

LICENSE NO. D-4359

IN THE MATTER OF
THE LICENSE OF
ROBERT G. WILKERSON, JR., M.D.

BEFORE THE
TEXAS MEDICAL BOARD

MEDIATED AGREED ORDER

On the 27 day of August, 2010, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of ROBERT G. WILKERSON, JR., M.D., ("Respondent").

Respondent received notice of an Informal Settlement Conference ("ISC") but failed to appear at the ISC, failed to provide notice or reasons for this failure, and failed to file a Motion for Continuance. The ISC was conducted in Respondent's absence in accordance with §2001.054(c), GOV'T CODE and §164.004 of the Act on September 2, 2008. All procedural rules were complied with, including but not limited to, Board Rules 182 and 187, as applicable. The Board's representatives were Timothy Webb, J.D., a member of the Board, and Janet Tornelli-Mitchell, M.D., a member of a District Review Committee. Lee Bukstein represented Board staff.

The matter did not settle this matter and the Board filed a formal complaint at the State Office of Administrative Hearings ("SOAH"). Prior to this matter going to trial, the parties agreed to mediation.

The mediation was held on July 9, 2010. Respondent appeared in person with counsel, Jeff Henry. The Board was represented by Allan N. Shulkin, M.D., a member of the Board, and staff attorney, John Heisler.

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 Mediated 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 Act or the Rules of the Board.

2. Respondent currently holds Texas Medical License No. D-4359. Respondent was originally issued this license to practice medicine in Texas on August 26, 1967. Respondent is not licensed to practice in any other state.

3. Respondent is primarily engaged in general practice. Respondent is not board certified. Respondent is 65 years of age.

4. Probationer has not previously been the subject of disciplinary action by the Board.

5. Beginning June 2005, Respondent worked as medical director for the South Texas Wellness Centers in the Houston, Texas, area.

6. Respondent initiated standing medical orders for personnel under the supervision of Respondent to assess and record minimal evaluations and write prescriptions for patients.

7. Respondent also failed to require office personnel under his supervision to follow the written protocols that he had created regarding requirements for patients being prescribed dangerous drugs and controlled substances.

8. 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 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 165.1, which requires the maintenance of adequate medical records.

3. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 170.3, regarding the treatment of pain.

4. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 193.2(12) and (13), which requires Respondent to establish and meet the minimum requirements for Standing Delegation and Standing Medical Orders, respectively.

5. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 193.4(1)-(8) by exceeding the permissible scope of Standing Delegation and Standing Medical Orders.

6. 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:

- a) Board Rule 190.8(1)(A), failure to treat patients according to the generally accepted standard of care;
- b) Board Rule 190.8(1)(C), failure to use proper diligence in one's professional practice;
- c) Board Rule 190.8(1)(H), failure to disclose reasonable alternative treatments to a proposed procedure or treatment; and,
- d) Board Rule 190.8(1)(L), prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient.

7. 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.

8. Sections 164.052(a)(5) and 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.

9. Sections 164.052(a)(5) and 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; or controlled substances scheduled in Chapter 481 Health and Safety Code; or controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. 801 et seq.).

10. Section 164.053(a)(8) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to supervise adequately the activities of those acting under Respondent's supervision.

11. Section 164.0025 of the Act and Board Rule 187.14 authorize the Board to resolve and make a disposition of this matter through a Mediated Agreed Order.

12. Section 164.002(d) of the Act provides that this Mediated 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. For a period of three years following the date of the entry of this Order, Respondent's practice shall be monitored by a physician ("monitor"), in accordance with §164.001(b)(7) of the Act. The Compliance Division of the Board shall designate the monitor and may change the monitor at any time for any reason. The monitor shall have expertise in a

similar specialty area as Respondent. The Compliance Division shall provide a copy of this Order to the monitor, together with other information necessary to assist the monitor.

a. As requested by the Compliance Division, Respondent shall prepare and provide complete legible copies of selected patient medical and billing records ("selected records"). The Compliance Division shall select records for at least 30 patients seen by Respondent during each three-month period following the last day of the month of entry of this Order ("reporting period"). The Compliance Division may select records for more than 30 patients, up to 10 percent of the patients seen during a reporting period. If Respondent fails to see at least 30 patients during any three-month period, the term of this Order shall be extended until Respondent can submit a sufficient number of records for a monitor to review.

b. The monitor shall perform the following duties:

1) Personally review the selected records;

2) Prepare written reports documenting any perceived deficiencies and any recommendations to improve Respondent's practice of medicine or assist in the ongoing monitoring process. Reports shall be submitted as requested by the Compliance Division; and

3) Perform any other duty that the Compliance Division determines will assist the effective monitoring of Respondent's practice.

c. The Compliance Division shall provide to Respondent a copy of any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division.

d. The monitor shall be the agent of the Board, but shall be compensated by the Respondent through the Board. Such compensation and any costs incurred by the monitor shall be paid by Respondent to the Board and remitted by the Board to the monitor. Respondent shall not charge the compensation and costs paid to the monitor to any patients.

3. Within one year from the entry of this Order, Respondent shall enroll in and successfully complete at least 20 hours of continuing medical education ("CME") courses approved for Category I credits by the American Medical Association, such CME to be divided as follows: 10 hours in risk management, and 10 hours in ethics. To obtain approval for the

courses, Respondent shall submit in writing, in advance, to the Manager of Compliance for the Board information on each 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 Manager of Compliance for the Board on or before the expiration of the time limit set forth for completion of the course. Respondent must personally attend the additional CME courses. Internet completion is not considered personal attendance. The CME referred to herein shall be in addition to CME required for license renewal.

4. Respondent shall pay an administrative penalty in the amount of \$7500 within 90 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. Respondent shall comply with all the provisions of the Act and other statutes regulating Respondent's practice.

6. 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.

7. Respondent shall inform the Board in writing of any change of Respondent's mailing or practice address within 10 days of the address change. This information shall be submitted to the Permits Department and the Director of Enforcement for 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 Mediated 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).

8. 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.

9. Respondent shall not serve as a supervisor for a physician assistant, advance practice nurse or a surgical assistant for a period of three years following the entry date of this Order.

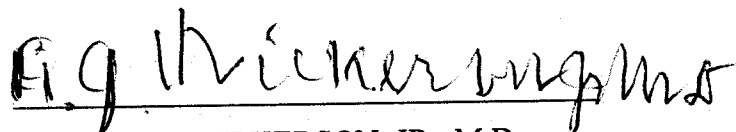
10. This Order shall automatically terminate upon the successful completion by Respondent of the requirements of Ordering Paragraph Nos. 2, 3 and 4.

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.

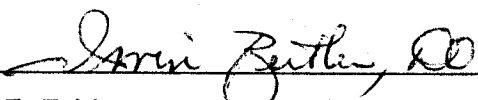
THIS ORDER IS A PUBLIC RECORD.

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

DATED: July 12, 2010.


ROBERT G. WILKERSON, JR., M.D..
Respondent

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
27 day of August, 2010.



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