

SOAH DOCKET No. 503-22-08900

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-22-_____.MD
TEXAS MEDICAL LICENSE NO. D6049

ACCEPTED
503-22-08900
8/19/2022 1:57:45 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

IN THE MATTER OF THE

COMPLAINT AGAINST

WAYNE C. JONES, 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), by and through its attorney of record, Claudia Kirk, files this Complaint against Wayne Charles Jones, M.D. (Respondent), for alleged violations of the Medical Practice Act (the Act), Texas Occupations Code, Title 3, Subtitle B, Chapters 151 to 165 (Vernon Supp. 2021) and the rules adopted by the Board thereunder and would show the following:

I. SUMMARY OF FACTUAL ALLEGATIONS

The Board alleges that Respondent failed to properly prescribe and meet the standard of care for two patients. Specifically, Respondent did not monitor urine drug screens when prescribing controlled substances and he continued with long-term prescriptions of benzodiazepines (clonazepam). In addition, Respondent has been self-prescribing dangerous drugs without creating and maintaining adequate records for his self-care.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a Texas Physician and holds Texas Medical License No. D6049 that was originally issued on August 27, 1969. 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 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 take disciplinary action against Respondent for committing an act prohibited by §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 Board rule; specifically, Board Rule 165.1, failure to maintain an adequate medical record for each patient that is complete, contemporaneous, and legible.

3. 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 the following Board Rules: 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 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)(M), inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following: (i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and (ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

4. 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, as provided by §164.053, or injure the public.

5. Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent committing an act that violates any state or federal law if the act is connected with the physician's practice of medicine, specifically, TEX. HEALTH & SAFETY CODE §481.129(c), related to prescribing controlled substances without a valid medical purpose; and TEX. OCC. CODE §107.104, related to documentation and consultation required to treat intractable pain.

6. Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug or treatment that is nontherapeutic in the manner the drug or treatment is administered or prescribed.

7. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing, administering, or dispensing in a manner inconsistent with public health and welfare: (A) dangerous drugs as defined by Chapter 483, Tex.

Health and Safety Code; or (B), controlled substances scheduled in Chapter 481, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sections 801 *et seq.*).

IV. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges:

1. Respondent failed to meet the applicable standard of care and non-therapeutically prescribed controlled substances to two patients, as follows:

a. Patient #1:

- i. Respondent diagnosed the patient with attention deficit hyperactivity disorder (ADHD).
- ii. Respondent prescribed Zenedi while the patient was also receiving prescriptions of Clonazepam and Diazepam, benzodiazepines, prescribed to the patient by other doctors. Vimpat was prescribed by one provider consistently and Opiate Analgesics was prescribed by two separate providers.
- iii. Respondent did not document urine or blood illicit drug assays, which is not within the standard of care when given the multiple controlled substances that the patient was receiving.

b. Patient #2:

- i. Respondent diagnosed the patient with attention deficit hyperactivity disorder (ADHD).
- ii. Respondent prescribed Zenedi 30 mg, 3 times a day, while continuing Vyvanse and Clonazepam.
- iii. Vyvanse was replaced and continued by Adensys in combination of Zenedi. Zenedi, Vyvanse, and Adensys are amphetamine-based compounds with the same stimulant compound base.
- iv. Respondent prescribed Clonazepam 0.5 mg, 2 times a day, a benzodiazepine, beginning in 2018 and continued on a monthly basis. The

clonazepam dosage was increased to 1 mg, 2 times a day, beginning on December 4, 2018, and continued throughout 2019 through 2021.

- v. The patient was maintained on a benzodiazepine for approximately three years, which is a long-term basis. Benzodiazepines are neuroinhibitors and promote ongoing depression. The use of long-term benzodiazepines is not within the standard of care.
- vi. Respondent also did not get urine drug screens which is not within the standard of care when prescribing controlled substances.

2. Respondent's failure to meet the standard of care and nontherapeutic prescribing of amphetamines/stimulants for two patients is a violation of Act and Board Rules as follows:

Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent for committing an act prohibited by §164.052 of the Act.

