

IN THE MATTER OF
THE LICENSE OF
EARL M. STENGER, M.D.

PS:SIK9 TS 08L2103

BEFORE THE

TEXAS MEDICAL BOARD

MODIFIED AGREED ORDER

On the 28 day of August, 2015, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Earl M. Stenger, M.D. (Probationer).

On May 11, 2015, Probationer appeared in person, without counsel, before Representatives of the Board as required by his November 13, 2013 Agreed Order, to discuss the results of his KSTAR evaluation, a copy of which Order is attached hereto and incorporated herein. The Board's representatives were James Scott Holliday, D.O., a member of the Board, and Lewis J. Benavides, a member of a District Review Committee (Panel). Hugh Spires, Jr. represented Board staff.

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

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board.

a. Probationer and the Board entered an Agreed Ordered on March 16, 1989, related to failing to maintain adequate medical records and prescriptions for controlled substances. The Order was terminated March 25, 1990.

b. Probationer and the Board entered an Agreed Order on October 13, 1995, for a suspension and subsequent revocation of Probationer's license due to a felony conviction for fraudulent billing and for Federal tax fraud.

c. Probationer and the Board entered an Agreed Order on February 7, 1998, which reinstated Probationer's medical license with restrictions for 10 years to work only as a salaried employee of a non-profit institution; not apply, possess, or retain hospital privileges; and not perform any billing practices. In addition, the Order required he pass the Special Purpose Examination (SPEX).

d. On February 9, 1999, the Board entered an Order suspending the Probationer's license for failure to pass the SPEX exam as required by the 1998 Order.

e. Probationer and the Board entered an Agreed Order on April 10, 1999, terminating the suspension of the Probationer's medical license and imposing certain terms and conditions for a period of 10 years. The Order required he pass the SPEX within two years and work only as a salaried employee of a non-profit institution and not apply, possess, or retain hospital privileges.

f. On October 8, 2004 the Board entered an order terminating the 1999 Order.

g. The Board entered a Corrective Order on August 26, 2011, for failure to maintain adequate medical records, requiring eight hours of continuing medical education (CME) in risk management and medical record keeping. The Order was terminated on February 27, 2012.

h. Probationer and the Board entered into an Agreed Order on June 14, 2013, for failure to maintain adequate medical records and failure to practice medicine in an acceptable professional manner consistent with public health and welfare, and requiring eight cycles of chart monitoring and eight hours of CME.

i. Probationer and the Board entered an Agreed Order on November 13, 2013 (2013 Order), for failure to maintain adequate medical records and failure to practice medicine in an acceptable professional manner consistent with public health and welfare, and requiring Probationer to successfully complete the Knowledge, Skills, Training, Assessment, and Research (KSTAR) program's Clinical Competency Assessment and all retraining, remedial measures and recommendations made by KSTAR. In addition, Probationer was ordered to request to appear in person before a panel of the Board to discuss the results of his KSTAR evaluation.

Probationer's appearance was required by Ordering Paragraph No. 1 of the 2013 Order, which stemmed from a standard of care violation and inadequate medical record keeping. The recommendations in this Order are based on concerns regarding Probationer's abilities based on the KSTAR report and the neuropsychological evaluation.

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. D-7315. Respondent was originally issued this license to practice medicine in Texas on August 21, 1971. Respondent is not licensed to practice in any other state.
- c. Respondent is primarily engaged in the practice of psychiatry. Respondent is not board certified.
- d. Respondent is 74 years of age.

2. Specific Panel Findings:

- a. Probationer completed the KSTAR evaluation on September 25, 2014, as required in the Agreed Order dated November 13, 2013.
- b. KSTAR recommended Probationer undergo a full neuropsychological evaluation as soon as possible due to the findings on his cognitive screen and the observations made by the KSTAR committee.
- c. KSTAR recommended that if Probationer's neuropsychological testing and physical evaluation do not find any problems that would be contributing to

Probationer's performance, then Probationer will need significant remediation including: a thorough review of psychopharmacology (minimum 16 hours), a comprehensive review of general psychiatry (minimum 40 hours), initiation of a more comprehensive ongoing plan for professional development such as doing an ongoing, high-quality psychiatry CME self-study program that awards at least 50 credit hours of APA or AMA-PRA credit every year; and a minimum of six months of training in a psychiatry residency program (or a similar/equivalent option if one is available and acceptable to the Texas Medical Board). In addition, KSTAR recommended Probationer undergo a reassessment after completing the recommendations to determine whether Probationer is performing at an acceptable and safe level.

