

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-18-2634.MD
TEXAS MEDICAL LICENSE NO. H-9000

IN THE MATTER OF THE

COMPLAINT AGAINST

RAYNALDO RIVERA ORTIZ, Jr., M.D.

BEFORE THE

TEXAS MEDICAL BOARD

FIRST AMENDED COMPLAINT

TO THE HONORABLE TEXAS MEDICAL BOARD AND THE HONORABLE
ADMINISTRATIVE LAW JUDGE SHANNON KILGORE:

The Staff of the Texas Medical Board (Board) files this Original Complaint against Raynaldo Rivera Ortiz, Jr., M.D. (Respondent), for alleged violations of the Medical Practice Act (the Act), Title 3, Subtitle B, Texas Occupations Code, and would show the following:

I. SUMMARY OF FACTUAL ALLEGATIONS

Respondent is subject to disciplinary action for his conviction of Cruelty to Non-Livestock Animals, a class A Misdemeanor and a crime of moral turpitude.

Respondent is subject to disciplinary action for his deferred adjudication in Assault against a female partner, a Class C Misdemeanor and crime of moral turpitude and for failing to timely report the resolution.

Respondent is subject to disciplinary action for disciplinary action taken by his peers at Baylor Scott and White Medical Center–Garland for failing to timely report his arrest for Cruelty to Non-Livestock Animals and for misleading the Medical Executive Committee as to whether he had disclosed the arrest to all other hospitals where he held privileges.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a Texas physician and holds Texas Medical License No. H-9000, which was originally issued by the Board on February 22, 1991. 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 Section 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 in 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, Ch.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, Ch. 190 sets forth aggravating factors that warrant more severe or restrictive action by the Board.

4. 1 Tex. Admin. Code, Ch. 155 sets forth the rules of procedure adopted by SOAH for contested case proceeding.

5. 1 Tex. Admin. Code, Ch. 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 *et seq.* and Board Rule 190 *et seq.*, 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 one or more of the following provisions of the Act:

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)(2) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's conviction and deferred adjudication for misdemeanors involving a crime involving moral turpitude.¹

3. 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 22 Tex. Admin. Code § 173.3(d)(3), requiring that a physician report to the Board within 30 days, a conviction, deferred adjudication, community supervision or deferred disposition for a misdemeanor involving moral turpitude.

4. Section 164.051(a)(7) of the Act authorizes the Board to take disciplinary action against Respondent based on disciplinary action taken by Respondent's peers, as further defined by Board Rule 190.8(4), disciplinary actions by peer groups.

5. 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 further defined by Board Rules 190.8(2)(R), violation of federal and state laws whether or not there is a complaint, indictment, or conviction: ii) any offense in which assault or battery, or the attempt of either is an essential element, v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section; and, 190.8(6), discipline based on criminal conviction of a misdemeanor crime involving moral turpitude.²

IV. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges:

1. On or about June 15, 2016, a Collin County jury found Respondent guilty of Cruelty to Non-Livestock Animals, a Class A Misdemeanor and a crime of moral turpitude.

2. Respondent shot his female neighbor's pet dog in retaliation for helping the third female partner and victim of domestic violence escape him and testifying against him at the protective order hearing.

¹ 22 Tex. Admin. Code § 190.8(6)(c) states that "misdemeanors involving moral turpitude, within the meaning of the Act, are those that involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license."

² *Id.*

3. Respondent was sentenced to 25 days confinement in the Collin County Jail, which was remanded to two years community service, assessed a \$4,000 fine, prohibited from engaging in harassing or threatening behavior, prohibited from owning or carrying weapons, including guns, prohibited from using marijuana, alcohol, and dangerous drugs and required to submit to random drug testing, participate in an Anger Management Program, and pay for all court costs and \$505 in restitution for veterinary bills.

4. On January 16, 2018, in *Ortiz v. State*, No. 05-16-00817-CR, 2018 Tex. App. LEXIS 464 (Tex. App. Dallas Jan. 16, 2018) (mem. op.), the court of appeals affirmed Appellant's conviction and sentence.

5. On May 9, 2018, the Texas Court of Criminal Appeals denied Respondent's request for discretionary review in *Ortiz v. State*, No. PD-00185-18.

6. On June 12, 2018, Mandate issued from the Court of Appeals for the Fifth District of Texas (Dallas) affirming Respondent's conviction.

