SOAH DOCKET NO. _____

LICENSE NO. E-4598

IN THE MATTER OF THE	§	**BEFORE THE**
	§	
COMPLAINT AGAINST	§	**TEXAS STATE BOARD**
	§	
MICHAEL STEPHEN PHILLIPS, M.D.	§	**OF MEDICAL EXAMINERS**

COMPLAINT

TO THE HONORABLE TEXAS STATE BOARD OF MEDICAL EXAMINERS AND THE HONORABLE ADMINISTRATIVE LAW JUDGE TO BE ASSIGNED:

COMES NOW, the Texas State Board of Medical Examiners ("the Board"), by and through the undersigned attorney of record and files this Complaint against MICHAEL STEPHEN PHILLIPS, M.D. ("Respondent"), based on Respondent's alleged violations of the Medical Practice Act ("the Act"), TEX. OCC. CODE ANN., Subtitle B (Vernon's 2001), and in support of this Complaint and based upon information and belief, would show the following:

I.

The filing of this Complaint against Respondent, MICHAEL STEPHEN PHILLIPS, M.D., and the relief requested herein are necessary to protect the health and safety of the citizens of the State of Texas as mandated by Section 151.003 of the Act.

II.

1. Respondent is a licensed Texas physician.

2. Respondent was issued a Texas medical license by the Board on or about August 23, 1975.

3. Respondent holds Texas medical license E-4598.

4. Respondent's Texas medical license was in full force and effect at all times and dates material and relevant to this Complaint.

5. All jurisdictional requirements have been satisfied.

III.

The allegations in this case arise from multiple malpractice actions against Respondent. Other patients were identified during the investigation who also received substandard care from Respondent.

IV. FACTUAL ALLEGATIONS

Board Staff received information that indicates that the Respondent may have violated the Act. Upon the basis of such information and belief, Board staff files this Complaint and hereby charges and alleges:

COUNT 1

S.K. was a patient of Respondent who was diagnosed with a twin pregnancy. Her expected delivery date was June 7, 1993. During the last month of her pregnancy, S.K. had presented with severe pitting edema and hypertension. Sonogram revealed that Twin A was cephalic in position. Twin B was in a transverse lie. Despite the position of Twin B, Respondent ordered Pitocin to stimulate labor. Respondent delivered twin girls on May 27, 1993. The second baby, Twin B, suffered a fractured right elbow and a crushed spinal cord during a breech delivery with forceps. Because of the spinal cord injury, the infant was virtually paralyzed from the neck down and suffered damage to her respiratory muscles. She died eight months later of respiratory failure.

COUNT 2

C.J. was a 25 year old patient with a lengthy history of very irregular menstruation and oligomenorrhea. On or about September 9, 1989, C.J. presented to Respondent with complaints of nausea and light spotting. She reported her last menstrual period three weeks prior to her visit with Respondent. Without assessing the patient for pregnancy, Respondent prescribed Provera. C.J. later presented to another hospital with an increase in her abdominal pain. It was determined that C.J. had an ectopic pregnancy, which Respondent failed to diagnose.

COUNT 3

T.F. was seen by Respondent in 1990. During the last month of her pregnancy, T.F. presented with elevated blood pressure (diastolic pressures ranging from 90 to 110) and complaints of numbness and tingling of the extremities. During her labor, T.F. was given Pitocin

to stimulate uterine contractions. Respondent applied midforceps, rotated the infants head and tried to force vaginal delivery of the infant. After delivery of the head, the 8 pound 9 ounce infant experienced severe shoulder dystocia and would not deliver. Respondent performed a symphysiotomy (cutting the symphysis pubic bone) and then a C-section. The baby was pronounced dead one hour after birth. Respondent ignored the patient's small size and medical/family history. Respondent further failed to recognize signs of pregnancy induced hypertension.

COUNT 4

A.S. was 20-21 weeks pregnant when spontaneous rupture of membranes occurred. Respondent treated the patient conservatively with bed rest and antibiotics to prevent sepsis, but he did not practice within the standard of care with when he performed a digital examination of the patient's cervix. The infant was stillborn on October 4, 1989.

COUNT 5

D.S. was a patient of Respondent in 1992. She underwent a laparoscopic tubal fulguration performed by Respondent. Postoperatively the patient began to experience abdominal pain. She notified the Respondent of her fever and pain, but he failed to see the patient for 8 days. Respondent noted negative findings on examination, despite a white blood cell count of 21,000 (normal 5000-10,000). He prescribed an antibiotic.

Four days later, the patient's symptoms worsened and she went to another physician. She required hospitalization to drain an abdominal abscess and hematomas. The patient ultimately required a total hysterectomy.

COUNT 6

T.F. was a 28 year old pregnant patient found to be hyperglycemic, yet received no follow-up from Respondent for possible gestational diabetes. At term, she was induced for macrosomia (abnormally large body size). Respondent attempted to deliver a 9 pound 7 ounce baby using vacuum extraction. Severe shoulder dystocia occurred and fetal distress resulted. Respondent attempted a symphysiotomy to deliver the baby abdominally. The baby died three days later. Prenatal records do not indicate that pelvic measurements were ever taken. Respondent failed to anticipate and recognize severe cephalopelvic disproportion. Respondent failed to recognize fetal distress and intervene appropriately in the labor process.

COUNT 7

S.D. had a term pregnancy with breech presentation. Respondent inappropriately administered Pitocin to stimulate labor, knowing it was contraindicated in a breech presentation. Respondent performed and assisted breech extraction for delivery of the infant. Decelerations of fetal heart tones were noted at the end of labor. Respondent inappropriately used Pitocin to stimulate labor in this patient with a breech presentation and failed to recognize fetal distress.

