

LICENSE NO. N-7224

IN THE MATTER OF THE LICENSE OF

BEFORE THE

EMAD MIKHAIL TEWFIK BISHAI, M.D.

TEXAS MEDICAL BOARD

AGREED ORDER

On the 9 day of June, 2023, 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 December 1, 2022, Respondent appeared via videoconference with counsel James McClendon, 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 LuAnn Morgan, a member of the Board, and Robert B. Simonson, D.O., a member of a District Review Committee (Panel). Preston Tom represented Board Staff and Kemisha Williams prepared this Order.

BOARD CHARGES

Board Staff engaged in unprofessional conduct. Respondent entered into a settlement agreement with the United States Department of Justice in November 2021 which excluded Respondent from participating in any federal health care programs based on allegations that he submitted false claims; and for making false statements when applying for a loan from the Paycheck Protection Program.

BOARD HISTORY

Respondent has the following prior Board history:

- a. On June 10, 2016, Respondent and the Board entered into a Remedial Plan

(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. The action was based on Respondent's failure to meet the standard of care for one patient. On May 8, 2017, the Remedial Plan was terminated due to completion of all requirements.

b. 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. The action was based on Respondent's prescribing leading to the deaths of (4) four patients.

c. 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 action was based on Respondent's indictment for charges related to prescribing controlled substances for other than medical purposes.

d. 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.

e. On August 19, 2022, the Board and Respondent entered into an Agreed Order with the following terms for a minimum period of three years: 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; within seven days of the effective date of this Order, request modification of his DEA controlled substances registration certificate to eliminate Schedule II controlled substances and shall not reregister or otherwise obtain registrations for Schedule II controlled substances without prior authorization; shall not possess, administer, or prescribe Schedule II controlled substances; within one year and three attempts pass the Medical

Jurisprudence Examination (JP Exam); within one year complete at least 40 hours of CME, divided as follows: twelve (12) hours in supervision and delegation, twelve (12) hours in pain management, eight (8) hours in medical recordkeeping and eight (8) hours in risk management; and shall not be permitted to supervise or delegate prescriptive authority to a physician assistant or advanced practice nurse or supervise a surgical assistant. The action was based on Respondent did not meet the standard of care and maintained inadequate medical records for three patients by not sufficiently monitoring these patients, not addressing aberrant drug screen rules, and prescribing multiple controlled substances without sufficient justification. Respondent also pled guilty to a misdemeanor count of violating the medical practice act and was placed on deferred adjudication. 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. N-7224. Respondent was originally issued this license to practice medicine in Texas on August 2, 2010. Respondent is not licensed to practice in any other state.
- c. Respondent is currently engaged in the practice of Neurology, Psychology and Pain Medicine. Respondent is not Board certified.

2. Specific Panel Findings:

- a. On or around November 2021, Respondent entered into a settlement agreement with the United States Department of Justice excluding Respondent from participating in any Federal (Medicare and Medicaid) health care programs based upon allegations that he submitted false claims for the placement of

electro-acupuncture devices and for making false statements when applying for a loan from the Paycheck Protection Program.

- b. Respondent used a surgical code for implantation of a nerve device in patients' ears, when he was instead performing non-surgical procedures.
- c. Respondent was under investigation for his false statements on Paycheck Protection Program loan applications.

3. Mitigating Factors:

Respondent has cooperated in the investigation of the allegations related to this Agreed Order.

4. Aggravating Factors:

Respondent has prior criminal and Board disciplinary history.

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 105.002(a) of the Occupations Code authorizes the Board to take disciplinary action against Respondent for committing unprofessional conduct by: (1) knowingly presenting or causing to be presented a false or fraudulent claim for the payment of a loss under an insurance policy; or (2) knowingly preparing, making, or subscribing to any writing, with intent to present or use the writing, or to allow it to be presented or used in support of a false or fraudulent claim under an insurance policy.
3. 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.

4. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public, as further defined by Board Rule 190.8(2)(J), providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third-party payer that the licensee knew or should have known was improper. "Improper" means the billing statement is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards.

5. Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine, specifically, specifically, THSC §311.0025(a), a hospital, treatment facility, mental health facility, or health care professional may not submit to a patient or a third party payer a bill for a treatment that the hospital, facility, or professional knows was not provided or knows was improper, unreasonable, or medically or clinically unnecessary

6. Section 164.053(a)(7) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Section 311.0025 of the Texas Health & Safety Code, which provides that a hospital, treatment facility, mental health facility, or health care professional may not submit to a patient or a third party payer a bill for a treatment that the hospital, facility, or professional knows was not provided or knows was improper, unreasonable, or medically or clinically unnecessary.

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:

1. Respondent's Texas license is hereby SUSPENDED; however, after the date of the signing of this Order by the presiding officer of the Board, the suspension shall be automatically STAYED and Respondent shall be placed on PROBATION under the following terms and

conditions for one year from the date of the signing of this Order by the presiding officer of the Board.

2. Respondent shall not use his Texas license in any jurisdiction to diagnose, treat, or prescribe controlled substances to patients in Texas for chronic or post-surgical, post-procedure, persistent non-chronic pain, as defined by Board Rules 170.2(4) and (10), or engage in the practice of pain management in Texas. Respondent shall refer any and all current pain management patients to appropriate specialists within 30 days of the date of the entry of this Order. Respondent may prescribe dangerous drugs and controlled substances for the treatment of acute pain to a patient in Texas on a one-time basis only, for no more than 72 hours, with no refills for any patient.

3. Respondent shall not engage in the practice of Pain Management medicine. Respondent shall limit Respondent's practice to Psychiatry and Family Medicine.

4. Respondent shall be subject to the following terms and conditions for eight (8) 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.

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. 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 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.

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

11. The above referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for one 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.

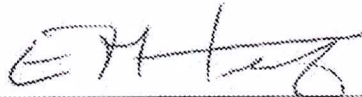
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER DOES NOT SUPERSEDE ANY PRIOR BOARD ORDERS. THIS ORDER IS A PUBLIC RECORD.

(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: 03/06/2023, 2023.

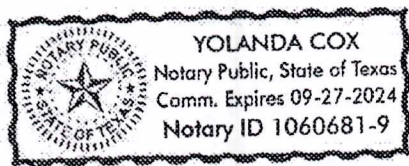


EMAD MIKHAIL TEWFIK BISHAI, M.D.
Respondent

STATE OF Texas §

COUNTY OF Montgomery §

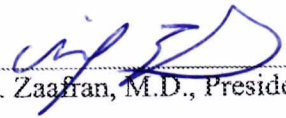
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 6 day of March, 2023.



(Notary Seal)


Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
9 day of June, 2023.



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