

LICENSE NO. F-6376

IN THE MATTER OF

BEFORE THE

THE LICENSE OF

MAUREEN L. ADAIR, M.D.

TEXAS MEDICAL BOARD

MEDIATED AGREED ORDER ON FORMAL FILING

On the 7 day of December, 2018, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Maureen L. Adair, M.D. (Respondent).

On February 7, 2017, Respondent appeared in person, with counsel, Victoria Soto, at an Informal Show Compliance Proceeding and Settlement Conference (ISC) in response to a letter of invitation from the staff of the Board. The Board's representatives were Melissa Tonn, M.D., and James Dickerson, both members of a District Review Committee (Panel). Jerry Bergman represented Board staff.

The matter did not settle and was filed at the State Office of Administrative Hearings under docket number 503-18-1477. Prior to a hearing on the merits, the parties convened mediation and reached this agreement. The Board was represented by Sherif Zaafran, M.D. Respondent was represented by Elizabeth Higginbotham.

BOARD CHARGES

Board staff charged that Respondent's unprofessional conduct and non-therapeutic prescribing failed to meet the standard of care in the treatment of pain for one patient.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board.

1. On April 7, 2006 an Agreed Order (2006 Order) was entered based on Respondent's failure to provide properly requested medical records within fifteen business days and failure to timely respond to correspondence from the Board. Respondent was required to complete a course in the area of risk management and pay an administrative penalty of \$1000.

2. On October 29, 2010, an Agreed Order (2010 Order) was entered based on Respondent's writing prescriptions while her controlled substance registration was expired. Respondent was required to pay an administrative penalty of \$500.

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. F-6376. Respondent was originally issued this license to practice medicine in Texas on August 24, 1980.
- c. Respondent is primarily engaged in Psychiatry. Respondent is board certified by the by the American Board of Psychiatry and Neurology, a member of the American Board of Medical Specialties.
- d. Respondent is 63 years of age.

2. Specific Panel Findings:

- a. Respondent was the provider for a patient initially seen in August of 2004 who presented with a diagnosis of bipolar disorder by another physician along with anxiety and panic disorder with agoraphobia. Respondent diagnosed the patient with PTSD, anxiety and panic disorder with agoraphobia, history of bipolar diagnosis and a provisional diagnosis of learning disability.
- b. On August 17, 2011 after the patient was involved in a motor vehicle accident, Respondent failed to personally perform an initial or subsequent physical examination, order diagnostic testing, document pain quality and improvement in

order to diagnose and manage the patient's pain to support her long term management of the patient's pain with controlled substances.

- c. The medical records were insufficient because they did not show that the patient's pain level was noted at each visit, that the patient's use of the controlled substances was monitored, that the patient was counseled on how to manage her symptoms.
- d. Available records indicate that Respondent referred the patient to a pain management physician and an orthopedic physician for further evaluation.

3. Mitigating Factors:

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

- a. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. With regard to the medical records for the patient in question, Respondent states that her medical offices were flooded and compromised her ability to demonstrate appropriate treatment of this patient's anxiety and pain.
- b. 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 commission of an act prohibited under Section 164.052 of the Act.
- 3. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on violation of Board Rules: 165.1(a), failure to maintain an adequate medical record, and 170.3, failure to adhere to those established guidelines and requirements for the treatment of pain.
- 4. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent for failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as further defined by Board Rule 190.8(1)(A), failure

to treat patient according to the generally accepted standard of care, (B), negligence in performing medical services, (C), failure to use proper diligence in one's professional practice, and (D), failure to safeguard against potential complications.

5. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent 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. § 801 et seq.).

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.

#### 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. Independent Medical Evaluation. Upon entry of this Order, the Executive Director of the Board will designate a physician who is board certified in psychiatry to serve as the Board's evaluating psychiatrist. Within 30 days thereafter, Respondent shall submit to and obtain an independent medical evaluation from the evaluating psychiatrist.

(b) The independent medical evaluation shall be conducted as directed by the Board, including, at a minimum:

- (1) Social history and background information;
- (2) History of present illness;
- (3) Mental status exam;
- (4) Review of records and other pertinent information;
- (5) Current DSM multiaxial diagnosis, and
- (6) Recommendations regarding continued care and treatment.

