

D-2355

IN THE MATTER OF	) (	BEFORE THE
	) (	
THE LICENSE OF	) (	TEXAS STATE BOARD
	) (	
ROBERT MCCREE BATTLE, M.D.	) (	OF MEDICAL EXAMINERS

AGREED ORDER

On this the 26th day of October, 1990, came on to be heard before the Texas State Board of Medical Examiners ("the Board"), duly in session the matter of the license of Robert McCree Battle, M.D. ("the Respondent"). On July 19, 1989 Respondent appeared in person with attorney, Gregory Seeley at an Informal Settlement Conference at the offices of the Board in response to the Board's letter of invitation.

The Texas State Board of Medical Examiners was represented at the Informal Settlement Conference by R.A.D. Morton, Jr., M.D. and Mrs. Janet McGlasson. Upon recommendation of said representatives and with the consent of Respondent, the Board hereby makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Robert McCree Battle, M.D., holds Texas medical license D-2355.
2. The Board has jurisdiction over the subject matter and the Respondent. The Respondent received notice as required by law and by the rules of the Board. The parties agree that all jurisdictional requirements have been satisfied.
3. Respondent did perform tests and treat patient K.H. without first performing a physical exam.
4. Respondent treated patients with "auto immune vaccine" without approval by the Federal Food and Drug Administration.
5. Respondent provided handouts on "Platelet Tests" and Chelation: Questions and Answers" that contained some misleading information.

### CONCLUSION OF LAW

These findings violate section 3.08(4)(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, of the Medical Practice Act.

Based on the above findings of fact and conclusion of law, the Board ORDERS that:

Respondent specifically acknowledges and agrees that any violation of this Order shall constitute conclusive 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 Respondent is placed on probation for two years under the following terms and conditions:

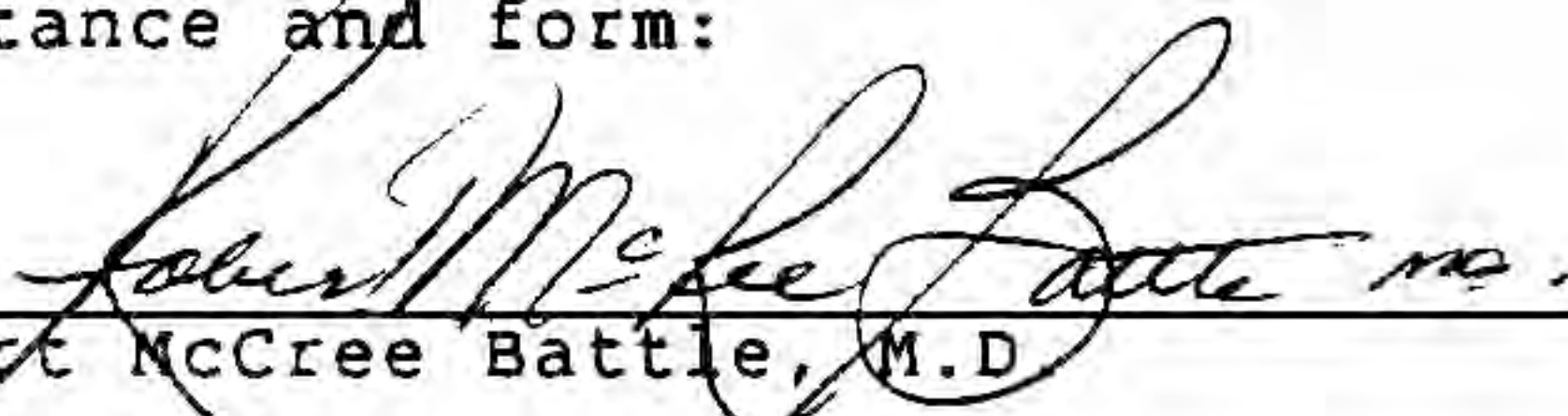
1. (a) The Respondent shall attend at least fifty (50) hours per year of Continuing Medical Education (CME) approved for Category I credits, in general medical courses acceptable to the American Academy of Family Practice or for the American Medical Association Physician's Recognition Award; and (b) shall submit proof of such attendance to the Board by January 31 of each year beginning in January 1991, for each prior calendar year, realizing that the first report may not meet the 50 hour requirement. A copy of the attendance certificate issued or a detailed report specifying each course, the date, the number of hours obtained, which can be verified by the Board would meet this requirement.

