

**HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-18- 1065 .MD
TEXAS MEDICAL LICENSE NO. D-7315**

**IN THE MATTER OF THE
COMPLAINT AGAINST**

EARL MARTIN STENGER, M.D.

BEFORE THE

THE TEXAS MEDICAL BOARD

COMPLAINT

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

The Staff of the Texas Medical Board (the Board) files this Complaint against Earl Martin Stenger, M.D. (Respondent), for alleged violations of the Medical Practice Act (the Act), Texas Occupations Code, Title 3, Subtitle B, Chapters 151 to 165 and would show the following:

I. SUMMARY OF FACTUAL ALLEGATIONS

The Board alleges that Respondent violated an Order of the Board.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a Texas Physician and holds Texas Medical License No. D-7315 that was originally issued on August 21, 1971. 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.

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, CHAPTER 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, CHAPTER 190 sets forth aggravating factors that warrant more severe or restrictive action by the Board.
4. 1 TEX. ADMIN. CODE, CHAPTER 155 sets forth the rules of procedure adopted by SOAH for contested case proceedings.
5. 1 TEX. ADMIN. CODE, CHAPTER 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 187.37(d)(2) and Board Rule 190 et. seq., provides 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 the Act and Board Rules.

1. 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.
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 rule adopted under this Act, specifically Board Rule 189.3(a)(1), requiring a Probationer to comply with all the terms and conditions of an Order.

3. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public, as further defined by Board Rules 189.8(c)(1), failure to comply with a term or condition in an order, and 190.8(2)(A), violating a Board order.

IV. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges:

1. On November 13, 2013, the Board entered an Agreed Order requiring that Respondent complete the Knowledge, Skills, Training, Assessment, and Research (KSTAR) program offered by the Texas A&M Health Science Center Rural and Community Health Institute, and appear before a panel of the Board to discuss the results. The action was based upon standard of care violations and inadequate medical records relating to one patient.

2. On August 28, 2015, the Board entered an Agreed Order modifying the November 2013 Order by requiring: that Respondent enroll in a residency program as recommended by KSTAR; that he enroll in and start working towards completing all CMEs recommended by KSTAR; and that he complete a physical examination as recommended by KSTAR.

3. The Ordering Paragraphs of the 2013 Order as modified by the 2015 Order were based on recommendations made for Respondent in his KSTAR Assessment and Final Report.

4. The recommendations included undergoing physical and neuropsychological assessments, and receiving remedial education through continuing medical education and through a minimum of six months training in a psychiatry residency program.

5. KSTAR recommended Respondent transition out of practice if he is unable to complete the recommendations of the assessment.

6. Ordering Paragraph No. 11 of the 2013 Order as modified by the 2015 Order requires that Respondent enroll in the residency program as recommended by KSTAR within 120 days.

7. Respondent is in violation of Ordering Paragraph No. 11 because he has failed to enroll in a mini-residency program in psychiatry.

8. Respondent's failure to comply with the terms and conditions of the 2013 Order as modified by the 2015 Order is a violation of the Act and/or Board Rules, specifically:

- a. 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.
- b. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a rule adopted under this Act, specifically Board Rule 189.3(a)(1), requiring a Probationer to comply with all the terms and conditions of an Order.
- c. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public, as further defined by Board Rules 189.8(c)(1), failure to comply with a term or condition in an order, and 190.8(2)(A), violating a Board order.

V. AGGRAVATING AND MITIGATING FACTORS

Board Rule 190.14 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 aggravating factor of increased potential for harm to the public. This case includes the following aggravating factors:

1. Increased potential for harm to the public;
2. Prior similar violations; and
3. Previous disciplinary action by the board, any government agency, peer review organization, or health care entity, to wit:

- On April 14, 1989, the Board entered an Agreed Order imposing certain terms and conditions, and requiring: that Respondent only provide treatment after an evaluation or in a medical emergency; that he maintain adequate medical records; that he keep copies of all controlled substance prescriptions; and that he prescribe therapeutically with several limitations. The action was based upon prescribing to two employees, improper disposal of unused medications, and the use of nitrous oxide in certain therapies.
- On October 13, 1995, the Board entered an Agreed Order suspending Respondent's license, followed by automatic revocation on January 1, 1996. This action was based upon Respondent's conviction for fraudulent billing and federal tax fraud.

