

SOAH DOCKET NO. 503-24-13134.MD  
TEXAS MEDICAL LICENSE NO. F9730

TEXAS MEDICAL BOARD,  
*Petitioner,*

v.

MICHAEL DAVID LESEM, M.D.,  
*Respondent.*

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

MEDIATED AGREED ORDER

On the 16 day of August, 2024, came to be heard before the Texas Medical Board (“the Board”), duly in session, the matter of the license of Michael David Lesem, M.D. (“Respondent”).

On February 6, 2023, Board Staff notified Respondent that he was invited to an Informal Settlement Conference (“ISC”) to address certain alleged violations of the Texas Medical Practice Act, TEX. OCC. CODE ANN. §§151.001 *et seq.* (Vernon Supp. 2021) (“the Act”) and related Board rules. On August 23, 2023, Respondent appeared in person with counsel, Kerry Bloodsaw, at the ISC in response to the letter of invitation. The Board’s representatives at the ISC were Leanne Burnett, M.D. and Tomeka Herod, a member of the Board. Shane D. Neldner represented Board Staff.

Board Staff was unable to negotiate a resolution of this matter with Respondent, and on March 5, 2024, Board Staff filed a Complaint with the State Office of Administrative Hearings (“SOAH”), alleging violations of the Act and Board Rules. Respondent filed an Answer, General Denial or other pleading in response to the filing of the Complaint. On March 11, 2024, an Administrative Law Judge (“ALJ”) with SOAH, Brent McCabe, issued Order No. 1 – Requiring Parties to Confer. On April 1, 2024, the ALJ issued Order No. 3 – Referring Case for Mediation, which set a mediation deadline of February 7, 2025.

On August 7, 2024, Respondent appeared via videoconference with counsel, Kerry Bloodsaw; ALJ/mediator, Holly Vandrovec; and Board member, James S. Distefano, D.O. Cassie Sapstead represented Board Staff and prepared this Order.

## BOARD CHARGES

Respondent failed to provide reasonable notice of his termination of the physician-patient relationship with one patient. Respondent failed to provide the patient with medication refills to avoid a lapse in the patient's prescription medications. Respondent, and his staff, failed to respond to communications from the patient by not returning the patient's phone calls or allowing the patient to schedule an appointment following the patient's discharge from the hospital.

## BOARD HISTORY

Respondent has previously received a Remedial Plan from the Board.

On March 3, 2023, the Board and Respondent entered into a non-disciplinary Remedial Plan that required Respondent to complete at least 12 hours of continuing medical education (CME) within one year in the following topics: four (4) hours on medical recordkeeping, four (4) hours on risk management, and four (4) hours on appropriate prescribing of controlled substances. The Remedial Plan further assessed a \$500 administrative penalty fee per year. The action was based on Respondent failing to appropriately document his medical care, failing to properly check the Prescription Monitoring Program (PMP), and failing to properly monitor his care and treatment for three patients.

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 and the rules of the Board.
  - b. Respondent currently holds Texas Medical License No. F9730. Respondent was originally issued this license to practice medicine in Texas on August 23, 1981. Respondent is not licensed to practice in any other state.

- c. Respondent is primarily engaged in the practice of psychopharmacology and neuropsychiatry. Respondent is board certified by the American Board of Psychiatry and Neurology, a member of the American Board of Medical Specialties.
2. Specific Panel Findings:
    - a. For one patient, Respondent improperly terminated the physician-patient relationship one day after admitting the patient to the Emergency Room for suicidal ideations and after that Emergency Room had discharged the patient AMA.
    - b. Respondent failed to adequately document patient care and his termination of the physician-patient relationship.
3. Mitigating Factors:
    - a. In determining the appropriate sanctions in this matter, the Panel also considered the following mitigating factors:
      - i. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent neither admits nor denies the information given above. 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, 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)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a rule adopted under this Act; specifically, Board Rule 165.1, failing to maintain an adequate medical record.

4. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent for failing to practice medicine in an acceptable professional manner consistent with public health and welfare, as defined by the following Board Rules: 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(C), failure to use proper diligence in one's professional practice; and 190.8(1)(J), termination of patient care without providing reasonable notice to the patient.

5. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent for engaging in unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided in §164.053 of the Act, or injure the public.

6. 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.

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

8. 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 and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. Within one year from date of the entry of this Order, Respondent shall enroll in and successfully complete the medical recordkeeping course offered by the University of California San Diego Physician Assessment and Clinical Education (PACE) program, or an equivalent course approved in advance by the Executive Director or a designee. To obtain approval for a course other than the PACE 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, 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.

2. Respondent shall be subject to the following terms and conditions for six (6) consecutive monitoring cycles (defined below). Respondent's practice shall be monitored by a physician (monitor), in accordance with §164.001(b)(7) of the Act. The Compliance Division of

the Board shall designate the monitor and may change the monitor at any time for any reason. The monitor shall have expertise in a similar specialty area as Respondent. The Compliance Division shall provide a copy of this Order to the monitor, together with other information necessary to assist the monitor.

a. As requested by the Compliance Division, Respondent shall prepare and provide complete legible copies of selected patient medical and billing records (selected records). The Compliance Division shall select records for at least 30 patients seen by Respondent during each three-month period following the last day of the month of entry of this Order (reporting period). The Compliance Division may select records for more than 30 patients, up to 10 percent of the patients seen during a reporting period. If Respondent fails to see at least 30 patients during any three-month period, the term of this Order shall be extended until Respondent can submit a sufficient number of records for a monitor to review.

b. The monitor shall perform the following duties:

