08(4)(E),
3.08(4)(H), 3.08(4)(I), and 3.08(18) of the Act are grounds for the Board upon
majority vote to rescind the Respondent's probationary status and suspend,
cancel or revoke the Respondent's medical license pursuant to section 4.11(b) of
the Act.

The Respondent's violations of Sections 3.08(4), 3.08(4)(A), 3.08(4)(E),
3.08(4)(H), 3.08(4)(I), and 3.08(18) of the Act are grounds for the Board to
cancel, revoke or suspend the Respondent's license to practice medicine in the
State of Texas pursuant to Section 4.01 of the Act.

The Respondent's violations of Sections 3.08(4), 3.08(4)(A), 3.08(4)(E),
3.08(4)(H), 3.08(4)(I), and 3.08(18) of the Act are grounds for the Board to
enter an order imposing other means of discipline upon the Respondent pursuant
to Section 4.12 of the Act.

WHEREFORE, PREMISES CONSIDERED, it is prayed that a hearing on this
complaint be held before the Texas State Board of Medical Examiners and that the
Board (1) cancel, revoke or suspend the Respondent's medical license; (2)
rescind the probationary status of the Respondent's Texas medical license; or
(3) enter an order imposing other means of disciplining.

Respectfully submitted,

Arnoldo G. Garza
Director of Hearings

THE STATE OF TEXAS

COUNTY OF TRAVIS

SUBSCRIBED AND SWORN to before me by the said Arnoldo G. Garza on this the
_______day of_____, 1989.

Laurine H. Baltz
Notary Public, State of Texas
Notary's Printed Name: Laurine H. Baltz
Notary’s Commission Expires: 8/22/89

4

STATE OF TEXAS
Notary Public
My Comm. Exp. 8/22/89
Filed with the Texas State Board of Medical Examiners on this the 10th day of February, 1980.

G. V. Brindley, Jr., M.D.
Executive Director
Texas State Board of Medical Examiners
IN THE MATTER OF THE COMPLAINT
RUSSELL R. ROBY, M.D.,
RESPONDENT

BEFORE THE
TEXAS STATE BOARD
OF MEDICAL EXAMINERS

COMPLAINT

TO THE HONORABLE TEXAS STATE BOARD OF MEDICAL EXAMINERS:

COMES NOW, the Texas State Board of Medical Examiners (the "Board"), by and through its Hearings Division, making this Complaint against Russell R. Roby, M.D. (the "Respondent"), concerning his violation of the Medical Practice Act (the "Act"), Article 4495b of the Revised Civil Statutes of the State of Texas. This relief is necessary to protect the health of the citizens of the State of Texas as mandated by Section 1.02 of the Act, and in support thereof would show the following:

I

The Respondent was previously issued a Texas medical license, number E-1255, by the Texas State Board of Medical Examiners, which was in full force and effect at all times relevant to this proceeding. The Respondent's Texas medical license was placed on probationary status on December 1, 1984, for 10 years until December 11, 1994. (A copy of which is attached hereto and incorporated herein for any and all purposes.)

II

The Texas State Board of Medical Examiners is informed and believes, and upon such information and belief, charges and alleges that:

Count I

The Respondent had an unlicensed LVN, M.G., administer injections of steroid medications or allergy immunizations when he was not present in violation of Section 3.08(4)(H) of the Act by his failure to supervise adequately the activities of those acting under the supervision of the physician, or alternatively, Section 3.08(4)(I) of the Act delegating professional medical responsibility or acts to a person if the delegating physician knows that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.
Count II

A

The Respondent used allergy testing procedures of rubbing cellophane lined paper over a previously pin pricked area of the patient's back instead of a test that reproducibly detects antigen-specific IgE, or intradermal testing for antigenic specific IgE, in violation of Section 3.04(E) of the Act by administering a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is administered.

B

The Respondent fraudulently manufactured allergy treatment kits by using the same allergin solution for each patient regardless of the patient's allergy instead of compounding a custom blend of allergins specifically for each patient's allergies, in violation of Section 3.04(E) of the Act by administering a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is administered.

C

The Respondent failed to properly and completely chart and document in the medical records the patient's condition and treatment or ficticiously creating the allergies each patient supposedly had, in violation of Section 3.08(18) of the Act as being a professional failure to practice medicine in an acceptable manner consistent with public health and welfare.

D

The Respondent failed to monitor new patient injection reaction to antigen or taught new patients how to self inject the antigen in violation of Section 3.08(18) of the Act as being a professional failure to practice medicine in an acceptable manner consistent with public health and welfare.

Count III

The Respondent's admissions to the Mediation Committee of the Travis County Medical Society that he had fraudulently billed insurance companies for allergy treatments not performed on the patient in violation of Section 3.08(4) of the Act as unprofessional or dishonorable conduct that is likely to deceive or defraud the public and in violation of Section 3.08(4)(A) of the Act as committing an act that is in violation of laws of the State of Texas, if the act is in connection with the physician's practice of medicine.
III

The Respondent's violations of Section 3.08(4), 3.08(4)(A), 3.08(4)(E), 3.08(4)(H), 3.08(4)(I), and 3.08(18) of the Act are grounds for the Board upon majority vote to rescind the Respondent's probationary status and suspend, cancel or revoke the Respondent's medical license pursuant to section 4.11(b) of the Act.

The Respondent's violations of Sections 3.08(4), 3.08(4)(A), 3.08(4)(E), 3.08(4)(H), 3.08(4)(I), and 3.08(18) of the Act are grounds for the Board to cancel, revoke or suspend the Respondent's license to practice medicine in the State of Texas pursuant to Section 4.01 of the Act.

The Respondent's violations of Sections 3.08(4), 3.08(4)(A), 3.08(4)(E), 3.08(4)(H), 3.08(4)(I), and 3.08(18) of the Act are grounds for the Board to enter an order imposing other means of discipline upon the Respondent pursuant to Section 4.12 of the Act.

WHEREFORE, PREMISES CONSIDERED, it is prayed that a hearing on this complaint be held before the Texas State Board of Medical Examiners and that the Board (1) cancel, revoke or suspend the Respondent's medical license; (2) rescind the probationary status of the Respondent's Texas medical license; or (3) enter an order imposing other means of disciplining.

Respectfully submitted,

Arnoldo G. Garza
Director of Hearings

THE STATE OF TEXAS )
COUNTY OF TRAVIS )

SUBSCRIBED AND SWORN to before me by the said Arnoldo G. Garza on this the 12th day of December, 1988.

Notary Public, State of Texas
Notary's Printed Name: Laurine H. Baltz
Notary's Commission Expires: 8-22-19
Filed with the Texas State Board of Medical Examiners on this the 12th
day of December, 1988.

G. V. Brindley, Jr., M.D.
Executive Director
Texas State Board of Medical Examiners