



Burnet County, Texas, wherein Respondent pled guilty to Count 1 - Fraud Delivery of a Controlled Substance/Prescription Schedule IV.

5. On or about September 22, 2015, a Judgment of Conviction by Court – Waiver of Jury Trial (Exhibit 3) was entered Cause No. 42272 Count 1, styled *The State of Texas v. Barlow Smith*, in the 424<sup>th</sup> District Court of Burnet County, Texas, wherein Respondent pled guilty to Count 1 - Fraud Delivery of a Controlled Substance/Prescription Schedule III/IV/V, and was sentenced to five years in the Institutional Division of the Texas Department of Criminal Justice with the sentence of confinement suspended and Respondent being placed on community supervision for ten (10) years. As a condition of probation, Respondent was ordered to spend fifteen (15) days in the Burnet County Jail, and ordered to pay a \$1000.00 fine. Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, are true and correct copies of the following documents in the Smith criminal case: Indictment (Exhibit 1), Plea Packet (Exhibit 2), and Judgment of Conviction by Court – Waiver of Jury Trial (Exhibit 3). Petitioner expects to introduce certified copies of Exhibits 1 through 3 at the time of hearing of this cause.

6. Respondent, Barlow Smith, whose bar card number 18536020, is the same person as the Barlow Smith who is the subject of the Indictment, Plea Packet and Judgment of Conviction by Court – Waiver of Jury Trial described above, true and correct copies of which are attached hereto as Exhibits 1 through 3.

7. Attached hereto as Exhibit 4 and made a part hereof for all intents and purposes as if the same were copied verbatim herein is a true and correct copy of an affidavit of Judith Gres DeBerry, Attorney of Record for Petitioner herein, attesting to the fact that Respondent is the same person as the person who is the subject of the Judgment of Conviction by Court – Waiver of Jury Trial entered in the Smith criminal case. Petitioner expects to introduce the original of said affidavit

at the time of hearing of this cause.

8. The offense for which Respondent was convicted is an intentional crime as defined by Rule 1.06(T), Texas Rules of Disciplinary Procedure. It is as well a serious crime as defined by Rule 1.06(AA), Texas Rules of Disciplinary Procedure.

9. Having pled guilty to an intentional crime, and such judgment being final, Respondent should be disbarred as provided in Rule 8.05, Texas Rules of Disciplinary Procedure.


PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that Respondent be given notice of these proceedings as provided by law and, upon hearing of this matter, that the Board enter its order disbarring Respondent and for such other and further relief to which Petitioner may be entitled to receive including costs of court and attorney's fees.

Respectfully submitted,

**Linda A. Acevedo**  
Chief Disciplinary Counsel

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Judith Gres DeBerry  
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ATTORNEYS FOR PETITIONER


**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent for personal service on Barlow Smith, 605 Camino Cielo, Marble Falls, Texas 78654 on this 22 day of February 2017.

  
\_\_\_\_\_  
Judith Gres DeBerry

**NOTICE OF HEARING**

NOTICE IS HEREBY GIVEN that a trial on the merits of the Petition for Compulsory Discipline heretofore sent to be filed with the Board of Disciplinary Appeals on this day, will be held in the courtroom of the Supreme Court of Texas, Tom C. Clark Building, 14th and Colorado Streets, Austin, Texas, at **9:00 a.m. on the 28th day of April 2017.**

  
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Judith Gres DeBerry

# INTERNAL PROCEDURAL RULES

## Board of Disciplinary Appeals

*Effective February 19, 2015*

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## SECTION 1: GENERAL PROVISIONS

### Rule 1.01 Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chair or, in the Chair’s absence, the member elected by BODA to serve as vice-chair.
- (c) “Classification” is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “BODA Clerk” is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “CDC” is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) “Commission” is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) “Executive Director” is the executive director of BODA.
- (h) “Panel” is any three-member grouping of BODA under TRDP 7.05.
- (i) “Party” is a Complainant, a Respondent, or the Commission.
- (j) “TDRPC” is the Texas Disciplinary Rules of Professional Conduct.
- (k) “TRAP” is the Texas Rules of Appellate Procedure.
- (l) “TRCP” is the Texas Rules of Civil Procedure.
- (m) “TRDP” is the Texas Rules of Disciplinary Procedure.
- (n) “TRE” is the Texas Rules of Evidence.

### Rule 1.02 General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and

determining disciplinary proceedings. But TRDP 15.01 applies to the enforcement of a judgment of BODA.

### Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

### Rule 1.04 Appointment of Panels

- (a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.
- (b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

### Rule 1.05 Filing of Pleadings, Motions, and Other Papers

- (a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.
  - (1) **Email Address.** The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.
  - (2) **Timely Filing.** Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA

for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

- (3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.
- (4) **Exceptions.**
  - (i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.
  - (ii) The following documents must not be filed electronically:
    - a) documents that are filed under seal or subject to a pending motion to seal; and
    - b) documents to which access is otherwise restricted by court order.
  - (iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.
- (5) **Format.** An electronically filed document must:
  - (i) be in text-searchable portable

document format (PDF);

- (ii) be directly converted to PDF rather than scanned, if possible; and
  - (iii) not be locked.
- (b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).
  - (c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:
    - (1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
    - (2) an electronic image or scanned image of the signature.
  - (d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.
  - (e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

#### **Rule 1.06 Service of Petition**

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition may be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or



her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent's signature.

#### **Rule 1.07 Hearing Setting and Notice**

- (a) **Original Petitions.** In any kind of case initiated by the CDC's filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23, the hearing date must be at least 30 days from the date that the petition is served on the Respondent.
- (b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23, the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.
- (c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.
- (d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately

following the docket call, the Chair will set and announce the order of cases to be heard.

