

IN THE MATTER OF § BEFORE THE
THE COMPLAINT AGAINST § TEXAS STATE BOARD
ERNESTO A. CANTU, 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 (hereinafter "the Board"), by and through the undersigned attorney of record, and files this, its COMPLAINT against ERNESTO A. CANTU, M.D. (hereinafter "Respondent") based on Respondent's alleged violations of the Medical Practice Act ("the Act"), TEX. OCC. CODE ANN. Subtitle B, Chapters 151-165,¹ and in support of this Complaint and based upon information and belief, would show the following:

I

The filing of this Complaint against the Respondent and the requested relief is necessary to protect the health and welfare of the citizens of the State of Texas as mandated by Section 151.003 of the Act.

II

1. The Respondent is a licensed Texas physician.
2. The Respondent received his Texas license on June 11, 1980.
3. The Respondent holds Texas medical license F-7416.
4. The Respondent's Texas medical license was in full force and effect at all times and dates material and relevant to this Complaint.
5. All jurisdictional requirements have been satisfied.

¹ The Medical Practice Act was formerly found at TEX. REV. CIV. STAT. ANN., art. 4495b (Vernon Supp. Pamphlet 1998). It is now codified in the Texas Occupations Code, Subchapter B, Chapters 151-165, effective September 1, 1999. Any violations of law, which occurred prior to September 1, 1999, will be cited to the statute in effect at the time of the violations.

III

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

COUNT ONE

1. The Respondent treated patient J.N. from April 1994 until February 1998. The medical records reflect the main purpose for his treatment was chronic back pain and weight reduction. However, it appears that the Respondent served as the patient's primary care provider.

2. The Respondent's care and treatment of J.N. was below the minimum standard of care due to inadequate history and physical exams, lack of documentation, lack of laboratory work, lack of ancillary testing, delay in referral, frequent high dose of narcotics provided to the patient, lack of a reason for providing B-12 shots, the use of depo and thyroid medication without medical reason, the continued use of diet pills despite weight gain by the patient, and the frequent prescribing of potentially habit forming medication. The Respondent also provided the non-standard care by prescribing antidepressants without proper or adequate treatment and evaluation. Further, failed to adequately monitor this patient's overall health, and failed to timely refer this patient to a pain specialist and an orthopedic surgeon.

3. The medical records for the patient fail to adhere to Board Rule §170 regarding treatment of intractable pain. Specifically, the records do not reflect that:

- a. an adequate initial history and physical examination were undertaken that must include assessment and consideration of the pain physical and psychological function;
- b. a history or potential for substance abuse, coexisting diseases or conditions;
- c. sufficient medical indication existed for the use of controlled and dangerous drugs without the use of other treatment modalities;
- d. a documented a treatment plan;
- e. documentation the patient was educated about the risks and benefits of the use of controlled substances and dangerous drugs; and,
- f. complete and accurate records of the care provided to the patient.

4. During this time period, the Respondent prescribed an excessive and non-therapeutic amount of controlled substances to the patient. The medical and pharmacy records demonstrate the great variety and large amounts of controlled substances and dangerous drugs prescribed to patient J.N., including Vicodin ES, Lortab, Diazide, Larcet, Adipex, Prozac, Xanax, Lasix, Tylenol #3, Soma, Prosom, Lodine, Relafen, Pondimin, Vistaril, and Nubain, among others. With particular attention to the Vicodin, this was prescribed for over three years in large doses.

5. The Respondent failed to recognize reasonably known signs of drug seeking behavior on the part of the patient. Notably the amount of narcotics requested the timing of the dosing of the narcotics, and the physical signs of addiction. In doing so, he continued to prescribe large doses of narcotics to a known or patient he reasonably should have known was an abuser of controlled substances or dangerous drugs.

IV

It is further alleged that the Respondent's conduct as described above constitutes grounds for the Board to revoke or suspend the Respondent's medical license or to impose any other authorized means of discipline upon the Respondent pursuant to Sections 3.08(4)(C), 3.08(4)(E), 3.08(5) and 3.08(18).

V

Section 3.08(4)(C) of the Act authorizes the Board to take disciplinary action against a licensed Texas physician for 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.

VI

Section 3.08(4)(E) of the Act authorizes the Board to take disciplinary action against a licensed Texas physician for prescribing or administering a drug or treatment that is non-therapeutic in nature or in the manner in which it is administered or prescribed.

VII

Section 3.08(5) of the Act authorizes the Board to take disciplinary action against a licensed Texas physician for violation of any rules issued under the Medical Practice Act, specifically, Board Rule 170 regarding the proper treatment of chronic pain.

VIII

Section 3.08(18) of the Act authorizes the Board to take disciplinary action against a licensed Texas physician for professional failure to practice medicine in an acceptable manner constant with public health and welfare.

