

IN THE MATTER OF  
THE COMPLAINT AGAINST  
KEITH E. KESLER, D.O.

BEFORE THE  
TEXAS STATE BOARD OF  
MEDICAL EXAMINERS

AGREED ORDER

On the 12 day of December, 2003, came on to be heard before the Texas State Board of Medical Examiners ("the Board" or "the Texas Board"), duly in session, the matter of the license of Keith E. Kesler, D.O. ("Respondent").

On April 22, 2003, Respondent appeared in person, with counsel Julie Springer, J.D., at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. Victoria White represented Board Staff. The Board's Representatives were Nancy Seliger, a member of the Board, and Leah Mabry, M.D., a member of the Disciplinary 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's 2002) (the "Act") or the Rules of the Board.
2. Respondent currently holds Texas Medical License No. G-0758. Respondent was originally issued this license to practice medicine in Texas on June 10, 1986. Respondent is not licensed to practice in any other state.

3. Respondent is primarily engaged in the practice of Psychiatry. Respondent is Board Certified in this specialty.

4. Respondent is 48 years of age.

5. Respondent reported that he relapsed into substance abuse and was treated at Starlite Recovery Center in October, 2001.

6. The complainant, a prior physician of S.G., referred S.G. to Respondent in November 1999 because she was depressed, overweight, suffered migraine headaches, and chronic fatigue syndrome.

7. On November 2, 2001, S.G. visited the Complainant. The Complainant stated that S.G. was upset and had lost quite a bit of weight. The complainant reported that S.G. informed him that she and Respondent had been involved in an inappropriate relationship over the last (1 ½) one and half years.

8. S.G. reported to Complainant that Respondent would prescribe medication for her and give her some of the pills, but keep the rest. Her medications included at varying times Adderall, Ambien, Ativan and Vicodin. Respondent admitted to self-prescribing medication but denied any allegation that he retained or received any medications prescribed for S.G.

9. The Complainant, a prior treating physician of S.G., subsequently withdrew his complaint against Respondent.

10. A review of the triplicate prescription revealed that Respondent prescribed the following to S.G.:

August 11, 2001	Percodan	#120
August 11, 2001	Adderall	#240
September 8, 2001	Adderall	#240
September 8, 2001	Percodan	#60
September 25, 2001	Adderall	#120

September 25, 2001	Percodan	#30
October 2, 2001	Adderall	#240
October 2, 2001	Percodan	#60

11. Respondent submitted a response to the Board denying S.G.'s allegations of an inappropriate relationship. Respondent, however, admitted that he allowed appropriate boundaries between himself and S.G. to lapse and that he over-prescribed medication to S.G. Respondent admitted that his judgment was impaired with respect to his treatment of S.G. as a result of his relapse into substance abuse in December 1999. Respondent maintained that he over-prescribed S.G. in response to threats made by S.G. to him and his family after he attempted to re-establish boundaries.

12. Respondent ended the physician-patient relationship with S.G. as soon as he recognized the boundary issues were beginning to cause problems after consulting with another physician.

13. On October 15, 2001, Respondent voluntarily checked himself into Starlite Recovery Center and established a new recovery program. Respondent has not suffered a relapse since his treatment at Starlite and continues in an active recovery program with sponsors and community support.

14. On April 22, 2003 at the Informal Settlement Conference (ISC), Respondent admitted that he did in fact allow appropriate boundaries to lapse with respect to patient, S.G. by allowing her to collaborate on a web page for his business.

15. Respondent also admitted at the ISC that he inappropriately over-prescribed medication to patient S.G. Respondent stated that the reasoning behind the over-prescribing was his impaired judgment due to his relapse and that patient S.G. had threatened to do harm to he and his family.

16. Respondent informed the ISC panel that his relapse occurred just before he began treatment with patient S.G.

17. 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 164.001 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.
3. 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.
4. 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.
5. Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against the Respondent for prescribing or administering drugs that are non-therapeutic in the manner in which they are prescribed.

6. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against the Respondent for prescribing drugs in a manner inconsistent with public welfare.

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

8. 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 REVOKED; however, the revocation is STAYED and Respondent is placed on PROBATION under the following terms and conditions for ten (10) years from the date of the signing of this Order by the presiding officer of the Board:

1. Respondent shall limit Respondent's medical practice, including any office and inpatient practice, to a group or an institutional setting approved in advance in the discretion of the Executive Director of the Board. Respondent shall inform the Director of Compliance for the Board in writing of Respondent's practice setting and/or of any change in Respondent's practice setting. Respondent shall provide a copy of this Order to the group or institutional setting administrator.

2. Unless otherwise provided for by the terms of this Order or in an institutional setting, Respondent shall not possess, administer, dispense, or prescribe any controlled substances or dangerous drugs with addictive potential or potential for abuse.

3. Respondent shall obtain at least fifty (50) hours per year of Continuing Medical Education (CME) approved for Category I credits by the American Medical Association or by the American Osteopathic Association in addition to this annual required CME. This fifty (50) required hours shall include at least twenty-four (24) hours in psychiatry. Upon request Respondent shall submit to the Board proof of the prior year's CME attendance by the Order's

anniversary date. Upon request Respondent shall submit proof to the Board of CME hours attended in the current year even though such may not meet the 50-hour requirement. A copy of the attendance certificate issued or a detailed report which can be readily verified by the Board shall satisfy this requirement.

4. Respondent shall personally appear before a panel of Board representatives at least one (1) time each year that Respondent is under the terms and conditions of this Order. Such appearances shall be for the purpose of reporting on and addressing issues related to Respondent's compliance with the terms and conditions of this Order.

5. Respondent shall not apply for early termination of this Agreed Order until seven (7) years from the signing of this Order has passed.

6. The time period of this Order shall be tolled if (a) Respondent subsequently resides or practices outside the State of Texas, (b) Respondent subsequently is in official retired status with the Board, (c) Respondent's license is subsequently canceled for nonpayment of licensure fees, 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.

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

8. 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.

9. 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.

10. 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.

11. 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, 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 may be filed only once a year thereafter. Any petition for terminating this Order, may be filed only after the passage of seven years, as described in paragraph number five (5) above and 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, KEITH E. KESLER, D.O., 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 7, 2003.




KEITH E. KESLER, D.O.  
RESPONDENT



STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 7 day of October, 2003.




  
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Signature of Notary Public

SHAZIA TABEER  
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Printed or typed name of Notary Public

My Commission Expires:  
Sept 30, 2005  
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SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 12 day of December, 2003.

  
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Lee S. Anderson, M.D., President  
Texas State Board of Medical Examiners