

LICENSE NO. K-5593

IN THE MATTER OF
THE LICENSE OF
MARTIN KRAM, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 3 day of February, 2006, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Martin Kram, M.D. ("Respondent").

On November 10, 2005, Respondent appeared in person, without counsel, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. Nancy Leshikar represented Board staff. The Board's representatives were Amanullah Khan, M.D., a member of the Board, and David W. Miller, a member of the District Review Committee.

Upon the recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order.

FINDINGS OF FACT

The Board finds that:

1. 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.
2. Respondent currently holds Texas Medical License No. K-5593. Respondent was originally issued this license to practice medicine in Texas on August 22, 1998. Respondent is not licensed to practice in any other state.

3. Respondent is primarily engaged in the practice of psychiatry. Respondent is board certified in this specialty by the American Board of Medical Specialties.

4. Respondent is 38 years of age.

5. Respondent has not previously been the subject of disciplinary action by the Board.

6. Patient T.M., age 27, after consulting the telephone book to locate a physician, initially presented to Respondent on April 2002. T.M. gave Respondent a long psychiatric history going back to childhood, along with a sophisticated history regarding nuances of various benzodiazepine medications, which he had been taking. During the initial visit, Respondent diagnosed the patient with Bipolar I disorder, panic disorder with agoraphobia, obsessive-compulsive disorder, attention deficit hyperactive disorder (ADHD), and personality disorder with borderline features. Respondent prescribed: Depakote 1500mg daily; Neurontin 300mg three times daily; Concerta 36mg daily; and Valium 10mg three times daily. Documentation was unclear as to whether on that initial visit, Respondent gave T.M. six refills on each medication or only on the Valium.

7. Respondent later changed the Concerta prescription for Adderall and then to Dextrostat and then back to Adderall, usually at T.M.'s request without further exploration of the diagnosis of ADHD. Respondent was seeking to find the medication that the patient was the most comfortable with and would work the best.

8. Although Respondent initially requested T.M. to provide prior medical records, Respondent did not aggressively pursue the acquisition of the prior medical records despite the patient's history of prior hospitalizations and psychiatric treatment. Such records would have revealed a documented history of alcohol, drug, and prescription medication abuse.

9. Respondent continued to prescribe amphetamines for T.M. until he received information from the patient's family describing a personality change and significant substance abuse.

10. Respondent failed to timely coordinate the prescribing of drugs for T.M. with other physicians treating T.M., thereby compromising patient safety.

11. C.B., 31 years old, was initially seen by Respondent on January 13, 2004. Respondent documented that C.B. was previously incarcerated for conspiracy and robbery; he had a substance abuse history positive for amphetamines and cocaine; and he reported to Respondent that he was "under federal investigation." C.B. presented with a chief complaint "not able to focus." Respondent diagnosed C.B. with bipolar disorder--type I, ADHD, obsessive-compulsive disorder, rule/out amphetamine abuse and alcohol abuse (in sustained remission).

12. During C.B.'s treatment, C.B. consistently specified which medications he wanted Respondent to prescribe, which should have been a warning sign for a patient with a history of amphetamine abuse.

13. Respondent continued to prescribe stimulant medication to C.B despite knowing that C.B. had relapsed by using speed.

14. The patient had suffered paranoid ideation throughout the time that Respondent treated him. Because Respondent did not see delusional behavior exhibited by C.B. Respondent did not believe that the medication prescribed was enhancing paranoid ideation. However, it became apparent from information from the family that the medication was having a distinct adverse side effect.

15. Respondent continued to prescribe short-acting stimulants, which could be crushed and abused easily, despite C.B.'s history of illicit substance abuse.

16. Respondent's failure to recognize C.B.'s drug seeking behavior, failure to recognize the potential of paranoid ideation as a possible side effect of amphetamines, and the continued prescribing of short-acting amphetamines in a patient with a history of amphetamine abuse all represented a significant potential threat to both patient and community safety.

17. Respondent has recognized the need for changes in the manner in which he practices. He has focused on more complete documentation and has implemented a number of practice changes designed to ensure the receipt of prior medical records, more timely coordination with other treating physicians, more frequent visits prior to the authorization of refills, referrals to other specialists for patients with multiple diagnoses, more standard testing criteria for diagnoses, lab testing and solicitation from input from family members.

18. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent's cooperation, through consent to this Agreed Order, pursuant to the provisions of Section 164.002 the Act, will save money and resources for the State of Texas. 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 of Fact, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.

2. 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.

3. Sections 164.052(a)(5) and 164.053(a)(3) of the Act authorize the Board to take disciplinary action against Respondent based on Respondent writing prescriptions for or dispensing to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs or to a person who the physician should have known was an abuser of the narcotic drugs, controlled substances, or dangerous drugs.

4. Sections 164.052(a)(5) and 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug

or treatment that is non-therapeutic in nature or non-therapeutic in the manner the drug or treatment is administered or prescribed.

5. Sections 164.052(a)(5) and 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. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

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 of Fact and Conclusions of Law, the Board ORDERS that:
The Respondent shall be subject to the following terms and conditions:

1. For two years beginning with the date of the entry of this Order, 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 thirty 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 thirty patients, up to ten percent of the patients seen during a reporting period. If Respondent fails to see at least thirty 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.

d. 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.

2. For two years from the date of the entry of this Order, Respondent shall obtain each year 25 hours of Continuing Medical Education (CME) approved for Category I credits by the American Medical Association in medical record keeping, risk management and/or treating patients with psycho-pharmaceuticals, approved in writing by the Executive Director. Upon completion of the required CME, Respondent shall submit proof to the Board of successful

completion of the CME. A copy of attendance certificates or a detailed report that can be readily verified by the Board shall satisfy this requirement.

3. Within one year from the entry of this Order, Respondent shall enroll in and successfully complete a course of at least 16 hours in duration, approved in writing in advance by the Executive Director of the Board in treating, prescribing, and managing difficult patients, such as the Physician Prescribing Course offered by the University of California San Diego Physician Assessment and Clinical Education Program (PACE). To obtain approval for the course, Respondent shall submit in writing to the Director of Compliance for the Board 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 Director of Compliance for the Board on or before the expiration of the time limit set forth for completion of the course.

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

5. The time period of this Order shall be extended for any period of time that (a) Respondent subsequently resides or practices outside the State of Texas, (b) Respondent's license is subsequently canceled for nonpayment of licensure fees, or (c) this Order is stayed or enjoined by Court Order. If Respondent leaves Texas to live or practice elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. 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 extended Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of extension.

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 mailing or practice address within ten days of the address change. This information shall be submitted to the Permits Department and the Director of Compliance for 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.

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, and to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act. Respondent agrees that ten 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 30 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).

10. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following entry of this Order. If, after the passage of the 12-month 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.

I, MARTIN KRAM, 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: December 9, 2005.




Martin Kram, M.D.
Respondent

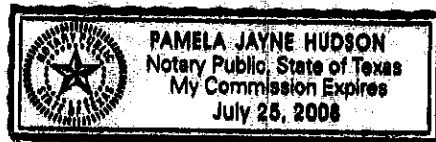
STATE OF Texas
COUNTY OF Dallas

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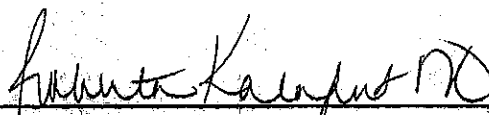
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 9th day of December, 2005.


Signature of Notary Public

(Notary Seal)



3 SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
day of February, 2006.



Roberta M. Kalafut, D.O., President
Texas Medical Board