

DOCKET NO. 503-98-1088

TEXAS STATE BOARD OF MEDICAL EXAMINERS,	§	BEFORE THE STATE OFFICE
PETITIONER,	§	
	§	
VS.	§	OF
	§	
HERNAN ENRIQUE BURGOS, M.D.	§	
License No. D-2649,	§	
RESPONDENT.	§	ADMINISTRATIVE HEARINGS

FINAL ORDER OF THE BOARD

During open meeting at Austin, Texas, the Texas State Board of Medical Examiners finds that after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a Proposal for Decision containing the Administrative Law Judge's Findings of Fact and Conclusions of Law. The Proposal for Decision was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Texas State Board of Medical Examiners, after review and due consideration of the Proposal for Decision, and exceptions and replies filed, if any, adopts the following Findings of Fact and Conclusions of Law of the Administrative Law Judge. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

FINDINGS OF FACT

1. On August 11, 1998, the Staff of the Texas State Board of Medical Examiners (Staff) issued a notice of hearing and complaint to Hernan Enrique Burgos, M.D. (Respondent) informing him of its intention to take disciplinary action against him and of his right to be heard on the allegations at a hearing scheduled for September 28, 1998.
2. On August 11, 1998, the Staff sent the notice of hearing by certified mail, return receipt requested, to Respondent at the Federal Correctional Institution, Inmate No. 29107-077, P.O. Box 629, in Bastrop, Texas. The return "green card" receipt was signed by R. Marks on August 12, 1998, and returned to the Staff.
3. A hearing on the merits was convened on September 28, 1998, at the State Office of Administrative Hearings (SOAH). Courtney Newton appeared for the Staff; Respondent did not appear.
4. Respondent is a licensed Texas physician.

5. The Board issued Respondent a Texas medical license in 1965.
6. Respondent holds Texas medical license D-2649 which was in full force and effect at all times and dates material and relevant to the allegations in the complaint.
7. On or about November 7, 1996, after entering a plea of "not guilty," Respondent was tried in the United States District Court for the Northern District of Texas and was found guilty and convicted of 14 counts of mail fraud and aiding and abetting in violation of Title 18, United States Code, Sections 1341 and 1342, in a scheme to facilitate the payment of more than \$1,000,000.00 to the Psychiatric Institute of Fort Worth generated by false health insurance claims.
8. Respondent was sentenced to 46 months of imprisonment on each count to be served concurrently, and was ordered to pay a fine in the amount of \$425,000.00, plus a special assessment of \$700.00.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to TEX. REV. CIV. STAT. ANN. art. 4495b, §§4.01, 4.02, 4.03, 4.11, and 4.12.
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a Proposal for Decision containing Findings of Fact and Conclusions of Law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052, and the Board's rules, 22 TEX. ADMIN. CODE §187.1, *et. seq.*
4. The hearing was conducted according to the requirements of the Administrative Procedure Act, the rules of the State Office of Administrative Hearings, 1 TEX. ADMIN. CODE ch. 155, and the Board's rules in 22 TEX. ADMIN. CODE ch.187 governing procedures in contested cases.
5. Respondent's conduct with respect to the crime described in Finding of Fact No. 7 for which he was convicted in the United States District Court for the Northern District of Texas on or about November 7, 1996, constitutes grounds for the Board to revoke or suspend Respondent's Texas medical license or to impose any other authorized means of discipline against Respondent.
6. Section 3.08(2) of the Medical Practices Act, TEX. REV. CIV. STAT. ANN. art. 4495(b), authorizes the Board to discipline a licensed physician for the conviction of a crime of the grade of felony or a crime of a lesser degree that involves moral turpitude.

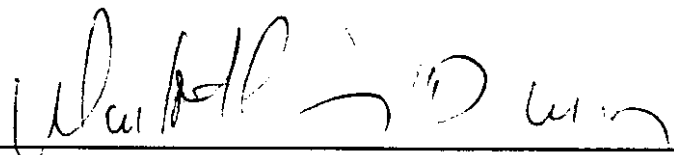
7. Section 3.08(4) of the Act authorizes the Board to discipline a licensed Texas physician for unprofessional or dishonorable conduct that is likely to deceive, defraud or injure the public.
8. Section 3.08(18) of the Act authorizes the Board to discipline a licensed Texas physician for professional failure to practice medicine in an acceptable manner consistent with the public health and welfare.
9. Section 4.01(a) of the Act authorizes the cancellation, revocation, suspension, and probation of a physician's Texas medical license for a violation of the Act or a rule of the Board or for any cause for which the Board is authorized to refuse to admit persons to its examinations and to issue a license or renewal license.
10. Section 4.125 of the Act authorizes the Board to impose a monetary administrative penalty not to exceed \$5,000.00 for each separate violation of the Act or Board rule by a person licensed or regulated under the Act.
11. Respondent violated Section 3.08 (2),(4), and (18) of the Act.
12. Respondent is subject to disciplinary action for the violations set out in Finding of Fact No. 7.
13. Respondent's medical license should be revoked.
14. Respondent should pay a fine in the total amount of \$15,000.00, consisting of \$5,000.00 for each violation of Section 3.08 of the Act as described in Conclusion of Law No. 11.

NOW, THEREFORE, IT IS ORDERED that Respondent's Texas medical license number D-2649 be revoked, and that he be assessed an administrative penalty in the amount of \$15,000.00.

The Board's Order shall become effective the date the Order is signed by the chairman.

Passed and approved at the regular meeting of the Texas State Board of Medical Examiners at Austin, Texas, on the 28th day of January, 1998. 1999

TEXAS STATE BOARD OF MEDICAL EXAMINERS



 William H. Fleming, III, M.D.
 President, Texas State Board of Medical Examiners