

IN THE MATTER OF  
THE LICENSE OF  
RAUL CAPITAINE, M.D.

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BEFORE THE  
TEXAS STATE BOARD  
OF MEDICAL EXAMINERS

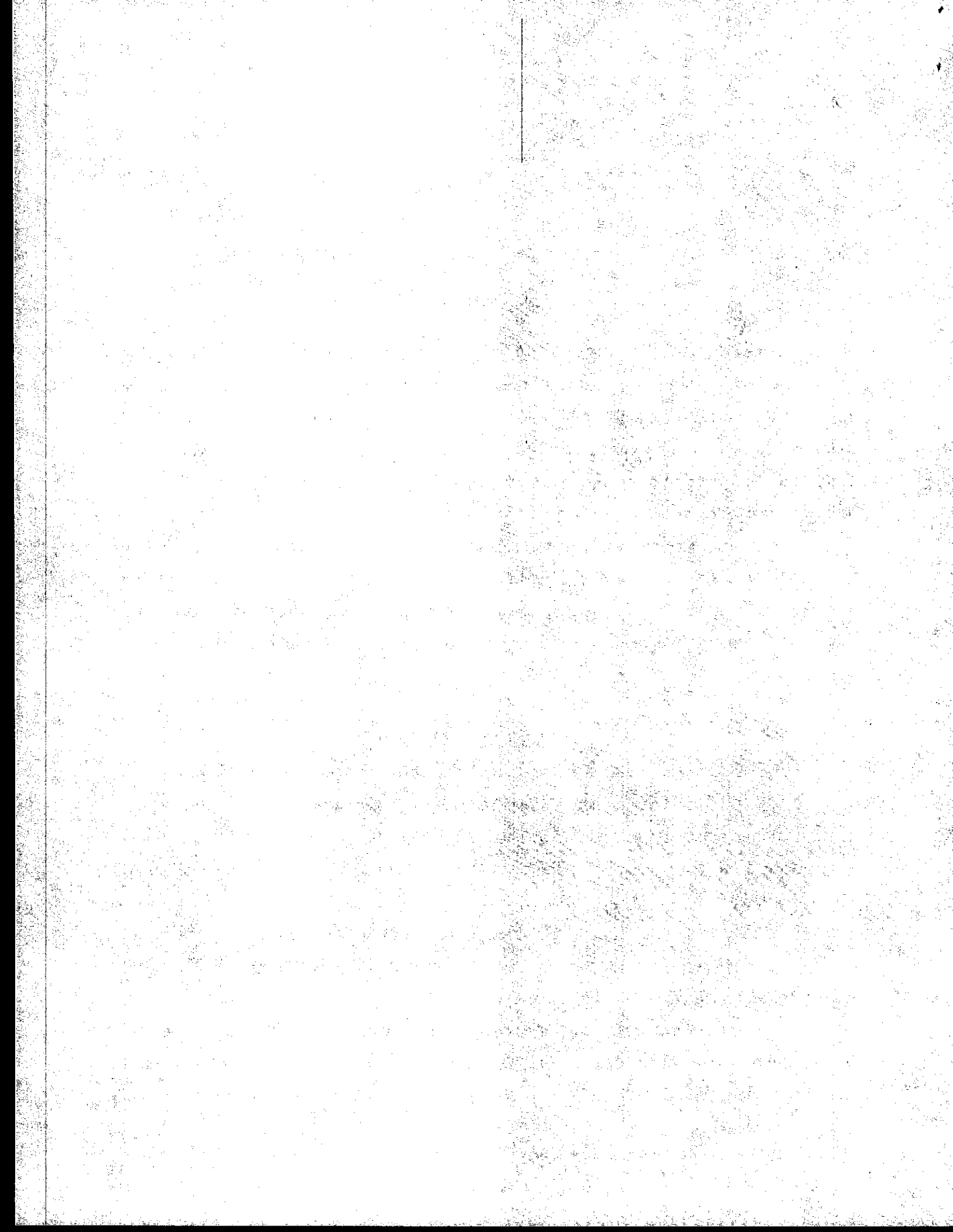
AGREED ORDER

On this the 28 day of March, <sup>2003</sup>~~2002~~, came on to be heard before the Texas State Board of Medical Examiners ("the Board" or "the Texas Board"), duly in session, the matter of the license of Raul Capitaine, M.D. ("Respondent"). On October 9, Respondent appeared in person, with counsel Jerry Stone, at an Informal Settlement Conference/Show Compliance Proceeding in response to a letter of invitation from the staff of the Board. Board staff was represented by Mari Robinson.

