

IN THE MATTER OF
THE LICENSE OF
BARLOW SMITH, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 29th day of May, 2009, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Barlow Smith, M.D. ("Respondent").

On February 25, 2009, Respondent appeared in person, with counsel Nina Willis, 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 Paulette B. Southard, a member of the Board, and Leah Mabry, M.D., a member of a District Review Committee. Claudia Kirk represented Board staff.

Upon the recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order.

FINDINGS OF FACT

The Board finds that:

1. 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.

2. Respondent currently holds Texas Medical License No. F-9026. Respondent was originally issued this license to practice medicine in Texas on February 21, 1981. Respondent is licensed in the state of California.

3. 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.

4. Respondent is 79 years of age.

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

6. In June of 2007, a vocation counselor from the Department of Assistive Rehabilitation Services ("DARS") referred P.C. to Respondent's practice for an evaluation and medication management.

7. On June 21 and 28 of 2007, P.C. saw another psychiatrist, who was working in Respondent's office on a temporarily basis, for treatment of her major depressive disorder. P.C. reported a history of sexual abuse in her childhood as part of her evaluation.

8. On July 24, 2007, P.C. had her first office visit with Respondent. Respondent saw P.C. twice in August of 2007, mainly for medication management.

9. On November 5, 2007, P.C. had a final treatment visit with Respondent and her medications were adjusted. Respondent documented "0" in the medical record under the section for return visits. P.C. requested her medical records from Respondent in June of 2008.

10. On December 13, 2007, P.C. went to Respondent's office so he could sign a form she needed for the Prescription Assistance Program. Respondent was at the office, although it was closed at the time. P.C. stated that she was not aware that Respondent would be at the office.

11. Respondent invited her to come inside the office. P.C. began crying and Respondent believed she was signaling an invitation to intimacy. Respondent and P.C. engaged in sexual contact at Respondent's invitation.

12. P.C. told her counselor that, after having the sexual encounter, Respondent talked with her about the importance of keeping it a secret because he was a psychiatrist, no one could know about it. P.C. stated that she had several more meetings with Respondent that resulted in sexual contact.

13. Sometime between July 5 and August 1 of 2008, P.C.'s DARS counselor received a phone message from P.C. The counselor noted that during one of the phone calls, P.C. was crying and upset because she had received a phone call from Respondent's fiancé. P.C. stated

that Respondent's fiancé had called and insulted her, indicating that Respondent had revealed P.C.'s status as his former patient.

14. 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 164.052(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, and as further defined by Board Rule(s): 190.8(2)(R), violations of federal and state laws whether or not there is a complaint, indictment, or conviction, and 190.8(2)(N), failing to maintain the confidentiality of a patient.

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. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

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. This Agreed Order shall constitute a PUBLIC REPRIMAND of Respondent, and Respondent is hereby reprimanded.

2. Within one year following 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 Vanderbilt Course without need for pre-approval by the Executive Director. Respondent may choose in an equivalent course, but only with advanced approved by the Executive Director. To obtain approval for a course other than PACE courses, Respondent shall submit in writing to 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 Board on or before the expiration of the time limit set forth for completion of the course.

3. Respondent shall pay an administrative penalty in the amount of \$3,000 within 180 days following 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.

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 Permits and 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. This Order shall automatically terminate upon the provision of evidence that Respondent has successfully completed the requirements in Ordering Paragraph Nos. 2 and 3.

[SIGNATURE PAGE(S) FOLLOW]

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.

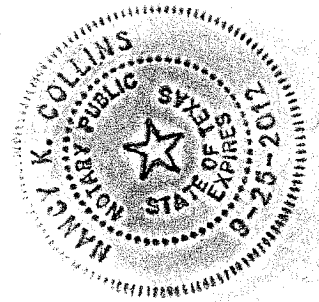
I, BARLOW SMITH, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: June 18, 2009.

Barlow Smith M.D.
BARLOW SMITH, M.D.
Respondent

STATE OF Texas
COUNTY OF Burnet

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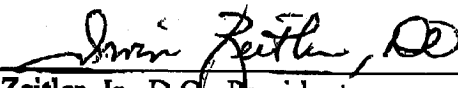


SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 18th day of June, 2009.

Nancy K. Collins
Signature of Notary Public

(Notary Seal)

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
26th day of June, 2009.



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