2. Respondent shall perform a physical examination and take a history before performing other tests on or treating any patient.
3. Entry by the Board of this Agreed Order shall constitute a Public Reprimand.
4. The Respondent shall cooperate with the Board, its attorneys, investigators, compliance officers, and other employees, to verify that Respondent has complied and is in compliance with this Board Order.
5. The Respondent shall advise the Board of any change of address, mailing or office, within (10) days of such occurrence.
6. The time period during which the restrictions, limitations, or conditions are herein assessed shall not include any periods of time during which Respondent either resides or practices medicine outside the state of Texas. If Respondent leaves Texas to live or practice medicine elsewhere, the Respondent shall immediately notify the Board of the dates of the Respondent's departure from and subsequent return to Texas. Upon Respondent's return to Texas, the time period tolled by his departure shall continue until its expiration or termination by the Board.
7. The Respondent shall comply with all the provisions of Article 4495b, Texas Revised Civil Statutes Annotated, and other statutes regulating the practice of medicine, as is required by law for physicians licensed by the Board. For the violation of any of the terms of this Order or Article 4495b, Texas Revised Civil Statutes Annotated, the Respondent could be cited to appear before the Board in a formal

disciplinary hearing for such violations which could result in revocation of the Respondent's license to practice medicine or other disciplinary action.


THIS DOCUMENT IS A PUBLIC RECORD.

Accepted and agreed to as to  
substance and form:

  
Robert McCree Battle, M.D.

10/9/90  
Date signed

SIGNED AND ENTERED this 26th day of October, 1990.

  
R.A.D. Morton, Jr., M.D.  
President, Texas State Board of  
Medical Examiners  
R.A.D. Morton, Jr., M.D.

J.AO 8.16/2



D-2355

IN THE MATTER OF THE COMPLAINT	) (	BEFORE THE
	) (	
ROBERT MCREE BATTLE, M.D.,	) (	TEXAS STATE BOARD
	) (	
RESPONDENT	) (	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 Robert McRee Battle, 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 D-2355, by the Texas State Board of Medical Examiners, which was in full force and effect at all times relevant to this proceeding. All jurisdictional events required prior to the filing of this Complaint have been satisfied.

II

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

Count I

Respondent on November 7, 1988 initially saw K.H. as a patient presenting with hives. Without performing a physical exam, Respondent on November 7, 1988, ordered a trace mineral analysis, fibrinogen stabilizer test (ROTS), and candida studies. Respondent's actions along with his attempt to charge for a comprehensive exam that was not

done, violated section 3.08(18) of the Act (professional failure to practice medicine in an acceptable manner consistent with public health and welfare) and section 3.08(4) of the Act (unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.)

#### Count II

Respondent on December 12, 1986 initially saw L.C. as a patient presenting with complaints of diabetes, flatulence and constipation and glaucoma. Without performing a physical examination or adequate history, Respondent on December 12, 1986, ordered a hair analysis, platelet adhesiveness study, and circulatory microemboli index. Respondent prescribed Celestrone and made dietary recommendations without assessing blood glucose. Respondent's actions violated section 3.08(18) of the Act, (professional failure to practice medicine in an acceptable manner consistent with public health and welfare) and section 3.08(4) (unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public).

#### Count III

Respondent between September 1, 1987 and April 23, 1988 treated patients with an "auto immune vaccine" without approval of that vaccine by the Federal Food and Drug Administration (21 USC 355) in violation of the Texas Food Drug and Cosmetics Act (Tex. Rev. Civ. Stat. Ann. art. 4476-5 sections 3 and 16), (now found in V.T.C.A. Health and Safety Section 431.021 and Section 431.114) in that no copy of a letter approving the new drug is on file with the Commissioner of Health for the State of Texas, and as such violated section 3.08(4)(A) of the Act (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).

