

HEARING CONDUCTED BY THE  
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS  
SOAH DOCKET NO. 503-22-\_\_\_\_.MD  
TEXAS MEDICAL LICENSE NO. K-8265

IN THE MATTER OF THE  
  
COMPLAINT AGAINST  
  
ANDREW MICHAEL KLYMIUK, M.D.

BEFORE THE STATE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS

**BOARD STAFF'S COMPLAINT**

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

The Staff of the Texas Medical Board (Board Staff), by and through its attorney of record, Shane D. Neldner, files this *Complaint* against Andrew Michael Klymiuk, M.D., (Respondent), for alleged violations of the Medical Practice Act (Act), Title 3, Subtitle B, TEX. OCC. CODE ANN. §§151.001 *et seq.* (Vernon Supp. 2019), the Texas Controlled Substances Act, TEX. HEALTH & SAFETY CODE ANN. Chapter 481 (Vernon Supp. 2019), and the rules adopted thereunder, and would respectfully show the following:

**I. SUMMARY OF FACTUAL ALLEGATIONS**

Board Staff alleges Respondent prescribed large quantities of Alprazolam and Suboxone without appropriate medical indications or monitoring despite the patient's history of addiction, abuse, and the patient's multiple efforts at rehabilitation, resulting in complications that included several episodes of relapse. Board Staff further alleges that Respondent prescribed Hydrocodone to the patient without appropriate medical indication.

**II. LEGAL AUTHORITY AND JURISDICTION**

1. Respondent is a Texas physician and holds Texas Medical License No. K-8265, which was originally issued by the Board on August 28, 1999. Respondent is not licensed to practice medicine in any other jurisdiction. 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 §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 (SOAH).

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 proceeding.

5. 1 TEX. ADMIN. CODE §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, and Board Rule 190 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:**

Board Staff alleges that Respondent has violated one or more of the following provisions of the Act and Board Rules:

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 § 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 165.1(a), failure to create and maintain an adequate medical record; and 170.3, failure to adhere to those established guidelines and requirements for the treatment of chronic pain.

4. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent for failing to practice medicine in an acceptable professional manner consistent with public health and welfare, as 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)(B), negligence in performing medical services; 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.

5. 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 in § 164.053 of the Act, or injure the public.

6. Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a federal or state law that is connected with Respondent's practice of medicine; specifically, Sections 481.071(a) and 481.129(c) of the Texas Health & Safety Code, relating to prescribing controlled substances without a valid medical purpose, as well as 481.076(a)(5)(B) of the Texas Health & Safety Code, relating to the requirement to check the PMP when prescribing an opioid, benzodiazepine, barbiturate, or carisoprodol, on or after March 1, 2020.

7. Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for writing prescriptions for or dispensing to a person whom he knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.

8. Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent for prescribing or administering a drug or treatment that is non-therapeutic in

nature or non-therapeutic in the manner in which the drug or treatment is prescribed or administered.

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

#### **IV. FACTUAL ALLEGATIONS**

Based on information and belief, Board Staff alleges:

1. Respondent is a solo practitioner with a primary practice located at 801 W. Road to Six Flags, Suite #124 in Arlington, Texas 76012. Respondent's specialty is psychiatry and pain management. Respondent is not board certified.

2. Patient 1, a 34-year-old man, established care with Respondent in 2018.<sup>1</sup>

3. This case involves allegations of non-therapeutic and inappropriate prescribing to one patient, who suffered from a substance use disorder. Although the Board recognizes that controlled substances, dangerous drugs, and other medications are an integral part of the practice of medicine, § 164.053(a)(5) of the Act prohibits prescribing or administering any drug or treatment that is non-therapeutic. Table 1 presents a list of the controlled substances involved in this matter.

**TABLE 1: Controlled Substance List**

<b>Controlled Substance</b>	<b>Common Name of Drug</b>	<b>Schedule</b>	<b>Type of Medication</b>
Alprazolam	Xanax	IV	benzodiazepine
Buprenorphine-naloxone	Suboxone	III	opioid
Dextroamphetamine Saccharate	Adderall	II	amphetamine
Hydrocodone Bitartrate and Acetaminophen	Norco	II	narcotic analgesic combination

<sup>1</sup> Staff will disclose the identities of the named patient in a separate confidential document filed under seal.

