

LICENSE NO. G-0999

IN THE MATTER OF
THE LICENSE OF
GRAHAM J. EMSLIE, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 25 day of August, 2017, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Graham J. Emslie, M.D. (Respondent).

On March 13, 2017, Respondent appeared in person, with counsel Philipa Remington, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. The Board's representatives were Kandace B. Farmer, D.O., a member of the Board, and Nancy Seliger, a member of a District Review Committee (Panel). Samer Shobassy represented Board staff.

BOARD CHARGES

Board Staff charged Respondent with breach of the standard of care in the treatment of one patient. Specifically, Board Staff alleged Respondent prescribed stimulant and sedative medications to the patient for several years without appropriate evaluation, monitoring, and medical record-keeping, with said patient later committing suicide.

BOARD HISTORY

Respondent has not previously received a disciplinary order or Remedial Plan from the Board.

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

FINDINGS

The Board finds the following:

1. General Findings:
 - a. 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 the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the Act) or the Rules of the Board.
 - b. Respondent currently holds Texas Medical License No. G-0999. Respondent was originally issued this license to practice medicine in Texas on December 1, 1981. Respondent is not licensed to practice in any other state.
 - c. Respondent is primarily engaged in the practice of Child and Adolescent Psychiatry. Respondent is board certified by the American Board of Psychiatry and Neurology, a member of the American Board of Medical Specialties.
 - d. Respondent is 67 years of age.

2. Specific Panel Findings:
 - a. Respondent started treatment of the patient 17 years ago. Respondent asserted he personally knew the patient's family because the patient's sister was a friend of the Respondent's daughter.
 - b. Respondent could not produce medical records for the 17 years of treatment but could only produce scant records kept on a notepad since 2006.
 - c. Respondent regularly prescribed to the patient benzodiazepines and amphetamines over the telephone without physically examining the patient first.
 - d. Respondent assisted the patient in pharmacy-shopping if patient was refused refills of his medications.
 - e. Respondent was aware of the patient's drinking problem, but continued prescribing medication at the request of the patient and did not refer the patient to an addictionologist for treatment of his alcohol dependence.
 - f. Respondent did not notice drug-seeking behavior of the patient until September of 2015.
 - g. The patient committed suicide in May of 2016.

3. Aggravating Factors/Mitigating Factors:
- a. In determining the appropriate sanctions in this matter, the Panel considered, as mitigating, that Respondent has cooperated in the investigation that resulted in this Agreed Order. Respondent neither admits nor denies the information given above. 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.
 - b. In determining the appropriate sanctions in this matter, the Panel considered the following aggravating factors:
 - i. A patient death was involved.
 - ii. Respondent did not admit to any error in his treatment of the patient, and maintained that his medical management of the patient was appropriate, suggesting increased potential for harm to the public.
 - iii. Respondent prescribed to the patient for 17 years – primarily over the telephone and via text message – without adequate examination.

CONCLUSIONS OF LAW

Based on the above Findings, the Board concludes that:

- 1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.
- 2. Section 107.052 of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing a dangerous drug or controlled substance for a purpose that is not a legitimate medical purpose as defined by the Board and prescribing to a known user.
- 3. Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent committing an act prohibited under Section 164.052.
- 4. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a rule adopted under this Act, specifically Board Rule 165.1(a), failure to maintain an adequate medical record.

5. 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, as defined by Board Rules: 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(B), negligence in performing medical services; 190.8(1)(C), failure to use proper diligence in one's professional practice; 190.8(1)(D), failure to safeguard against potential complications; and 190.8(1)(M), inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship.

6. Section 164.052(a)(5) of the Act 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, as provided by Section 164.053, or injure the public.

7. Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against a Respondent based on Respondent's writing prescriptions for or dispensing to a person who the physician knew or should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.

8. Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against a Respondent based on Respondent's prescribing or administering a drug or treatment that is non-therapeutic in nature or non-therapeutic in the manner the drug or treatment is administered or prescribed.

9. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against a Respondent based on Respondent's prescribing, administering, or dispensing in a manner inconsistent with public health and welfare dangerous drugs as defined by THSC Chapter 483; or controlled substances scheduled in THSC Chapter 481, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 801 et seq.).

10. 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.

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

12. 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 and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. This Agreed Order shall constitute a PUBLIC REPRIMAND of Respondent, and Respondent is hereby reprimanded.

2. Respondent shall be subject to the following terms and conditions for eight consecutive monitoring cycles (defined below). Respondent's practice shall be monitored by a physician (monitor), in accordance with §164.001(b)(7) of the Act. The Compliance Division of the Board shall designate the monitor and may change the monitor at any time for any reason. The monitor shall have expertise in a similar specialty area as Respondent. The Compliance Division shall provide a copy of this Order to the monitor, together with other information necessary to assist the monitor.

(a) As requested by the Compliance Division, Respondent shall prepare and provide complete legible copies of selected patient medical and billing records (selected records). The Compliance Division shall select records for at least 30 patients seen by Respondent during each three-month period following the last day of the month of entry of this Order (reporting period). The Compliance Division may select records for more than 30 patients, up to 10 percent of the patients seen during a reporting period. If Respondent fails to see at least 30 patients during any three-month period, the term of this Order shall be extended until Respondent can submit a sufficient number of records for a monitor to review.

(b) The monitor shall perform the following duties:

- 1) Personally review the selected records;
- 2) Prepare written reports documenting any perceived deficiencies and any recommendations to improve Respondent's practice of medicine or assist in the ongoing monitoring process. Reports shall be submitted as requested by the Compliance Division; and
- 3) Perform any other duty that the Compliance Division determines will assist the effective monitoring of Respondent's practice.

