LICENSE NO. J-2442

IN THE MATTER OF

THE LICENSE OF

ELIAS BENHAMOU, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER

On the 8th day of December, 2017, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Elias Benhamou, M.D. (Respondent).

On August 3, 2017, Respondent appeared in person, with counsel Ken Stone, 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 Jeffrey L. Luna M.D., a member of the Board, and Sharon J. Barnes, a member of a District Review Committee (Panel). Samer Shobassy represented Board staff.

BOARD CHARGES

Board Staff charged that Respondent ordered unnecessary blood and urine toxicology tests without first evaluating the patient. It was further alleged that Respondent failed to inform the patient in advance of Respondent’s part ownership in the lab where tests were performed. Finally, it was alleged Respondent failed to timely release the patient’s medical records and when they were finally received, the toxicology tests were not included in the medical records.

BOARD HISTORY

Respondent has previously received a Remedial Plan from the Board. On February 10, 2012, the Board entered a non-disciplinary Remedial Plan requiring Respondent to pass within one year and within three attempts the medical jurisprudence exam and pay an administrative fee of $500 within 60 days. The Board found Respondent violated Board Rules regarding adequate medical records and standing delegation orders. Respondent completed the requirements of the Remedial Plan on September 3, 2012.
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. J-2442. Respondent was originally issued this license to practice medicine in Texas on November 14, 1992. Respondent is not licensed to practice in any other state.
   c. Respondent is primarily engaged in the practice of Anesthesiology and Pain Management. Respondent is board certified by the American Board of Anesthesiology, a member of the American Board of Medical Specialties.
   d. Respondent is 58 years of age.

2. Specific Panel Findings:
   a. Respondent failed to adequately document in the medical records aspects of the patient’s behavior and demeanor that Respondent believed contributed to patient’s risk for opioid abuse thus justifying the urine toxicology tests.
   b. The Panel found Respondent did not own an interest in the company which processes the urine drug test ordered but rather owns an interest in the company that collects the sample. The ownership interest was properly disclosed by Respondent through large signs in the office.

3. Mitigating Factors:
   In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:
a. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent neither admits nor denies the information given above.
b. 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)(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 Rule 165.1(a), failure to maintain an adequate medical record.

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 the medical record-keeping course offered by University of California San Diego Physician Assessment and Clinical Education (PACE) program or an equivalent course approved in advance by the Executive Director. To obtain approval for a course other than PACE courses, Respondent shall submit in writing to the Compliance Division of the Board information on the course that includes 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.
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 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).

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 & 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, ELIAS BENHAMOU, 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: November 27, 2017.

ELIAS BENHAMOU, M.D.
Respondent

STATE OF Texas
COUNTY OF Victoria

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 27th day of NOVEMBER, 2017.

(Notary Seal)

Signature of Notary Public
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 8 day of December, 2017.

[Signature]

Sherif Z. Zaafran, MD, President
Texas Medical Board