4. Respondent wrote prescriptions for large quantities for controlled substances for Patient 1 without properly following the applicable standard of care, despite the patient's history of addiction, substance use, and repeated efforts at rehabilitation. Patient 1 had received addictive medications at 10 different pharmacies in a period of 2 years.

5. There is no indication in Respondent's records that he checked the patient's Texas Prescription Monitoring Program (PMP) report before or after prescribing to the patient, even after the requirement to check the PMP prior to prescribing certain controlled substances, including opioids and benzodiazepines, went into effect on March 1, 2020.

6. Patient 1 commenced seeing Respondent on November 16, 2018. By the time of the first office visit, Patient 1 had been using Oxycodone, a Schedule II opioid, for 4 years, following a motor vehicle accident in 2013 in which he suffered a severe head injury. He reported to Respondent that he had been abusing Oxycodone. He reported tried to quit on his own but failed. He reported having gone to drug rehabilitation for 2 months, and at the time of the office visit, had been clean for 2 weeks.

7. Patient 1 also complained of depression that was progressively getting worse. Beck's Depression Inventory suggested severe depression based on Patient 1's responses. Respondent diagnosed Patient 1 with opioid dependence, but ruled out major depressive disorder, attention deficit disorder, generalized anxiety disorder, and post-traumatic stress disorder (PTSD). At the conclusion of the office visit, Respondent wrote the patient prescriptions for Suboxone and Xanax with plans to "decrease ASAP".

8. The next day, on November 17, 2018, Respondent prescribed 120 tabs of Alprazolam (Xanax) (1 mg/#120 tablets) for 30 days and 29 tablets and 60 tablets of Suboxone (8 mg) for 10 days and 20 days, respectively. Respondent's conduct in writing the patient prescriptions for Xanax while also prescribing an opioid agonist (suboxone/buprenorphine) after the patient reported a drug abuse history, opioid dependence, and worsening depression violates 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 §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 rule

adopted under this Act; specifically, Board Rules 165.1(a), failure to create and maintain an adequate medical record.

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 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 exercise 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 for unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided in §164.053 of the Act, or injure the public.

Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for writing prescriptions for or dispensing to a person whom he knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.

9. On December 18, 2018, Respondent saw the patient for a medication refill. His notes state that the patient is having a lot of anxiety and discontinued Wellbutrin due to the anxiety. The notes also state that the patient has attention deficit disorder (ADD) and that he will consider Adderall. There is no evaluation, testing, or documentation of any kind to support a diagnosis of attention deficit disorder at this visit. The medical records lack any treatment plan for the diagnosis.

10. On January 14, 2019, Respondent wrote the patient a prescription for a powerful Schedule II stimulant, Adderall (20 mg/#60 tablets), in addition to prescribing the patient a benzodiazepine, Xanax, as well as an opioid antagonist. Respondent's records do not include a basis for that diagnosis. Nor does Respondent refer to the medical records of a previous treating physician as basis for this diagnosis. There is no indication in the medical records that Respondent discussed with Patient 1 the risks of taking a stimulant, a benzodiazepine, and suboxone/buprenorphine together. Respondent's conduct in prescribing Adderall to a patient already taking a benzodiazepine and an opioid antagonist without legitimate medical indication, without an individualized treatment plan to address the patient's ADD, and without appropriate

monitoring for adverse side effects, substance abuse, or diversion constitute violations 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 §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 rule adopted under this Act; specifically, Board Rules 165.1(a), failure to create and maintain an adequate medical record.

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 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 exercise 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 for unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided in §164.053 of the Act, or injure the public.

Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine; specifically, Texas Health & Safety Code §§481.071(a) and 481.129 (c), relating to prescribing controlled substances without a valid medical purpose.

Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for writing prescriptions for or dispensing to a person whom he knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.

Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent for prescribing or administering a drug or treatment that is non-therapeutic in nature or non-therapeutic in the manner in which the drug or treatment is prescribed or administered.

Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent for prescribing, administering, or dispensing in a manner inconsistent with public health and welfare dangerous drugs as

defined by Chapter 483, Health & Safety Code; or controlled substances scheduled in Chapter 481, Health & Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §§801 *et seq.*).

