

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-17-2467
TEXAS MEDICAL LICENSE NO. J-0080

IN THE MATTER OF THE
COMPLAINT AGAINST
MARSHALL BRENT LUCAS, M.D.

BEFORE THE

STATE OFFICE OF
ADMINISTRATIVE HEARINGS

BOARD STAFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE TEXAS MEDICAL BOARD AND THE HONORABLE
ADMINISTRATIVE LAW JUDGE REBECCA SMITH:

The Staff of the Texas Medical Board (the Board) files this **Board Staff's First Amended Complaint** against Marshall Brent Lucas, M.D. (Respondent), for alleged violations of the Medical Practice Act (the Act), Title 3, Subtitle B, Texas Occupations Code, and would show the following:

I. SUMMARY OF FACTUAL ALLEGATIONS

Respondent failed to timely respond to a patient's written request for copies of her medical records or, in the alternative, disclosed a patient's confidential information without adequate consent.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a Texas physician and holds Texas Medical License No. J-0080, which was originally issued by the Board on December 4, 1991. Respondent's license was in full force and effect at all times material and relevant to this Complaint.

2. Respondent received notice of one or more Informal Settlement Conferences (ISC). The Board complied with all procedural rules, including but not limited to, Board Rules 182 and 187, as applicable.

3. No agreement to settle this matter has been reached by the parties.

4. All jurisdictional requirements have been satisfied.

5. 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.

III. APPLICABLE STATUTES AND STATUTORY VIOLATIONS

The following Statutes, Rules, and Agency Policy are applicable to the procedures for conduct of the hearing this matter:

A. General Statutes and Rules:

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, Ch.187 sets forth the procedures adopted by the Board under the requirement of Section 164.007(a) of the Act.

3. 22 Tex. Admin. Code, Ch. 190 sets forth aggravating factors that warrant more severe or restrictive action by the Board.

4. 1 Tex. Admin. Code, Ch. 155 sets forth the rules of procedure adopted by SOAH for contested case proceeding.

5. 1 Tex. Admin. Code, Ch. 155.507, requires the issuance of a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law.

6. 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.

B. Specific Violations Cited:

Respondent has violated one or more of the following provisions of the Act:

1. Section 159.005 of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to comply with the requirements of a consent for the release of confidential information.

2. Section 159.006(a), (d), (e) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to timely release medical records or provide notification of denial within 15 business days following receipt of a written consent for release of confidential information.

3. Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act prohibited under Section 164.052 of the Act.

4. 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 165.2(a)-(b), failure to release medical records pursuant to a written release within 15 business days following receipt of request.

5. 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)(C), failure to use proper diligence in one's professional practice.

6. 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, as provided by Section 164.053, or injure the public, and further defined by Board Rule 190.8(2)(L), failure to timely respond to communications from a patient.

7. Section 164.053(a)(8) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to supervise adequately the activities of those acting under Respondent's supervision.

IV. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges:

1. On August 27, 2010, the Board entered an **Order Imposing Administrative Penalty** against Respondent for failing to timely update his practice address in violation of Tex. Occ. Code 164.051(a)(3) and 22 Tex. Admin. Code § 165.5, 173.3, and 166.1(d).

2. Respondent owns and operates Family Psychiatry of the Woodlands (Clinic).

3. Patient One began receiving treatment at the Clinic in the Spring of 2011.

4. The Clinic has a form called "Consent for Confidential Information (Consent)". The Consent allows patients to authorize the Clinic to either "Obtain Records From" another provider or "Release Records To" another provider/individual.

5. On or about November 2, 2015, Patient One signed and submitted a Consent requesting copies of her medical records.

6. Patient One put her own contact information in the "Release Records To" section of the Consent.

7. Patient One checked every box on the Consent specifying which records to release, including the box marked **ALL RECORDS**.

8. Patient One wrote on the Consent that the purpose of her request was to obtain copies for her "personal records".

9. Patient One left the "Obtain Records From" section of the Consent blank because she "figured it was pretty darn obvious who they were obtaining them from."

10. Attached to the Consent was a cover page that stated the following:

To whom it may concern,

Please find enclosed the original signed and witnessed release of information. **I am hereby making a request for a complete and accurate copy of my medical records. I am requesting the entire file.**

11. Respondent personally reviewed the Consent and denied the request.

12. Respondent failed to respond within 15 days, either to release the requested records or to provide written notification that he would not release the records.

13. Respondent claims that he directed his staff to follow up with Patient One at the time; however, no one from the Clinic contacted Patient One.

14. Approximately 65 days after receiving the Consent, upon learning that the Board had initiated an investigation, Respondent directed his staff to make copies of Patient One's medical records available at the front desk, but he did not contact Patient One to make her aware that they were available for pick up.

