

H-9656

IN THE MATTER OF
THE LICENSE OF
SUDHEER KAZA, M.D.

§
§
§
§
§

BEFORE THE
TEXAS STATE BOARD
OF MEDICAL EXAMINERS

AGREED ORDER

On this the 22 day of August, 1998, came on to be heard before the Texas State Board of Medical Examiners ("the Board" or "the Texas Board"), duly in session the matter of the license of Sudheer Kaza, M.D. ("Respondent"). On March 13, 1997, Respondent appeared in person with counsel, Michael R. Sharp, at an Informal Settlement Conference/Show Compliance Proceeding in response to a letter of invitation from the staff of the Board.

The Board was represented at the Informal Settlement Conference/Show Compliance Proceeding by R. Russell Thomas, Jr., D.O., a member of the Board, and Ann Nolen, D.O., a district review committee member. Upon 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 Order as set forth herein:

FINDINGS OF FACT

1. Respondent, Sudheer Kaza, M.D., holds Texas medical license H-9656.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied.
3. Respondent has been licensed to practice in Texas since August 23, 1991.
4. Respondent is engaged in the practice of psychiatry in the Beaumont, Texas, area.
5. In April 1995, Respondent began treating an adult male patient for depression and addiction.
6. Respondent's treatment of the adult male patient consisted of patient office visits initially two to three visits weekly, and prescribing anti-anxiety and anti-depression medication, and

then tapering to weekly and bi-weekly visits as the patient progressed.

7. This method of treatment continued until November, 1995, when the patient was a no show for two visits in December and one in January, 1996, and was not seen again.

8. In July, 1995, Respondent was informed by the patient's wife that the patient would become suicidal because of financial hardship.

9. Respondent documented that Respondent believed that the patient might become suicidal.

10. Instead of appropriately addressing the patient's suicidal mental state through medically recognized intervention, Respondent loaned the patient and his wife several thousand dollars in order to assist the family. The loan was secured by a promissory note between Respondent and the patient, and the patient's wife who had solicited the loan.

11. Despite entering into a business relationship with the patient and his wife, Respondent failed to terminate the physician-patient relationship.

12. Respondent referred the patient to another physician and the patient refused because of the progress he was making in treatment with Respondent.

13. In January, 1996, a dispute arose between Respondent and the patient's wife as to repayment of the business transaction, and Respondent last saw the patient in November, 1996.

14. The patient or his wife attempted to subsequently obtain medications from a pharmacy in Respondent's name.

15. The patient credits Respondent with curing his addiction.

16. After the loan was defaulted, Respondent learned that the patient's wife had a history of arrests for illegal financial transactions.

17. In Respondent's medical care of the patient, Respondent failed to do the following:

- failed to make adequate medical entries into the patient's record
- failed to maintain proper physician-patient boundaries by making a loan to the patient

18. In 1993, Respondent began treating an adult female patient who presented with complaints of feeling depressed. Respondent diagnosed her as suffering from major depression during the initial patient visit.

19. From the initial patient visit through August, 1996, Respondent treated the patient on a regular and continuous basis.

20. Respondent's treatment of the adult female patient consisted primarily of prescribing Schedule IV controlled substances, such as Halcion and Xanax for anxiety and Darvocet and Schedule III controlled substances such as Vicodin for multiple somatic complaints, including headaches, joint pains, and body aches following explanation of leaking breast implants. Respondent prescribed these drugs without adequately documenting the medical rationale to support such prescribing.

21. Respondent failed to document in the patient's medical record all the drugs which he prescribed for her.

22. In November, 1994, during the course of Respondent's physician-patient relationship with the adult female patient, Respondent helped the patient to obtain a loan.

23. After entering into the business relationship, Respondent failed to terminate the physician-patient relationship and failed to refer the adult female patient to another physician. Instead, Respondent continued to treat the adult female patient.

24. The patients referenced in the above findings of fact are not related in any manner. The events involving the adult male patient and adult female patient, respectively, were separate patient cases involving separate and unrelated facts.

25. Separate and apart from his treatment of the aforementioned patients, Respondent wrote prescriptions for controlled substances such as Dexedrine, Phentermine and Restoril without proper documentation.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes the following:

1. Respondent has violated Section 3.08(18) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, which authorizes the Board to take disciplinary action against Respondent based on Respondent's professional failure to practice medicine in an acceptable manner consistent with public health and welfare.

2. Section 4.02(h) of the Act authorizes the Board to resolve and make a disposition of

this matter through an Agreed Order.