- d. Probationer is still under the June 14, 2013 Order requiring eight cycles of monitoring. He has completed five cycles of monitoring.
- e. Probationer is in compliance with all terms and conditions of the June 14, 2013 Order and November 13, 2013 Order.
- f. Probationer completed a neuropsychological evaluation on December 5, 2014, that was consistent with a diagnosis of mild cognitive impairment with amnesic features.
- g. Probationer completed a physical examination along with an examination by an ophthalmologist that revealed Probationer has symptoms of moderate, worsening dry eye which can cause blurred vision. The condition can be exacerbated by close work and computer use.

CONCLUSIONS OF LAW

Based on the above Findings, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.
2. Respondent remains subject to discipline pursuant to the 2013 Order, which cited to violations including Section 164.051(a)(6) of the Act, which 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 defined by Board Rules 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; and 190.8(1)(C), failure to use proper diligence in one's professional practice.

3. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

ORDER

Based on the above Findings and Conclusions of Law, and the recommendations of the Board's representatives, the Board ORDERS the following:

The November 2013 Order shall be modified as follows:

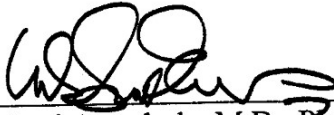
1. Ordering Paragraph No. 11 shall be added and shall read as follow:
"11. Within 120 days of the entry of this Modified Agreed Order, Probationer shall enroll in the residency program as recommended by KSTAR.
2. Ordering Paragraph No. 12 shall be added and shall read as follows:
"12. Within 120 days of the entry of this Modified Agreed Order, Probationer shall enroll in and start working towards completion of all the required CME courses recommended by KSTAR.
3. Ordering Paragraph No. 13 shall be added and shall read as follows:
"13. Within 120 days of the entry of this Modified Agreed Order, Probationer shall complete the physical examination as required by KSTAR."
4. Ordering Paragraph No. 14 shall be added and shall read as follows:
"12. Any violation or failure to comply with Ordering Paragraphs Nos. 11, 12, or 13, or any other provision stated in the KSTAR evaluation shall be considered a violation of the Order."
5. All other terms of the November 2013 Order remain in full force and effect and are not superseded by any terms in this Order.

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.

(SIGNATURE PAGES FOLLOW)

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
28 day of August, 2015.



Michael Arambula, M.D., Pharm.D., President
Texas Medical Board

LICENSE NO. D-7315

IN THE MATTER OF
THE LICENSE OF
EARL MARTIN STENGER, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 18 day of October, 2013, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Earl Martin Stenger, M.D. (Respondent).

On August 15, 2013, Respondent appeared in person, without counsel, 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 Mrs. Paulette B. Southard, a member of the Board, and Kathy C. Flanagan, M.D., a member of a District Review Committee ("Panel"). Franklin Hopkins represented Board Staff.

BOARD CHARGES

Board staff charged that Respondent committed unprofessional conduct in his evaluation of a minor patient at an office visit. Specifically, it was alleged that Respondent failed to perform a proper patient assessment, and used the incorrect form(s) for the prescription of Schedule II medications.

BOARD HISTORY

Respondent has five prior Orders with the Board.

1. Respondent and the Board entered an Agreed Order entered on March 16, 1989, related to failing to maintain adequate medical records and prescriptions for controlled substances. The Order was cleared on March 25, 1990.
2. Agreed Order entered on October 13, 1995, for a suspension and revocation of Respondent's license due to a felony conviction for fraudulent billing and for Federal tax fraud.

3. Respondent and the Board entered an Agreed Order entered on February 7, 1998, which reinstated Respondent's medical license with restrictions for 10 years to work only as a salaried employee of a non-profit institution; not apply, possess, or retain hospital privileges; and not perform any billing practices.
4. The Board entered an Corrective Order entered on August 26, 2011, for failure to maintain adequate medical records, requiring eight hours of continuing medical education (CME) in risk management and medical record keeping. Order cleared on February 27, 2012.
5. Respondent and Board entered into an Agreed Order on June 14, 2013, for failure to maintain adequate medical records and failure to practice medicine in an acceptable professional manner consistent with public health and welfare, and requiring 8 cycles of chart monitoring and 8 hours of continuing medical education.

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. D-7315. Respondent was originally issued this license to practice medicine in Texas on August 21, 1971. Respondent is not licensed to practice in any other state.
- c. Respondent is primarily engaged in the practice of Psychiatry. Respondent is not board certified.
- d. Respondent is 72 years of age.

