

IN THE MATTER OF THE
COMPLAINT AGAINST

STANISLAW R. BURZYNSKI, M.D.,
PH.D., RESPONDENT

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BEFORE THE TEXAS
STATE BOARD OF
MEDICAL EXAMINERS

ORDER

On the 20th day of August, 1994, came on to be heard for final action by the Texas State Board of Medical Examiners, ("the Board") duly in session, the matter of The Texas medical license of STANISLAW R. BURZYNSKI, M.D., PH.D., RESPONDENT herein, wherein the Board was represented by Dewey E. Helmcamp, III, Assistant Attorney General, and the RESPONDENT appeared and was represented by Richard A. Jaffe, Attorney. It was alleged that RESPONDENT violated Section 3.08 subsections (4)(A), (4)(G), and (6) of article 4495b, Texas Revised Civil Statutes. The matter was heard in public hearing on May 24, 1993, and May 25, 1993, before Earl A. Corbitt, Administrative Law Judge. After consideration of the Proposal for Decision submitted to the Board by the Administrative Law Judge, the Board makes the following findings of fact hereby denying any and all findings of fact proposed by any party not specifically made herein:

FINDINGS OF FACT

1. The parties, the Texas State Board of Medical Examiners and Stanislaw R. Burzynski, M.D., Ph.D., stipulated that they received proper and timely notice of the hearing.
2. Stanislaw R. Burzynski, M.D., Ph.D., (RESPONDENT) is licensed to practice medicine in the State of Texas and is the holder of Texas Medical License No. D-9377.

3. The RESPONDENT operates a clinic in Houston, Texas, in which he treats cancer patients and AIDS patients with substances known as "antineoplastons".

4. Antineoplastons are peptides.

5. Antineoplastons are not approved for commercial interstate marketing by the Food and Drug Administration (FDA). The Food and Drug Administration has not issued a letter of approval or letter of approvability regarding antineoplastons.

6. The RESPONDENT stipulated that from 1977 until August 14, 1992, the date of the Second Amended Complaint, he administered antineoplastons to his patients.

7. In an Order, filed May 24, 1983, and entered in Cause Number H-83-2069, United States of America v. Burzynski Cancer Research Institute, et al, in the United States District Court for the Southern District of Texas, Houston Division, antineoplastons A2, A3, A5, A10, and AS2-1 were found to be "drugs" within the meaning of Federal law and "new drugs" within the meaning of Federal law. Antineoplastons A2, A3, A5, A10, and AS2-1 are here found to be "drugs" and "new drugs" in agreement with the Court's Order. Antineoplastons are further found to be "drugs" and "new drugs" within the meaning of Texas statutes.

8. No evidence was admitted, either by document or by testimony, that antineoplastons A, AS2-5 or AS-5 are "drugs" or "new drugs" as defined in Federal law. By inference from testimony provided by Respondent regarding the nature and use of all types of these agents, antineoplastons A, AS2-5 and AS-5 are here found to be "drugs" and "new drugs" within the meaning of Texas statutes.

9. In 1977, the RESPONDENT sought legal advice regarding whether he could lawfully manufacture antineoplastons and use them in the treatment of his patients in the State of Texas.

10. In 1977, Hal Nelson, then General Counsel, Texas Department of Health, and Bob Henna, then Director of the Division of Food and

Drugs, Texas Department of Health, were asked to render opinions whether the RESPONDENT could lawfully manufacture antineoplastons and use them in the treatment of his patients in the State of Texas.

11. Although evidence was presented that Hal Nelson and Bob Henna each orally expressed the opinion that the RESPONDENT would not be in violation of the Texas Food, Drug and Cosmetic Act by manufacturing antineoplastons and using them in the treatment of his patients no written order or grant of permission regarding these activities was extended to RESPONDENT by any employee or representative of the Texas Department of Health.

