

LICENSE NO. D-3411

IN THE MATTER OF
THE LICENSE OF

JAMES TAYLOR STINNETT, III, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

ORDER DENYING TERMINATION BUT GRANTING MODIFICATION

On the 10th day of October, 2008, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of James Taylor Stinnett, III, M.D. ("Respondent").

On September 16, 2008, Respondent appeared in person, with counsel W. Richard Ellis III, before representatives of the Board to petition the Board for termination of an Agreed Order ("Order") entered on December 9, 2005, pertaining to Respondent's Texas Medical License No. D-3411, a copy of which Order is referred to and incorporated herein, and to address issues related to Respondent's compliance with the terms and conditions of the Order. The Board's representatives were Frank R. Wellborne, D.O., and Carlos L. Gallardo, members of District Review Committees. Claudia Kirk represented Board staff.

Upon the recommendation of the Board's representatives, the Board makes the following Findings of Fact and Conclusions of Law and enters this Order.

FINDINGS OF FACT

The Board finds that:

A. Prior Disciplinary History:

1. On December 9, 2005, Respondent's license was suspended, the suspension was stayed, and Respondent was placed on probation for five years. The Order was based on an allegation that Respondent touched patient D.N. in an intimate manner, while demonstrating a massage technique in his massage room, which was located at his personal residence.

2. The Order requires Respondent to: have a chaperone for all female patients; complete a course on physician-patient-boundaries; not perform massage therapy on any of his

psychiatric patients; write a letter of apology to patient D.N.; submit to a psychiatric evaluation; and pay a \$2,500 administrative fine.

B. Status of Compliance with the Order as of September 16, 2008:

1. Respondent has served two years and nine months of his five-year Order.
2. Respondent is in compliance with the terms and conditions of the Order.
 - a. Respondent has complied with the chaperone requirement for female patients. In addition, Respondent has closed his practice and is no longer seeing patients as of March 3, 2008.
 - b. Respondent completed a course on physician-patient-boundaries in May of 2006.
 - c. Respondent is in compliance with the requirement that he not perform massage therapy on any of his psychiatric patients. Respondent has retired and closed his practice as of March 3, 2008, and is no longer seeing patients.
 - d. Respondent wrote patient D.N. a letter of apology on May 5, 2006.
 - e. Respondent had a psychiatric evaluation performed on February 20, 2006. The evaluating psychiatrist did not find a contra-indication to Respondent continuing in practice. The psychiatrist stated that he believed the Respondent could benefit from psychotherapy, but did not feel it was necessary to ensure that Respondent would avoid future boundary violations.
 - f. Respondent paid the \$2,500 administrative penalty on January 17, 2006.

3. Respondent is requesting a termination of the Order, based on the fact that he has been retired from practice since March 3, 2008. All the Order requirements that have not been completed relate to his practice. Respondent believes it would save Board resources and therefore be in the best interest of the public if his Order were to terminate.

C. Recommendation: Based on the above Findings of Facts and information available at the hearing on September 16, 2008, the Board's representatives recommended that Respondent's petition for termination be DENIED and instead the Board's

representatives recommended a modification to the Order. The recommended modification to the Order is to change the term period of the Order from five years to four years. Therefore, the Order would terminate December 9, 2009, instead of December 9, 2010.

CONCLUSIONS OF LAW

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

1. The Board has jurisdiction over this matter and Respondent pursuant to the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the "Act").
2. 22 TEX. ADMIN. CODE §187.43 authorizes the Board to consider petitions for Termination and Modification of Agreed Orders and Disciplinary Orders.

ORDER

Based on the available information, the above Findings of Fact and Conclusions of Law, and the recommendation of the Board's Representatives, the Board ORDERS that Respondent's petition for termination be denied, and instead a modification is hereby GRANTED. The Order is hereby MODIFIED as follows:

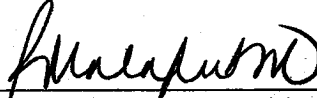
1. The introductory paragraph in the ordering section of the Order, specifying the terms of the Order, shall be modified to read as follows:

"Respondent's Texas license is hereby SUSPENDED; however, the suspension is STAYED and Respondent is placed on PROBATION under the following terms and conditions for four years from the date of the signing of this Order by the presiding officer of the Board.

2. All other provisions of the Order remain in full force and effect until superseded by subsequent Order of the Board.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
10th day of October, 2008.



Roberta M. Kalafut, D.O., President
Texas Medical Board

IN THE MATTER OF

THE LICENSE OF

JAMES TAYLOR STINNETT, III, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER

On the 9 day of December, 2005, came on to be heard before the Texas State Board of Medical Examiners ("the Board"), duly in session, the matter of the license of James Taylor Stinnett, III, M.D. ("Respondent").

On March 18, 2005, Respondent appeared in person, with counsel David Chamberlain, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. David Wofford represented Board staff. The Board's representatives were Nancy Seliger, a member of the Board, and Janet Tornelli-Mitchell, M.D., a member of the District Review Committee.

