LICENSE NO. K-0420

IN THE MATTER OF

THE LICENSE OF

RAYMOND RICHARD BIXBY, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER ON FORMAL FILING

On the 10 day of June, 2016, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Raymond Richard Bixby (Respondent).

On August 12, 2014, Respondent appeared in person, without counsel, 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 Stanley S. Wang, M.D., a member of the Board, and Sharon Barnes, a member of a District Review Committee (Panel). Nikki Karr represented Board staff.

The matter did not settle and Staff filed a formal complaint at the State Office of Administrative Hearings under SOAH Docket No. 503-15-5645.MD. Prior to a hearing on the merits the parties engaged in settlement negotiations and reached this agreement. Respondent was not represented by counsel. Susan Rodriguez represented Board Staff.

BOARD CHARGES

Board staff charged Respondent with violations regarding pain management, including violating pain management clinic registration requirements, non-therapeutically prescribing large quantities of controlled substances to multiple patients without legitimate medical need, failing to meet the standard of care with respect to his care and treatment of the patients at the clinic, and failing to keep adequate medical and billing records for these patients. In addition, it was alleged that Respondent failed to respond to Board Staff’s subpoena for medical records for a patient.

BOARD HISTORY

Respondent has not previously received a disciplinary order from the Board.
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. K-0420. Respondent was originally issued this license to practice medicine in Texas on August 17, 1996. Respondent is not licensed to practice in any other state.
   c. Respondent is primarily engaged in the practice of Family Medicine and Geriatrics. Respondent is not board certified.
   d. Respondent is 63 years of age.

2. **Specific Findings:**
   a. Respondent admits that he does not make regular referrals to specialists but occasionally makes referrals to physical therapy. First-time pain patients, however, received narcotic medications without diagnostic testing, evaluation, or review of prior medical records.
   b. Respondent indicated that less than 50 percent of his patients are chronic pain patients.
   c. Respondent's medical records are handwritten, illegible, and incomplete. Respondent explained that he does not have the resources to implement an electronic medical records system and that he does not even have a computer in his office.
   d. Respondent failed to respond to the Board subpoena for records for one patient out of spite because he did want to respond and was angry at the request.
e. Respondent treated and prescribed to that patient without documentation to support or justify prescribing and treatment.

f. Respondent indicated that he initially saw the patient on September 16, 2012, for opioid dependence and treated him with Suboxone. He also admitted to prescribing Adderall (20 milligrams) for the patient’s Attention Deficit Hyperactivity Disorder (ADHD) based on the patient’s inability to focus at work.

g. Respondent failed to document that he received a call from the patient’s wife, who indicated the patient was smoking crack. Respondent stopped prescribing Adderall to the patient, and from that point Respondent only met with the patient with another person present in order to have a witness. Respondent did not terminate the patient.

h. Respondent states that he did not perform drug screens on the patient but did have a Suboxone treatment contract dated September 6, 2012.

3. **Mitigating Factors:**

a. Respondent does have some chronic pain patients sign pain contracts.

b. Respondent represented that he does take insurance; sees walk-in patients; and that only approximately 20-25% of his patients pay by cash.

c. Respondent claimed that he sees only approximately eight patients per day and that his clinic is open four and a half days per week.

d. According to Respondent, he does perform imaging studies on some, but not all of his chronic pain patients.

e. Respondent stated that he signed a waiver for Suboxone with the Drug Enforcement Administration (DEA) and no longer prescribes Suboxone as of December 2013.

f. The Panel found that there was insufficient evidence that Respondent was operating an illegal pain management clinic.

g. Respondent neither admits nor denies the information given above. 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)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent’s commission of an act prohibited under Section 164.052 of the Act.

3. 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 Rules: 165.1, failure to maintain an adequate medical record; 170.3, failure to adhere to those established guidelines and requirements for the treatment of pain; and 195.2, failure to properly register a pain management clinic.

4. 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 Board Rules: 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(B), negligence in performing medical services; 190.8(1)(C), failure to use proper diligence in one’s professional practice; 190.8(1)(D), failure to safeguard against potential complication; 190.81(1)(G), failure to disclose reasonably foreseeable side effects of a procedure or treatment; and 190.8(1)(H), failure to disclose reasonable alternative treatments to a proposed procedure or treatment.

5. 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, as further defined by Board Rules: 190.8(2)(B), failure to comply with Board request for information; 190.8(2)(D), failure to cooperate with Board staff; and 190.8(2)(R), commission of violations of federal and state laws whether or not there is a complaint, indictment, or conviction.

6. Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent’s commission of an act that violates a law of this state that is connected with Respondent's practice of medicine.

7. Section 164.053(a)(3)(B) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent writing prescriptions for or dispensing to a person who
the physician should have known was an abuser of the narcotic drugs, controlled substances, or dangerous drugs.

8. 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.

9. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

10. 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 and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. If Respondent has not already surrendered Respondent's controlled substance certificates or otherwise had such certificates cancelled, Respondent shall surrender to the appropriate agency, within seven days of the entry of this Order, Respondent's Drug Enforcement Administration (DEA) Controlled Substances Registration Certificate and Texas Department of Public Safety (DPS) Controlled Substances Registration Certificate, and shall promptly sign the appropriate DEA and DPS forms to accomplish the cancellation of these registrations. Respondent shall provide to the Director of Compliance objective evidence of surrender or cancellation within seven days after the date of surrender.

   Respondent shall not re-register or otherwise obtain Controlled Substances Registrations until Respondent has received written authorization from the Board. Authority to register for Controlled Substances Registration Certificates may be granted only after Respondent makes written petition and a personal appearance before the Board, a committee of the Board, or authorized Board representatives. The granting of such authority is discretionary with the Board and shall not control any decision by DEA or DPS in regard to granting or denying any application by Respondent for the return of controlled substance registrations.

2. Within one year following the date of the entry of this Order, Respondent shall take and pass with a score of 75 or above the Medical Jurisprudence Examination (JP Exam)
given by the Texas Medical Board. Respondent is allowed three attempts to successfully pass this examination.

Respondent’s failure to take and pass the JP Exam within three attempts within one year following the date of the entry of this Order shall constitute a violation of this Agreed Order. After a committee of the Board or a panel of Board representatives (Board Representatives) has considered the information related to Respondent’s violation of this provision and has determined that Respondent has not fulfilled the requirements of this provision, 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 Board Representatives have considered the information related to Respondent’s violation of this provision and have determined that Respondent has not fulfilled the requirements of this provision. Although Respondent shall be invited to provide information or testimony to the Board Representatives, Respondent specifically waives any administrative due process under the Medical Practice Act, or the Administrative Procedure Act, for the Board Representatives to consider this information. THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS 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 AND ALL RIGHTS OF APPEAL. Respondent shall be notified of any suspension by certified mail, return receipt requested to Respondent’s last known address on file with the Board. If Respondent’s 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 in Texas and is otherwise physically and mentally competent to resume the practice in this state.

3. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete the Clinical Competence Assessment, including Phase I and Phase II, offered by the University of California San Diego Physician Assessment and Clinical Education (PACE) program, or an equivalent course approved in advance by the by the Executive Director or their designee. To obtain approval for a course other than the PACE
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, faculty, 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.

Upon Respondent's acceptance into the PACE program, Respondent shall execute a written request and authorization to PACE representatives to provide a complete copy of any and all final assessments for both phases to the Compliance Division within 15 days of their completion.

4. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete the medical recordkeeping course by the University of California San Diego Physician Assessment and Clinical Education (PACE) program, or an equivalent course approved in advance by the Executive Director or their designee. To obtain approval for a course other than the PACE 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, faculty, 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.

5. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 16 hours of continuing medical education (CME) approved for Category I credits by the American Medical Association in topic of risk management, approved in writing in advance by the Executive Director or their designee. To obtain approval for the course, Respondent shall submit in writing to the Compliance Department 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 Department 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.
6. Respondent shall pay an administrative penalty in the amount of $3,000 within 60 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.

7. At all times while Respondent is under the terms of this Order, Respondent shall give a copy of this Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Respondent has privileges, has pending an application for privileges, applies for privileges, or otherwise practices. Within 30 days of being first contacted by the Compliance Division of the Board following entry of this Order, Respondent shall provide to the Compliance Division of the Board documentation, including proof of delivery, that the Order was delivered to all such facilities.

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

9. 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.

10. 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).
11. 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.

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

13. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for one year following the date of the entry of this Order. If, after the passage of the one-year 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 without further appeal or review. 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. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

SIGNATURE PAGES TO FOLLOW
I, RAYMOND RICHARD BIXBY, 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: May 27, 2016.

RAYMOND RICHARD BIXBY, M.D.
Respondent

STATE OF Texas
COUNTY OF Taylor

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 27th day of May, 2016.

DEBORAH S KEITER
Notary Public
Commission Expires April 4, 2018

Signature of Notary Public
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this day of June, 2016.

Michael Arambula, M.D., Pharm.D., President
Texas Medical Board