

HEARING CONDUCTED BY THE  
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS  
SOAH DOCKET NO. 503-13-5971.MD  
TEXAS MEDICAL LICENSE NO. H-0554

IN THE MATTER OF THE  
COMPLAINT AGAINST  
SHAYNA PATRICE LEE, M.D.

BEFORE THE  
TEXAS MEDICAL BOARD

**FINAL ORDER**

During an open meeting on August 29, 2014, in Austin, Texas, the Texas Medical Board (Board) finds that after proper and timely notice was given, the above-styled case was assigned to Administrative Law Judge Catherine C. Egan (ALJ) of the State Office of Administrative Hearings (SOAH). On March 20, 2014, Board Staff filed a Motion for Summary Disposition. ALJ Egan granted the Summary Disposition in part, and a hearing was convened on April 22, 2014. Accordingly, on July 2, 2014, ALJ Egan prepared a Proposal For Decision (PFD), which contained findings of fact and conclusions of law. The PFD was properly served on all parties, and all parties were given an opportunity to file exceptions and replies as part of the record herein. No exceptions were filed by either party.

The Board, after review and due consideration of the PFD, adopts the findings of fact and conclusions of law of the ALJ.

**I. FINDINGS OF FACT**

1. Shayna Patrice Lee, M.D. (Respondent) currently holds Medical License No. H-0554 that was issued by the Texas Medical Board (Board) in 1986, and primarily practices psychiatry.
2. On March 2, 2011, Respondent was indicted in Harris County, Texas, for the felony offense of engaging in organized criminal activity by committing aggregate theft of Medicaid/Medicare funds.
3. On June 3, 2011, the Board and Respondent entered into an Agreed Order finding, among other things, that Dr. Lee failed to supervise her physician assistant properly.

4. The Agreed Order required, among other things, that Respondent complete within one year, by June 3, 2012, at least 26 hours of continuing medical education (CME) in person.
5. The CME had to include at least eight hours related to opioid prescribing, eight hours related to risk management, eight hours related to medical recordkeeping, and at least two hours of ethics.
6. The Board assigned Compliance Officer Marvin Miller to monitor Respondent's compliance with the Agreed Order.
7. On July 1, 2011, Respondent and Mr. Miller reviewed the terms and conditions of the Agreed Order together, after which they both signed the "Board Order Acknowledgment" form documenting that Respondent had received a copy of the order and that acknowledging that Respondent was solely responsible for complying with the terms and conditions of the Agreed Order.
8. The "Board Order Acknowledgment" included a statement that Respondent could contact Mr. Miller with questions regarding the Agreed Order.
9. Mr. Miller gave Respondent a list of CME courses the Board had previously approved as well as the CME approval sheet form she was required to submit to request approval for CME courses.
10. Respondent did not obtain a waiver or prior Board approval to take on-line, rather than in-person CME courses as required by the Agreed Order.
11. Respondent did not complete the 26 hours of CME by June 3, 2012, as required by the Agreed Order.
12. In March 2011, Respondent was indicted for the felony offense of engaging in organized criminal activity regarding the aggregate theft of Medicaid/Medicare funds between 2007 and 2010 while she was CMC's medical director.
13. Respondent had difficulty meeting the Agreed Order's CME requirements because she was restricted from leaving Texas after she was indicted for the felony of engaging in organized criminal activity in March 2011.
14. Respondent cooperated in the criminal investigation regarding the felony offense of engaging in organized criminal activity.
15. On July 23, 2012, before the 184th District Court of Harris County, Texas (the Court), in Case No. 129745101010, Respondent pleaded guilty to the second-degree felony of

engaging in organized criminal activity regarding the aggregate theft of Medicaid/Medicare funds from July 1, 2007 through September 29, 2010 (the Felony), a violation of Texas Penal Code § 71.02.

