LICENSE NO. H-5735

IN THE MATTER OF

THE LICENSE OF

DIRK I. RODRIGUEZ, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER

On the 28 day of August, 2015, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Dirk I. Rodriguez, M.D. (Respondent).

On April 22, 2015, Respondent appeared in person, with counsel Tim Weitz, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board, pertaining to Respondent’s Texas Medical License No. H-5735. The Board’s representatives were Frank Denton, a member of the Board, and Robert Hootkins, M.D., PhD, a member of the District Review Committee (Panel). Amy Swanholm represented Board staff.

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.

BOARD CHARGES

The Board has alleged that Respondent violated the standard of care in regard to two patients, surrendered his privileges while under investigation, did not report the termination of his privileges at another facility, and did not update his address with the Board in a timely manner.
BOARD HISTORY

On November 30, 2007, the Board and Respondent entered an Agreed Order that required Respondent to complete ten hours of CME related to professional relationships with physicians and medical staff, obtain routine counseling for anger management issues for a period of three years, obtain monitoring from a psychiatrist during the three year counseling period, and pay an administrative fee of $1,000. This was related to unprofessional conduct towards coworkers.

Upon the recommendation of the Panel 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-5735. Respondent was originally issued this license to practice medicine in Texas on August 26, 1989. Respondent is not licensed to practice in any other state.
   c. Respondent is primarily engaged in the practice of general and vascular surgery. Respondent is not board certified.
   d. Respondent is 58 years of age.

2. Specific Panel Findings:
   a. Respondent made unprofessional and offensive remarks to a colleague at the Wise Regional Health System regarding her weight. Respondent subsequently apologized. Based on the available records, Board representatives found that
Respondent’s termination of employment did constitute a peer review action, which Respondent did not report to the Board. Respondent’s alleged peer review by University General Hospital was not appropriately and reasonably supported by evidence presented to the Board, and is therefore not grounds for action by the Board.

b. The Panel found insufficient evidence that Respondent breached the standard of care as to the two patients, although Respondent failed to properly document post-operative visits.

3. Mitigating Factors:
In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:

a. In determining the appropriate sanctions in this matter, the Panel considered that Respondent has cooperated in the investigation of the allegations related to this Agreed Order. The 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)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent’s violation of a Board rule, specifically Board Rules 165.1(a), regarding the failure to maintain an adequate medical record; 166.1(d), regarding the
failure to notify the Board, in writing, within 30 days of a physician’s change of mailing address; and 173.3(d) regarding the failure to report a change of address for a physician on physician profile.

4. Section 164.051(a)(7) of the Act authorizes the Board to take disciplinary action against Respondent based on disciplinary action taken by Respondent’s peers, as further defined by 190.8(4), disciplinary actions by peer groups.

5. Section 164.052(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent submitting to the Board a false or misleading statement, document, or certificate in an application for a license.

6. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent’s unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public, as further defined by Board Rule 190.8(2)(P), behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient.

7. 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.

8. 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 following the date of the entry of this Order, Respondent shall take and pass with a score of 75 or above the Medical Jurisprudence Examination ("JP Exam") given by the Texas Medical Board. Respondent is allowed three attempts to successfully pass this examination.

   Respondent’s failure to take and pass the JP Exam within three attempts within one year following the date of the entry of this Order shall constitute a violation of this Agreed Order.
After a committee of the Board or a panel of Board representatives (Board Representatives), has considered the information related to Respondent’s violation of this provision and has determined that Respondent has not fulfilled the requirements of this provision, Respondent's medical license shall be **IMMEDIATELY SUSPENDED** pursuant to correspondence to Respondent from the Executive Director or Secretary-Treasurer of the Board indicating that Board Representatives have considered the information related to Respondent’s violation of this provision and have determined that Respondent has not fulfilled the requirements of this provision. Although Respondent shall be invited to provide information or testimony to the Board Representatives, Respondent specifically waives any administrative due process under the Medical Practice Act, or the Administrative Procedure Act, for the Board Representatives to consider this information. **THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE MEDICAL PRACTICE ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS AND ALL RIGHTS OF APPEAL.** Respondent shall be notified of any suspension by certified mail, return receipt requested to Respondent’s last known address on file with the Board. If Respondent's license is suspended on such a basis, the suspension shall remain in effect until such time as Respondent takes and passes the JP Exam and subsequently appears before the Board in person and provides sufficient evidence which, in the discretion of the Board, is adequate to show that Respondent possesses the skills and knowledge to safely practice in Texas and is otherwise physically and mentally competent to resume the practice in this state.

2. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 12 hours of continuing medical education ("CME") approved for Category I credits by the American Medical Association, divided as follows: four hours in the topic of risk management, four hours in the topic of medical recordkeeping, and four hours in the topic of professionalism and communication, 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 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 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.

3. Respondent shall pay an administrative penalty in the amount of $2,500 within 60 days of the date of the entry of this Order. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas Medical Board and shall be submitted to the Board for routing so as to be remitted to the Comptroller of Texas for deposit in the general revenue fund. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

4. 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 thirty days of entry of this Order Respondent shall provide documentation, including proof of delivery, to the Compliance Division of the Board that the Order was delivered to all such facilities.

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

6. 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.

7. 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 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).

8. 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.

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

10. 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 through 4.

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 TO FOLLOW]
I, DIRK I. RODRIGUEZ, 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: 07/02, 2015.

DIRK I. RODRIGUEZ, M.D.
Respondent

STATE OF Texas

COUNTY OF Dallas

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 2 day of July, 2015.

Signature of Notary Public
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 28 day of August, 2015.

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