

LICENSE NO. N7224

IN THE MATTER OF

BEFORE THE

THE LICENSE OF

EMAD MIKHAIL TEWFIK BISHAI, M.D.

TEXAS MEDICAL BOARD

AGREED ORDER

On the 19 day of August, 2022, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Emad Mikhail Tewfik Bishai, M.D. (Respondent).

On June 22, 2022, Respondent appeared with his counsel, Victoria Soto, at an Informal Show Compliance Proceeding and Settlement Conference (ISC) held remotely using videoconference technology in response to a letter of invitation from the staff of the Board. This Agreed Order was offered by Robert Gracia, a member of the Board, and Leanne Burnett, M.D., a member of the District Review Committee (Panel). Preston Tom represented Board Staff and prepared this Order.

BOARD CHARGES

Board Staff charged that Respondent failed to adequately document and meet the standard of care and treatment of three of four patients by not sufficiently monitoring these patients, poor coordination with these patients' other providers, not addressing aberrant drug screen results with these patients, and prescribing multiple controlled substances without sufficient justification. Board Staff further charged that pleading guilty and then being placed on deferred adjudication for violations related to the Texas Medical Practice act constituted unprofessional conduct.

BOARD HISTORY

Respondent has received one prior Remedial Plan and Order with the Board.

On June 10, 2016, Respondent and the Board entered into a Remedial Plan requiring Respondent to complete within one year: (8) eight hours of continuing medical education (CME) in risk management, (4) four hours of CME in record keeping, and (4) four hours of CME in management of anti-coagulation agents in a surgical patient. On May 8, 2017, the Remedial Plan

dated June 10, 2016, was terminated due to completion of all requirements.

On November 18, 2019, the Board temporarily suspended Respondent's medical license after determining his continuation in the practice of medicine posed a continuing threat to public welfare. Arrest warrants were issued against Respondent for four felony counts of prescribing controlled substances for other than medical purposes, and five felony counts of practicing medicine in violation of the Medical Practice Act. These charges were related to the deaths of (4) four patients.

On March 6, 2020, Respondent and the Board entered into an Agreed Order with the following terms: Respondent shall not treat patients for chronic pain by prescribing or administering controlled substances; within (7) seven days of the Order, Respondent must modify his DEA controlled substances registration certificates to eliminate Schedule II controlled substances and shall not re-register without prior Board approval; Respondent shall not possess, administer, or prescribe Schedule II controlled substances in Texas; and his delegates are prohibited from prescribing or administering dangerous drugs or controlled substances for the treatment of chronic pain. The Order was based on Respondent's indictment for charges related to prescribing controlled substances for other than medical purposes.

On March 5, 2021, the Board entered a modification order modifying the March 6, 2020, Order by clarifying that Respondent shall not prescribe controlled substances to treat acute pain patients beyond a 72-hour period. All other terms of the March 2020 Order remained in full effect. The modification was based on Respondent's prescribing beyond a 72-hour period.

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 was issued a license on August 2, 2010. Respondent is not licensed to practice in any other state.
  - c. Respondent is primarily engaged the practice of neurology, psychiatry, and pain medicine. Respondent is board certified by the American Board of Psychiatry and Neurology and the American Board of Pain Medicine, members of the American Board of Medical Specialties
2. Specific Panel Findings:
- a. Respondent did not meet the standard of care and maintained inadequate medical records for three of the four patients.
  - b. Respondent's records indicate that he did not consistently follow his practice's policy for monitoring patients, aberrant urine drug screen results not being followed or addressed, poor coordination with patient primary care physicians and/or other providers, and his records indicating prescribing combinations of controlled substances even though Respondent stated otherwise.
  - c. Regarding Respondent's records, they were inadequate, lacking pertinent information about patient history, complaints, and treatments administered or prescribed.
  - d. Respondent's plea of guilty to a misdemeanor count of violating the Medical Practice Act and Board rules related to delegation and deferred adjudication was evidence of unprofessional conduct.
3. Mitigating Factors:
- a. In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:
    - i. Standard of care met for one of the four patients at issue;
    - ii. No evidence of a pill mill scheme;
    - iii. Respondent has rehabilitative potential. He is a caring physician who requires re-education in risk management and supervision practices; and
    - 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.

