

SOAH DOCKET NO. 503-99-1992

LICENSE NO. D-6049

IN THE MATTER OF THE

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BEFORE THE

COMPLAINT AGAINST

TEXAS STATE BOARD

WAYNE CHARLES JONES, M.D.

OF MEDICAL EXAMINERS

COMPLAINT

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

COMES NOW, the Staff of the Texas State Board of Medical Examiners ("the Board"), by and through the undersigned attorney of record and files this Complaint against Wayne Charles Jones, M.D. ("Respondent"), based on Respondent's alleged violations of the Medical Practice Act ("the Act"), TEX. REV. CIV. STAT. ANN., art. 4495b (Vernon Supp. Pamphlet 1998), and in support of this Complaint and based upon information and belief, would show the following:

I.

The filing of this Complaint against Respondent, Wayne Charles Jones, M.D., and the relief requested herein are necessary to protect the health of the citizens of the State of Texas as mandated by Section 1.02 of the Act.

II.

1. Respondent is a licensed Texas physician.
2. Respondent was issued a Texas medical license by the Board on or about August 27, 1969.
3. Respondent holds Texas medical license D-6049.
4. Respondent's Texas medical license is currently in full force and effect and was in full force and effect at all times and dates material and relevant to this Complaint.
5. All jurisdictional requirements have been satisfied.

III.

Board Staff has received information which indicates that Respondent may have violated the Act. Upon the basis of such information and belief, Board staff files this Complaint and thereby charges and alleges that:

Count I

Respondent began treating Ann Daulong on or about July 17, 1991. From on or about July 17, 1991 until on or about August, 1994 Respondent prescribed and/or dispensed narcotic drugs, controlled substances and/or dangerous drugs to Ann Daulong, a person he knew, or should have known, was an abuser of narcotic drugs, controlled substances and/or dangerous drugs without having notified the Board as required by Section 3.08(4)(C)(i) of the Act. On August 1, 1994, Ann Daulong died of an overdose of Ritalin, Prozac, and Desoxyn, all of which were prescribed by Respondent and while under the care of Respondent.

Count II

Respondent began treating Jeff Wester on or about September 9, 1994. From on or about September 9, 1994 until at least July 7, 1995, Respondent prescribed and/or dispensed narcotic drugs, controlled substances and/or dangerous drugs to Jeff Wester, a person he knew or should have known, was an abuser of narcotic drugs, controlled substances and/or dangerous drugs without having notified the Board as required by Section 3.08(4) (C)(i) of the Act.

Count III

Respondent began treating Tommy Bowers on or about September 30, 1992. From, on or about Sept. 30, 1992 until at least July 7, 1995, Respondent prescribed and/or dispensed narcotic drugs, controlled substances and/or dangerous drugs to Tommy Bowers, a person he knew or should of known, was an abuser of narcotic drugs, controlled substances and/or dangerous drugs Board as required by Section 3.08(4)(C)(i) of the Act.

Count IV

Respondent began treating Bonnie Lindlief on or about October 26, 1993. From on or about October 26, 1993 until at least July 7, 1995, Respondent prescribed and/or dispensed narcotic drugs, controlled substances and/or dangerous drugs to Bonnie Lindlief, a person he knew or should of known, was an abuser of narcotic drugs, controlled substances and/or dangerous drugs without having notified the Board as required by Section 3.08(4)(C)(i) of the Act.

Count V

From on or about July 17, 1991 until on or about August 1994, Respondent prescribed and/or dispensed narcotic drugs, controlled substances and/or dangerous drugs to Ann Daulong in a non-therapeutic manner, including stimulants such as Ritalin, Dexedrine, and Desoxyn for the treatment of Attention Deficit Disorder (ADD) as well as benzodiazepines and antidepressants including Prozac. Ann Daulong's Medical records failed to justify or document a diagnosis for ADD. In addition, the use of Desoxyn was excessive. Moreover, there were occasions in which the Desoxyn was being counteracted by the use of the atypical neuroleptic Risperdal and on some occasions in the past, Haldol. This was accentuated with the use of Synthroid, even though the medical records do not document the diagnosis of a hypothyroid condition. Additional contraindications of continued stimulant therapy included the fact that Ms. Daulong maintained a low weight, and was bulimic and anorexic on occasions; therefore, the prescribed medication helped her to maintain the poor image that was clearly distorted and was in fact at one time recognized by the Respondent. On August 1, 1994, Ann Daulong died of an overdose of Ritalin Prozac and Desoxyn, dangerous drugs, all of which were prescribed by Respondent.