12. RESPONDENT testified that, in reliance upon the legal advice, described in Finding of Fact No. 9, and the oral opinion of the officials responsible for the administration of the Texas Food, Drug and Cosmetic Act, described in Findings of Fact Nos. 10 and 11, the RESPONDENT turned down an offer of a tenured position and substantial research funding from the University of Tennessee, and opened his clinic and laboratory facility in Houston, Texas.

13. On May 24, 1983, an Order was issued by the Federal Court, as referenced in Finding of Fact No. 7, which enjoined the RESPONDENT from shipping antineoplastons interstate unless the RESPONDENT first obtained approval of the Food and Drug Administration.

14. Since the Federal Court which heard the case referenced in Finding of Fact No. 7 was without authority to regulate intrastate commerce in antineoplastons, the Order described in Finding of Fact No. 13 contained a statement that said Order did not apply to the RESPONDENT'S manufacture or use of antineoplastons within the State of Texas.

15. From 1980 forward, officials within the Texas Department of Health were aware of the RESPONDENT'S manufacture and use of antineoplastons. The Department maintained contact with the Food and Drug Administration and followed the FDA's attempt to obtain an injunction against the RESPONDENT. (See Finding of Fact No. 13).

16. At no time pertinent to the allegations against the RESPONDENT did the Texas Department of Health adopt rules related to the use in Texas of drugs which were not approved by the Food and Drug Administration.

17. RESPONDENT'S use of antineoplastons prior to September 1, 1985, was not solely for investigational use.

18. On May 2, 1988, the Texas Department of Health issued a letter to the RESPONDENT advising the RESPONDENT that his use of antineoplastons was considered to be in violation of Section 18 of the Texas Food, Drug and Cosmetic Act.

19. In 1992, the Texas Department of Health filed suit against the RESPONDENT seeking to enjoin his manufacture and use of antineoplastons and seeking to destroy his stock on hand.

20. Many of the cancer patients treated by the RESPONDENT have been previously treated with radiation therapy and chemotherapy but have failed to respond. The condition of many of the RESPONDENT'S patients is believed to be terminal with no further conventional treatment available.

21. RESPONDENT, Nicholas Patronas, M.D., Chief of the Section of Neuroradiology, National Institutes of Health; Fred J. Epstein, M.D.; patient T.M.S., a medical doctor; the father of patient D.M., and the physicians treating patients S.C., P.M., M.J.S. , testified that, in their opinion, antineoplaston therapy is necessary for the survival of many of the RESPONDENT'S patients.

22. No evidence was received at hearing that was contrary to the testimony described in Finding of Fact No. 21.

23. The efficacy of antineoplastins in the treatment of human cancers is not of issue in these proceedings.

24. Prior to June 1983 the RESPONDENT filed with the FDA a "Notice of Claimed Investigational Exemption for New Drug" (IND) for a study of the use of antineoplaston A-10 in the treatment of advanced breast cancer. On February 13, 1984, the RESPONDENT was notified by

letter from the FDA that this proposed study had been placed on "clinical hold", in that he was not to proceed further with the study until he received further authority from the FDA. On March 16, 1989, the FDA, by letter, granted such authority and released the clinical hold only with respect to antineoplastin A-10. No authority was granted nor was the clinical hold released in relation to any other antineoplaston utilized by RESPONDENT.

25. The RESPONDENT treated patients with antineoplaston A-10 between February 13, 1984, and March 16, 1989.

26. The RESPONDENT stipulated that he treated the 40 individuals as alleged in Count II, including treatment with one or more of the following antineoplastons other than A-10: A, A-2, A-3, A-5, AS2-1, AS2-5, and AS-5.

27. After May 2, 1988, and through August 31, 1989, RESPONDENT'S treatment of patients with antineoplastins constituted a deliberate and knowing violation of the provisions of the Texas Food, Drug and Cosmetic Act pertaining to the sale, delivery, and use of "new drugs" in the state of Texas.

28. The codification of the Texas Food, Drug and Cosmetic Act in the Texas Health and Safety Code became effective on September 1, 1989.

