

HEARING CONDUCTED BY THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-18-2027.MD
TEXAS MEDICAL LICENSE NO. G-6438

IN THE MATTER OF THE
COMPLAINT AGAINST

CHARLES HENRY FISCHER, 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 against Charles Henry Fischer, 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

Respondent's medical license is subject to revocation by operation of law because he is serving a twenty year sentence in the Texas Department of Criminal Justice (TDCJ), after being found guilty of six counts of indecency with a child, sexual contact; and two counts of sexual assault of a child.

II. DISCIPLINARY HISTORY

1. On November 22, 2011, a Temporary Suspension without Notice Hearing was held, the result of which was Respondent's medical license was suspended due to his practice of medicine posing a continuing threat to the public welfare; based on allegations of sexual abuse of at least 8 underage patients..

2. On November 30, 2012, the Board entered an Agreed Order of Suspension, suspending Respondent's Texas Medical License until the final disposition of his criminal case.

III. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a Texas Physician and holds Texas Medical License No. G-6438, that was originally issued 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 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.

IV. 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, provide 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 following provisions of 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)(A) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's conviction of a felony, as further defined by Board Rule 190.8(6), discipline based on criminal conviction, specifically, Tex. Penal Code §§ 19.03 and 30.02.

4. 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, as provided by Section 164.053, or injure the public, and further defined by Board Rule 190.8(2)(R), violation of federal and state laws whether or not there is a complaint, indictment, or conviction: (i) any felony; (ii) any offense in which assault or battery, or the attempt of either is an essential element; (viii) child molestation; specifically, Tex. Penal Code §§ 21.11 and 22.011.

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

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

V. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges:

A. Respondent's sexual assault of Patient 1 during examinations violates the Act.

1. On November 17, 2016, a Travis County jury found Respondent guilty of six counts of indecency with a child, sexual contact; and two counts of sexual assault of a child.

2. The 299th Judicial District Court of Travis County, Texas, sentenced Respondent to twenty years confinement in the TDCJ.

3. TDCJ has had custody of Respondent since his conviction.

4. Respondent currently resides at the TDCJ Holliday Unit in Huntsville, Texas.
5. Respondent's conviction for indecency with a child, sexual contact; and sexual assault of a child, violates the following provisions of the Act:

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.

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.

Section 164.051(a)(2)(A) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's conviction of a felony, as further defined by Board Rule 190.8(6), discipline based on criminal conviction, specifically, Tex. Penal Code §§ 19.03 and 30.02.

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, as provided by Section 164.053, or injure the public, and further defined by Board Rule 190.8(2)(R), violation of federal and state laws whether or not there is a complaint, indictment, or conviction: (i) any felony; (ii) any offense in which assault or battery, or the attempt of either is an essential element; specifically, Tex. Penal Code §§ 21.11 and 22.011.

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

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

VI. AGGRAVATING AND MITIGATING FACTORS

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

Board Rule 190.15 provides that the Board may consider aggravating and mitigating factors that warrant more or less severe disciplinary action; however, these factors are inapplicable because Texas Occ. Code § 53.021(b) provides for a single outcome upon imprisonment for a felony – automatic revocation.

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 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

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THE STATE OF TEXAS

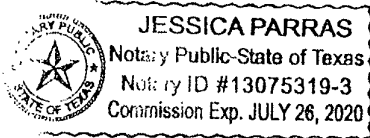
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COUNTY OF TRAVIS

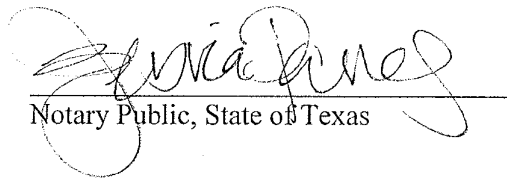
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SUBSCRIBED AND SWORN to before me by the said Jerry Bergman on January 25
2018.

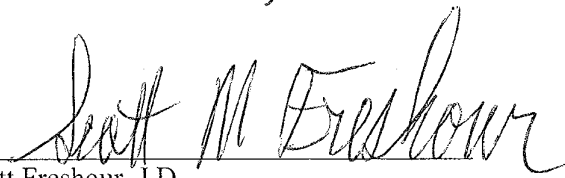


Notary without Bond



Notary Public, State of Texas

Filed with the Texas Medical Board on Jan 24/18, 2018.



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

CERTIFICATE OF SERVICE

I certify that on January 25, 2018, a true and correct copy of the foregoing Complaint has been served as follows:

BY EMAIL TO: DOCKETING@SOAH.TEXAS.GOV:

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State Office of Administrative Hearings
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BY FAX (512) 473-8525

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BY FIRST CLASS AND CMRRR #7008 2810 0000 1412 0621 TO RESPONDENT:

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BY HAND DELIVERY TO:

Robin Etheridge
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Jerry Bergman, Staff Attorney