11. According to pharmacy records, in the months that followed, Respondent prescribed the following controlled substances to Patient 1:

Date Prescribed	Prescription	Amount (units and days)	Date Filled	Pharmacy
11/16/18	Alprazolam (1 mg)	120 tabs; 30 days	11/17/18	Walgreens
	Suboxone (8 mg)	29 tabs; 10 days	11/17/18	Walmart
	Suboxone (8 mg)	60 tabs; 20 days	11/26/18	Walmart
12/15/18	Alprazolam	120 tabs; 30 days	12/15/18	CVS
12/15/18	Suboxone (8 mg)	60 tabs; 30 days	1/23/19	CVS
12/17/18	Suboxone (8 mg)	30 days	12/18/19	CVS
1/1/19	Alprazolam (1 mg)	120 tabs; 30 days	1/13/19	Walgreens
1/3/19	Alprazolam (1 mg)	32 tabs; 8 days	1/3/19	Mercy Care
	Alprazolam (1 mg)	120 tabs; 30 days	1/11/19	Mercy Care
	Alprazolam (1 mg)	120 tabs; 30 days	2/8/19	Mercy Care
	Suboxone (8 mg)	90 tabs; 30 days	2/8/19	Mercy Care
	Alprazolam (1 mg)	1 week early refill	1/11/19	Mercy Care
	Suboxone (8 mg)	1 week early refill	1/11/19	Mercy Care
1/14/19	Alprazolam (2 mg)	60 tabs; 30 days	1/14/19	Revco
	Alprazolam (2 mg)	60 tabs; 30 days	2/12/19	Revco
	Adderall (20 mg)	60 tabs; 30 days	1/14/19	CVS
1/16/19	Buprenorphine (8 mg)	90 tabs	1/16/19	Revco
1/25/19	Alprazolam (1 mg)	120 tabs; 30 days	2/3/19	CVS
1/29/19	Buprenorphine (8 mg)	90 tabs	1/29/19	Revco
2/9/19	Norco (10-325 mg)	20 tabs; 5 days	2/9/19	CVS
2/11/19	Adderall (20 mg)	60 tabs; 30 days	2/11/19	Mercy Care
2/12/19	Buprenorphine (8 mg)	90 tabs, 30 days	2/12/19	Revco
2/12/19	Alprazolam (2 mg)	60 tabs	2/12/19	Revco
?	Suboxone (8 mg)	90 tabs	3/6/19	Mercy Care
	Alprazolam (1 mg)	120 tabs	3/6/19	Mercy Care
?	Adderall (20 mg)	50 tabs	3/11/19	Mercy Care
3/14/19	Alprazolam (2 mg)	60 tabs	3/14/19	Revco
4/5/19	Adderall (20 mg)	60 tabs	4/5/19	Mercy Care
	Suboxone (8 mg)	90 tabs	4/5/19	Mercy Care
	Alprazolam (1 mg)	120 tabs	4/5/19	Mercy Care
5/6/19	Alprazolam (.25 mg)	120 tabs	5/6/19	Revco
5/8/19	Suboxone (8 mg)	60 tabs	5/8/19	Revco
	Amphetamine Salts	60 tabs	5/8/19	Revco
6/4/19	Alprazolam (.25 mg)	120 tabs	6/4/19	Revco
6/10/19	Suboxone (8 mg)	60 tabs	6/10/19	Revco
10/7/19	Suboxone (8 mg)	60 tabs	6/10/19	Mercy Care