#### Count IV

Respondent, in 1988, disseminated statements from the waiting room



at McRee Medical Center Inc., 9910 Long Point Road, Houston, Texas. The advertisements address "Platelet Tests" (specifically the Platelet Adhesiveness Test and The Circulatory Miroemboli Index), and "Chelation: Questions and Answers". Each of these contains a statement that is false, misleading or deceptive in violation of section 3.08 (6) of the Act, advertises the performance of professional service in a superior manner not readily subject to verification in violation of section 3.08(7) of the Act, and also violates Chapter 17 (Deceptive Trade Practices) of the Texas Business and Commerce Code (Vernon's Texas Code Annotated, Bus & C, section 17.12) in that it disseminates a statement materially misrepresenting the character of a service for the purpose of inducing a person to contract with regard to the service. In violating the Business and Commerce Code, Respondent also violated section 3.08(4)(A) of the Act by committing an act in violation of the laws of the State of Texas if the act is connected with the physician's practice of medicine. Statements in each advertisement that fall within the purview of Count IV are specified as follows:

#### A

Use of Platelet Tests described in "II A" and "B" of this handout are not within the standard of practice in diagnosing conditions set forth in "I" of the handout nor are they within the standard of practice in monitoring therapy of such conditions. In paragraph III, platelet tests are not known as a useful monitor for determining additional treatment such as chelation therapy.

#### B

"Chelation: Questions and Answers." Paragraph 1, "Chelation therapy treats the underlying causes.... by removing plaque from inside the arteries...". Paragraph 2, "...EDTA slowly pulls the calcium out of the placque, gradually causing it to dissolve..." Paragraph 3, "90% of persons who have these treatments do as well as, or better than, they would have with bypass surgery." Paragraph 6,

"There have not been any mortalities due to chelation in over 10 years..." Paragraph 11. "Chelation treatments not only reduced chest pains (angina), but also, in most cases, improve the quality of life without requiring surgery, and at considerably less expense." While the second part of the sentence in Paragraph 11 has at least some limiting factor disclosed, there is no limitation included in the assertion that chelation treatments will reduce chest pains (angina).

### III

The Respondent by his actions, conduct and behavior has violated sections 3.08(4), 3.08(4)(A), 3.08(6), 3.08(7) and 3.08(18) of the Medical Practice Act of Texas.

The Respondent's violations of sections 3.08(4), 3.08(4)(A), 3.08(6), 3.08(7) and 3.08(18) of the Act are grounds for cancellation, revocation or suspension of the Respondent's license to practice medicine in the State of Texas pursuant to section 4.01 of the Act.

The Respondent's violation of sections 3.08(4), 3.08(4)(A), 3.08(6), 3.08(7) 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.

The Respondent's violation of sections 3.08(4), 3.08(4)(A), 3.08(6), 3.08(7) and 3.08(18) of the Act resulting in the cancellation, revocation or suspension of the Respondent's Texas medical license or the imposition of other means of discipline may be probated pursuant to section 4.11 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 enter its order herein to (1) cancel, revoke or suspend the Respondent's medical license; (2) impose other means of discipline, or (3) probate the cancellation, revocation, suspension or the Respondent's Texas medical license, or the imposition of other means of discipline.