Count VI

From on or about September 30, 1992 until at least July 7, 1995, Respondent prescribed and/or dispensed narcotic drugs, controlled substances and/or dangerous drugs to Tommy Bowers in a non-therapeutic manner, including stimulants such as

Ritalin, and Desoxyn for the treatment of Attention Deficit Disorder (ADD) as well as Darvon, Valium, Catapres, Prozac, Lithium, Effexor, Ativan, Loxitane, Trexan and Depakote. Tommy Bowers's medical records failed to justify or document a diagnosis for ADD. Respondent continued to prescribe stimulants to Tommy Bowers despite contraindications of worsening mood swings, irritability, verbal and physical aggression toward his wife, paranoia, and evidence of prescription medication abuse and deception.

Count VII

From on or about September 9, 1994 until at least July 7, 1995, Respondent prescribed and/or dispensed narcotic drugs, controlled substances and/or dangerous drugs to Jeff Wester in a non-therapeutic manner, including stimulants such as Ritalin and Dexedrine, for the treatment of Attention Deficit Disorder (ADD) as well as Zanax, Risperdal, Elavil, Dalmane, Seretil, Parnate, Eskalith, Cylert, Wellbutrin, Loxitane Desyrel, Clonidine, Resperdal and Depokote. Jeff Wester's medical records failed to justify or document a diagnosis for ADD. Respondent continued to prescribe stimulants to Jeff Wester despite contraindications of reports by his wife that he became confused and paranoid on Ritalin and despite reports that he was hallucinating during one hospital stay, and despite evidence of prescription medication abuse and deception.

Count VIII

From on or about March 4, 1992 until at least March 23, 1993, Respondent prescribed and/or dispensed narcotic drugs, controlled substances and/or dangerous drugs to Mary Hardin in a non-therapeutic manner, including stimulants such as Desoxyn and Dexedrine, for the treatment of low energy, depression and inability to concentrate as well as Desiprimine, Synthoid, Klonopin, Orap, Lithium, Prozac, Tegretol, Noropramine, Eskalith, and Urecoline. Respondent continued to prescribe stimulants to Mary Hardin despite contraindications, including the loss of 34 pounds in two months (from 123 lbs. to 89 lbs.), and her reported inability to eat or sleep and "panic attacks".

Count IX

Regarding Patients Tommy Bowers, Bonnie Lindlief, Jeff Wester, John Bryant, Mary Harding and Ann Daulong:

1. Respondent failed to keep adequate medical records for patients he was treating for substance abuse and attention deficit disorder.

2. Respondent failed to document his rationale for administration of dangerous drugs utilized in the care and treatment of his patients.

3. Respondent failed to document his rationale for his therapies and treatment utilized in care and treatment of his patients.

Count X

During the period of approximately November 10, 1993 to approximately March 16, 1998, Respondent failed to keep complete and accurate records of purchases and disposals of drugs listed in chapter 481, Texas Health and Safety Code, or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A , Section 801 et. seq. (Public Law 91-513) including without limitation the date of purchase, the sale or disposal of the drugs by the physician, the name and address of the person receiving the drugs, and the reason for the disposing or dispensing of the drugs to the person.

Count XI

During the period of approximately November 10, 1993 to approximately March 16, 1999, Respondent violated the provisions of the recordkeeping and inventory requirements of Title 21 CFR §1304.13 and 37 TAC section 13.61 by failing to conduct a biennial inventory as required by Title 21 CFR §1304.13 and 37 TAC section 13.61(a).

These provisions require that a registrant take a physical inventory of all controlled substances every two years. The inventory should state if it was taken at either the beginning of business or at the close of business on the inventory date. 37 TAC chapter 13, subchapter D and Title 21 CFR parts 1301 through 1306 are made applicable to Respondent by Section 481.067 of the Texas Health & Safety Code and

4.08(4)(B) of the Act.

