

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-19- 6940 .MD
TEXAS MEDICAL LICENSE NO. H-3476

IN THE MATTER OF THE

COMPLAINT AGAINST

RAUL DARIO ISERN, JR., M.D.

BEFORE THE

THE TEXAS MEDICAL BOARD

COMPLAINT

TO THE HONORABLE TEXAS MEDICAL BOARD AND THE HONORABLE
ADMINISTRATIVE LAW JUDGE TO BE ASSIGNED:

The Staff of the Texas Medical Board (the Board) files this Complaint against Raul Dario Isern, Jr., M.D.(Respondent), for alleged violations of the Medical Practice Act (the Act), Texas Occupations Code, Title 3, Subtitle B, Chapters 151 to 165 and would show the following:

I. SUMMARY OF FACTUAL ALLEGATIONS

Board Staff alleges that Respondent committed unprofessional conduct after sexually harassing and assaulting a staff member at the institution at which Respondent was practicing, an incident after which Respondent's contract with the institution was terminated.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a Texas Physician and holds Texas Medical License No. H-3476 that was originally issued on February 26, 1988. 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.

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, Chapter 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, Chapter 190 sets forth aggravating factors that warrant more severe or restrictive action by the Board.
4. 1 TEX. ADMIN. CODE, CHAPTER 155 sets forth the rules of procedure adopted by SOAH for contested case proceedings.
5. 1 TEX. ADMIN. CODE, CHAPTER 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 187.37(d)(2) and Board Rule 190 et. seq., provides 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 the Act and Board Rules.

1. Section 164.051(a)(1) of the Act authorizes the Board to discipline Respondent based on Respondent committing an act prohibited under Section 164.052.
2. Section 164.051(a)(7) of the Act authorizes the Board to discipline Respondent based on Respondent being subject to disciplinary action by a licensed hospital, including limitation of hospital privileges, or other disciplinary action as defined by Board Rule 190.8(4), disciplinary actions by peer groups.
3. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public, and further defined by Board Rules:

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; and, 190.8(2)(R), commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction: ii) any offense in which assault or battery, or the attempt of either is an essential element.

IV. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges:

1. Respondent is a psychiatrist who became a contracted provider for Spindletop MHMR Services (hereafter "Spindletop") beginning in August 2010. Respondent's employment contract with Spindletop was renewed most recently on January 14, 2015.

2. During the course of his tenure at Spindletop, Respondent received disciplinary write ups related to job performance, unsatisfactory patient interactions, concerns with maintaining confidentiality, documentation issues, and tardiness and absenteeism. These write ups were documented in Respondent's personnel file on September 22, 2017, November 8, 2017, November 22, 2017, and December 20, 2017.

3. On March 27, 2018, a customer service representative (Employee) employed by Spindletop alleged Respondent made sexual comments towards her, touched her breast, rubbed her back, and placed his hand and arm between her legs and touched her genitals. Employee alleged she reported the incident to the Human Resources (HR) Department at Spindletop.

4. A licensed vocational nurse employed at Spindletop observed Respondent repeatedly harass Employee and make unnecessary and inappropriate contact with Employee during work hours at the facility.

5. Respondent was recommended for termination from Spindletop by letter on April 12, 2018.

6. Respondent's discipline by Spindletop constituted a violation of the Act, particularly:

- a. Section 164.051(a)(7) of the Act authorizes the Board to discipline Respondent based on Respondent being subject to disciplinary action by a licensed hospital,

including limitation of hospital privileges, or other disciplinary action as defined by Board Rule 190.8(4), disciplinary actions by peer groups.

7. The employment contract between Respondent and Spindletop was terminated on April 16, 2018, allegedly as a result of numerous ongoing and unresolved complaints regarding Respondent's attendance and job performance.

8. Respondent's alleged sexual harassment and assault of Employee constitutes a violation of the Act and Board Rules, particularly:

- a. Section 164.051(a)(1) of the Act, which authorizes the Board to discipline Respondent based on Respondent committing an act prohibited under Section 164.052.
- b. Section 164.052(a)(5) of the Act, which authorizes the Board to take disciplinary action against Respondent based on Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public, and further defined by Board Rules: 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; and, 190.8(2)(R), commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction: ii) any offense in which assault or battery, or the attempt of either is an essential element.