29. From September 1, 1989, through August 14, 1992, RESPONDENT'S treatment of patients with antineoplastins constituted a deliberate and knowing violation of the provisions of the Health and Safety Code of Texas pertaining to the sale, delivery, and use of "new drugs" in the state of Texas.

30. The RESPONDENT provided persons interested in antineoplaston therapy with an informational brochure which contained representations that antineoplastons affect cancers.

31. The RESPONDENT provided persons interested in antineoplaston therapy, upon request, with articles which contained representations that antineoplastons affect cancers.

32. There was no evidence that the representations described in Findings of Fact Nos. 30 and 31 are, in fact, false.

33. Representations to the effect that a drug will affect cancers, such as the representations described in materials provided to persons interested in antineoplastons, as described in Findings of Fact Nos. 30 and 31, are representations that said drug will affect neoplasms.

34. The RESPONDENT has two INDs approved. IND #22,029 provides for a study of the use of antineoplaston A-10 capsules in the treatment of advanced breast cancer. IND #40,576 provides for a study of the use of antineoplaston AS2-1 capsules in the treatment of persons infected with HIV.

35. The RESPONDENT had not initiated clinical trials under either IND #22,029 or IND #40,576.

36. No evidence was offered by which a reasonable charge for treatment of patients for cancer using antineoplastons could be determined.

37. No evidence was offered by which a reasonable charge for treatment of persons infected with HIV using antineoplastons could be determined.

38. At all times pertinent to the allegations, the RESPONDENT has charged his patients a fee for antineoplaston therapy.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Board concludes that:

1. The Texas State Board of Medical Examiners has jurisdiction over this matter under Tex. Rev. Civ. Stat. Ann. art. 4495b, the Texas Medical Practice Act.
2. The RESPONDENT received proper notice of the hearing pursuant to Tex. Rev. Civ. Stat. Ann. art. 6252-13a and the Texas Medical Practice Act.

3. Pursuant to the Texas Medical Practice Act, Section 4.01, the Texas State Board of Medical Examiners has authority to take disciplinary action against any of its licensees for conduct specified in the Texas Medical Practice Act, Section 3.08, which includes:

(4) unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public. Unprofessional or dishonorable conduct likely to deceive or defraud the public includes but is not limited to the following acts:

(A) committing any act that is in violation of the laws of the State of Texas if the act is connected with the physician's

practice of medicine.....

(G) persistently and flagrantly overcharging or overtreating patients;

...

(6) use of any advertising statement that is false, misleading, or deceptive;

4. Prior to September 1, 1985, the Texas Food, Drug and Cosmetic Act (Tex. Rev. Civ. Stat. Ann. art. 4476-5) included the following provision:

Sec. 16. (a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless (1) an application with respect thereto has been approved and said approval has not been withdrawn under Section 505 of the Federal Act, or (2) when not subject to the Federal Act, unless such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug,

there has been filed with the Commissioner of Health an application setting forth (a) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use; (b) a full list of the articles used as components of such drug; (c) a full statement of the composition of such drug; (d) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (e) such samples of such drug and of the articles used as components thereof as the Commissioner of Health may require; and (f) specimens of the labeling proposed to be used for such drug.

...

(c) This section shall not apply--

(1) to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the Commissioner of Health or pursuant to Section 505(i) or 507(d) of the Federal Act...

5. From September 1, 1985, until August 31, 1989, the Texas Food, Drug and Cosmetic Act (Tex. Rev. Civ. Stat. Ann. art. 4476-5) included the following provision:

Sec. 18. (a) A person shall not sell, deliver, offer for sale, hold for sale or give away any new drug unless (1) an application with respect thereto has been approved and the approval has not been withdrawn under section 505 of the Federal Act, and (2) a copy of the letter of approval or approvability issued by the Federal Food and Drug Administration is on file with the commissioner if the product is manufactured in this state.

