

HEARING CONDUCTED BY THE  
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS  
SOAH DOCKET NO. 503-12- 5388.MD  
TEXAS MEDICAL LICENSE NO. F-9026

IN THE MATTER OF THE  
COMPLAINT AGAINST  
BARLOW SMITH, M.D.

BEFORE THE  
TEXAS MEDICAL BOARD

**COMPLAINT**

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

COMES NOW, the Staff of the Texas Medical Board (the "Board"), by and through its attorney of record, Christopher M. Palazola, and files this Complaint against Barlow Smith, M.D., ("Respondent"), based on Respondent's alleged violations of the Medical Practice Act ("the Act"), Title 3, Subtitle B, Texas Occupations Code, and would show the following:

**I. INTRODUCTION**

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.

**II. LEGAL AUTHORITY AND JURISDICTION**

1. Respondent is a Texas Physician and holds Texas Medical License No. F-9026. Respondent was originally issued this license to practice medicine in Texas on February 21, 1981. Respondent's license was in full force and effect at all times material and relevant to this Complaint.

2. Respondent received notice of an Informal Settlement Conference ("ISC"), which was conducted in accordance with §2001.054(c), GOV'T CODE and §164.004 of the Act. All

procedural rules were complied with, 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.

### **III. FACTUAL ALLEGATIONS**

Board Staff has received information and on that information believes that Respondent has violated the Act. Based on such information and belief, Board Staff alleges:

1. On or about September 11, 2008, Respondent improperly delegated the task of disposing of the medical records of his psychiatric patients to staff that was not adequately trained to comply with the requirements of destroying these records.
2. On or about September 11, 2008, Respondent delegated, to the same unlicensed staff, the responsibility of discarding controlled substances. These controlled substances were placed on the curb in front of Respondent's office in violation of the Health and Safety Code, Controlled Substances Act.
3. Respondent has previously been disciplined by the Board and Respondent demonstrated that he lacks knowledge of the expectations for the supervision of his employees.
4. Respondent failed to take the appropriate actions to protect patient confidentiality and the public by not adequately disposing of records and dangerous drugs.

### **IV. STATUTORY ALLEGATIONS**

The actions of Respondent as specified above violate one or more of the following provisions of the Medical Practice Act:

1. 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 rule: 190.8(1)(C), failure to use proper diligence in one's professional practice.

2. 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 Section 164.053, or injure the public and as further defined by Board Rule(s), 190.8(2)(N), failing to maintain the confidentiality of a patient.

3. Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of any state or federal law if the act is connected with the physician's practice of medicine: specifically, violation of Health Insurance Portability and Accountability Act (HIPPA) 45 C.F.R. 160-164, and Chapter 481 Health and Safety Code, Controlled Substance Act, regarding the disposal of controlled substances.

4. Section 164.053(a)(8) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to supervise adequately the activities of those acting under the supervision of the physician;

#### **V. AGGRAVATING FACTORS**

Pursuant to Board Rule 190.15, the Board may consider an aggravating factor that warrants more severe or restrictive sanction by the Board, as listed in Board Rule 190.15: specifically, 190.15(3), one or more violations that involve one or more patients, 190.15(5), increased potential for harm to the public, 190.15(8), prior similar violations of the Act and 190.15(9), previous disciplinary action by the Board.

#### **VI. APPLICABLE STATUTES, RULES, AND AGENCY POLICY**

The following statutes, rules, and agency policy are applicable to the conduct of the contested case:

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.

#### **VII. 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.**

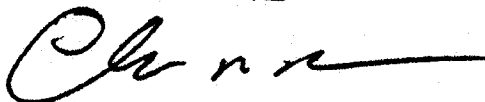
WHEREFORE, PREMISES CONSIDERED, Board Staff requests that an administrative law judge employed by the State Office of Administrative Hearings conduct a contested case hearing on the merits of the Complaint, and issue a Proposal for Decision ("PFD") containing Findings of Fact and Conclusions of Law necessary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

**SIGNATURE PAGES FOLLOW**

Respectfully submitted,

TEXAS MEDICAL BOARD

By:



Christopher M. Palazola, Staff Attorney  
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Texas State Bar No. 24060379  
Telephone: (512) 305-7071  
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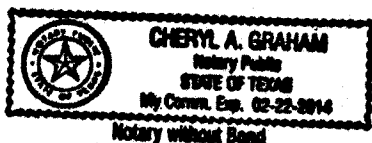
THE STATE OF TEXAS

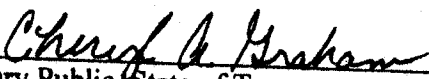
COUNTY OF TRAVIS

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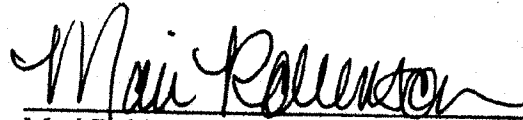
SUBSCRIBED AND SWORN to before me by the said Christopher Palazola, on

March 22, 2012.



  
Notary Public, State of Texas

Filed with the Texas Medical Board on March 21, 2012.

A handwritten signature in cursive script, appearing to read "Mari Robinson", written over a horizontal line.

Mari Robinson, J.D.  
Executive Director  
Texas Medical Board

**CERTIFICATE OF SERVICE**

On this 22nd day of March, 2012, I certify that a true and correct copy of this Complaint has been served on the following individuals at the locations and the manner indicated below.

**Via E-mail To: docketing@soah.state.tx.us**

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

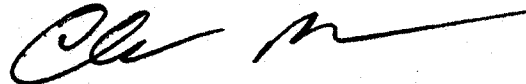
**Via Certified Mail #7008 2810 0000 1404 9440, Return Receipt Requested**

**And First Class Mail**

Barlow Smith, M.D.  
1811 Highway 281, #8  
Marble Falls, TX 78654  
Respondent

**By Hand Delivery:**

Sonja Aurelius  
Hearings Coordinator  
Texas Medical Board  
333 Guadalupe, Tower 3, Suite 610  
Austin, Texas 78701



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Christopher Palazola J.D.