

HEARING CONDUCTED BY THE  
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS  
SOAH DOCKET NO. 503-16-2752.MD  
TEXAS MEDICAL LICENSE NO. N-0660

IN THE MATTER OF THE  
COMPLAINT AGAINST  
FERMIN BRIONES, JR., M.D.

BEFORE THE  
TEXAS MEDICAL BOARD

**FIRST AMENDED COMPLAINT**

TO THE HONORABLE TEXAS MEDICAL BOARD AND THE HONORABLE  
ADMINISTRATIVE LAW JUDGE SARAH STARNES AND SHANNON KILGORE:

The Staff of the Texas Medical Board (the Board) files this First Amended Complaint against Fermin Briones, Jr., M.D. (Respondent), for alleged violations of the Medical Practice Act (the Act), Title 3, Subtitle B, Texas Occupations Code, and would show the following:

**I. SUMMARY OF FACTUAL ALLEGATIONS**

Respondent is a psychiatrist who formerly had a practice located in San Antonio, Texas. Respondent has been suspended from practice since January 2, 2015, due to findings that he had an ongoing sexual relationship with a psychiatric patient. The full Board approved an Agreed Order with Respondent on April 10, 2015 (2015 Order), which upheld the suspension and required certain actions on the part of Respondent. After Respondent's 2015 Order became effective, a second psychiatric patient (Subsequent Patient) stepped forward with allegations that Respondent had a sexual relationship with her as well.

It is further alleged that Respondent never informed his patients that his office had closed due to his suspension, which resulted in one patient (Subsequent Patient 2) being without a prescribing psychiatrist during a mental health crisis. Last, it is alleged that Respondent is in violation of his 2015 Order by failing to cooperate with Board Staff.

## **II. LEGAL AUTHORITY AND JURISDICTION**

1. Respondent is a Texas physician and holds Texas Medical License No. N-0660, which was originally issued by the Board on August 29, 2008. Respondent's license was in full force and effect at all times material and relevant to this Complaint.

2. Respondent received notice of one or more Informal Settlement Conferences (ISC). The Board complied with all procedural rules, including but not limited to, Board Rules 182 and 187, as applicable.

3. No agreement to settle this matter has been reached by the parties.

4. All jurisdictional requirements have been satisfied.

5. The filing of this Complaint and the relief requested are necessary to protect the health and public interest of the citizens of the State of Texas, as provided in Section 151.003 of the Act.

## **III. APPLICABLE STATUTES AND STATUTORY VIOLATIONS**

The following Statutes, Rules, and Agency Policy are applicable to the procedures for conduct of the hearing this matter:

### **A. General Statutes and Rules:**

1. Section 164.007(a) of the Act requires that the Board adopt procedures governing formal disposition of a contested case before the State Office of Administrative Hearings.

2. 22 TEX. ADMIN. CODE, CH.187 sets forth the procedures adopted by the Board under the requirement of Section 164.007(a) of the Act.

3. 22 TEX. ADMIN. CODE, CH. 190 sets forth aggravating factors that warrant more severe or restrictive action by the Board.

4. 1 TEX. ADMIN. CODE, CH. 155 sets forth the rules of procedure adopted by SOAH for contested case proceeding.

5. 1 TEX. ADMIN. CODE, CH. 155.507, requires the issuance of a Proposal for Decision ("PFD") containing Findings of Fact and Conclusions of Law.

6. Section 164.007(a) of the Act, Board Rule 187 et. seq. and Board Rule 190 et. seq., provide the Board with the sole and exclusive authority to determine the charges on the merits, to impose sanctions for violation of the Act or a Board rule, and to issue a Final Order.

## **B. Specific Violations Cited:**

Respondent has violated one or more of the following provisions of the Act:

1. 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.

2. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a rule adopted under this Act, specifically Board Rules 165.5(a), failure to ensure patients receive reasonable notice of practice closure; 165.5(b), failure to publish a closure notice in a newspaper, to place a closure notice in the physician's office, and to send a letter to patients to notify them of the discontinuance of service; 189.3 requiring compliance with all terms of a Board Order; and, 179.4(e), failure to respond to Board requests for information.

3. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public, and as further defined by Board Rules 190.8(2)(A), violation of a Board Order; 190.8(2)(B), failure to comply with a Board request for information; 190.8(2)(C), providing false information to the Board; 190.8(2)(D), failure to cooperate with Board staff; 190.8(2)(E), engaging in sexual contact with a patient; 190.8(2)(F), engaging in sexually inappropriate behavior or comments directed towards a patient; 190.8(2)(G), becoming personally involved with a patient in an inappropriate manner; 190.8(2)(R), commission of a violation of state laws whether or not there is a complaint, indictment, or conviction, specifically, Texas Penal Code Section 22.011.

4. Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine.

## **IV. FACTUAL ALLEGATIONS**

Based on information and belief, Board Staff alleges:

### **A. Sexual Contact with Subsequent Patient**

1. On January 2, 2015, the Board issued a Temporary Suspension without Notice against Respondent for allegations that he engaged in a sexual relationship with a psychiatric patient.
2. On January 29, 2015, the Board issued a Temporary Suspension with Notice against Respondent which upheld the previous suspension granted without notice. The Temporary Suspension was based upon findings that Respondent was a continuing threat to the public health and welfare due to engaging in a sexual relationship with a psychiatric patient. The Board also found that Respondent provided false information to the Board about the relationship.
3. After the findings that Respondent had engaged in a sexual relationship with a psychiatric patient became public, Subsequent Patient stepped forward with allegations that Respondent had initiated a sexual relationship with her as well.
4. Subsequent Patient had begun seeing Respondent in November 2012 after a suicide attempt. Respondent diagnosed her with serious psychiatric conditions, including Major Depression Recurrent.
5. It is alleged that Respondent initiated an inappropriate personal relationship with Subsequent Patient during medical visits in which he revealed personal information about the state of his marriage and made comments of a sexual nature. Respondent's sharing of personally and sexually inappropriate information with Patient constitutes a violation of the Act and Board Rules, specifically:

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.

Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to injure the public, and as further defined by Board Rules 190.8(2)(F), engaging in sexually inappropriate behavior or comments directed towards a patient; and, 190.8(2)(G), becoming personally involved with a patient in an inappropriate manner.

6. Respondent initiated sexual contact with Subsequent Patient in late 2013 after she revealed in a medical visit that she was going through a divorce. The sexual contact is alleged to have included intercourse outside the office. It is also alleged that Respondent would kiss

Subsequent Patient during medical visits. Respondent's sexual contact with Subsequent Patient constitutes a violation of the Act and Board Rules, specifically:

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.

Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to injure the public, and as further defined by Board Rules 190.8(2)(E), engaging in sexual contact with a patient; and, 190.8(2)(R), commission of a violation of state laws whether or not there is a complaint, indictment, or conviction, specifically, Texas Penal Code Section 22.011.

Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine.

**B. Failure to Notify Patients of Office Closure**

1. It is alleged that Respondent failed to notify his patients of the closure of his practice due to the suspension of his license on January 2, 2015. It is alleged this failure had a direct impact on the care provided to a patient. Respondent's failure to notify his patients of the office closure constitutes a violation of the Act and Board Rules, specifically:

Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a rule adopted under this Act, specifically Board Rule 165.5(a), failure to ensure patients receive reasonable notice of practice closure; and, 165.5(b), failure to publish a closure notice in a newspaper, to place a closure notice in the physician's office, and to send a letter to patients to notify them of the discontinuance of service.

2. It is further alleged that a patient (Subsequent Patient 2) attempted to make an appointment with Respondent in February 2015 to address a mental health crisis involving command hallucinations. Respondent's office manager informed her that Respondent would be out of the office until March 2015. Neither the office manager nor Respondent provided a referral to another psychiatric provider to address Subsequent Patient 2's immediate needs.
3. On her own accord, Subsequent Patient 2 visited a family counseling center to obtain help. The counseling center staff called Respondent to coordinate Subsequent Patient 2's care.

4. Respondent's office manager answered the phone. It is alleged that he stated to the counseling center staff that no accommodations had been made for the patients' continuity of care. Staff at the counseling center expressed concern about the ramifications of that failure, to which it is alleged the office manager responded, "You're telling me."
5. During the investigation on Respondent's failure to notify patients of his office closure, it is alleged that Respondent submitted false information to the Board to cover up his failure to notify his patients of the office closure.

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.

Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to injure the public, and as further defined by Board Rule 190.8(2)(C), providing false information to the Board.

### **C. Violation of 2015 Order**

1. Respondent is in violation of his 2015 Agreed Order. Specifically, Respondent has violated Ordering Paragraph No. 12, which required that he cooperate with Board Staff. Respondent has refused to meet with his Compliance Officer (CO) to complete his quarterly compliance report.

Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a rule adopted under this Act, specifically Board Rules 189.3 requiring compliance with all terms of a Board Order; and, 179.4(e), failure to respond to Board requests for information.

2. Ordering Paragraph No. 14 states that any violation of the terms, conditions, or requirements of the Order shall constitute unprofessional conduct likely to deceive or defraud the public, or to injure the public, and shall constitute a basis for disciplinary action by the Board pursuant to the Act.

Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public, and as further defined by Board Rules 190.8(2)(A), violation of a Board Order; 190.8(2)(B), failure to comply with Board request for

information; 190.8(2)(C), providing false information to the Board; and, 190.8(2)(D), failure to cooperate with Board staff.

#### **V. AGGRAVATING AND MITIGATING FACTORS**

Board Rule 190.15 provides that the Board may consider aggravating factors that warrant more severe or restrictive disciplinary action. This case includes the following aggravating factors: (1) harm to one or more patients; (2) the severity of patient harm; (3) one or more violations that involve more than one patient; (4) increased potential for harm to the public; (5) attempted concealment of the act constituting a violation; (6) intentional, premeditated, knowing, or grossly negligent act constituting a violation; (7) prior similar violations; (8) previous disciplinary action by the board, any government agency, peer review organization, or health care entity; and, (9) other relevant circumstances increasing the seriousness of the misconduct.

#### **Prior Disciplinary Orders:**

On January 2, 2015, a Disciplinary Panel of the Board suspended, without notice, Respondent's Texas medical license. The action was based on evidence of a sexual relationship with a patient.

On January 29, 2015, a Disciplinary Panel of the Board suspended, with notice, Respondent's Texas medical license. The action was based on evidence of a sexual relationship with a patient.

On April 10, 2015, the Board entered an Agreed Order publically remanding Respondent and suspending his license indefinitely for engaging in a sexual relationship with a patient and for providing false information to the Board. The order imposed the following terms and conditions upon Respondent: requiring that he undergo a psychiatric evaluation at the Gabbard Center and appear before a panel to consider the evaluation; requiring that he pass the medical jurisprudence (JP) examination within one year; requiring that he obtain eight hours each of in-person, pre-approved continuing medical education (CME) in medical ethics and HIPAA compliance within one year; requiring that he pay an administrative penalty of \$5,000 within 90 days, and requiring that he give a copy of the order to all healthcare entities (HCEs) where privileged or practicing and provide proof of delivery within 30 days.



Board staff is aware of no mitigating factors that apply and demands that Respondent submit proof to substantiate any alleged mitigating factors.

**VI. PRAYER**

Board Staff requests that an administrative law judge employed by the State Office of Administrative Hearings conduct a contested case hearing on the merits of the Complaint, and issue a Proposal for Decision containing Findings of Fact and Conclusions of Law necessary to support a determination that Respondent violated the Act as set forth in this First Amended Complaint.

Respectfully submitted,

TEXAS MEDICAL BOARD

CHRISTOPHER PALAZOLA  
Litigation Manager

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Supervising Attorney



By:

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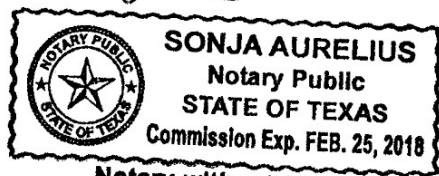
THE STATE OF TEXAS

COUNTY OF TRAVIS

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SUBSCRIBED AND SWORN to before me by the said Ann Skowronski, J.D., on

July 21, 2016.



  
Notary Public, State of Texas



Filed with the Texas Medical Board on July 21<sup>st</sup>, 2016.

Scott M Freshour for  
Mari Robinson, J.D.  
Executive Director  
Texas Medical Board

*by permission*

**CERTIFICATE OF SERVICE**

I certify that on the 21<sup>st</sup> day of July 2016, a true and correct copy of the foregoing First Amended Complaint has been served as follows:

**By Email to: docketing@soah.state.tx.us**

Docket Clerk  
State Office of Administrative Hearings  
William P. Clements Bldg.  
300 W. 15<sup>th</sup> St., Ste. 504  
Austin, TX 78701-1649

**By Fax No. (512) 482-0164 to:**

Louis Leichter  
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**By Hand Delivery to:**

Robin Etheridge  
Hearings Coordinator  
Texas Medical Board  
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Ann Skowronski, J.D.