Count XII

During the period of approximately November 10, 1993 to approximately March 16, 1999, Respondent violated the provisions of the recordkeeping and inventory requirements of Title 21 CFR §1304.24(d) and 37 TAC chapter 13, subsection D section 13.61 by failing to maintain a dispensation/distribution records in a readily retrievable manner and with all the required information. Title 21 CFR §1304.24(d) and 37 TAC chapter 13, subsection D section 13.61 are made applicable to Respondent by Section 481.067 of the Texas Health & Safety Code and 4.08(4)(B) of the Act.

Count XIII

During the period of approximately November 10, 1993 to approximately March 16, 1999, Respondent violated the provisions of the recordkeeping and inventory requirements of Title 21 CFR § 1304.24(d) and §1304.02(i.). These provisions require that entries for dispensation be marked in such a manner as to visually distinguish those entries from other patient information. Title 21 CFR § 1304.24(d) and §1304.02(i.). are made applicable to Respondent by Section 481.067 of the Texas Health & Safety Code and 4.08(4)(B) of the Act.

Count XIV

During the period of approximately November 10, 1993 to approximately March 16, 1999 Respondent violated the provisions of the recordkeeping and inventory requirements of Title 21 CFR §1306.04(a). This provision states: "A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." A prescription, by definition, means an order for medication which is dispensed to an ultimate user. Investigators noted that Respondent's 'drug drawer' contained numerous prescription bottles labeled for specific patients who had obtained the controlled substance prescriptions from other physicians. Those substances were being dispensed by Respondent to patients other than to whom they were originally

prescribed. Those prescriptions should not have been in Respondent's possession. Title 21 CFR §1304.06.04(a) is made applicable to Respondent by Section 481.067 of the Texas Health & Safety Code and 4.08(4)(B) of the Act.

Count XV

During the period of approximately November 10, 1993 to approximately March 16, 1999, Respondent violated the provisions of the recordkeeping and inventory requirements of Title 21 CFR §1306.04(b). This provision states that prescriptions may not be issued in order for an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients. Respondent obtained controlled substances through other than valid registered suppliers Title 21 CFR §1306.04(b) is made applicable to Respondent by Section 481.067 of the Texas Health & Safety Code and 4.08(4)(B) of the Act.

Count XVI

During the period of approximately November 10, 1993 to approximately March 16, 1999 Respondent violated the provisions of the recordkeeping and inventory requirements of Title 21 CFR §1301.75(b). This provision requires that controlled substances be stored in a securely locked, substantially constructed cabinet. Title 21 CFR §1301.75(b) is made applicable to Respondent by Section 481.067 of the Texas Health & Safety Code and 4.08(4)(B) of the Act.

IV.

It is further alleged that Respondent's actions and/or omissions as described in Counts I through XVI herein, individually and collectively, constitute grounds for the Board to revoke and suspend Respondent's Texas medical license or to impose any other authorized means of discipline upon Respondent pursuant to Sections 3.08(4)(A), (B), (C), (E), (F), and 3.08(18) of the Act.

V.

Section 3.08(4) 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 or injure the public.

VI.

Section 3.08(4)(A) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of any act that is in violation of the laws of the State of Texas if the act is connected with Respondent's practice of medicine.

VII.

Section 3.08(4)(B) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failing to keep complete and accurate records of purchases and disposals of drugs listed in Chapter 481, Texas Health and Safety Code or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), which require that physicians shall keep records of purchases and disposals of these drugs to include without limitation the date of purchase, the sale or disposal of the drugs by the physician, the name and address of the person receiving the drugs, and the reason for the disposing or dispensing of the drugs to the person.

VIII.

Section 3.08(4)(C) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's writing prescriptions for or dispensing to a person known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs or to a person who the physician should have known was an abuser of the narcotic drugs, controlled substances, or dangerous drugs.

IX.

Section 3.08(4)(E) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's prescribing or administering a drug or

treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.

X.

