

**HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-16-6188.MD
TEXAS MEDICAL LICENSE NO. G-5125**

**IN THE MATTER OF THE
COMPLAINT AGAINST**

ROBERT HADLEY GROSS, M.D.

BEFORE THE

THE TEXAS MEDICAL BOARD

FIRST AMENDED COMPLAINT

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

The Staff of the Texas Medical Board (the Board) files this Complaint against Robert Hadley Gross, M.D. (Respondent), for alleged violations of the Medical Practice Act (the Act), Texas Occupations Code, Title 3, Subtitle B, Chapters 151 to 165 and would show the following:

I. SUMMARY OF FACTUAL ALLEGATIONS

The Board alleges that Respondent has been convicted of felony health care fraud, and incarcerated pursuant to his conviction sentencing.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a Texas physician and holds Texas Medical License No. G-5125 that was originally issued on August 27, 1983. Respondent's license was in full force and effect at all times material and relevant to this Complaint.

2. Respondent received notice of one or more Informal Settlement Conferences (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.

5. 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.

III. APPLICABLE STATUTES AND STATUTORY VIOLATIONS

The following Statutes, Rules, and Agency Policy are applicable to the procedures for conduct of the hearing this matter:

A. General Statutes and Rules:

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.

B. Specific Violations Cited:

Respondent has violated the Act and Board Rules.

1. TEXAS OCC. CODE § 53.021(b) provides for the automatic revocation of Respondent's license by operation of law upon his imprisonment for a felony conviction.

2. Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act prohibited under Section 164.052 of the Act.

3. Section 164.051(a)(2) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's conviction of a felony or a crime of a lesser degree that involves moral turpitude.

4. 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, as further defined by Board Rules: 190.8(2)(R), violation of federal and state laws whether or not there is a complaint, indictment, or conviction of any felony; and 190.8(6), discipline based on criminal conviction.

5. Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine, specifically 18 U.S.C. § 1347.

6. Section 164.057(a)(1)(A) of the Act requires the Board to suspend Respondent's license upon his initial conviction for a felony.

7. Section 164.057(b) of the Act requires the Board to revoke Respondent's license upon his final conviction for a felony.

IV. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges:

1. On or about December 16, 2015, Respondent was convicted of one count of Health Care Fraud, wherein he submitted claims to Medicare and Medicaid for services not rendered in the manner billed, including for services rendered after patients had died.

2. Respondent was sentenced to be imprisoned by the U.S. Bureau of Prisons for a term of 71 months, which 18 U.S.C. 3559, relating to sentencing classifications of offenses, classifies as a Class D felony.

3. Respondent's conviction related to the practice of medicine is a violation of the Act and/or Board Rules, specifically:

- a. Texas Occ. Code § 53.021(b) provides for the automatic revocation of Respondent's license by operation of law upon his imprisonment for a felony conviction.
- b. Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act prohibited under Section 164.052 of the Act.

- c. Section 164.051(a)(2) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's conviction of a felony or a crime of a lesser degree that involves moral turpitude.
- d. 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, as further defined by Board Rules: 190.8(2)(R), violation of federal and state laws whether or not there is a complaint, indictment, or conviction of any felony; and 190.8(6), discipline based on criminal conviction.
- e. Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine, specifically 18 U.S.C. § 1347.
- f. Section 164.057(a)(1)(A) of the Act requires the Board to suspend Respondent's license upon his initial conviction for a felony.
- g. Section 164.057(b) of the Act requires the Board to revoke Respondent's license upon his final conviction for a felony.

V. AGGRAVATING AND MITIGATING FACTORS

Board Rule 190.15 provides that the Board may consider aggravating factors that warrant more severe or restrictive disciplinary action. This case includes the following aggravating factors:

- 1. Increased potential for harm to the public;
- 2. Prior similar violations; and
- 3. Previous disciplinary action by the board, any government agency, peer review organization, or health care entity, to wit:
 - a. Agreed Order (2002) limiting Respondent from practicing medicine in the state of Texas until the legal proceedings regarding Respondent's billing practices had been resolved;
 - b. Agreed Order (2004) resulting from Respondent's criminal conviction for contempt and a felony conviction for filing false health care claims. The Order restricted Respondent from practicing medicine in the state of Texas until he provided information to the Board showing he was competent to resume the safe practice of medicine;

- c. Mediated Agreed Order (2013) requiring Respondent to have his practice evaluated by TMA's Practice Counseling Services with a specific emphasis on billing and coding, risk management and operational assessment and complete 18 hours of continuing medical education (CME). The action was based on Respondent failing to adequately supervise the activities of those acting under his supervision, peer review action, and failure to maintain adequate medical records; and
- d. Agreed Order on Formal Filing (2014) requiring Respondent to submit specific protocols, complete the recordkeeping course offered by University of California San Diego Physician Assessment and Clinical Education (PACE) program, and complete eight hours of CME. The action was based on Respondent's failure to maintain adequate medical records for seven patients.