2. Specific Panel Findings:

- a. Respondent failed to obtain an adequate history of the patient and failed to complete an adequate assessment of the patient to support his diagnosis and treatment of the patient.
- b. Respondent failed to obtain the patient's medical records from the previous treating physician.
- c. Respondent ineffectively managed a difficult therapeutic encounter between the patient and the Patient's mother, resulting in an inadequate history and assessment of the patient.
- d. Respondent failed to document an adequate basis to support his diagnosis of the patient for ADHD and bi-polar disorder.
- e. Respondent is currently under an Agreed Order that addressed similar issues that occurred during the same time period. The terms of this Agreed Order provide for 8 cycles of chart monitoring.
- f. Respondent's medical records for the patient were inadequate.

3. Mitigating Factors:

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

- a. Respondent stated he implemented changes to his EMR system since the treatment of this patient.
- b. 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, 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 rule adopted under this Act, specifically Board Rule 165.1(a), failure to maintain an adequate medical record.
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 defined by Board Rules 190.8(1)(A), Failure to treat a patient according to the generally accepted standard of care; and 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.

ORDER

Based on the above Findings 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 the Knowledge, Skills, Training, Assessment, and Research ("KSTAR") program's Clinical Competency Assessment offered by the Texas A&M Health Science Center Rural and Community Health Institute. Upon Respondent's acceptance into the KSTAR program, Respondent shall execute a written request and authorization to KSTAR representatives to provide a complete copy of the final assessment report to the Compliance Division within 15 days of its completion. Respondent shall successfully complete any and all retraining, remedial measures, and/or other recommendations made by KSTAR based upon the assessment.

Within 30 days of the completion of the KSTAR program, Respondent shall provide written request to the Board to appear in person before a panel of the Board to discuss the results of his KSTAR evaluation.

2. Respondent shall give a copy of this Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Respondent has privileges, has applied for privileges, applies for privileges, or otherwise practices. Within thirty days of entry of this Order Respondent shall provide documentation, including proof of delivery, to the Compliance Division of the Board that the Order was delivered to all such facilities.

3. The time period of this Order shall be extended for any period of time that: (a) Respondent subsequently practices exclusively outside the State of Texas; (b) Respondent's license is subsequently cancelled for nonpayment of licensure fees; (c) this Order is stayed or enjoined by Court Order; or (d) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine. If Respondent leaves Texas to practice elsewhere or ceases active practice for more than 60 consecutive days, Respondent shall immediately notify the Board in writing. Upon Respondent's return to active practice or return to practice in Texas, Respondent shall notify the Board in writing. When the period of extension ends, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of extension or tolling.

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

5. 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.

6. 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).

7. 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.

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

10. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for one year following the date of the entry of this Order. If, after the passage of the one-year period, Respondent wishes to seek amendment or termination of these conditions, Respondent may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition without further appeal or review. Petitions for modifying or terminating may be filed only once a year thereafter.

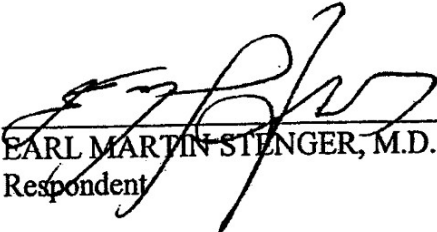
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

SIGNATURE PAGES FOLLOW

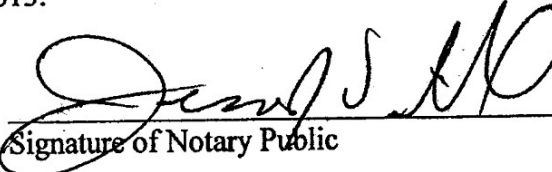
I, EARL MARTIN STENGER, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: Nov, 8, 2013, 2013.

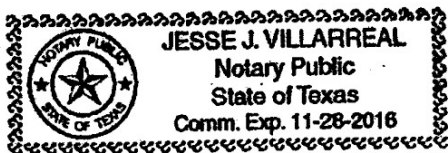

EARL MARTIN STENGER, M.D.,
Respondent

STATE OF Texas §
COUNTY OF Bexar §

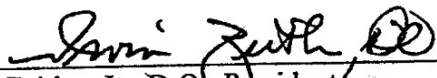
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 9th day of November, 2013.


Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
13th day of November, 2013.



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