

G-1644

IN THE MATTER OF	) (	BEFORE THE
	) (	
THE LICENSE OF	) (	TEXAS STATE BOARD
	) (	
SCOTT R. ELKIN, D.O.	) (	OF MEDICAL EXAMINERS

AGREED ORDER

On this the 4th day of December, 1991, came on to be heard the Texas State Board of Medical Examiners ("the Board"), duly in session the matter of the license of Scott R. Elkin, D.O. ("Respondent").

On June 21, 1991, Respondent appeared in person and with a friend, Gary Aitcheson, a psychiatrist, and without legal counsel, at an Informal Settlement Conference at the offices of the Board in response to the Board's letter of invitation dated May 17, 1991.

The Texas State Board of Medical Examiners was represented at the Informal Settlement Conference by C. Richard Stasney, M.D., a member of the Board.

Upon recommendation of Dr. Stasney and with the consent of the Respondent, the Board hereby makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Scott R. Elkin, D.O., holds Texas medical license number G-1644.

2. Respondent received notice as required by law and by the rules of the Board. The parties agree that all jurisdictional requirements have been satisfied.

3. The actions of Respondent, a psychiatrist in practice in Austin, Texas, for ten (10) years, of signing Attending Physician's Statements representing he, as physician or supplier, had provided individual out-patient psychotherapy to J.D. on the following dates, resulted in the filing of false insurance claims by J.D. with her insurance carrier: November 6, 1989, November 14, 1989, December 6, 1989, December 8, 1989, December 19, 1989, January 3, 1990, January 10, 1990, January 17, 1990, January 24, 1990, February 7, 1990, and February 14, 1990.

4. Respondent did not provide any psychotherapy to J.D. on any of the above-referenced dates. The services were provided by J.C. an unlicensed psychotherapist. Respondent only provided alleged consultation to J.C. regarding her therapeutic counseling of J.D. Respondent failed to disclose this arrangement on his Attending Physician Statements or in any other way to the insurance carrier. His failure to so disclose was misleading.

5. The claim forms, along with the Attending Physician's Statements signed by Respondent, were submitted to the insurance carrier by the patient, J.D.; none were submitted by Respondent.

6. But for a representation by Respondent that he provided the services, the insurance carrier would not likely have honored a claim representing services were provided by an unlicensed psychotherapist.

#### Conclusions of Law

1. The Board has jurisdiction over the Respondent and the subject matter of this cause.

2. Respondent violated Section 3.08(4) of the Medical Practice Act, which is defined as unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure the public:

Respondent's acts were likely to deceive, defraud, or injure the public.

3. Section 4.05(b) of the Act provides, in part, that the Board may dispose of this case by agreement.

4. Violation of Section 3.08(4) of the Act subject Respondent to disciplinary action pursuant to Section 4.12 of the Act, which provides, in part, for suspension, revocation, treatment, participation in a program of education or counseling, practicing medicine under the direction of a designated physician, performance of public service, other restrictions on the physician's license, a public reprimand and/or deny the physician's application for a license or other authorization to practice medicine.

#### ORDER

It is ORDERED, ADJUDGED, and DECREED that:

1. Respondent's license to practice medicine is suspended, the

suspension is stayed, and placed on probation for a period of five (5) years under the following terms and conditions:

a. The Respondent shall complete each year five (5) hours of an ethics course for five years. The ethics course is not limited to medical ethics. Documentation of successful completion shall be sent to the Director of Hearings for the Board each year.

b. The Respondent shall refrain from signing insurance claim forms and/or attending physician statements for persons he has not personally provided treatment.

c. The Respondent shall appear before the Board or a Committee of the Board once a year during the probationary period to make a report as to his compliance with this order and the Medical Practice Act.

2. The Respondent shall cooperate with the Board, its attorneys, investigators, compliance officers, and other employees, to verify that Respondent has complied and is in compliance with this Board Order.

3. The Respondent shall advise the Board of any change of address, mailing or office, within (10) days of such occurrence.

4. The time period during which the restrictions, limitations, or conditions are herein assessed shall not include any periods of time during which Respondent either resides or practices medicine outside the state of Texas. If Respondent leaves Texas to live or practice medicine elsewhere, the Respondent shall immediately notify the Board of the dates of the Respondent's departure from and subsequent return to Texas. Upon Respondent's return to Texas, the time period tolled by his departure shall continue until its expiration or termination by the Board.

5. The Respondent shall comply with all the provisions of Article 4495b, Texas Revised Civil Statutes Annotated, and other

statutes regulating the practice of medicine, as is required by law for physicians licensed by the Board.

6. Any violation of the terms, conditions and requirements of this Order shall constitute conclusive evidence of unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure the public within Section 3.08(4) of the Act, and may result in disciplinary action pursuant to Section 4.01(a) of the Act.

7. The Respondent shall not petition the Board for modification or termination of this Order for a period of at least one (1) year from the date of this Order. The grant or denial of any relief sought by the Respondent is discretionary with the Board. Petitions for modification or termination may be filed only once a year.

8. In regard to all terms and conditions of this Agreed Board Order, Respondent waives any further hearings or appeal to the Board or to any court regarding this Order and the terms thereunder. Nothing in this paragraph shall be deemed a waiver of Respondent's rights, under rule, statute or the United States or Texas Constitutions, to appeal a decision or action later taken by the Board subsequent to this Order, except as the Respondent may have agreed herein. Respondent agrees that this Order is a final Order.

THIS ORDER IS A PUBLIC RECORD.

Accepted and agreed to as to substance and form:

Scott R. Elkin  
Scott R. Elkin, D.O.

11/25/91  
Date signed

SIGNED on this 4th day of December, 1991.

[Signature]  
President, Texas State Board of  
Medical Examiners

(Bd.or.10 - 8.4/SF)