

LICENSE NO. E-8372

IN THE MATTER OF

THE LICENSE OF

TROY ARTHUR CALDWELL, JR., M.D.

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BEFORE THE

TEXAS STATE BOARD

OF MEDICAL EXAMINERS

AGREED ORDER

On this the 7th day of December, 2001, 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 Troy Arthur Caldwell, Jr., M.D. ("Respondent").

On June 27, 2000, Respondent appeared in person with counsel, Mr. Sam V. Stone, Jr., at an Informal Settlement Conference/Show Compliance Proceeding in response to a letter of invitation from the staff of the Board. Kalyne Harvey represented Board staff. The Board was represented at the Informal Settlement Conference/Show Compliance Proceeding by Jose M. Benavides, M.D., a member of the Board, and Leah Raye Mabry, M.D., a District Review Committee member.

A formal complaint was filed by the Board at the State Office of Administrative Hearings. Respondent and Board Staff subsequently participated in informal mediation. Respondent was represented by Sam V. Stone, Jr. Board staff was represented by Jean M. DeLoach and the Board was represented by David E. Garza, D.O.

Upon 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 Order as set forth herein:

FINDINGS OF FACT

1. Respondent, Troy Arthur Caldwell, Jr., M.D., holds Texas medical license E-8372.

2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied under TEX. OCC. CODE ANN. Subtitle B (Vernon 2000), (hereinafter the "Act"). By entering into this Agreed Order, Respondent waives any defect in the notice and any further right to notice or hearing under the Act; TEX. GOV'T CODE ANN. §§2001.051 through .054; and the Rules of the State Board of Medical Examiners (22 TEX. ADMIN. CODE Chapter 187).

3. Respondent is Board certified in Psychiatry.
4. Respondent has been in the practice of medicine in Texas for approximately twenty-four (24) years.
5. Respondent treated patient J.W. for severe abdominal pain from March 13, 1997, until May 11, 1998, the date of her death. Respondent had last seen patient J.W. on May 8, 1998.
6. Respondent prescribed medications for patient J.W. for severe pain. In May 1998, records indicate patient J.W.'s medication regime consisted of Demerol 200 mg. injections five (5) times a day with instructions to go 8 hours without taking any Demerol every 24 hours, Phenergan 25 mg. five (5) times a day, Roxicodone 70 mg. every three (3) to four (4) hours up to a total of 420 mg. daily, Oxycontin 40 mg. tablets two (2) to three (3) tablets three (3) times daily, and Xanax 1 mg. as needed up to six (6) tablets daily.
7. Respondent's medical records for patient J.W. reflect that no general physical examination was conducted on the patient.
8. On May 11, 1998, patient J.W. died. Autopsy records indicated the cause of death as mixed drug intoxication.
9. Respondent's training in pain management consisted of nine and one-half (9.5) hours of Category I continuing medical education in the last six (6) years.
10. Board investigation resulted in an audit of medical records for patients J.C., J.S., K.S., P.S., J.H., and J.W. Some medical records lacked documentation of general physical examinations, appropriate clinical monitoring, lack of specific outcome objectives and progress toward meeting those objectives.

CONCLUSIONS OF LAW

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

1. Respondent is subject to disciplinary action by the Board pursuant to Section 164.051(a)(1) of the Act by committing a prohibited act or practice within the meaning of Section 164.052 of the Act.
2. Respondent is subject to disciplinary action by the Board pursuant to Section 164.051(a)(3) of the Act by committing a direct or indirect violation of a rule adopted under this Act, either as a principal, accessory, or accomplice, specifically 22 Tex. Admin. Code §170.
3. Respondent has committed a prohibited act or practice within the meaning of Sections 164.052(a)(5) and 164.053(a)(5) of the Act by prescribing or administering a drug or

treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.

4. Respondent has committed a prohibited act or practice within the meaning of Sections 164.052(a)(5) and 164.053(a)(6) of the Act by prescribing, administering, or dispensing in a manner inconsistent with public health and welfare, dangerous drugs as defined by Chapter 483, Health and Safety Code; or controlled substances scheduled in Chapter 481 Health and Safety Code; or controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. §801et seq.).

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 (5) years from the date of the signing of this Order by the presiding officer of the Board:

1. Respondent shall limit his medical practice to an institutional setting approved in advance by the Executive Director of the Board, except that Respondent may provide private spiritual counseling that does not include the prescribing or administration of any medications. 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. Respondent shall limit his practice to the extent that he may not treat any patients for chronic pain. Respondent shall refer all of his current chronic pain patients to a physician who specializes in chronic pain.

3. Respondent shall become familiar with and comply with all statutes, rules, and regulations, both State and Federal, pertaining to the prescribing, administering, dispensing, supplying, storing, and disposal of dangerous drugs and controlled substances.

