

IN THE MATTER OF	§	BEFORE THE
	§	
THE LICENSE OF	§	TEXAS STATE BOARD
	§	
DANA ANDREW BUTLER, M.D.	§	OF MEDICAL EXAMINERS

AGREED ORDER

On this the 9 day of December, 1995, 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 Dana Andrew Butler, M.D. ("Respondent"). On September 19, 1995, Respondent appeared in person with counsel, Francis A. (Tony) Bradley, at an Informal Settlement Conference/Show Compliance Proceeding in response to a letter of invitation from the staff of the Board.

The Board was represented at the Informal Settlement Conference/Show Compliance Proceeding by Catalina E. Garcia, M.D., and Paul G. Meyer, M.D., members of the Board, and Larry Hufford, Ph.D., a district review committee member. 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, Dana Andrew Butler, M.D., holds Texas medical license G-3203.
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.
3. Respondent is a 41 year old psychiatrist who is currently engaged in the private practice of psychiatry in Lubbock, Texas.
4. Respondent reports that his current medical practice does not include psychotherapy.
5. Respondent is certified by the American Board of Medical Specialties in Psychiatry.

6. In 1986, Respondent engaged in inappropriate social contact and physical contact with one adult female patient either without proper termination of the physician-patient relationship or without allowing adequate time to elapse after the termination of the physician-patient relationship.

7. In or about 1986, Respondent engaged in the abuse of alcohol on more than one occasion.

8. Respondent reports that he has undergone psychotherapy from June 1991 to the present on a regular basis in relation to the findings set forth in the above Findings of Fact Numbers 6 and 7. Documentation in support of Respondent has been received by Board staff from Respondent's treating clinical psychologist, Dr. Charles W. Keller.

9. Respondent has cooperated with Board staff in the investigation of the allegations related to this Agreed Order.

10. Respondent's cooperation, through consent to this Agreed Order, will save money and resources for the State of Texas.

11. Respondent has entered into this Agreed Order pursuant to the provisions of Sections 4.02(h) and (i) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b.

12. So as to avoid the expense and inconvenience of litigating the allegations, in lieu of further investigation or a hearing, Respondent agrees to the entry of this Agreed Order, and further agrees to comply with the terms and conditions set forth herein.

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

#### CONCLUSIONS OF LAW

Based on the above findings of fact, the Board concludes the following:

1. Respondent has violated Section 3.08(3) of the Act which authorizes the Board to take disciplinary action against Respondent based on Respondent's intemperate use of alcohol.

2. Respondent has violated Section 3.08(4) of the Act which authorizes the Board to take disciplinary action against Respondent based on Respondent's unprofessional or dishonorable conduct that is

likely to deceive or defraud the public or injure the public.

3. Respondent has violated Section 3.08(18) of the Act which authorizes the Board to take disciplinary action against Respondent based on Respondent's professional failure to practice medicine in an acceptable manner consistent with public health and welfare.

#### ORDER

Based on the above findings of fact and conclusions of law, the Board ORDERS that Respondent's Texas medical 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 Agreed Order by the presiding officer of the Board; and the Board further ORDERS that Respondent's medical license is hereby RESTRICTED indefinitely in that Respondent is prohibited from utilizing psychotherapy in his medical practice, as set forth below:

#### RESTRICTION ON PSYCHOTHERAPY

Respondent shall not engage in the use of psychotherapy in Respondent's medical practice until such time as Respondent requests permission in writing to resume the utilization of psychotherapy in Respondent's medical practice, personally appears before the Board to orally petition for permission to resume the use of psychotherapy, and provides sufficient evidence and information which in the discretion of the Board adequately indicates that Respondent is competent to safely utilize psychotherapy in his medical practice. Such evidence and information shall include at a minimum, but shall not be limited to the following:

Respondent presenting evidence and information that Respondent has undergone an independent psychiatric evaluation by an American Board Certified psychiatrist approved in advance by the Board's Executive Director; and the Board receiving a written report from the approved psychiatrist expressly stating that Respondent is competent to safely utilize psychotherapy in Respondent's medical practice.