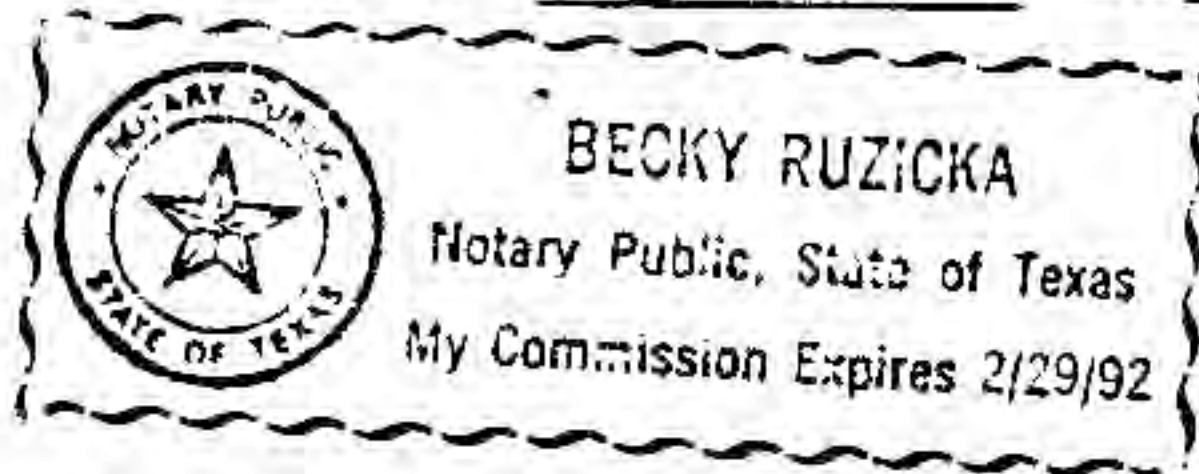
Respectfully submitted,

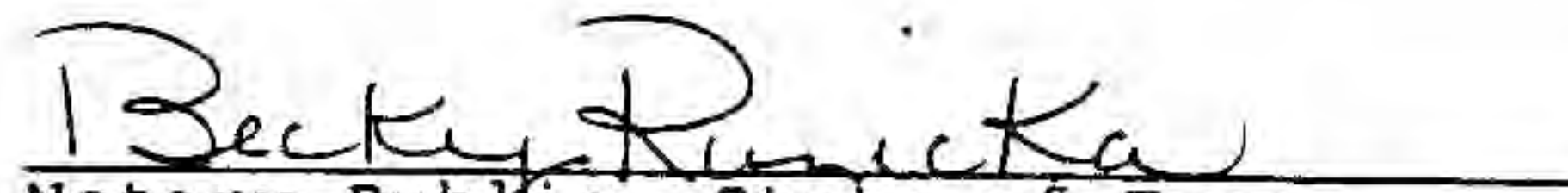


Joe Sebesta  
Staff Attorney

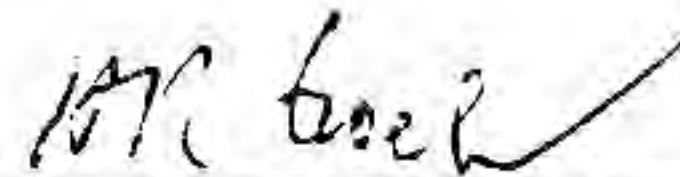
THE STATE OF TEXAS    )  
                                  )  
COUNTY OF TRAVIS    )

SUBSCRIBED AND SWORN to before me by the said Joe Sebesta on  
this the 5<sup>th</sup> day of September, 1990.



  
Notary Public, State of Texas

Filed with the Texas State Board of Medical Examiners on this the  
5<sup>th</sup> day of September, 1990.



Homer R. Goehrs, M.D.  
Executive Director  
Texas State Board of Medical  
Examiners

D-2355

IN THE MATTER OF THE COMPLAINT	) (	BEFORE THE
	) (	
ROBERT MCREE BATTLE, M.D.,	) (	TEXAS STATE BOARD
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RESPONDENT	) (	OF MEDICAL EXAMINERS

COMPLAINT

TO THE HONORABLE TEXAS STATE BOARD OF MEDICAL EXAMINERS:

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I

The Respondent was previously issued a Texas medical license, number D-2355, by the Texas State Board of Medical Examiners, which was in full force and effect at all times relevant to this proceeding. All jurisdictional events required prior to the filing of this Complaint have been satisfied.

