

LICENSE NO. F-9026

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

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 26TH day of August, 2011, 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 May 19, 2011, Respondent appeared in person, with counsel Dan Ballard, at an Informal Show Compliance Proceeding and Settlement Conference (ISC) in response to a letter of invitation from the staff of the Board. The Board's representatives were Wynne Snoots, M.D., a member of the Board, and Ruthie Burrus, a member of a District Review Committee (Panel). Claudia Kirk represented Board staff.

BOARD CHARGES

Respondent had insufficient medical record documentation for pain medication and stimulants prescribed for four patients.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board. The Orders are as follows:

- a. Board entered an Agreed Order on June 2009 (2009 Order), the case was related to sexual boundaries. Respondent was publicly reprimanded, required to take a boundaries course, and pay a \$3,000 administrative penalty.
- b. The 2009 Order terminated in December 2009.

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. F-9026. Respondent was originally issued this license to practice medicine in Texas on February 21, 1981. Respondent is also licensed to practice in New York and California.
- c. 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.
- d. Respondent is 81 years of age.

2. Specific Panel Findings:

- a. Respondent's medical records did not support his treatment regimen and did not delineate his thought process.
- b. Respondent, however, was able to clearly explain that his treatment choices met the standard of care.

3. Mitigating Factors:

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 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 rule adopted under this Act, specifically Board Rule 165.1, failure to maintain an adequate medical record for each patient that is complete, contemporaneous, and legible.
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.
4. 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. Within one (1) year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least eight (8) hours of continuing medical education (CME) approved for Category I credits by the American Medical Association in the topic of medical recordkeeping. The course must be approved in writing in advance by the Compliance Division of the Board. To obtain approval for the 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 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 Division of the Board 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.

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

3. 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.

4. 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).

5. 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.

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

7. This Order shall automatically terminate upon Respondent's submission of sufficient evidence to the Compliance Division of the Board that Respondent successfully completed the requirements ordered in Ordering Paragraph No. 1.

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 PAGE(S) FOLLOW]

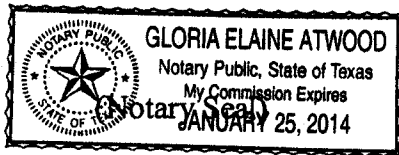
I, BARLOW SMITH, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: June 17, 2011.

Barlow Smith, M.D.
Barlow Smith, M.D.
Respondent

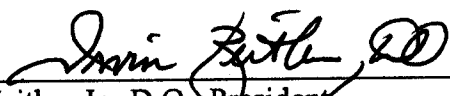
STATE OF Texas §
COUNTY OF Burnet §
§

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 17th day of June, 2011.



Gloria Elaine Atwood
Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
26TH day of AUGUST, 2011.



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