LICENSE NO. L-0318

IN THE MATTER OF

THE LICENSE OF

JAMES KEVIN KAUFMAN, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER

On the 24th day of August, 2018, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of James Kevin Kaufman, M.D. (Respondent).

On January 25, 2018, Respondent appeared in person, with counsel, John McChristian, at an Informal Show Compliance Proceeding and Settlement Conference (ISC) in response to a letter of invitation from the staff of the Board. The Board’s representatives were Frank Denton, a member of the Board, and Courtney Townsend, M.D., a member of a District Review Committee (Panel). Jerry Bergman represented Board staff.

BOARD CHARGES

Board staff charged that Respondent screened positive for Diazepam while being monitored by the Texas Physician’s Health Program (TXPHP). The Diazepam was prescribed and pre-approved by TXPHP for a surgical procedure; however, Respondent took the Diazepam in a manner not prescribed, which resulted in his discharge from TXPHP.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board.

1. On April 11, 2008, the Board entered an Agreed Order (2008 Order) requiring that Respondent complete five hours of pre-approved continuing medical education (CME) in medical record-keeping, and requiring that he pay an administrative penalty of $1000. The action was based upon disruptive behavior in an operating room and failing to timely provide medical records and the order terminated on August 12, 2008.

2. On August 30, 2013, the Board entered a Remedial Plan (2013 Remedial Plan) requiring that Respondent complete 16 hours of in person CME, divided as follows: eight hours
in risk management, four hours in management of post-operative complications and four hours in airway management; and requiring that he pay an administrative fee of $500. The action was based upon his delayed response to a hospital page and the plan terminated on October 9, 2014.

3. On August 28, 2015, the Board entered an Agreed Order (2015 Order) imposing certain terms and conditions: requiring that Respondent correct all inaccurate board certification statements; requiring that he complete eight hours of CME in the topics of ethics or risk management; and requiring that he give a copy of the order to all health care entities (HCEs) where privileged or practicing and provide proof of delivery. The action was based upon inaccurate board certification statements and adverse action by an HCE, and the order terminated on July 8, 2016.

4. On March 4, 2016, the Board entered an Agreed Order (2016 Order) imposing certain terms and conditions: requiring that Respondent's practice be monitored for eight cycles and that he implement the monitor's recommendations; requiring that he complete 16 hours of in person CME, divided as follows: eight hours in risk management and eight hours in medical recordkeeping; requiring that he pay an administrative penalty of $3000 within 60 days; and requiring that he give a copy of the order to all HCEs where privileged or practicing and provide proof of delivery within 30 days. The action was based upon violation of the standard of care and inadequate medical records.

5. On March 3, 2017, the Board entered an Agreed Order (2017 Order) imposing certain terms and conditions: requiring that Respondent's practice be monitored for eight additional cycles and that he implement the monitor's recommendations; requiring that he complete 32 hours of in person CME, divided as follows: eight hours in risk management, eight hours in ethics, eight hours in spinal surgery, and eight hours in physician-patient communication; requiring that he pay an administrative penalty of $3000 within 60 days; and requiring that he give a copy of the order to all HCEs where privileged or practicing and provide proof of delivery within 30 days. The action was based upon violation of the standard of care and inadequate communications.

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. L-0318. Respondent was originally issued this license to practice medicine in Texas on August 26, 2000.
   c. Respondent is primarily engaged in Neurological Surgery; Respondent is not board certified.
   d. Respondent is 53 years of age.

2. **Specific Panel Findings:**
   a. Respondent had a positive screen for diazepam and was discharged from the TXPHP program.
   b. Respondent past history requires close monitoring by the Board.

3. **Mitigating Factors:**
   In determining the appropriate sanctions in this matter, the Panel considered as mitigating that Respondent has 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)(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)(4)(B),(C) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent’s inability to practice medicine with reasonable skill and safety to patients because of drunkenness or use of drugs.

4. Section 164.052(a)(4) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent using alcohol or drugs in an intertemperate manner that could endanger a patient’s life.