II

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

Count I

Respondent on November 7, 1988 initially saw K.H. as a patient presenting with hives. Without performing a physical exam, Respondent on November 7, 1988, ordered a trace mineral analysis, fibrinogen stabilizer test (ROTS), candida studies, Rinkle indra dermal tests, and modified RAST studies. Respondent prescribed BASIC, B-carot, P-5-P, Vit. E. & C, SAN-GLA, Acidophyllus and Nizoril. Respondent's actions along with his attempt to charge for a comprehensive exam that was not done, violated section 3.08(4)(E) of the Act (prescribing or

administering a drug or a treatment that is nontherapeutic in nature or nontherapeutic in the manner administered or prescribed), section 3.08(18) of the Act (professional failure to practice medicine in an acceptable manner consistent with public health and welfare) and section 3.08(4) of the Act (unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.)

#### Count II

Respondent on December 12, 1986 initially saw L.C. as a patient presenting with complaints of flatulence and constipation. Without performing a physical examination, Respondent on December 12, 1986, ordered an EKG, hair analysis, thermograph of hands and feet, platelet adhesiveness study, circulatory microemboli index, fibrinogen stabilizer tests (ROTS), candida study and a single beam bone densitometer. Respondent prescribed Pantothenic acid, selenium, Grace "E" 400, Pancreatin 8, EVAC, Calcium, Magnesium, SAON EPA, Beta urotene and B6. Respondent's actions violated section 3.08(4)(E) of the Act (prescribing or administering a drug or a treatment that is nontherapeutic in nature or nontherapeutic in the manner administered or prescribed) and section 3.08(18) of the Act, (professional failure to practice medicine in an acceptable manner consistent with public health and welfare).

#### Count III

Respondent between September 1, 1987 and March 14, 1989 treated patients with an "auto immune vaccine" without approval of that vaccine by the Federal Food and Drug Administration (21 USC 355) in violation of the Texas Food Drug and Cosmetics Act (Tex. Rev. Civ. Stat. Ann. art. 4476-5 sections 3(e) and 18) and as such violated section 3.08(4)(A) of the Act (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).

#### Count IV

Respondent, in 1988, placed undated advertisements in an area of his establishment open to the public at McRee Medical Center Inc.,



9910 Long Point Road, Houston, Texas. The advertisements address "A Treatment Program That Ends Back Pain", "Platelet Tests" (specifically the Platelet Adhesiveness Test and The Circulatory Miroemboli Index), and "Chelation: Questions and Answers". Each of these contains a statement that is false, misleading or deceptive in violation of section 3.08 (6) of the Act, advertises the performance of professional service in a superior manner not readily subject to verification in violation of section 3.08(7) of the Act, and also violates Chapter 17 (Deceptive Trade Practices) of the Texas Business and Commerce Code (Vernon's Texas Code Annotated, Bus & C, section 17.12) in that it disseminates a statement materially misrepresenting the character of a service for the purpose of inducing a person to contract with regard to the service. In violating the Business and Commerce Code, Respondent also violated section 3.08(4)(A) of the Act by committing an act in violation of the laws of the State of Texas if the act is connected with the physician's practice of medicine. Statements in each advertisement that fall within the purview of Count IV are specified as follows:

A

"A Treatment Program That Ends Back Pain." The title itself is deceptive in applying no limitation to the statement. In paragraph 4, "The body heals itself as the ligaments are strengthened through a natural healing mechanism known as fibroblastic proliferation, which is induced by the injections." Again no limitation to the amount of healing is given, implying that healing is complete. In paragraph 6, "The injections are safe." No limitation concerning safety is mentioned. In addition to no limitation on the effect of the drug (not revealed), this sentence also implies that the physical act of injection itself will do no nerve damage or cause any other problem. Finally, the last two sentences, "The treatment herein outlined is available in this office. Please make inquiry", serve as evidence of an inducement under the Texas Business and Commerce Code.

B

"Platelet Tests." In paragraph IIA, "The Platelet Adhesiveness

Test tells us how many cells are adhering to the vessel walls and restricting the blood flow through the arteries." This sentence allows no variance based on any other condition of the patient. In paragraph IIB "The Circulation Microemboli Index indicates if a person has an abnormal amount of thromboemboli (blood clots)." Use of Platelet Tests described in "II A" and "B" of this handout are not within the standard of practice in diagnosing conditions set forth in "I" of the handout nor are they within the standard of practice in monitoring therapy of such conditions.