Board staff is not aware of any mitigating factors that apply and demands that Respondent submit proof to substantiate any alleged mitigating factors.

VI. 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.

VII. 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 containing Findings of Fact and Conclusions of Law necessary to support a determination that Respondent violated the Act and Board Rules as set forth in this Complaint.

Respectfully submitted,

TEXAS MEDICAL BOARD

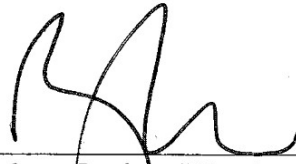
CHRISTOPHER PALAZOLA

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SUSAN RODRIGUEZ

Supervising Attorney

By:



Barbara Jordan, J.D., Attorney-in-Charge

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Telephone: (512) 305-7106

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333 Guadalupe, Tower 3, Suite 610

Austin, Texas 78701

THE STATE OF TEXAS

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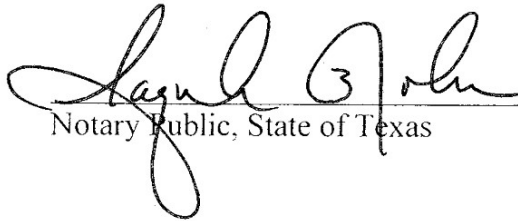
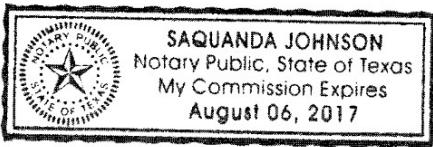
COUNTY OF TRAVIS

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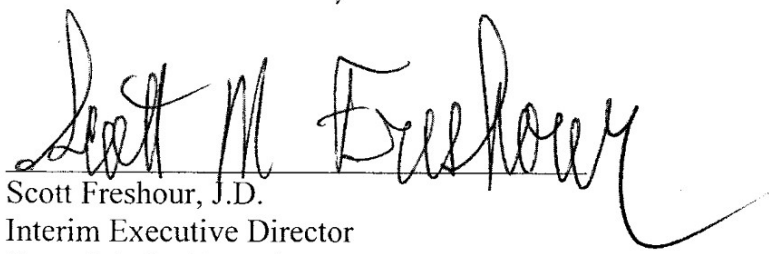
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SUBSCRIBED AND SWORN to before me by the said Barbara Jordan, J.D., on

October 17, 2016.


Notary Public, State of Texas

Filed with the Texas Medical Board on Oct 17th, 2016.

A handwritten signature in black ink, reading "Scott M. Freshour". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Scott Freshour, J.D.
Interim Executive Director
Texas Medical Board

CERTIFICATE OF SERVICE

I certify that on the 17th day of October, 2016, a true and correct copy of the foregoing document has been served as follows:

Via Electronic Submission to:

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

Via CMRRR No. 7008 2810 0000 3055 6642 and

First Class Mail to:

Robert Hadley Gross, M.D.
Register No. 28352-077
FCI Big Spring
Federal Correctional Institution
1900 Simler Ave
Big Spring, TX 79720
(Respondent)

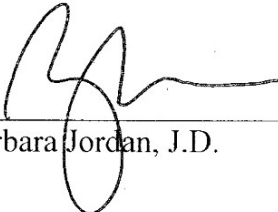
Via CMRRR No. 7008 2810 0000 3055 6659 and

First Class Mail to:

Robert Hadley Gross, M.D.
3814 Sherwood Way
San Angelo, TX 76901
(Respondent)

Via Hand Delivery to:

Robin Etheridge
Hearings Coordinator
Texas Medical Board
333 Guadalupe, Tower 3, Suite 610
Austin, TX 78701



Barbara Jordan, J.D.