(b) A person shall not use in or on human beings or animals a new drug or new animal drug limited to investigational use unless the person has filed with the Federal Food and Drug Administration a completed and signed "Notice of claimed investigational exemption for a new drug" form in accordance with Section 312.1 of Title 21 of the Code of Federal Regulations (1980) and the exemption has not been terminated. The drug shall be plainly labeled in compliance with Section 505(i) or 507(d) of the Federal Act.

(c) This section shall not apply--

(1) to any drug that is not a new drug as defined in the Federal Act...

6. From September 1, 1989, until August 14, 1992, the Texas Food, Drug and Cosmetic Act contained the following provisions:

Section 431.114:

(a) A person shall not sell, deliver, offer for sale, hold for sale or give away any new drug unless:

(1) an application with respect thereto has been approved and the approval has not been withdrawn under Section 505 of the Federal Act; and

(2) a copy of the letter of approval or approvability issued by the Federal Food and Drug Administration is on file with the commissioner if the product is manufactured in this state.

(b) A person shall not use in or on human beings...a new drug...limited to investigational use unless the person has filed with the Federal Food and Drug Administration a completed and signed "Notice of claimed investigational exemption for a new drug" form in accordance with 21 C.F.R. 312.1 (1980) and the exemption has not been terminated. The

drug shall be plainly labeled in compliance with Section 505(i) or 507(d) of the Federal Act.

(c) This section shall not apply:

(1) to any drug that is not a new drug as defined in the Federal Act...

7. The mistake of law defense found at Tex. Penal Code Ann. Section 8.03, prevents a criminal prosecution when the State misleads a person about the law. That Section states, in part, "(b) It is an affirmative defense to prosecution that the actor reasonably believed the conduct charged did not constitute a crime and that he acted in reasonable reliance upon: (1) an official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question..." (emphasis added). The provisions contained in the Texas Penal Code are not directly applicable to the current administrative law proceedings, as these proceedings are civil in nature. Such provisions contained in the Texas Penal Code, may be considered persuasive in some instances.
8. Based upon Findings of Fact Nos. 5 through 12, and Conclusions of Law Nos. 4, 5, and 7, the mistake of law defense is not applicable in this case to the RESPONDENT'S manufacture and use of antineoplastons prior to May 2, 1988.
9. Based upon Findings of Fact No. 18, the mistake of law defense is not applicable in this case to the RESPONDENT'S manufacture and use of antineoplastins after May 2, 1988.
10. From August 5, 1981, to August 29, 1983, the Texas Medical Practice Act Section 5.09 read as follows:

A person licensed to practice medicine under this Act is authorized to supply the needs of his patients with any drugs

or remedies as are necessary to meet the patients' immediate needs; provided, however, this section does not permit the practitioner to operate a pharmacy without first complying with the Texas Pharmacy Act.

11. From August 29, 1983, to June 14, 1989, the Texas Medical Practice Act Section 5.09 read as follows:

(a) A person licensed to practice medicine under this Act is authorized to supply the needs of his patients with any drugs or remedies as are necessary to meet the patients' immediate needs; provided, however, this section does not permit the physician to operate a retail pharmacy without first complying with the Texas Pharmacy Act.

12. From June 14, 1989, to August 14, 1992, the Texas Medical Practice Act, Section 5.09 read as follows:

(a) A physician licensed to practice medicine under this Act may supply patients with any drugs, remedies, or clinical supplies as are necessary to meet the patients' immediate needs. This subsection does not permit the physician to operate a retail pharmacy without first complying with the Texas Pharmacy Act.

13. Texas Food, Drug and Cosmetic Act Section 18 and Texas Health and Safety Code Section 431.114 are general provisions of the law. They are directed to all persons. Texas Medical Practice Act Section 5.09 is a special provision of the law directed specifically to physicians licensed by the Texas State Board of Medical Examiners. Read in context, however, Section 5.09 of the Texas Medical Practice Act clearly grants physicians only a limited exception to provisions of the Texas Pharmacy Act.