5. Section 164.052(a)(5) of the Act 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 as provided by §164.053 of the Act, or injure the public, and provided by Board Rule 190.8(2)(R)(xii), substance abuse or diversion.

6. 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.

7. 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 for a period of 10 years:

1. Respondent shall abstain from the consumption of prohibited substances as defined below, except as prescribed by another physician to Respondent for legitimate and documented therapeutic purposes. As used in this provision, “consumption” means any manner of ingestion, including oral, injection, topical, inhalation, or otherwise.

a. Prohibited substances, as used in this order, includes:

   (1) Alcohol in any form;
   (2) Dangerous drugs, as defined in Chapter 483, TEX. HEALTH & SAFETY CODE;
   (3) Controlled substances, as defined in Chapter 481, TEX. HEALTH & SAFETY CODE;
   (4) Any substance, in any form, including over-the-counter (OTC) agents and food products, that may cause a positive drug or alcohol test.
b. The following is an illustrative, but not exclusive, list of prohibited substances:

(1) Stimulants
(2) Appetite suppressants
(3) Medication for ADD/ADHD
(4) Anti-anxiety agents
(5) Antidepressants
(6) Antihistamines
(7) Anticholinergics
(8) Antispasmodics
(9) Recreational, mind-altering drugs
(10) Any product containing pseudoephedrine or epinephrine
(11) Alcohol
(12) Any product containing alcohol, including mouthwashes, cough medicines, after shave lotions, colognes, hand sanitizing formulas, and dietary and herbal supplements
(13) Food containing any of the above and/or poppy seeds.

c. Within five days after receipt of this Order, Respondent shall:

(1) Provide to the Compliance Division of the Board a list of all prohibited substances that Respondent is currently consuming, whether by prescription or otherwise;
(2) Give any treating physician a copy of this Order;
(3) Cause any treating physician to report all prescriptions and orders for any prohibited substance within five days after the treating physician receives this Order. The report shall include the medical condition being treated; the substance
(4) Prescribed, dispensed or administered; the amount of such substance; and any refills authorized.

d. During the term of this Order, Respondent shall:

(1) Provide to the Compliance Division of the Board a list of all subsequentprescriptions and any subsequent orders for prohibited substances within 24 hours after receipt of the subsequent prescription or order; and
(2) Give any subsequent treating physician a copy of this Order within five days after the initiation of treatment, and Respondent shall cause the subsequent treating physician(s) to report all prescriptions and any orders for prohibited substances to the Compliance Division of the Board no later
than five days after receipt of this Order by the treating physician. The report shall include the medical condition being treated; the substance prescribed, dispensed or administered; the amount of such substance; and any refills authorized.

e. If Respondent consumes any prohibited substance in any form without a prescription or order authorized by a physician for a legitimate medical purpose, Respondent shall immediately report Respondent’s consumption in writing within 24 hours to the Compliance Division of the Board.

f. The Respondent shall participate in the Board’s drug testing program. In addition, at the request of a representative of the Board, with or without prior notice, Respondent shall submit to appropriate examinations, including screenings for alcohol and drugs, to determine by laboratory analysis whether Respondent is free of prohibited drugs and alcohol. Respondent shall pay any costs associated with these analyses.

g. A violation of this Order under this provision shall include: (i) a positive or a positive-dilute screen for prohibited drugs or alcohol, or a metabolite of prohibited drugs or alcohol; (ii) an adulterated specimen; (iii) a substituted specimen; or (iv) a refusal or failure to submit to random screenings. Should a specimen be reported as negative-dilute, Respondent may be required to undergo additional testing and may be subject to further Board action. A violation may be based on drug and alcohol screening under the Board’s program or any other drug and/or alcohol testing.

(1) Evidence of a violation of this Order under this provision and any other information related to Respondent’s violation of this Order may be presented to Board representatives at a Probationer’s Show Compliance Proceeding, held in accordance with 22 TEX. ADMIN. CODE, §187.44.

