

TEXAS MEDICAL LICENSE NO. E-2228

IN THE MATTER OF
THE LICENSE OF
THEODORE M. HERRING, JR., M.D.

BEFORE THE DISCIPLINARY
PANEL OF THE
TEXAS MEDICAL BOARD

ORDER OF TEMPORARY SUSPENSION
(WITHOUT NOTICE OF HEARING)

On February 13, 2014, came to be heard before the Disciplinary Panel (the Panel) of the Texas Medical Board (the Board), composed of Michael Arambula, M.D., Chair; Paulette Southard; and Carlos Gallardo, members of the Board duly in session, the matter of the Application for Temporary Suspension (Without Notice of Hearing) of the license of Theodore M. Herring, Jr., M.D. (Respondent). Christopher Palazola represented Board staff. Based on evidence submitted, the Board through this Panel makes the following Findings of Fact and Conclusions of Law and enters this Order of Temporary Suspension (Without Notice of Hearing):

FINDINGS OF FACT

1. Respondent practices in Houston, Texas. On his public profile, Respondent lists his primary practice area as gynecology.
2. At all times relevant to Staff's Application for Temporary Suspension or Restriction, Respondent was the sole provider of abortion services at "A Affordable Women's Medical Center" (the facility) located in Houston, Texas.
3. As of November 1, 2013, Respondent, as a provider of abortion services in Texas, is required by law to have active admitting privileges at a hospital providing obstetric or gynecological health care services located within 30 miles of the location where the abortion services are provided.
4. Between November 6, 2013 and February 7, 2014, Respondent performed or induced 268 abortion procedures at the facility.
5. Between November 6, 2013 and February 7, 2014, Respondent did not hold active admitting privileges at a hospital that provides obstetrical or gynecological health care services

located no further than 30 miles from the location of the facility.

6. Respondent was notified by the Department of State Health Services (DSHS) of deficiencies, including lack of active admitting privileges, found during an unannounced inspection of the facility on December 11, 2013.

7. Respondent did not submit an application for active admitting privileges until January 15, 2014.

8. On or about January 27, 2014, Respondent submitted a Plan of Correction in response to the deficiency notification. On February 3, 2014, DSHS notified Respondent on that the Plan of Correction was not sufficient and that he remained in violation of state law.

9. DSHS conducted a second unannounced follow-up visit of the facility on February 7, 2014. During this visit Respondent acknowledged that he continued to provide abortion services and that he did not have active admitting privileges as required by law.

10. As of February 13, 2014, Respondent has not obtained active admitting privileges at a hospital that provides obstetrical or gynecological health care services located no further than 30 miles from the location of his clinic.

11. The evidence demonstrates that Respondent has engaged in ongoing violations of the law that make his continued practice of medicine a continuing threat to the public health and safety.

CONCLUSIONS OF LAW

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

1. Section 164.059 of the Act authorizes the Panel to temporarily suspend or restrict the medical license of Respondent if the Panel determines from evidence presented to it that Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.

2. Section 164.069(c) of the Act authorizes that a license may be suspended or restricted by a disciplinary panel under this section without notice of hearing if: (1) the board immediately provides notice of the suspension or restriction to the license holder; and (2) a hearing on the temporary suspension or restriction before a disciplinary panel of the board is scheduled for the earliest possible date after 10 days' notice of hearing.

3. Based on the evidence presented and the Findings of Fact set forth herein, the Panel finds that Respondent violated various sections of the Medical Practice Act.

4. The Panel finds that Respondent violated Section 164.052(a)(5) of the Medical Practice Act by engaging in unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053.

5. The Panel finds that Respondent violated Section 164.053(a)(1) of the Medical Practice Act by committing an act that violates any state or federal law that is connected with Respondent's practice of medicine, specifically Texas Health and Safety Code 171.0031(a)(1), requiring a physician who performs or induces an abortion to hold active admitting privileges at a hospital that provides obstetrical or gynecological health care services located no further than 30 miles from the location at which the abortion is performed or induced.

6. Based on the evidence presented and the above Findings of Fact and Conclusions of Law, the Panel determines that Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.

ORDER

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

1. Respondent's Texas Medical License No. E-2228 is hereby TEMPORARILY SUSPENDED.

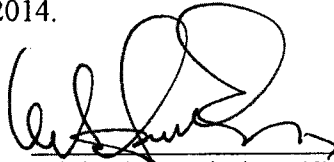
2. This Order of Temporary Suspension Without Notice of Hearing is final and effective on the date rendered.

3. Notice of this Order of Temporary Suspension (Without Notice of Hearing) shall be given immediately to Respondent.

4. A hearing on the Application for Temporary Suspension (With Notice of Hearing) will hereby be scheduled before a disciplinary panel of the Board at a date to be determined as soon as practicable, at the offices of the Board, unless such hearing is specifically waived by the Respondent.

5. This Order of Temporary Suspension (Without Notice of Hearing) shall remain in effect until such time as a hearing on the Application for Temporary Suspension (With Notice of Hearing) is conducted and a disciplinary panel enters an order, or until it is superseded by a subsequent Order of the Board.

Signed and entered this February 13, 2014.

A handwritten signature in black ink, appearing to read 'Michael Arambula', written over a horizontal line.

Michael Arambula, M.D.
Chair, Disciplinary Panel
Texas Medical Board