

HEARING CONDUCTED BY THE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS  
SOAH DOCKET NO. 503-21\_\_\_\_\_.MD  
TEXAS MEDICAL LICENSE NO. H-4211

IN THE MATTER OF THE  
  
COMPLAINT AGAINST

ROBERT EDWARD CANTU, 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 Robert Edward Cantu, M.D. (Respondent), for alleged violations of the Medical Practice Act (the Act), Texas Occupations Code, Title 3, Subtitle B, and the rules of the Board, and would show the following:

**I. SUMMARY OF ALLEGATIONS**

Board Staff charged Respondent with violating the Act because Respondent engaged in an inappropriate sexual relationship with one patient and has displayed a pattern of inappropriate sexual behavior towards former female patients.

**II. LEGAL AUTHORITY AND JURISDICTION**

1. Respondent is a Texas Physician and holds Texas Medical License No. H-4211, that was originally issued on December 6, 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, 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 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 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 violation of Board Rule: 165.1(a), failure to maintain an adequate medical record.

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 Board Rules

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

4. 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, as further defined by Board Rules: 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 financially or personally involved with a patient in an inappropriate manner; 190.8(2)(K), behaving in an abusive or assaultive manner towards a patient or patient's family that interferes with patient care; 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: (i) any felony, (ii) any offense in which assault or battery, or the attempt of either is an essential element, specifically Texas Penal Code 22.011(a)(9), and (v) any misdemeanor involving moral turpitude.

#### **IV. ALLEGATIONS**

Based on information and belief, Board Staff alleges:

1. Respondent is a physician engaged in psychiatry. Respondent is certified by the American Board of Psychiatry and Neurology; a member of the American Board of Medical Specialties.

2. Respondent treated Patient 1 approximately 42 times from May 23, 2013, to May 24, 2017.

3. During the course of treatment Respondent failed to maintain adequate medical records for Patients 1, including: legible identity of the observer; past and present diagnoses; prior treatment records from other providers; an assessment, clinical impression, or diagnosis a written plan for care; the patient's progress, including response to treatment, change in diagnosis, Relevant risk factors for medications and treatments prescribed and patient's non-compliance; and a

summary or documentation memorializing communications transmitted or received by the physician about which a medical decision is made regarding the patient.

4. Patient 1 alleged that in November 2015, while a patient, a sexual relationship began with Respondent.

5. Patient 1 alleged that the sexual relationship with Respondent ended in March 2016.

6. During the time Respondent had an inappropriate sexual relationship with Patient 1, he continued to treat her, and inappropriately prescribed her dangerous drugs and controlled substances; including, Xanax and Lexapro.

7. Patient 1 alleged that after her sexual relationship with Respondent ended, she continued to see him professionally and personally. During this time Respondent continued to treat her, and inappropriately prescribed her dangerous drugs and controlled substances.

8. In 2017, Patient 1 told her new psychologist about her past sexual relationship with Respondent.

9. On July 20, 2018, Patient 1 filed a report with the Austin Police Department alleging sexual assault.

10. Respondent's alleged sexual assault of Patient 1, Respondent's inappropriate sexual relationship with Patient 1, and Respondent's inappropriate treatment and prescribing to Patient 1 during that sexual relationship, violates the following provisions of the Act:

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 164.051(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), regarding adequate maintenance of medical records.

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; 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.

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, as further defined by Board Rules: 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 financially or personally involved with a patient in an inappropriate manner; 190.8(2)(K), behaving in an abusive or assaultive manner towards a patient or patient's family that interferes with patient care; 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: (i) any felony, (ii) any offense in which assault or battery, or the attempt of either is an essential element, specifically Texas Penal Code 22.011(a)(9), and (v) any misdemeanor involving moral turpitude.

**Patient 2 – Aggravating factor, based on past similar incidents.**

11. On August 26, 2005 an Agreed Order (2005 Order) was entered based on Respondent's violation of the standard of care. Respondent prescribed Adderall to a female patient with whom he had had a prior social relationship, and Respondent did not keep medical records for her treatment. Respondent was required to take the Vanderbilt University Boundaries Course, 10 hours of Continuing Medical Education in the topic of medical record keeping and pay an administrative penalty of \$2500.

**Patient 3 – Aggravating factor, based on past similar incidents.**

12. On June 15, 2018, an Agreed Order (2018 Order) was entered based on Respondent's unprofessional boundaries violation. Respondent reinitiated the physician-patient relationship by visiting a former patient in her home while she was engaged in apparent alcohol relapse behavior. Respondent was ordered to undergo an Independent Medical Evaluation and to take the PACE boundaries course.

**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; (5) increased potential for harm to the public; (6) attempted concealment of the act constituting a violation; (7) intentional, premeditated, knowing, or grossly negligent act constituting a violation; (8) prior similar violations; (9) previous disciplinary action by the board, any government agency, peer review organization, or health care entity; and (11) other relevant circumstances increasing the severity of the misconduct..

In addition to the 2005 Order and the 2018 Order, which establish that Respondent has previously been disciplined by the Board for similar violations, Respondent has been the subject of disciplinary action by the Board. On June 3, 2011, an Agreed Order (2011 Order) was entered based on Respondent's failure to maintain an adequate medical record for one patient. Respondent was required to take four hours in medical records, and to pay an administrative penalty of \$1000.

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

SUSAN RODRIGUEZ  
Litigation Manager

By:   
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Filed with the Texas Medical Board on 15<sup>th</sup> January, 2021.

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

**CERTIFICATE OF SERVICE**

I certify that on January 21, 2021, a true and correct copy of the foregoing Complaint has been served as follows:

**BY EFILE:**

Docket Clerk  
State Office of Administrative Hearings  
William P. Clements Bldg.  
300 W. 15th Street, Suite 504  
Austin, TX 78701-1649  
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**BY CERTIFIED MAIL/RRR No. 7008 2810 0000 1319 1553 and FIRST CLASS MAIL**

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Jerry Bergman, Staff Attorney