

LICENSE NO. J-7923

IN THE MATTER OF  
THE LICENSE OF  
ROY LOUIS CAIVANO, D.O.

BEFORE THE  
TEXAS MEDICAL BOARD

AGREED ORDER

On the 16 day of June, 2017, came on to be heard before the Texas Medical Board (Board), duly in session, the matter of the license of Roy Louis Caivano, D.O. (Respondent).

On April 12, 2017, Respondent appeared in person, with counsel, Bridget Eyler, 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 Duchman, M.D., a member of a District Review Committee (Panel). Jerry Bergman represented Board staff. Michelle A. McFaddin prepared this Agreed Order.

BOARD CHARGES

Board Staff alleged that Respondent prescribed controlled substances to a patient without medical indication or in-office monitoring and that Respondent was romantically involved with this patient while he was treating and prescribing medication to her.

BOARD HISTORY

Respondent has previously been the subject of action by the Board. On August 20, 2013, the Board entered a Remedial Plan requiring Respondent to take four hours of continuing medical education (CME) in the topic of ethics or risk management and pay a \$500 fee. This was the result of Respondent's failure to use the Texas Electronic Death Registry.

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 (Act) or the Rules of the Board.
  - b. Respondent currently holds Texas Medical License No. J-7923. Respondent was originally issued this license to practice medicine in Texas on June 28, 1995. Respondent is not licensed to practice in any other state.
  - c. Respondent is primarily engaged in the practice of internal medicine. Respondent is not board certified.
  - d. Respondent is 66 years of age.
2. Specific Panel Findings:
  - a. Respondent prescribed benzodiazepines and Adderall to a family member in the absence of immediate need and despite his knowledge of a history of substance abuse.
  - b. Respondent's medical records relating to his treatment of this patient were inadequate. Although Respondent maintains that he was continuing treatment initiated by another physician, he failed to document why the treatment was warranted.
3. Mitigating Factors:

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

  - a. Respondent has not been the subject of a formal Board disciplinary action.
  - b. Respondent has rehabilitative potential.
  - c. Respondent implemented remedial measures to correct the alleged violations.
  - d. 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)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a Board rule; specifically, Board Rule 165.1(a), failure to create and maintain an adequate medical record.

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 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; 190.8(1)(D), failure to safeguard against potential complications; and 190.8(1)(M), inappropriate prescribing of dangerous drugs and controlled substances to oneself, family members, or others with whom there is a close personal relationship.

4. Section 164.053(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent writing prescriptions for or dispensing to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs or to a person who the physician should have known was an abuser of the narcotic drugs, controlled substances, or dangerous drugs.

5. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing, administering, or dispensing in a manner inconsistent with public health and welfare, dangerous drugs as defined by Chapter 483, Health and Safety Code; controlled substances scheduled in Chapter 481, Texas Health & Safety Code; or controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 *et seq.*).

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. Respondent shall not treat or otherwise serve as a physician for Respondent's immediate family, or for anyone with whom he has a close personal relationship, and Respondent shall not prescribe, dispense, administer or authorize controlled substances or dangerous drugs with addictive potential or potential for abuse to Respondent or Respondent's immediate family, or to anyone with whom he has a close personal relationship. Respondent may self-administer or administer to Respondent's immediate family, or to someone with whom he has a close personal relationship, only such drugs as prescribed by another physician for legitimate medical purposes and in compliance with the orders and directions of such physician.

2. 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.

3. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 12 hours of continuing medical education (CME) as follows: at least four hours of CME on the topic of medical recordkeeping, at least four hours of CME on the topic of risk management, and at least four hours of CME on the topic of drug-seeking behavior, approved for Category I credits by the American Medical Association or American Osteopathic Association and approved in writing in advance by the Executive Director or an authorized designee. To obtain approval for the course, 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.

4. Respondent shall pay an administrative penalty in the amount of \$3,000 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.

5. 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 showing that the Order was delivered to all such facilities.

6. 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.

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

8. 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.

9. 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).

10. 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.

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

12. 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 this condition, 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.

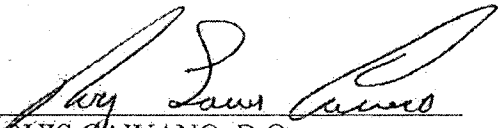
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

(SIGNATURE PAGES FOLLOW)

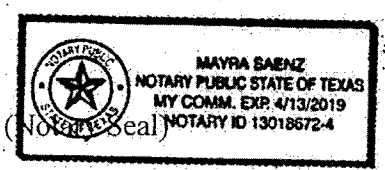
I, ROY LOUIS CAIVANO, D.O., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

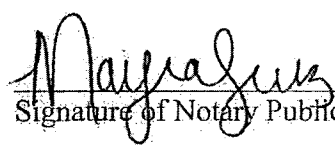
DATED: 5/23/17, 2017.

  
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ROY LOUIS CAIVANO, D.O.  
Respondent

STATE OF Texas §  
COUNTY OF Tarrant §  
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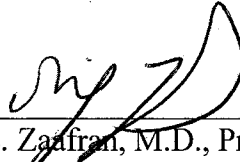
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 23 day of May, 2017.



  
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Signature of Notary Public



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this  
16 day of June, 2017.



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Sherif Z. Zafraan, M.D., President  
Texas Medical Board