AGREED ORDER

On the 2 day of March, 2018, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Melissa Yvonne Macias, M.D. (Respondent).

On November 6, 2017, Respondent appeared in person, with counsel, Stacey Simmons, 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 Margaret McNeese, M.D., a member of the Board, and Sharon J. Barnes, a member of a District Review Committee (Panel). Claudia Kirk represented Board staff.

BOARD CHARGES

Respondent was arrested for driving under the influence (DUI) in March 2016, which was her third arrest for that offense. Respondent was also the subject of disciplinary action by the Wisconsin Medical Board due to the March 2016 DUI arrest.

BOARD HISTORY

Respondent has not previously received a disciplinary order or Remedial Plan 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. N-3851. Respondent was originally issued this license to practice medicine in Texas on August 21, 2009. Respondent is also licensed to practice in Wisconsin.

c. Respondent is primarily engaged in the practice of neurological surgery. Respondent is board certified by the American Board of Neurological Surgery, a member of the American Board of Medical Specialties.

d. Respondent is 50 years of age.

2. **Specific Panel Findings:**

   a. Respondent was arrested and convicted for three DUls.
      
      i. On March 1, 2016, Respondent was arrested by the Brookfield, Wisconsin Department. Respondent pled guilty and was convicted in Waukesha County, Wisconsin. The court revoked her driver’s license for 30 months, required an ignition interlock system for 30 months, alcohol assessment, 75 hours of community service, and fines/court costs totaling $2,537.00.
      
      ii. On January 24, 2014, Respondent was arrested for a DUI. Respondent was sentenced to one year of court supervision for a Class A misdemeanor DUI.
      
      iii. In August 1991, Respondent was arrested by the Milwaukee Police Department for a DUI. The Milwaukee Municipal Court conviction resulted in a six-month driver’s license revocation/suspension with completion of alcohol counseling and driver’s safety course.

b. On April 6, 2017, the Wisconsin Medical Examining Board disciplined Respondent with a Final Decision and Order due to her arrest in March 2016.

3. **Mitigating Factors:**

   In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:
a. Respondent has been under an employment agreement that includes abstinence and testing. Respondent has been compliant with all the terms of her agreement.
b. Respondent has maintained her sobriety since March 2016.
c. Respondent has cooperated in the investigation of the allegations related to this Agreed Order.
d. 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)(4) of the Act authorizes the Board to take disciplinary action based on Respondent’s inability to practice medicine with reasonable skill and safety to patients because of: (B) drunkenness; and (D) a mental or physical condition.

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

4. Section 164.051(a)(7) of the Act authorizes the Board to take disciplinary action based on Respondent’s being removed, suspended, or is subject to disciplinary action taken by the person’s peers in a local, regional, state, or national professional medical association or society, or is disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if the board finds that the action: (A) was based on unprofessional conduct or professional incompetence that was likely to harm the public; and (B) was appropriate and reasonably supported by evidence submitted to the board. Also further defined in Board Rule 190.8(4), disciplinary action by peer groups.

5. Section 164.051(a)(9) of the Act authorizes the Board to take disciplinary action based on Respondent holding a license to practice medicine subject to disciplinary action by
another state, or subject to disciplinary action by the uniformed services of the United States, based on acts by the person that are prohibited under Section 164.052 or are similar to acts described by this subsection. Also further defined in Board Rule 190.8(3), disciplinary action by another state board.

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.

8. 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 for 15 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 ephedrine
(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 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 subsequent prescriptions 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. Independent Medical Evaluation. Upon entry of this Order, the Executive Director
of the Board will designate a physician who is board certified in psychiatry to serve as the
Board’s evaluating psychiatrist. Within 30 days thereafter, Respondent shall submit to and obtain
an independent medical evaluation from the evaluating psychiatrist.

(a) The independent medical evaluation shall be conducted as directed by the Board, including,
at a minimum:

(1) Social history and background information;
(2) History of present illness;
(3) Mental status exam;
(4) Review of records and other pertinent information;
(5) Current DSM multiaxial diagnosis, and
(6) Recommendations regarding continued care and treatment.

(b) The Compliance Division of the Board shall furnish a copy of this Order to the evaluating
psychiatrist, who shall make a full report to the Board regarding the evaluating
psychiatrist's evaluation of Respondent and recommendations.

(c) Respondent shall pay all fees charged by the evaluating psychiatrist.

(d) Respondent shall follow all recommendations made by the evaluating psychiatrist
regarding continued care and treatment.

(e) Respondent’s failure to cooperate with the evaluating psychiatrist or failure to follow the evaluating psychiatrist’s recommendations shall constitute a violation of this Order.