IX

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.

X

Section 4.125 of the Act authorizes the Board to impose upon a licensed Texas physician 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 or regulated under the Act. The Board Staff seeks an administrative penalty of at least twenty thousand dollars (\$20,000.00) due to persistent and egregious violations of the Act.

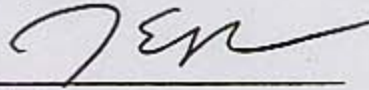
XI

The Respondent's alleged violation of to Sections 3.08(4)(C), 3.08(4)(E), 3.08(5) and 3.08(18) of the Act, as described above is an adequate ground for the Board to enter an Order in regard to the Respondent and the Respondent's medical license pursuant to Sections 4.12 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 the Respondent's medical license and to assess an administrative penalty of no less than twenty thousand dollars (\$20,000.00) as directed

by law. In the alternative, the Board seeks to restrict the Respondent license in a manner consistent with resolving the above stated allegations and monitoring the physician to the degree that the public will be protected.

Respectfully submitted,

By: 

Jon E. Porter
SBOT No.: 24010319
For the Texas State Board of
Medical Examiners
P.O. Box 2018
Austin, Texas 78768-2018
(512) 305-7084
(512) 305-7007 (fax)

THE STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

SUBSCRIBED AND SWORN before me by the said Jon E. Porter on this 12 day of April 2000.



Bonnie Kaderka
Notary Public, State of Texas

Filed with the Texas State Board of Medical Examiners of this the 7 day of April 2000.

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 12th day of April 2000, a true and correct copy of the forgoing Complaint has been served on the following individuals at the locations and in the manner indicated below:

VIA CERTIFIED MAIL – R.R.R.

Ernesto A. Cantu, M.D.
12151 Jones Maltsberger, Suite 113
San Antonio, Texas 78247

VIA CERTIFIED MAIL – R.R.R.

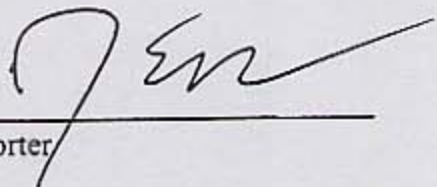
Phil Watkins, P.C.
One Riverwalk Place
700 N. St. Mary's Street, Suite 1750
San Antonio, Texas 78205

VIA HAND DELIVERY

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

VIA HAND DELIVERY

Bonnie Kaderka, Administrator of Hearings
Texas State Board of Medical Examiners
333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701



Jon E. Porter

DOCKET NO. 503-00-0902

IN THE MATTER OF)	BEFORE THE STATE OFFICE
)	
THE COMPLAINT AGAINST)	OF
)	
ERNESTO A. CANTU, M.D.)	ADMINISTRATIVE HEARINGS

AGREED ORDER

On September 26, 2000, a mediated settlement conference was held concerning the above-referenced matter in Austin, Texas. Participants included: Dr. F.M. "Skip" Langley, Executive Director of the Texas State Board of Medical Examiners (the Board); Paulette B. Southard, Board member; Susan Farris, the Board's lead investigator in this matter; Jon E. Porter, Chief of Compliance and Staff Attorney to the Board; Dr. Ernesto A. Cantu, the Respondent; and Anthony Troiani, Respondent's counsel. The parties mediated their dispute and this Order was made pursuant to the Governmental Dispute Resolution Act, Chapter 2008, Texas Government Code:

FINDINGS OF FACT

1. Respondent, Ernesto A. Cantu, holds Texas medical license number F-7416.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice, which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied under Tex. Occ. Code Ann. Subtitle B (Vernon 2000) (hereinafter "the Act"). By entering into this Agreed Order, Respondent waives any defect in the notice and any further right to notice or hearing under the Act; Tex. Gov't Code Ann. Sections 2001.051 through .054; and the Rules of the State Board of Medical Examiners (22 Tex. Admin. Code Chapter 187).
3. Respondent treated J.N. from April 1994 through February 1998 for chronic back pain, obesity, and depression.
4. Respondent did not adequately comply with the record keeping guidelines as stated in 22 Texas Administrative Code §170.3; however, Respondent's non-compliance did not rise to a violation of §164.053 of the Act.
5. The findings of fact and conclusions of law included herein are the sole findings and conclusions of the Board.
6. The complaint filed on April 30, 2000 is dismissed with prejudice.

7. Respondent neither admits nor denies that the allegations are true as alleged or that the allegations support a violation of the Act, however, Respondent agrees to comply with the terms and conditions set forth herein.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes the following:

1. Respondent is subject to disciplinary action pursuant Section 164.051(a)(3) of the Act by committing a direct or indirect violation of the rule adopted under this Act, either as a principle, accessory, or accomplice. Specifically, Title 22 Tex. Admin. Code Section 170.