#### **Rule 1.08 Time to Answer**

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

#### **Rule 1.09 Pretrial Procedure**

- (a) **Motions.**
  - (1) **Generally.** To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.
  - (2) **For Extension of Time.** All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:
    - (i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;
    - (ii) if an appeal has been perfected, the date when the appeal was perfected;
    - (iii) the original deadline for filing the item in question;

- (iv) the length of time requested for the extension;
  - (v) the number of extensions of time that have been granted previously regarding the item in question; and
  - (vi) the facts relied on to reasonably explain the need for an extension.
- (b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.
- (c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.
- (d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:
- (1) marked;
  - (2) indexed with the title or description of the item offered as an exhibit; and
  - (3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

#### **Rule 1.10 Decisions**

- (a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

- (b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:
  - (1) as required by the TRDP; and
  - (2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.
- (c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

#### **Rule 1.11 Board of Disciplinary Appeals Opinions**

- (a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.
- (b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.
- (c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

### **Rule 1.12 BODA Work Product and Drafts**

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA’s adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

### **Rule 1.13 Record Retention**

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

### **Rule 1.14 Costs of Reproduction of Records**

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

### **Rule 1.15 Publication of These Rules**

These rules will be published as part of the TDRPC and TRDP.

## **SECTION 2: ETHICAL CONSIDERATIONS**

### **Rule 2.01 Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases**

- (a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

- (b) A current BODA member must not serve as an expert witness on the TDRPC.
- (c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

### **Rule 2.02 Confidentiality**

- (a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.
- (b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.
- (c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction.

### **Rule 2.03 Disqualification and Recusal of BODA Members**

- (a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.
- (b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.
- (c) These rules do not disqualify a lawyer who is a member of, or associated with,

the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him- or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

### **SECTION 3: CLASSIFICATION APPEALS**

#### **Rule 3.01 Notice of Right to Appeal**

- (a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.
- (b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

#### **Rule 3.02 Record on Appeal**

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

### **SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS**

#### **Rule 4.01 Perfecting Appeal**

- (a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the

appellate timetable under this section. To make TRDP 2.21 consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21.

- (b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21.

- (1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

- (2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

- (c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

- (d) **Time to File.** In accordance with TRDP 2.24, the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.
- (e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

#### **Rule 4.02 Record on Appeal**

- (a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.
- (b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.
- (c) **Responsibility for Filing Record.**
  - (1) Clerk's Record.
    - (i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.
    - (ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of

fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

- (iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

#### (2) Reporter's Record.

- (i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:
  - a) a notice of appeal has been filed;
  - b) a party has requested that all or part of the reporter's record be prepared; and
  - c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.
- (ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

#### (d) Preparation of Clerk's Record.

- (1) To prepare the clerk's record, the

evidentiary panel clerk must:

- (i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);
  - (ii) start each document on a new page;
  - (iii) include the date of filing on each document;
  - (iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;
  - (v) number the pages of the clerk's record in the manner required by (d)(2);
  - (vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and
  - (vii) certify the clerk's record.
- (2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.
- (3) The table of contents must:
- (i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each

document begins;

- (ii) be double-spaced;
  - (iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;
  - (iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and
  - (v) if the record consists of multiple volumes, indicate the page on which each volume begins.
- (e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:
- (1) file each computer file in text-searchable Portable Document Format (PDF);
  - (2) create electronic bookmarks to mark the first page of each document in the clerk's record;
  - (3) limit the size of each computer file to 100 MB or less, if possible; and
  - (4) directly convert, rather than scan, the record to PDF, if possible.
- (f) **Preparation of the Reporter's Record.**
- (1) The appellant, at or before the time prescribed for perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The

reporter's record must be certified by the court reporter for the evidentiary panel.

- (2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.
  - (3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.
  - (4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise appear.
  - (5) A court reporter or recorder must not lock any document that is part of the record.
  - (6) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.
- (g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.
- (h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record

that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

- (i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

#### **Rule 4.03 Time to File Record**

- (a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.
- (b) **If No Record Filed.**
  - (1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.
  - (2) If no reporter's record is filed due to appellant's fault, and if the clerk's

record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

- (i) the appellant failed to request a reporter's record; or
  - (ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.
- (c) **Extension of Time to File the Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.
- (d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

#### **Rule 4.04 Copies of the Record**

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

#### **Rule 4.05 Requisites of Briefs**

- (a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after

the clerk's record or the reporter's record is filed, whichever is later.

- (b) **Appellee's Filing Date.** Appellee's brief must be filed within 30 days after the appellant's brief is filed.
- (c) **Contents.** Briefs must contain:
- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
  - (2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;
  - (3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;
  - (4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;
  - (5) a statement, without argument, of the basis of BODA's jurisdiction;
  - (6) a statement of the issues presented for review or points of error on which the appeal is predicated;
  - (7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;
  - (8) the argument and authorities;
  - (9) conclusion and prayer for relief;
  - (10) a certificate of service; and
  - (11) an appendix of record excerpts pertinent to the issues presented for review.
- (d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part



of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer-generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

- (e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.
- (f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:
  - (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;
  - (2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or
  - (3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

#### **Rule 4.06 Oral Argument**

- (a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to

timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

- (b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:
  - (1) the appeal is frivolous;
  - (2) the dispositive issue or issues have been authoritatively decided;
  - (3) the facts and legal arguments are adequately presented in the briefs and record; or
  - (4) the decisional process would not be significantly aided by oral argument.
- (c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

#### **Rule 4.07 Decision and Judgment**

- (a) **Decision.** BODA may do any of the following:
  - (1) affirm in whole or in part the decision of the evidentiary panel;
  - (2) modify the panel's findings and affirm the findings as modified;
  - (3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or
  - (4) reverse the panel's findings and

remand the cause for further proceedings to be conducted by:

- (i) the panel that entered the findings; or
  - (ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.
- (b) **Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

#### **Rule 4.08 Appointment of Statewide Grievance Committee**

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

#### **Rule 4.09 Involuntary Dismissal**

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring

a response or other action within a specified time.