The Board was represented at the Informal Settlement Conference/Show Compliance Proceeding by Janet Tornelli-Mitchell, M.D. and Ed Hicks, Sr., Board members. Upon 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 Order as set forth herein:

FINDINGS OF FACT

1. Respondent, Raul Capitaine, M.D., holds Texas medical license H-4885.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice that may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied under TEX. OCC. CODE ANN. Subtitle B (Vernon 2000) (hereinafter the "Act").
3. By entering into this agreed order, Respondent waives any defect in the notice and any further right to notice and hearing under the Act, TEX. GOV'T CODE ANN. §§2001.051 - .054, and the Rules of the State Board of Medical Examiners.
4. Southwest Texas Clinic (SWTC) was a clinic that operated a Narcotic Treatment Program through a permit with the Texas Department of Health. On 10/16/97 Respondent entered into an agreement with SWTC to provide services as the Medical Director of the clinic.



On 11/23/98, Respondent signed a Medical Responsibility Statement for Use of Narcotic Drugs in a Treatment Program which states that the physician assumes responsibility for the administration and dispensing of narcotic drugs under the program and that as Medical Director he assumes responsibility for administering all medical services performed by the program and ensures that the program was in compliance with all federal, state, and local laws and regulations regarding medical treatment of narcotic addiction.

