

1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**  
2 **OF THE STATE OF NEVADA**

3 \* \* \* \* \*

4  
5 **In the Matter of Charges and Complaint**

Case No. 21-47802-1

6 **Against:**

**FILED**

7 **KELLY JAMES TURNER, M.D.,**

**MAR 04 2022**

8 **Respondent.**

**NEVADA STATE BOARD OF  
MEDICAL EXAMINERS**

By: *[Signature]*

9  
10 **SETTLEMENT AGREEMENT**

11 The Investigative Committee (IC) of the Nevada State Board of Medical Examiners  
12 (Board), by and through Sarah A. Bradley, J.D., MBA, Deputy Executive Director and Robert G.  
13 Kilroy, J.D., Senior Deputy General Counsel for the Board and attorney for the IC, and Kelly  
14 James Turner, M.D. (Respondent), a licensed physician in Nevada, hereby enter into this  
15 Settlement Agreement (Agreement) based on the following.<sup>1</sup>

16 **A. BACKGROUND**

17 1. Respondent is a medical doctor currently licensed in inactive status by the Board  
18 pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada  
19 Administrative Code (NAC), collectively, the Medical Practice Act (MPA), to practice medicine in  
20 Nevada. His license was originally issued on January 25, 2018 (License No. 17670).

21 2. On October 26, 2021, in Case No. 21-47802-1, the IC filed a formal Complaint  
22 (Complaint) charging Respondent with violating the MPA. Specifically, the Complaint alleges one (1)  
23 violation of NRS 630.301(3), Out of State Discipline (Count I). By reason of the foregoing,  
24 Respondent is subject to discipline by the Board as provided in NRS 630.352.

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26  
27 <sup>1</sup> All agreements and admissions made by Respondent are solely for final disposition of this matter and any  
28 subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore,  
Respondent's agreements and admissions are not intended or made for any other use, such as in the context of another  
state or federal government regulatory agency proceeding, state or federal civil or criminal proceeding, any state or  
federal court proceeding, or any credentialing or privileges matter.

1           3.       Respondent was properly served with a copy of this Complaint, has reviewed and  
2 understands this Complaint, and has had the opportunity to consult with competent counsel concerning  
3 the nature and significance of this Complaint.

4           4.       Respondent is hereby advised of his rights regarding this administrative matter, and of  
5 his opportunity to defend against the allegations in the Complaint. Specifically, Respondent has certain  
6 rights in this administrative matter as set out by the United States Constitution, the Nevada  
7 Constitution, the MPA, the Nevada Open Meeting Law (OML), which is contained in  
8 NRS Chapter 241, and the Nevada Administrative Procedure Act (APA), which is contained in  
9 NRS Chapter 233B and 622A. These rights include the right to a formal hearing on the allegations in  
10 the complaint, the right to representation by counsel, at his own expense, in the preparation and  
11 presentation of his defense, the right to confront and cross-examine the witnesses and evidence against  
12 him, the right to written findings of fact, conclusions of law and order reflecting the final decision of  
13 the Board, and the right to judicial review of the Board's order, if the decision is averse to him.

14           5.       Respondent understands that, under the Board's charge to protect the public by  
15 regulating the practice of medicine, the Board may take disciplinary action against Respondent's  
16 license, including license probation, license suspension, license revocation and imposition of  
17 administrative fines, as well as any other reasonable requirement or limitation, if the Board concludes  
18 that Respondent violated one or more provisions of the MPA.

19           6.       Respondent understands and agrees that this Agreement, by and between Respondent  
20 and the IC, is not with the Board, and that the IC will present this Agreement to the Board for  
21 consideration in open session at a duly noticed and scheduled meeting. Respondent understands  
22 that the IC shall advocate for the Board's approval of this Agreement, but that the Board has  
23 the right to decide in its own discretion whether to approve this Agreement. Respondent further  
24 understands and agrees that if the Board approves this Agreement, then the terms and conditions  
25 enumerated below shall be binding and enforceable upon him and the Board.

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1 **B. TERMS & CONDITIONS**

2 **NOW, THEREFORE**, to resolve the matters addressed herein, i.e., the matters about the  
3 Complaint, Respondent and the IC hereby agree to the following terms and conditions:

4 1. **Jurisdiction.** Respondent is, and always relevant to the Complaint has been, a  
5 physician licensed to practice medicine in Nevada subject to the jurisdiction of the Board as set  
6 forth in the Medical Practice Act.

