

IN THE MATTER OF
THE LICENSE OF
RONALD M. PENCE, M.D.

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BEFORE THE
TEXAS STATE BOARD
OF MEDICAL EXAMINERS

AGREED ORDER

On this the 9th day of August, 1997, 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 Ronald M. Pence, M.D. ("Respondent"). On May 16, 1996, Respondent appeared in person with counsel, David Sweat, 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 Larry Hufford, Ph.D., 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, Ronald M. Pence, M.D., holds Texas medical license H-2677.
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 is not certified by the American Board of Medical Specialties, but is primarily engaged in the practice of child and adolescent psychiatry.
4. Respondent has been licensed to practice medicine in Texas for approximately ten (10) years.
5. Respondent's practice involves psychiatric care and treatment of children, adolescents, and adults.

6. During 1993 and 1994, Respondent developed a romantic and sexual relationship with an adult female registered nurse.

7. During 1993 and 1994, Respondent also treated this adult female through initiation of prescription medications including Prozac and Klonopin.

8. During the period of this relationship, Respondent also modified the dosage of estrogen medications provided to this patient.

9. Respondent failed to maintain medical records on his care and treatment of this adult female patient.

10. On or about April 26, 1994, the patient ingested an overdose of medications and called Respondent from a local motel room.

11. Subsequently, Respondent drove to the motel and transported the patient to a local hospital emergency room. Respondent provided all information of which he was aware to hospital staff regarding the medications consumed by the patient.

12. Respondent has entered into this Agreed Order pursuant to the provisions of Sections 4.02(h) and (i) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b.

13. So as to avoid the expense and inconvenience of litigating the allegations, in lieu of further investigation or a hearing, Respondent agrees to the entry of this Agreed Order, and further agrees to comply with the terms and conditions set forth herein.

14. Respondent has not previously been the subject of disciplinary action by the Board.

CONCLUSIONS OF LAW

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

1. Respondent has violated Section 3.08(4) 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 unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.

2. 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.

3. Section 4.02(h) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

4. 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.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent's Texas medical license is hereby SUSPENDED, however, the suspension is hereby fully PROBATED for the period of four (4) years, subject to the following terms and conditions:

1. Prior to the entry of this Agreed Order, Respondent provided the Executive Director of the Board with a report of psychological and neuropsychiatric evaluation conducted by or under the direction of a psychiatrist certified by the American Board of Medical Specialties in Psychiatry. The psychiatrist was approved in writing in advance by the Executive Director of the Board to perform this evaluation, which addressed Respondent's current mental and physical status and clearly indicated that Respondent is able to safely practice medicine. Respondent shall comply with the recommendation of the approved psychiatrist to present for a reevaluation within three (3) months from July 14, 1997, the date of the original evaluation, and to contact the psychiatrist should any significant deterioration occur. A copy of this Agreed Order was provided by Respondent to the approved psychiatrist as a reference for the evaluation, and as authorization for the psychiatrist to provide to the Board any and all records and reports related to the evaluation conducted pursuant to this paragraph. Respondent executed a release for medical records necessary to effectuate the provisions of this paragraph. A copy of this Agreed Order, when fully executed, shall be provided by Respondent to the approved physician as a reference for evaluation and treatment, and as authorization for the physician to provide to the Board any and all records and reports related to the evaluation and treatment which was conducted pursuant to this paragraph. Respondent shall execute any and all releases for medical records necessary to effectuate the provisions of this paragraph.

2. Respondent shall not unilaterally withdraw from the evaluation, care, or treatment required by this Agreed Order, and shall request and authorize in writing that Respondent's physician

or any other individuals involved in Respondent's care and treatment immediately report to the Board any unilateral withdrawal from treatment by Respondent.

3. Respondent's unilateral withdrawal from evaluation, treatment, or medical care required by this Agreed Order shall constitute unprofessional and dishonorable conduct, a violation of this Agreed Order, and grounds for disciplinary action under Sections 3.08(4), 4.01, 4.11, 4.12 and 4.13 of the Act. Section 4.13 authorizes the Board to temporarily suspend the license of a physician who in the determination of the Disciplinary Panel of the Board constitutes a continuing threat to the public welfare.

