

HEARING CONDUCTED BY THE  
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS  
SOAH DOCKET NO. 503-13-0197.MD  
LICENSE NO. H-9656

IN THE MATTER OF THE  
COMPLAINT AGAINST:  
SUDHEER KAZA, 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 Sudheer Kaza, M.D., ("Respondent"), based on Respondent's alleged violations of the Medical Practice Act ("the Act"), TEX. OCC. CODE ANN., Title 3, Subtitle B, Chapters 151-165, 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. LEGAL AUTHORITY AND JURISDICTION**

1. Respondent is a Texas Physician and holds Texas Medical License No. H-9656.
2. Respondent's license was in full force and effect at all times material and relevant to this Complaint.
3. Respondent received proper notice of Informal Settlement Conferences ("ISC"), which was conducted in accordance with §2001.054(c), GOV'T CODE and §164.004 of the Act. All procedural rules were complied with, including but not limited to, Board Rules 182 and 187, as applicable.
4. No agreement to settle this matter has been reached by the parties.

5. 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:

#### **A. Patient Related Violations:**

**Summary of Allegations-** Respondent prescribed Dilaudid and other controlled substances to four people.<sup>1</sup> Only one of people was his patient and he kept no records for the three non-patients. Respondent non-therapeutically prescribed medications to the four individuals without keeping adequate medical records. Respondent failed to perform or record appropriate physical examination, evaluations, or diagnostic workups. Respondent provided prescriptions without establishing a proper physician-patient relationship.

#### **Patient #1-**

1. Respondent saw Patient # 1 from approximately June 2010 through August 2010. Patient #1 had a significant medical history, including being a known abuser of opiates.
2. Respondent and Patient#1 were close personal friends during the time Respondent provided prescriptions to this individual.
3. Respondent prescribed Dilaudid Vyvanse, Klonopin, Suboxone, and Ativan to Patient#1. These prescriptions included a three month supply of Klonopin in July 2010, 120 Suboxone in July 2010, and a 30-day supply of Ativan and Vyvanse along with Dilaudid in August 2010.
4. Respondent's office was notified on or about July 7, 2010, that Patient #1 was abusing Klonopin and selling it to other individuals. Respondent continued to provide this medication despite the report of diversion.
5. Respondent prescribed Dilaudid because Suboxone was not treating the symptoms of opiate withdrawal.

**Summary of Allegations-** Respondent stated that he could not locate any medical records for three individuals despite acknowledging that he also prescribed Dilaudid to these individuals. Respondent failed to establish a proper physician-patient relationship with these individuals

#### **Patient #2-**

1. Respondent prescribed Suboxone in November 2009 and January 2010 to Patient #2.

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<sup>1</sup> Identification of the patients will be provided by separate document under seal.

2. Respondent prescribed her Dilaudid on or about August 9, 2010, December 6, 2010, December 29, 2010, January 8, 2011, and January 20, 2011, respectively.

3. Respondent has no medical records for this individual.

**Patient #3-**

1. Respondent prescribed Dilaudid to Patient #3 on or about November 17, 2010.

2. Respondent has no medical records for this individual.

**Patient #4-** Respondent prescribed Patient #4 Suboxone or Subutex in November 2009 and January 2010.

1. Respondent prescribed Patient #3 Dilaudid on or about August 9, 2010, December 29, 2010 and January 8, 2010, respectively.

2. Respondent has no medical records for this individual.

**B. Non-Patient Violations:**

**Summary of Allegations-** Respondent violated laws connected to the practice of medicine related to maintaining inventory, maintaining records, maintaining a dispensing log, exceeding patient limits for Suboxone patients, and taking in controlled substances for the purpose of maintaining custody of and dispensing said substances.

1. The DEA investigated Respondent's prescriptions of controlled substances and found numerous violations including Respondent's failure to maintain adequate medical records.

2. Respondent also exceeded the 30-patient limit for prescribing Suboxone without proper authorization, and maintaining custody of controlled substances that were legally issued to a patient.

**C. 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 170, related to the Board's guidelines for the treatment of pain.

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)(D), failure to safeguard against potential complications; 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; 190.8(1)(L), prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with a patient; and 190.8(1)(M), inappropriate prescriptions of dangerous drugs or controlled substances in which there is a close personal relationship.

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.

5. Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's commission of an act that violates any state or federal law if the act is connected with the physician's practice of medicine, specifically, Health and Safety Code.

6. Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's writing prescriptions for or dispensing to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs; or to a person whom the physician should have known was an abuser of the narcotic drugs, controlled substances, or dangerous drugs.

7. Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug or treatment that is non-therapeutic in nature or non-therapeutic in the manner the drug or treatment is administered or prescribed.

8. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's prescribing, administering, or dispensing in a manner inconsistent with public health and welfare dangerous drugs as defined by Chapter 483, Health and Safety Code; or controlled substances scheduled in Chapter 481, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. Section 801 et seq.).

**D. Aggravating Factors:**

Under Texas Administrative Code, Title 22, Part 9, Board Rule 190.15(a), in any disciplinary action, aggravating factors can be considered to 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; and
5. intentional, premeditated, knowing, or grossly negligent act constituting a violation.

**IV. 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.

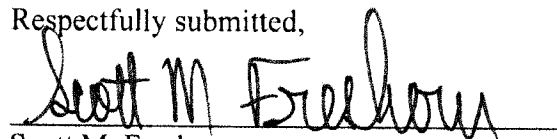
**V. NOTICE TO RESPONDENT**

**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:



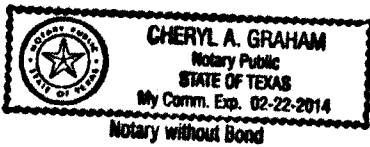
Scott M. Freshour  
State Bar No. 00789299  
Texas Medical Board  
333 Guadalupe, Tower 3, Suite 610  
Austin, Texas 78701  
Telephone: 512-305-7096  
Facsimile: 512-305-7007

THE STATE OF TEXAS

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§  
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COUNTY OF TRAVIS

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



Cheryl A. Graham  
Notary Public, State of Texas

Filed with the Texas Medical Board on this 14<sup>th</sup> day of September, 2012.

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

**CERTIFICATE OF SERVICE**

I certify that on the 18<sup>th</sup> day of September 2012, a true and correct copy of the foregoing complaint document has been served as follows:

**VIA E-MAIL TO: docketing@soah.state.tx.us**

Docket Clerk  
State Office of Administrative Hearings  
William P. Clements Building  
300 West 15<sup>th</sup> Street, Room 502  
Austin, Texas 78701

**Via CMRRR: 7008 2810 0000 1317 5003**

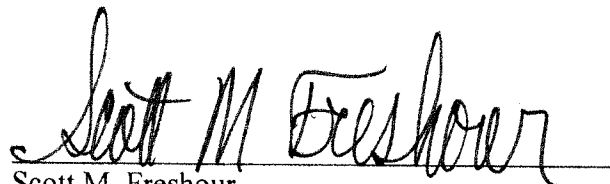
Sudheer Kaza, M.D.  
5734 Spohn Drive  
Corpus Christi, TX 78414  
Respondent

**Via CMRRR: 7008 2810 0000 1318 8195**

Dan Ballard  
Ballard & Simmons  
114 West 7th Street, Suite 650  
Austin, TX 78701  
Attorney for Respondent

**Via Hand Delivery**

Sonja Aurelius  
Hearings Coordinator  
Texas Medical Board  
33 Guadalupe, Tower 3, Suite 610  
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Scott M. Freshour