

LICENSE NO. J-8358

IN THE MATTER OF
THE COMPLAINT AGAINST
SERGIO MANUEL RODARTE-ROJAS, M.D.

BEFORE THE
TEXAS STATE BOARD OF
MEDICAL EXAMINERS

AGREED ORDER

On the 12 day of December, 2003, came on to be heard before the Texas State Board of Medical Examiners ("the Board" or "the Texas Board"), duly in session, the matter of the license of SERGIO MANUEL RODARTE-ROJAS, M.D. ("Respondent").

On June 18, 2003, Respondent appeared in person, with counsel Tony Cobos, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. Walter Mosher represented Board Staff. The Board's Representatives were Janet Tornelli-Mitchell, M.D., a member of the Board, and Phyllis Strother, a member of the District Review Committee.

Upon the recommendation of the Board's Representatives and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order.

FINDINGS OF FACT

The Board finds that:

1. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under TEX. OCC. CODE ANN. Title 3, Subtitle B (Vernon's 2002) (the "Act") or the Rules of the Board.
2. Respondent currently holds Texas Medical License No.J-8358. Respondent was originally issued this license to practice medicine in Texas on August 19, 1995. Respondent is also licensed to practice in the state of Pennsylvania.

3. Respondent is primarily engaged in the practice of psychiatry. Respondent is not certified in this specialty.

4. Respondent is 63 years of age.

5. Respondent has not previously been the subject of disciplinary action by the Board.

6. On June 15, 2002 Respondent entered into a business arrangement for approximately three months that allowed an unlicensed individual to perform and evaluate electromyography tests on patients without Respondent personally examining the patient. The evidence also suggested that the unlicensed individual used Respondent's billing identifier without permission to bill healthplans for the services provided.

7. Respondent maintains that he was under the impression that unlicensed individual (who held himself out as a neurophysiologist) was credentialed and qualified to perform the testing. Further, Respondent asserts that upon discovering that the unlicensed individual was engaged in an unauthorized practice, Respondent immediately discontinued the arrangement. Finally, Respondent maintains that he had no knowledge, either direct or constructive, relating to the unlicensed individual's unauthorized use of Respondent's billing identifier and that he would have taken corrective action had he known of the unauthorized use.

8. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent's cooperation, through consent to this Agreed Order, pursuant to the provisions of Section 164.002 the Act, will save money and resources for the State of Texas. To avoid further investigation, hearings, and the expense and inconvenience of litigation, Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions. By entering into this Agreed Order, however, Respondent admits no intentional misconduct with regard to any allegations related to this case and maintains that violations of the Medical Practice Act, if any, were due to mistake, oversight, or misunderstanding.

CONCLUSIONS OF LAW

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

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.
2. 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.
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.
4. Section 164.052(a)(17) of the Act prohibits licensed physicians from directly or indirectly aiding or abetting the practice of medicine by any person, partnership, association, or corporation that is not duly licensed to practice medicine by the Board.
5. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.
6. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.
7. Section 164.002(d) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that this Agreed Order shall constitute a PUBLIC REPRIMAND of Respondent, and that Respondent is hereby reprimanded. The Board FURTHER ORDERS that the Respondent's shall comply with the following terms and conditions upon the date of the signing of this Agreed Order by the presiding officer of the Board:

1. Within one (1) year following the signing of this Order by the presiding officer of the Board, Respondent shall take and pass with a score of 75 or above the Medical Jurisprudence Examination (JP Exam) given by the Texas State Board of Medical Examiners. Respondent is allowed three (3) attempts to successfully pass this examination.
2. Respondent's failure to take and pass the JP Exam within three (3) attempts within one (1) year following the signing of this Order by the presiding officer of the Board shall constitute a violation of this Agreed Order. After a committee of the Board, or a panel of Board representatives, has considered the information related to Respondent's violation of this provision and has determined that Respondent has not fulfilled the requirements of this provision, Respondent's medical license shall be immediately suspended pursuant to correspondence to Respondent from the Executive Director or Secretary-Treasurer of the Board indicating that a committee of the Board, or a panel of Board representatives, has considered the information related to Respondent's violation of this provision and has determined that Respondent has not fulfilled the requirements of this provision. Although Respondent shall be invited to provide information or testimony to the committee of the Board, or the panel of Board representatives, Respondent specifically waives any administrative due process under the Medical Practice Act, or the Administrative Procedure Act, for the committee of the Board, or the panel of Board representatives, to consider this information. THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE MEDICAL PRACTICE ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS. Respondent shall be notified of any such suspension by certified mail, return receipt requested to Respondent's last known address on file with the

Board. If Respondent's license is suspended on such a basis, the suspension shall remain in effect until such time as Respondent takes and passes the JP Exam and subsequently appears before the Board in person and provides sufficient evidence which, in the discretion of the Board, is adequate to show that Respondent possesses the skills and knowledge to safely practice in Texas and is otherwise physically and mentally competent to resume the practice in this state.

3. Respondent shall pay an administrative penalty in the amount of two thousand five hundred dollars (\$2500) dollars within sixty (60) days of the signing of this Order by the presiding officer of the Board.

4. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas State Board of Medical Examiners and shall be submitted to the Director of Compliance for the Board for routing so as to be remitted to the comptroller of Texas for deposit in the general revenue fund.

5. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board as provided for in the Act, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

6. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent's practice.

7. Respondent shall fully cooperate with the Board and the Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Order. Failure to fully cooperate shall constitute a violation of this order and a basis for disciplinary action against Respondent pursuant to the Act.

8. Respondent shall inform the Board in writing of any change of Respondent's mailing or practice address within ten days of the address change. This information shall be submitted to

the Permits Department and the Director of Compliance for the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

9. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, and to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, SERGIO MANUEL RODARTE-ROJAS, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 11-22-03, 2003.


SERGIO MANUEL RODARTE-ROJAS, M.D.
RESPONDENT

STATE OF Texas
COUNTY OF El Paso

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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 11th day of November, 2003.



[Handwritten Signature]
Signature of Notary Public

Elizabeth Zamora
Printed or typed name of Notary Public
My commission expires April 22, 2006

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 12 day of December, 2003.

[Handwritten Signature]
Lee S. Anderson, M.D., President
Texas State Board of Medical Examiners