

LICENSE NO. G3166

IN THE MATTER OF
THE LICENSE OF
HOWARD LELAND BOLAND, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 4 day of December, 2020, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Howard Leland Boland, M.D. (Respondent).

On August 26, 2020, Respondent appeared in person, by videoconference with counsel Mike Sharp, 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 Sharon Barnes, a member of the Board, and Stanley Duchman, M.D., a member of a District Review Committee (Panel). Claudia Kirk represented Board staff.

BOARD CHARGES

The Board charged that Respondent failed to meet the standard of care for one patient. Specifically, Respondent failed to perform an adequate physical evaluation for the patient, who had significant and prominent respiratory symptoms and presented with a chief complaint of dyspnea and chest pain.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board as follows:

1. On August 27, 2010, the Board and Respondent entered into an Agreed Order (2010 Order) due to Respondent's failure to meet the standard of care for one chronic pain patient. The 2010 Order required that Respondent: have a chart monitor for two years; within one year complete the pain management course offered by the University of California San Diego Physician Assessment and Clinical Education program; and within one year complete 10 hours of CME in medical record-keeping. The 2010 Order terminated on August 27, 2012.

2. On August 26, 2011, the Board and Respondent entered into an Agreed Order (2011 Order) due to Respondent maintaining controlled substances in his office without properly securing them. The 2011 Order required that Respondent: refrain from obtaining controlled substances registrations until receiving written authorization from the Board; pass the Medical Jurisprudence Examination (JP exam); and complete eight hours of CME in risk management. The 2011 Order terminated on April 12, 2013.

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. G3166. Respondent was originally issued this license to practice medicine in Texas on February 27, 1983. Respondent is not licensed to practice in any other state.
- c. Respondent is primarily engaged in the practice of psychiatry. Respondent is not board certified.
- d. Respondent is 64 years of age.

2. Specific Panel Findings:

- a. Respondent failed to perform an adequate physical evaluation for the patient that had recent cold, significant and prominent respiratory symptoms and presented with a chief complaint of dyspnea, dry cough, and atypical chest pain.
- b. Respondent did not have available a stethoscope to listen to the patient's heart.
- c. Respondent diagnosed and treated the patient for pneumonia.

d. Respondent did not pursue appropriate alternative cardiac possibilities.

3. Aggravating Factors/Mitigating Factors:

- a. In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:
- i. Respondent voluntarily saw the patient at her family's request due to lack of financial resources.
 - ii. Respondent's prior Board history is not related to this case and the violations in this case are not related to his primary practice area of psychiatry.
 - iii. Respondent voluntarily completed 38 hours of continuing medical education in cardiac diagnosis and treatment after this case occurred.
 - iv. 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.
- b. In determining the appropriate sanctions in this matter, the Panel considered Respondent's prior Board disciplinary action as an aggravating factor.

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)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation Board Rule 165.1, failure to maintain an adequate medical record.
3. 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 further defined by Board

Rules: 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(C), failure to use proper diligence in one's professional practice; and 190.8(1)(D), failure to safeguard against potential complications.

4. 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.

5. 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. Respondent shall limit Respondent's medical practice to patients bearing the primary diagnosis of mental health or substance abuse/addiction and being treated within the specialty practice of psychiatry. Respondent shall not engage in the general practice of medicine and shall not treat patients for ailments requiring specialty care or patients not bearing the primary diagnosis of mental health or substance abuse/addiction. Any patient that present with symptoms of complaints that are not minor and who do not bear a primary diagnosis of mental health or substance abuse/addiction must be referred to an appropriate physician for non-psychiatric care/treatment. Respondent may not petition for modification or termination of this provision for a least three years following the date of the entry of this Order.

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 following the date of the entry of this Order, Respondent shall take and pass with a score of 75 or above the Jurisprudence Examination (JP Exam) given by the 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 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 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 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.

4. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 20 hours of continuing medical education (CME) approved for Category I credits by the American Medical Association or the American Osteopathic Association, divided as follows: eight hours in the topic of risk management, four hours in the topic of ethics, and eight hours in the topic of general or emergency medicine, 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.

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 in Texas 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. Pursuant to Board Rule 189.15, 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) this Order is stayed or enjoined by Court Order; or (c) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine and such cessation in practice is NOT due to a suspension of Respondent's license. Respondent shall immediately notify the Board in writing in the event that Respondent leaves Texas to practice elsewhere or ceases active practice for more than 60 consecutive days. Upon Respondent's return to active practice or return to Texas, Respondent shall notify the Board in writing. Upon return to Texas or

active practice, 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. Tolling shall be in accordance with Board Rule 189.15.

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 practice or mailing address within 10 days of the address change. This information shall be submitted to the Registrations 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 with this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent agrees that any proceeding related to this Order may be held in person, by teleconference, or by videoconference at the discretion of the Board.

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. Supervision must be consistent with the requirements of Ordering Paragraph No. 1.

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, with the exception of Ordering Paragraph No. 1, which may not be modified or terminated for at least three years from the date of the entry of this Order. 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.

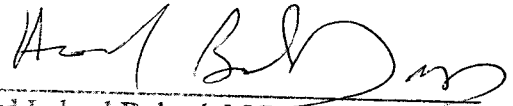
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

(SIGNATURE PAGES FOLLOW)

I, HOWARD LELAND BOLAND, 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: 10-20-20, 2020.



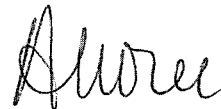
Howard Leland Boland, M.D.
Respondent

STATE OF Texas

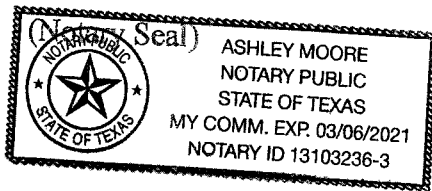
COUNTY OF Galveston

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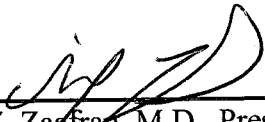
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this day of October 20, 2020.



Signature of Notary Public



4 SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
day of December, 2020.



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