

LICENSE NO. N-7224

IN THE MATTER OF

BEFORE THE

THE LICENSE OF

EMAD MIKHAIL TEWFIK BISHAI, M.D.

TEXAS MEDICAL BOARD

AGREED ORDER

On the 6 day of March, 2020, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Emad Mikhail Tewfik Bishai, M.D. (Respondent).

On January 30, 2020, Respondent appeared in person, with counsel James K. McClendon, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. The Board's representatives were Robert Martinez, M.D., a member of the Board, and Annette Raggette, a member of a District Review Committee (Panel). Samer Shobassy represented Board staff.

BOARD CHARGES

Board staff charged Respondent based upon Respondent's arrest in Montgomery County, Texas, on or about November 5, 2019, related to four felony counts of prescribing controlled substances for other than medical purposes, and five felony counts of practicing medicine in violation of the Medical Practices Act. The criminal charges were related to the deaths of four patients attributed in part to medication prescribed by Respondent or his delegates.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by and received a Remedial Plan from the Board.

On November 18, 2019, a disciplinary panel of the Board temporarily suspended, without notice, Respondent's Texas medical license after determining his continuation in the practice of medicine posed a continuing threat to public welfare. The suspension was effective immediately. The Board panel found that on or about November 4, 2019, in Montgomery County, Texas, warrants for the arrest of Respondent were issued related to four felony counts of prescribing

controlled substances for other than medical purposes, and five felony counts of practicing medicine in violation of the Medical Practices Act. The charges were related to the deaths of four patients. Respondent was arrested on November 5, 2019, after surrendering to authorities. The temporary suspension was to remain in place until the Board took further action.

On June 10, 2016, the Board and Respondent entered into a non-disciplinary Remedial Plan requiring Respondent to within one year complete at least 16 hours of Continuing Medical Education (CME), to be divided as follows: eight hours in risk management; four hours in medical record-keeping; and, four hours in the management of anti-coagulation agents in a surgical patient; and within 60 days pay an administrative fee of \$500 per year. The Board found Respondent performed an epidural injection on a patient while she was on anticoagulation therapy, which was reported on the patient intake form but the form was not available to Respondent prior to the procedure, resulting in the patient suffering a hematoma. On May 8, 2017, the Remedial Plan terminated due to completion of all the requirements.

Upon the recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings and Conclusions of Law and enters this Agreed Order.

FINDINGS

The Board finds the following:

1. General Findings:
 - a. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the Act) or the Rules of the Board.
 - b. Respondent currently holds Texas Medical License No. N-7224. Respondent was originally issued this license to practice medicine in Texas on August 2, 2010. Respondent is not licensed to practice in any other state.
 - c. Respondent is primarily engaged in the practice of Neurology, Psychiatry, and Pain Medicine. Respondent is board certified by the American Board of Psychiatry and Neurology, a member of the American Board of Medical Specialties.

d. Respondent is 48 years of age.

2. Specific Panel Findings:

- a. Respondent provided information indicating that he had a very busy and complex practice, seeing over 100 patients a day, not counting those patients seen by delegates.
- b. Respondent is currently under indictment in Montgomery County, Texas. The charges in the indictment are serious, but have not yet been adjudicated. Respondent disputes the charges against him and intends to defend himself against the allegations.
- c. The Board did not specifically evaluate the care and treatment provided to the patients involved by Respondent as the matter is still in the early stages of investigation.
- d. This settlement is related to the above-referenced criminal charges and does not affect any other investigation by the Board, including any investigation that is ongoing or that may be opened.
- e. The criminal case related to the above-referenced charges remains ongoing.

3. Mitigating Factors:

In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:

- a. Respondent has cooperated in the investigation of the allegations related to this Agreed Order.
- b. Respondent neither admits nor denies the information given above. This is a compromised settlement of disputed matter and is not considered an admission of liability or guilt for either criminal or civil matters and shall only be relevant for matters involving Dr. Bishai and the Texas Medical Board.
- c. To avoid further investigation, hearings, and the expense and inconvenience of litigation related to this investigation, Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions.