### **SECTION 5: PETITIONS TO REVOKE PROBATION**

#### **Rule 5.01 Initiation and Service**

- (a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23.
- (b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23, the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

#### **Rule 5.02 Hearing**

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

### **SECTION 6: COMPULSORY DISCIPLINE**

#### **Rule 6.01 Initiation of Proceeding**

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

#### **Rule 6.02 Interlocutory Suspension**

- (a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA may suspend the Respondent's license to

practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

(i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or

(ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court

attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

## **SECTION 7: RECIPROCAL DISCIPLINE**

### **Rule 7.01 Initiation of Proceeding**

The Commission for Lawyer Discipline may initiate an action for reciprocal discipline by filing a petition with BODA under TRDP Part IX and these rules. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

### **Rule 7.02 Order to Show Cause**

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

### **Rule 7.03 Attorney's Response**

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

## **SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS**

### **Rule 8.01 Appointment of District Disability Committee**

(a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2),

or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

- (b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.
- (c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.
- (d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.
- (e) Should any member of the District Disability Committee become unable to serve, the BODA Chair may appoint a substitute member.

### **Rule 8.02 Petition and Answer**

- (a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service may be made in person or by certified mail, return receipt requested. If service is by certified mail, the return receipt with the Respondent's signature must be filed with the BODA Clerk.
- (b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.
- (c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

### **Rule 8.03 Discovery**

- (a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.
- (b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam

ordered by the District Disability Committee.

- (1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.
- (2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.
- (c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

#### **Rule 8.04 Ability to Compel Attendance**

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

#### **Rule 8.05 Respondent's Right to Counsel**

- (a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.
- (b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk

within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

#### **Rule 8.06 Hearing**

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

#### **Rule 8.07 Notice of Decision**

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

#### **Rule 8.08 Confidentiality**

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

### **SECTION 9: DISABILITY REINSTATEMENTS**

#### **Rule 9.01 Petition for Reinstatement**

- (a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.
- (b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms

or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

- (c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

### **Rule 9.02 Discovery**

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

### **Rule 9.03 Physical or Mental Examinations**

- (a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.
- (b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.
- (c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

- (d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.
- (e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

### **Rule 9.04 Judgment**

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

## **SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS**

### **Rule 10.01 Appeals to the Supreme Court**

- (a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.
- (b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.
- (c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.

NO: 42272 THE STATE OF TEXAS VS. BARLOW SMITH

**COUNT I**

INDICTMENT: FRAUD DEL CS/PRESCRIPTION SCH III/IV/V  
PENAL CODE: 481.129 (c)(1)  
DEGREE OF FELONY: THIRD DEGREE FELONY  
OFFENSE CODE: 35990195  
BOND: \$20,000 *DAH*

CONTROL # DA-13-01167 TRN#

**COUNT II**

INDICTMENT: FRAUD DEL CS/PRESCRIPTION SCH III/IV/V  
PENAL CODE: 481.129 (c)(1)  
DEGREE OF FELONY: THIRD DEGREE FELONY  
OFFENSE CODE: 35990195  
BOND: \$50,000 *DAH*

CONTROL # DA-13-01167 TRN#

**COUNT II**

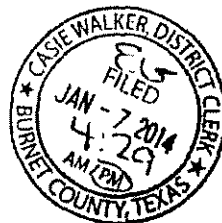
INDICTMENT: FRAUD DEL CS/PRESCRIPTION SCH II  
PENAL CODE: 481.129  
DEGREE OF FELONY: SECOND DEGREE FELONY  
OFFENSE CODE: 35990194  
BOND: \$50,000 *DAH*

CONTROL # DA-13-01167 TRN#  
IN THE 424<sup>th</sup> JUDICIAL DISTRICT COURT OF BURNET COUNTY, TEXAS

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IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of Burnet, State of Texas, duly organized, impaneled and sworn as such at the January term, A.D. 2014, of the 424<sup>th</sup> Judicial District Court for said County, upon their oaths present in and to said court at said term that, BARLOW SMITH, hereinafter referred to as Defendant, on or about the 1<sup>st</sup> day of April, 2013, and before the presentment of this indictment, in the County of Burnet, and the



Exhibit

|



State of Texas, did then and there intentionally or knowingly deliver to Renee Harrell, by actual transfer or constructive transfer, a prescription for Phentermine, for other than a valid medical purpose in the course of his professional practice.

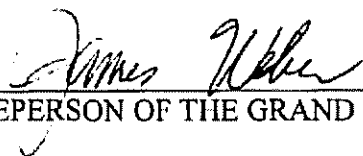
### COUNT II

AND IT IS FURTHER PRESENTED in and to said Court at said term that the Defendant, on or about the 29<sup>th</sup> day of April, 2013, and before the presentment of this indictment, in the County of Burnet, and the State of Texas, did then and there intentionally or knowingly deliver to Michelle Cochrane, by actual transfer or constructive transfer, a prescription for Phentermine, for other than a valid medical purpose in the course of his professional practice.

### COUNT III

AND IT IS FURTHER PRESENTED in and to said Court at said term that the Defendant, on or about the 15<sup>th</sup> day of May, 2013, and before the presentment of this indictment, in the County of Burnet, and the State of Texas, did then and there intentionally or knowingly deliver to Michelle Cochrane, by actual transfer or constructive transfer, a prescription for Hydrocodone, for other than a valid medical purpose in the course of his professional practice.

AGAINST THE PEACE AND DIGNITY OF THE STATE

  
FOREPERSON OF THE GRAND JURY

THE STATE OF TEXAS  
COUNTY OF BURNET

I, Casie Walker, District Clerk of Burnet County,  
Texas, do hereby certify that this is a true  
and correct copy as same appears of record  
in my office. Witness my hand and seal on  
February 13, 2017 DLW



Casie Walker  
District Clerk



CAUSE NO. 42272 (COUNT 1)

THE STATE OF TEXAS

§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

V.