2. Sections 164.001(a)(3) and 164.001(b)(2) authorize the Board to administer a Public Reprimand and to Limit a medical license.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board Orders that this Agreed Order (hereafter "Order") shall constitute a PUBLIC REPRIMAND and that the Respondent is hereby REPRIMANDED and shall LIMIT the Respondent's license under the following terms and conditions for three (3) years from the date of the signing of this Order by the presiding officer of the Board:

1. Beginning no later than sixty (60) days from the effective date of this Order, Respondent's medical practice, including any office and surgical practice, shall be monitored by a licensed Texas physician approved in advance in writing by the Executive Director of the Board based on the monitoring physician licensure status and history, general qualifications, area of specialty, business affiliation with the Respondent, and specialty certifications and training. Respondent shall provide a copy of this Order to the monitoring physician and shall allow the monitoring physician access to Respondent's patient medical records, patient's billing records, and offices. The monitoring physician's duties shall include but are not limited to the following activities as part of the monitoring process:

- a) on-site inspection of Respondent's medical practice once each month;
- b) personal review of no less than ten (10) percent of the Respondent's charts of patients seen during the current review period.
- c) personal counseling of the Respondent of any perceived deficiencies.
- d) the monitoring physician shall provide quarterly reports to the Board representative through the Chief of Compliance for the Board on February 1, June 1, September 1 and December 1, and other times upon the request of the Board representatives. The report shall fully document the monitoring performed, any perceived deficiencies discussed the Respondent and any improvements observed.

Respondent shall follow the appropriate guidance provided by the monitoring physician. Any cost incurred by the monitoring physician shall be the responsibility of Respondent and shall not be charges to patients. To request approval of monitoring physician, Respondent shall submit in writing to the Chief of Compliance of the Board the names and practice addresses of at least three (3) physicians who are willing and able to effectively monitor Respondent's office and surgical practice. The Executive Director of the Board based on good cause and after thirty (30) days' notice may change the monitoring physician at any time to Respondent.

2. Respondent shall obtain at least fifty (50) hours per year of continuing medical education (CME) approved for Category I credits by the American Medical Association or by the American Osteopathic Association. The Respondent shall take courses approved in advance by the Executive Director in the following areas for no less than the stated time periods: at least ten (10) hours in chronic pain management, ten (10) hours in addictionology, and five (5) hours in medical record-keeping. Upon request, Respondent shall submit to the Board proof of the prior year's CME attendance by the Order's anniversary date. Upon request Respondent shall submit proof to the Board of CME hours attended in the current year even though such may not meet the fifty (50) hour requirement. A copy of the attendance certificate issued or a detailed report, which can be readily verified by the Board, shall satisfy this requirement.

3. The time period for this Order shall be extended for any period of time in which Respondent subsequently resides or practices outside the State of Texas, is in official retired status with the Board, or for any period during which Respondent's license is subsequently canceled for non-payment of licensure fees. If Respondent leaves Texas to live or practice elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. Upon Respondent's return to practice in Texas or Respondent's relicensure, Respondent shall be required to comply with the terms of this Order for the period of time remaining in the Order when Respondent left Texas, retired, or had his license canceled for non-payment of licensure fees and shall pay all fees for reinstatement, renewal of a license covering the period of extension or tolling.

4. Respondent shall comply with all provisions of the Act and other statutes regulating the Respondent's practice.

5. Respondent shall inform the Board in writing of any change of Respondent's mailing or office address within ten (10) days of the change in address. This information shall be submitted to the verifications department and the Chief of Compliance for the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against the Respondent pursuant to the Act.

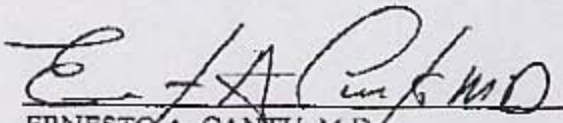
6. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, and to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

7. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear drafting error, for twelve (12) month period,

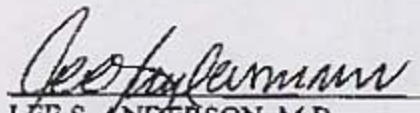
Respondent wishes to seek amendment or termination of these conditions, Respondent may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition without further appeal or review. Petitions for modification or termination may be filed only once a year thereafter.

THIS IS A PUBLIC ORDER.

SIGNED AND AGREED TO BY:


ERNESTO A. CANTU, M.D.

10-18-00
Date


LEE S. ANDERSON, M.D.
PRESIDENT, TEXAS STATE BOARD OF
MEDICAL EXAMINERS

12-8-2000
Date