(2) If the Board representatives at such Probationer’s Show Compliance Proceeding determine that Respondent is in violation of this Order pursuant to this provision, the Board representatives may direct the Executive Director to immediately SUSPEND Respondent’s medical license. THIS SUSPENSION SHALL BE EFFECTIVE
IMMEDIATELY WITHOUT THE NEED FOR A FORMAL HEARING BEFORE THE BOARD, A PANEL OF THE BOARD, OR THE STATE OFFICE OF ADMINISTRATIVE HEARINGS OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE MEDICAL PRACTICE ACT OR THE ADMINISTRATIVE PROCEDURE ACT. RESPONDENT WAIVES ANY SUCH HEARING OR ANY SUCH DUE PROCESS AND ALL RIGHTS OF APPEAL IN REGARD TO THE SUSPENSION.

If Respondent is suspended under this provision, a Board representative shall file a formal complaint under Section 164.005 of the Medical Practice Act as soon as practicable, alleging the violations of this Order under this provision and seeking such disciplinary action as may be appropriate, including revocation of Respondent's license. The formal complaint may also include allegations of other violations of this Order and other violations of the Medical Practice Act. The parties may resolve the issues by an agreed order, either before or after the filing of a formal complaint. **RESPONDENT DOES NOT WAIVE AND SPECIFICALLY RESERVES THE RIGHT TO A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS, WITH ALL RIGHTS PROVIDED BY THE MEDICAL PRACTICE ACT OR THE ADMINISTRATIVE PROCEDURE ACT AND THE RIGHT TO SEEK JUDICIAL REVIEW OF THE FINAL ORDER.**

2. Respondent shall participate in the activities and programs of Alcoholics Anonymous ("AA"), (or any other substantially similar program that has been approved in writing by the Executive Director of the Board), on a regular basis of not less than five times a week. Respondent shall maintain documentation as to the number and location of meetings attended and make such documentation available to the Board staff upon request.

3. Respondent shall participate in the activities and programs of Caduceus on a regular basis of not less than three times per month. Respondent shall maintain documentation as to the number and location of meetings attended and make such documentation available to the Board staff upon request.

4. **Addiction Psychologist Care and Treatment.** Within 30 days after the entry of this Order, Respondent shall submit to the Compliance Division of the Board letters from up to three
addiction psychologists who agree to serve as Respondent’s approved treating addiction psychologist.

a. The letters from proposed treating psychologist(s) shall state that they:

   (1) have been provided a copy of this Order;
   (2) agree to provide addiction treatment to Respondent; and
   (3) agree to provide periodic reports regarding Respondent’s compliance with treatment and rehabilitation to (a) the Board or (b) an independent monitoring addiction psychologist.

b. A proposed treating addiction psychologist may not be approved unless the proposed treating addiction psychologist agrees to provide periodic reports either to the Board or to an independent monitoring addiction psychologist.

c. The Executive Director may reject all of the proposed treating addiction psychologist(s) and require the submission of additional letters or approve one or more to be the approved treating addiction psychologist’s.

d. Respondent shall begin the recommended care and treatment within 30 days after notification of approval of the treating addiction psychologist.

e. Respondent shall receive care and treatment from the treating addiction psychologist no less than once per month. Respondent shall not unilaterally withdraw from treatment.

f. Respondent shall pay all fees charged by the treating addiction psychologist

g. Respondent shall follow all recommendations made by the treating addiction psychologist regarding continued care and treatment.

h. Board staff may furnish to the treating addiction psychologist any Board information that it determines, in its discretion, may be helpful or required for the treatment of Respondent.

i. The treating addiction psychologist shall provide periodic written reports no less than quarterly, on March 15, June 15, September 15, and December 15 of each year, during Respondent’s treatment, either directly to the Compliance Division of the Board or to an independent monitoring psychiatrist. Periodic reports shall include (a) current diagnosis; (b) treatment regimen; (c) treatment compliance; (d) follow-up recommendations; and (e) prognosis. The Board or an independent
monitoring addiction psychologist may request clarification of periodic reports and may request additional reports.

j. The treating addiction psychologist may require Respondent to participate in alcohol and/or drug screens and shall immediately report any positive results either directly to the Compliance Division of the Board or to an independent monitoring addiction psychologist.

l. The treating addiction psychologist shall immediately report, either directly to the Compliance Division of the Board or to an independent monitoring addiction psychologist, any unilateral withdrawal from treatment by Respondent.

m. The treating addiction psychologist shall consider requiring Respondent to meet with a recovery monitor and providing the Board with quarterly updates.

k. Respondent shall execute any and all releases for medical records and authorizations necessary to effectuate the provisions of this Order.