V. AGGRAVATING AND MITIGATING FACTORS

Board Rule 190.14 provides that the Board may impose more restrictive sanctions when there are multiple violation of the Act.

Board Rule 190.15 provides that the Board may consider aggravating factors that warrant more severe or restrictive disciplinary action. This case includes the aggravating factors of: (5) increased potential of harm to the public, (6) attempted concealment of the act constituting a violation, (7) intentional, premeditated, knowing, or grossly negligent act constituting a violation, and (11) other relevant circumstances increasing the circumstances of the misconduct.

Board Staff is not aware of any mitigating factors that apply and demands that Respondent submit proof to substantiate any alleged mitigating factors.

VI. NOTICE TO RESPONDENT

IF YOU DO NOT FILE A WRITTEN ANSWER TO THIS COMPLAINT WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS AFTER THE DATE OF RECEIPT, A DEFAULT ORDER MAY BE ENTERED AGAINST YOU, WHICH MAY INCLUDE THE DENIAL OF LICENSURE OR ANY OR ALL OF THE REQUESTED SANCTIONS, INCLUDING THE REVOCATION OF YOUR LICENSE. A COPY OF ANY ANSWER YOU FILE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS SHALL ALSO BE PROVIDED TO THE HEARINGS COORDINATOR OF THE TEXAS MEDICAL BOARD.

VII. PRAYER

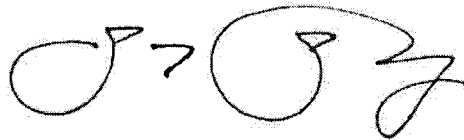
Board Staff requests that an administrative law judge employed by the State Office of Administrative Hearings conduct a contested case hearing on the merits of the Complaint, and issue a Proposal for Decision containing Findings of Fact and Conclusions of Law necessary to support a determination that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

Respectfully submitted,

TEXAS MEDICAL BOARD

CHRISTOPHER PALAZOLA
Litigation Manager

SUSAN RODRIGUEZ
Supervising Attorney



By:

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THE STATE OF TEXAS

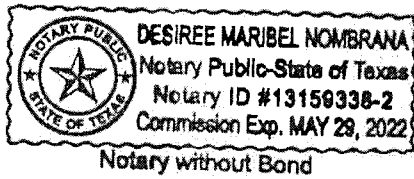
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COUNTY OF TRAVIS

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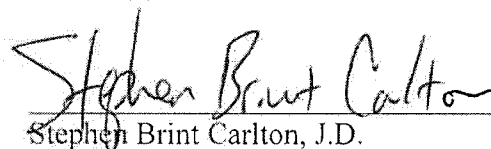
SUBSCRIBED AND SWORN to before me by the said Samer N. Shobassy, J.D., on
August 27, 2019.



[Handwritten Signature]

Notary Public, State of Texas

Filed with the Texas Medical Board on August 26, 2019.

A handwritten signature in cursive script that reads "Stephen Brint Carlton". The signature is written in black ink and is positioned above a horizontal line.

Stephen Brint Carlton, J.D.
Executive Director
Texas Medical Board

CERTIFICATE OF SERVICE

I certify that on the 27th day of August 2019, a true and correct copy of the foregoing document has been served as follows:

Via Email to docketing@SOAH.texas.gov

Docket Clerk
State Office of Administrative Hearings
William P. Clements Bldg.
300 W. 15th Street, Suite 504
Austin, TX 78701-1649

Via Certified Mail Article No. 7014 2870 0000 3056 5675 and First Class Mail

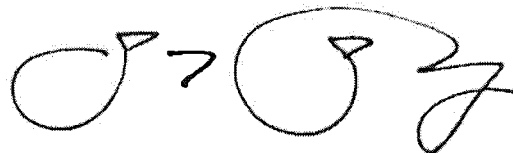
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Samer N. Shobassy, J.D.