CONCLUSIONS OF LAW

Based on the above Findings, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.
2. Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against a Respondent based on Respondent's commission of an act that violates any state or federal law if the act is connected with the physician's practice of medicine, particularly 22 Texas Administrative Code (TAC) Section 315.13(b)(2), prohibiting a practitioner from pre-signing an official prescription blank; and, 21 Code of Federal Regulations (CFR) Section 1306.05, prohibiting a practitioner from pre-signing a prescription form for a controlled substance.
3. Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against a Respondent based on Respondent's writing prescriptions for or dispensing to a person who the physician knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.
4. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against a Respondent based on Respondent's prescribing, administering, or dispensing in a manner inconsistent with public health and welfare dangerous drugs as defined by THSC Chapter 483; or controlled substances scheduled in THSC Chapter 481, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 801 et seq.).
5. Section 164.053(a)(8) of the Act authorizes the Board to take disciplinary action against a Respondent based on Respondent's failure to supervise adequately the activities of those acting under the supervision of the physician.
6. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule.
7. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

ORDER

Based on the above Findings and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. Respondent shall not treat patients for chronic pain, as defined by Board Rule 170.2(4), by prescription or administration of controlled substances. Respondent, however, may continue to use interventional procedures to treat chronic pain.

2. If Respondent has not already done so, Respondent shall request modification of Respondent's Drug Enforcement Administration (DEA) Controlled Substance Registration Certificate to eliminate Schedule II, within seven days after the date of the entry of this Order. Respondent's authority to prescribe, administer, possess, or dispense such controlled substances is hereby limited to the remaining schedules (III, IV, and V) and is further limited by the terms of this Order. Respondent shall promptly sign and mail to the appropriate agency the necessary DEA forms to accomplish the required modification of Respondent's controlled substance registration. Respondent has seven days after the date of surrender to provide objective evidence of surrender to the Director of Compliance.

Respondent shall not reregister or otherwise obtain Schedule II Controlled Substance Registrations until Respondent has received written authorization from the Board. Authority to register for Controlled Substances Registration Certificates may be granted only after Respondent makes written petition and a personal appearance before the Board, a committee of the Board, or authorized Board representatives. The granting of such authority is discretionary with the Board and shall not control any decision by DEA in regard to granting or denying any application by Respondent for the return of controlled substance registrations.

3. Respondent shall not possess, administer, or prescribe Schedule II controlled substances in Texas other than prescriptions written to him by a licensed provider for personal use.

4. At all times while Respondent is under the terms of this Order, Respondent shall give a copy of this Order to all hospitals, nursing homes, treatment facilities, and other health

care entities in Texas where Respondent has privileges, has pending an application for privileges, applies for privileges, or otherwise practices. Within 30 days of being first contacted by the Compliance Division of the Board following entry of this Order, Respondent shall provide to the Compliance Division of the Board documentation, including proof of delivery, that the Order was delivered to all such facilities.

5. Pursuant to Board rule 189.15, the time period of this Order shall be extended for any period of time that: (a) Respondent subsequently practices exclusively outside the State of Texas; (b) this Order is stayed or enjoined by Court Order; or (c) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine and such cessation in practice is NOT due to a suspension of Respondent's license. Respondent shall immediately notify the Board in writing in the event that Respondent leaves Texas to practice elsewhere or ceases active practice for more than 60 consecutive days. Upon Respondent's return to active practice or return to Texas, Respondent shall notify the Board in writing. Upon return to Texas or active practice, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of extension or tolling. Tolling shall be in accordance with Board Rule 189.15.

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

7. Respondent shall fully cooperate with the Board and the Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Order. Failure to fully cooperate shall constitute a violation of this order and a basis for disciplinary action against Respondent pursuant to the Act.

8. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within 10 days of the address change. This information shall be submitted to the Registration Department and the Compliance Department of the Board. Failure

to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act. Respondent agrees that 10 days notice of a Probationer Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent waives the 45-day notice requirement provided by §164.003(b)(2) of the Medical Practice Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code §187.44(4).

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

10. Respondent shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants. Consistent with the terms of this Order, Respondent's delegates are prohibited from prescribing or administering dangerous drugs or controlled substances for the treatment of chronic pain.

11. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, and shall remain in effect until superseded by a subsequent order of the Board.

12. By entering this Order Respondent understands and acknowledges that the Board is entitled to and expressly reserves, and is not waiving any and all of its rights to take further action against Respondent's license, if appropriate, in the event of any other determinations of further possible violations of the Medical Practice Act, whether related or unrelated, to the criminal investigation referenced herein.


RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

THIS ORDER SUPERSEDES THE ORDER OF TEMPORARY SUSPENSION ENTERED ON NOVEMBER 4, 2019.

(SIGNATURE PAGES FOLLOW)

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
6 day of March, 2020.



Sherif Z. Zafran, MD, President
Texas Medical Board