

LICENSE NO. D-7315

IN THE MATTER OF

THE LICENSE OF

EARL MARTIN STENGER, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

MEDIATED AGREED ORDER

On the 15 day of June, 2018, came on to be heard before the Texas Medical Board (Board), duly in session, the matter of the license of Earl Martin Stenger, M.D. (Respondent).

On February 22, 2016, 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 James "Scott" Holliday, D.O., a member of the Board, and Betty Lou Angelo, a member of a District Review Committee. Barbara Jordan represented Board staff.

On April 27, 2017, 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 regarding compliance with an Agreed Order entered on November 13, 2013 (2013 Order) and modified on August 28, 2015 (2015 Order). The Board's representatives were Jeffrey Luna, M.D., a member of the Board, and Randall Isenberg, a member of a District Review Committee. Barbara Jordan represented Board staff.

These matters did not settle and Staff filed a formal complaint at the State Office of Administrative Hearings under SOAH Docket No. 503-18-1055.MD. Prior to a hearing on the merits, the parties participated in mediation on March 23, 2018, and reached this settlement. Respondent was not represented by counsel. The Board was represented by Jeffrey Luna, M.D., a member of the Board. Susan Rodriguez represented Board Staff.

BOARD CHARGES

Board Staff charged that Respondent violated an Order of the Board entered on November 13, 2013, and subsequently modified on August 28, 2015.

BOARD HISTORY

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

On April 14, 1989, the Board entered an Agreed Order imposing certain terms and conditions. Respondent was required to: only provide treatment after an evaluation or in a medical emergency; maintain adequate medical records; keep copies of all controlled substance prescriptions; and 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 (1998 Order) reinstating and restricting Respondent's license and imposing certain terms and conditions for a period of 10 years. Respondent was required to: pass the Special Purpose Examination (SPEX); limit his medical practice to an approved institutional setting with no billing responsibilities; refrain from applying for or possessing hospital privileges; comply with the terms and conditions related to his criminal conviction; refrain from possessing, prescribing or administering controlled substances or dangerous drugs; complete 100 hours of approved community service per year; complete at least 50 hours of Continuing Medical Education (CME) per year; complete 12 hours of CME in ethics; provide a copy of the order to his supervisor and ensure quarterly reports are submitted to the Board; and have his practice 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 (1999 Order) terminating the suspension of Respondent's medical license and imposing certain terms and conditions for a period of 10 years. Respondent was required to: pass the SPEX within two years or obtain board certification in psychiatry or pass the Psychiatry Residents in Training Examination; limit his medical practice to an approved institutional setting; refrain from applying, possessing or retaining hospital privileges; comply with all terms and conditions related to his criminal convictions; maintain a logbook of all prescriptions written for controlled

substances or dangerous drugs; that he obtain at least 50 hours of CME per year; provide a copy of the order to his supervisor and ensure quarterly reports are submitted to the Board; and have his practice monitored by a practice monitor.

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

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. Respondent was required to: have his practice monitored for eight cycles; and 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.

On November 13, 2013, the Board entered an Agreed Order requiring that Respondent complete the Knowledge, Skills, Training, Assessment, and Research (KSTAR) program 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 from the same time period as the June 2013 Order.

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

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 (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 76 years of age.

2. Specific Findings:

The 2013 and 2015 Orders included the KSTAR recommendation that Respondent complete a mini-residency in psychiatry as part of retraining after an evaluation. No such mini-residency program exists, and an acceptable alternative program has not been located.

3. Mitigating Factors:

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

- a. Respondent made attempts to comply with the orders and made diligent efforts to locate an acceptable residency program and an acceptable alternative program but was unable to find an acceptable program.
- b. Respondent timely complied with, and has continued to comply with all other terms of the 2013 and 2015 Orders. Respondent completed eight cycles of chart monitoring from 2013-2015, before and after the KSTAR evaluation and there were no deficiencies noted by the chart monitor at any time. Since the KSTAR evaluation, Respondent has also completed over 200 hours of CME related to psychiatry.

- c. The KSTAR evaluation was completed three-and-a-half years ago, and Respondent has not had any meritorious complaints since the evaluation took place.
- d. Since the KSTAR evaluation, Respondent has undergone two neuropsychological evaluations, including one at the Gabbard Center. The Gabbard Center determined that Respondent did not have any psychiatric diagnoses and did not require further monitoring of his practice based on any psychiatric diagnoses.
- e. Since 2011 Respondent has practiced in a group setting with five other psychiatrists and numerous social workers. Approximately 70% of Respondent's patients are Medicare patients, and he is the only practitioner in his clinic who takes Medicare.
- f. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent neither admits nor denies the information given above. 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 189.3(a)(1), requiring a Respondent to comply with all the terms and conditions of an Order.
3. 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.
4. 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. Respondent shall limit Respondent's medical practice, including any office and inpatient practice, to a group or an institutional setting approved in advance in the discretion of the Executive Director of the Board. Respondent shall provide a copy of this Order to the group or institutional setting administrator. If there are any personnel or scheduling changes related to the approved setting, the Respondent shall notify the Board in writing of those changes within 14 days.

