LICENSE NO. J-7879

IN THE MATTER OF
THE LICENSE OF
AJAY AGGARWAL, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 27th day of June, 2014, came on to be heard before the Texas Medical Board (Board), duly in session, the matter of the license of Ajay Aggarwal, M.D., (Respondent).

On February 18, 2014, Respondent appeared in person, with counsel Timothy E. Weitz, 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 George Willeford, III, M.D. and Frank Denton, members of the Board (Panel). Trina Richardson represented Board staff, and Nycia Deal prepared this Order.

BOARD CHARGES

Board staff charged that Respondent did not meet the standard of care in the treatment of patients with respect to adequate recordkeeping and prescribing controlled substances, including prescribing suboxone without authorization. Board staff also charged that Respondent practiced medicine while visually impaired.

BOARD HISTORY

On May 1, 2009, the Board entered an Agreed Order of public reprimand (2009 Order), requiring Respondent to obtain continuing medical education, have a practice monitor, have a chart monitor, surrender his schedule II controlled substances registrations, and not obtain controlled substance registration without Board approval. The action was based on
Respondent’s failure to meet the standard of care in the treatment of and prescribing to one patient who subsequently died of acute methadone intoxication.

On August 27, 2010, the Board entered into an Agreed Corrective Order requiring Respondent to pay an administrative penalty, and complete the continuing education as ordered in the 2009 Order.

On February 10, 2012, the Board entered a Modification Order regarding the 2009 Order allowing Respondent to reapply for his schedule II controlled substance registrations and decreasing the continuing education requirements required by the 2009 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. J-7879. Respondent was originally issued this license to practice medicine in Texas on June 28, 1995. Respondent is not licensed to practice in any other state.
   c. Respondent is primarily engaged in the practice of family practice. Respondent is not board certified.
   d. Respondent is 52 years of age.

2. Specific Panel Findings:
   a. Respondent did not use proper diligence in his practice and did not adequately document his treatment of multiple patients, including documenting history for suboxone patients and the medical necessity for the treatment of patients with interventional treatments.
   b. There was not sufficient evidence to show that Respondent nontherapeutically prescribed to the pain management patients at issue in the case.
c. Respondent was properly licensed to administer suboxone, and his administration of suboxone to the patients at issue was proper.

d. Respondent’s use of botox to treat a patient’s headache was proper.

e. Respondent employs computer monitors with view enlargement capabilities to compensate for his visual impairment while performing interventional pain management procedures. In addition, Respondent has voluntarily limited the interventional pain management procedures he performs.

f. Respondent employs a physician assistant who works at both of his clinics.

3. **Mitigating Factors:**

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

   a. Respondent received letters of support from his local medical community and hospital where he is currently practicing.

   b. Respondent self-reported his visual impairment to PHP and has maintained contact with PHP.

   c. PHP did not require any restriction on Respondent’s practice or that he enter into an agreement with PHP.

   d. Respondent admitted responsibility for problematic record-keeping and indicated a willingness to modify his practice and comply with any actions required by the Board. Respondent is already working to improve his EMR system and record-keeping.

   e. Respondent’s charts have been monitored for five years, and his charts have not exhibited any significant issue or deficiency in that time.

   f. 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)(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(a), requiring the maintenance of adequate medical records.

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 Rule 190.8(1)(C), failure to exercise diligence in professional practice.

5. 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.

6. 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. Respondent shall limit Respondent’s interventional pain management procedures to those procedures he is currently performing, specifically: lumbar epidural steroid injections, cervical epidural steroid injections, joint injections, SI joint injections, tailbone coccyx injections, median branch blocks, and radio frequency lumbar and cervical nerve ablation, using the visual aids he is currently employing.

2. Respondent shall maintain at least one midlevel provider at each of his practice sites at any time he is performing procedures.
3. Respondent shall be subject to the following terms and conditions for consecutive monitoring cycles (defined below) until this Order is modified or terminated by the Board. 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 the monitor’s report describing any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division.

   d. A “monitoring cycle” begins when the Compliance Division selects patient records for review, and concludes when Respondent receives the monitor’s report for that group of records and has made full payment for the chart monitor’s services.

   e. 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.

4. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete the medical recordkeeping course 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.

5. Respondent shall personally appear before the Board, a committee of the Board, or a panel of Board representatives nine months after the date of entry of this Order and at other times upon written request, mailed to Respondent's last known address on file with the Board, at least 10 calendar days before the requested appearance date. 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 Order.

6. 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 applied for privileges, applies for privileges, or otherwise practices. Within 30 days of 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.

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

8. 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.
9. 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 day notice of a Respondent 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 day notice, as provided in 22 Texas Administrative Code §187.44(4).

10. 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.

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

12. 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 FOLLOW.
I, AJAY AGGARWAL, 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.


AJAY AGGARWAL, M.D.
Respondent

STATE OF Texas
COUNTY OF Hidalgo

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 14th day of June, 2014.

Signature of Notary Public

Ajay Aggarwal, M.D.
Agreed Order
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 27th day of June, 2014.

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