

**HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-17- 5936 .MD
TEXAS MEDICAL LICENSE NO. F-7512**

**IN THE MATTER OF THE
COMPLAINT AGAINST
LIONEL LEVISON, M.D.**

**BEFORE THE

THE TEXAS MEDICAL BOARD**

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 Lionel Levison, 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 failed to meet the standard of care and keep adequate medical records for one patient. Specifically, Respondent failed to timely order the patient's medication despite the pharmacy contacting Respondent regarding pre-authorization. Furthermore, Respondent's prescriptions were not legible and he and his office staff did not call in prescriptions to clarify illegibility as requested by the patient. Finally, Respondent failed to cooperate with Board staff by failing to respond to requests for information during both the investigative and hearings phase.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a Texas Physician and holds Texas Medical License No. F-7512 that was originally issued on June 11, 1980. 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 ct. 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. Section 160.009(b) of the Act authorizes the Board to discipline Respondent based on failure to comply with a Board subpoena.

2. Section 164.051(a)(1) of the Act authorizes the Board to discipline Respondent based on Respondent committing an act prohibited under Section 164.052.

3. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a Board Rule, specifically Board Rule 165.1, failure to maintain an adequate medical record for each patient that is complete, contemporaneous, and legible.

4. 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 Board Rules: 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(B), negligence in performing medical services; 190.8(1)(C), failure to use proper diligence in one's professional practice; and 190.8(1)(D), failure to safeguard against potential complications.

5. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public, and further defined by Board Rules: 190.8(2)(B), failure to comply with a Board request for information; and, 190.8(2)(D), failure to cooperate with Board staff.

IV. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges:

Medical Records and Documentation:

1. Respondent's handwritten initial psychiatric evaluation note was brief and illegible with only a few phrases which could be interpreted.

2. Respondent's patient evaluation also lacked a clear and legible treatment plan.

3. Respondent and his office staff also failed to complete prior prescription authorization forms and the prescriptions written after the evaluation were not legible and could not be filled until two weeks after the appointment.

4. Respondent's failure to appropriately document a legible treatment plan is a violation of Section 164.051(a)(3) of the Act authorizes the Board to discipline Respondent

based on Respondent's Violation of Board Rule, specifically Board Rule 165.1, failure to maintain an adequate medical record for each patient that is complete, contemporaneous, and legible.

Standard of Care:

1. Respondent failed to meet the standard of care when he did not note a clear treatment plan during a new psychiatric patient evaluation on January 27, 2016.

2. Respondent also failed to meet the standard of care when Respondent and his staff were not diligent in ensuring the patient's prescriptions were filled, as the written prescriptions were not legible and requests by the pharmacy regarding clarification of the prescriptions were not answered promptly. Additionally, the failure to timely complete preauthorization forms added to the delay in filling the patient's prescriptions.

3. Respondent's failure to meet the standard of care is a violation of Section 164.051(a)(6) of the Act authorizes the Board to discipline Respondent based on Respondent failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as further defined by Board Rules: 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(B), negligence in performing medical services; 190.8(1)(C), failure to use proper diligence in one's professional practice; and 190.8(1)(D), failure to safeguard against potential complications.

Failure to Cooperate with Board:

1. Respondent failed to cooperate with Board staff during investigation of the complaint and refused to provide Board staff with a narrative statement in response to the complaint.

2. On February 19, 2016, Board staff sent correspondence by mail requesting a response by Respondent to a complaint filed against him. Respondent's response was due on March, 18, 2016, 28 days from the date of the letter. No response was provided.

3. On April 7, 2016, Board staff sent correspondence by mail reiterating the request for a response from Respondent by April 21, 2016. No response was provided.

4. On April 11, 2016, a Board subpoena duces tecum was issued and sent to Respondent via certified mail requesting a complete and accurate copy of medical and billing records for the patient (PW). The correspondence also requested affidavits completed by a

custodian of records. The certified letter was returned to the Board as unclaimed on May 31, 2016, and the complete copies of medical and billing have not heretofore been provided.