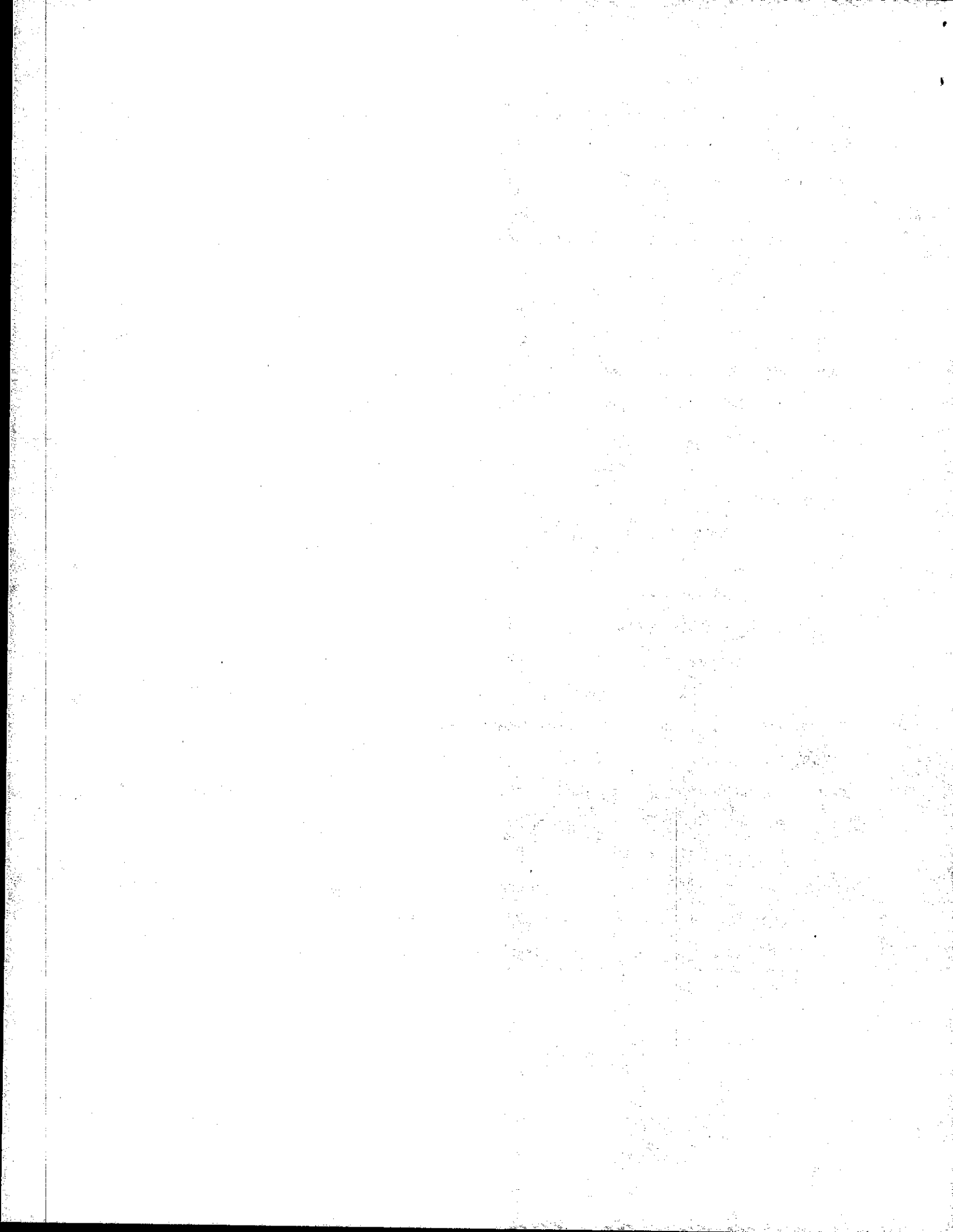
5. Texas Department of Health (TDH), Drug and Medical Devices Division, opened an investigation into the clinic based on complaints they had received concerning the clinic. In September 1999, an Investigator with TDH conducted an inspection of the facility and the medical records of the facility, finding 24 violations during the course of the inspection. In March 2000, a follow up visit was conducted by a representative of the Compliance Division of TDH. During the follow up inspection, many of the same violations previously noted were discovered as well as new additional violations. On a third visit, in December 2000, a TDH Compliance inspector returned again to SWTC and found several violations. Following this, a letter of Notice of Intent to Revoke the permit of SWTC was sent by TDH, due to the several inspections resulting in numerous violations that went uncorrected despite multiple warning letters. In April 2001, a Compliance inspection in conjunction with an emergency order for clinic closure was carried out.

6. Dr. Capitaine served as the medical director for the clinic throughout the course of the period of time involved with these investigations. On 2/23/01 Respondent signed a letter resigning as Medical Director of SWTC in which he stated that this was his 30 day termination notice and that he would be available during this time for medication adjustments as well as facilitating transfer to the physician or facility of the patient's choice.

7. The Respondent asserts that he discussed the shortcomings with the clinic management. In each instance the Respondent says the management would give a commitment to improve. He states that when issues that directly impacted patient care continued and when new patient care issues arose, as revealed by the March 2001 inspection, he tendered his resignation as Medical Director.

#### CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes the following:



1. Respondent is subject to disciplinary action pursuant to Section 164.051(a)(1) of the Act based on Respondent's commission of an act prohibited under Section 164.052 of the Act.

2. Respondent has committed a prohibited act or practice within the meaning of Section 164.052(a)(5) of the Act based upon unprofessional or dishonorable conduct that is likely to deceive or defraud the public as listed by Section 164.053.

3. Respondent has committed a prohibited act or practice within the meaning of Section 164.053(a)(8) of the Act by failing to supervise adequately the activities of those acting under Respondent's supervision.

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

5. Sections 165.001 and 165.003 of the Act authorize the Board to impose a monetary administrative penalty not to exceed five thousand dollars (\$5,000.00) for each separate violation of the Act or Board rule by a person licensed or regulated under the Act.