7 2. **Representation by Counsel/Knowing, Willing and Intelligent Agreement.**  
8 Respondent acknowledges he is represented by counsel and wishes to resolve the matters  
9 addressed herein with said counsel. Respondent agrees that if representation by counsel in this  
10 matter materially changes prior to entering into this Agreement and for the duration of this  
11 Agreement, that counsel for the IC will be timely notified of the material change. Respondent  
12 agrees that he knowingly, willingly, and intelligently enters into this Agreement after deciding to  
13 have a full consultation with and upon the advice of legal counsel.

14 3. **Waiver of Rights.** In connection with this Agreement, and the associated terms  
15 and conditions, Respondent knowingly, willingly, and intelligently waives all rights in connection  
16 with this administrative matter. Respondent hereby knowingly, willingly and intelligently waives  
17 all rights arising under the United States Constitution, the Nevada Constitution, the MPA, the  
18 OML, the APA, and any other legal rights that may be available to him or that may apply to him  
19 in connection with the administrative proceedings resulting from the Complaint filed in this  
20 matter, including defense of the Complaint, adjudication of the allegations set forth in the  
21 Complaint, and imposition of any disciplinary actions or sanctions ordered by the Board.  
22 Respondent agrees to settle and resolve the allegations of the Complaint as set out by this  
23 Agreement, without a hearing or any further proceedings and without the right to judicial review.

24 4. **Acknowledgement of Reasonable Basis to Proceed.** As of the time of entering  
25 into this Settlement Agreement, the allegations of the Complaint remain unproven. Respondent  
26 acknowledges that the IC believes it has a reasonable basis to allege that Respondent engaged in  
27 conduct that is grounds for discipline pursuant to the MPA. The IC acknowledges Respondent is  
28 not admitting that the IC's claims/counts as alleged in the Complaint have merit and Respondent

1 is agreeing to resolve this matter to avoid the costs of hearing and potential subsequent litigation.  
2 Respondent asserts if this matter were to proceed to hearing, he has evidence, witnesses, expert  
3 witness(es) and defenses to the counts/claims alleged in the Complaint, but for the purposes of  
4 resolving the matter and for no other purpose, Respondent waives the presentation of evidence,  
5 witnesses, expert witnesses, and defenses to effectuate this Agreement.

6       5.     Consent to Entry of Order. To resolve this Complaint pending against Respondent,  
7 Respondent hereby agrees that the Board may issue an order finding that Respondent engaged in  
8 conduct that is grounds for discipline pursuant to the MPA. Accordingly, the following terms and  
9 conditions are hereby agreed upon:

10           a.     Respondent admits to Count I of the Complaint, violation of NRS 630.301(3),  
11 Out of State Discipline.

12           b.     Respondent will pay the costs and expenses incurred in the investigation  
13 and prosecution of the above-referenced matter within sixty (60) days of the Board's acceptance,  
14 adoption, and approval of this Agreement in the amount of five hundred sixty-eight dollars and  
15 four cents (\$568.04).

16           c.     Respondent shall pay a fine of \$500 within sixty (60) days of the Board's  
17 acceptance, adoption, and approval of this Agreement.

18           d.     This Agreement shall be reported to the appropriate entities and parties as  
19 required by law, including, but not limited to, the National Practitioner Data Bank.

20           e.     Respondent shall receive a Public Letter of Reprimand.

21           f.     From the date that Respondent's license is changed to "active" status,  
22 Respondent's license shall be subject to a term of probation for a period not to exceed thirty-six  
23 (36) months from the date of the Board's acceptance, adoption, and approval of this Agreement  
24 (Probationary Period).

25           g.     During the Probationary Period, Respondent shall successfully complete all  
26 requirements and comply with all Orders, past or future, of the Texas Medical Board, specifically  
27 including, but not limited to, the Texas Medical Board's Order Granting Modification issued on  
28 October 15, 2021, in its Case No. L-4152.

1           h.     During the Probationary Period, Respondent shall not supervise any  
2 Physician Assistant, or collaborate with any Advanced Practice Registered Nurse in the State of  
3 Nevada.

