

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-_____
TEXAS MEDICAL LICENSE NO. E-2499

IN THE MATTER OF THE
COMPLAINT AGAINST

DAVID WILLIAMS CARDWELL, 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"), and files this Complaint against David Williams Cardwell, 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. E-2499, that was originally issued on August 17, 1974. Respondent's license was in full force and effect at all times material and relevant to this Complaint.

2. Respondent received notice of the Informal Settlement Conference(s) ("ISC") and appeared at the ISC(s), 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:

Patient Care:

1. Patient 1¹
 - a. Respondent had been treating Patient 1's spouse for the previous 10 years. Patient 1's spouse brought Patient 1 to see Respondent under the guise that it was for marital counseling. The real purpose of the visit was for Patient 1's spouse to collect evidence to later use at a divorce and child custody procedure against Patient 1.
 - b. The first visit occurred on November 10, 2006, at which time the medical documentation is largely a transcription of the conversation between Patient 1 and her husband. The couple mainly discussed their disagreement about a joint business venture with another individual, which Patient 1 believed was not being run appropriately. At the session, Respondent explained to Patient 1 that she had a psychotic disorder and needed to take medication. Respondent diagnosed Patient 1 with a brief psychotic disorder and "likely personality disorder, mixed."
 - c. The second follow-up visit was on November 14, 2006. This office visit was mainly to convince Patient 1 that she was mentally ill and needed medication. Respondent again diagnosed her with a brief psychotic disorder and recommended the medication Zyprexa.
 - d. The real purpose of the office visits were not revealed to the patient and she never consented to psychiatric treatment. Respondent did not do a formal evaluation for Patient 1. Patient 1 did not receive or fill out any forms regarding treatment, medical privacy, or medical history. At one session, Respondent gave the Patient a sample of Niravam 5 mg (alprazolam).

¹ Board Staff will provide the identification of all patients to the ALJ and Respondent by separate document confidential and under seal.

- e. Additionally, Respondent discussed Patient 1's diagnosis with her spouse's divorce attorney and presented the evaluation in a state district court against Patient 1 in a divorce proceeding involving child custody issues.
2. Patient 2:
 - a. Respondent treated Patient 2 for 16 years.
 - b. In April 17, 2007, Patient 2 went to another psychiatrist, associated with a professional assistance program, through a referral. The psychiatrist noted that Patient 2 was "severely depressed" and described two previous suicide attempts the previous weekend. The psychiatrist diagnosed Bipolar Disorder and recommended changing medication and hospitalization due to symptom severity.
 - c. Patient 2 saw Respondent that same day. Respondent changed the patient's medication from fluoxetine to Effexor XR. Respondent, however, did not document suicidal ideation and/or attempts, or hospitalization as a management option. Respondent also did not document any follow-up plans for this patient. Overall, there is limited documentation for this patient, especially considering the long patient doctor relationship time-frame.
 3. Patient 3:
 - a. Patient 3 had been Respondent's patient since 2004. There is no documented assessment from the first patient office visit in May of 2004.
 - b. On July 15, 2007, Patient 3 was admitted to the local psychiatric hospital following a suicide attempt.
 - c. Five days prior to the incident, Patient 3's wife had emailed Respondent about his state of mind and decreased sleep. Respondent did not respond to email and had no physician coverage outside of normal business hours or arrangements for emergencies.

Self and Family Prescribing:

1. Starting in January 2003 until April 2008, Respondent prescribed himself several different medications, including Schedule II medications methylphenidate (Ritalin, Concerta) and amphetamine salts (Adderall), and the Schedule IV medication alprazolam (Xanax).

2. Respondent filled out three Conner's Questionnaires for ADHD, dated July 1998, April 2002, and May 2002. The last medical documentation entry is on December 12, 2003 and there is no psychiatric evaluation or history noted in the records.

3. Starting in 2003 and continuing through 2008, Respondent prescribed several controlled substances to a total of nine family members for non-emergent circumstances without keeping any medical records to document prescriptions, diagnosis, or follow-up.

Allegation Summary:

1. Respondent's actions are inconsistent with public health and welfare due to prescribing a controlled substance without first establishing a proper professional relationship with the patient, failure to obtain informed consent prior to initiating psychiatric treatment, and inappropriately prescribing dangerous and controlled substances to himself and family members.

2. Respondent committed unprofessional or dishonorable conduct due to failing to maintain the confidentiality of a patient and to timely respond to communications from a patient, prescribing or administering a drug or treatment that is nontherapeutic, and prescribing in a manner inconsistent with public health and welfare.