6. Section 164.001 of the Act authorizes the Board to restrict the medical license and medical practice of Respondent.

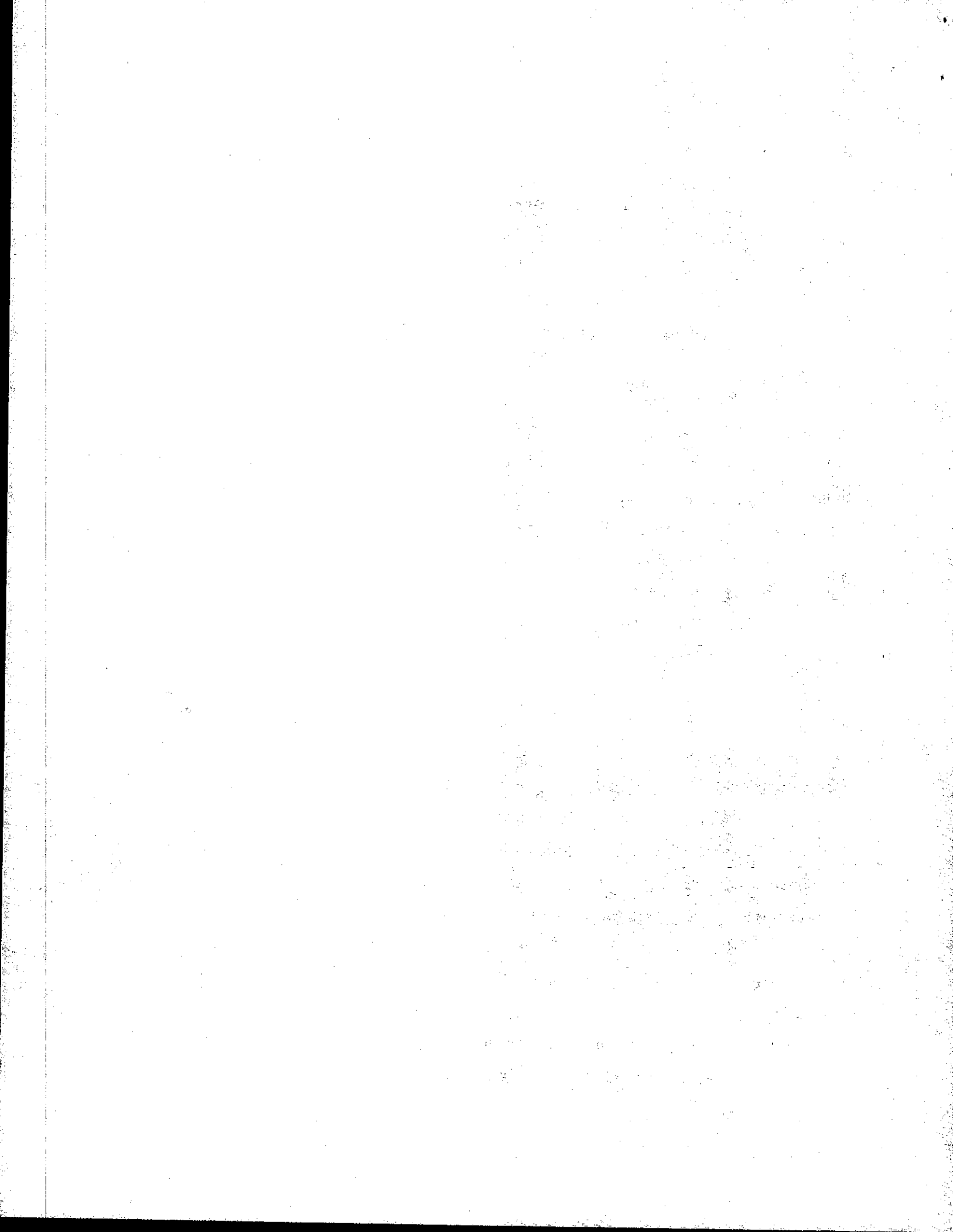
7. Sections 164.001(a)(3) and 164.001(b)(2) of the Act authorize the Board to administer a public reprimand.

#### ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board **ORDERS** that this Agreed Order shall constitute a **PUBLIC REPRIMAND** of Respondent, and that Respondent is hereby reprimanded. The Board additionally **ORDERS** that:

1. Within one (1) year following the signing of this Order by the presiding officer of the Board, Respondent shall take and pass with a score of 75 or above the Medical Jurisprudence Examination (JP Exam) given by the Texas State Board of Medical Examiners. Respondent is allowed three (3) attempts to successfully pass this examination.