10/14/19	Suboxone (8 mg)	60 tabs	10/14/19	Mercy Care
12/2/19	Alprazolam (1 mg)	60 tabs	12/2/19	Mercy Care
	Suboxone (8 mg)	60 tabs	12/2/19	Mercy Care
12/20/19	Suboxone (8 mg)	10 tabs	12/20/19	Mercy Care
12/30/19	Suboxone (8 mg)	90 tabs	12/30/19	Mercy Care
	Alprazolam (1 mg)	60 tabs	12/30/19	Mercy Care
1/15/20	Adderall (20 mg)	90 tabs	1/15/20	Mercy Care
	Alprazolam (1 mg)	120 tabs	1/15/20	Mercy Care
1/27/20	Suboxone (8 mg)	90 tabs	1/27/20	Mercy Care
2/5/20	Alprazolam (1 mg)	90 tabs	2/5/20	Mercy Care
2/13/20	Adderall (20 mg)	90 tabs	2/13/20	Mercy Care
2/20/20	Suboxone (8 mg)	90 tabs	2/20/20	Mercy Care
3/10/20	Amphetamine (20 mg)	90 tabs; 30 days	3/10/20	Trail Creek
3/11/20	Alprazolam (2 mg)	90 tabs	3/10/20	Revco
3/20/20	Suboxone (8 mg)	90 tabs	3/20/20	Mercy Care
4/8/20	Alprazolam (2 mg)	90 tabs	4/8/20	Revco
4/9/20	Adderall (20 mg)	90 tabs	4/8/20	Mercy Care
4/16/20	Alprazolam (2 mg)	90 tabs	4/16/20	Revco
4/17/20	Suboxone (8 mg)	90 tabs	4/17/20	Mercy Care
4/22/20	Norco (10-325 mg)	28 tabs	4/22/20	Mercy Care
5/4/20	Adderall (20 mg)	90 tabs	5/4/20	Mercy Care
5/6/20	Norco (10-325 mg)	28 tabs	5/6/20	Mercy Care
5/14/20	Norco (10-325 mg)	28 tabs	5/14/20	Mercy Care
5/19/20	Alprazolam (2 mg)	90 tabs	5/19/20	Revco
?	Suboxone (8 mg)	28 tabs	6/3/20	Mercy Care
?	Suboxone (8 mg)	90 tabs	6/16/20	Mercy Care
?	Alprazolam (1 mg)	30 tabs	6/23/20	Mercy Care
?	Suboxone (8 mg)	90 tabs	7/13/20	Mercy Care
?	Alprazolam, 2mg	90 tabs	7/16/20	Revco
?	Alprazolam (1 mg)	90 tabs	3/2/21	Mercy Care
?	Adderall (20 mg)	90 tabs	3/29/21	Mercy Care
?	Adderall (20 mg)	90 tabs	4/2/21	Mercy Care
?	Adderall (20 mg)	90 tabs	5/7/21	Mercy Care

12. On January 1, 2019, Respondent prescribed the patient 1 mg/#120 tablets of Xanax for 30 days. There are no medical records supporting the basis for Respondent's prescribing for this day.

13. On January 3, 2019, Respondent prescribed the patient Xanax 240 tablets of Xanax, in three different prescriptions:

- 1 mg/#32 tablets for 8 days, which Patient 1 filled the same day at a Mercy Care Pharmacy;

- 1 mg/#120 tablets for 30 days, which Patient 1 filled on January 11, 2019 at Mercy Care Pharmacy;
- 1 mg/#120 tablets for 30 days which Patient 1 filled on February 8, 2019 at a Mercy Care Pharmacy.

There are no medical records supporting the basis for Respondent's prescribing for this day. Mercy Care Pharmacy left a note that Patient 1's medications were lost or stolen. Respondent approved an early refill, and the pharmacy provided one week's worth of a refill and the rest on January 11, 2019 upon the patient's insurance payment.

14. Despite issuing an emergency refill, a full month prescription, and a refill for the following month of February 2019, Respondent issued another prescription for Xanax, three days later on January 14, 2019, at a higher dosage (2 mg/#60 tablets). Patient 1 filled the prescription the same day, at Revco Pharmacy. There are no medical records supporting the basis for Respondent's prescribing for this day although there is a single line notation in the medication log with no basis for the issuance of the early prescription. Respondent's conduct in prescribing large quantities of Xanax to the patient in January 2019 violates 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 §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 rule adopted under this Act; specifically, Board Rules 165.1(a), failure to create and maintain an adequate medical record.

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 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)(B), negligence in performing medical services; 190.8(1)(C), failure to exercise 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 for unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided in §164.053 of the Act, or injure the public.

Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine; specifically, Texas Health & Safety Code §§481.071(a) and 481.129 (c), relating to prescribing controlled substances without a valid medical purpose.

Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for writing prescriptions for or dispensing to a person whom he knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.

Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent for prescribing or administering a drug or treatment that is non-therapeutic in nature or non-therapeutic in the manner in which the drug or treatment is prescribed or administered.

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

15. Also on January 14<sup>th</sup>, 2019, Respondent prescribed the patient Adderall (20 mg/#60 tablets) which was filled the same day by Patient 1 at a CVS pharmacy. There are no medical records supporting the basis for Respondent's prescribing for this day although there is a notation in the medication log. Respondent's conduct in prescribing the patient a Schedule II stimulant, Adderall, in conjunction with a benzodiazepine, Xanax, without legitimate medical indication and without monitoring for side effects, substance abuse, and diversion violates 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 §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 rule adopted under this Act; specifically, Board Rules 165.1(a), failure to create and maintain an adequate medical record.

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 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)(B), negligence in performing medical services; 190.8(1)(C), failure to exercise 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 for unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided in §164.053 of the Act, or injure the public.

Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine; specifically, Texas Health & Safety Code §§481.071(a) and 481.129 (c), relating to prescribing controlled substances without a valid medical purpose.

Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for writing prescriptions for or dispensing to a person whom he knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.

Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent for prescribing or administering a drug or treatment that is non-therapeutic in nature or non-therapeutic in the manner in which the drug or treatment is prescribed or administered.

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

11. On October 7, 2019, Patient 1 returned to Respondent after missing a follow up appointment in August. Respondent noted that Patient 1 relapsed using an opioid, which he last used the day before the visit after running out of Suboxone. Patient 1 reported withdrawal symptoms of nausea, anxiety, and sneezing. Urine toxicology for Patient 1 showed a positive test for codeine, morphine, hydromorphone, and THC, none of which had been prescribed by Respondent. The positive drug screen is not reflected in the patient's medical record, nor is there any indication that Respondent counseled the patient on the risks of taking prescription drugs that

he had not prescribed. There is no indication that Respondent otherwise acted to refer the patient to a specialist for treatment. Respondent restarted the patient on Suboxone and discontinued writing prescriptions for Xanax. Respondent's conduct violates 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 §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 rule adopted under this Act; specifically, Board Rules 165.1(a), failure to create and maintain an adequate medical record.

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 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)(B), negligence in performing medical services; 190.8(1)(C), failure to exercise 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 for unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided in §164.053 of the Act, or injure the public.

Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine; specifically, Texas Health & Safety Code §§481.071(a) and 481.129 (c), relating to prescribing controlled substances without a valid medical purpose.

Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for writing prescriptions for or dispensing to a person whom he knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.

Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent for prescribing or administering a drug or treatment that is non-therapeutic in nature or non-therapeutic in the manner in which the drug or treatment is prescribed or administered.

12. On October 14, 2019, Patient 1 returned to the Respondent one week after resuming Suboxone due to an opioid use relapse. He reported worsening of his ADD symptoms as well. Respondent documents that he is restarting the patient on Adderall and "ADT". It is unclear what "ADT" means. Respondent's conduct in documenting a treatment plan to resume the patient's treatment after relapse including writing a prescription for Adderall, and failing to refer the patient to a specialist, violates 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 §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 rule adopted under this Act; specifically, Board Rules 165.1(a), failure to create and maintain an adequate medical record.

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 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)(B), negligence in performing medical services; 190.8(1)(C), failure to exercise 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 for unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided in §164.053 of the Act, or injure the public.

Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine; specifically, Texas Health & Safety Code §§481.071(a) and 481.129 (c), relating to prescribing controlled substances without a valid medical purpose.

Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for writing prescriptions for or dispensing to a person whom he knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.

Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent for prescribing or administering a drug or

treatment that is non-therapeutic in nature or non-therapeutic in the manner in which the drug or treatment is prescribed or administered.

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

13. On January 15, 2020, Patient 1 returned to see Respondent after missing a follow-up appointment for medication refills. Patient 1 complained of anxiety that was not controlled with Xanax taken twice a day. Respondent increased the frequency of the Xanax prescription to 1 mg/#90 tablets three times per day. Respondent's conduct in increasing the frequency of this benzodiazepine shortly after the patient admitted to relapsing on opioid medication, without advising the patient of the potential addiction risk, and without referring this patient to a specialist violates 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 §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 rule adopted under this Act; specifically, Board Rules 165.1(a), failure to create and maintain an adequate medical record.