3. Respondent violated Board rules due to failure to maintain adequate medical records.

IV. VIOLATIONS

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

a. Section §159.002 of the Act provides that a communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed.

b. 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.

c. 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, which requires the maintenance of adequate medical records.

d. 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 Texas Medical Board Rule(s): 190.8(1)(A), failure to treat 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; 190.8(1)(I), failure to obtain informed consent from the patient before performing tests, treatments, or procedures; 190.8(1)(L)(i)(I-IV), prescription of any dangerous or controlled substance without first establishing a proper professional relationship with the patient and 190.8(1)(M) inappropriate prescription drugs to oneself, family members, or others in which there is a close personal relationship.

e. 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 or injure the public, as provided by Section 164.053, as further defined by Board Rule(s): 190.8(2)(L), failing to respond in a timely manner to communications from patients; and 190.8(2)(N), failing to maintain the confidentiality of a patient.

f. Sections 164.053(a)(1) of the Act authorize 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.

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

h. Sections 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, dangerous drugs as defined by Chapter 483, Health and Safety Code; or controlled substances scheduled in Chapter 481

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

i. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule.

V. AGGRAVATING FACTORS

This case includes the following aggravating factors:

1. increased potential harm to the public;
2. harm to one or more patients; and
3. intentional, premeditated, knowing, or grossly negligent act constituting a violation.

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. 1 TEX. ADMIN. CODE, CHAPTER 155 sets forth the rules of procedure adopted by SOAH for contested case proceedings.
4. 1 TEX. ADMIN. CODE, CHAPTER 155.507, requires the issuance of a Proposal for Decision (“PFD”) containing Findings of Fact and Conclusions of Law.
5. 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 NOTICE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHING 20 DAYS OF THE DATE NOTICE OF ADJUDICATIVE HEARING WAS MAILED, 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. IF YOU FILE A WRITTEN ANSWER, BUT THEN FAIL TO ATTEND THE HEARING, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU, WHICH MAY ALSO INCLUDE THE DENIAL OF LICENSURE OR ANY OR ALL OF THE REQUESTED SANCTIONS INCLUDING THE REVOCATION OF YOUR LICENSE. A COPY OF ANY RESPONSE YOU FILE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS SHALL ALSO BE PROVIDED TO THE HEARINGS COORDINATOR OF THE TEXAS MEDICAL BOARD.

IF YOU FAIL TO ATTEND THE HEARING, THE ADMINSTRATIVE LAW JUDGE MAY PROCEED WITH THE HEARING AND ALL THE FACTUAL ALLEGATIONS LISTED IN THIS NOTICE CAN BE DEEMED ADMITTED, AND THE RELIEF SOUGHT IN THIS NOTICE MIGHT BE GRANTED.

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.

Respectfully submitted,

TEXAS MEDICAL BOARD

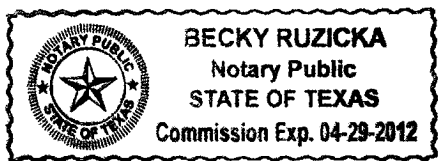
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333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701

THE STATE OF TEXAS

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COUNTY OF TRAVIS

SUBSCRIBED AND SWORN to before me by the said Claudia Kirk, on this 4th
day of June, 2010.



Notary without Bond

Becky Ruzicka
Notary Public, State of Texas

Filed with the Texas Medical Board on this 21st day of May, 2010.

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

CERTIFICATE OF SERVICE

On this 4th/day of June, 2010, 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, in accordance with TEX. GOV'T CODE §2001.052, 22 TEX. ADMIN. CODE §187.26, and 1 TEX. ADMIN. CODE §155.103:

BY CERTIFIED MAIL RETURN RECEIPT REQUESTED and FIRST CLASS MAIL:

David Williams Cardwell, M.D.
800 West 34th, Suite 210
Austin, TX 78705

BY FAX TRANSMISSION TO: (512) 476-1825

James O. Guleke, II
Sneed Vine & Perry
901 Congress Ave.
Austin, TX 78701

BY FAX TRANSMISSION TO: (512) 479-1101

James McClendon
Brown McCarroll LLP
111 Congress Ave., Suite 1400
Austin, TX 78701-4043

BY FAX TRANSMISSION TO: (512) 475-4994

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

BY HAND DELIVERY:

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



Claudia Kirk