

HEARING CONDUCTED BY THE  
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS  
SOAH DOCKET NO. 503-10-5750.MD  
LICENSE NO. N/A

IN THE MATTER OF THE

COMPLAINT AGAINST:

ROBY DEAN MITCHELL, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

**CEASE & DESIST ORDER BY DEFAULT**

During open meeting at Austin, Texas, the Texas Medical Board (the "Board") considered Board Staff's Motion for Cease & Desist Order by Default ("Motion") against ROBY DEAN MITCHELL, M.D., ("Respondent").

**I. FINDINGS OF FACT**

1. Respondent no longer has a Texas Medical License. On September 26, 2005, Respondent's license to practice medicine was revoked by the Board. There was no license to practice medicine in effect at all times material and relevant to this Motion.

2. All jurisdictional requirements have been satisfied under TEX. OCC. CODE ANN., Title 3, Subtitle B, Medical Practice Act (the "Act").

3. Respondent received all notice that may be required by law and by the rules of the Board.

4. A Complaint was filed by the Board on August 11, 2010, with the State Office of Administrative Hearings ("SOAH"), alleging that Respondent had violated the Act and was subject to disciplinary action by the Board. The Complaint referenced the following facts:

- a. Respondent is not licensed to practice medicine in the State of Texas.
- b. Respondent's license to practice medicine was permanently revoked by an Order of the Board on September 26, 2005.

- c. Since the 2005 revocation of Respondent's medical license, he has engaged in the unlicensed practice of medicine in Amarillo, TX.
- d. Since the 2005 revocation of Respondent's medical license, he has opened and operated a medical practice office.
- e. Since the 2005 revocation of Respondent's medical license, he advertised his medical practice to the public, and has solicited patients.
- f. Since the 2005 revocation of Respondent's medical license, he has offered, and dispensed, medical advice and treatments to patients.
- g. Since the 2005 revocation of Respondent's medical license, he has dispensed medications to patients.

5. A copy of the Complaint was served upon Respondent at Respondent's current mailing address of record on file with the Board. Delivery was successful as evidenced by return of a "green card" (PS Form 3811) receipt signed by Respondent or an agent of Respondent.

6. The Complaint included all language required by 22 TEX. ADMIN. CODE §187.27(b), advising Respondent that the failure to file a written answer to the Complaint within 20 days of the date of service may result in the entry of a Default Order.

7. Respondent has failed to file an Answer, or any response, to the Complaint.

8. More than 20 days have passed since the date on which the Complaint was served on Respondent.

9. On December 13, 2010, the General Counsel of the Board issued a Determination of Default. The Determination of Default was served on Respondent by U.S. Postal Service certified mail/return receipt requested, and First Class mail, at the Respondent's address of record on file with the Board.

10. On December 29, 2010, the case was remanded from SOAH to the Board pursuant to the Board's Motion To Remand.

11. As a result of Respondent's failure to respond, all facts alleged in the Complaint are deemed admitted.

## II. CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes the following:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.
2. Section 155.001 of the Act provides that a person may not practice medicine in this state unless the person holds a license issued under TEX. OCC. CODE ANN., Title 3, Subtitle B.
3. Sections 165.052(a), as well as the Act's Board Rules, specifically Chapter 198, provide the Board with the sole and exclusive authority to determine the charges on the merits, to impose a Section 165.052 sanction for violation of the Act, and to enter a Cease and Desist Order.
4. Section 165.052(b) provides that a violation of an Order under Section 165.052(a) constitutes grounds for imposing an administrative penalty under TEX. OCC. CODE, Title 3, Subtitle B, Chapter 165, Subchapter A, which allows for an administrative penalty of up to \$5000 for each violation to be assessed, and each day of a violation continues constitutes a separate violation.
5. Sections 165.101 and 165.103 of the Act provide that any violation of this Order constitutes grounds for imposing a civil penalty of up to \$1000 for each violation, and for recovery of the reasonable expenses of litigation, by action of the Attorney General, and each day a violation continues, which constitutes a separate violation.
6. Section 165.151(a) provides that a person commits an offense if the person violates TEX. OCC. CODE ANN., Title 3, Subtitle B.
7. Section 165.152 provides that a person who practices medicine in violation of TEX. OCC. CODE ANN., Title 3, Subtitle B, commits a felony of the third degree, and that each day a violation continues constitutes a separate offense.
8. Section 165.153 provides that a person who practices medicine without a license or permit, and causes another person harm, commits a third degree felony if the other person suffers physical or psychological harm, and/or commits a state jail felony if the other person suffers financial harm.

9. Section 165.156 provides that a person commits an offense if the person uses letters, words, or terms affixed on stationary or advertisements, or in any other manner, to indicate the person is entitled to practice medicine if the person is not licensed to so.

10. Section 165.159 provides that a person commits an offense if the person practices medicine without complying with registration requirement imposed by this subtitle.

11. 22 TEX. ADMIN. CODE §187.26 authorizes service of process by hand delivery, regular, registered, or certified mail, courier service or otherwise at the address of record on file with the Board, and that a certificate of service shall be prima facie evidence of proper service of the Complaint.

12. 22 TEX. ADMIN. CODE §187.27(b) authorizes: the General Counsel of the Board to issue a Determination of Default when a Respondent fails to answer a Complaint within 20 days of the date of service; the Board to consider the Determination of Default after at least 20 days from the date of its issuance; and for the Board to deem all allegations in the Complaint as true and enter a Default Order when Respondent fails to file a written answer to a Complaint within 20 days of the date Notice was served.

### **III. ORDER**

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that:

1. Respondent is prohibited from practicing as a physician in the State of Texas.
2. Respondent shall cease and desist any practice of medicine, including the practice of alternative or complimentary medicine, and any express or implied representation that he is a physician, after the effective date of this Order.

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board  
on this 4<sup>TH</sup> day of FEBRUARY, 2011.

Melinda McMillan MD FR  
Irvin E. Zeitler, Jr., D.O., President  
Texas Medical Board