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D-2408

IN THE MATTER OF)(BEFORE THE
)(
THE LICENSE OF)(TEXAS STATE BOARD
)(
HERBERT A. DAVIS, M.D.)(OF MEDICAL EXAMINERS

SUPPLEMENTAL AGREED ORDER

On this the 4 day of MARCH, 1995, 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 Herbert A. Davis, M.D. ("Respondent"). By the signature of Respondent on this Order, Respondent waived the right to appear at an Informal Settlement Conference/Show Compliance Proceeding and instead agrees to the entry of this Order to resolve the matters addressed herein.

Upon recommendation of the Board's staff 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. Herbert A. Davis, M.D., holds Texas medical license D-2408.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied.
3. On August 19, 1994 the Respondent entered into an Agreed Order with the Board. Said Order is incorporated herein as Exhibit A.
4. On November 7, 1994 the Board received a report from Talbott-Marsh Recovery System, Atlanta, Georgia and evaluator Richard Irons, M.D. which made certain recommendations and opinions:
 - a. We do not believe that Herbert Davis is impaired or potentially impaired at the current time in his practice of psychiatry. We believe he remains vulnerable to

- boundary violations and role blurring due to limited insight to engage in and commit to therapeutic process.
- b. Herbert Davis has demonstrated the capacity for additional insight and the ability to make substantial gains in therapy and he is willing to engage in and commit to therapeutic process.
 - c. We strongly encourage him to enter into therapy with an experienced therapist knowledgeable in the areas identified in the report.
 - d. We recommend continued medical education in the areas identified in the report.
 - e. We support continued employment in his current position and believe that he can continue to serve with appropriate safeguards, maintaining reasonable safety for himself and his patients.

5. Dr. Irons recommended the use of a contingency contract to assure safe and effective boundaries in Respondent's professional practice. Said recommendations are reflected below.

6. Respondent has cooperated with Board staff in the investigation of the allegations related to this Agreed Order.

CONCLUSIONS OF LAW

1. Section 4.02(h) of the Act authorizes the Board to resolve and make a disposition of this matter through an agreed order.

2. Section 4.02(i) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Civil Evidence for purposes of civil litigation.

IT IS THEREFORE ORDERED that:

- 1. Respondent shall not engage in the practice of ongoing psychotherapy unless approved in advance by his therapist as

approved in paragraph 6 below and the Texas State Board of Medical Examiners.

2. Respondent shall limit his practice to crisis intervention, medication management and group work with a co-facilitator present.
3. Respondent shall see patients in his office alone only for brief visits (15-20 minutes) and initial evaluations (approximately 60 minutes) with his office door open, during regular working hours and with others readily available in the work place.
4. Respondent shall use a nurse chaperon in all situations where there exists some risk of misinterpretation or events occurring in clinical interaction. Such observation shall be clearly documented on medical records.
5. Respondent's medical practice, including any office and surgical practice, shall be monitored by a licensed Texas physician approved in advance in writing by the Executive Director of the Board based on the monitoring physician's licensure status and history, general qualifications, area of specialty, business affiliation with Respondent, and specialty certifications and training. Respondent shall provide a copy of this Agreed Order to the monitoring physician and shall allow the monitoring physician random access to Respondent's patient medical records, patient billing records, and offices. The monitoring physician shall review Respondent's medical practice and shall counsel Respondent on any perceived deficiencies. Respondent shall follow the appropriate guidance provided by the monitoring physician and shall ensure that quarterly reports from the monitoring physician are routed in a timely manner to Board

representatives through the Director of Hearings for the Board. Any costs incurred by the monitoring physician shall be the responsibility of Respondent and shall not be charged to patients.

5. To request approval of a monitoring physician, Respondent shall submit in writing to the Director of Hearings of the Board the name and practice address of the physician who is willing and able to effectively monitor Respondent's practice. The monitoring physician may be changed at any time by the Executive Director of the Board pursuant to a written request by Respondent based upon good cause shown by Respondent for such a change.
6. Respondent shall identify an expert in the field to provide periodic review and oversight of the therapeutic process. Respondent shall submit to therapy under the approved expert and follow his/her recommendations. Said expert shall be approved in writing by the Executive Director of the Board in the same manner as set forth in Paragraph 5 above.
7. Respondent shall obtain at least thirty (30) hours per year of Continuing Medical Education (CME) approved for Category I credits by the American Medical Association or by the American Osteopathic Association. The required hours shall include at least one course in medical ethics, sexual abuse, or transference/countertransference/professional boundaries per year. Each year Respondent shall submit to the Board proof of the prior year's CME attendance by the Order's anniversary date. Respondent shall submit proof to the Board of CME hours attended in the current year even though such may not meet the 30 hour requirement. A copy of the attendance certificate issued or a detailed report which can be readily verified by the Board shall satisfy this requirement.

8. The above terms and conditions shall remain in effect for two (2) years unless terminated earlier by further Order of the Board, pursuant to Respondent's right to petition for review and modification of this Order on a yearly basis.