4           i.     At the time of the execution of this Agreement, Respondent's license is in  
5 an "inactive" status. Prior to changing his licensure status in Nevada from "inactive" to "active,"  
6 Respondent agrees to complete a 'fitness for duty' evaluation which addresses his competence to  
7 practice medicine, as well as his possible substance abuse issues. If this evaluation results in any  
8 recommendations, then before Respondent's license may be changed from "inactive" to "active,"  
9 Respondent will come before the Board at a public Board meeting for the Board to review these  
10 recommendations and potentially order Respondent to complete those recommendations, which  
11 may result in the Board placing conditions, limitations, or other requirements upon Respondent's  
12 license.

13           6.     Release from Liability. In execution of this Agreement, Respondent understands  
14 and agrees that the State of Nevada, the Board, and each of its members, staff, counsel,  
15 investigators, experts, peer reviewers, committees, panels, hearing officers, consultants and agents  
16 are immune from civil liability for any decision or action taken in good faith in response to  
17 information acquired by the Board. NRS 630.364(2)(a). Respondent agrees to release the State of  
18 Nevada, the Board, and each of its members, staff, counsel, investigators, experts, peer reviewers,  
19 committees, panels, hearing officers, consultants and agents from any and all manner of actions,  
20 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and  
21 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against  
22 any or all of the persons, government agencies or entities named in this paragraph arising out of,  
23 or by reason of, this investigation, this Agreement or the administration of the case referenced  
24 herein.

25           7.     Procedure for Adoption of Agreement. The IC and counsel for the IC shall  
26 recommend approval and adoption of the terms and conditions of this Agreement by the Board in  
27 resolution of this Complaint. While seeking Board acceptance, approval, and adoption of this

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1 Agreement, counsel for the IC may communicate directly with the Board staff and the  
2 adjudicating members of the Board.

3 Respondent acknowledges that such contacts and communications may be made or  
4 conducted ex-parte, without notice or opportunity to be heard on his part until the public Board  
5 meeting where this Agreement is discussed, and that such contacts and communications may  
6 include, but may not be limited to, matters concerning this Agreement, the Complaint and all  
7 information of every nature whatsoever related to this matter. The IC and its counsel agree that  
8 Respondent and/or Counsel for the Respondent may appear at the Board meeting where this  
9 Agreement is discussed and, if requested, respond to any questions that may be addressed to the  
10 IC or the IC's counsel.

11 8. **Effect of Acceptance of Agreement by Board.** In the event the Board accepts,  
12 approves, and adopts this Agreement, the Board shall issue a final order, making this Agreement  
13 an order of the Board, and, pending full compliance with the terms herein, the case shall be closed  
14 and all remaining claims arising out of the Complaint shall be dismissed with prejudice.

15 9. **Effect of Rejection of Agreement by Board.** In the event the Board does not  
16 accept, approve and adopt this Agreement, this Agreement shall be null, void and of no force and  
17 effect except as to the following agreement regarding adjudications: (1) Respondent agrees that,  
18 notwithstanding rejection of this Agreement by the Board, nothing contained in this Agreement  
19 and nothing that occurs pursuant to efforts of the IC to seek the Board's acceptance of this  
20 Agreement shall disqualify any member of the adjudicating panel of the Board from considering  
21 this Complaint and from participating in disciplinary proceedings against Respondent, including  
22 adjudication of this case; and (2) Respondent further agrees that he shall not seek to disqualify any  
23 such member absent evidence of bad faith.

24 10. **Binding Effect.** If approved by the Board, Respondent understands that this  
25 Agreement is a binding and enforceable contract upon Respondent and the Board.

26 11. **Forum Selection Clause.** The parties agree that in the event either party is  
27 required to seek enforcement of this Agreement in district court, the party's consent to such

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1 jurisdiction and agree that exclusive jurisdiction shall be in the Second Judicial District Court,  
2 State of Nevada, Washoe County.

3 12. **Attorneys' Fees and Costs**. The parties agree that in the event an action is  
4 commenced in district court to enforce any provision of this Agreement, the prevailing party shall  
5 be entitled to recover reasonable attorneys' fees and costs.