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, failure to maintain an adequate medical record for each patient that is complete, contemporaneous, and legible.

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)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(C), failure to use proper diligence in one's professional practice; and 190.8(1)(D), failure to safeguard against potential complications.

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, as provided by §164.053, or injure the public.

Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent committing an act that violates any state or federal law if the act is connected with the physician's practice of medicine, specifically, TEX. HEALTH & SAFETY CODE §481.129(c), related to prescribing controlled substances without a valid medical purpose; and TEX. OCC. CODE §107.104, related to documentation and consultation required to treat intractable pain.

Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug or treatment that is nontherapeutic in the manner the drug or treatment is administered or prescribed.

Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing, administering, or dispensing in a manner inconsistent with public health and welfare: (A) dangerous drugs as defined by Chapter 483, Tex. Health and Safety Code; or (B), controlled substances scheduled in Chapter 481, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sections 801 *et seq.*).

2. Respondent has been self-prescribing dangerous drugs without keeping adequate medical record documentation for his self-care.

a. Respondent has been self-prescribing dangerous drugs including: clonidine, liothyronine, levothyroxine, rosuvastatin, propranolol, trazodone, tamsulosin, and Horizant.

b. Respondent is not keeping medical records for his self-care prescribing of dangerous drugs.

3. Respondent's self-prescribing dangerous drugs without keeping adequate medical record documentation is a violation of Act and Board Rules as follows:

Section 164.051(a)(3) violation of Board Rule; specifically, Board Rules: 165.1, failure to maintain an adequate medical record for each patient that is complete, contemporaneous, and legible.

Section 164.051(a)(6) failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as further defined by Board Rule 190.8(1)(M), inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following: (i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and (ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

V. AGGRAVATING AND MITIGATING FACTORS

Board Rules 190.14 and 190.15 provide that the Board may consider aggravating factors that warrant more severe or restrictive disciplinary action. This case includes the following aggravating factors: 190.15(3), one or more violations that involve more than one patient; 190.15(5), increased potential for harm to the public; 190.15(8) prior similar violations; and 190.15(9), previous disciplinary action by the Board.

Respondent's Disciplinary History with the Board and Prior Similar Violations:

1. On May 19, 2000, the Board and Respondent entered into an Agreed Order (2000 Order). The 2000 Order required that Respondent have his practice monitored for three (3) years. The Board's action was based on Respondent's failure to maintain adequate prescribing records.

2. On August 26, 2011, the Board and Respondent entered into a Mediated Agreed Order (2011 Order). The 2011 Order required that Respondent's practice be monitored for eight (8) cycles, and that he complete eight (8) hours of continuing medical education (CME) in the topic of risk management. The Board's action was based on Respondent's failure to meet the standard of care and keep adequate medical records.

3. On August 16, 2019, the Board and Respondent entered into an Agreed Order (2019 Order). The 2019 Order required that Respondent: not inject or perform physical examinations on female patients; have a chaperone present when treating female patients; complete a competency evaluation within 60 days; complete the PACE course; pass the Medical Jurisprudence Examination (JP Exam); and give a copy the of Order to all health care entities (HCEs). The Board's action was based on inappropriate touching and comments to one female patient.

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

AMY SWANHOLM, J.D., MSEL
Litigation Manager

MICHELLE A. MCFADDIN, J.D.
Supervising Attorney

By:



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Filed with the Texas Medical Board on the 12th day of August, 2022.

A handwritten signature in black ink that reads "Stephen Brint Carlton". The signature is written in a cursive style with a horizontal line underneath the text.

Stephen Brint Carlton, J.D.
Executive Director

CERTIFICATE OF SERVICE

I certify that on the 19th day of August 2022, a true and correct copy of the foregoing Complaint has been served as follows:

VIA E-FILE:

Docket Clerk
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William P. Clements Bldg.
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Claudia Kirk, J.D.