

LICENSE NO. G-2467

IN THE MATTER OF	BEFORE THE DISCIPLINARY
THE LICENSE OF	PANEL OF THE
RICHARD MARTIN ROBERTS, M.D.	TEXAS MEDICAL BOARD

ORDER OF TEMPORARY RESTRICTION
(WITH NOTICE OF HEARING)

On November 2, 2017, at the direction and approval of Sherif Z. Zaafran, M.D., President of the Texas Medical Board, Margaret McNeese, M.D., Julie K. Attebury, and LuAnn Morgan were appointed to sit as a Disciplinary Panel (Panel) in this matter, pursuant to § 164.059(a) of the Medical Practice Act (Act) and 22 Tex. Admin. Code § 187.56. Richard Martin Roberts, M.D. (Respondent), was properly notice of the hearing and appeared with counsel Dan Lypc and Andre DeSousa. Nikki Karr 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 Restriction (WITH NOTICE OF HEARING):

FINDINGS OF FACT

1. Respondent is a physician who reports practicing medical genetics and pediatrics as a locum tenens physician at United Medical Center until April of 2016, and as a solo practitioner performing prenatal genetics procedures and prenatal genetics counseling.
2. On January 6, 2016, Consilium Staffing confirmed Respondent's locum tenens employment at United Medical Centers (UMC). Providers through the staffing agency were independent contractors.
3. On January 14, 2016, Respondent was granted temporary privileges at United Medical Centers (UMC) for the period of 120 days pending completion of the credentialing process.
4. On March 31, 2016, Respondent treated Patient 1, aged three, for fever and cough

symptoms. The patient's mother complained to UMC about Respondent's examination being too rough while checking the child's ears and that Respondent had the child's pants pulled down and touched her buttocks without seeking proper consent or informing the patient what he was going to do.

5. On April 5, 2016, Respondent treated Patient 2, aged five-years-old, for a well child check. The patient's mother complained to UMC about Respondent's examination. The patient's mother reported that Respondent made an invasive examination of the patient's genital area by rubbing his hand on the patient's genitals, and then placed the unclothed child on his lap without seeking proper consent or informing the patient what he was going to do or why.

6. On April 25, 2016, Respondent treated Patient 3, aged 18 months, for a well child check. The UMC staff chaperone complained to UMC about Respondent's examination of the patient. The chaperone reported that the infant patient began to kick and scream while Respondent attempted to examine the patient's ears. Respondent placed the patient on her belly, placing his left forearm under the patient's head and leaning his weight on the patient to restrain her, causing her to bleed from the mouth during the struggle. The chaperone reported that she suggested a different restraining method, which would allow the patient's mother to hold the child, but Respondent refused, stating, "No, I can handle this."

7. On April 26, 2016, Respondent treated Patient 4, aged seven, whose mother reported a chief complaint of a possible learning disability. The UMC staff chaperone reported that during the examination, Respondent pulled the patient's shorts down to check her buttocks and genitalia during the examination without seeking proper consent or informing the patient what he was going to do, commenting that, "only doctors get to do this."

8. Also on April 26, 2016, Respondent treated Patient 5, aged 14 years, for cough and congestion symptoms. The UMC staff chaperone and the patient's family complained regarding Respondent's behavior and conversation during the visit. Reportedly, Respondent pulled the patient's shirt and bra up to listen to her heartbeat, then slipped his hand into her pants to check her groin during the examination without seeking proper consent or informing the patient what he was going to do, commenting that, "only doctors check you here." Respondent also made a comment to the patient when instructing them on what over the counter medication,

stating that they should purchase the medication “that you can make meth (methamphetamines) with.”

9. On April 28, 2016, Roberto Duran, MD, Chief Medical Officer (CMO), and William Worrell, Chief Executive Officer (CEO), recommended that Respondent’s UMC assignment be cancelled and his employment be terminated. This action was due to the multiple reports at the UMC San Felipe Clinic.

10. On June 1, 2016, Teresa Carmona, UMC Compliance Officer, informed Respondent of several patient complaints filed against him during his assignment at the San Felipe Clinic in Del Rio. He was requested to appear before the UMC Professional Review Committee at the next scheduled meeting on June 15, 2016, to provide an opportunity to explain the accusations. Respondent did not attend the meeting.

11. In June 2016, Deana Prescott, MD, performed an initial psychiatric evaluation of Respondent. Dr. Prescott diagnosed Respondent with at least four psychiatric or mental conditions,¹ and prescribed Respondent medications. Respondent was seen frequently for medication monitoring with his last visit in May 2017. Respondent is also receiving medications for an additional psychiatric issue from Dr. Andres Nisimblat, M.D., at Corpus Christi Medical Associates.²

12. Respondent’s conduct constitutes an imminent peril to the public health, safety, or welfare that requires immediate effect of this Order of Temporary Restriction.

13. Respondent’s conduct constitutes a pattern of practice including professional boundary violations wherein he inappropriately performs genital examinations on patients without sufficient medical justification and fails to obtain adequate consent from patients and parents before performing examinations. This pattern of conduct is unprofessional and disruptive in nature, and interferes with, or could reasonably be expected to adversely impact, the quality of care rendered to a patient.

¹ Staff has submitted Dr. Prescott’s evaluation and records under seal to protect the Respondent’s privacy. That evaluation is referenced and incorporated herein under seal.

² Staff has submitted Dr. Nisimblat’s records under seal to protect the Respondent’s privacy. Those records referenced and incorporated herein under seal.

14. Respondent's continuation in the practice of medicine poses a continuing threat to public welfare.

CONCLUSIONS OF LAW

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

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

2. Based on the evidence presented and the Findings of Fact set forth herein, the Disciplinary Panel finds that Respondent violated various sections of the Act, specifically the following:

- a. Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act prohibited under Section 164.052 of the Act.
- b. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a Board rule, specifically, Board Rule 165.1(a), failure to maintain an adequate medical record.
- c. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as further defined by Board Rules 190.8(1)(C), failure to use proper diligence in one's professional practice; 190.8(1)(D), failure to safeguard against potential complications; and 190.8(1)(I), failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, procedures, or autopsies as required under Chapter 49 of the Code of Criminal Procedure.
- d. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent for unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the

public, and further defined by Board Rules: 190.8(2)(K), behaving in an abusive or assaultive manner towards a patient or patient's family that interferes with patient care; and 190.8(2)(P), behaving in a disruptive manner towards licensees, hospital personnel, other medical personnel, patients, family members or others that interferes or could be reasonably expected to adversely impact the quality of care rendered to a patient.

3. 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 G-2467 is hereby TEMPORARILY RESTRICTED.

1. This Order of Temporary Restriction (WITH NOTICE OF HEARING) is effective on the date rendered.

2. Anytime Respondent performs an examination on any patient, in-person or otherwise, Respondent shall have a chaperone present who is able to directly observe Respondent during the entire patient encounter, including the history and exam. Respondent shall make a notation on the patient's chart indicating that a chaperone was present, and Respondent shall ensure that the chaperone signs the entry made in the chart to indicate that the chaperone was present and observed the examination or treatment.

3. Whenever Respondent performs an examination on any patient, in-person or otherwise, and the patient and/or patient's guardian is not fluent in English, the chaperone, as described above, must be fluent in the language of the patient and be competent to act as a translator between Respondent and the patient and/or patient's guardian.

3. This Order of Temporary Restriction (WITH NOTICE OF HEARING) shall remain in effect until it is superseded by an order of the Board.

Signed and entered this 3rd day of November, 2017.

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

Margaret McNeese, M.D.
Chair, Disciplinary Panel
Texas Medical Board