### C

"Chelation: Questions and Answers." Paragraph 3, "90% of persons who have these treatments do as well as, or better than, they would have with bypass surgery." Paragraph 11. "Chelation treatments not only reduced chest pains (angina), but also, in most cases, improve the quality of life without requiring surgery, and at considerably less expense." While the second part of the sentence in Paragraph 11 has at least some limiting factor disclosed, there is no limitation included in the assertion that chelation treatments will reduce chest pains (angina).

### III

The Respondent by his actions, conduct and behavior has violated sections 3.08(4), 3.08(4)(A), 3.08(4)(E), 3.08(6), 3.08(7) and 3.08(18) of the Medical Practice Act of Texas.

The Respondent's violations of sections 3.08(4), 3.08(4)(A), 3.08(4)(E), 3.08(6), 3.08(7) and 3.08(18) of the Act are grounds for cancellation, revocation or suspension of the Respondent's license to practice medicine in the State of Texas pursuant to section 4.01 of the Act.

The Respondent's violation of sections 3.08(4), 3.08(4)(A), 3.08(4)(E), 3.08(6), 3.08(7) 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.

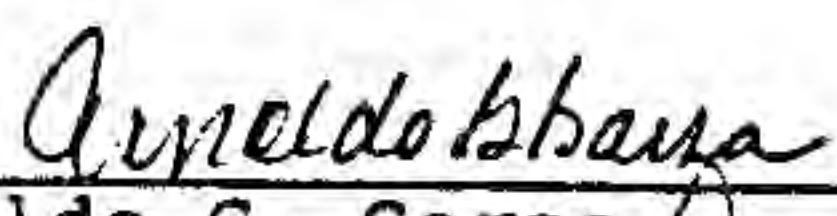
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cancellation, revocation or suspension of the Respondent's Texas medical license or the imposition of other means of discipline may be probated pursuant to section 4.11 of the Act.

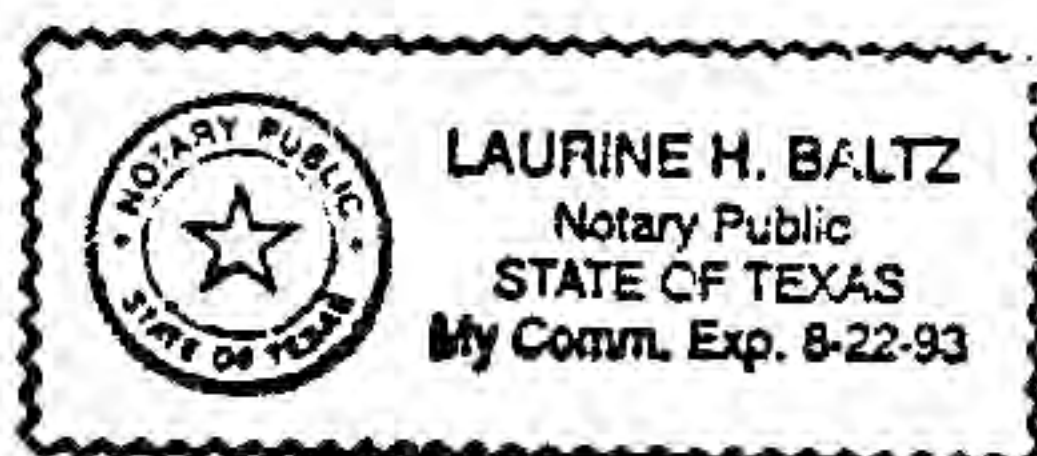
WHEREFORE, PREMISES CONSIDERED, it is prayed that a hearing on this complaint be held before the Texas State Board of Medical Examiners and that the Board enter its order herein to (1) cancel, revoke or suspend the Respondent's medical license; (2) impose other means of discipline, or (3) probate the cancellation, revocation, suspension or the Respondent's Texas medical license, or the imposition of other means of discipline.


Respectfully submitted,

  
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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 16th day of February, 1990.



  
\_\_\_\_\_  
Notary Public, State of Texas

Filed with the Texas State Board of Medical Examiners on this the 16th day of February, 1990.

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