2. Respondent shall be subject to the following terms and conditions for eight consecutive monitoring cycles (defined below). Respondent's practice shall be monitored by a physician (monitor), in accordance with §164.001(b)(7) of the Act. The Compliance Division of the Board shall designate the monitor and may change the monitor at any time for any reason. The monitor shall have expertise in a similar specialty area as Respondent. The Compliance Division shall provide a copy of this Order to the monitor, together with other information necessary to assist the monitor.

a. As requested by the Compliance Division, Respondent shall prepare and provide complete legible copies of selected patient medical and billing records (selected records). The Compliance Division shall select records for at least 30 patients seen by Respondent during each three-month period following the last day of the month of entry of this Order (reporting period). The Compliance Division may select records for more than 30 patients, up to 10 percent of the patients seen during a reporting period. If Respondent fails to see at least 30 patients during any three-month period, the term of this Order shall be extended until Respondent can submit a sufficient number of records for a monitor to review.

b. The monitor shall perform the following duties:

- 1) Personally review the selected records;
- 2) Prepare written reports documenting any perceived deficiencies and any recommendations to improve Respondent's practice of medicine or assist in

the ongoing monitoring process. Reports shall be submitted as requested by the Compliance Division; and

- 3) Perform any other duty that the Compliance Division determines will assist the effective monitoring of Respondent's practice.

c. The Compliance Division shall provide to Respondent a copy of any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division. If the chart monitor recommends that Respondent restrict or suspend his or her practice of medicine, Respondent shall be required to personally appear before a panel of Board representatives, upon written request mailed to Respondent's last known address on file with the Board at least 10 calendar days before the requested appearance date. Such appearance shall be for the purpose of consideration of the chart monitor's recommendations of restriction or suspension and held in accordance with 22 TEX. ADMIN. CODE, §187.44. Based upon the panel's findings and recommendations, the Board may modify this Order so that Respondent's practice is restricted or suspended, in accordance with the chart monitor's recommendations, or take any other action that may be appropriate to resolve the issues presented.

d. The monitor may recommend that Respondent complete a competency evaluation. A monitor's recommendation for a competency evaluation must be reviewed by the Chair of the Disciplinary Process and Review Committee (DPRC) for the purpose of making a determination of whether a competency evaluation is warranted. The Chair may approve or deny the monitor's recommendation. If the Chair approves the recommended competency evaluation, then the following terms shall apply and shall be a requirement of this Order:

1. Within 10 calendar days of being notified by the Compliance Division of the Board that the Chair has approved the monitor's recommendation, Respondent must contact a program approved by the Board and schedule an assessment of at least two days in length to determine Respondent's competence and ability to practice medicine.

2. Respondent shall authorize the approved program to send a written report regarding Respondent's performance and results of the competency evaluation directly to the compliance officer.
3. Upon completion of the competency evaluation, and based upon its results, Respondent must personally appear before a panel of Board representatives, upon written request mailed to Respondent's last known address on file with the Board at least 10 calendar days before the requested appearance date. The panel may make recommendations for appropriate action, including that Respondent follow all the program recommendations, comply with other necessary re-training or re-education measures, and may impose any other restrictions or suspension of Respondent's practice. Section 187.44 of this title (relating to Probationer Show Compliance Proceedings) applies to such appearances.
4. The Board may temporarily restrict or suspend Respondent's license based upon the results of the competency evaluation or Respondent's failure to follow any and all requirements set forth in subsection (c) of this section. Chapter 187, Subchapter F of this title (relating to Temporary Suspension and Restriction Proceedings) applies to such proceedings.

e. The monitor shall be the agent of the Board, but shall be compensated by the Respondent through the Board. Such compensation and any costs incurred by the monitor shall be paid by Respondent to the Board and remitted by the Board to the monitor. Respondent shall not charge the compensation and costs paid to the monitor to any patients.

f. A "monitoring cycle" begins when the Compliance Division selects patient records for review, and concludes when Respondent receives the monitor's report for that group of records and has made payment for the costs of that monitoring cycle.

3. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 50 hours of continuing medical education (CME) approved for Category I credits by the American Medical Association or the American Osteopathic Association, in topics related to psychiatry. Respondent may take this CME as self-study or in-

person. To obtain approval for the course, Respondent shall submit in writing to the Compliance Department information on the course, to include at least a reasonably detailed description of the course content and faculty, as well as the course location and dates of instruction. Respondent shall submit documentation of attendance and successful completion of this requirement to the Compliance Department on or before the expiration of the time limit set forth for completion of the course. The CME requirements set forth in this paragraph shall be in addition to all other CME required for licensure maintenance.

4. At all times while Respondent is under the terms of this Order, Respondent shall give a copy of this Order to all hospitals, nursing homes, treatment facilities, and other health care entities in Texas where Respondent has privileges, has pending an application for privileges, applies for privileges, or otherwise practices. Within 30 days of being first contacted by the Compliance Division of the Board following entry of this Order, Respondent shall provide to the Compliance Division of the Board documentation, including proof of delivery, that the Order was delivered to all such facilities.

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

6. 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.

7. 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 day 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 45-day notice requirement provided by §164.003(b)(2) of the Medical Practice Act and agrees to 10 day notice, as provided in 22 Texas Administrative Code §187.44(4).

8. 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.

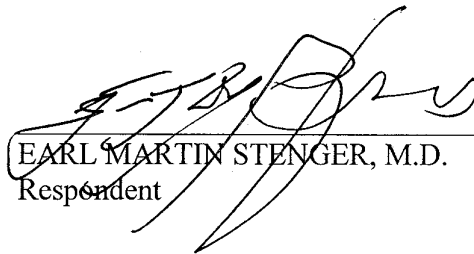
THIS ORDER IS A PUBLIC RECORD.

THIS ORDER SUPERSEDES ALL PRIOR ORDERS OF THE BOARD.

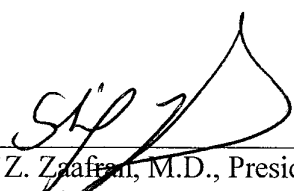
SIGNATURE PAGES FOLLOW.

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: March 23, 2018.


EARL MARTIN STENGER, M.D.
Respondent

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
15 day of June, 2018.



Sherif Z. Zafran, M.D., President
Texas Medical Board