

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-14-~~1008~~ M.D.
LICENSE NO: G-6438

IN THE MATTER OF THE
COMPLAINT AGAINST
CHARLES HENRY FISCHER, 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 Charles Henry Fischer, 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 G-6438, which was issued by the Board on June 13, 1984. Respondent's license was in full force and effect at all times material and relevant to this Complaint.

2. Respondent received notice of an Informal Settlement Conference (ISC). The Board complied with all procedural rules, 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:

A. General Allegations:

On January 22, 2013, the Respondent was arrested in a public park for public lewdness after officers witnessed him engaging in sex acts with another person in a wooded area.

B. Specific Allegations:

1. At approximately 12:45 p.m. on January 22, 2013, two officers of the Austin Police Department ("APD") were patrolling an area of Austin, Texas known to be a location for lewd public activity.

2. During their patrol of this area the APD officers observed Respondent sitting at a picnic table and decided to maintain surveillance over Respondent.

3. While under surveillance by the APD officers, Respondent met with another individual and engaged in sexual activity that was witnessed by the APD officers. This sexual activity took place in a public space.

4. Respondent was placed under arrest by one of the officers, issued a criminal trespass notice and transported to the Travis County jail where he was incarcerated for public lewdness.

IV. STATUTORY ALLEGATIONS

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

1. Section 164.051(a)(1) authorizes the Board to take disciplinary action against a Respondent that commits an act prohibited under Section 164.052;

2. Section 164.052(a)(5), authorizes the Board to take disciplinary action against a Respondent that commits unprofessional or dishonorable conduct that is likely to deceive or

defraud the public as provided by Section 164.053 of the Act, or injure the public, as further defined by Board Rule 190.8(2)(R)(iii), (n), (v) and (xii), violations of federal and state laws whether or not there is a complaint, indictment, or conviction: Specifically, misdemeanor public lewdness, Texas Penal Code Sec. 21.07, and committing a misdemeanor that constitutes a crime of moral turpitude.

V. AGGRAVATING FACTORS

Board Rule 190.15 provides that the Board may consider aggravating factors in reaching a determination of sanctions. In this case, the facts warrant more severe or restrictive disciplinary action. This case includes the following aggravating factors: other similar acts, intentional, premeditated, knowing, or grossly negligent act constituting a violation and previous disciplinary action by the Board, any government agency, peer review organization, or health care entity. Specifically, On November 22, 2011, a disciplinary panel of the Texas Medical Board temporarily suspended, without notice, Respondent's medical license, after determining that his continuation in the practice of medicine constitutes a continuing threat to the public welfare. The panel found that Respondent, a psychiatrist at the Austin State Hospital in Austin, has demonstrated a pattern of sexually abusing teenage boys in his care for inpatient psychiatric treatment over a period of nearly 20 years.

On November 30, 2012, the Board and Respondent entered into an Agreed Order of Suspension, suspending Respondent's license and barring him from the practice of medicine until final disposition of the criminal charges pending against him.

On June 14, 2012, Respondent was indicted by a Travis County Grand Jury on charges involving sexual assault of a child.

VI. APPLICABLE STATUTES, RULES, AND AGENCY POLICY

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. 22 TEX. ADMIN. CODE, Chapter 190 sets forth aggravating factors that warrant more severe or restrictive action by the board.
4. 1 TEX. ADMIN. CODE, CHAPTER 155 sets forth the rules of procedure adopted by SOAH for contested case proceedings.
5. 1 TEX. ADMIN. CODE, CHAPTER 155.507, requires the issuance of a Proposal for Decision (“PFD”) containing Findings of Fact and Conclusions of Law.
6. 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.

VII. 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 ANSWER YOU FILE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS SHALL ALSO BE PROVIDED TO THE HEARINGS COORDINATOR OF THE TEXAS MEDICAL BOARD.

VIII. PRAYER

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,

CHRISTOPHER PALAZOLA
Litigation Manager

SUSAN RODRIGUEZ
Lead Attorney



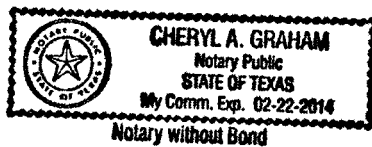
Christopher M. Palazola
Litigation Manager
Attorney-in-Charge
State Bar No. 24060379
christopher.palazola@tmb.state.tx.us
Telephone: (512) 305-7096
FAX # (512) 305-7007
333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701

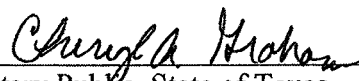
THE STATE OF TEXAS

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COUNTY OF TRAVIS

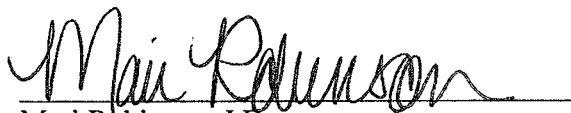
SUBSCRIBED AND SWORN to before me by the said Christopher M. Palazola on this
6th day of November, 2013.





Notary Public, State of Texas

Filed with the Texas Medical Board on this 6th day of Nov, 2013.

A handwritten signature in cursive script that reads "Mari Robinson". The signature is written in black ink and is positioned above a horizontal line.

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

CERTIFICATE OF SERVICE

I certify that on the 18th day of November 2013, a true and correct copy of the foregoing document has been served as follows:

Via E-mail: docketing@soah.state.tx.us

Rommel Corro, Docket Clerk
State Office of Administrative Hearings
William P. Clements Bldg.
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

Via Certified Mail/RRR No. 7008 2810 0000 1319 0600 and First Class Mail

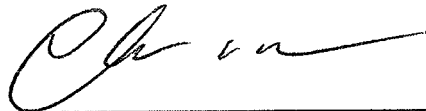
Charles Henry Fischer, MD
1703 Yaupon Valley
Austin, Texas 78746

Via Facismile No. 512-473-8525

Tony Cobos
4705 Spicewood Springs Rd., Suite 100
Austin, Texas 78759

By Hand Delivery:

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



Christopher Palazola J.D.