

LICENSE NO. M-5508

IN THE MATTER OF

BEFORE THE

THE LICENSE OF

KEVIN JAMES SIMMONS, M.D.

TEXAS MEDICAL BOARD

AGREED ORDER

On the 2 day of March, 2018, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Kevin James Simmons, M.D. (Respondent).

On November 7, 2017, Respondent appeared in person, with counsel, Kenda Dalrymple, 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 Frank Denton, a member of the Board, and Melissa Tonn, M.D., a member of a District Review Committee (Panel). Nancy S. Elmilady represented Board Staff.

BOARD CHARGES

Board Staff charged that Respondent failed to meet the standard of care in the treatment and prescribing of one patient, resulting in over medication of the patient, and thereby placing the patient at risk.

BOARD HISTORY

Respondent has not had a prior Order or Remedial Plan with 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. M-5508. Respondent was originally issued this license to practice medicine in Texas on December 8, 2006. 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 39 years of age.

2. Specific Panel Findings:

- a. Respondent's documentation lacked his rationale for continuing to treat the patient with controlled substances when he was aware of the patient's alcohol and marijuana use.
- b. Respondent failed to check the patient's Prescription Monitoring Program (PMP) report prior to prescribing controlled substances.

3. Mitigating Factors:

In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:

- a. Respondent now refers patients to pain management clinics.
- b. Respondent recognized his medical records lacked his rationale in treating the patient.
- c. Respondent has improved his documentation to thoroughly reflect his rationale.
- d. Respondent now checks patients' PMP reports before writing prescriptions.
- e. Respondent has cooperated in the investigation of the allegations related to 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.

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 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's committing an act prohibited under Section 164.052.
3. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; and Board Rule 190.8(1)(C), failure to use proper diligence in one's professional practice.
4. 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 defined by Section 164.053, or injure the public.
5. Section 164.053(a)(3)(B) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's conduct of writing prescriptions for or dispensing to a person who the physician should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs.
6. 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.
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 and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. Within one year following the date of the entry of this Order, Respondent shall take and pass with a score of 75 or above the Medical Jurisprudence Examination ("JP Exam") given by the Texas Medical Board. Respondent is allowed three attempts to successfully pass this examination.

Respondent's failure to take and pass the JP Exam within three attempts within one year following the date of the entry of this Order shall constitute a violation of this Agreed Order. After a committee of the Board or a panel of Board representatives (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 Board Representatives have considered the information related to Respondent's violation of this provision and have determined that Respondent has not fulfilled the requirements of this provision. Although Respondent shall be invited to provide information or testimony to the Board Representatives, Respondent specifically waives any administrative due process under the Medical Practice Act, or the Administrative Procedure Act, for the Board Representatives to consider this information. **THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS 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 AND ALL RIGHTS OF APPEAL.** Respondent shall be notified of any 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.

2. Within one year from the date of the entry of this Agreed Order, Respondent shall enroll in and successfully complete at least 16 hours of continuing medical education (CME) approved for Category I credits by the American Medical Association or the American

Osteopathic Association, divided as follows: at least eight hours in the topic of drug seeking behavior; at least four hours in the topic of risk management; and least four hours in the topic of medical record-keeping, each approved in writing in advance by the Executive Director or a 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.

3. 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.

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

5. 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.

6. 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 Respondent 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 45-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).

7. 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.

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

9. This Order shall automatically terminate upon Respondent's submission of sufficient evidence to the Compliance Division of the Board that Respondent successfully completed the requirements ordered in Ordering Paragraph No. 1 through 3.


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, KEVIN JAMES SIMMONS, 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.

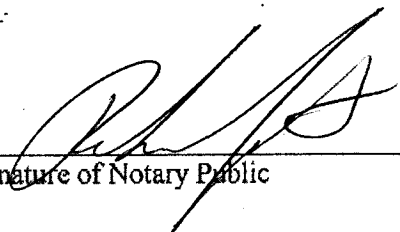
DATED: January 29, 2018.


KEVIN JAMES SIMMONS, M.D.
Respondent

STATE OF Texas
COUNTY OF Fort Bend

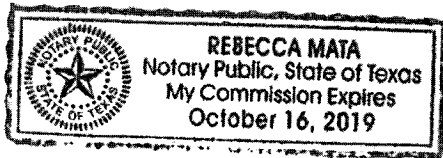
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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 29 day of January, 2018.

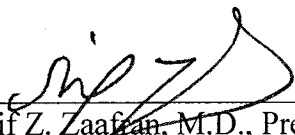


Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
2 day of March, 2018.



Sherif Z. Zafran, M.D., President
Texas Medical Board