

# Cynthia Marcotte Stamer, P.C. SOLUTIONS LAWYER™

**Cynthia Marcotte Stamer**  
Board Certified – Labor and Employment Law  
Texas Board of Legal Specialization  
Direct Telephone: (972) 588.1860  
Mobile Telephone: (469) 767.8827  
Facsimile: (469) 814-8382  
E-Mail: [cstamer@solutionslawyer.net](mailto:cstamer@solutionslawyer.net)

**Helping Management Manage**

**Primary Office**  
6633 Dallas Parkway, Suite 600  
Addison, Texas 75001  
**Plano Office**  
3948 Legacy Drive  
Suite 106, Box 397  
Plano, Texas 75023

March 16, 2011

## **Texas Medical Board Suspend Denton Doctor For Sexual Misconduct**

### *Personal Misconduct By Physician & Health Care Workers Common Trigger for Disciplinary Action and Other Liability*

On March 14, 2011, a disciplinary panel of the Texas Medical Board temporarily suspended, with notice, the medical license of Ramon A. Cruz, M.D., of Denton, based on allegations of inappropriate sexual behavior with several patients. According to the Texas Medical Board, the panel found that Dr. Cruz, Lic. No. K3703, engaged in sexually inappropriate behavior with several patients. Four incidents, including an alleged sexual assault, were reported by patients to Denton Police. The panel found that Dr. Cruz's actions demonstrate a pattern of inappropriate behavior, which is a continuing threat to public health and safety justifying the suspension of his license. The suspension remains in effect until the Board takes further action.

Unprofessional personal misconduct presenting a risk to public health and safety is a common trigger for discipline by the Texas Medical Board and other licensing boards. See, e.g. [Quality, Recordkeeping & Unprofessional Conduct Lead Reasons For Medical Board Discipline of Physicians](#). Although complaints based on sexual misconduct occur much less frequently than substance abuse or other types of personal misconduct, the Texas Medical Board and other medical licensing bodies view sexual misconduct as among the most serious types of violations. The prevalence rate of sexual misconduct in physicians is estimated at 6-10 percent but this phenomenon is likely under-reported in physician surveys and by patients. It is believed that the number of false claims made by patients is very low. A 1992 study indicates that only 4-8 percent of patients report a doctor's sexual misconduct. Physicians found guilty of engaging in prohibited sexual misconduct typically are male, have a mean age of 53, practice in private practice, and have a history of substance abuse, are in the midst of a divorce, separation or other life crisis and tend to engage in higher than typical nonsexual patient touch with patients.

Because of their special role and responsibility with respect to patients and the community, the law, the profession and the public impose high expectations upon physicians and other health care professionals in relation to their sexual conduct toward patients and others. State medical practices and other medical licensure bodies, the American Medical Association Code of Conduct, the Joint Commission, peer review and other disciplinary boards and other regulatory and administrative policies and bodies generally prohibit both sexual assault, sexual harassment, and a broad range of other conduct of a sexual nature considered to be inconsistent with the special relationship of trust occupied by the health care professional.

Sexual misconduct charges that can result in discipline can include clear atrocities such as rape or other sexual assaults, as well as engagement in inappropriate sexual relationships or overtures to current or former patients, as well as sexual harassment and certain other types of sexual relationships or conduct involving staff or others. See, e.g., *Ringer v. Texas State Bd. of Med. Examiners*, 1999 Tex. App. LEXIS 8214 (Tex. App. 1999); *Texas State Board of Medical Examiners v. Haynes*, 388 S.W.2d 258, 261 (Tex. App. 1965); *Texas State Board of Medical Examiners v. Koepsel*, 159 Tex. 479 (Tex. 1959). In addition discipline by the Board of Medicine, physicians or other health care providers typically also face other consequences such as medical malpractice, sexual harassment or other similar claims or charges, peer review discipline, data bank reports, employment termination or discipline, practice expulsion, and criminal prosecution. Even if a physician or other health care provider dodges formal discipline, accusations of sexual misconduct by a physician or other health care provider tends to permanently damage the practice and reputation of the health care. Sexual misconduct by a physician or other health care provider or workforce member also can create significant exposures for hospitals, clinics, affiliated physicians and health care professionals associated with a physician or health care provider found to have engaged in sexual misconduct. Among other things, the failure of these third parties to take adequate steps to prevent, investigate, report or redress another health care provider's sexual misconduct or harassment may result in malpractice or other civil litigation, licensure or other professional investigation or discipline, reputational damages and other consequences.