BURNET COUNTY, TEXAS

BARLOW SMITH

33<sup>rd</sup>/424<sup>th</sup> JUDICIAL DISTRICT

**FELONY ADMONITIONS TO THE DEFENDANT**

1. The range of punishment attached to this offense(s) as enhanced, if any, is (check one):

Count \_\_\_\_\_ (Habitual Offender) confinement in the Institutional Division of the Texas Department of Criminal Justice for life or a term of not more than 99 years or less than 25 years.

Count \_\_\_\_\_ (First Degree Felony + Repeat Offender) confinement in the Institutional Division of the Texas Department of Criminal Justice for life or a term of not more than 99 years or less than 15 years; in addition, a fine not to exceed \$10,000 may be imposed.

Count \_\_\_\_\_ (First Degree Felony) confinement in the Institutional Division of the Texas Department of Criminal Justice for life or a term of not more than 99 years or less than 5 years; in addition, a fine not to exceed \$10,000 may be imposed.

Count \_\_\_\_\_ (Second Degree Felony) confinement in the Institutional Division of the Texas Department of Criminal Justice for a term of not more than 20 years or less than 2 years; in addition, a fine not to exceed \$10,000 may be imposed.

Count X (Third Degree Felony) confinement in the Institutional Division of the Texas Department of Criminal Justice for a term of not more than 10 years or less than 2 years; in addition, a fine not to exceed \$10,000 may be imposed. If the offense was committed before 9/1/94, the punishment may include an alternative confinement of up to one year in a community correctional facility.

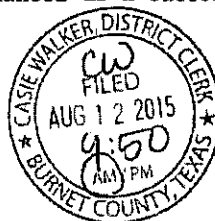
Count \_\_\_\_\_ (State Jail Felony) confinement in state jail for a term of not more than 2 years or less than 180 days; in addition, a fine not to exceed \$10,000.00 may be imposed. If the offense is possession of a controlled substance in penalty group I or II (< 1g), LSD (5 abuse units or less), marijuana or synthetic marijuana (1 lb. or less), or fraud by prescription (Schedule II or III drugs), and the Defendant has no prior felony conviction, the judge shall suspend sentence and place the Defendant on probation (community supervision).

Count \_\_\_\_\_ (12.44 Agreement) For an offense committed after 8/31/95, if the offense is punished under Section 12.44(a) of the Texas Penal Code, the range of punishment is not more than 1 year in the county jail and/or a fine not to exceed \$4000.00.

Count \_\_\_\_\_ (Special punishment range) confinement in \_\_\_\_\_ for a term of \_\_\_\_\_ and/or a fine of \_\_\_\_\_.

Count \_\_\_\_\_ (Class A Misdemeanor) confinement in county jail for not more than one year and/or a fine not to exceed \$4,000. For a DWI enhanced as a subsequent, the minimum term of confinement in jail is 30 days.

Exhibit 2



STATE'S EXHIBIT 1



2. The recommendation of the prosecuting attorney, if any, is not binding on the Court. The Court will inquire as to the existence of a plea agreement and, if any exists, inform the defendant in open Court before any finding on the plea whether the Court will follow such agreement. Should the Court reject a plea agreement, the defendant will be permitted to withdraw the plea of guilty. If there is no plea agreement, the defendant has no right to withdraw the plea following sentencing.

3. If the punishment assessed does not exceed the punishment recommended by the prosecuting attorney and agreed to by the defendant and the defense attorney, the trial Court must give its permission to the defendant before the defendant may pursue an appeal on any matter in the case, except for those matters raised by written motions filed and ruled upon before trial.

4. If the defendant is not a citizen of the United States of America, a plea of guilty for the offense(s) charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law.


5. If the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to sex offender registration, the defendant will be required to meet the registration requirements of Chapter 62 of the Code of Criminal Procedure. See attached supplemental sex offender registration admonition.

6. If the defendant is convicted of a misdemeanor offense involving violence and the Defendant is or was a spouse, intimate partner, parent or guardian of the victim, or is/was involved in another, similar relationship with the victim, it may be unlawful for the Defendant to possess or purchase a firearm (including a handgun or long gun) or ammunition, pursuant to federal law under 18 USC § 922(g)(9) or state law under § 46.04(b) PC. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

7. If the Defendant is placed on deferred adjudication, upon violation of a condition of community supervision, the defendant may be arrested and detained. The defendant is entitled to a hearing limited to the determination by the judge whether to proceed with an adjudication of guilty on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision (probation), and defendant's appeal continue as if the adjudication of guilty had not been deferred.

  
\_\_\_\_\_  
JUDGE PRESIDING

The defendant understands the admonitions given above and is aware of the consequences of the plea.

  
\_\_\_\_\_  
DEFENDANT

\_\_\_\_\_  
DEFENDANT'S ATTORNEY



**FELONY WAIVERS, CONFESSION, AND AGREEMENT**

I, BARLOW SMITH, the Defendant herein, make the following waivers as to each count of the indictment or information not waived/abandoned by the State of Texas as indicated by his

**Initials:**

1. BS If the Grand Jury has not returned an indictment, I waive the right to be accused by indictment and agree to proceed by way of information.
2. BS I waive the right to service of a copy of the indictment or information and the time allowed by law to file motions and pleadings thereon and to prepare for trial.
3. BS I waive the right to a trial, including the right to a trial by jury during the guilt innocence phase and a speedy trial.
4. BS I waive the appearance of and confrontation and cross-examination of the State's witnesses, the privilege against self-incrimination (as to guilt and punishment), and the right against double jeopardy.
5. BS I waive the reading of the indictment or information.
6. BS I waive and abandon all motions, pleadings and objections made before the entry of my plea.
7. BS I consent to an oral stipulation of the evidence and testimony and to the introduction of testimony by affidavits, written statements of the witnesses and any other documentary evidence.
8. BS I waive my right to file a post-conviction application for writ of habeas corpus pursuant to Article 11.07 or 11.072 of the Texas Code of Criminal Procedure. This waiver applies to any claim of which I had knowledge or any claim that I could have discovered by the exercise of due diligence with the assistance of my attorney. This waiver also applies to any facts, the legal significance of which I should have been able to comprehend and develop on the record had I chosen to do so.
9. BS I waive my right to a motion for new trial.
10. BS I waive any appeal that I could make or pursue in this cause.