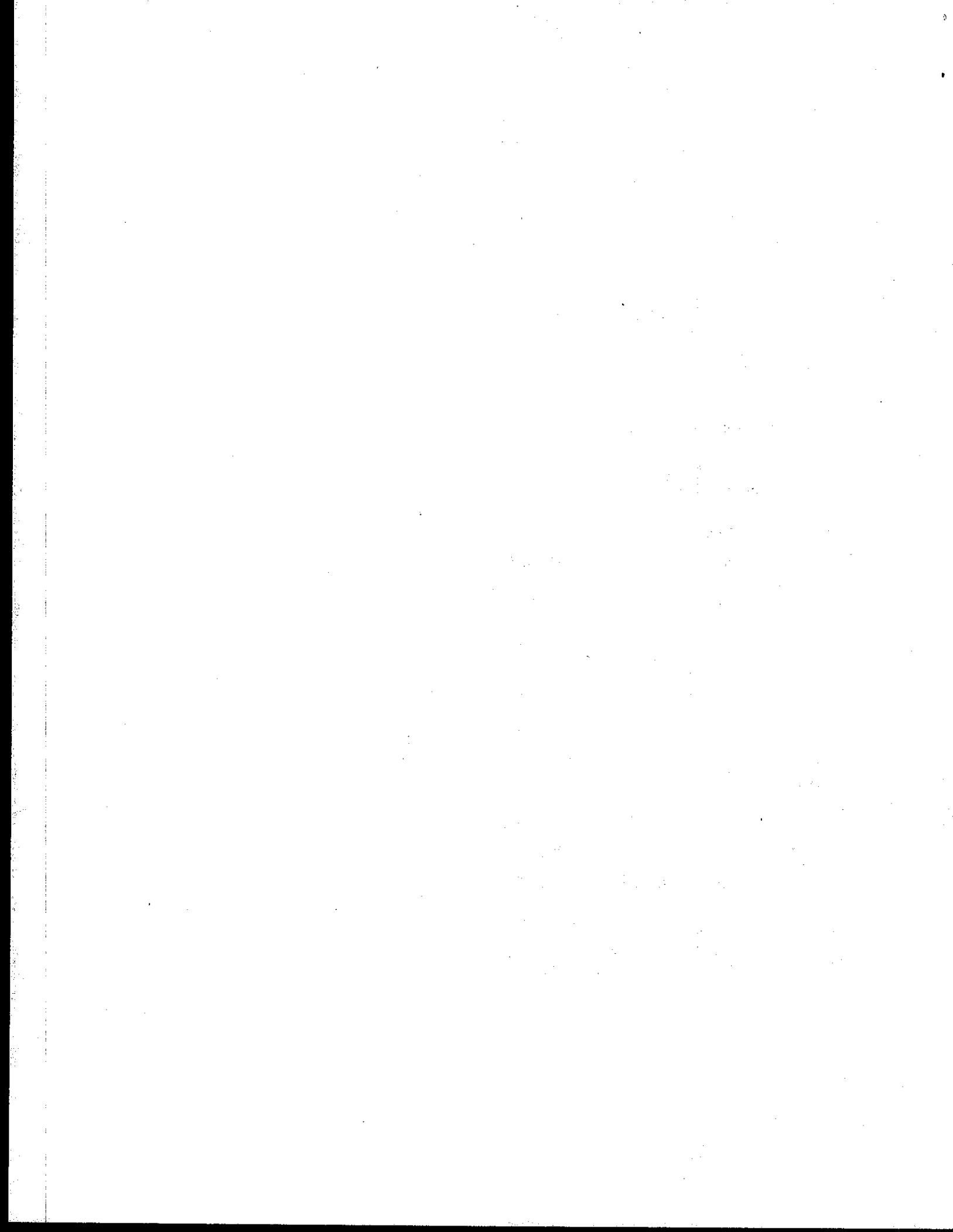
Respondent's failure to take and pass the JP Exam within three (3) attempts within one (1) year following the signing of this Order by the presiding officer of the Board shall constitute a violation of this Agreed Order. After a committee of the Board, or a panel of Board representatives, has considered 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 a committee of the Board, or a panel of 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. Although Respondent shall be invited to provide information or testimony to the committee of the Board, or the panel of Board representatives, Respondent specifically waives any administrative due process under the Medical Practice Act, or the Administrative Procedure Act, for the committee of the Board, or the panel of Board representatives, to consider this information. THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING 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. Respondent shall be notified of any such 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.