#### 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 for a violation of the act or Board Rules; specifically, Board Rules 165.1(a), failure to create and maintain an adequate medical record; and 170.3, failure to adhere to those established guidelines and requirements for the treatment of pain.
3. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent for failing 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 164.052(a)(5) of the Act authorizes the board to take disciplinary action against Respondent for unprofessional or dishonorable conduct that is likely to deceive or defraud or injure the public, as provided by Section 164.053 of the Act, and as further defined by Board Rule 190.8(2)(R)(ii), commission of a violation of federal or state laws whether or not there is a complaint, indictment, or conviction; specifically, any criminal violation of the Medical Practice Act or other statutes regulating or pertaining to the practice of medicine.
5. Section 164.03(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent for 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.
6. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent for prescribing administering or dispensing in a manner inconsistent with public health and welfare dangerous drugs as defined by Texas Health and Safety Code (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.*).

7. 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.

8. 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 for three years:

1. Respondent shall not prescribe or administer dangerous drugs or controlled substances for the treatment of pain, either acute or chronic, for a period of longer than 72 hours. Respondent may treat patients for pain on a one-time basis, for no more than 72 hours, with no refills or re-writes for any patients. Respondent, however, may continue to use interventional procedures to treat chronic pain.

2. If Respondent has not already done so, Respondent shall request modification of Respondent's Drug Enforcement Administration (DEA) Controlled Substances Registration Certificate to eliminate Schedule II, within seven days after the date of the entry of this Order. Respondent's authority to prescribe, administer, possess, or dispense such controlled substances is hereby limited to the remaining schedules (III, IV, and V) and is further limited by the terms of this Order. Respondent shall promptly sign and mail to the appropriate agency the necessary DEA forms to accomplish the required modification of Respondent's controlled substance registration. Respondent has seven days after the date of surrender to provide objective evidence of surrender to the Director of Compliance.

Respondent shall not reregister or otherwise obtain Controlled Substances Registrations for Schedule II controlled substances until Respondent has received written authorization from the Board. Authority to register for Controlled Substances Registration Certificates may be granted only after Respondent makes written petition and a personal appearance before the Board, a committee of the Board, or authorized Board representatives. The granting of such authority is discretionary with the Board and shall not control any decision by DEA in regard to granting or denying any application by Respondent for the return of controlled substance registrations.

3. Respondent shall not possess, administer, or prescribe Schedule II controlled substances in Texas other than prescriptions written to him by a licensed provider for personal use.

4. 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.

5. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least (40) forty hours of continuing medical education (CME) approved for Category I credits by the American Medical Association or the American Osteopathic



Association, divided as follows: (8) eight hours of CME on the topic of medical recordkeeping; (12) twelve hours of CME on the topic of supervision and delegation, and (12) twelve hours of CME on the topic of pain management; and (8) eight hours of CME on the topic of risk management 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.

6. Respondent shall comply with the Order of Deferred Adjudication and conditions of community supervision in the case of the State of Texas vs. Emad Mikhail Tewfik Bishai, Criminal Cause Number 22-364766, rendered on February 16, 2022, in Montgomery County, Texas.

7. 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.

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

9. 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.

10. 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 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). 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.

11. 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.

12. This Agreed Order constitutes a restriction on Respondent's license and Respondent shall not be permitted to supervise and delegate prescriptive authority to a physician assistant or advanced practice nurses or supervise a surgical assistant.

13. The above referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for three years following the date of the entry of this Order. If, after the passage of the three-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. To seek modification or termination of the Order, Respondent must personally appear at the ISC. 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.

THIS ORDER SUPERSEDES ALL PRIOR ORDERS.

(SIGNATURE PAGES FOLLOW)



I, EMAD MIKHAIL TEWFIK BISHAI, 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.

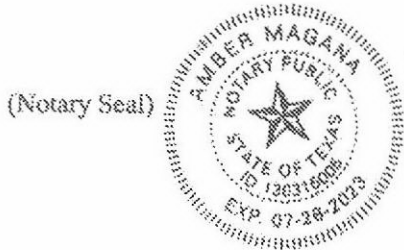
DATED: 8/1/2022, 2022.

  
EMAD MIKHAIL TEWFIK BISHAI, M.D.  
Respondent

STATE OF Texas §

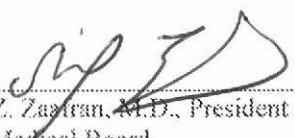
COUNTY OF Montgomery §

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 1 day of August, 2022.



  
Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this  
19 day of August, 2022.



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