LICENSE NO. H-9957

IN THE MATTER OF

THE LICENSE OF

JAIME RAFAEL GOMEZ, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER

On the 4th day of March, 2015, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Jaime Rafael Gomez, M.D. (Respondent).

On October 14, 2015 Respondent appeared in person, with counsel, Paul Bracken, 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 Julie K. Attebury, a member of the Board and Richard K. Newman, M.D., F.A.C.S., a member of a District Review committee (Panel). Heather R. E. Pierce represented Board staff.

BOARD CHARGES

Board Staff charged that Respondent failed to meet the standard of care in his care and treatment of two patients. With respect to Patient 1, Staff alleged that Respondent failed to properly perform an esophagogastroduodenoscopy (EGD) and to review an EGD by the referring gastroenterologist. With respect to Patient 2, Staff alleged that Respondent failed to take appropriate precautionary measures to prevent injury to the patient during laparoscopic surgery, and as a consequence, Respondent injured the patient’s abdominal artery requiring Respondent to convert the laparoscopic surgery to open abdominal surgery.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board. On August 31, 2012, an Agreed Order was entered based on Respondent’s failure to evaluate a patient over a six-hour period. The Order required Respondent to have his practice monitored for four cycles and to complete four hours of continuing medical education (CME) in the topic of medical management of hemorrhagic shock.
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. H-9957. Respondent was originally issued this license to practice medicine in Texas on December 4, 1991. Respondent is not licensed to practice in any other state.
   c. Respondent is primarily engaged in the practice of Colon and Rectal Surgery. Respondent is board certified by the American Board of Colon and Rectal Surgery, a member of the American Board of Medical Specialties.
   d. Respondent is 51 years of age.

2. Specific Panel Findings:
   a. Patient 1: The Panel found that Respondent failed to use proper diligence in his professional practice. Respondent did not communicate with the referring gastroenterologist regarding the lack of findings on the endoscopic procedure. Respondent’s endoscopy did not confirm a diagnosis of malignancy in the stomach, and prior to proceeding to open partial gastrectomy, Respondent should have consulted directly with the other physician regarding Respondent’s findings.
   b. Patient Two: The Panel did not find a violation of the standard of care. Trocar injury can occur, is a known complication, and is not necessarily a breach of the standard of care.
3. **Mitigating Factors:**

In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:

i. Respondent had not been informed by either Patient 1 or the referring physician that an intervening EGD had been performed revealing presumptive cancer and tattooing of the lesion.

ii. Respondent is practicing as a colorectal surgeon in an area of high need, and in an area of high litigation.

iii. Respondent subsequently changed his procedure to the Hassan technique.

iv. Patient 2’s body size and obesity increased the likelihood of injury to the artery, a possible complication that was disclosed to the patient.

v. Respondent cooperated in the investigation of the allegations related to this Agreed Order. 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)(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 Rule 190.8(1), failure to use proper diligence in one’s professional practice.

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 year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least eight hours of continuing medical education CME to be divided as follows: four hours in the topic of risk management and four hours in the topic of professional communications. The CME shall be approved for Category I credits by the American Medical Association and 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 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 Department 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. 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.

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

4. 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.

5. 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).

6. 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.

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

8. 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 Nos. 1 and 2.

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 FOLLOW)
I, JAIME RAFAEL GOMEZ, 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: December 7, 2015.

JAIME RAFAEL GOMEZ, M.D.
Respondent

STATE OF Texas §
COUNTY OF El Paso §

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 07 day of December, 2015.

Signature of Notary Public

(Notary Seal)

Expires: 05/31/2019
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
4 day of March, 2016.

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