THIS ORDER IS A PUBLIC RECORD.

I, HERBERT A. DAVIS, 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 3, 1995

HA Davis MD
HERBERT A. DAVIS, M.D.
RESPONDENT

D-2408

IN THE MATTER OF
THE LICENSE OF
HERBERT A. DAVIS, M.D.

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BEFORE THE
TEXAS STATE BOARD
OF MEDICAL EXAMINERS

AGREED ORDER

On this the 19th day of August, 1994, came on to be heard before the Texas State Board of Medical Examiners ("the Board"), duly in session the matter of the license of Herbert A. Davis, M.D. ("the Respondent"). On July 25, 1994, Respondent appeared in person with James McClendon, legal counsel, at an Informal Settlement Conference/Show Compliance Proceeding in response to the Board's letter of invitation dated June 29, 1994.

The Texas State Board of Medical Examiners was represented at the Informal Settlement Conference/Show Compliance Proceeding on July 25, 1994, by James H. Clark, Jr., a member of the Board and William Rector, Jr., M.D., a District Review Committee member. 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:

FINDINGS OF FACT

1. Herbert A. Davis, M.D., holds Texas medical license D-2408.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied.
3. By Order dated August 4, 1993 Respondent voluntarily surrendered his Colorado Medical license in lieu of further proceedings for the reasons set forth in Finding of Fact 4. Said Order is attached hereto as Exhibit A and incorporated herein by reference for any and all purposes.

4. Respondent's treatment of patient D.W. began in 1985 and ended in 1988. Towards the end of treatment, a social and later a romantic relationship developed between Respondent and D.W. The relationship later became sexual. Respondent contends that the sexual relationship occurred after termination of treatment. In retrospect, Respondent understands that the relationship developed between D.W. and himself was non-therapeutic and detrimental to D.W. regardless of when sexual contact occurred. Respondent has cooperated with the Board in its investigation.

5. Respondent is a 54 year old physician who specializes in psychiatry. Respondent currently practices psychiatry at the Andrews Center, Tyler, Texas. No other complaints about Respondent's practice in Texas have been received.

CONCLUSIONS OF LAW

1. Based on the above Findings of Fact, the Board concludes Respondent has violated the Medical Practice Act of Texas ("the Act"), V.A.C.S., article 4495b, Section 3.08(21) suspension, revocation, restriction, or other disciplinary action by another state of a license to practice medicine, or disciplinary action by the uniformed services of the United States, based upon acts by the licensee similar to acts described in this section; and Section 3.08(4) unprofessional conduct that is likely to injure the public.

2. These violations subject Respondent to discipline under Section 4.12 of the Act.

3. Section 4.02(h) of the Act authorizes the Board to make a disposition of this matter by an agreed order.

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that:

1. Respondent shall submit to a full examination for sexual disorders/addiction at the Talbott-Marsh Recovery Center,

College Park, Georgia. Respondent shall submit to the evaluation no later than 30 days from the signing of this Order by the President of the Board or at such other time as authorized by the Executive Director of the Board. Respondent shall have an evaluation report sent to the Board upon completion of the evaluation and shall execute such medical release forms as are necessary for the Board to obtain documentation.

2. Upon receipt of a favorable report from Talbott-Marsh Recovery Center indicating that Respondent does not suffer from any sexual disorder/addiction which may affect his practice of medicine, Respondent agrees:
 - a. that entry by the Board of this Order shall constitute a final Order of public reprimand and shall resolve the above allegations.
 - b. to give a copy of this Order to all hospitals and health care entities where he has privileges.
 - c. to cooperate with the Board, its attorneys, investigators, compliance officers and other employees and agents to verify that Respondent has complied and is in compliance with this Order.
 - d. to comply with all provisions of the Medical Practice Act, art. 4495b V.A.C.S. and other statutes regulating the practice of medicine as is required by law for physicians licensed by the Board.
3. The Board reserves the right to seek or impose additional disciplinary action based upon the findings set forth above should an unfavorable report, as determined by the Board or

its representatives, be received from Talbott-Marsh Recovery Center or if Respondent fails to comply with the terms and conditions of this Order.

Any violation of the terms, conditions, and requirements of this Order shall constitute conclusive evidence of unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure the public within Section 3.08(4) of the Act, and may result in disciplinary action pursuant to Section 4.01(a) of the Act.

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, the 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. Petitions for modifying or terminating may be filed only once a year thereafter.

In regard to all terms and conditions of this Agreed Order, Respondent waives any further hearings or appeal to the Board or to any court regarding this Order and the terms thereunder. Nothing in this paragraph shall be deemed a waiver of Respondent's rights under rule, statute, or the United States or Texas Constitutions to appeal any decision or action which may later be taken by the Board subsequent to this Order, except as Respondent may have agreed herein. Respondent agrees that this Order is a final Order.

THIS ORDER IS A PUBLIC RECORD.