(f) If the evaluating psychiatrist recommends continued care and treatment for Respondent, the Executive Director shall notify the Respondent to submit letters from up to three physicians who are board certified in psychiatry and who agree to serve as Respondent’s approved treating psychiatrist within 30 days.

(1) The letters from proposed treating psychiatrist(s) shall state that they:

   a. have been provided a copy of this Order;
   b. agree to provide psychiatric treatment to Respondent; and
   c. agree to provide periodic reports regarding Respondent’s compliance with treatment and rehabilitation to (a) the Compliance Division of the Board or (b) an independent monitoring psychiatrist.

(2) A proposed treating psychiatrist may not be approved unless the proposed treating psychiatrist agrees to provide periodic reports either to the Compliance Division of the Board or to an independent monitoring psychiatrist.

(3) The Executive Director may reject all of the proposed treating psychiatrists and require the submission of additional letters or approve one or more to be the approved treating psychiatrist.

(4) Respondent shall begin the recommended care and treatment within 30 days after notification of approval of the treating psychiatrist.

(5) Respondent shall pay all fees charged by the treating psychiatrist.

(6) Respondent shall follow all recommendations made by the treating psychiatrist regarding continued care and treatment.

(7) Board staff may furnish to the treating psychiatrist any Board information that it determines, in its discretion, may be helpful or required for the treatment of Respondent.

(8) The treating psychiatrist 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 Compliance Division of the Board or
an independent monitoring psychiatrist may request clarification of periodic
reports and may request additional reports.

(9) The treating psychiatrist 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
psychiatrist.

(10) The treating psychiatrist shall immediately report, either directly to the Compliance
Division of the Board or to an independent monitoring psychiatrist, any unilateral
withdrawal from treatment by Respondent.

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

(12) Respondent’s failure to cooperate with the treating psychiatrist or failure to follow
the treating psychiatrist’s recommendations shall constitute a violation of this
Order.

3. Monitoring Continued Care and Treatment. During any continued care and
treatment, the Board shall monitor Respondent’s compliance with treatment and rehabilitation,
either directly through the treating psychiatrist or through an independent monitoring psychiatrist
designated by the Executive Director.

(a) If the approved treating psychiatrist agrees to provide reports directly to the Board, with
the consent of Respondent, the Executive Director may authorize the treating psychiatrist
to serve in the dual capacity as treating psychiatrist for Respondent and monitoring
psychiatrist for the Board.

(b) If the approved treating psychiatrist does not agree to provide periodic reports to the
Board, or if Respondent does not consent, or if the Executive Director requires an
independent monitoring psychiatrist, the Executive Director shall designate a physician
who is board certified in psychiatry to serve as the Board’s independent monitoring
psychiatrist. Respondent shall pay all fees charged by an independent monitoring
psychiatrist.
(c) An independent monitoring psychiatrist may require Respondent to present for a personal interview up to twice each year during treatment.

(d) Respondent shall authorize the treating psychiatrist to provide information necessary for monitoring by the Board, either directly to the Board or through an independent monitoring psychiatrist. The information shall be limited to the minimum information necessary to ensure adequate assessment of Respondent’s compliance with treatment, rehabilitation, and compliance with the terms of this Order.

(e) An independent monitoring psychiatrist shall provide periodic written reports to the Compliance Division of the Board no less than semi-annually on March 15 and September 15 of each year during Respondent’s treatment. The monitoring reports shall include: (a) current diagnosis; (b) treatment regimen; (c) treatment compliance; (d) follow-up recommendations; and (e) prognosis.

(f) Board staff may furnish to the monitoring psychiatrist any Board information that it determines, in its discretion, may be helpful or required for the effective monitoring of Respondent’s compliance with treatment, rehabilitation, and compliance with this Order.

(g) Respondent's failure to cooperate with the monitoring psychiatrist shall constitute a violation of this Order.

4. 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.

5. 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) Respondent’s license is subsequently cancelled for nonpayment of licensure fees; (c) this Order is stayed or enjoined by Court Order; or (d) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine. If Respondent leaves Texas to practice
elsewhere or ceases active practice for more than 60 consecutive days, Respondent shall immediately notify the Board in writing. Upon Respondent's return to active practice or return to practice in Texas, Respondent shall notify the Board in writing. When the period of extension ends, 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.

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

7. 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.

8. 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).

9. 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.
10. Respondent shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants.

11. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for five years following the date of the entry of this Order. If, after the passage of the five-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, MELISSA YVONNE MACIAS, 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: January 10, 2018

[Signature]
Melissa Yvonne Macias, M.D.
Respondent

STATE OF Texas

COUNTY OF Harris

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 10th day of January, 2018

[Signature]
Signature of Notary Public

(Notary Seal)

MARY JANE COVARRUBIAS
My Commission Expires September 23, 2018
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 2 day of March, 2018.

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