

LICENSE NO. M-2953

IN THE MATTER OF
THE LICENSE OF
ROBERT BENSON FREELE, JR., M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 10 day of June, 2016, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Robert Benson Freele, Jr., M.D. (Respondent).

On February 24, 2016, Respondent appeared in person, with counsel Kenda Dalrymple, 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 Frank Denton, a member of the Board, and Stanley M. Duchman, M.D., a member of a District Review Committees (Panel). Nikki Karr represented Board staff.

BOARD CHARGES

Board Staff charged that Respondent violated sexual boundaries with one patient by kissing her, which resulted in peer review disciplinary action by Green Oaks Hospital.

BOARD HISTORY

Respondent has not previously been the subject of disciplinary action by 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. M-2953. Respondent was originally issued this license to practice medicine in Texas on February 3, 2006. Respondent is not licensed to practice in any other state.
- c. Respondent is primarily engaged in Psychiatry. Respondent is board certified by the American Board of Psychiatry and the American Board of Neurology, members of the American Board of Medical Specialties.
- d. Respondent is 41 years of age.

2. Specific Panel Findings:

- a. Respondent violated psychiatrist-patient boundaries by establishing a personal relationship with the patient, which involved texting and evidence of a one-time meeting and kiss.
- b. Respondent was the subject of a peer review action by his hospital and was required to complete the Vanderbilt boundaries course, additional CME, two independent psychiatric evaluations, and was restricted to treating male patients only.
- c. A boundaries course such as the one already taken by Respondent would have been a requirement of this Order.

3. Mitigating Factors:

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

- a. Respondent has no prior Board history.
- b. Respondent self-reported the boundary violation to the Board.
- c. The evidence presented indicated that the sexual contact was limited to a single-kiss at which point Respondent broke off contact and advised the patient that she needed to find other psychiatric treatment.
- d. Respondent already completed a boundaries course as part of his compliance with a peer review action.

- e. The peer review order's restriction to treatment of male patients only was lifted by the hospital and the two independent psychiatric evaluations did not indicate Respondent was a threat to commit further boundaries violations.
- f. Respondent was forthright and contrite with the Panel.
- g. 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)(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, as further defined by Board Rule 190.8(1)(C), failure to use proper diligence in one's professional practice.
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 provided by §164.053, or injure the public, as defined by Board Rules: 190.8(2)(E), engaging in sexual contact with a patient; and 190.8(2)(F), engaging in sexually inappropriate behavior or comments directed towards a patient.
5. Section 164.051(a)(7) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's disciplinary action by a licensed hospital, including limitation of hospital privileges, or other disciplinary action as defined by Board Rule 190.8(4), disciplinary action by peers.
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.

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. 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 **and specifically whether Respondent presents a risk to female patients and whether a chaperone should be required.**

(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 following the date of the entry of this Order, Respondent shall take and pass with a score of 75 or above the Medical Jurisprudence Examination (JP Exam) given by the Texas Medical Board. Respondent is allowed three attempts to successfully pass this examination.

Respondent's failure to take and pass the JP Exam within three attempts within one year following the date of the entry of this Order shall constitute a violation of this Agreed Order. After a committee of the Board or a panel of Board representatives (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 Board Representatives have considered the information related to Respondent's violation of this

provision and have determined that Respondent has not fulfilled the requirements of this provision. Although Respondent shall be invited to provide information or testimony to the Board Representatives, Respondent specifically waives any administrative due process under the Medical Practice Act, or the Administrative Procedure Act, for the Board Representatives to consider this information. **THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS 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 AND ALL RIGHTS OF APPEAL.** Respondent shall be notified of any 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.

5. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 8 hours of CME approved for Category I credits by the American Medical Association approved in writing in advance by the Executive Director or a designee in the topic of ethics. To obtain approval for the courses, Respondent shall submit in writing to the Compliance Department 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 Department 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 60 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. 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 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, that the Order was delivered to all such facilities.

8. 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.

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

10. 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.

11. 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 Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code §187.44(4).

12. 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.

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

14. 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.

SIGNATURE PAGES FOLLOW.

I, ROBERT BENSON FREELE, JR., 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: 4/29, 2016.



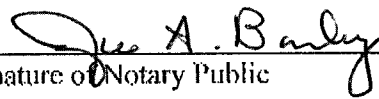
ROBERT BENSON FREELE, JR., M.D.
Respondent

STATE OF TEXAS

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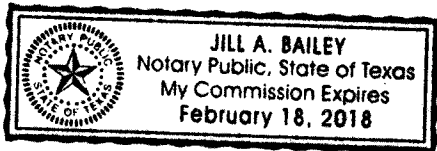
COUNTY OF DALLAS

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 29 day of APRIL, 2016.

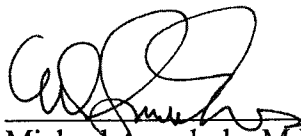


Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
10 day of June, 2016.



Michael Arambula, M.D., Pharm.D., President
Texas Medical Board