3. Section 4.02(i) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Civil Evidence for purposes of civil litigation.

4. Section 4.12 of the Act authorizes the Board to take action in regard to Respondent and Respondent's medical license as set forth below.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent's Texas medical license is hereby RESTRICTED under the following terms and conditions for three (3) years from the date of the signing of this Agreed Order by the presiding officer of the Board:

1. Respondent shall become familiar with and comply with all statutes, rules, and regulations, both State and Federal, pertaining to the prescribing, administering, dispensing, supplying, storing, and disposal of dangerous drugs and controlled substances.

2. Respondent shall refrain from the prescription or administration of any drug for any patient unless the drug is medically indicated and is prescribed in therapeutic doses. Respondent shall not prescribe, administer, or dispense any drug with a potential for abuse to any person unless there is a legitimate medical and therapeutic need after the Respondent has taken an appropriate medical history and conducted an examination which is clinically adequate to determine a proper diagnosis and course of treatment. Respondent shall conduct adequate follow-up examinations on all patients to determine whether the course of treatment, including the prescribing of drugs, is appropriate for the medical condition of the patient and to determine if the drug regimen being prescribed or administered should be modified in any way.

3. For purposes of this Agreed Order, dangerous drugs with addictive potential or potential for abuse shall include, but shall not be limited to, Nubain, Soma, Phenergan, Talwin, Propofol, Butalbital, and their trademark or generic equivalents in any form, as well as any chemical or chemical combination substantially similar or equivalent to such drugs.

4. Respondent shall maintain a logbook of all prescriptions written by Respondent for controlled substances or dangerous drugs with addictive potential or potential for abuse in

chronological order by date issued. This logbook shall be made available for inspection by compliance officers, investigators, and other representatives of the Board during regular office hours without notice to Respondent. For each prescription or refill, Respondent shall legibly record in the logbook the specific dosage and amount of medication authorized, the time and date of the prescription, the patient's name, the number of refills authorized, and the medical basis for the prescription and number of authorized refills.

5. Respondent shall maintain adequate medical records on all patient office visits, consultations, surgeries performed, drugs provided, and treatment rendered by Respondent. These records will include at a minimum, the patient's name and address, vital signs and statistics, chief complaints, history and physical findings, diagnosis and basis for diagnosis, treatment plan for each patient visit or operative procedure, a notation of all medications prescribed or otherwise provided to the patient including the quantity, dosage, and rationale for providing the medications, and detailed records of all follow-up visits. Each visit shall be noted in the patient record and dated accordingly. Respondent shall make all patient medical records available for inspection and copying upon the oral or written request of Board consultants, investigators, compliance officers, attorneys, or the Executive Director of the Board.

6. Respondent shall obtain at least fifty (50) hours per year of Continuing Medical Education (CME) approved for Category I credits by the American Medical Association or by the American Osteopathic Association. Each year Respondent shall submit to the Board proof of the prior year's CME attendance by the Order's anniversary date. Respondent shall submit proof to the Board of CME hours attended in the current year even though such may not meet the 50 hour requirement. A copy of the attendance certificate issued or a detailed report which can be readily verified by the Board shall satisfy this requirement.

7. Within one (1) year from the date of the signing of this Agreed Order by the presiding officer of the Board, Respondent shall attend Continuing Medical Education (CME) courses approved for Category I credits by the American Medical Association or by the American Osteopathic Association as follows: a course addressing physician-patient boundaries and a course addressing psychiatric transference issues. Upon completion of the required CME, Respondent shall submit proof to the Board of successful completion of the CME. A copy of attendance certificates

issued or a detailed report which can be readily verified by the Board shall satisfy this requirement.

8. Respondent shall obtain ten (10) hours of an ethics course or courses or an ethics program per year for each year this Agreed Order is in effect. Documentation of attendance and successful completion of each yearly requirement for ethics shall be delivered to the Director of Compliance for the Board on or before the end of each year this Agreed Order is in effect. This ethics instruction is not limited to medical ethics.

9. Respondent shall pay an administrative penalty in the amount of Five Thousand Dollars (\$5,000.00) within sixty (60) days of the signing of this Agreed Order by the presiding officer of the Board.

10. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas State Board of Medical Examiners and shall be submitted to the Director of Compliance for the Board for routing so as to be remitted to the comptroller of Texas for deposit in the general revenue fund.

11. Respondent's failure to pay the administrative penalty as ordered may constitute grounds for further disciplinary action by the Board based on unprofessional and dishonorable conduct likely to deceive or defraud the public or injure the public as provided for in Section 3.08(4) of the Act, and may result in a referral by the Executive Director of the board for collection by the Office of the Attorney General.

