

HEARING CONDUCTED BY THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-17-1157
TEXAS RESPIRATORY CARE PRACTITIONER LICENSE NO.: RCP00072893

IN THE MATTER OF THE
COMPLAINT AGAINST
BRANDIE LEE SMITH, R.C.P.

BEFORE THE TEXAS
RESPIRATORY CARE BOARD

COMPLAINT

TO THE HONORABLE TEXAS BOARD OF RESPIRATORY CARE AND THE
HONORABLE ADMINISTRATIVE LAW JUDGE TO BE ASSIGNED:

The staff of the Texas Respiratory Care Board (the Board) files this Complaint against Brandie L. Smith, R.C.P. (Respondent) for alleged violations of the Respiratory Care Practitioner Act (the Act), Title 3, Subtitle K, Chapter 604 of the Texas Occupations Code, and the Board's rules and would show the following:¹

I. SUMMARY OF FACTUAL ALLEGATIONS

On July 15, 2014, Respondent walked off her job while on shift at the Northwest Texas Healthcare System (NTHS), leaving her work assignment and patients, without being properly relieved. In addition, since her termination, Respondent has failed to respond to Board requests for information into allegations of unprofessional conduct and she has failed to update the Board with changes to her address and employment.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a respiratory care practitioner and holds RCP License No. RCP00072893, which was originally issued by the Department of State Health Services (DSHS)

¹ 2015 Tex. Gen. Law Serv. Ch. 838 (S.B. 202), § 2.199(a) (transferring the Texas Board of Respiratory Care from the Department of State Health Services (DHS) to the Texas Medical Board (TMB) and stating that all rules promulgated under DSHS remain in effect until changed by TMB), eff. Sep. 1, 2015; Tex. Occ. Code § 604.021 (2015) ("The Texas Board of Respiratory Care is an advisory board to the Texas Medical Board."); Tex. Occ. Code § 604.0522 (2015) (authorizing the Texas Medical Board to adopt rules regulating the practice of respiratory care).

on October 23, 2009. Respondent's license was in full force and effect at all times material and relevant to this Complaint.

2. The Board complied with all procedural rules relating to disciplinary actions for violations of the Act including, but not limited to, § 604.203 of the Act and the Board rules set forth in 25 Tex. Admin. Code Chapter 140, 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 604.203 of the Act requires that the Board adopt rules governing the formal disposition of a contested case before the State Office of Administrative Hearings (SOAH).

2. 25 Tex. Admin. Code §140.214 sets forth the procedures adopted by the Board for disciplinary actions pursuant to §604.203 of the Act.

3. 25 Tex. Admin. Code §140.214(f)(4) sets forth aggravating factors that warrant more severe or restrictive disciplinary 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 §155.507 requires the issuance of a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law.

B. Specific Violations Cited:

Respondent has violated the following provisions of the Act and Board Rules:

1. Section 604.201(b)(2) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent being unfit or incompetent because of negligence or another cause of incompetency.

2. Section 604.201(b)(4) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent being found guilty of dishonest or unethical conduct as determined by the advisory board.

3. Section 604.201(b)(8) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of this chapter or aided or abetted another in violating this chapter.

4. Section 604.201(b)(9)(a) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board rules; specifically, 25 TEX. ADMIN. CODE §§140.211 and 140.212(K), failure to notify DSHS and the Board of changes in Respondent's preferred mailing address, or place(s) of business or employment within 30 calendar days of such change(s); §140.212(1)(I), incompetent and inefficient performance of assigned duties; §140.212(M), failure to conform to medically accepted principles and standards of respiratory care which are generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the American Association for Respiratory Care, the National Board for Respiratory Care, the Texas Society for Respiratory Therapy, the department, and other professional or governmental bodies; §140.212(1)(O), leaving an assignment without being properly relieved by appropriate personnel and §140.212(P), failure to respond to a request for information or other correspondence relating to the certification process or unprofessional conduct claims.

IV. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges the following:

1. On July 15, 2014, Respondent walked off her job while on shift at the Northwest Texas Healthcare System (NTHS), leaving her work assignment and patients, without being properly relieved.

2. On August 8, 2014, DSHS sent correspondence to Respondent requesting information, but it was returned undeliverable.

3. DSHS attempted several times to contact Respondent telephone numbers listed in the licensing database; all telephone numbers were disconnected or no longer accurate.

4. On September 15, 2015 the Board sent Respondent a letter stating that authority to regulate her license had been transferred to the Board.

5. On March, 16, 2016, the Board sent correspondence via Lone Star Overnight to Respondent requesting information, but it was returned undeliverable.

6. All correspondence was sent to Respondent's last known address filed with the Board.

7. To date, Respondent has failed to provide the Board with the requested information.

V. AGGRAVATING AND MITIGATING FACTORS

Board Rule 140.214(f)(4) provides that the Board may consider aggravating factors that warrant more severe or restrictive disciplinary action. This case includes the following aggravating factors: (1) the severity of the offense; (2) the danger to the public; (3) the deterrent effect of the penalty imposed; and, (4) any other mitigating or aggravating circumstances.

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 SOAH conduct a contested case hearing on the merits of the Complaint, and issue a Proposal for Decision containing those Findings of Fact and Conclusions of Law that are necessary to support a determination that Respondent violated the Act and Board Rules as set forth in this Complaint.

Respectfully Submitted,

TEXAS RESPIRATORY CARE BOARD

CHRISTOPHER PALAZOLA
Litigation Manager

SUSAN RODRIGUEZ
Supervising Attorney

By:




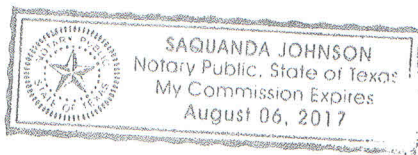
Jerry Bergman, Staff Attorney
State Bar No. 24081694
Telephone: (512) 305-7072
Fax: (512) 305-7007
Jerry.Bergman@TMB.state.tx.us
333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701

THE STATE OF TEXAS

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COUNTY OF TRAVIS

SUBSCRIBED AND SWORN to before me by the said Jerry Bergman, on November 8,
2016.



Notary Public, State of Texas

Filed with the Texas Board of Respiratory Care on Nov 7th, 2016.

Scott M Freshour

Scott Freshour, J.D.
Interim Executive Director
Texas Medical Board

CERTIFICATE OF SERVICE

I certify that on November 10, 2016, a true and correct copy of the foregoing document has been served as follows:

BY EMAIL TO: DOCKETING@SOAH.TEXAS.GOV:

Docket Clerk
State Office of Administrative Hearings
William P. Clements Bldg.
300 W. 15th Street, Suite 504
Austin, TX 78701-1649
Docketing@soah.texas.gov

BY CERTIFIED RETURNED MAIL/RRR NO. 7014 2870 0000 3056 7921 AND FIRST CLASS MAIL:

Brandie Lee Smith, RCP
5110 Travis
Amarillo, TX 79110

BY HAND DELIVERY TO:

Robin Etheridge
Hearings Coordinator
Texas Respiratory Care Board
333 Guadalupe, Tower 3, Suite 610
Austin, TX 78701


Jerry Bergman, Staff Attorney