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 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)(B), negligence in performing medical services; 190.8(1)(C), failure to exercise 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 for unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided in §164.053 of the Act, or injure the public.

Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that

violates a law of this state that is connected with Respondent's practice of medicine; specifically, Texas Health & Safety Code §§481.071(a) and 481.129 (c), relating to prescribing controlled substances without a valid medical purpose; and 21 C.F.R. §1306.05, relating to the manner of issuing prescriptions of controlled substances.

Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for writing prescriptions for or dispensing to a person whom he knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.

Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent for prescribing or administering a drug or treatment that is non-therapeutic in nature or non-therapeutic in the manner in which the drug or treatment is prescribed or administered.

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

14. On April 22, 2020, Patient 1 returned to Respondent with reports of 6-9/10 back pain worse with bending. He reported that he was in a vehicular collision in which his car was totaled, but denied culpability for the collision. Respondent noted that Patient 1 had been evaluated by a pain facility in Dallas where a chiropractor was recommended. Despite failing to perform and/or document a physical examination of the patient and failing to order an imaging study and notwithstanding the patient's previous history of opioid addiction, Respondent prescribed Gabapentin, Zanaflex, and Norco to the patient. Respondent's conduct in prescribing this patient a powerful opioid, Norco, despite the patient's medical history, substance abuse history, and history of relapse violates 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 §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 rule adopted under this Act; specifically, Board Rules 165.1(a), failure to create and maintain an adequate medical record.



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 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)(B), negligence in performing medical services; 190.8(1)(C), failure to exercise 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 for unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided in §164.053 of the Act, or injure the public.

Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine; specifically, Texas Health & Safety Code §§481.071(a) and 481.129 (c), relating to prescribing controlled substances without a valid medical purpose; 481.076(a)(5)(B) of the Texas Health & Safety Code, relating to the requirement to check the PMP when prescribing an opioid, benzodiazepine, barbiturate, or carisoprodol, on or after March 1, 2020; and 21 C.F.R. §1306.05, relating to the manner of issuing prescriptions of controlled substances.

Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for writing prescriptions for or dispensing to a person whom he knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.

Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent for prescribing or administering a drug or treatment that is non-therapeutic in nature or non-therapeutic in the manner in which the drug or treatment is prescribed or administered.

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

15. On May 6, 2020, Patient 1 returned to Respondent requesting an early refill of Norco and Adderall because his car was broken into. Respondent noted that Patient 1's Adderall prescription was refilled early. Respondent also noted that a police report was on file, but the

patient's medical records do not contain the police report. Despite the multitude of red flags suggesting substance abuse and/or diversion (e.g., medications stolen from car, car accidents, need for early refills), Respondent refilled his prescriptions of a Schedule II opioid and a Schedule II stimulant in 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 §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 rule adopted under this Act; specifically, Board Rules 165.1(a), failure to create and maintain an adequate medical record.

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 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)(B), negligence in performing medical services; 190.8(1)(C), failure to exercise 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 for unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided in §164.053 of the Act, or injure the public.

Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine; specifically, Texas Health & Safety Code §§481.071(a) and 481.129 (c), relating to prescribing controlled substances without a valid medical purpose; 481.076(a)(5)(B) of the Texas Health & Safety Code, relating to the requirement to check the PMP when prescribing an opioid, benzodiazepine, barbiturate, or carisoprodol, on or after March 1, 2020.

Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for writing prescriptions for or dispensing to a person whom he knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.

Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent for prescribing or administering a drug or

treatment that is non-therapeutic in nature or non-therapeutic in the manner in which the drug or treatment is prescribed or administered.

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

16. On March 2, 2021, Patient 1 returned to Respondent reporting that he was off Suboxone since October 2020, but complained of cravings. He admitted to taking illegal drugs and reported feeling guilty. Respondent reported that Patient 1 was having a relapse of opioid use disorder, suboptimal control of attention deficit disorder, and chronic lower back pain. Respondent increased the Adderall prescription, started the patient again on Zanaflex, and restarted the patient on Suboxone. Despite the multitude of red flags suggesting substance abuse, Respondent refilled and increased his prescriptions of a Schedule II opioid, a Schedule II stimulant, and a Schedule III mixed opioid agonist, in 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 §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 rule adopted under this Act; specifically, Board Rules 165.1(a), failure to create and maintain an adequate medical record.