16. On July 23, 2012, the Court found that the evidence substantiated Respondent's guilt, but determined that it was in the best interest of society and Respondent to defer proceedings without entering an adjudication of guilt. The Court entered an Order of Deferred Adjudication placing Respondent on community supervision for 10 years, ordering her to pay \$70,000 in restitution, and prohibiting her from billing or being involved with Medicaid or Medicare while she is on community supervision.
17. On February 21, 2014, Staff filed an amended notice of hearing and first amended complaint that was timely served on Respondent.
18. The notice contained a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the applicable statutes and rules involved; the date, time, and location of the hearing; and a short, plain statement of matters asserted.
19. On April 28, 2014, the Administrative Law Judge convened the hearing on the merits at the State Office of Administrative Hearings (SOAH) with both parties in attendance. The record was reopened on May 8, 2014, to accept the transcript that was filed that day at SOAH, and then the record was closed.
20. When Respondent received the list of Board-approved CME courses from Mr. Miller, she misunderstood that she could take any course contained on the list, both on-line and in-person courses, to satisfy the Agreed Order's CME requirements.
21. Respondent has been the subject of only one Board order—the Agreed Order.
22. Respondent's criminal conduct caused economic harm to the public because it involved the aggregate theft of Medicaid/Medicare funds.
23. Respondent had her Medicaid provider number suspended in 2003 because of the criminal conduct of Christine Jones, her sister, for which Ms. Jones was incarcerated.
24. Respondent was grossly negligent in permitting her sister to work in CMC's business office.
25. Respondent tried to mitigate the harm caused by her criminal conduct by cooperating in the criminal investigation and agreeing to testify for the prosecution.

26. Respondent made an effort to secure additional CME after the deadline to satisfy the spirit of the Agreed Order regarding the CME requirements.
27. Dr. Lee accepted responsibility for her criminal conduct that resulted in the Order of Deferred Adjudication.

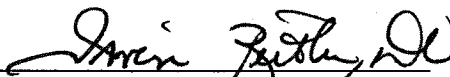
## II. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Texas Occupations Code, title 3, subchapter B.
2. SOAH has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Notice of the hearing on the merits complied with Texas Occupations Code § 164.007(a) and Texas Government Code §§ 2001.051 and 2001.052.
4. Staff had the burden of showing by a preponderance of the evidence that Respondent is subject to disciplinary action by the Board, and any aggravating factors the Board may consider in determining the appropriate sanction to impose, if any. 1 Tex. Admin. Code § 151.427.
5. Respondent had the burden to show evidence of mitigating factors that the Board may consider in determining the appropriate sanction to impose against Respondent, if any. 1 Tex. Admin. Code § 155.247.
6. Dr. Lee committed an act that violated state and federal law, and that act was connected with her practice of medicine. Tex. Occ. Code § 164.053(a)(1).
7. Dr. Lee committed unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public. This conduct is a prohibited act. 22 Tex. Admin. Code §§ 189.8(c)(1), 190.8(2)(A) and (R); Tex. Occ. Code § 164.052(a)(5).
8. The Board may take disciplinary action against Dr. Lee because she has committed a prohibited act under Texas Occupations Code § 164.052(a)(5). Tex. Occ. Code § 164.051(a)(1).
9. The Board may take disciplinary action against Dr. Lee because she has been placed on deferred adjudication community supervision for a felony. Tex. Occ. Code § 164.051(a)(2).

10. In any disciplinary action, the Board may consider aggravating and mitigating factors that warrant more or less severe or restrictive action. 22 Tex. Admin. Code § 190.15(a), (b).
11. A final order shall include a finding of fact on each applicable aggravating and mitigating factor. 22 Tex. Admin. Code § 190.15(a), (b).
12. Staff met its burden of proof on the following aggravating factors: 22 Texas Administrative Code § 190.15(a)(4), (7), (8), (9), (10).
13. Dr. Lee met her burden of proof on the following mitigating factors: 22 Texas Administrative Code § 190.15(b)(2), (3), (7), (8).

The Board hereby adopts the findings of fact and conclusions of law as proposed by the ALJ and ORDERS that Respondent's Texas Medical License is hereby REVOKED effective the date of the entry of this Order.

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 29th day of August 2014.

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