

LICENSE NO. C-4954

IN THE MATTER OF
THE LICENSE OF
DOYLE HUBBARD BRASHEAR, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 9th day of April, 2010, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Doyle Hubbard Brashear, M.D. ("Respondent").

On February 22, 2010, Respondent appeared in person, with counsel Edward McFarland, 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 Michael Arambula, M.D., and David Baucom, members of the Board. Darrin Dest represented Board staff.

BOARD CHARGES

Initially, Board staff charged that Respondent violated the standard of care in his treatment of six patients for chronic pain, specifically, by failing to review existing labs/x-rays or order new ones, and by failing to screen for abuse potential. Additionally, Board staff charged that Respondent's documentation was illegible and inadequate.

Ultimately, the Board finds that Respondent inadequately documented his treatment of six chronic pain patients, and failed to follow the Board's pain management guidelines. The Board further finds no violation of the standard of care.

BOARD HISTORY

Respondent has not received a prior disciplinary order from the Board.

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. C-4954. Respondent was originally issued this license to practice medicine in Texas on August 20, 1955. Respondent is not licensed to practice in any other state.
- c. Respondent is primarily engaged in the practice of psychiatry. Respondent is not board certified.
- d. Respondent is 86 years of age.

2. Specific Panel Findings:

- a. Respondent has a part-time psychiatric practice in Lufkin, Texas. Respondent does not seek to treat his psychiatric patients for their chronic pain issues, but has found that other physicians in the area will often not treat chronic pain at all. Respondent believed that in order to treat his patients' psychiatric problems, he had to address their chronic pain issues first.
- b. The Board looked at Respondent's care of six patients for treatment of chronic pain.
- c. The Board found that Respondent did not meet the Board's standards for maintaining adequate medical records or treating chronic pain.
- d. Documentation: The Board found that Respondent failed to maintain adequate medical records, specifically, Respondent failed to adequately document mental status exams, substance abuse histories, and his justification for diagnoses of chronic pain and attention deficit disorder.

- e. The Board found that Respondent did not comply with Board rules regarding the treatment of chronic pain. Specifically, Respondent failed to perform mental status exams, and failed to screen for abuse potential.

3. Mitigating Factors:

In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:

- i. The Respondent has been open and forthright about his recordkeeping deficiencies.
- ii. Respondent had logical reasons for his treatment choices, although they were not documented.
- iii. Respondent was addressing a need in the area, as he is the only private psychiatrist in practice in his small town.
- iv. Respondent has since stopped taking new patients, and welcomes the opportunity to stop treating chronic pain patients.
- v. 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. Texas Occupations Code §164.051(a)(3) – commits or attempts to commit a direct or indirect violation of a rule adopted under this Act, either as a principal, accessory, or

accomplice, specifically Board Rules: 165.1, regarding the maintenance of adequate medical records; and 170.1, regarding the guidelines for treatment of chronic pain.

3. 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.

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

5. 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 Respondent shall be subject to the following terms and conditions:

1. Respondent shall not treat chronic pain patients. The term "chronic pain patients" is defined as patients needing pain treatment beyond three months. If pain treatment must continue beyond that three-month period, the patient must be referred to a pain management specialist.

2. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least eight hours of continuing medical education ("CME") in the area of medical recordkeeping. The course must be approved for Category I credits by the American Medical Association or American Osteopathic Association, and 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.

3. 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.

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

5. 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.

6. 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).

7. 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.

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

9. 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.

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, DOYLE HUBBARD BRASHEAR, 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: March 13, 2010.

Doyle Hubbard Brashear
DOYLE HUBBARD BRASHEAR, M.D.
Respondent

STATE OF Texas

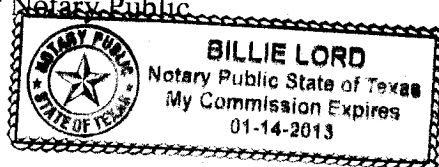
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COUNTY OF Angelina

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 13th day of March, 2010.

Billie Lord
Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 9th day of April, 2010.

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