- (c) The Compliance Division of the Board shall furnish a copy of this Order to the evaluating psychiatrist, who shall make a full report to the Board regarding the evaluating psychiatrist's evaluation of Respondent and recommendations.
- (d) Respondent shall pay all fees charged by the evaluating psychiatrist.
- (e) Respondent shall follow all recommendations made by the evaluating psychiatrist regarding continued care and treatment.
- (f) Respondent's failure to cooperate with the evaluating psychiatrist or failure to follow the evaluating psychiatrist's recommendations shall constitute a violation of this Order.
- (g) If the evaluating psychiatrist recommends continued care and treatment for Respondent, the Executive Director shall notify the Respondent to submit letters from up to three physicians who are board certified in psychiatry and who agree to serve as Respondent's approved treating psychiatrist within 30 days.
  - (1) The letters from proposed treating psychiatrist(s) shall state that they:
    - a. have been provided a copy of this Order;
    - b. agree to provide psychiatric treatment to Respondent; and
    - c. agree to provide periodic reports regarding Respondent's compliance with treatment and rehabilitation to (a) the Compliance Division of the Board or (b) an independent monitoring psychiatrist.
  - (2) A proposed treating psychiatrist may not be approved unless the proposed treating psychiatrist agrees to provide periodic reports either to the Compliance Division of the Board or to an independent monitoring psychiatrist.
  - (3) The Executive Director may reject all of the proposed treating psychiatrists and require the submission of additional letters or approve one or more to be the approved treating psychiatrist.
  - (4) Respondent shall begin the recommended care and treatment within 30 days after notification of approval of the treating psychiatrist.
  - (5) Respondent shall pay all fees charged by the treating psychiatrist.
  - (6) Respondent shall follow all recommendations made by the treating psychiatrist regarding continued care and treatment.

- (7) Board staff may furnish to the treating psychiatrist any Board information that it determines, in its discretion, may be helpful or required for the treatment of Respondent.
- (8) The treating psychiatrist shall provide periodic written reports no less than quarterly, on March 15, June 15, September 15, and December 15 of each year, during Respondent's treatment, either directly to the Compliance Division of the Board or to an independent monitoring psychiatrist. Periodic reports shall include: (a) current diagnosis; (b) treatment regimen; (c) treatment compliance; (d) follow-up recommendations; and (e) prognosis. The Compliance Division of the Board or an independent monitoring psychiatrist may request clarification of periodic reports and may request additional reports.
- (9) The treating psychiatrist may require Respondent to participate in alcohol and/or drug screens and shall immediately report any positive results either directly to the Compliance Division of the Board or to an independent monitoring psychiatrist.
- (10) The treating psychiatrist shall immediately report, either directly to the Compliance Division of the Board or to an independent monitoring psychiatrist, any unilateral withdrawal from treatment by Respondent.
- (11) Respondent shall execute any and all releases for medical records and authorizations necessary to effectuate the provisions of this Order.
- (12) Respondent's failure to cooperate with the treating psychiatrist or failure to follow the treating psychiatrist's recommendations shall constitute a violation of this Order.

2. Monitoring Continued Care and Treatment. During any continued care and treatment, the Board shall monitor Respondent's compliance with treatment and rehabilitation, either directly through the treating psychiatrist or through an independent monitoring psychiatrist designated by the Executive Director.

- (a) If the approved treating psychiatrist agrees to provide reports directly to the Board, with the consent of Respondent, the Executive Director may authorize the

treating psychiatrist to serve in the dual capacity as treating psychiatrist for Respondent and monitoring psychiatrist for the Board.

- (b) If the approved treating psychiatrist does not agree to provide periodic reports to the Board, or if Respondent does not consent, or if the Executive Director requires an independent monitoring psychiatrist, the Executive Director shall designate a physician who is board certified in psychiatry to serve as the Board's independent monitoring psychiatrist. Respondent shall pay all fees charged by an independent monitoring psychiatrist.
- (c) An independent monitoring psychiatrist may require Respondent to present for a personal interview up to twice each year during treatment.
- (d) Respondent shall authorize the treating psychiatrist to provide information necessary for monitoring by the Board, either directly to the Board or through an independent monitoring psychiatrist. The information shall be limited to the minimum information necessary to ensure adequate assessment of Respondent's compliance with treatment, rehabilitation, and compliance with the terms of this Order.
- (e) An independent monitoring psychiatrist shall provide periodic written reports to the Compliance Division of the Board no less than semi-annually on March 15 and September 15 of each year during Respondent's treatment. The monitoring reports shall include: (a) current diagnosis; (b) treatment regimen; (c) treatment compliance; (d) follow-up recommendations; and (e) prognosis.
- (f) Board staff may furnish to the monitoring psychiatrist any Board information that it determines, in its discretion, may be helpful or required for the effective monitoring of Respondent's compliance with treatment, rehabilitation, and compliance with this Order.
- (g) Respondent's failure to cooperate with the monitoring psychiatrist shall constitute a violation of this Order.

3. 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.

4. 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.

5. 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.

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

7. 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.

8. 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).

9. 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.

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

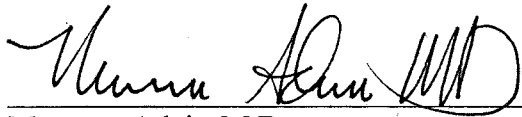
11. The above referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for one year following the date of the entry of this Order. If, after the passage of the one-year period, Respondent wishes to seek amendment or termination 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)**

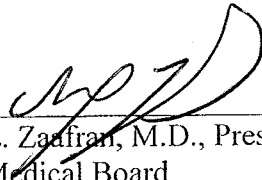
I, MAUREEN L. ADAIR, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 10 / 17, 2018.



Maureen Adair, M.D.  
Respondent

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

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