To guard against these exposures, physicians and other health care providers should exercise care to avoid engaging in actions that might expose them to charges of sexual assault, harassment or other inappropriate sexual conduct and should adopt policies, adopt procedures and practices to prohibit and provide training and other oversight to encourage other health care providers and staff to avoid such conduct. If a physician or other health care provider or organization observes, receives a report or charge or otherwise becomes aware of information indicating that a potential sexual assault or other inappropriate sexual conduct may have occurred, it should act promptly and appropriately to investigate and redress the conduct or suspected conduct in a manner designed to strengthen their defenses against possible disciplinary action or other liabilities and risks. Because of the legal sensitivity and risk associated with the allegations of sexual misconduct and the investigation of those charges, physicians and other health care providers and organizations involved in these concerns generally should engage competent legal counsel as soon as possible when these concerns come to light for assistance in responding to the concerns, as well as the ability to use attorney-client privilege and work product, peer review, quality, and other legal privileges and other legal rules and safeguards to help promote confidentiality and defensibility of sensitive communications and conduct in connection with the investigation and response to these concerns.

### **For More Information Or Assistance**

If you need assistance providing compliance or other training, reviewing or responding to these or 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 23 years experience advising health industry clients about these and other matters. Ms. Stamer has extensive experience advising and assisting health care providers and other health industry clients to establish and administer compliance and risk management policies, to train and administer compliance and risk management programs, and to investigate and defend employment, peer review, quality, licensing board and other disciplinary concerns, 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. She also regularly designs and presents risk management, compliance and other training for health care providers, professional associations and others. 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 her highly popular programs on “*Sex Drugs & Rock ‘N Role: Managing Personal Misconduct in Health Care*,” “*Managing Physician Performance*” and others.. 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](#).

### **Other Recent Developments**

If you found this information of interest, you also may be interested in reviewing some of the following recent publications by Ms. Stamer:

- [States Get More Info On Affordable Care Act Medicaid Eligibility Maintenance Of Effort; Payers & Providers Must Monitor](#)
- [Health Care Providers Brace For New HIPAA Enforcement AS OCR Announces Hospital Resolution Agreement Requiring \\$1 Million Settlement Payment](#)
- [HHS Imposes 1st HIPAA Privacy Civil Penalty of \\$4.3 million](#)
- [ONC Giving Small Critical Access And Rural Hospitals Added Electronic Health Records Funds](#)
- [Health Care Employer’s NLRB Settlement Shows Care Necessary When Using Social Networking & Other Policies Restricting Employee Communications](#)
- [Medicare Proposes To Require Providers To Notify Patients Of Quality Of Care Complaint Rights](#)
- [Supreme Court Ruling Medical Resident Stipend Are Wages Highlights Advisability of Compliance Review](#)
- [CMS Physician Compare Tool Gives Patients New Info On Physicians & Other Providers](#)
- [Health Care Fraud Enforcement Packs New Heat](#)
- [President Signs Long-Sought Red Flag Rule Exemption Into Law](#)
- [Quality, Recordkeeping & Unprofessional Conduct Lead Reasons For Medical Board Discipline of Physicians](#)
- [DEA Cautions Practitioners Must Restrict Delegation of Controlled Substance Prescribing Functions, Urges Adoption of Written Policies & Agreements](#)
- [Rite Aid Agrees to Pay \\$1 Million to Settle HIPAA Privacy Case As OCR Moves To Tighten Privacy Rules](#)

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](#) or e-mailing this information [here](#). To unsubscribe, e-mail [here](#).