14. Based upon Conclusions of Law Nos. 4 through 6, and 10 through 13, the provisions of Texas Medical Practice Act

allowing physicians authority to supply "any drugs" necessary to meet the patients' immediate needs does not confer any authority which extends beyond that included within the Texas Food, Drug and Cosmetic Act. The two statutes are not in conflict.

15. Based upon Findings of Fact Nos. 3, 5 through 8, and 25 through 27, and Conclusions of Law Nos. 3, 4, 7, 8, and 11 through 14, RESPONDENT'S treatment of patients with antineoplastons prior to September 1, 1985, constituted a violation of Texas Food, Drug and Cosmetic Act (Tex. Rev. Civ. Stat. Ann. art. 4476-5) Section 16, and, therefore, a violation of Texas Medical Practice Act, Section 3.08(4).
16. Based on Findings of Fact Nos. 3, 5 through 8, and 25 through 27, and Conclusions of Law 3,5,7,8, and 10 through 14, RESPONDENT'S treatment of patients with antineoplastons from September 1, 1985, through August 31, 1989, constituted a violation of Texas Food, Drug and Cosmetic Act (Tex. Rev. Civ. Stat. Ann. art. 4476-5) Section 18, and, therefore a violation of Texas Medical Practice Act, Section 3.08 (4).
17. Based on Findings of Fact Nos. 27 and 29, and Conclusions of Law Nos. 3, 6 through 8, and 10 through 14, RESPONDENT'S treatment of patients with antineoplastons from September 1, 1989 through August 14, 1992, constituted a violation of the Texas Food, Drug and Cosmetic Act as contained in Section 431.114 of the Health and Safety Code.
18. Based on Findings of Fact Nos. 27 and 29, and Conclusions of Law Nos. 3, 16, and 17, RESPONDENT'S treatment of patients with antineoplastons subsequent to May 2, 1988, constituted a violation of Texas Medical Practice Act, Section 3.08 (4).
19. The Texas Food, Drug and Cosmetic Act bans false advertising in Health and Safety Code Section 431.021, which states:

"The following acts and the causing of the following acts within this state are unlawful and prohibited...(f) the dissemination of any false advertisement..."

20. "Advertising" is defined in Health and Safety Code Section 431.002, as: "'Advertising' means all representations disseminated in any manner or by means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics."
21. The Texas Food, Drug and Cosmetic Act states at Health and Safety Code Section 431.183:
 - (a) An advertisement of a drug or device is false if the advertisement represents that the drug or device affects:
 - ...
 - (2) neoplasms;
 - ...
 - (b) Subsection (a) does not apply to an advertisement of a drug or device if the advertisement does not violate section 431.182 and is disseminated:
 - (1) to the public for self-medication and is consistent with the labeling claims permitted by the Federal Food and Drug Administration;
 - (2) only to members of the medical, dental, and veterinary professions and appears only in the scientific periodicals of those professions; or
 - (3) only for the purpose of public health education by a person not commercially interested, directly or indirectly, in the sale of the drug or device.
22. Advertising which is defined as false under the provisions of Section 431.183 of the Health and Safety Code, as referenced in Conclusion of Law No. 21, are false under Texas Medical Practice Act, Section 3.08 (6).