4. Respondent's medical practice, including any office and surgical practice, shall be monitored by a licensed Texas physician approved in advance in writing by the Executive Director of the Board based on the monitoring physician's licensure status and history, general qualifications, area of specialty, business affiliation with Respondent, and specialty certifications and training. Respondent shall provide a copy of this Agreed Order to the monitoring physician and shall allow the monitoring physician random access to Respondent's patient medical records, patient billing records, and offices. The monitoring physician shall review Respondent's medical practice and shall counsel Respondent on any perceived deficiencies. Respondent shall follow the appropriate guidance provided by the monitoring physician and shall ensure that quarterly reports from the monitoring physician are routed in a timely manner to Board representatives through the Director of Compliance for the Board. Any costs incurred by the monitoring physician shall be the responsibility of Respondent and shall not be charged to patients.

To request approval of a monitoring physician, Respondent shall submit in writing to the Director of Compliance of the Board the name and practice address of one physician who is willing and able to effectively monitor Respondent's office and surgical practice. The monitoring physician may be changed at any time by the Executive Director of the Board pursuant to a written request by Respondent based upon good cause shown by Respondent for such a change.

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 adopt or establish a system of patient record keeping and billing, if applicable, to ensure that all patient records accurately reflect the patient's name, the service rendered, the date of the service, and the amount charged or to be charged for the service, if applicable.

7. During the period of probation, 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. This CME will also satisfy the requirements of Board Rule 22, TAC Section 166.2. At least five (5) hours shall be in the area of Ethics. 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.

8. Within one (1) year following the signing of this Agreed Order by the presiding officer of the Board, Respondent shall take and pass the Medical Jurisprudence Examination (JP Exam) given by the Texas State Board of Medical Examiners. In the event that Respondent does not take and pass the JP Exam within one (1) year following signing of this Agreed Order by the presiding officer of the Board, 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 Respondent has not fulfilled the requirements of this provision by passage of the JP Exam within the allotted time period. THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING 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.

Respondent shall be notified of any such suspension by certified mail, return receipt requested, to his last known address on file with the Board. If Respondent's medical 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 medicine in Texas and is otherwise physically and mentally competent to resume the practice of medicine in this state.

9. Respondent shall personally appear before the Board, a committee of the Board, or a panel of Board representatives, at least one (1) time 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.

10. Respondent shall pay an administrative penalty in the amount of five thousand dollars (\$5,000.00) within ninety (90) days of the signing of this Agreed Order by the presiding officer of the Board.

11. 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.

12. Respondent's failure to pay the administrative penalty as ordered shall 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.

13. 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 the terms of this Agreed Order shall constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

14. Upon request by the Board or a member of the Board staff, Respondent shall immediately execute, and provide as needed, any and all medical releases as may be requested by the Board or Board staff to obtain copies of medical treatment records of Respondent to include, but not limited to, any such releases required to obtain treatment records of Respondent protected by 42 C.F.R. Chapter 1, subchapter A, part 2, and any subsequent amendments. Failure to execute and provide such releases shall constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

15. 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 where Respondent has or has had privileges. Failure to execute and provide such releases shall constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

16. When requested by the Board or Board staff, Respondent shall provide to Board staff complete legible written reports regarding any aspect of Respondent's physical or mental condition and Respondent's compliance with the terms of this Agreed Order.

17. 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.

18. 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.

19. 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.

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 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 shall 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 shall 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 shall 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, RONALD M. PENCE, 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: July 26, 1997

Ronald M Pence, M.D.
RONALD M. PENCE, M.D.
RESPONDENT

STATE OF Texas
COUNTY OF Tarrant

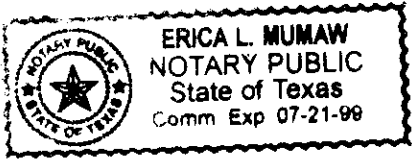
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BEFORE ME, the undersigned Notary Public, on this day personally appeared RONALD M. PENCE, M.D., known to me to be the person whose name is subscribed to this instrument, an Agreed Order, and who after being by me duly sworn, on oath, stated that he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

Given under my hand and official seal and office this 26th day of July, 1997.

Erica L. Mumaw
Signature of Notary Public

(Notary Seal)



Erica L. Mumaw
Printed or typed name of Notary Public

My commission expires: 7-21-99

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 9th day of August, 1997.

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