2. Within one (1) year following the signing of this Order by the presiding officer of the Board, Respondent shall obtain twenty hours of Continuing Medical Education (CME) approved for Category I credits by the American Medical Association or by the American Osteopathic Association to include ten hours in the area of addiction medicine and ten hours in the area of risk management. These twenty hours of CME shall be obtained in addition to the CME requirements necessary to maintain licensure. Upon completion of the required CME, Respondent shall submit proof to the Board of successful completion of the CME. A copy of attendance certificates issued or a detailed report, which can be readily verified by the Board shall satisfy this requirement.

3. Respondent shall pay an administrative penalty in the amount of five thousand dollars (\$5000.00) within ninety (90) days of the signing of this Order by the presiding officer of the Board.





4. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas State Board of Medical Examiners 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.

5. Respondent's failure to pay the administrative penalty as ordered shall constitute unprofessional and dishonorable conduct that is likely to deceive or defraud the public and shall constitute grounds for further disciplinary action by the Board as provided for in the Act, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

6. To verify that Respondent has complied with and is in compliance with the terms and conditions of this Order, Respondent shall fully cooperate with the Board and the Board staff, including but not limited to, Board attorneys, investigators, compliance officers, consultants, and other such 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 cooperate as required by this paragraph and the terms of this Order shall constitute a basis for disciplinary action against Respondent pursuant to the Act.

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

8. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within ten (10) days of the change of address. 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.

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



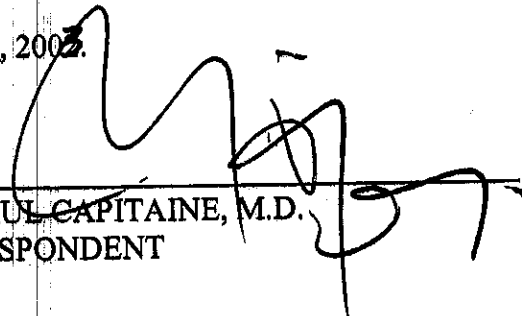
may inquire into the request and may, in its sole discretion, grant or deny the petition without further appeal or review. Petitions for modifying or termination may be filed only once a year thereafter.

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 IS A PUBLIC ORDER.

I, RAUL CAPITAINE, 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: February 25, 2003.



