

LICENSE NO. J-1649

IN THE MATTER OF  
THE LICENSE OF  
RAJEN BHULABHAI DESAI, M.D.

BEFORE THE  
TEXAS MEDICAL BOARD

AGREED ORDER

On the 8<sup>TH</sup> day of APRIL, 2011, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Rajen Bhulabhai Desai, M.D. ("Respondent").

On March 10, 2011, Respondent appeared in person, with counsel Fred E. Davis, 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 Kathy C. Flanagan, M.D. and Larry Buehler, members of a District Review Committee ("Panel"). Wendy A. Pajak represented Board staff.

BOARD CHARGES

Board staff charged that Respondent was unable to practice medicine safely as a result of his documented pattern of inappropriate behavior towards a patient and the mother of one patient. Specifically, it was alleged that Respondent solicited an unwanted intimate relationship with the mother of a patient when he made inappropriate sexual comments to her and sent her suggestive text messages. Furthermore, Respondent pursued an unwanted personal relationship with one patient, who was treated by Respondent for six years, when he engaged in unsolicited, sexually inappropriate behavior and comments directed towards the patient via telephone and text messages.

## BOARD HISTORY

1. Respondent has previously been the subject of disciplinary action by the Board. On January 26, 2011, a disciplinary panel of the Texas Medical Board entered an Order of Temporary Suspension (with Notice of Hearing) against Respondent, suspending his medical license after determining that Respondent's continuation in the practice of medicine constituted a continuing threat to the public welfare. The Board's action was based on the finding that Respondent, engaged in a pattern of inappropriate conduct towards patients and/or their family members. Specifically, the Board found that Respondent engaged in unsolicited, sexually inappropriate behavior or comments directed towards a patient; pursued an unwanted personal relationship with a patient in an inappropriate manner; and behaved in an abusive or assaultive manner towards a patient's family member in such a way as could have adversely impacted the quality of care rendered to a patient.

2. 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. J-1649. Respondent was originally issued this license to practice medicine in Texas on August 21, 1992. Respondent is not licensed to practice in any other state.
  - c. Respondent is primarily engaged in the practice of psychiatry. Respondent is board certified by the American Board of Psychiatry and Neurology, a member of the American Board of Medical Specialties.

d. Respondent is 52 years of age.

2. Specific Panel Findings:

- a. Respondent began treating a pediatric patient ("Patient A") in 2009.
- b. During the office visits, Respondent made suggestive statements to Patient A's mother.
- c. After the visits, Respondent made unsolicited phone calls to Patient A's mother suggesting that she meet with him. Respondent also sent Patient A's mother several text messages suggesting an inappropriate relationship with him.
- d. Respondent treated an adult female patient ("Patient B") from approximately 2005 to 2010.
- e. In 2010, Respondent began to pursue an intimate and personal relationship with Patient B and sent her unsolicited, inappropriate text messages.

3. Mitigating Factors: In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:

- a. Respondent did not engage in any physical contact with either Patient A's mother or Patient B and his inappropriate behavior was limited to texting and phone calls;
- b. Respondent admitted that he "crossed the line" and made mistakes with regard to his behavior towards Patient A's mother and Patient B;
- c. At the ISC, Respondent produced 17 letters of support from former colleagues and former female patients;
- d. Respondent has no history of substance abuse or other impairment; and
- e. 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)(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.
3. 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.
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)(F), engaging in sexually inappropriate behavior or comments directed towards a patient.
5. 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.
6. 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 of Fact and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. This Agreed Order shall constitute a PUBLIC REPRIMAND of Respondent, and Respondent is hereby reprimanded.
2. Independent Medical Evaluation. Upon entry of this Order, the Executive Director of the Board will designate a physician who is board certified in psychiatry to serve as

the Board's evaluating psychiatrist. Within 30 days thereafter, Respondent shall submit to and obtain an independent medical evaluation from the evaluating psychiatrist.