COUNT 8

M.S. underwent a repeat C-section for cephalopelvic disproportion after a failed vaginal delivery attempt. After delivery, the patient experienced uterine atony and required an emergency D & C (dilatation & curettage) and transfusion of 6 units of blood. She finally required a total hysterectomy due to uncontrollable hemorrhaging. The labor record indicates that Respondent had allowed the patient to push for a very lengthy period of time prior to intervening with C-section. The prolonged period of the second stage of labor additionally resulted in fetal distress.

COUNT 9

Disciplinary action was initiated at Baylor Richardson Medical Center against Respondent's privileges. In April 1995, the Medical Executive Committee reviewed recommendations of the OB/GYN Department and an independent consultant regarding problems identified with Respondent's patient care, including performing symphysiotomies and cesarean sections in inappropriate circumstances. The Committee recommended probation for not less than 2 years with complete chart review, a course in high risk obstetrics, and several restrictions on his practice, including prohibition from performing symphysiotomies and performing cesarean sections in deliveries with a nonreplaceable head. Respondent left the hospital prior to resolution of the recommendations by the Committee. Respondent then moved away from Dallas to prevent final action on the disciplinary proceeding.

V.

It is further alleged that the Respondent's conduct, including actions and/or omissions, as described above, individually and collectively, constitute grounds for the Board to revoke or suspend the Respondent's Texas medical license or to impose any other authorized means of discipline upon the Respondent pursuant to Sections 164.051(a)(1), 164.051(a)(6), 164.051(a)(7), 164.052(a)(5), 164.053(a)(5), 164.001, and 165.001 of the Act.

VI.

Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against a physician who commits and act prohibited under section 164.052 of the Act.

VII.

Section 164.051(a)(6) authorizes the Board to take disciplinary action against a physician who fails to practice medicine in an acceptable professional manner consistent with public health and welfare.

VIII.

Section 164.051(a)(7) authorizes the Board to take disciplinary action against a physician based on being removed, suspended, or subject to disciplinary action taken by the person's peers in a local, regional, state or national medical association or society, or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if that action, in the opinion of the Board, was based on unprofessional conduct or professional incompetence that was likely to harm the public; and was appropriate and reasonably supported by evidence submitted to the Board. Action taken by a professional medical association, society, or hospital medical staff does not constitute state action.

IX.

Section 164.052(a)(5) of the Act authorizes the Board to discipline a licensed Texas physician for commission of unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public.

X.

Section 164.053(a)(5) of the Act defines a prohibited act to include prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.

XI.

Section 164.001 of the Act authorizes a range of disciplinary actions against a licensed Texas physician for committing any of the conduct set forth in Sections 164.051 through 164.054 of the Act.

XII.

Section 165.001 of the Act authorizes the imposition of an administrative penalty for a violation of the Act or rule of the Board. Section 165.003 of the Act authorizes the amount of the administrative penalty, which may not exceed $5,000 for each violation and every day a violation continues or occurs.

XIII.

Respondent's actions as described above, are grounds, individually and collectively, for the Board to enter an Order in regard to Respondent and Respondent's medical license pursuant to Sections 164.051(a)(1), 164.051(a)(6), 164.051(a)(7), 164.052(a)(5), 164.053(a)(5), 164.001 and 164.003 of the Act.

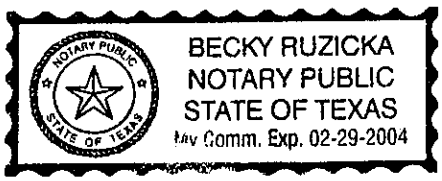
WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a contested case hearing on the merits of this Complaint be held and that upon the trial of the matters asserted herein, the Honorable Administrative Law Judge issue a Proposal for Decision ("PFD") which reflects Respondent's violation of the Act as set forth in this Complaint, and that, following issuance of the PFD, the Texas Board enter an Order to revoke or suspend Respondent's medical license, and in the event Respondent's medical license is not revoked or suspended, it is prayed that other means of discipline be imposed.

Respectfully submitted,

Jean M. DeLoach, J.D., Staff Attorney
State Bar of Texas Number: 05652600
Texas State Board of Medical Examiners
P.O. Box 2018
Austin, Texas 78768-2018
(512) 305-7071
(512) 305-7007 (fax)

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

SUBSCRIBED AND SWORN to before me by the said Jean M. DeLoach on this 24th day of April, 2002.



Becky Ruzicka
Notary Public, State of Texas

Filed with the Texas State Board of Medical Examiners on this the 24th day of April, 2002.

Jerry Walker
Deputy Executive Director Texas
State Board of Medical Examiners

CERTIFICATE OF SERVICE

I hereby certify that on this the 24th day of April, 2002, a true and correct copy of the foregoing Complaint has been served on the following individuals at the locations and the manner indicated below as required by 1 TEX. ADMIN. CODE Section 155.25:

Jean M. DeLoach, Staff Attorney

VIA TELEFAX TRANSMISSION TO: 475-4994
Docket Clerk
State Office of Administrative Hearings
William P. Clements Bldg.
300 West 15th Street, Suite 504
P.O. Box 13025
Austin, Texas 78711

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Michael Stephen Phillips, M.D.
2500 N. Esplanade, Suite 105
Cuero, Texas 77954

VIA HAND-DELIVERY
Hearings Coordinator
Texas State Board of Medical Examiners
333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701