I, HERBERT A. DAVIS, 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: August 12, 1994

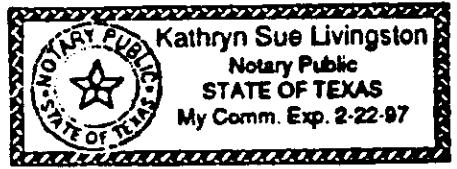
Herbert A. Davis M.D.
HERBERT A. DAVIS, M.D.
RESPONDENT

STATE OF Texas
COUNTY OF Smith

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BEFORE ME, on this day personally appeared Herbert A. Davis, M.D., known to me, who, first, being duly sworn, signed the foregoing Agreed Order in my presence.

SIGNED on this the 12 day of August, 1994.



Kathryn Sue Livingston
Notary Public, in and for
the State of Texas

Notary Seal

SIGNED AND ENTERED by the Presiding Officer of the Texas State Board of Medical Examiners on this 19th day of August, 1994.

John M. Lewis
John M. Lewis, M.D.,
President, Texas State Board
of Medical Examiners

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS REGARDING THE LICENSE TO PRACTICE MEDICINE OF HERBERT A. DAVIS, M.D., LICENSE NO. 21196

Respondent.

IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel B ("Panel") of the Colorado State Board of Medical Examiners ("Board") and Herbert A. Davis, M.D. ("Respondent") as follows:

1. Respondent was licensed to practice medicine in Colorado on October 11, 1977, and was issued license number 21196, which Respondent has held continuously since that date.

2. The Panel and the Board have jurisdiction over Respondent and over the subject matter of this proceeding.

3. On June 18, 1993, the Panel reviewed a report submitted to the National Practitioner Data Bank by Respondent's professional liability carrier regarding Respondent's care and treatment of patient A. The Panel also reviewed correspondence from Respondent indicating that he currently practices medicine outside Colorado and has no intention of resuming the practice of medicine in Colorado.

4. Respondent understands that:

- a. He has the right to be represented by an attorney of his choice;
- b. He has the right to a formal disciplinary hearing pursuant to Section 12-36-118(5), C.R.S.;
- c. By entering into this Stipulation and Final Agency Order (hereinafter, the "Order"), he is knowingly and voluntarily giving up the right to a hearing, admits the facts contained in this Order, and relieves the Panel of its burden of proving such facts;

BOARD EXHIBIT A

d. He is knowingly and voluntarily giving up the right to present a defense by oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Panel.

5. It is the intent of the parties and purpose of this Order to provide for settlement of all issues set forth in paragraph 3 above, without the necessity of holding a formal disciplinary hearing.

6. Respondent admits and agrees that his treatment of patient A allegedly failed to meet generally accepted standards of medical practice in the following respects:

a. Respondent maintained a relationship with patient A which he knew was likely to impair his professional judgement or increase the risk of exploitation of the patient.

b. Respondent failed to terminate his physician-patient relationship with patient A when it was reasonably clear that continuation of the relationship was not in patient A's best interest.

7. Respondent admits that the allegations set forth above, if unrebutted, would establish that he has engaged in unprofessional conduct as defined in Section 12-36-117(1)(p), C.R.S.

8. Based upon the admissions above, the Panel is authorized by Section 12-36-118(5)(g)(III), C.R.S. to impose discipline of Respondent's license to practice medicine in Colorado.

9. Respondent currently practices medicine outside the State of Colorado. Respondent's license to practice medicine in Colorado lapsed due to non-payment of the renewal fee effective May 31, 1993. Respondent has indicated that he does not intend to practice medicine in Colorado in the future.

10. Respondent hereby surrenders, and the Panel accepts, Respondent's license to practice medicine in Colorado in lieu of imposing disciplinary action authorized by Section 12-36-118(5)(g)(III), C.R.S. Respondent surrenders his license simultaneously with his execution of this document.

11. Respondent agrees not to apply for a new license to practice medicine in this state.

12. Following surrender of his license, Respondent shall not perform any act requiring a license to practice medicine in Colorado.

13. This Order shall take effect on acceptance and signature by the Panel.

14. This Order is a public record in the custody of the Board.

A.G. Dawes MD

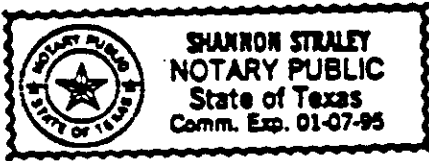
Respondent

7730 OLD Jacksonville Rd

TULER, TEXAS 75701

Address

SUBSCRIBED AND SWORN to before me in the County of Smith, State of
Texas, this 4th day of August, 1993.



Shannon Straley
NOTARY PUBLIC

My commission expires:

1-07-95

THE FOREGOING Stipulation and Final Agency Order is approved and effective this
17 day of September, 1993.

FOR THE COLORADO STATE
BOARD OF MEDICAL EXAMINERS
INQUIRY PANEL B

Margaret Ann Carz MD

APPROVED AS TO FORM:

FOR THE BOARD OF
MEDICAL EXAMINERS

GALE A NORTON
Attorney General

RAYMOND T. SLAUGHTER
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH
Solicitor General

MERRILL SHIELDS
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