23. Based upon Findings of Fact Nos. 30, 31 and 33 and Conclusions of Law Nos. 19 through 21, the RESPONDENT, between September 1, 1989, and August 14, 1992, has violated the Texas Food, Drug and Cosmetic Act Section 431.183 which constitutes a violation of the Texas Medical Practice Act Section 3.08(4)(A).
24. Based upon Finding of Fact No. 28, the RESPONDENT did not violate the Texas Food, Drug and Cosmetic Act Section 431.183 between September 1, 1985, and September 1, 1989, as alleged, inasmuch as the specified section of the Health and Safety code was not in effect during that period of time.
25. Based upon Findings of Fact Nos. 30, 31 and 33, and Conclusions of Law Nos. 3, 21, and 22, the RESPONDENT'S brochure is in violation of the Texas Medical Practice Act, Section 3.08(6).
26. Federal regulations, at 21 C.F.R. Section 312.7(d) prohibit charging a fee for an investigational drug in a clinical trial under an IND.
27. Based upon Findings of Fact Nos. 32, 33 and 35 the RESPONDENT has not charged a fee for antineoplastons in violation of the Federal regulations found at 21 C.F.R. Section 312.7(d).
28. Based upon Findings of Fact Nos. 34 through 36, and Conclusion of Law No. 3, there is insufficient evidence to find that RESPONDENT has persistently and flagrantly overcharged any patient.
29. Based upon Conclusions of Law No. 17, Count IA against the RESPONDENT was proven by a preponderance of the evidence.
30. Based upon Conclusions of Law No. 16, Count IB against the RESPONDENT was proven by a preponderance of the evidence.
31. Based upon Conclusions of Law No. 15, Count IC against the RESPONDENT was proven by a preponderance of the evidence.

32. Based upon Finding of Fact No. 25, and Conclusions of Law Nos. 15 and 16, Count ID against the RESPONDENT was proven by a preponderance of the evidence.
33. Based upon Conclusions of Law Nos. 15 through 17, Count II against the RESPONDENT was proven by a preponderance of the evidence.
34. Based upon Conclusion of Law Nos. 23 and 25, Count III against the RESPONDENT was partially proven by a preponderance of the evidence.
35. Based upon Conclusions of Law No. 24, Count III against the RESPONDENT was not proven by a preponderance of the evidence as the Count relates to the time prior to the enactment of Health and Safety Code section 431.183 and as it relates to the Texas Medical Practice Act Section 3.08(6).
36. Based upon Conclusions of Law Nos. 26 and 27, Count IV against the RESPONDENT was not proven by a preponderance of the evidence.
37. Pursuant to Section Nos. 4.01(a) and 4.12 of the Texas Medical Practice Act, and based on Conclusions of Law Nos. 15 through 18, 23 through 25, and 29 through 34, both jointly and severally, the Board is authorized to cancel or revoke Respondent's license to practice medicine; administer a public reprimand; suspend, limit or restrict Respondent's license to practice medicine, including limiting his practice to or exclusion of one or more specified activities of medicine or stipulating periodic Board review; to require Respondent to submit to care, counseling, or treatment of physicians designated by the Board as a condition for the continuance of his license to practice medicine; require RESPONDENT to participate in a program of education or counseling as prescribed by the Board; require Respondent to

practice under the direction of a physician designated by the Board for a specified period of time; and require RESPONDENT to perform public service considered appropriate by the Board. Provided, if the Board determines that, through the practice of medicine, RESPONDENT poses a continuing threat to the public welfare, it is required to revoke or suspend RESPONDENT'S license. Pursuant to Section No. 4.11 of the Texas Medical Practice Act, the Board may order that any discipline of RESPONDENT be probated for so long as the probationer conforms to the orders, conditions, and rules that the Board may set out as the terms of probation, provided that the Board, at the time of probation, shall set out the period of time that constitutes the probationary period.

38. Section 2001.058, Texas Gov't Code Ann. (Vernon's Pamphlet 1994) provides:

A state agency may change a Finding of Fact or Conclusion of Law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, only for reasons of policy. The agency shall state in writing the reason and legal basis for a change made under this subsection.

39. Section 1.02(1) of the Texas Medical Practice Act, under Findings and Purposes, provides:

the practice of medicine is a privilege and not a natural right of individuals and as a matter of policy it is considered necessary to protect the public interest through the specific formulation of this Act to regulate the granting of that privilege and its subsequent use and control.