### TERMS AND CONDITIONS OF PROBATION

1. Respondent shall abstain from the consumption of alcohol, dangerous drugs, or controlled substances in any form unless prescribed by another physician to Respondent for a legitimate and therapeutic purpose. In the event that Respondent receives alcohol, dangerous drugs, or controlled substances from another physician for the purpose of treating Respondent, Respondent shall cause the treating physician to immediately report in writing to the Board the medical condition being treated, the substance prescribed, dispensed or administered, the amount of such substance and any refills authorized, or shall have the treating physician provide the Board with a copy of Respondent's medical record which substantially reflects this information. Respondent shall give the treating physician a copy of this Agreed Order and shall ensure that a report to the Board is made by the treating physician or that a copy of Respondent's medical record is provided by the treating physician to the Board. Respondent shall immediately report by telephone to Respondent's compliance officer, the Director of Hearings, or the Assistant Administrator of Hearings and Compliance of the Board, to be followed by a letter within twenty-four (24) hours, an explanation of any incident in which Respondent ingests any alcohol, controlled substances, or dangerous drugs in any manner not prescribed by another physician for a legitimate medical purpose.

2. Respondent shall submit himself for appropriate examinations, including screening for alcohol or drugs either through a urine, blood, or hair specimen, at the request of a representative of the Board, without prior notice, to determine chemically through laboratory analysis that Respondent is free of prohibited drugs and alcohol. Respondent shall pay for the costs of these chemical analyses. A positive screen for drugs or alcohol consumed in violation of the terms of this Agreed Order, or a refusal to submit to random screenings shall constitute a violation of this Agreed Order and may result in further disciplinary action pursuant to Sections 4.01(a) and 3.08 of the Medical Practice Act.

3. Respondent shall be solely responsible for the payment of all

costs and charges by any facility which conducts screens on Respondent pursuant to this Agreed Order to determine whether or not Respondent has ingested alcohol or drugs in violation of the terms set forth herein. Respondent shall promptly pay all such costs and charges. Respondent's failure to promptly pay the legitimate costs and charges associated with such screens shall constitute unprofessional and dishonorable conduct, a violation of this Agreed Order, and grounds for disciplinary action under Sections 3.08(4), 4.01, 4.11, and 4.12 of the Act.

4. Respondent shall continue to receive care and treatment from clinical psychologist, Charles W. Keller, Ph.D., Lubbock, Texas, and shall see Dr. Keller no less than one time per month. Respondent shall authorize and request in writing that Dr. Keller provide written periodic reports no less than quarterly during Respondent's treatment which reflect the status of Respondent's physical and mental condition, as well as Respondent's efforts at cooperation with treatment. Respondent shall authorize and participate in alcohol or drug screens directed by Dr. Keller and shall authorize in writing Dr. Keller to immediately provide the positive results of any such screens to Board staff. Respondent shall authorize and request in writing that Dr. Keller immediately provide such other written or oral reports as Board representatives and staff may request regarding Respondent's care and treatment. Respondent shall follow all recommendations of Dr. Keller to the extent that the recommendations are consistent with the terms of this Agreed Order. Respondent shall not unilaterally withdraw from treatment, and shall request and authorize in writing that Dr. Keller immediately report to the Board any unilateral withdrawal from treatment by Respondent. A copy of this Agreed Order shall be provided by Respondent to Dr. Keller as a reference for evaluation and treatment, and as authorization for the physician to provide to the Board any and all records and reports related to the evaluation and treatment conducted pursuant to this paragraph. Respondent shall execute any and all releases for medical records necessary to effectuate the provisions of this paragraph.

5. Respondent shall not unilaterally withdraw from the

evaluation, care, or treatment required by this Agreed Order, and shall request and authorize in writing that Respondent's clinical psychologist or any other individuals involved in Respondent's care and treatment immediately report to the Board any unilateral withdrawal from treatment by Respondent.

6. Respondent shall immediately notify the Director of Hearings for the Board or a Board Compliance Officer or Investigator upon discontinuation for any reason of any care and treatment required by the terms of this Agreed Order.