15. Respondent stated that, in his mind, Patient One could've called if she wanted to find out that he had now made her records available for pick up at the front desk.

16. Respondent's refusal to release Patient One's medical records or notify her of his refusal to release the records within 15 days, failure to adequately supervise his staff, and failure to timely communicate with Patient One about the Consent violates the Act and Board Rules, specifically:

Section 159.006(a), (d), (e) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to timely release medical records or provide notification of denial within 15 business days following receipt of a written consent for release of confidential information.

Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act prohibited under Section 164.052 of the Act.

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 165.2(a)-(b), failure to release medical records pursuant to a written release within 15 business days following receipt of request.

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)(C), failure to use proper diligence in one's professional practice.

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, as provided by Section 164.053, or injure the public, and further defined by Board Rule 190.8(2)(L), failure to timely respond to communications from a patient.

Section 164.053(a)(8) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to supervise adequately the activities of those acting under Respondent's supervision.

17. Respondent later claimed that he was statutorily prevented by Tex. Occ. Code § 159.005 from releasing Patient One's records pursuant to the Consent because she failed to fill in the "Obtain Records From" section.

18. Yet, on or about September 7, 2016, approximately 310 days after Patient One submitted the Consent, Respondent release Patient One's medical records pursuant to the Consent.

19. Respondent's failure to timely communicate with Patient One for 310 days in response to the Consent, and in the alternative, release of Patient One's confidential information pursuant to an invalid Consent, violates the Act and Board Rules, specifically:

Section 159.005 of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to comply with the requirements of a consent for the release of confidential information.

Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act prohibited under Section 164.052 of the Act.

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)(C), failure to use proper diligence in one's professional practice.

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, as provided by Section 164.053, or injure the public, and further defined by Board Rule 190.8(2)(L), failure to timely respond to communications from a patient.

V. AGGRAVATING AND MITIGATING FACTORS

Board Rule 190.14(1) provides that the Board may impose more restrictive sanctions when there are multiple violations of the Act.

Board Rule 190.15 provides that the Board may consider aggravating factors that warrant more severe or restrictive disciplinary action. This case includes the following aggravating factors: (1) harm to one or more patients; (5) increased potential for harm to the public; (6) attempted concealment of the act constituting a violation; (7) intentional, premeditated, knowing, or grossly negligent act constituting a violation; and, (11) other relevant circumstances increasing the seriousness of the misconduct.

Board staff is aware of no mitigating factors that apply and demand that Respondent submit proof to substantiate any alleged mitigating factors.

VI. PRAYER

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 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,

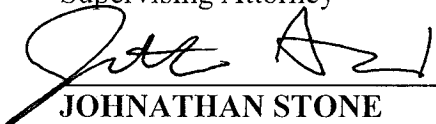
TEXAS MEDICAL BOARD

CHRISTOPHER PALAZOLA

Litigation Manager

SUSAN RODRIGUEZ

Supervising Attorney

A handwritten signature in black ink, appearing to read "Johnathan Stone", is written over a horizontal line.

JOHNATHAN STONE

Senior Staff Attorney

Lead Counsel

State Bar No. 24071779

Texas Medical Board

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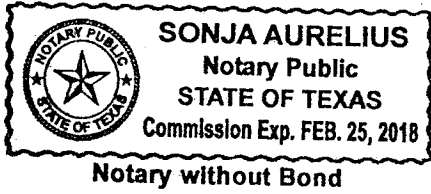
ATTORNEYS FOR THE BOARD

THE STATE OF TEXAS

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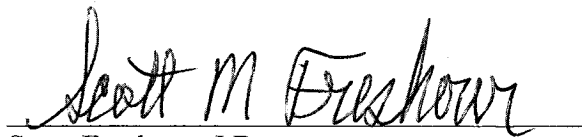
COUNTY OF TRAVIS

SUBSCRIBED AND SWORN to before me by the said Johnathan Stone on August
11, 2017.



Sonja Aurelius
Notary Public, State of Texas

Filed with the Texas Medical Board on August 10th, 2017.

A handwritten signature in cursive script that reads "Scott M. Freshour". The signature is written in black ink and is positioned above a horizontal line.

Scott Freshour, J.D.
Interim Executive Director
Texas Medical Board

CERTIFICATE OF SERVICE

I certify that on August 11, 2017, a true and correct copy of the foregoing document has been served as follows:

By SOAH Electronic Upload to:

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

**By CMRRR NO. 7014 2870 0000 3055 7953, and
By First Class Mail to:**

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Respondent

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/s/ Johnathan Stone
JOHNATHAN STONE
Senior Staff Attorney
Lead Counsel