5. Respondent's failure to comply with a Board subpoena is grounds for disciplinary action under Section 160.009(b).

6. Respondent's failure to cooperate with Board staff and refusal to comply with the Board subpoena is a violation of Section 164.052(a)(5) of the Act, which authorizes the Board to take disciplinary action against Respondent based on Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public, and further defined by Board Rules: 190.8(2)(B), failure to comply with a Board request for information; and 190.8(2)(D), failure to cooperate with Board staff.

7. Additionally, Section 164.051(a)(1) of the Act authorizes the Board to discipline Respondent based on Respondent committing an act prohibited under Section 164.052.

V. AGGRAVATING AND MITIGATING FACTORS

Board Rule 190.14 provides that the Board may impose more restrictive sanctions when there are multiple violation of the Act.

Board Rule 190.15 provides that the Board may consider aggravating factors that warrant more severe or restrictive disciplinary action. This case includes the aggravating factors of increased potential for harm to the public and prior disciplinary action by the board:

On October 10, 2013, the Board and Respondent entered into an Agreed Order publicly reprimanding Respondent, assessing an administrative penalty of \$5,000, and requiring completion of a CME course on patient boundaries. The action was based on allegations Respondent made sexually inappropriate remarks and acted inappropriately toward female coworkers and had his staff privileges terminated as a result.

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

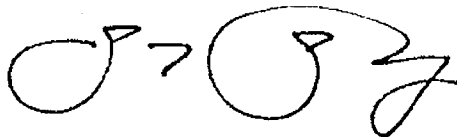
Board Staff requests that an administrative law judge employed by the State Office of Administrative Hearings conduct a contested case hearing on the merits of the Complaint, and issue a Proposal for Decision containing Findings of Fact and Conclusions of Law necessary to support a determination that Respondent violated the Act and Board Rules as set forth in this Complaint.

Respectfully submitted,

TEXAS MEDICAL BOARD

CHRISTOPHER PALAZOLA
Litigation Manager

SUSAN RODRIGUEZ
Supervising Attorney



By:

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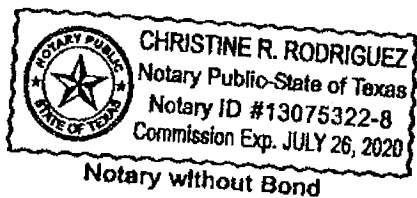
THE STATE OF TEXAS

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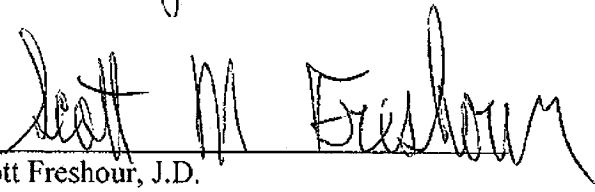
COUNTY OF TRAVIS

SUBSCRIBED AND SWORN to before me by the said Samer N. Shobassy, J.D., on
August 30, 2017.

Christine Rodriguez
Notary Public, State of Texas



Filed with the Texas Medical Board on Aug 30th, 2017.

A handwritten signature in black ink that reads "Scott M. Freshour". The signature is written in a cursive style and is positioned above a horizontal line.

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

CERTIFICATE OF SERVICE

I certify that on the 30th day of August, 2017, a true and correct copy of the foregoing document has been served as follows:

Via Email to docketing@SOAH.texas.gov

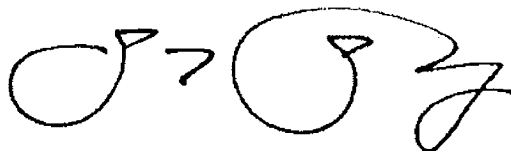
Docket Clerk
State Office of Administrative Hearings
William P. Clements Bldg.
300 W. 15th Street, Suite 504
Austin, TX 78701-1649

Via Certified Mail Article No. 7008 2810 0000 1414 4169 and First Class Mail

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Via Hand Delivery

Robin Etheridge
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Samer N. Shobassy, J.D.