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

FINDINGS OF FACT

The Board finds that:

1. 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 TEX. OCC. CODE ANN. Title 3, Subtitle B (Vernon 2004) (the "Act") or the Rules of the Board.
2. Respondent currently holds Texas Medical License No. D-3411. Respondent was originally issued this license to practice medicine in Texas on August 20, 1966. Respondent is not licensed to practice in any other state.
3. Respondent is primarily engaged in the practice of child psychiatry. Respondent is not board certified by the American Board of Medical Specialties.
4. Respondent is 64 years of age.

5. Respondent has not previously been the subject of disciplinary action by the Board.

6. Respondent began treating patient D.N., a 35-year-old female, in October 2002, with an initial psychiatric evaluation. D.N. continued to see Respondent for brief medication follow-up visits until November 2003. Her last office visit was on May 24, 2004. D.N. expressed to Respondent her interest in becoming a massage therapist; Respondent is also a registered massage therapist, and encouraged D.N.'s interest in the field. Occasionally, during D.N.'s office visits, Respondent would give her a mini-massage.

7. D.N. also made candles, and Respondent agreed to purchase candles from her for use in his massage therapy business. Respondent invited D.N. to his house on June 4, 2004 so that she could deliver the candles. D.N. brought the candles to Respondent's house on that date, and Respondent invited her to see his massage room. While in the room, Respondent asked D.N. to lay on the massage table, and he said he would show her a few massage techniques. During the course of the massage, Respondent moved his hands underneath D.N.'s shorts and, without the consent of D.N., touched the outside of her vagina. Another massage client rang the doorbell and D.N. was able to extricate herself from the embarrassing situation. D.N. has suffered nightmares as a result of the experience.

8. The massage was not administered by the Respondent as medical treatment or therapy.

9. At the Informal Settlement Conference, Respondent admitted giving D.N. a massage but denied touching her in an intimate manner as she alleged.

10. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent's cooperation, through consent to this Agreed Order, pursuant to the provisions of Section 164.002 the Act, will save money and resources for the State of Texas. To avoid further investigation, hearings, and the expense and inconvenience of litigation, 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 of Fact, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.

2. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.

3. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice medicine in an acceptable professional manner consistent with public health and welfare.

4. 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. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

5. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

6. Section 164.002(d) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that:

Respondent's Texas license is hereby **SUSPENDED**; however, the suspension is **STAYED** and Respondent is placed on **PROBATION** under the following terms and conditions for five years from the date of the signing of this Order by the presiding officer of the Board:

1. Anytime Respondent sees a female patient, Respondent shall have a chaperone that is able to directly observe Respondent present in the room during the entire patient visit. Respondent shall make a notation on the patient's chart indicating that a chaperone was present, and Respondent shall ensure that the chaperone initials the entry made by Respondent to indicate that the chaperone was present and observed the entire patient visit.

2. Within six months from the entry of this Order, Respondent shall enroll in and successfully complete a course in Physician-Patient Boundaries of at least ten hours in duration, approved in writing in advance by the Executive Director of the Board. To obtain approval for the course, Respondent shall submit in writing to the Director of Compliance for the Board

information on the course, to include at least a reasonably detailed description of the course content and faculty, as well as the course location and dates of instruction. Respondent shall submit documentation of attendance and successful completion of this requirement to the Director of Compliance for the Board on or before the expiration of the time limit set forth for completion of the course.

3. Respondent shall not perform massage therapy on any of his psychiatric patients.

4. Respondent shall, within six months of the signing of this Order by the presiding officer of the Board, write a letter of apology to D.N. The letter will be approved in advance by the Executive Director of the Board or his designee.

5. Within thirty days after the entry of this Order, Respondent will receive from the Board the name of a physician who is board certified in forensic or addiction psychiatry to serve as the evaluating psychiatrist. Within thirty (30) days after Respondent receives the name of the approved physician, Respondent shall submit to and obtain a complete forensic evaluation from the board-approved evaluating psychiatrist.

The psychiatric evaluation shall include, at a minimum: (a) social history and background information, (b) history of present illness, if any, (c) mental status exam, (d) review of records and other pertinent collateral information, (e) DSM IV multi-axial diagnosis, and (f) treatment recommendations.

The Compliance Division of the Board shall furnish a copy of this Order to the evaluating psychiatrist, who shall make a full report to the Board regarding Respondent's evaluation and any subsequent reports regarding Respondent's compliance with this Order. Respondent shall follow all recommendations made by the evaluating psychiatrist regarding continued care and treatment.

If the evaluating psychiatrist recommends continued psychiatric care and treatment, within thirty days after that recommendation, Respondent shall submit in writing to the Director of Compliance of the Board the names of three physicians, who are board certified in psychiatry, which may include the name of Respondent's current treating psychiatrist, to serve as the treating psychiatrist. The Executive Director may reject all of the submitted names and require the submission of additional names or approve one. Respondent shall begin the recommended care and treatment within thirty days after notification of approval of the treating psychiatrist. The Board and Respondent shall furnish a copy of this Order to the treating psychiatrist as authorization for the treating psychiatrist to make reports to the evaluating psychiatrist regarding

Respondent's compliance with the terms of this Order. Respondent shall follow all recommendations made by the treating psychiatrist regarding continued care and treatment.