Section 3.08(4)(F) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's prescribing, administering, or dispensing in a manner not consistent with public health and ~~welfare~~ dangerous drugs as defined by Chapter 483, Texas Health and Safety Code, controlled substances scheduled in the Texas Controlled Substances Act (Chapter 481, Health and Safety Code), or controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513).

XI.

Section 3.08(18) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's professional failure to practice medicine in an acceptable manner consistent with public health and welfare.

XII.

Section 4.12 of the Act authorizes a range of disciplinary actions against a licensed Texas physician for committing any of the conduct set forth in Section 3.08 of the Act.

XIII.

Respondent's actions and/or omissions as set forth in Counts I through XVI herein, are, individually and collectively, grounds for cancellation, revocation, or suspension of Respondent's license to practice medicine in the State of Texas pursuant to Sections 3.08, 4.01, and 4.12 of the Act.

XIV.

Section 4.01 of the Act authorizes the cancellation, revocation, suspension and probation of a physician's license for a violation of the Act or a rule of the Board or for

any cause for which the Board is authorized to refuse to admit persons to its examination and to issue a license and renewal license.

XV.

Section 4.12 of the Act authorizes a range of disciplinary actions against a licensed physician for committing any of the conduct set forth in Section 3.08 of the Act.

XVI.

Section 4.125 of the Act authorizes the imposition of a monetary administrative penalty not to exceed five thousand dollars (\$5,000.00) for each separate violation of the Act or Board rule by a person licensed to regulated under the Act.

XVII.

Respondent's alleged violations of Sections 3.04(4)(A), (B), (C), (E), (F), and 3.08(18) of the Act, as described in Counts I through XVI above, are grounds for the Board to enter an order imposing other discipline upon Respondent pursuant to Sections 4.12 and 4.125 of the Act.

XVIII.

Respondent's actions and/or omissions as set forth in Counts I through XVI above, are, collectively and singularly, grounds for the revocation or suspension of Respondent's Texas medical license or the imposition of other means of discipline as provided in Sections 4.12, 4.125, 3.08(4)(A), (B), (C), (E), (F), and 3.08(18), 4.12, and 4.125 of the Act.

WHEREFORE, PREMISES CONSIDERED, Board Staff prays that a contested case hearing on the merits of this Complaint be held and that upon the trial of the matters asserted herein, that an Order be entered to revoke or suspend Respondent's medical license, and in the event Respondent's medical license is not revoked or suspended, it is prayed that other means of discipline be imposed, to include at a minimum probation and restrictions on his license to include at a minimum a prohibition

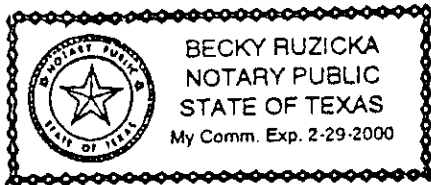
from prescribing or dispensing controlled substances or dangerous drugs, and a minimum fine of Fifty Thousand Dollars (\$50,000.00).

Respectfully submitted,

By: SB White
Stephen B. White, Attorney
State Bar Number 21328750
Texas State Board of Medical Examiners
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(512)305-7081
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THE STATE OF TEXAS
COUNTY OF TRAVIS

SUBSCRIBED AND SWORN to before me by the said Stephen B. White
on this the 30th day of September, 1999.



Becky Ruzicka
Notary Public, State of Texas

Filed with the Texas State Board of Medical Examiners on this the 30 day of
SEPTEMBER, 1999.

Bruce A. Levy
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners

CERTIFICATE OF SERVICE

I certify that on this 30th day of September, 1999, a true and correct copy of the foregoing Complaint has been served on the following individuals at the locations and in the manner indicated below in compliance with 1 TEX. ADMIN. CODE §155.25 and the Texas Rules of Civil Procedure:

Daniel W. Bishop II
Watson, Bishop, London, Galow, P.C.
106 West Sixth Street, Suite 700
Austin, Texas 78701
(VIA FACSIMILE TRANSFER (512)479-5934 and U.S. FIRST CLASS MAIL)

Docket Clerk
State Office of Administrative Hearings
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Stephen B. White