7. Respondent's unilateral withdrawal from evaluation, treatment, or medical care required by this Agreed Order shall constitute unprofessional and dishonorable conduct, a violation of this Agreed Order, and grounds for disciplinary action under Sections 3.08(4), 4.01, 4.11, 4.12 and 4.13 of the Act. Section 4.13 authorizes the Board to temporarily suspend the license of a physician who in the determination of the Disciplinary Panel of the Board constitutes a continuing threat to the public welfare.

8. When requested by the Board or Board staff, Respondent shall provide to Board staff complete legible written reports regarding any aspect of Respondent's physical or mental condition and Respondent's compliance with the terms of this Agreed Order.

9. To verify that Respondent has complied with and is in compliance with the terms and conditions of this Agreed 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 Agreed Order. Failure to cooperate as required by this paragraph and the terms of this Agreed Order shall constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

10. Upon request by the Board or a member of the Board staff, Respondent shall immediately execute, and provide as needed, any and all medical releases as may be requested by the Board or Board staff to

obtain copies of medical treatment records of Respondent to include, but not limited to, any such releases required to obtain treatment records of Respondent protected by 42 C.F.R. subchapter A, part 2, and any subsequent amendments. Failure to execute and provide such releases shall constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

11. Upon request by the Board or a member of the Board staff, Respondent shall immediately execute, and provide as needed, any and all releases as may be requested by the Board or Board staff to obtain copies of peer review records pertaining to Respondent of any health care entity or hospital where Respondent has or had privileges. Failure to execute and provide such releases shall constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

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

13. 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 medical licensure status are answered by accurate reference to this Agreed Order.

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

15. Respondent shall personally appear before the Board, a committee of the Board, or a panel of Board representatives, at least one (1) time each year that Respondent is under the terms and conditions of this Agreed 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 Agreed Order.

16. Respondent shall personally appear before the Board, a committee of the Board, or panel of Board representatives, upon written

request mailed to Respondent's last known address on file with the Board at least ten (10) calendar days before the requested appearance date. 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 Agreed Order.

17. The time period of this Order shall be extended for any period of time in which Respondent subsequently resides or practices medicine 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 medicine 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 license cancelled for nonpayment of licensure fees.

18. Respondent shall comply with all the provisions of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, and other statutes regulating the practice of medicine, as is required by law for physicians licensed by the Board.

19. 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 Hearings 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 Sections 3.08, 4.01, and 4.11 of the Act.

20. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute a basis for disciplinary



action by the Board against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute evidence of unprofessional or dishonorable conduct likely to deceive or defraud the public or injure the public.

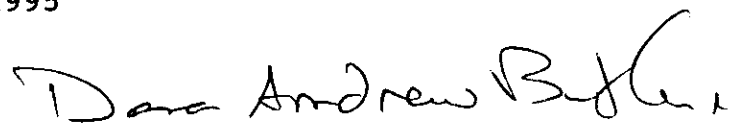
21. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following entry of this Order. If, after the passage of the 12 month period, Respondent wishes to seek amendment or termination of these conditions, 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. 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. NOTHING IN THIS ORDER SHALL BE DEEMED A WAIVER OF RESPONDENT'S RIGHTS UNDER STATUTE OR THE UNITED STATES OR TEXAS CONSTITUTIONS TO APPEAL AN ORDER OR ACTION OF THE BOARD SUBSEQUENT TO THIS AGREED ORDER EXCEPT AS RESPONDENT MAY HAVE OTHERWISE AGREED TO HEREIN. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, DANA ANDREW BUTLER, 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: 10/31/95, 1995

  
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DANA ANDREW BUTLER, M.D.  
RESPONDENT

STATE OF Texas  
COUNTY OF Subsack

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BEFORE ME, the undersigned Notary Public, on this day personally appeared DANA ANDREW BUTLER, 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 31<sup>st</sup> day of October, 1995.

(Notary Seal)



Neenah McCraw  
Signature of Notary Public

Neenah McCraw  
Printed or typed name of Notary Public

My commission expires: June 07, 1998

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 9 day of December, 1995.

William H. Fleming, III, M.D.  
President, Texas State Board of Medical Examiners