During any continued care and treatment, Respondent shall be monitored for purposes of compliance with this Order. The evaluating psychiatrist will monitor Respondent's treatment and rehabilitation, and provide progress reports to the Board every six months. The reports are due on March 15 and September 15. The monitoring reports shall include (a) current mental status examinations; (b) pertinent history and social background information; (c) progress with treatment and rehabilitation; and (d) updated recommendations for Respondent's care. Respondent shall authorize the evaluating psychiatrist to obtain any collateral information necessary for preparation of the monitoring reports from any third party, including the treating psychiatrist. The collateral information obtained shall be strictly limited to the minimum information necessary to ensure adequate assessment of Respondent's rehabilitation and compliance with the terms of this Order.

Board staff may furnish to the evaluating and treating psychiatrists any Board information that it determines, in its discretion,, may be helpful or required for the evaluation and treatment of Respondent.

Respondent's failure to cooperate with the evaluating or treating psychiatrist or failure to follow their recommendations shall constitute a violation of this Order.

6. Respondent shall pay an administrative penalty in the amount of \$2500 within 180 days of the entry of this Order. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas State Board of Medical Examiners and shall be submitted to the Director of Compliance for the Board for routing so as to be remitted to the Comptroller of Texas for deposit in the general revenue fund. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

7. Violations of this Order:

- a. Evidence of any violation of this Order may be presented to Board representatives at a Probationer's Show Compliance Proceeding, held in accordance with 22 TEX. ADMIN. CODE, §187.44. Respondent shall have the right to: (i) receive at least 10 days notice of the date and time of the Probationer's Show Compliance

Proceeding and the allegations to be presented; (ii) attend and be represented by an attorney; (iii) question any witness; and (iv) produce testimonial and/or documentary evidence and information relevant to the allegations of violation of this Order.

- b. If the Board representatives at such Probationer's Show Compliance Proceeding determine that Respondent is in violation of this Order, the Board representatives may direct the Executive Director to immediately suspend Respondent's medical license. **THIS SUSPENSION SHALL BE EFFECTIVE IMMEDIATELY WITHOUT THE NEED FOR A FORMAL HEARING BEFORE THE BOARD, A PANEL OF THE BOARD, OR THE STATE OFFICE OF ADMINISTRATIVE HEARINGS OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE MEDICAL PRACTICE ACT OR THE ADMINISTRATIVE PROCEDURE ACT. RESPONDENT WAIVES ANY SUCH HEARING OR ANY SUCH DUE PROCESS AND ALL RIGHTS OF APPEAL IN REGARD TO THE SUSPENSION.**
- c. If Respondent is suspended under this provision, a Board representative shall file a formal complaint under Section 164.005 of the Medical Practice Act as soon as practicable, alleging the violations of this Order under this provision and seeking such disciplinary action as may be appropriate, including revocation of Respondent's license. The formal complaint may also include allegations of other violations of this Order and other violations of the Medical Practice Act. The parties may resolve the issues by an agreed order, either before or after the filing of a formal complaint. **RESPONDENT DOES NOT WAIVE AND SPECIFICALLY RESERVES THE RIGHT TO A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS, WITH ALL RIGHTS PROVIDED BY THE MEDICAL PRACTICE ACT OR THE ADMINISTRATIVE PROCEDURE ACT AND THE RIGHT TO SEEK JUDICIAL REVIEW OF THE FINAL ORDER.**
8. The time period of this Order shall be tolled if (a) Respondent subsequently resides or practices outside the State of Texas, (b) Respondent's license is subsequently canceled for nonpayment of licensure fees, (c) Respondent ceases the practice of medicine in Texas or (d)

this Order is stayed or enjoined by Court Order. If Respondent leaves Texas to live or practice elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. When the period of tolling ends, 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 tolling.

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

10. 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.

11. Respondent shall inform the Board in writing of any change of Respondent's mailing or practice address within ten days of the address change. This information shall be submitted to the Permits Department and the Director of Compliance for the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

12. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, and to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act. Respondent agrees that ten 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 all notice requirements under Section 164.003 of the Medical Practice Act related to informal proceedings, and Section 2001.054(c) of the Administrative Procedure Act.

13. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following entry of this Order. If, after the passage of the 12-month period, Respondent wishes to seek amendment or termination of these conditions, Respondent may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition without

further appeal or review. Petitions for modifying or terminating may be filed only once a year thereafter.

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.

I, JAMES TAYLOR STINNETT, III, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: October 13, 2005.

James T. Stinnett, III MD
JAMES TAYLOR STINNETT, III, M.D.
RESPONDENT

STATE OF TEXAS
COUNTY OF TARRANT

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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 13th day of October, 2005.



Sylvia M. Rosales
Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 9 day of December, 2005.

Roberta M. Kalafut MD
Roberta M. Kalafut, D.O., President
Texas Medical Board