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Physician's Suspension Shows Complying With Medical Board Orders Critical

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A recent Texas Medical Board order suspending a Houston physician shows the serious consequences that can result if a physician subject to an order fails to comply.

Board's Suspension of Dr. Theresa Cachuela Rice

In September, 2011, the Board automatically suspended the license of Houston doctor Theresa Cachuela Rice, M.D., requiring Dr. Rice, 79, to immediately cease practicing medicine in Texas after Dr. Rice failed to complete Continuing Medical Education and to take and pass the Texas Medical Jurisprudence Exam as stipulated by a previous March 2010 Order.

In March 2010, the Board and Dr. Rice entered into an Agreed Order requiring Dr. Rice to: pass, within one year from the date of the entry of the Order, the Texas Medical Jurisprudence Examination within three attempts; complete 24 hours of CME within one year; and pay an administrative penalty of \$1,500 within 60 days of the date of the entry of the Order.

The 2010 Order was based on the Board's finding that Dr. Rice: failed to meet the standard of care; aided and abetted the practice of medicine by a person not licensed by the Board; and failed to supervise adequately the activities of those acting under her supervision.

In its 2010 decision, the Board considered as a mitigating circumstance that Dr. Rice was one of several doctors duped by a Nigerian businessman who had a history of fraudulent activity. At that time, the Board elected not to suspend Dr. Rice subject to her completion of continuing medical education (CME) and fulfillment of other terms.

The Board's announcement of the suspension of Dr. Rice does not provide any information about the reasons or circumstances underlying the alleged failure by Dr. Rice to fulfill the terms of the Board's order. According to the announcement, however, Dr. Rice will have the opportunity to appeal her automatic suspension.

Physicians Should Take Seriously Board Charges & Orders

While most physicians that become subject to a disciplinary order of the Board generally comply, from time to time, some physicians do not. Because of the potential severity of the consequences for failing to comply with a Board order, physicians facing discipline need to fully understand the charges leveled against them, the expectations of the Board regarding the past behavior of the physician, and the Board's expectations about the physician's action and future conduct as soon as possible after charges are first leveled to the Board. While many physicians agreeing or subjected to discipline by the Board or another disciplinary body often do not fully agree with the discipline, most understand the need to comply with the order and adjust their behavior to ensure their ability to demonstrate that compliance to the Board.

Frequently, physicians under disciplinary investigation by the Board may feel the charges leveled against them are unjustified or otherwise disagree with criticisms regarding the physician's behavior. When this is the case, before deciding how to respond to the charges in question, it is important that the physician carefully and objectively review the conduct underlying the charges with qualified counsel in light of board rules and other standards of care to assess the likelihood that the Board can be persuaded to agree with the physician's perspective or if not, what other response the Board is likely to have to the conduct under review. When making these evaluations, it is critical that the physician exercise caution to ensure the objectiveness of this analysis.

Whether negotiating a voluntary consent order or considering whether and how to discipline a physician following a hearing where the Board finds fault with the conduct under review, the Board's perception about the culpability of the actions of the physician, the physician's acceptance of the need for changes in conduct and the likelihood that the physician will make the required change and comply with the Board ordered corrective action and other Board rules going forward play heavily into the decision of what discipline is ordered.

When it feels the inappropriateness of the conduct to be relatively clear, the Board is likely to view the persistence of a physician in contesting the charges as reflecting the physician's failure to accept responsibility for his or her misconduct as well as an indicator that the physician is unlikely to comply with the Board's expectations in the future. For this reason

legal counsel for a physician often might recommend that the physician consider seeking to negotiate a voluntary consent order with the Board when the legal counsel is concerned that the Board might find fault with the conduct of the physician.

While genuine contrition and a commitment to work to improve compliance going forward may help mitigate Board discipline exposures at the time expressed, a physician pursuing this strategy must be prepared to in fact comply with the orders of the Board and adjust his or her behavior accordingly. As reflected by the Board's action against Dr. Rice, the Board rarely is sympathetic or lenient when it determines that a physician fails to comply with a Board order. Consequently, physicians entering into a voluntary consent order with the Board or subject to an order imposed by the Board should make every effort to understand and fully comply. If legitimate circumstances beyond the control of the physician subsequently prevent or undermine the ability of the physician to comply with the order, the physician immediately should consult with counsel regarding the potential to modify the order or other actions that are required or advisable to mitigate the potential sanctions from the Board for failing to comply.

Physician Personal Misconduct Topic of Stamer's 9/27 HCMS CME Program

While the Board's announcement about the suspension of Dr. Rice does not indicate any facts or circumstances at this time surrounding her noncompliance, a review of published Board actions reveals that in many instances, physicians that incur follow up discipline for failing to comply with Board orders often are impacted by a physical or mental condition, substance abuse or other circumstance impairs the ability of the physician to appreciate the need to comply or his or her ability to conform behavior to the required expectation.

Cynthia Marcotte Stamer will discuss licensing board, peer review, tort and other exposures arising out of sexual, substance abuse, or other personal misconduct issues affecting physician and other health care providers in a program entitled "Sex, Drugs & Rock 'n Role" for the Harris County Medical Society Central Branch on October 27, 2011. To register or for other details, see [here](#).

For More Information Or Assistance

If you need assistance conducting or reviewing or responding to a medical licensing board, peer review or other health care quality investigation or concern or with other health care related risk management, compliance, enforcement or management concerns, the author of this update, attorney Cynthia Marcotte Stamer, may be able to help. Vice President of the North Texas Health Care Compliance Professionals Association, Past Chair of the ABA Health Law Section Managed Care & Insurance Section and the former Board Compliance Chair of the National Kidney Foundation of North Texas, Ms. Stamer has more than 24 years experience advising health industry clients about these and other matters. Her experience includes advising hospitals, nursing home, home health, rehabilitation and other health care providers and health industry clients to establish and administer compliance and risk management policies; prevent, conduct and investigate, and respond to peer review and other quality concerns; and to respond to Board of Medicine, Department of Aging & Disability, Drug Enforcement Agency and other health care industry investigation, enforcement and other compliance, public policy, regulatory, staffing, and other operations and risk management concerns.

A popular lecturer and widely published author on health industry concerns, Ms. Stamer continuously advises health industry clients about compliance and internal controls, workforce and medical staff performance, quality, governance, reimbursement, and other risk management and operational matters. Ms. Stamer also publishes and speaks extensively on health and managed care industry regulatory, staffing and human resources, compensation and benefits, technology, public policy, reimbursement and other operations and risk management concerns including a number of programs and publications on medical licensure, peer review, quality and related risk management and defense.

Her insights on these and other related matters appear in the Health Care Compliance Association, Atlantic Information Service, Bureau of National Affairs, World At Work, The Wall Street Journal, Business Insurance, the Dallas Morning News, Modern Health Care, Managed Healthcare, Health Leaders, and a many other national and local publications. You can get more information about her health industry experience [here](#). If you need assistance with these or other compliance concerns, wish to inquire about arranging for compliance audit or training, or need legal representation on other matters please contact Ms. Stamer at (469) 767-8872 or via e-mail [here](#).

If you or someone else you know would like to receive future updates about developments on these and other concerns, please be sure that we have your current contact information – including your preferred e-mail – by creating or updating your profile [here](#). For important information concerning this communication click [here](#). If you do not wish to receive these updates in the future, send an e-mail with the word "Remove" in the Subject to [here](#).