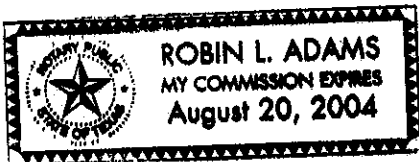
RAUL CAPITAINE, M.D.  
RESPONDENT

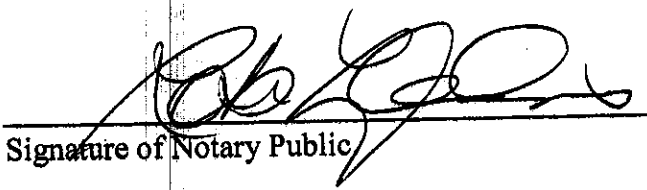
STATE OF Texas  
COUNTY OF Nueces

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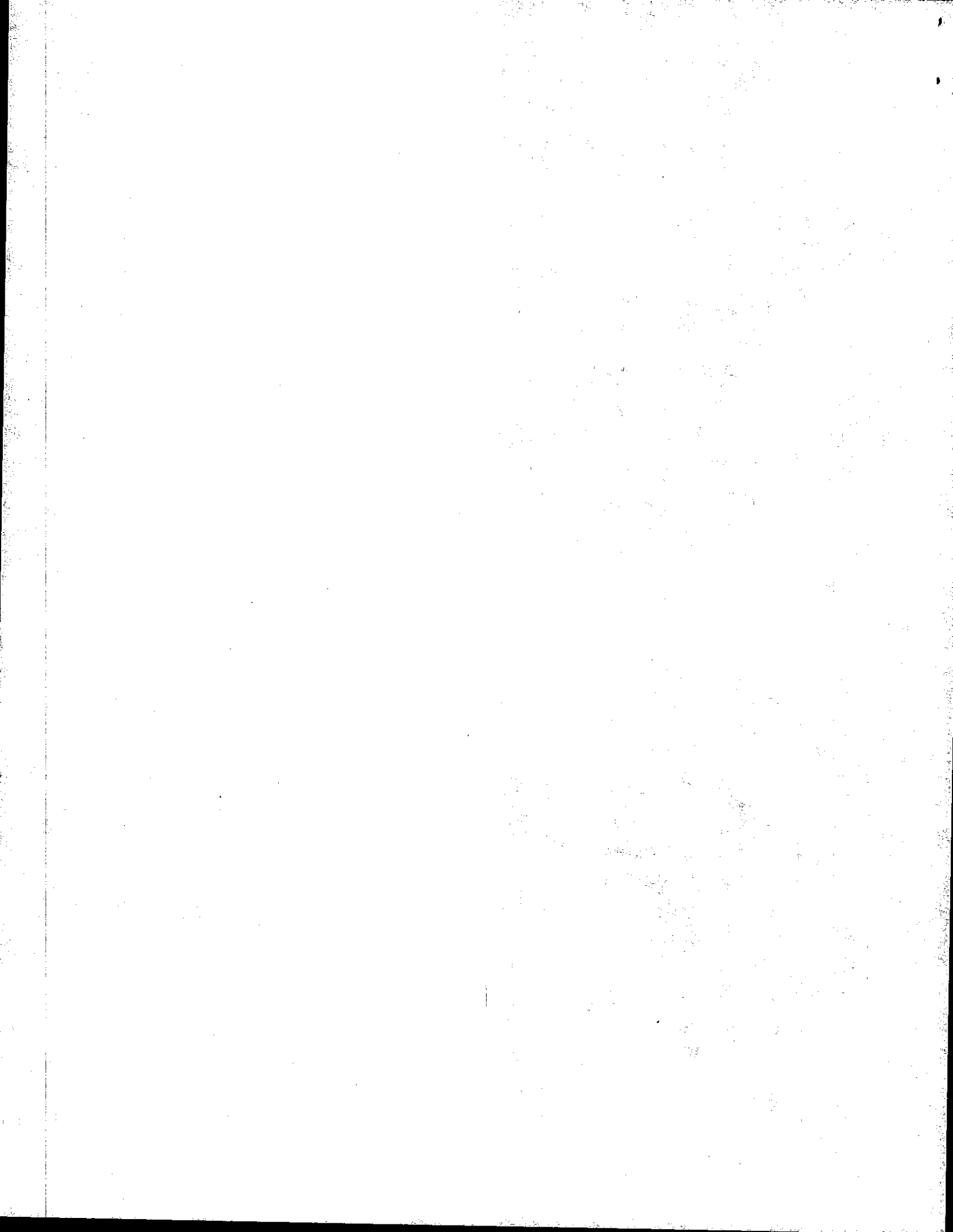
BEFORE ME, the undersigned Notary Public, on this day personally appeared RAUL CAPITAINE, M.D., known to me to be the person whose name is subscribed to this instrument, an Agreed Order, and who after being by me duly sworn, on oath, stated that he executed the same for all purposes expressed therein.

Given under my hand and official seal and office this 25 day of February, 2003.

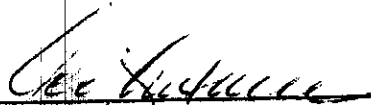


  
Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical  
Examiners on this 28 day of March, ~~2002~~ 2003.



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Lee S. Anderson, M.D.  
President, Texas State Board of Medical Examiners