12. To verify that Respondent has complied with and is in compliance with the terms and conditions of this Agreed Order, Respondent shall fully cooperate with the Board and the Board staff, including but not limited to, Board attorneys, investigators, compliance officers, consultants, and other such employees or agents of the board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Agreed Order. Failure to cooperate as required by this paragraph and terms of this Agreed Order may constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

13. Upon request by the Board or a member of the Board staff, Respondent shall immediately execute, and provide as needed, any and all releases as may be requested by the Board or Board staff to obtain copies of peer review records pertaining to Respondent of any health care entity where respondent has privileges, has had privileges, or is applying for medical privileges.

Failure to execute and provide such releases may constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

14. Respondent shall give a copy of this Agreed Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Respondent has privileges, has applied for privileges, or applies for privileges.

15. Respondent shall ensure that any inquiries which are made by any person or entity through any means to Respondent or Respondent's employees regarding Respondent's Texas medical licensure status are answered by accurate reference to this Agreed Order.

16. Upon request by any person or entity, either orally or in writing, Respondent shall provide a complete and legible copy of this Agreed Order to the requesting party within ten (10) calendar days of the request.

17. Respondent shall personally appear before the Board, a committee of the board, or a panel of Board representatives, at least two (2) times each year that Respondent is under the terms and conditions of this Agreed Order. Such appearances shall be for the purpose of reporting on and addressing issues related to Respondent's compliance with the terms and conditions of this Agreed Order.

18. Respondent shall personally appear before the Board, a committee of the Board, or panel of Board representatives, upon written request mailed to Respondent's last known address on file with the Board at least ten (10) calendar days before the requested appearance date. Such appearances shall be for the purpose of reporting on and addressing issues related to Respondent's compliance with the terms and conditions of this Agreed Order.

19. Entry of this Agreed Order by the Board shall also constitute a PUBLIC REPRIMAND of Respondent, and Respondent is hereby reprimanded.

20. The time period of this Order shall be extended for any period of time in which Respondent subsequently resides or practices medicine outside the State of Texas, is in official retired status with the Board, or for any period during which Respondent's license is subsequently cancelled for nonpayment of licensure fees. If Respondent leaves Texas to live or practice medicine elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. Upon Respondent's return to practice in Texas or

Respondent's relicensure, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order when Respondent left the practice of medicine in Texas, retired, or had his or her license cancelled for nonpayment of licensure fees.

21. Respondent shall comply with all the provisions of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, and other statutes regulating the practice of medicine, as is required by law for physicians licensed by the Board.

22. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within ten (10) days of the address change. This information shall be submitted to the Verification Department and the Director of Compliance for the Board. Failure to provide such information in a timely manner may constitute a basis for disciplinary action by the Board against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

23. Any violation of the terms, conditions, or requirements of this Order by Respondent may constitute a basis for disciplinary action by the Board against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act. Any violation of the terms, conditions, or requirements of this Order by Respondent may constitute evidence of unprofessional or dishonorable conduct likely to deceive or defraud the public or injure the public.

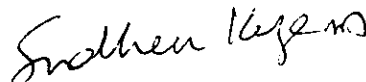
24. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following entry of this Order. If, after the passage of the 12 month period, Respondent wishes to seek amendment or termination of these conditions, 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. 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. NOTHING IN THIS ORDER SHALL BE DEEMED A WAIVER OF RESPONDENT'S RIGHTS UNDER STATUTE OR THE UNITED STATES OR TEXAS CONSTITUTIONS TO APPEAL AN ORDER OR ACTION OF THE BOARD SUBSEQUENT TO THIS AGREED ORDER EXCEPT AS RESPONDENT MAY HAVE OTHERWISE AGREED TO HEREIN. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, SUDHEER KAZA, 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: August 5, 1998



SUDHEER KAZA, M.D.
RESPONDENT

STATE OF Texas
COUNTY OF TRAVIS

§
§
§

BEFORE ME, the undersigned Notary Public, on this day personally appeared SUDHEER KAZA, M.D., known to me to be the person whose name is subscribed to this instrument, an Agreed Order, and who after being by me duly sworn, on oath, stated that he executed the same for all purposes expressed therein.

Given under my hand and official seal and office this 5th day of August, 1998.

Kimberly A. Stampler
Signature of Notary Public

(Notary Seal)

Printed or typed name of Notary Public
My commission expires:



SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 22 day of August, 1998.

William H. Fleming, III, M.D.
William H. Fleming, III, M.D.
President, Texas State Board of
Medical Examiners