- (a) The independent medical evaluation shall be conducted as directed by the Board, including, at a minimum:
  - (1) Social history and background information;
  - (2) History of present illness;
  - (3) Mental status exam;
  - (4) Review of records and other pertinent information;
  - (5) Current DSM multiaxial diagnosis, and
  - (6) Recommendations regarding continued care and treatment.
- (b) The Compliance Division of the Board shall furnish a copy of this Order to the evaluating psychiatrist, who shall make a full report to the Compliance Division of the Board regarding the evaluating psychiatrist's evaluation of Respondent and recommendations.
- (c) Respondent shall pay all fees charged by the evaluating psychiatrist.
- (d) Respondent shall follow all recommendations made by the evaluating psychiatrist regarding continued care and treatment.
- (e) Respondent's failure to cooperate with the evaluating psychiatrist or failure to follow the evaluating psychiatrist's recommendations shall constitute a violation of this Order.
- (f) If the evaluating psychiatrist recommends continued care and treatment, the Executive Director shall notify Respondent to submit within 30 days letters from at least three physicians who are board certified in psychiatry and who agree to serve as Respondent's approved treating psychiatrist.
  - (1) The letters from proposed treating psychiatrist(s) shall state that they:
    - a. have been provided a copy of this Order;
    - b. agree to provide psychiatric treatment to Respondent; and
    - c. agree to provide periodic reports regarding Respondent's compliance with treatment and rehabilitation to (a) the Compliance Division of the Board or (b) an independent monitoring psychiatrist.

- (2) A proposed treating psychiatrist may not be approved unless the proposed treating psychiatrist agrees to provide periodic reports either to the Compliance Division of the Board or to an independent monitoring psychiatrist.
- (3) The Executive Director may reject all of the proposed treating psychiatrists and require the submission of additional letters or approve one or more to be the approved treating psychiatrist.
- (4) Respondent shall begin the recommended care and treatment within 30 days after notification of approval of the treating psychiatrist.
- (5) Respondent shall pay all fees charged by the treating psychiatrist.
- (6) Respondent shall follow all recommendations made by the treating psychiatrist regarding continued care and treatment.
- (7) Board staff may furnish to the treating psychiatrist any Board information that it determines, in its discretion, may be helpful or required for the treatment of Respondent.
- (8) The treating psychiatrist shall provide periodic written reports no less than quarterly, on March 15, June 15, September 15, and December 15 of each year, during Respondent's treatment, either directly to the Compliance Division of the Board or to an independent monitoring psychiatrist. Periodic reports shall include: (a) current diagnosis; (b) treatment regimen; (c) treatment compliance; (d) follow-up recommendations; and (e) prognosis. The Board or an independent monitoring psychiatrist may request clarification of periodic reports and may request additional reports.
- (9) The treating psychiatrist may require Respondent to participate in alcohol and/or drug screens and shall immediately report any positive results either directly to the Compliance Division of the Board or to an independent monitoring psychiatrist.
- (10) The treating psychiatrist shall immediately report, either directly to the Compliance Division of the Board or to an independent monitoring psychiatrist, any unilateral withdrawal from treatment by Respondent.

- (11) Respondent shall execute any and all releases for medical records and authorizations necessary to effectuate the provisions of this Order.
- (12) Respondent's failure to cooperate with the treating psychiatrist or failure to follow the treating psychiatrist's recommendations shall constitute a violation of this Order.

3. Monitoring Continued Care and Treatment. During any continued care and treatment, the Board shall monitor Respondent's compliance with treatment and rehabilitation, either directly through the treating psychiatrist or through an independent monitoring psychiatrist designated by the Executive Director.

