LICENSE NO. P-1740

IN THE MATTER OF
THE LICENSE OF
JAMES ALLEN CLARK, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGreed ORDER

On the 14th day of June, 2013, came on to be heard before the Texas Medical Board (the “Board”), duly in session, the matter of the license of James Allen Clark, M.D. (“Respondent”).

On March 27, 2013, Respondent appeared in person, with counsel, Jon E. Porter, 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 Jayaran Naidu, M.D. and Phillip Worley, members of a District Review Committee (“Panel”). Ketan Patel represented Board staff.

BOARD CHARGES

Board staff alleged Respondent did not comply with terms of his Texas Physician Health Program (TXPHP) Agreement, which led to his termination from the program. Specifically, Respondent’s agreement with the TXPHP was terminated due to a history of non-compliance by not paying the required enrollment fee, obtaining required evaluations, and by not submitting the required quarterly reports.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board. Respondent is currently under a three-year order pertaining to Respondent’s initial licensure application. The terms of the Agreed Order entered November 21, 2011 (“2011 Order”) are as follows: Respondent shall limit his practice to an institutional or group setting; shall complete a live preparatory course for special board certification in Family Medicine; Respondent shall
complete 50 hours of CME in Family Medicine annually for the duration of the order; shall have a chart monitor; shall have a practice mentor, who shall report on Respondent bi-annually to the Compliance Department; shall sign a sign release of any and all peer review records; and shall fully cooperate with 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.

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. P-1740. Respondent was originally issued this license to practice medicine in Texas on January 2, 2012. Respondent is not licensed to practice in any other state.
   c. Respondent is primarily engaged in general practice. Respondent is not board certified.
   d. Respondent is 35 years of age.

2. Specific Panel Findings:
   a. Respondent failed to comply with his TXPHP agreement. Respondent entered into his TXPHP Agreement due to a history of Obsessive-Compulsive Disorder. Respondent failed to pay the monitoring fee for TXPHP and failed to timely submit to a psychiatric evaluation in Texas. These failures lead to his dismissal from the TXPHP.
b. Respondent took full responsibility for his actions. The Panel recognized Respondent’s forthrightness noting that he is a young physician working in a rural, medically underserved area with significant financial constraints. Respondent implemented numerous measures to improve his administrative practice and responsiveness. Respondent also did get a psychiatric evaluation in June 2012.

3. Mitigating Factors:

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

i. Since December of 2011, Respondent has been under an Agreed Order as described above. Respondent is in full compliance with the 2011 Order, and has had no practice or patient care complaints.

ii. Respondent took responsibility for violating certain terms of his TXPHP agreement. He fully admitted he exercised poor judgment in not prioritizing the TXPHP agreement in dealing with his financial struggles. Respondent further admitted he immaturely failed to communicate with TXPHP staff concerning his financial troubles and inability to locate a psychiatrist in his area; this failure to communicate exacerbated the problem.

iii. Respondent outlined the actions he took to ensure that his compliance with TXPHP and the 2011 Order would remain a top priority. These include:

1. Working on better decision making and problem solving by engaging his Board approved mentor and other individuals when encountering problems;

2. Changing his schedule so that he does not see patients for half a day per week to work on administrative responsibilities and Board matters;

3. Improving his efficiency by delegating some administrative duties;
4. Improving communication and responsiveness with the Board and TXPHP by purchasing a smart phone that enables him to check email at home because he does not own a home computer.

iv. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent's cooperation, through consent to this Agreed Order, pursuant to the provisions of Section 164.002 the Act, will save money and resources for the State of Texas. 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 164.052(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, or injure the public, and further defined by Board Rule 190.8(2)(D), failure to cooperate with Board staff.

3. Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent’s committing an act prohibited under section 164.052.

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.

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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. Respondent shall submit to an evaluation by the TXPHP no later than 30 days from the effective date of this Order. Respondent shall comply with any and all recommendations made by the TXPHP following such evaluation. This term shall be considered satisfied upon the Board’s receipt of notice of resolution from the TXPHP.

2. Respondent shall pay an administrative penalty in the amount of $500.00 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.

3. 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.

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

5. 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.

6. 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).

7. 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.

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

9. 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 TO FOLLOW]
I, JAMES ALLEN CLARK, 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.


[Signature]
JAMES ALLEN CLARK
Respondent

STATE OF Texas
COUNTY OF Tyler

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 1st day of May, 2013.

[Signature]
Signature of Notary Public
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 14th day of June, 2013.

Irvin E. Zeitler, Jr., D.O., President
Texas Medical Board