

HEARING CONDUCTED BY THE  
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS  
SOAH DOCKET NO. 503- 11-0937.MD  
TEXAS MEDICAL LICENSE NO. D-3082

IN THE MATTER OF THE  
COMPLAINT AGAINST

FRANCISCO JOSE RODRIGUEZ, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

**COMPLAINT**

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

COMES NOW, the Staff of the Texas Medical Board (the "Board"), and files this Complaint against Francisco Jose Rodriguez, M.D., ("Respondent"), based on Respondent's alleged violations of the Medical Practice Act ("the Act"), Title 3, Subtitle B, Texas Occupations Code, and would show the following:

**I. INTRODUCTION**

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.

**II. LEGAL AUTHORITY AND JURISDICTION**

1. Respondent is a Texas Physician and holds Texas Medical License No. D-3082, that was originally issued on June 21, 1966. Respondent's license was in full force and effect at all times material and relevant to this Complaint.

2. Respondent received notice of the Informal Settlement Conference ("ISC") and appeared at the ISC, which was conducted in accordance with §2001.054(c), GOV'T CODE and §164.004 of the Act. All procedural rules were complied with, 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.

### III. FACTUAL ALLEGATIONS

Board Staff has received information and on that information believes that Respondent has violated the Act. Based on such information and belief, Board Staff alleges:

1. Respondent treated the Patient<sup>1</sup> from September 1982 until August 2009 for "schizoaffective disorder."

2. Respondent's medical records lacked documentation of: a mental status examination; a discussion of risks, including Tardive Dyskinesia, and benefits of Thorazine; alternative medication treatments; reasons for the medication and the dosages given; and periodic monitoring for the potential emergence of side effects of the prescribed medication.

3. Respondent failed to document appropriate evaluation and management of the Patient when he presented with anxiety symptoms and auditory hallucinations. Respondent also failed to monitor the Patient for the potential emergence of irreversible side effects from the medication.

4. On August 3, 2009, the Patient refused to follow Respondent's recommendations and switch medications. Respondent then summarily informed the Patient and his spouse that he was terminating his care of the Patient immediately. Respondent reiterated this termination of care by sending a letter to Respondent that day that referenced the availability of the Center for Health Care Services. Respondent discontinued treatment without addressing the Patient's current medication needs and without indicating that Respondent would continue to remain available to the Patient for a specified period of time while the Patient secured a new physician.

5. The actions of the Respondent as specified above violate one or more of the following provisions of the Medical Practice Act:

- a. 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, failure to maintain an adequate medical record for each patient that is complete, contemporaneous and legible.

---

<sup>1</sup> The identity of the Patient will be provided to the Administrative Law Judge under seal in order to protect the Patient's confidentiality rights.

b. Respondent is subject to disciplinary action by the Board pursuant to Section 164.051(a)(6) of the Act by failing to practice medicine in an acceptable professional manner consistent with public health and welfare, as further defined by the following Board Rules: 190.8(1)(A), the failure to treat a patient according to the generally accepted standard of care; 190.8(1)(B), negligence in performing medical service, 190.8(1)(C), failure to use proper diligence in one's practice; 190.8(1)(D), failure to safeguard against potential complications; and 190.8(1)(J), termination of patient care without providing reasonable notice to the patient.

6. Pursuant to Board Rule 190.15, this case involves significant risk for patient harm and multiple violations of the Act and Board rules, all of which are aggravating factors that may be considered by the Board in determining appropriate sanctions in this case.

#### **IV. APPLICABLE STATUTES AND RULES FOR THE CONTESTED CASE** **PROCEEDING**

The following statutes, rules, and agency policy are applicable to the conduct of the contested case:

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. 1 TEX. ADMIN. CODE, CHAPTER 155 sets forth the rules of procedure adopted by SOAH for contested case proceedings.
4. 1 TEX. ADMIN. CODE, CHAPTER 155.507, requires the issuance of a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law.
5. 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.

**V. 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 RESPONSE YOU FILE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS SHALL ALSO BE PROVIDED TO THE HEARINGS COORDINATOR OF THE TEXAS MEDICAL BOARD.**

WHEREFORE, PREMISES CONSIDERED, 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 ("PFD") 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

By:



Lee Bukstein, Staff Attorney  
Texas State Bar No. 3320300  
Telephone: (512) 305-7079  
FAX # (512) 305-7007  
333 Guadalupe, Tower 3, Suite 610  
Austin, Texas 78701

THE STATE OF TEXAS

§

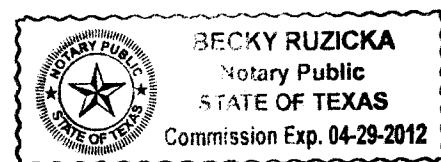
COUNTY OF TRAVIS

§

§

SUBSCRIBED AND SWORN to before me by the said Lee Bukstein, on  
October 22, 2010.

  
Notary Public, State of Texas



Filed with the Texas Medical Board on Oct. 22, 2010.



Mari Robinson, J.D.  
Executive Director  
Texas Medical Board

SERVICE LIST

On this 22<sup>nd</sup> day of October, 2010, I certify that a true and correct copy of this Complaint has been served on the following individuals at the locations and the manner indicated below, in accordance with TEX. GOV'T CODE §2001.052, 22 TEX. ADMIN. CODE §187.26, and 1 TEX. ADMIN. CODE §155.103:

**BY CERTIFIED MAIL RETURN RECEIPT REQUESTED NO. 7008 2810 0000 1316 811**

**FIRST CLASS MAIL**

Francisco Jose Rodriguez, M.D.  
311 CAMDEN #211  
SAN ANTONIO, TX 78215

**BY FAX TRANSMISSION TO: (512) 479-1101**

Ace Pickens, Attorney at Law  
BROWN MCCARROLL LLP  
111 CONGRESS AVE SUITE 1400  
AUSTIN, TX 78701-4043  
Attorney for the Respondent

**BY FAX TRANSMISSION TO: 475-4994**

Docket Clerk  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> #504  
Austin, Texas 78701

**BY HAND DELIVERY:**

Sonja Aurelius  
Hearings Coordinator  
Texas Medical Board  
333 Guadalupe, Tower 3, Suite 610  
Austin, Texas 78701



Lee Bukstein