LICENSE NO. E9190

IN THE MATTER OF

THE LICENSE OF

ROBERT A. ERSEK, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER

On the 2 day of December, 2016, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Robert A. Ersek, M.D. (Respondent).

On October 6, 2016, Respondent appeared in person, with counsel, Fletcher Brown, 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 Melissa Tonn, M.D. and Annette Raggette, members of District Review Committees (Panel). Amy Swanholm represented Board staff at the ISC. Claudia Kirk drafted this Agreed Order.

BOARD CHARGES

The Board charged that Respondent failed to meet the standard of care in surgical procedures he performed on four patients. Additionally, Respondent failed to keep adequate medical record documentation for two of the patients. The Board did not find that Respondent failed to meet the standard of care for three of the four patients charged. The Board found that Respondent kept adequate records for two of the four patients treated.

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. E9190. Respondent was originally issued this license to practice medicine in Texas on August 27, 1977. Respondent is not licensed to practice in any other state.
   c. Respondent is primarily engaged in the practice of cosmetic and plastic surgery. Respondent is board certified by the American Board of Plastic Surgery, a member of the American Board of Medical Specialties.
   d. Respondent is 78 years of age.

2. Specific Panel Findings:
   a. Respondent performed facial and neck surgery on Patient 1 in 2014. Respondent failed to meet the standard of care in that he did not complete an adequate pre-operative evaluation and ignored other factors indicating that the patient was not a good candidate for the procedure, including the patient's current health issues and previous surgeries.
   b. For Patients 1 and 2, Respondent failed to keep adequate medical record documentation.
      i. Respondent’s operative notes lacked significant details, including blood loss, intraoperative fluids, and technical aspects of the procedure performed.
      ii. Respondent’s documented history and physicals were also deficient in that they lacked significant details, including classic descriptions such as degree of lid ptosis, jowling, skin laxity and quality, type of breast implants, and quantity of breast tissue.
3. **Mitigating Factors:**

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

a. Respondent has no prior Board history.

b. Respondent has implemented remedial measures to correct or mitigate the harm, including completing a documentation course and hiring a company to audit his charts and provide recommendations for recordkeeping improvements.

c. Respondent has rehabilitative potential.

d. Respondent has cooperated in the investigation of the allegations related to this Agreed Order.

e. 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)(3) of the Act authorizes the Board to take disciplinary action based on Respondent’s violation of a rule adopted under this subtitle, either as a principal, accessory or accomplice, specifically Board Rule 165.1(a), failure to maintain an adequate medical record.

3. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action based on Respondent’s failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as defined by Board Rule 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care.

4. 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.

5. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.
6. 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:

1. Within one year following the date of the entry of this Agreed Order, Respondent shall enroll in and successfully complete at least 12 hours of continuing medical education (CME), divided into the following subjects: four hours in the topic of risk management; four hours in medical record keeping; and four hours in the topic of patient selection. The CME shall be approved for Category I credits by the American Medical Association or American Osteopathic Association and 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 Division of the Board 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 Division of the Board 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.

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 and 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, ROBERT A. ERSEK, 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.


ROBERT A. ERSEK, M.D.
Respondent

STATE OF Texas

COUNTY OF Travis

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 16th day of November, 2016.

Signature of Notary Public

TRACY L. WOLF
Notary Public, State of Texas
FEBRUARY 24, 2017
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 2nd day of December, 2016.

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