

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-
TEXAS MEDICAL LICENSE NO. D-4359

IN THE MATTER OF THE
COMPLAINT AGAINST
ROBERT G. WILKERSON, JR., 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 Robert G. Wilkerson, Jr., 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 §151.003 of the Act.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a Texas Physician and holds Texas Medical License No. D-4359, which was originally issued on August 26, 1967. 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") but did not appear personally or through counsel 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 based on that information believes that Respondent has violated the Act. Based on such information and belief, Board Staff alleges:

1. In June of 2005 Respondent began working as medical director for the South Texas Wellness Centers located in Houston, Texas, and the surrounding area.

2. Respondent initiated standing delegation and standing medical orders for a licensed vocational nurse ("LVN") and other personnel employed by and under the supervision of Respondent to assess and record minimal evaluations and write prescriptions for patients. The LVN was allowed to see patients in an exam room, document the assessment of, and select medications for patients.

3. Respondent was not called by the LVN following each patient visit.

4. Respondent allowed his pre-signed blank prescription pads to be used by the LVN and other personnel to issue prescriptions for Xanax, Hydrocodone, Soma and Lortab for multiple patients who Respondent never saw or examined.

5. Respondent also failed to follow the written protocols that he had created regarding requirements for patients being prescribed dangerous drugs and controlled substances.

6. Specific Patient Facts:

Patient JL:

(a) On or about June 23, 2006, Respondent diagnosed JL as having lumbar strain, panic attacks and anxiety. JL's chronic pain contract is dated June 23, 2006.

(b) On or about November 30, 2006, Registered Nurse ("RN") Nidia Thomas signed the progress note and refilled Xanax, Soma and Lortab.

(c) Subsequent visits document refills on preprinted prescriptions of Xanax, Soma and Lortab and note headings are usually labeled "Pain Management."

(d) At least one of these refills was not signed by Respondent but by an individual named "Yolanda" on Respondent's preprinted prescription.

(e) Physical exams are documented on preprinted check-off sheets.

(f) There is no complete history and physical, there is no mention of physical therapy or psychological evaluation recommendations.

Patient JR:

(a) JR presented on April 28, 2006, with a history of a motor vehicle accident with resultant neck soreness and right-sided soreness. There was no musculoskeletal examination.

(b) The intake note, signed by Physician Assistant ("PA") Yelderman(?) reflects prescriptions for Xanax, Soma and Lortab.

(c) On May 30, 2006, and again on July 6, 2006, Xanax, Soma and Lortab were prescribed to JR. The May 30, 2006, progress note is unsigned.

(d) On December 5, 2006, and January 9, 2007, Nidia Thomas, RN, prescribed Xanax, Soma and Lortab as reflected in the progress notes from these days.

(e) Respondent also prescribed Soma, alprazolam and hydrocodone from May 9, 2006. Prescriptions were preprinted and are on Respondent's letterhead and signed by "Yolanda."

(f) Xanax, Lortab and Soma were prescribed starting with the first visit without evidence of a long-term plan. There is no documentation of physical therapy recommendations.

Patient DT:

(a) The medical record for DT reflects a diagnosis of chronic lumbar strain and prescriptions for Soma, Lorcet and alprazolam beginning June 23, 2006, her first visit.

(b) There are no x-rays and there is no last menstrual period ("LMP") documented.

(c) DT had blood pressure of 140/106 on her August 24, 2006 visit, significantly elevated, which is not addressed.

(d) There is no apparent musculoskeletal exam.

(e) "Yolanda" signed a preprinted script for Lorcet, Soma and alprazolam under Respondent's prescriptive authority.

(f) Pharmacy records show DT filled #360 hydrocodone, #360 Soma and #180 alprazolam between June 23 and August 24, 2006. There is no diagnosis to support all three medications (Lortab, Xanax and Soma).

Patient DR:

(a) DR's first visit with the Respondent appears to be on April 28, 2006. Diagnoses entered into the record include low back pain, lower extremity pain and anxiety. One of the progress notes reports a history of laminectomy Progress notes are signed by Nidia Thomas, RN, and there is not/are not any physician signature(s).