- (a) If the approved treating psychiatrist agrees to provide reports directly to the Compliance Division of the Board, with the consent of Respondent, the Executive Director may authorize the treating psychiatrist to serve in the dual capacity as treating psychiatrist for Respondent and monitoring psychiatrist for the Board.
- (b) If the approved treating psychiatrist does not agree to provide periodic reports to the Compliance Division of the Board, or if Respondent does not consent, or if the Executive Director requires an independent monitoring psychiatrist, the Executive Director shall designate a physician who is board certified in psychiatry to serve as the Board's independent monitoring psychiatrist. Respondent shall pay all fees charged by an independent monitoring psychiatrist.
- (c) An independent monitoring psychiatrist may require Respondent to present for a personal interview up to twice each year during treatment.
- (d) Respondent shall authorize the treating psychiatrist to provide information necessary for monitoring by the Board, either directly to the Compliance Division of the Board or through an independent monitoring psychiatrist. The information shall be limited to the minimum information necessary to ensure adequate assessment of Respondent's compliance with treatment, rehabilitation, and compliance with the terms of this Order.
- (e) An independent monitoring psychiatrist shall provide periodic written reports to the Compliance Division of the Board no less than semi-annually, on March 15 and September 15 of each year, during Respondent's treatment. The monitoring

reports shall include: (a) current diagnosis; (b) treatment regimen; (c) treatment compliance; (d) follow-up recommendations; and (e) prognosis.

- (f) Board staff may furnish to the monitoring psychiatrist any Board information that it determines, in its discretion, may be helpful or required for the effective monitoring of Respondent's compliance with treatment, rehabilitation, and compliance with this Order.
- (g) Respondent's failure to cooperate with the monitoring psychiatrist shall constitute a violation of this Order.

4. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete the professional boundaries course offered by University of California San Diego Physician Assessment and Clinical Education (PACE) program or an equivalent course approved in advance by the Executive Director. To obtain approval for a course other than PACE courses, Respondent shall submit in writing to the Compliance Division of the Board information on the course that includes description of the course content, faculty, course location, and dates of instruction. Respondent shall submit documentation of attendance and successful completion of this requirement to the Compliance Division of the Board on or before the expiration of the time limit set forth for completion of the course.

5. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 24 hours of continuing medical education (CME) approved for Category I credits by the American Medical Association divided as follows: 18 hours in the topic of risk management; six hours in the topic of ethics, each approved in writing in advance by the Compliance Division of the Board. To obtain approval for the course, Respondent shall submit in writing to the Compliance Division of 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 Compliance Division of the Board on or before the expiration of the time limit set forth for completion of the course. The CME requirements set forth in this paragraph shall be in addition to all other CME required for licensure maintenance.



6. Respondent shall pay an administrative penalty in the amount of \$5,000 within 90 days of the date 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 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.

7. The time period of this Order shall be extended for any period of time that: (a) Respondent subsequently practices exclusively outside the State of Texas; (b) Respondent's license is subsequently cancelled for nonpayment of licensure fees; (c) this Order is stayed or enjoined by Court Order; or (d) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine. If Respondent leaves Texas to practice elsewhere or ceases active practice for more than 60 consecutive days, Respondent shall immediately notify the Board in writing. Upon Respondent's return to active practice or return to practice in Texas, Respondent shall notify the Board in writing. 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 Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of extension or tolling.

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

9. 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.

10. 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 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).

11. 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.

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

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

14. This Order supersedes all previous Orders of the Board.

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, RAJEN BHULABHAI DESAI, 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: 3/21, 2011.

*R B Desai M.D.*

RAJEN BHULABHAI DESAI, M.D.  
Respondent

STATE OF Texas §  
COUNTY OF Jefferson §

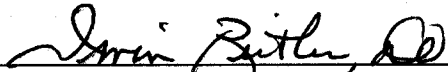
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 21<sup>st</sup> day of March 2011.

*Dawn Teeter*  
Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this  
8<sup>TH</sup> day of APRIL, 2011.

  
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Irvin E. Zeitler, Jr., D.O. President  
Texas Medical Board