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 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)(B), negligence in performing medical services; 190.8(1)(C), failure to exercise 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 for unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided in §164.053 of the Act, or injure the public.

Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine; specifically, Texas Health & Safety Code §§481.071(a) and 481.129 (c), relating to prescribing controlled substances without a valid medical purpose; 481.076(a)(5)(B) of the Texas Health & Safety Code, relating to the requirement to check the PMP when prescribing an opioid, benzodiazepine, barbiturate, or carisoprodol, on or after March 1, 2020.

Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for writing prescriptions for or dispensing to a person whom he knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.

Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent for prescribing or administering a drug or treatment that is non-therapeutic in nature or non-therapeutic in the manner in which the drug or treatment is prescribed or administered.

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

17. On April 22, 2021, Patient 1 returned to Respondent complaining of stress due to a DUI that occurred months ago. Respondent's note reports that Patient 1 denied driving, but admitted to alcohol intoxication. Respondent reported Patient 1's generalized anxiety disorder, attention deficit disorder, opioid use disorder, and major depressive disorder appeared to be stable with no change in medication. Respondent failed to document what medications and doses Patient 1 was taking in the patient's medical record and failed to address the patient's chronic lower back pain complaints. Failing to describe the medications, doses, and frequencies in the patient's medical records, to monitor the patient for adverse side effects, including impairment and addiction, and to refer the patient to an appropriate specialist violates 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 Rules 165.1(a), failure to create and maintain an adequate medical record; and 170.3, failure to adhere to those standards and requirements relating to the treatment of chronic pain.

27. An April 28, 2021 Laboratory Report, in which Patient 1 is incorrectly listed as taking no prescribed medications, showed that Patient 1 tested positive for 7-aminoclonazepam, benzoylecgonine, carisoprodol, meprobamate, and buprenorphine. The report also noted that the specific gravity was interpreted as being unacceptable, suggesting that the specimen was possibly tampered with.

28. Respondent received written notice that an Informal Settlement Conference (ISC) would be convened to consider the alleged violations of the Act and Board rules by letter dated November 16, 2021.

29. The ISC on this matter was ultimately convened remotely via videoconference on April 21, 2022. Respondent appeared at the ISC with counsel, E. James Rausch. After the conclusion of the ISC, the parties were unable to reach a settlement in this matter.

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

Board Rule 190.14 provides that the Board may impose more restrictive sanctions when there are multiple violations 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 following aggravating factors: 1) harm to one or more patients; (2) the severity of patient harm; (4) economic harm to any individual or entity and the severity of such harm; 5) increased potential for harm to the public; 7) intentional, premeditated, knowing, or grossly negligent act constituting a violation; and 11) other relevant circumstances increasing the seriousness of the misconduct.

Board staff is aware of no mitigating factors that apply and demand 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


FOR THSE REASONS, 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 L. SWANHOLM, J.D., M.S.E.L.  
Litigation and Enforcement Manager

MICHELLE A. McFADDIN, J.D.  
Supervising Attorney



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FAX: (888) 391-2366

Filed with the Texas Medical Board on this 29th day of August, 2022.

Handwritten signature of Stephen Brint Carlton in cursive script.

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

**CERTIFICATE OF SERVICE**

I certify that on the 29th day of August 2022, a true and correct copy of the foregoing *Complaint* has been served as follows:

**By E-Filing**

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

**By CMRRR No. 7008 2810 0000 1325 9574, and by First Class Mail to:**

Andrew M. Klymiuk, M.D.  
801 W Road to Six Flags  
Suite 124  
Arlington, TX 76012

**By E-Filing**

E. James Rausch  
12421 E. Aunnick Ln  
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Ejrausch@gmail.com

**By E-Filing**

Robin Etheridge  
Hearings Coordinator  
Texas Medical Board  
333 Guadalupe, Tower 3, Suite 610  
Austin, TX 78701



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Shane D. Neldner  
Senior Staff Attorney