

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-18- 5383 .MD
TEXAS MEDICAL LICENSE NO. G-3541

IN THE MATTER OF THE
COMPLAINT AGAINST
FRANK ELMER LANE, M.D.

BEFORE 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 (Board) files this Original Complaint against Frank Elmer Lane, M.D. (Respondent), for alleged violations of the Medical Practice Act (the Act), Title 3, Subtitle B, Texas Occupations Code and the Board's Rules, and would show the following:

I. SUMMARY OF FACTUAL ALLEGATIONS

Respondent failed to maintain adequate medical records for one patient.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a Texas physician and holds Texas Medical License No. G-3541, which was originally issued by the Board on February 27, 1983. 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 in 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 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 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 190.8(1)(C), failure to use proper diligence in one's professional practice.

4. 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.

IV. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges:

1. On August 13, 2004, the Board entered into an Agreed Order requiring required Respondent to pay a \$500 administrative penalty for failing to timely release patient records pursuant to a written request.

2. Respondent's billing records show that he treated the patient on approximately 20 separate occasions between June 28, 2013, and June 3, 2014.

3. Respondent billed approximately \$4,751.35 for the visits.

4. The entirety of Respondent's treatment records for the patient over the course of 20 separate visits consist of a single handwritten note.

5. Respondent's medical records for the patient violates the Act and Board Rules, specifically:

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 165.1, which requires the maintenance of adequate medical records.

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 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 or injure the public.

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: (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; (8) prior similar violations; (9) previous disciplinary action by the board, any government agency, peer review organization, or health care entity [On August 13, 2004, the Board and Respondent entered into an Agreed Order assessing an administrative penalty in the amount of \$500. The action was based upon allegations of failing to timely release patient records.]; 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. 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

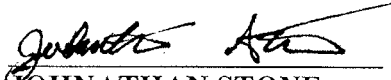
Board Staff requests that an administrative law judge employed by the State Office of Administrative Hearings conduct a contested case hearing on the merits of the Complaint, and issue a Proposal for Decision containing Findings of Fact and Conclusions of Law necessary to support a determination that Respondent violated the Act as set forth in this Complaint.

Respectfully Submitted,

TEXAS MEDICAL BOARD

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Litigation Manager

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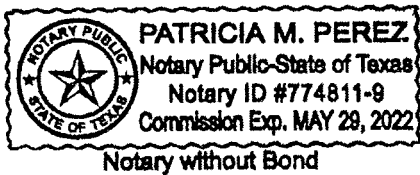
ATTORNEYS FOR THE BOARD

THE STATE OF TEXAS

COUNTY OF TRAVIS

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SUBSCRIBED AND SWORN to before me by the said Johnathan Stone on August 30, 2018.



Patricia M. Perez

Notary Public, State of Texas

August 28

Filed with the Texas Medical Board on _____, 2018.



Stephen 'Brint' Carlton, J.D.
Executive Director
Texas Medical Board

CERTIFICATE OF SERVICE

I certify that on August 31, 2018, a true and correct copy of the foregoing document has been served as follows:

By Email:

Docket Clerk

State Office of Administrative Hearings
William P. Clements Bldg.
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Austin, TX 78701-1649
docketing@soah.texas.gov

By CMRRR No. 7008 2810 0000 1408 3949 and First Class Mail:

Frank Elmer Lane, M.D.

9533 Losa Drive, Ste. 3
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Respondent

By Hand Delivery:

**Robin Etheridge
Hearings Coordinator**

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