X Barlow Smith  
DEFENDANT

\_\_\_\_\_  
DEFENDANT'S ATTORNEY

A plea agreement exists in this cause as follows (and the State agrees to recommend):

\_\_\_\_\_  
STATE AGREES TO RECOMMEND PROBATION  
STATE WAIVES COUNTS 2 & 3  
DEFENDANT WAIVES APPEAL  
\_\_\_\_\_



(Initial) If community supervision (probation) in any form is recommended, I understand that the Court has the discretion to impose any reasonable condition of supervision, including confinement in various facilities, treatment, and restitution without violating the plea agreement, if any, unless the plea agreement expressly limits or prohibits such a condition.

       (Initial) If my attorney is appointed by the Court, I acknowledge that I have the ability to reimburse the county for court-appointed attorney fees assessed, either in full or by periodic partial payments, upon release on community supervision or upon release from incarceration.

I, BARLOW SMITH, the Defendant herein, JUDICIALLY CONFESS to committing every element of the offense(s) of FRAUDULENT DELIVERY OF A CONTROLLED SUBSTANCE PRESCRIPTION and 544 IV exactly as charged in the indictment or information and to any lesser included offenses of the offense(s) charged in the indictment or information.


I, BARLOW SMITH, the Defendant herein, agree to plead GUILTY to the above specified offense(s), TRUE to all enhancements and special issues, if any, as charged in the indictment or information. By my signature below, I judicially confess to the above offense(s).

I, Barlow Smith, the Defendant herein, agree that I have the ability to pay all fines, fees, and restitution assessed as a condition of my probation.

X Barlow Smith  
DEFENDANT

\_\_\_\_\_  
DEFENDANT'S ATTORNEY

Sworn and subscribed to before me on the 12<sup>th</sup> day of August, 2015.

Casie Walker  
Clerk of the Court 

The State consents to and approves the foregoing.

P. Keen  
ATTORNEY FOR THE STATE

The Court consents to and approves the foregoing waivers and consent to stipulation and introduction of evidence.

        
JUDGE PRESIDING



CASE NO. 42272                      COUNT 1  
 INCIDENT NO./TRN: 9192632165 A001

THE STATE OF TEXAS                      §                      IN THE 424TH DISTRICT COURT  
    §  
 v.     §                      OF  
    §  
 BARLOW SMITH                                   §                      BURNET COUNTY, TEXAS  
    §  
 STATE ID NO.: TX-04905326                   §

**JUDGMENT OF CONVICTION BY COURT—WAIVER OF JURY TRIAL**

Judge Presiding:    **HON. EVAN STUBBS**                      Date Judgment Entered:                      **09/22/2015**

Attorney for State:    **PETER KEIM**                      Attorney for Defendant:                      **BARLOW SMITH**

Offense for which Defendant Convicted:  
**FRAUD DEL CS/PRESCRIPTION SCH III/IV/V**

Charging Instrument:                      Statute for Offense:  
**INDICTMENT**                                      **481.129 (c)(1) Health & Safety Code**

Date of Offense:  
**04/01/2013**

Degree of Offense:                      Plea to Offense:                      Findings on Deadly Weapon:  
**THIRD DEGREE FELONY**                      **GUILTY**                                      **N/A**

Terms of Plea Bargain:  
**AGREEMENT THAT THE STATE WOULD RECOMMEND PROBATION, DISMISS COUNTS 2 & 3**

Plea to 1<sup>st</sup> Enhancement Paragraph:                      **N/A**                      Plea to 2<sup>nd</sup> Enhancement/Habitual Paragraph:                      **N/A**

Findings on 1<sup>st</sup> Enhancement Paragraph:                      **N/A**                      Findings on 2<sup>nd</sup> Enhancement/Habitual Paragraph:                      **N/A**

Date Sentence Imposed:    **9/22/2015**                      Date Sentence to Commence:    **9/22/2015**

Punishment and Place of Confinement:                      **FIVE YEARS INSTITUTIONAL DIVISION, TDCJ**

**THIS SENTENCE SHALL RUN CONCURRENTLY.**

**SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR TEN YEARS.**

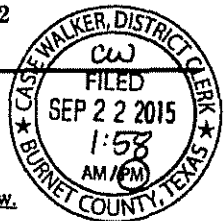
Fine:                      Court Costs:                      Restitution:                      Restitution Payable to:  
**\$ 1,000.00**                      **\$ 359.00**                      **\$ N/A**                       VICTIM (see below)     AGENCY/AGENT (see below)

Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part hereof.

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62

The age of the victim at the time of the offense was **N/A**.

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.  
 Time Credited:                      From                      to                      From                      to                      From                      to  
 From                      to                      From                      to                      From                      to  
 If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.  
**N/A DAYS    NOTES: N/A**



All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Burnet County, Texas. The State appeared by her District Attorney.

**Counsel / Waiver of Counsel (select one)**

- Defendant appeared in person with Counsel.
- Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court. Both parties announced ready for trial. Defendant waived the right of trial by jury and entered the plea indicated above. The Court then admonished Defendant as required by law. It appeared to the Court that Defendant was mentally competent to act freely and voluntarily, and was aware of the consequences of this plea. The Court received the plea and

Exhibit  
**3**



entered it of record. Having heard the evidence submitted, the Court found Defendant guilty of the offense indicated above. In the presence of Defendant, the Court pronounced sentence against Defendant.