- (c) The Compliance Division shall provide to Respondent a copy of any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division. If the chart monitor recommends that Respondent restrict or suspend his or her practice of medicine, Respondent shall be required to personally appear before a panel of Board representatives, upon written request mailed to Respondent's last known address on file with the Board at least 10 calendar days before the requested appearance date. Such appearance shall be for the purpose of consideration of the chart monitor's recommendations of restriction or suspension and held in accordance with 22 TEX. ADMIN. CODE, §187.44. Based upon the panel's findings and recommendations, the Board may modify this Order so that Respondent's practice is restricted or suspended, in accordance with the chart monitor's recommendations, or take any other action that may be appropriate to resolve the issues presented.
- (d) The monitor may recommend that Respondent complete a competency evaluation. A monitor's recommendation for a competency evaluation must be reviewed by the Chair of the Disciplinary Process and Review Committee (DPRC) for the purpose of making a determination of whether a competency evaluation is warranted. The Chair may approve or deny the monitor's recommendation. If the Chair approves the recommended competency evaluation, then the following terms shall apply and shall be a requirement of this Order:
- 1) Within 10 calendar days of being notified by the Compliance Division of the Board that the Chair has approved the monitor's recommendation, Respondent must contact a program approved by the Board and schedule an assessment of at least two days in length to determine Respondent's competence and ability to practice medicine.
 - 2) Respondent shall authorize the approved program to send a written report regarding Respondent's performance and results of the competency evaluation directly to the compliance officer.
 - 3) Upon completion of the competency evaluation, and based upon its results, Respondent must personally appear before a panel of Board

representatives, upon written request mailed to Respondent's last known address on file with the Board at least 10 calendar days before the requested appearance date. The panel may make recommendations for appropriate action, including that Respondent follow all the program recommendations, comply with other necessary re-training or re-education measures, and may impose any other restrictions or suspension of Respondent's practice. Section 187.44 of this title (relating to Probationer Show Compliance Proceedings) applies to such appearances.

4) The Board may temporarily restrict or suspend Respondent's license based upon the results of the competency evaluation or Respondent's failure to follow any and all requirements set forth in subsection (c) of this section. Chapter 187, Subchapter F of this title (relating to Temporary Suspension and Restriction Proceedings) applies to such proceedings.

(e) The monitor shall be the agent of the Board, but shall be compensated by the Respondent through the Board. Such compensation and any costs incurred by the monitor shall be paid by Respondent to the Board and remitted by the Board to the monitor. Respondent shall not charge the compensation and costs paid to the monitor to any patients.

(f) A "monitoring cycle" begins when the Compliance Division selects patient records for review, and concludes when Respondent receives the monitor's report for that group of records and has made payment for the costs of that monitoring cycle.

3. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 24 hours of continuing medical education (CME) as follows: at least eight hours in the topic of drug-seeking behavior; at least eight hours in the topic of risk management; and, at least eight hours in medical record keeping, approved for Category I credits by the American Medical Association or American Osteopathic Association and approved in writing in advance by the Executive Director or an authorized designee. To obtain approval for the course, Respondent shall submit in writing to the Compliance Department 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 Compliance Department on or before the expiration of the time limit set forth for completion of the course. The CME requirements set forth in this paragraph shall be in addition to all other CME required for licensure maintenance.

4. Respondent shall pay an administrative penalty in the amount of \$3000 within 60 days of the date 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 Medical Board and shall be submitted to 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.

5. At all times while Respondent is under the terms of this Order, 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 pending an application for privileges, applies for privileges, or otherwise practices. Within 30 days of being first contacted by the Compliance Division of the Board following entry of this Order, Respondent shall provide to the Compliance Division of the Board documentation, including proof of delivery, that the Order was delivered to all such facilities.

6. The time period of this Order shall be extended for any period of time that: (a) Respondent subsequently practices exclusively outside the State of Texas; (b) Respondent's license is subsequently cancelled for nonpayment of licensure fees; (c) this Order is stayed or enjoined by Court Order; or (d) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine. If Respondent leaves Texas to practice elsewhere or ceases active practice for more than 60 consecutive days, Respondent shall immediately notify the Board in writing. Upon Respondent's return to active practice or return to practice in Texas, Respondent shall notify the Board in writing. When the period of extension 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 extension or 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 office or mailing address within 10 days of the address change. This information shall be submitted to the Registration Department and the Compliance Department of 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. Respondent agrees that 10 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 the 30-day notice requirement provided by §164.003(b)(2) of the Medical Practice Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code §187.44(4).

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, or to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

11. Respondent shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants.

12. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for one year following the date of the entry of this Order. If, after the passage of the one-year 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.

(SIGNATURE PAGES FOLLOW)

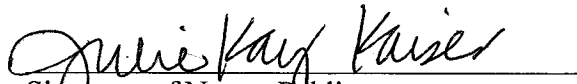
I, GRAHAM J. EMSLIE, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: August 15th, 2017.

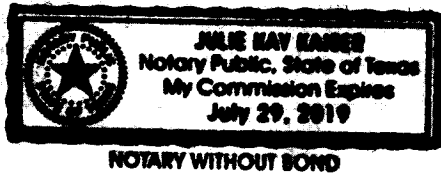

GRAHAM J. EMSLIE, M.D.
Respondent

STATE OF Texas §
COUNTY OF Dallas §
§

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 15 day of August, 2017.


Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
25 day of August, 2017.



Sherif Z. Zafraan, MD, President
Texas Medical Board