

IN THE MATTER OF  
THE COMPLAINT AGAINST  
LEO JAMES BORRELL, 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 Leo James Borrell, M.D. ("Respondent").

On March 7, 2005, Respondent appeared in person, with counsel, Kenda Dalrymple, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. Sherry Statman represented Board staff. The Board's representatives were Elvira Pascua-Lim, M.D. and Eddie J. Miles, Jr., members of the Board.

On November 15, 2005, Respondent appeared in person, with counsel, Kenda B. Dalrymple, at an Informal Show Compliance Proceeding and Settlement Conference concerning a separate matter. Sherry Statman represented Board staff. The Board's representatives were Elvira Pascua-Lim, M.D., a member of the Board, and Nancy Seliger, 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

**Allegation One:**

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 TEX. OCC. CODE ANN. Title 3, Subtitle B (Vernon 2004) (the "Act") or the Rules of the Board.

2. Respondent currently holds Texas Medical License No. D-8507. Respondent was originally issued this license to practice medicine in Texas on August 21, 1971. Respondent is also licensed to practice in Georgia and California.

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

4. Respondent is 62 years of age.

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

6. On April 12, 2004, Respondent provided a second opinion to V.G., the mother of H.G. and an employee of the Respondent. H.G. is a 13-year old male with a history of mental health issues. V.G. requested a second opinion on the progress of H.G.'s treatment under a different doctor.

7. Respondent produced a medical record dated April 12, 2004, and a memorandum dated April 15, 2004 concerning H.G.'s health. The medical record and memorandum implied that Respondent evaluated H.G. in person. The memorandum stated: "I initially evaluated H.G.<sup>1</sup> regarding his difficulties functioning in school." Commentary was made about H.G.'s past treatment and family situation. Respondent further wrote: "It is my professional opinion that H.G. has good moral character, but has lapses in his judgment because of his emotional difficulties and impulse problems and poor problem solving abilities secondary to his diagnosis of ADD, anxiety, and depression."

8. A Board expert opined that it was below the standard of care for Respondent to create a record that implies that Respondent examined H.G. in person when he did not. The expert further opined that it was a boundary violation for Respondent to render a formal opinion to an employee regarding mental health and family relationships.

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<sup>1</sup> The child's name has been redacted and replaced with initials in the quoted statements.

9. Mitigating circumstances include that there was not patient harm and Respondent has had no history of board actions.

**Allegation Two:**

10. Respondent was a shareholder and "medical consultant" for the MD SpaCare Clinic in Austin, Texas. Respondent is also a shareholder of another aesthetic-medical spa in Houston, Texas. Respondent would travel to Austin from Houston one to two times a month to review charts and make suggestions. The treatments were performed by trained employees and a registered nurse who was an employee.

11. Patient K.T., a 49-year old female, presented to the MD SpaCare Clinic for photofacial pulsed light treatments. K.T. received a total of six intense pulse light treatments to her chest area. These treatments were performed by employees of the MD SpaCare Clinic.

12. On July 16, 2003, the date of K.T.'s second treatment, K.T. reported that her chest had "blistered in spots." After additional treatments, K.T. continued to complain of an adverse reaction described as "brown spots and scar tissue." A registered nurse employed by MD SpaCare Clinic saw K.T. and stated that she could be treated with a "cool touch" laser at no charge.

13. Before K.T. could receive the "cool touch" laser treatments, the MD SpaCare Clinic closed. Initially, K.T. was told that she could travel to Houston to have the free follow-up treatment. On October 3, 2004, Victoria Grantland, the Manager of Operations in the Houston clinic, informed K.T. that MD SpaCare was not responsible for any further treatments.

14. Respondent did not personally examine K.T. prior to, during, or after her treatments. The Board's expert opined that Respondent did not meet the standard of care because he never evaluated K.T.'s adverse reaction nor directly referred her to someone else for treatment.

15. Respondent denied that his position as a "medical consultant" established a physician-patient relationship. Respondent further denied that he was responsible for supervision

of delegates. The Panel found that a physician-patient relationship was established and Respondent was ultimately responsible for K.T.'s care.

16. Mitigating factors include that Patient K.T. was informed of the possible risks of treatment and signed a consent and there was minimal patient harm.

### 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. 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.
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. 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.
5. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.
6. 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:

1. Within one year from the entry of this Order, Respondent shall enroll in and successfully complete a course of at least 10 hours in the area of boundary violations approved in writing in advance by the Executive Director of the Board. 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 deliver 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.

2. Within one year from the date of the entry of this Order, Respondent shall obtain 20 hours of ethics through courses or programs that have been approved in writing by the Executive Director of the Board. This ethics education is not limited to medical ethics. To obtain approval, Respondent shall submit to the Director of Compliance for the Board complete information on the courses or programs to include at least the course content and faculty. Respondent shall deliver documentation of attendance and successful completion of this requirement for ethics education to the Director of Compliance for the Board on or before the first anniversary date of the entry of this Order.

3. Respondent shall pay an administrative penalty in the amount of \$5500.00 within 90 days of the entry of this Order. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas Medical Board and shall be submitted to the Director of Compliance for the Board for routing so as to be remitted to the Comptroller of Texas for deposit in the general revenue fund. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

4. Within one year following the entry of this Order, Respondent shall take and pass with a score of 75 or above the Medical Jurisprudence Examination ("J.P. Exam") given by the Texas Medical Board. Respondent is allowed three attempts to successfully pass this examination.

Respondent's failure to take and pass the J.P. Exam within three attempts within one year following 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 medical 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 Medical Practice 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 MEDICAL PRACTICE 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 J.P. 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. Respondent shall be permitted to supervise or delegate prescriptive authority to a physician assistant or advanced practice nurse or supervise a surgical assistant.

6. Respondent shall not use the term "M.D." in the name of any future spa facility unless he or another M.D. is on-site and directly involved in patient care.

7. Respondent shall remove Plastic Surgery as a specialization in his physician profile submitted to the Texas Medical Board.

8. The time period of this Order shall be tolled if (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 tolling 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 tolling.

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

10. 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.

11. 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.

12. 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 all notice requirements under Section 164.003 of the Medical Practice Act related to informal proceedings, and Section 2001.054(c) of the Administrative Procedure Act.

13. This order shall terminate automatically upon completion of all the provisions listed herein.

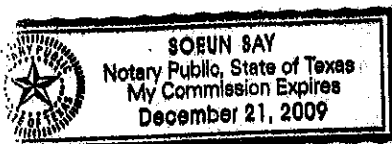
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, LEO JAMES BORRELL, 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: 1/04/06 2006.

  
Leo James Borrell, M.D.  
Respondent



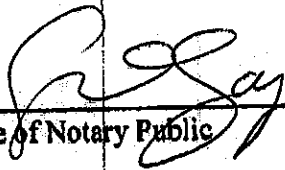


STATE OF TEXAS

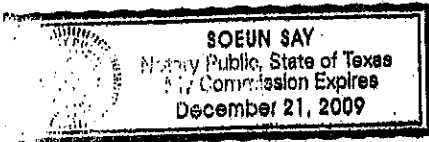
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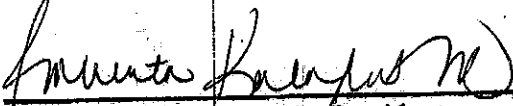
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this  
06 day of January, 2006.

  
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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.

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