The Court FINDS Defendant committed the above offense and ORDERS, ADJUDGES AND DECREES that Defendant is GUILTY of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court ORDERS Defendant punished as indicated above. The Court ORDERS Defendant to pay all fines, court costs, and restitution as indicated above.

**Punishment Options (select one)**

**Confinement in State Jail or Institutional Division.** The Court ORDERS the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, Institutional Division, TDCJ. The Court ORDERS Defendant to be confined for the period and in the manner indicated above. The Court ORDERS Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court ORDERS that upon release from confinement, Defendant proceed immediately to the Burnet County District Clerk. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

**County Jail—Confinement / Confinement in Lieu of Payment.** The Court ORDERS Defendant immediately committed to the custody of the Sheriff of Burnet County, Texas on the date the sentence is to commence. Defendant shall be confined in the Burnet County Jail for the period indicated above. The Court ORDERS that upon release from confinement, Defendant shall proceed immediately to the Burnet County District Clerk. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

**Fine Only Payment.** The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the Office of the Burnet County District Clerk. Once there, the Court ORDERS Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

**Execution / Suspension of Sentence (select one)**

The Court ORDERS Defendant's sentence EXECUTED.


The Court ORDERS Defendant's sentence of confinement SUSPENDED. The Court ORDERS Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court ORDERS that Defendant is given credit noted above on this sentence for the time spent incarcerated.

**Furthermore, the following special findings or orders apply:**

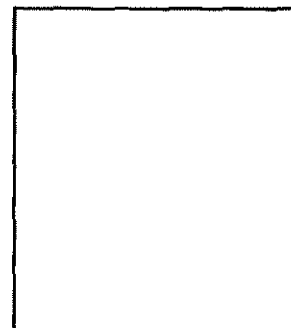
**THE DEFENDANT IS ORDER TO SPEND FIFTEEN DAYS IN THE BURNET COUNTY JAIL AS A CONDITION OF HIS PROBATION**

Signed and entered on SEPTEMBER 22, 2015

X   
EVAN STUBBS  
JUDGE PRESIDING

Clerk:

Right Thumbprint



CAUSE NO. 42272

THE STATE OF TEXAS §

33<sup>RD</sup> / 424<sup>TH</sup> DISTRICT COURT

VS. §

OF

Barlow Smith §

Burnet COUNTY, TEXAS

TO THE SHERIFF OF BURNET COUNTY, TEXAS; GREETINGS

In open Court on this date, the Defendant in the above styled and numbered cause, whose thumbprint is contained below, appeared and the judge pronounced judgment and sentence in this cause. A written judgment reflecting that pronouncement is to follow. The District Clerk shall affix this document to the written judgment when received.

The following action is directed in the above styled and numbered cause:

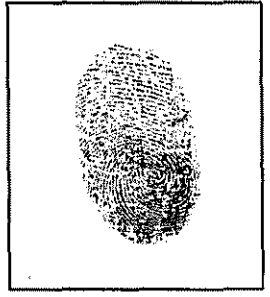
Defendant sentenced to serve 5  months  years in the Texas Department of Corrections  Institutional Division  State Jail.  
Defendant remanded to Sheriff.

Defendant Sentenced to serve 10  months  years Probation  
This is your authority to release Defendant and for the Defendant to report to the Adult Probation Department immediately upon release.

Defendant sentenced to serve 15  days  months  years in the County Jail.  
Defendant remanded to the Sheriff.

Other: \_\_\_\_\_  
\_\_\_\_\_

Signed [Signature]  
Judge Presiding



THUMBPRINT



**TERMS AND CONDITIONS OF PROBATION  
OF**

BARLOW SMITH

CAUSE NO.: 42272

COURT: 33rd/424th JUDICIAL DISTRICT COURT OF BURNET COUNTY, TEXAS

DATE PROBATION GRANTED: SEPTEMBER 22, 2015.

LENGTH OF PROBATION: (10) TEN YEARS

OFFENSE: FRAUDULENT DELIVERY OF A CONTROLLED SUBSTANCE DEGREE: 3RD

During your probation, you are **ORDERED** to comply with and abide by the following terms and conditions of probation:

1. Commit no offense against the laws of this State, or any other State of the United States.
2. Completely abstain from the use and/or possession of all narcotics, habit forming drugs, alcoholic beverages and controlled substances.
3. Avoid persons of disreputable or harmful character including, association with persons on probation or parole or who have been previously convicted of a crime, and specifically, avoid contact or association with \_\_\_\_\_.
4. Avoid places of disreputable or harmful character including, but not limited to, places where alcoholic beverages are sold, served or delivered, except bonafide eating establishments.
5. Report in person immediately to the Probation Officer of the Community Supervision and Corrections Department of BURNET County, Texas, and thereafter report at such other times and in such manner as directed by the Court or the Probation Officer.
6. Permit the Probation Officer to visit you at your home, place of employment, or elsewhere, as directed by the Probation Officer. You shall consent to search of your person, residence or any vehicle which you operate, occupy or possess at any time by any Community Supervision and Corrections Department Supervision Officer, without prior notice or search warrant, to determine if you are in compliance with the Conditions of Community Supervision. Any contraband found to be in your possession will be subject to confiscation.