(b) A lumbosacral magnetic resonance imaging ("MRI") report dated May 23, 2004, shows broad soft disc protrusion at L5-S1 with S1 root compromise. It also shows annular disc bulge at L5-L5 and L1-L2. There is a small left sided annular tear at L2.

(c) It is unclear whether DR underwent a laminectomy between the time of the MRI and his visits with Respondent. There is one fleeting mention of a history of lumbosacral surgery per RN Thomas.

(d) There are no further imaging reports available in the chart. Imaging studies were warranted given history of possible laminectomy and persistence of pain including right leg pain.

(e) There is no mention of what type of treatment DR received prior to visit with the Respondent. High dose Lortab is initiated from the first visit. Two scripts for opioids are written under the Respondent's prescriptive authority but not signed by him.

(f) LaTina Blair and "Yelderman" (?) signed prescriptions for Lortab and Xanax.

(g) DR filled # 480 hydrocodone and # 240 alprazolam 2 mg. between April of 2006 and September of 2006.

7. Respondent violated the standard of care with regard to all the patients as follows:

(a) Respondent's office under Respondent's supervision failed to perform and document an appropriate physical exam for each patient;

(b) Respondent failed to examine any of the patients himself;

(c) Respondent's standing instructions had been for various personnel employed by him to use pre-printed prescriptions; and,

(d) Respondent inappropriately prescribed all the patients the same "cocktail" of controlled substances and dangerous drugs.

8. Aggravating factors in this case include:

- (a) One or more violations that involve more than one patient; and,
- (b) Increased potential harm to the public.

IV. APPLICABLE STATUTES, RULES, AND AGENCY POLICY

Respondent's conduct, as described above, constitutes grounds for the Board to revoke or suspend Respondent's Texas medical license or to impose any other authorized means of discipline upon the Respondent. The following statutes, rules, and agency policy are applicable to this matter:

A. Procedures for the Conduct of this Hearing:

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 §155.3(c) provides that the procedural rules of the state agency on behalf of which the hearing is conducted govern procedural matters that relate to the hearing as required by law, to wit: Section 164.007(a) of the Act, as cited above.
4. 1 TEX. ADMIN. CODE, CHAPTER 155 sets forth the rules of procedure adopted by SOAH for contested case proceedings.

B. Violations Warranting Disciplinary Action:

1. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 165.1, which requires the maintenance of adequate medical records.
2. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 170.3, regarding the treatment of pain.

3. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 193.2(12) and (13), which requires Respondent to establish and meet the minimum requirements for Standing Delegation and Standing Medical Orders, respectively.

4. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 193.4(1)-(8) by exceeding the permissible scope of Standing Delegation and Standing Medical Orders; and, specifically, Board Rule 193.4(4)(C), by issuing pre-signed prescriptions for controlled substances.

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:

(a) Board Rule 190.8(1)(A), failure to treat patients according to the generally accepted standard of care;

(b) Board Rule 190.8(1)(C), failure to use proper diligence in one's professional practice;

(c) Board Rule 190.8(1)(H), failure to disclose reasonable alternative treatments to a proposed procedure or treatment; and,

(d) Board Rule 190.8(1)(L), prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient.

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 or injure the public.

7. Sections 164.052(a)(5) and 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.

8. Sections 164.052(a)(5) and 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing, administering, or dispensing in a manner inconsistent with public health and welfare, dangerous drugs as defined by Chapter 483, Health and Safety Code; or controlled substances scheduled in Chapter 481

Health and Safety Code; or controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. § 801 et seq.).

9. Section 164.052(a)(17) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's directly or indirectly aiding or abetting the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine by the board.

10. 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.

9. Section 164.053(a)(9) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent delegating professional medical responsibility or acts to a person whom Respondent knew or had reason to know was not qualified by training, experience, or licensure to perform the responsibility or acts.

C. Sanctions that May Be Imposed:

1. 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. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

2. Chapter 165, Subchapter A of the Act sets forth statutory requirements for the amount and basis of an administrative penalty.