40. 22 T.A.C. 187.34(d) provides that:

Changes to Recommendation. In that the board has been

created by the legislature to protect the public interest as an independent agency of the executive branch of the government of the State of Texas so as to remain as the primary means of licensing, regulating and disciplining physicians and surgeons, consistent with APTRA, Section 13(j) to protect the public interest and ensure that sound medical principles govern the decisions of the board, it shall hereafter be the policy of the board to change a finding of fact or conclusion of law or to vacate or modify the proposed order of an administrative law judge when the proposed order is:

- (1) erroneous;
- (2) against the weight of the evidence;
- (3) based on unsound medical principals;
- (4) based on an insufficient review of the evidence;
- (5) not sufficient to protect the public interest; or
- (6) not sufficient to adequately allow rehabilitation of the physician.

41. The proposal for Decision and Proposed Order of the Administrative Law Judge are each, in part, erroneous, against the weight of the evidence, and not sufficient to protect the public interest.

42. The Board cites each of the following, jointly and severally, as the reason(s) and legal basis for modifying the Proposal for Decision and Proposed Order of the Administrative Law Judge:

- a. Conclusions of Law Nos. 1 through 41, jointly and severally;
- b. Section 1.02(1) of the Texas Medical Practice Act;

Based on the above Findings of Fact and Conclusions of Law the Board ORDERS that RESPONDENT'S license to practice medicine is

suspended; however, the suspension is stayed and RESPONDENT is placed on probation for ten (10) years effective the date of the signing of this Order by the presiding officer of the Board, under the following terms and conditions:

1. RESPONDENT shall comply with all provisions of all statutes and regulations promulgated by the United States of America or any of its agencies or departments and of all statutes or regulations promulgated by the state of Texas or any of its agencies or departments, relating to the manufacture and/or distribution, by any means, of drugs and/or new drugs.
2. RESPONDENT shall not disseminate, by any means, any advertisement in violation of either the Texas Food, Drug and Cosmetic Act section 431.183 or the Texas Medical Practice Act, Section 3.08(6).
3. Respondent shall give a copy of this Order to all hospitals and health care entities where he has privileges.
4. Respondent shall cooperate with the Board, its attorneys, investigators, compliance officers, and other employees and agents, to verify that Respondent has complied and is in compliance with this Board Order.
5. Respondent shall advise the Board of any change of address, mailing or office, within (10) days of such occurrence.
6. The time period of this Order shall be extended for any period of time in which Respondent subsequently resides or practices medicine outside the State of Texas, is in official retired status with the Board, or for any period during which Respondent's license is subsequently cancelled for nonpayment

of licensure fees. If Respondent leaves Texas to live or practice medicine elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. Upon Respondent's return to practice in Texas or Respondent's relicensure, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order when Respondent left the practice of medicine in Texas, retired, or had his license cancelled for nonpayment of licensure fees.

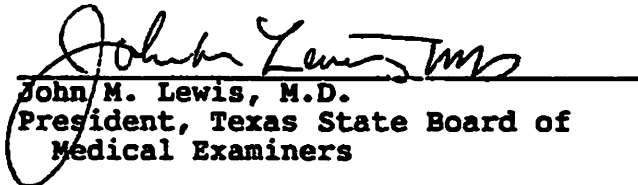
7. Respondent shall comply with all the provisions of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, and other statutes regulating the practice of medicine, as is required by law for physicians licensed by the Board, to include such statutes for ensuring informed patient consent to any and all medical treatments rendered.

Any violation of the terms, conditions, and requirements of this Order may constitute evidence of unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure the public within Section 3.08(4) of the Act, and may result in disciplinary action pursuant to Section 4.01(a) of the Act.

The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following entry of this Order. If, after the passage of the 12 month period, the Respondent wishes to seek amendment or termination of these conditions, then he may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition. Petitions for modifying or terminating may be filed only once a year thereafter.

It is further ORDERED that all costs of preparation of the original or a certified copy of the record of the proceedings in this matter which may be required to be transmitted to a reviewing court for appellate purposes be assessed against and paid by Respondent.

SIGNED this 31st day of August, 1994.



John M. Lewis, M.D.
President, Texas State Board of
Medical Examiners