

**HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-14-1342
LICENSE NO. D-9377**

IN THE MATTER OF THE	§	BEFORE THE
COMPLAINT AGAINST:	§	
STANISLAW R. BURZYNSKI, M.D.	§	TEXAS MEDICAL BOARD

**RESPONDENT'S MOTION FOR CONTINUANCE OF HEARING ON THE MERITS
AND TO MODIFY ORDER NO. 27 AND REQUEST FOR HEARING**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW RESPONDENT, STANISLAW R. BURZYNSKI, M.D., by and through his counsel of record, and files this his Motion for Continuance of the current Hearing on the Merits, set as a bifurcated hearing to begin on November 19, 2015, and Motion to Modify Order No . 27 with respect to the scheduled hearing on the merits, as well as his Request for a Hearing on this Motion. In support thereof, Respondent would respectfully show the ALJ as follows:

1. This matter is currently scheduled for a bifurcated hearing on the merits to begin on November 19, 2015 and continue to November 25, 2015 with the Texas Medical Board Staff's presentation of its case. Respondent's presentation of its case is scheduled to begin on January 19, 2016 and continue to January 29, 2016.
2. As the ALJ is aware, Respondent had been represented, from the inception of this matter, by counsel Richard Jaffe. After a protracted period of representation by Mr. Jaffe, he unexpectedly and without providing notice or explanation to Respondent, filed a Motion to Withdraw as counsel for Respondent on or about July 23, 2015. At the time of the filing of his Motion, Respondent was made aware of Mr. Jaffe's intention

to withdraw upon receiving a copy of the Motion to Withdraw in the mail. Thereafter, on or about August 26, 2015, the ALJ entered Order No. 26 allowing Mr. Jaffe to withdraw as counsel. At that same time, Dan Cogdell was substituted in as counsel for Respondent and Order No. 27 was entered on September 2, 2015. Despite a request that the hearing on the merits be continued to 2016, the Board's counsel Mr. Bukstein opposed the request noting that the Staff's witnesses, both expert and fact witnesses, were scheduled to appear at the hearing and a continuance of the hearing would pose a hardship on its witnesses. At that time, a bifurcated schedule was ordered wherein the Board's Staff would present its direct case November 19-25, 2015, followed by Respondent's case on January 19-29, 2016.

3. Respondent has since retained the undersigned counsel to assist in his representation. The undersigned counsel for Respondent would respectfully request that the ALJ reconsider its Order No. 27 with respect to the hearing on the merits for the following reasons:

- a. Respondent's prior counsel Mr. Jaffe withdrew as counsel without conferring with or notifying Respondent, and without consideration of the pending motions or the November 19, 2015 hearing on the merits.
- b. This matter has been on file with the ALJ since December 11, 2013. Since that time, there has been a significant amount of activity in this matter including the filing of a significant number of Motions. There are a voluminous number of boxes of documents pertaining to this matter that have yet to have been reviewed by the undersigned counsel or by counsel Mr. Cogdell simply due to the brief amount of time Respondent's counsel have been involved in this

matter. The undersigned counsel have only today filed their Notice of Appearance of Co-Counsel on behalf of the Respondent.

- c. The withdrawal of Mr. Jaffe in the eleventh hour of this case and the subsequent actions by Mr. Jaffe certainly cast a shadow and concern regarding his actions in his representation of Respondent in this matter. Additionally, Mr. Jaffe has now filed suit against Respondent in the Bankruptcy Court in an attempt to force an involuntary bankruptcy for the Respondent. It is Respondent's belief that Mr. Jaffe has taken actions to undermine Respondent's position in this case, all of which prejudices Respondent and his ability to properly prepare his defense.
- d. In a very quick and cursory review of the file, received only two (2) days ago by the undersigned counsel, it appears that Mr. Jaffe elected not to depose the Board Staff's two (2) medical experts, Dr. Wetmore and Dr. Fost. Respondent strongly believes that the depositions of these experts is imperative prior to the hearing on the merits. Mr. Jaffe's decisions, for whatever reason they were made, should not prejudice Respondent and his ability to properly prepare his defense in this matter.
- e. It is further abundantly clear that Respondent's former counsel Mr. Jaffe failed to properly conduct discovery on behalf of Respondent. The undersigned counsel believe that some additional discovery, including but not limited to the foregoing depositions, is imperative to their ability to prepare this case for the hearing on the merits.

- f. Finally, Respondent desires to have this case mediated prior to a hearing on the merits in the hope that the pending issues can be resolved amicably with the Medical Board's Staff, as opposed to proceeding to a full trial on the merits.
4. For the reasons set forth above, Respondent would show that, in the interest of fairness and justice, the hearing on the merits, scheduled to begin on November 19, 2015 should be continued. Respondent believes that he can be ready to proceed with the hearing on January 19, 2016, or any day thereafter. As the case has already been set on the ALJ's docket for that date, there is no prejudice to any party to simply begin the hearing on January 19, 2016.
5. Counsel for the Medical Board, Mr. Bukstein, previously represented to the Board that continuing the hearing as currently scheduled would present a hardship to the Board's expert and fact witnesses. Respondent would respectfully request that the ALJ consider the hardship imposed upon Respondent by requiring this case to proceed to the hearing on the merits on November 19, 2015. After all, it is Respondent's medical license that is at issue in this matter. There is no bigger hardship that could be imposed on Respondent than to require him to proceed with the trial on the merits, with new counsel, without having had the opportunity to depose the Medical Board Staff's medical experts and without having had the opportunity to mediate this matter with the Texas Medical Board. Proceeding as scheduled would only serve to prejudice Respondent. In the interest of fairness to Respondent, the current hearing on the merits should be continued.

6. It is the undersigned counsel's belief that several motions seeking a continuance of the hearing on the merits have been filed by both the Medical Board Staff and by Respondent; however, none of the motions filed were for the reasons set forth above.
7. The undersigned counsel has conferred with the Medical Board Staff's counsel Mr. Bukstein regarding the filing of this Motion and Respondent's request for a live hearing on the Motion. Mr. Bukstein and the undersigned counsel are available for a live hearing before the ALJ on Tuesday, October 27, 2015, Wednesday, October 28, 2015 or Friday, October 30, 2015. Respondent would respectfully request that the ALJ afford him the opportunity to discuss this matter with the ALJ at a live hearing.
8. Finally, Respondent would show the Honorable ALJ that this Motion is not filed in an effort to simply delay this matter but solely so that justice may be served and Respondent and his new counsel can properly prepare their case.

Respectfully submitted,

MYERS ♦ DOYLE

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CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with counsel for the Texas Medical Board, Mr. Bukstein, who has advised he is opposed to a continuance of the hearing on the merits.

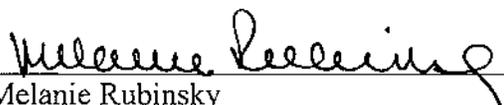
Melanie Rubinsky
Melanie Rubinsky

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of October, 2015 a true and correct copy of the foregoing instrument was served upon counsel for the Texas Medical Board via facsimile transmission and email transmission as follows:

Mr. Lee Bukstein
Attorney in Charge
Texas Medical Board
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*Via Facsimile: (512) 305-7007 and
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