3. 22 TEX. ADMIN. CODE Chapter 187.39 authorizes the Board to assess, in addition to any penalty imposed, costs of the investigation and administrative hearing in the case of a default judgment or upon adjudication that Respondent is in violation of the Act after a trial on the merits.

4. 22 TEX. ADMIN. CODE Chapter 190 provides disciplinary guidelines intended to provide guidance and a framework of analysis for administrative law judges in the making of recommendations in contested licensure and disciplinary matters and to provide guidance as to the types of conduct that constitute violations of the Act or board rules.

5. 22 TEX. ADMIN. CODE Chapter 190.15 provides the authority for this Board to consider aggravating factors in this case.

V. NOTICE TO RESPONDENT

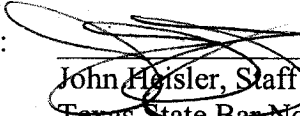
IF YOU DO NOT FILE A WRITTEN ANSWER TO THIS NOTICE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS OF THE DATE NOTICE OF SERVICE WAS MAILED, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU, WHICH MAY INCLUDE THE DENIAL OF LICENSURE OR ANY OR ALL OF THE REQUESTED SANCTIONS INCLUDING THE REVOCATION OF YOUR LICENSE. IF YOU FILE A WRITTEN ANSWER, BUT THEN FAIL TO ATTEND THE HEARING, A DEFAULT JUDGMENT 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, in accordance with Section 164.007(a) of the Act. Upon final hearing, Board Staff requests that the Honorable Administrative Law Judge issue a Proposal for Decision (“PFD”) that reflects Respondent’s violation of the Act as set forth in this Complaint. Following issuance of the PFD, Board Staff requests that the Board, pursuant to §164.001 and §165.003 of the Act and Board Rules 187.30, 187.39, 190.8, 190.14, 190.15 and 190.16, enter an Order imposing any and all sanctions or disciplinary measures necessary to protect health and public welfare, including the imposition on Respondent of SOAH hearing costs and an administrative penalty.

Respectfully submitted,

TEXAS MEDICAL BOARD

By:


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THE STATE OF TEXAS

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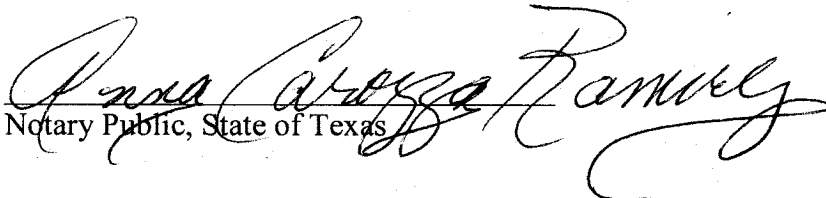
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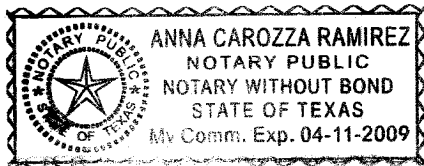
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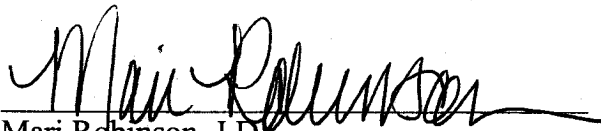
SUBSCRIBED AND SWORN to before me by the said John Heisler on

January 21, 2009.


Notary Public, State of Texas



Filed with the Texas Medical Board on Jan. 15, 2009.



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

SERVICE LIST

On this 21 day of January, 2009, 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 §155.25:

**BY CERTIFIED MAIL RETURN RECEIPT REQUESTED NO.
and FIRST CLASS MAIL**

Robert G. Wilkerson, Jr., M.D.
1305 Glourie
Houston, TX 77055

BY FAX TRANSMISSION TO:

Larry P. McDougal
Attorney at Law
809 Houston Street
Richmond, TX 77469

BY FAX TRANSMISSION TO: 475-4994

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

BY HAND DELIVERY:

Sonja Aurelius
Hearings Coordinator
Hearings Department
Texas Medical Board
333 Guadalupe, Tower 3, Suite 610
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John Heister