4. If Respondent is in possession of any unused triplicate prescription forms, Respondent shall immediately surrender to the Texas Department of Public Safety for destruction all unused triplicate prescription forms in Respondent's possession. Respondent shall not attempt to order any more triplicate prescription forms until Respondent has written authority from the Board. Such authority may be granted after Respondent's 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 Texas Department of Public Safety in regard to the issuance of triplicate prescription forms.

5. 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. The required hours shall be at least ten (10) hours of ethics each year. 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.

6. Within one (1) year following the signing of this Order by the presiding officer of the Board, Respondent shall take and pass with a score of 75 or above the Medical Jurisprudence Examination (JP Exam) given by the Texas State Board of Medical Examiners. Respondent is allowed three (3) attempts to successfully pass this examination. Respondent's failure to take and pass the JP Exam within three (3) attempts within one (1) year following the signing of this Order by the presiding officer of the Board shall constitute a violation of this Agreed Order. After a committee of the Board, or a panel of Board representatives, has considered the information related to Respondent's violation of this provision and has determined that Respondent has not fulfilled the requirements of this provision, Respondent's medical license shall be immediately suspended pursuant to correspondence to Respondent from the Executive Director or Secretary-Treasurer of the Board indicating that a committee of the Board, or a panel of Board representatives, has considered the information related to Respondent's violation of this provision and has determined that Respondent has not fulfilled the requirements of this provision. Although Respondent shall be invited to provide information or testimony to the committee of the Board, or the panel of Board representatives, Respondent specifically waives any administrative due process under the Medical Practice Act, or the Administrative Procedure Act, for the committee of the Board, or the panel of Board representatives, to consider this information. THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE MEDICAL PRACTICE ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS. Respondent shall be notified of any such suspension by certified mail, return receipt requested to Respondent's last known address on file with the Board. If Respondent's license is suspended on such a basis, the suspension shall remain in effect until such time as Respondent takes and passes the JP Exam and subsequently appears before the Board in person and provides sufficient evidence which, in the discretion of the Board, is adequate to show that

Respondent possesses the skills and knowledge to safely practice in Texas and is otherwise physically and mentally competent to resume the practice in this state.

7. Respondent shall personally appear before a panel of Board representatives, unless waived by the Director of Compliance, at least two (2) times 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.

8. To verify that Respondent has complied with and is in compliance with the terms and conditions of this Order, Respondent shall fully cooperate with the Board and the Board staff, including but not limited to, Board attorneys, investigators, compliance officers, consultants, and other such 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 cooperate as required by this paragraph and the terms of this Order shall constitute a basis for disciplinary action against Respondent pursuant to the Act.

9. Respondent shall give a copy of this Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Respondent has privileges, has applied for privileges, applies for privileges, or otherwise practices.

10. Respondent shall ensure that any inquiries which are made by any person or entity through any means to Respondent or Respondent's employees regarding Respondent's Texas licensure status are answered by accurate reference to this Order.

11. Upon request by any person or entity, either orally or in writing, Respondent shall provide a complete and legible copy of this Order to the requesting party within ten (10) calendar days of the request.

12. The time period of this Order shall be extended for any period of time in which Respondent subsequently resides or practices outside the State of Texas, is in official retired status with the Board, or for any period during which Respondent's license is subsequently cancelled for nonpayment of licensure fees. 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. Upon Respondent's return to practice in Texas or Respondent's relicensure, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order when Respondent left the practice of medicine in Texas, retired, or had his or her license cancelled for nonpayment of licensure fees and shall pay all fees for reinstatement or renewal of a license covering the period of extension or tolling.

13. Respondent shall comply with all the provisions of the Act, and other statutes regulating the Respondent's practice, as is required by law.

14. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within ten (10) days of the address change. This information shall be submitted to the Verification 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.

15. 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.

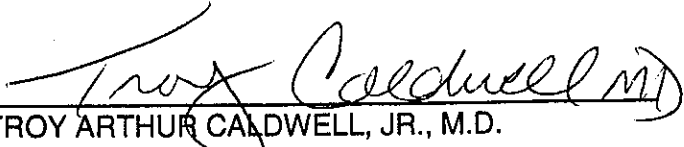
16. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following entry of this Order. If, after the passage of the 12-month period, Respondent wishes to seek amendment or termination of these conditions, 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, TROY ARTHUR CALDWELL, JR., 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 23, 2001.


TROY ARTHUR CALDWELL, JR., M.D.
RESPONDENT

STATE OF Texas
COUNTY OF Cherokee

NOTARY PUBLIC

BEFORE ME, the undersigned Notary Public, on this day personally appeared Troy Arthur Caldwell, Jr., M.D., known to me to be the person whose name is subscribed to this instrument, an Agreed Order, and who after being by me duly sworn, on oath, stated that he executed the same for all purposes expressed therein.

Given under my hand and official seal and office this 23rd day of October, 2001.

Patricia E. Haddock
Signature of Notary Public

(Notary Seal)

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 7th day of December, 2001.

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