- 1) Personally review the selected records;
- 2) Prepare written reports documenting any perceived deficiencies and any recommendations to improve Respondent's practice of medicine or assist in the ongoing monitoring process. Reports shall be submitted as requested by the Compliance Division; and
- 3) Perform any other duty that the Compliance Division determines will assist the effective monitoring of Respondent's practice.

c. The Compliance Division shall provide to Respondent a copy of any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division. If the chart monitor recommends that Respondent restrict or suspend his or her practice of medicine, Respondent shall be required to personally appear before a panel of Board representatives, upon written request mailed to Respondent's last known address on file with the Board at least 10 calendar days before the requested appearance date. Such appearance shall be for the purpose of consideration of the chart monitor's recommendations of restriction or suspension and held in accordance with 22 TEX. ADMIN. CODE, §187.44. Based upon the panel's findings and recommendations, the Board may modify this Order so that Respondent's practice is restricted or suspended, in accordance with the chart monitor's

recommendations, or take any other action that may be appropriate to resolve the issues presented.

d. The monitor may recommend that Respondent complete a competency evaluation. A monitor's recommendation for a competency evaluation must be reviewed by the Chair of the Disciplinary Process and Review Committee (DPRC) for the purpose of making a determination of whether a competency evaluation is warranted. The Chair may approve or deny the monitor's recommendation. If the Chair approves the recommended competency evaluation, then the following terms shall apply and shall be a requirement of this Order:

1. Within 10 calendar days of being notified by the Compliance Division of the Board that the Chair has approved the monitor's recommendation, Respondent must contact a program approved by the Board and schedule an assessment of at least two days in length to determine Respondent's competence and ability to practice medicine.
2. Respondent shall authorize the approved program to send a written report regarding Respondent's performance and results of the competency evaluation directly to the compliance officer.
3. Upon completion of the competency evaluation, and based upon its results, Respondent must personally appear before a panel of Board representatives, upon written request mailed to Respondent's last known address on file with the Board at least 10 calendar days before the requested appearance date. The panel may make recommendations for appropriate action, including that Respondent follow all the program recommendations, comply with other necessary re-training or re-education measures, and may impose any other restrictions or suspension of Respondent's practice. Section 187.44 of this title (relating to Probationer Show Compliance Proceedings) applies to such appearances.
4. The Board may temporarily restrict or suspend Respondent's license based upon the results of the competency evaluation or Respondent's failure to follow any and all requirements set forth in subsection (c) of this section.

Chapter 187, Subchapter F of this title (relating to Temporary Suspension and Restriction Proceedings) applies to such proceedings.

e. The monitor shall be the agent of the Board but shall be compensated by the Respondent through the Board. Such compensation and any costs incurred by the monitor shall be paid by Respondent to the Board and remitted by the Board to the monitor. Respondent shall not charge the compensation and costs paid to the monitor to any patients.

f. A “monitoring cycle” begins when the Compliance Division selects patient records for review and concludes when Respondent receives the monitor’s report for that group of records and has made payment for the costs of that monitoring cycle.

3. At all times while Respondent is under the terms of this Order, Respondent shall give a copy of this Order to all hospitals, nursing homes, treatment facilities, and other health care entities in Texas where Respondent has privileges, has pending an application for privileges, applies for privileges, or otherwise practices. Within 30 days of being first contacted by the Compliance Division of the Board following entry of this Order, Respondent shall provide to the Compliance Division of the Board documentation, including proof of delivery showing that the Order was delivered to all such facilities.

4. Pursuant to Board Rule 189.15, 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) this Order is stayed or enjoined by Court Order; or (c) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine and such cessation in practice is NOT due to a suspension of Respondent’s license. Respondent shall immediately notify the Board in writing in the event that Respondent leaves Texas to practice elsewhere or ceases active practice for more than 60 consecutive days. Upon Respondent’s return to active practice or return to Texas, Respondent shall notify the Board in writing. Upon return to Texas or active practice, 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. Tolling shall be in accordance with Board Rule 189.15.

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

6. 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.

7. Respondent shall inform the Board in writing of any change of Respondent's practice or mailing address within 10 days of the address change. This information shall be submitted to the Registrations 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 with this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent agrees that any proceeding related to this Order may be held in person, by teleconference, or by videoconference at the discretion of the Board.

8. 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.

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

10. 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 WITH RESPECT TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

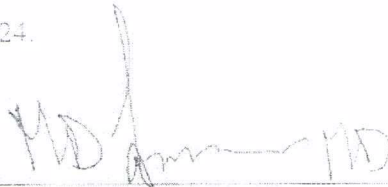


THIS ORDER IS A PUBLIC RECORD.

**(SIGNATURE PAGES FOLLOW)**

I, DAVID LEESE, 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, ORAL, WRITTEN OR OTHERWISE.

DATE: AUGUST 7, 2024.

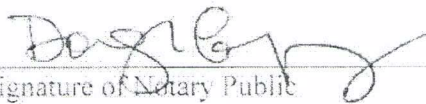


MICHAEL DAVID LESEM, M.D.  
Respondent

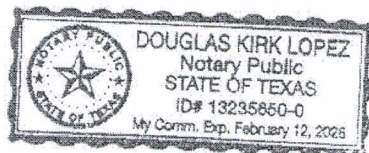
STATE OF TEXAS  
COUNTY OF HARRIS

§  
§  
§

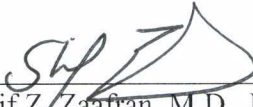
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on  
the 07 day of AUGUST, 2024.

  
Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this  
16 day of August, 2024.

  
\_\_\_\_\_  
Sherif Z. Zaafran, M.D., President  
Texas Medical Board