Respondent’s failure to cooperate with the treating psychiatrist, failure to follow the treating psychiatrist’s recommendations, or withdrawal from treatment without consent of the Executive Director of the Board shall constitute a violation of this Order.

5. Respondent shall participate in the activities of a county or state medical society committee on physician health and rehabilitation, including participation in weekly meetings, if any. Respondent shall request in writing that the chair of the committee or the chair’s designee make written quarterly reports of Respondent’s attendance and participation in the committee’s activities on March 15, June 15, September 15, and December 15 of each year, or more often if desired by the chair or requested by the Compliance Division of the Board or Board staff. The chair shall be provided with a copy of this Order by Respondent and authorization in writing by Respondent to report both orally and in writing to the Compliance Division of the Board or Board staff on Respondent’s rehabilitation efforts or failure to adequately participate in committee activities. Respondent shall also immediately submit to drug and alcohol screens upon the request of the chair of the committee or the chair’s designee, and shall authorize in writing the chair or the chair’s designee to transmit the results of such screens to the Compliance Division of the Board or Board staff.

6. Respondent shall continue to meet with his Recovery Monitor, including participation in daily/weekly meetings, if any. Respondent shall maintain documentation as to
the number and location of meetings with the Recovery Monitor and make such documentation
available to the Board staff upon request. Respondent shall provide quarterly reports of
Respondent's attendance and participation with the Recovery Monitor on March 15, June 15,
September 15, and December 15 of each year, or more often if desired or requested by the
Compliance Division of the Board or Board staff. Respondent’s failure to cooperate with the
Recovery Monitor, failure to follow the Recovery Monitor’s recommendations, or withdrawal
from the Recovery Monitor without consent of the Executive Director of the Board shall
constitute a violation of this Order.

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 in Texas 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. Pursuant to Board Rule 189.15, the time period of this Order shall be extended for
any period of time that: (a) Respondent subsequently practices exclusively outside the State of
Texas; (b) this Order is stayed or enjoined by Court Order; or (c) for any period of time longer
than 60 consecutive days that Respondent does not actively practice medicine and such cessation
in practice is NOT due to a suspension of Respondent’s license. Respondent shall immediately
notify the Board in writing in the event that Respondent leaves Texas to practice elsewhere or
ceases active practice for more than 60 consecutive days. Upon Respondent’s return to active
practice or return to Texas, Respondent shall notify the Board in writing. Upon return to Texas or
active practice, Respondent shall be required to comply with the terms of this Order for the
period of time remaining on the Order. Respondent shall pay all fees for reinstatement or renewal
of a license covering the period of extension or tolling. Tolling shall be in accordance with Board
Rule 189.15.

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

10. 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.

11. 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 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 45-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).

12. 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.

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

14. The above referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for two years following the date of the entry of this Order. If, after the passage of the two 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, JAMES KEVIN KAUFMAN, 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: \[\text{JUNE 1}\] 2018.

JAMES KEVIN KAUFMAN, M.D.
Respondent

STATE OF \[\text{Texas}\]  §
COUNTY OF \[\text{Tarrant}\]  §

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this \[\text{1st}\] day of \[\text{JUNE}\] 2018.

\[\text{Hussein Nazim Valiyani}\]
Signature of Notary Public

\[\text{Notary Public, STATE OF TEXAS}\]
My Comm. Exp. 11-19-19
Notary ID # 13044667-7
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this day of August, 2018.

Sherif Z. Zeran, M.D., President
Texas Medical Board