

LICENSE NO. H-0378

IN THE MATTER OF
THE LICENSE OF
ELISA GARZA SANCHEZ, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 8TH day of APRIL, 2011, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Elisa Garza Sanchez, M.D. ("Respondent").

On September 9, 2010, Respondent appeared in person, with counsel Victoria Soto, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. The Board's representatives were Carlos L. Gallardo, and Kathy C. Flanagan, M.D., both members of District Review Committees. Kyle Smith represented Board staff.

BOARD CHARGES

Board Staff originally charged that Respondent demonstrated unprofessional conduct when she attempted to restrain a combative patient.

The Board's Expert Panel determined that Respondent met the standard of care (SOC) for the patient.

BOARD HISTORY

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

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

FINDINGS

The Board finds the following:

1. General Findings:

- a. 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 the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the "Act") or the Rules of the Board.
- b. Respondent currently holds Texas Medical License No. H-0378. Respondent was originally issued this license to practice medicine in Texas on December 3, 1986. Respondent is not licensed to practice in any other state.
- c. Respondent is primarily engaged in the practice of psychiatry. Respondent is board certified by the American Board of Psychiatry, a member of the American Board of Medical Specialties.
- d. Respondent is 54 years of age.

2. Specific Panel Findings:

a. Standard of Care:

- i. Respondent was on the way out of the hospital when asked by a nurse to help provide assistance with a 10 year old male patient. The nurse was attempting to restrain the Patient who was out of control.
- ii. The Patient was lying on a mattress, spitting, using foul language, and kicking and screaming, while having his arms held by a technician and his legs restrained by two nurses.
- iii. Respondent took a paper towel, folded it in half and placed it on or in his mouth. Respondent claims that she was using it to wipe Patient's mouth.
- iv. A portion of the paper towel got into the Patient's mouth and he immediately spit it out.
- v. Respondent claims that if the behavior had continued unabated it would have presented a high risk of injury and even death to the patient.

vi. After the incident, the child's mother requested that Respondent continue acting as her child's treating physician, even after Respondent told her she had the option to choose another physician.

b. **Medical Record Keeping:**

- i. Respondent had treated the patient previously and, despite his having continued assaultive behaviors, no progress notes documented a mental status exam concerning safety.
- ii. Respondent had noted in more than one progress note that the patient required "restraining" due to temper tantrums, and throwing things, but the notes had no other specific details. Respondent alleges that she was not present at those incidents.
- iii. Respondent's documentation is lacking in basic objective data for a patient admitted after he had threatened to kill his newborn sister and with continued assaultive behaviors on the ward.
- iv. Respondent's documentation of the restraint lacked necessary completeness.

c. Respondent's actions are inconsistent with: Title 37 Texas Administrative Code Sec. 97.23 - Physical Restraint; Title 25 Texas Administrative Code Sec. 448.706 - Restraint and Seclusion; Joint Commission Board of Commissioners, "Facts About the 2008 National Patient Safety Goals"; and Center for Medicare and Medicaid Services, Standards for Restraints.

3. **Mitigating Factors:**

In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:

- a. Respondent immediately acknowledged that her action was inconsistent with hospital guidelines and protocols for restraints.
- b. The situation appeared to be something not previously experienced by Respondent and hospital staff.

- c. The child did not experience any physical harm nor manifested any emotional or psychological damage as a result of the restraint and the Respondent's placing the napkin over his mouth.
- d. 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.

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 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a Board rule, specifically Board Rule 165.1, which requires the maintenance of adequate medical records.
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 as further defined by Board Rule 190.8(1)(A), failure to treat patient according to the generally accepted standard of care; 190.8(1)(C), failure to use proper diligence in one's professional practice;
4. 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.
5. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.
6. 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 Respondent shall be subject to the following terms and conditions:

1. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 8 hours of continuing medical education (CME) approved for Category I credits by the American Medical Association in the topic of medical record-keeping, and at least 16 hours of CME in the topic of child and adolescent psychiatry. All CME is to be approved in writing in advance by the Compliance Division of the Board. To obtain approval for the course, Respondent shall submit in writing to the Compliance Division of the Board information on the course, to include at least a reasonably detailed description of the course content and faculty, as well as the course location and dates of instruction. Respondent shall submit documentation of attendance and successful completion of this requirement to the Compliance Division of the Board on or before the expiration of the time limit set forth for completion of the course. The CME requirements set forth in this paragraph shall be in addition to all other CME required for licensure maintenance.

2. Respondent shall pay an administrative penalty in the amount of \$2,000 within 60 days of the date of the entry of this Order. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas Medical Board and shall be submitted to the Board for routing so as to be remitted to the Comptroller of Texas for deposit in the general revenue fund. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

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

4. 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.

5. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within 10 days of the address change. This information shall be submitted to the Registration Department and the Compliance Department of 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. Respondent agrees that 10 days notice of a Probationer Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent waives the 30-day notice requirement provided by §164.003(b)(2) of the Medical Practice Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code §187.44(4).

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

7. Respondent shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants.

8. This Order shall automatically terminate upon Respondent's submission of sufficient evidence to the Compliance Division of the Board that Respondent successfully completed the requirements ordered in Ordering Paragraph Nos. 1 and 2.

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.

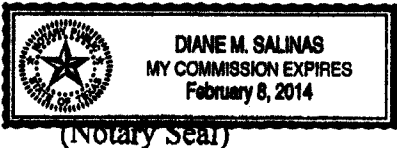
I, ELISA GARZA SANCHEZ, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 3.28.11, 2010.

Elisa Garza Sanchez M.D.
ELISA GARZA SANCHEZ, M.D.
Respondent

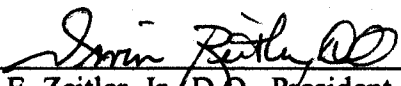
STATE OF TEXAS §
COUNTY OF HIDALGO §
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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 28th day of March, 2010.



Diane M. Salinas
Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
8TH day of APRIL, 2011.



Irvin E. Zeitler, Jr. D.O., President
Texas Medical Board