- On February 7, 1998, the Board entered an Agreed Order reinstating and restricting Respondent's license and imposing certain terms and conditions for a period of ten years, and requiring: that he pass the Special Purpose Examination (SPEX); that he limit his medical practice to an approved institutional setting with no billing responsibilities; that he not apply for or possess hospital privileges; that he comply with the terms and conditions related to his criminal conviction; that he not possess, prescribe or administer controlled substances or dangerous drugs; that he complete 100 hours of approved community service per year; that he complete at least 50 hours of Continuing Medical Education (CME) per year; that he complete 12 hours of CME in ethics; that he provide a copy of the order to his supervisor and ensure quarterly reports are submitted to the Board; and that his practice be monitored by a practice monitor.
- On February 9, 1999, the Board entered an Order suspending Respondent's license for failure to pass the SPEX exam as required by the 1998 Order.
- On April 10, 1999, the Board entered a superseding Agreed Order terminating the suspension of Respondent's medical license and imposing certain terms and conditions for a period of ten years, and requiring: that he pass the SPEX within two years or obtain board certification in psychiatry or pass the Psychiatry Residents in Training Examination; that he limit his medical practice to an approved institutional setting; that he refrain from applying, possessing or retaining hospital privileges; that he comply with all terms and conditions related to his criminal convictions; that he maintain a logbook of all prescriptions written for controlled substances or dangerous drugs; that he obtain at least 50 hours of CME per year; that he provide a copy of the order to his supervisor and ensure quarterly reports are submitted to the Board; and that his practice be monitored by a practice monitor.
- On August 26, 2011, the Board entered a Corrective Order requiring that Respondent complete four hours of CME in risk management and four hours of CME in medical recordkeeping. The action was based upon Respondent's failure to maintain adequate medical records for one patient to whom he was prescribing Xanax, and failing to effectively communicate with that patient's social worker.
- On June 14, 2013, the Board entered an Agreed Order imposing certain terms and conditions, and requiring: that Respondent's practice be monitored for eight cycles; and

that he obtain eight hours of pre-approved, in-person CME in medical recordkeeping within one year. The action was based upon violations relating to standard of care, prescribing and medical recordkeeping for one patient, who he was treating for anxiety.

Board staff is not aware of any mitigating factors that apply and demands that Respondent submit proof to substantiate any alleged mitigating factors.

VI. NOTICE TO RESPONDENT

IF YOU DO NOT FILE A WRITTEN ANSWER TO THIS COMPLAINT WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS AFTER THE DATE OF RECEIPT, A DEFAULT ORDER MAY BE ENTERED AGAINST YOU, WHICH MAY INCLUDE THE DENIAL OF LICENSURE OR ANY OR ALL OF THE REQUESTED SANCTIONS, INCLUDING THE REVOCATION OF YOUR LICENSE. A COPY OF ANY ANSWER YOU FILE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS SHALL ALSO BE PROVIDED TO THE HEARINGS COORDINATOR OF THE TEXAS MEDICAL BOARD.

VII. 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 and Board Rules as set forth in this Complaint.

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Respectfully submitted,

TEXAS MEDICAL BOARD

CHRISTOPHER M. PALAZOLA
Litigation Manager

SUSAN RODRIGUEZ
Supervising Attorney

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THE STATE OF TEXAS

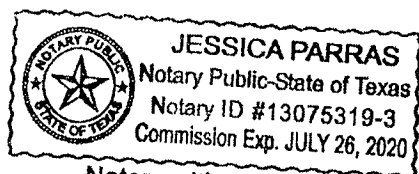
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COUNTY OF TRAVIS

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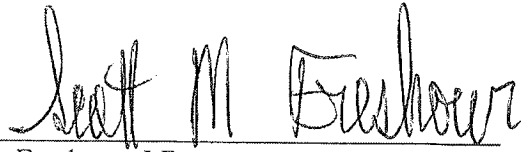
SUBSCRIBED AND SWORN to before me by the said Susan Rodriguez, J.D., on
November 20, 2017.



Notary without Bond

Jessica Parras
Notary Public, State of Texas

Filed with the Texas Medical Board on Nov 16th, 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 the 20th day of November, 2017, a true and correct copy of the foregoing document has been served as follows:

BY CMRRR NO 7008 2810 0000 1412 0590:

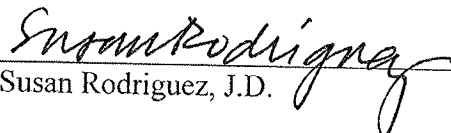
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Susan Rodriguez, J.D.