7. Inform the Community Supervision Officer within 5 days of any charge or accusation of violating the law made against you or any contact with law enforcement officers pertaining to violations of the law.
8. Do not purchase, manufacture, transport, repair, sell or possess a firearm or other illegal weapon as defined in Sec. 46.01, Texas Penal Code.
9. Remain within the limits of BURNET COUNTY unless given permission by the Probation Officer to leave such limits.
10. Support all dependents you now have or that you may acquire during the probation period, which includes, but is not limited to, payment of all court ordered child support.
11. Obtain permission prior to any change of address or employment from the Community Supervision Officer.
12. Submit yourself to urine or hair follicle testing by your Community Supervision Officer for detection of controlled substances, dangerous drugs, marijuana or alcohol and pay the cost of same.
13. Participate and work, without compensation, ten hours per month in a community service restitution program or task as directed by the Community Supervision Officer for a total of 750 hours.
14. Pay the following amounts to and through the Community Supervision and Corrections Department:
  - a. Court costs in the amount of \$ 359.00 due in full OCTOBER 22, 2015.
  - b. Probation fee of \$ 60.00 each month during your probation period beginning OCTOBER 22, 2015.
  - c. Crime Stoppers fee to the BURNET Crime Stoppers Program in the amount of \$ 50.00 at the rate of: \$ 5.00 per month beginning OCTOBER 22, 2015.
  - d. Restitution/Reparation in the amount of \$ \_\_\_\_\_ at the rate of: \$ \_\_\_\_\_ per month beginning \_\_, 2.
  - e. Fine in the amount of \$ 1000.00 at the rate of \$ 25.00 per month beginning OCTOBER 22, 2015.
  - f. Court appointed attorney fees in the amount of \$ \_\_\_\_\_ at the rate of: \$ \_\_\_\_\_ per month beginning \_\_, 2.
  - g. Pay a reimbursement fee of \$ \_\_\_\_\_ to \_\_\_\_\_ at the rate of \$ \_\_\_\_\_ beginning \_\_, 2.



15. Do not communicate with or contact the victim(s) of your offense(s) or the victim(s) family or go near a residence, school or other location of the victim(s) or victim(s) family without permission of the Probation Officer.
16. Work faithfully at suitable employment.
17. Do not avail yourself to any law enforcement agency as a confidential informant, without prior written approval from your Probation Officer.
18. If you are unable to provide verification of a High School Diploma, GED or current enrollment in school, you must attend Educational classes at the rate of two times per week for the duration of probation, or until a GED is obtained.
19. Attend and complete a Drug/Alcohol evaluation as directed by the Community Supervision Officer and abide by any referrals made and pay the costs of same.
20. \_\_\_\_\_ Attend Alcoholics/Narcotics Anonymous a minimum of 2 per week while on probation and provide verification of attendance to the Community Supervision Officer.
21. \_\_\_\_\_ Attend and successfully complete the 15 hour Drug Education class of the Supervising Probation Office within 90 days from date of this order and pay the established fee for said classes.
22. \_\_\_\_\_ Attend and successfully complete the 12 hour Texas DWI Education Class of the Supervising Probation Office within 180 days from this date of this order and pay the established fee for said classes.
23. Attend and successfully complete the Cognitive Skills Training Program of the Supervising Probation Office, if directed by the Community Supervision Officer within one year of this date of this order and pay cost of the same.
24. \_\_\_\_\_ Attend and successfully complete a Victim Impact panel as directed by the Community Supervision Officer within one year of this date and pay costs of same.
25. Defendant shall submit a buccal swab DNA sample to the Community Supervision Officer in charge of their case.
26. Abide by the rules and regulations of the 33rd/424th Judicial Districts Community Supervision and Corrections Department.
27. Agree to waive extradition to the State of Texas from any State in the United States or any other place and agree to return to Texas if directed by the Community Supervision Officer or the Court



Comply with the further terms and conditions set out in the attached:

- SO Supplement/Specialized Sex Offender Caseload
- DC Supplement
- Alcohol Related Offense Supplement

It is further ordered that the initial degree of probation supervision you will be under will be:

\_\_\_\_\_ Intensive supervision probation (ISP)

You are hereby advised that this court shall determine the terms and conditions of your probation and may, at any time during the period of probation, alter or modify such terms and conditions. The Court has the authority at any time during the period of probation to revoke your probation for violation of any of the terms and conditions of probation.

Signed this date: September 22, 2015

  
\_\_\_\_\_  
JUDGE PRESIDING

I hereby acknowledge that I have received a copy of the terms and conditions of probation, including any terms and conditions set out in any Supplements.

  
\_\_\_\_\_  
PROBATIONER

092215  
DATE

Right thumb



Cause No. 42272

Charge: FRAUDULENT DELIVERY OF A CONTROLLED SUBSTANCE

State of Texas	IN THE DISTRICT COURT OF
v.	BURNET COUNTY, TEXAS
BARLOW SMITH	33 <sup>rd</sup> / 424th JUDICIAL DISTRICT

**DEFENDANT'S AGREEMENT TO WAIVE EXTRADITION  
AS A CONDITION OF BOND OR PROBATION**

On this date the Court examined the aforementioned defendant, who is charged with a criminal offense in the State of Texas. The defendant is being this day (granted bail) / (placed on probation) and as a condition thereof wishes to agree that if it is necessary to seek the return of the defendant to Texas, that defendant will waive formal extradition proceedings and will not contest any proceedings for the return of defendant to Texas in connection with this case.

The defendant was advised of the right to have a Governor's warrant issued by Texas for extradition and to test same by an application for Writ of *Habeas Corpus*. However, defendant hereby agrees to return to Texas at any time directed to do so, from any other state or country where defendant may be found, and WAIVES the right to insist that Texas extradite from any other state where defendant may be found.