7. Respondent's conviction for Cruelty to Non-Livestock Animals, a Class A Misdemeanor and a crime of moral turpitude pursuant to 22 Tex. Admin. Code § 190.8(6)(c), and history of violence against women, 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 Section 164.052 of the Act.

Section 164.051(a)(2) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's conviction for a misdemeanor involving a crime involving moral turpitude.

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 further defined by Board Rules 190.8(2)(R), violation of federal and state laws whether or not there is a complaint, indictment, or conviction: ii) any offense in which assault or battery, or the attempt of either is an essential element, v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section; and, 190.8(6), discipline based on criminal conviction of a misdemeanor crime involving moral turpitude.³

³ *Id.*

8. On or about June 10, 1995, Respondent was arrested for Assault Causing Bodily Injury to a Spouse, a Class A Misdemeanor.

9. On or about September 19, 2005, a second female partner filed for an emergency protective order against Respondent.

10. On or about December 30, 2014, Respondent was arrested for Assault Involving Domestic Violence, a Class C Misdemeanor involving a third female partner.

11. Respondent entered into deferred adjudication for the Assault Involving Domestic Violence, a Class C Misdemeanor involving the third female partner, which he failed to timely report to the Board.

12. Respondent's deferred adjudication for Assault Involving Domestic Violence, a Class C Misdemeanor and a crime of moral turpitude, and failure to timely report such, pursuant to 22 Tex. Admin. Code § 190.8(6)(c), 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 Section 164.052 of the Act.

Section 164.051(a)(2) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's deferred adjudication for a misdemeanor involving a crime involving moral turpitude.

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 22 Tex. Admin. Code § 173.3(d)(3), requiring that a physician report to the Board within 30 days, a conviction, deferred adjudication, community supervision or deferred disposition for a misdemeanor involving moral turpitude.

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 further defined by Board Rules 190.8(2)(R), violation of federal and state laws whether or not there is a complaint, indictment, or conviction: ii) any offense in which assault or battery, or the attempt of either is an essential element, v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section; and, 190.8(6), discipline based on criminal conviction of a misdemeanor crime involving moral turpitude.⁴

⁴ *Id.*

13. On July 13, 2016, the Medical Executive Committee at Baylor Scott and White Medical Center-Garland administratively suspended Respondent's clinical privileges for 14 days for his failure to notify the hospital of the misdemeanor criminal charges.

14. The suspension of Respondent's clinical privileges for violating hospital policy 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 Section 164.052 of the Act.

Section 164.051(a)(7) of the Act authorizes the Board to take disciplinary action against Respondent based on disciplinary action taken by Respondent's peers, as further defined by Board Rule 190.8(4), disciplinary actions by peer groups.

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.

V. AGGRAVATING AND MITIGATING FACTORS

Board Rule 190.14(1) 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: (4) economic harm to any individual or entity and the severity of such 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 seriousness of the misconduct.

Specifically, but not limited to, Respondent's prior incidents of alleged domestic violence against female partners.

Board Staff is aware of no mitigating factors that apply and demand that Respondent submit proof to substantiate any alleged mitigating factors.

VI. 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 as set forth in this Complaint.

Respectfully Submitted,

TEXAS MEDICAL BOARD

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Litigation Manager

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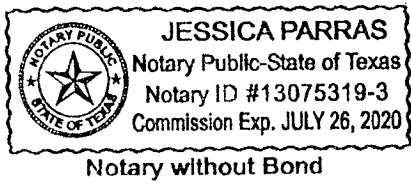
ATTORNEYS FOR THE BOARD

THE STATE OF TEXAS

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COUNTY OF TRAVIS

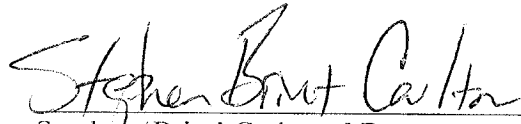
SUBSCRIBED AND SWORN to before me by the said Johnathan Stone on June 15,
2018.





Notary Public, State of Texas

Filed with the Texas Medical Board on June 15, 2018.

A handwritten signature in cursive script that reads "Stephen Brint Carlton". The signature is written in black ink and is positioned above a horizontal line.

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

CERTIFICATE OF SERVICE

I certify that on June 20, 2018, a true and correct copy of the foregoing document has been served as follows:

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