The Court then proceeded to inquire if the defendant wished to now agree as a condition of Bond to waive extradition proceedings in the event defendant has failed to return to Texas when directed. Defendant thereupon agreed as follows: **I AGREE THAT I WILL NOT RESIST OR FIGHT ANY EFFORT BY ANY STATE TO RETURN ME TO TEXAS AND I AGREE TO WAIVE ANY RIGHT THAT I MAY HAVE TO EXTRADITION. I WAIVE THIS RIGHT FREELY, VOLUNTARILY AND INTELLIGENTLY.**

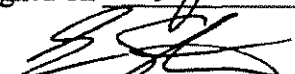
Signed on: \_\_\_\_\_

  
Defendant

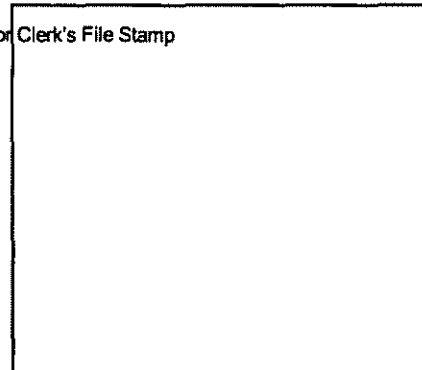
Approved: \_\_\_\_\_  
Attorney for Defendant

The Court finds that defendant has freely, voluntarily and intelligently WAIVED any right to extradition to be returned to Texas and the same is APPROVED.

Reserved for Clerk's File Stamp

Signed on September 22, 2015  


Presiding Judge  
REVISED 2013



PROBATIONER: BARLOW SMITH

DATE: SEPTEMBER 22, 2015

CAUSE NO.: 42272

COURT: 33RD JUDICIAL DISTRICT COURT OF BURNET COUNTY, TEXAS

DC SUPPLEMENT

PROBATION TERMS AND CONDITIONS FOR  
DETENTION AND/OR CONFINEMENT

It is further ordered that you comply with the following designated terms and conditions:

\_\_\_\_\_ 1. Unless there is an emergency or you obtain permission in advance from your Probation Officer, you are to be and remain in your home during the hours from \_\_\_\_\_ O' Clock \_\_.M. to \_\_\_\_\_ o'clock \_\_.M.

\_\_\_\_\_ 2. Be confined in the BURNET County Jail for a period of \_\_\_ days to be served as follows: \_\_\_\_\_

X 3. Be confined in the Texas Department of Criminal Justice Institutional Division for State Jail Division for a period of 15 days.  
to be served starting this date and to be served day for day

\_\_\_\_\_ 4. Pursuant to the Community Corrections Facilities provisions of the Texas Criminal Procedure Code and Rules, Articles 42.12 and IN LIEU OF INCARCERATION IN THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OR CRIMINAL JUSTICE, the Defendant is ordered to reside at the 33rd Judicial District Intermediate Sanctions Facility for a term which may not be less than (180) one hundred eighty days and no more than (24) twenty-four months. The Defendant shall abide by the Facility's rules and regulations, including, but not limited to, submitting to random urinalysis and periodic searches for the purpose of safety and security, and performing work detail outlined by Facility Program Guidelines.

If incarcerated in the Burnet County Jail the defendant must complete a physical and Tuberculosis test prior to entry into the 33<sup>rd</sup> Judicial District



Intermediate Sanction Facility. Cost of the physical will be reimbursed to the 33<sup>rd</sup> Judicial District Sanction Facility, as well as any other medical costs incurred during their term in the Facility.

\_\_\_\_\_ 5. Serve a term of not less than three (3) months or more than twelve (12) months in a restitution center, to wit: \_\_\_\_\_

\_\_\_\_\_ obey all rules and regulations of such center, and:

- (1) Work at such employment and/or community service projects as directed by the center.
- (2) From any salary earned while at the center, have deducted by the center:
  - (a) The cost to the center for food, housing and supervision.
  - (b) Necessary travel expenses to and from work and community service projects and other incidental expenses.
  - (c) Support for your dependents; and
  - (d) Restitution to the victim(s) of an offense you committed.

\_\_\_\_\_ 6. Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed this date: September 22, 2015

[Signature]  
JUDGE PRESIDING

right thumb print



RECORDED 3/01

[Signature]  
Defendant

THE STATE OF TEXAS  
COUNTY OF BURNET

I, Casie Walker, District Clerk of Burnet County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal on February 13, 2017 DW



Casie Walker  
District Clerk

AFFIDAVIT

THE STATE OF TEXAS    §  
  §  
COUNTY OF TRAVIS    §

BEFORE ME, the undersigned authority, on this day personally appeared Judith Gres DeBerry, Petitioner's attorney of record, who, being by me duly sworn, deposed as follows:

"My name is Judith Gres DeBerry. I am over the age of 18 years, of sound mind, capable of making this affidavit, and state the following:

Based upon information and belief, Barlow Smith, whose Texas Bar Card Number is 18536020, is licensed as an attorney and counselor at law in the State of Texas. Based upon information and belief, Barlow Smith, named as Respondent in the Petition for Compulsory Discipline filed with the Board of Disciplinary Appeals is one and the same person as the Barlow Smith who is the subject of the Judgment of Conviction by Court – Wavier of Jury Trial entered in Cause No. 42272 Count 1, styled *The State of Texas v. Barlow Smith*, in the 424<sup>th</sup> District Court of Burnet County, Texas, wherein Respondent pled guilty to Count 1 - Fraud Delivery of a Controlled Substance/Prescription Schedule III/IV/V, and was sentenced to five years in the Institutional Division of the Texas Department of Criminal Justice with the sentence of confinement suspended and Respondent being placed on community supervision for ten (10) years and, as a condition of community supervision Respondent was ordered to spend fifteen (15) days in the Burnet County Jail, and ordered to pay a \$1000.00 fine."

FURTHER Affiant saith not.

  
Judith Gres DeBerry

SWORN AND SUBSCRIBED before me on the 22 day of February 2017.



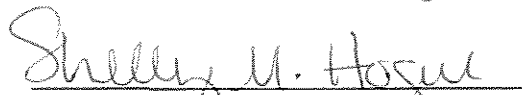
  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

Exhibit  
4