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1           13.    **Failure to Comply with Terms.** Should Respondent fail to comply with any term  
2 or condition of this Agreement after the Agreement has been accepted, approved, and adopted by  
3 the Board, the IC shall be authorized to immediately suspend Respondent's license to practice  
4 medicine in Nevada pending an Order to Show Cause Hearing, which will be duly noticed.  
5 Failure to comply with the terms of this Agreement, including failure to pay any fines, costs,  
6 expenses, or fees owed to the Board, is a failure to comply with an order of the Board, which may  
7 result in additional disciplinary action being taken against Respondent. See NRS 630.3065(2)(a).  
8 Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a  
9 condition of this Agreement may subject Respondent to civil collection efforts.

10 DATED this 4th day of February, 2022.    DATED this 2nd day of February, 2022.

11 INVESTIGATIVE COMMITTEE OF THE  
12 NEVADA STATE BOARD OF MEDICAL  
13 EXAMINERS

14 By: Sarah A. Bradley  
15 SARAH A. BRADLEY, J.D., MBA  
16 Deputy Executive Director  
17 ROBERT G. KILROY, J.D.  
18 Senior Deputy General Counsel  
19 9600 Gateway Drive  
20 Reno, NV 89521  
21 *Attorney for the Investigative Committee*

By: Kelly James Turner  
KELLY JAMES TURNER, M.D.,  
*Respondent*

19 State of \_\_\_\_\_  
20 County of \_\_\_\_\_

21 This instrument was acknowledged before me on  
22 this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by  
23 KELLY JAMES TURNER, M.D.

24 \_\_\_\_\_  
NOTARY PUBLIC

26 **X    SEE ATTACHED**  
27 **Notary Public**

28

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Bernardino )

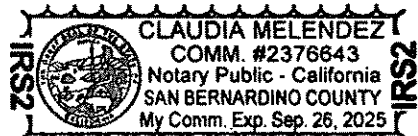
On 2.2.2022 before me, Claudia Melendez, Notary Public  
(insert name and title of the officer)

personally appeared Kelly James Turner  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



**ORDER**

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**IT IS HEREBY ORDERED** that, the foregoing Settlement Agreement (Case No. 21-47802-1) was approved and accepted by the Nevada State Board of Medical Examiners on the 4<sup>th</sup> day of March, 2022

DATED this 4<sup>th</sup> day of March, 2022.

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: Victor M. Muro  
VICTOR M. MURO, M.D.  
*Board President*

**OFFICE OF THE GENERAL COUNSEL**  
Nevada State Board of Medical Examiners  
9600 Gateway Drive  
Reno, Nevada 89521  
(775) 688-2559

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**BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF NEVADA**

\* \* \* \* \*

**In the Matter of Charges and  
Complaint Against:  
KELLY JAMES TURNER, M.D.,  
Respondent.**

Case No. 21-47802-1

**FILED**  
OCT 26 2021  
NEVADA STATE BOARD OF  
MEDICAL EXAMINERS  
By: \_\_\_\_\_

**COMPLAINT**

The Investigative Committee<sup>1</sup> (IC) of the Nevada State Board of Medical Examiners (Board), by and through Robert G. Kilroy, Esq., Senior Deputy General Counsel and attorney for the IC, having a reasonable basis to believe that Kelly James Turner, M.D., (Respondent) violated the provisions of Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630 (collectively, the Medical Practice Act), hereby issues its Complaint, stating the IC's charges and allegations as follows:

1. At all times relative to this Complaint, Respondent held an active license to practice medicine in the State of Nevada (License No. 17670), originally licensed by the Board on January 25, 2018, and, placed his license into an "inactive" status on January 11, 2019 and confirmed continuance of this status on May 13, 2021.

2. On June 14, 2019, the Texas Medical Board and Respondent entered into an Agreed Order (See **Exhibit 1**) suspending his Texas license to practice medicine in that state. The license suspension was "stayed" and Respondent was placed upon probation under the following terms for ten (10) years: limit his practice to administrative medicine and shall have no patient contact, prescribe, or supervise or delegate prescriptive authority; abstain from the consumption of prohibited substances as defined in the Order; participate in the Texas Board's drug testing

<sup>1</sup> The Investigative Committee of the Nevada State Board of Medical Examiners, at the time this formal Complaint was authorized for filing, was composed of Board members Mr. M. Neil Duxbury, Aury Nagy, M.D., and Michael C. Edwards, M.D. FACS

1 program; within thirty (30) days obtain a Board-approved treating psychiatrist and receive  
2 treatment no less than two times each month; participate in the activities of alcoholic anonymous  
3 no less than three times a week; and, participate in the activities of a county or state medical  
4 society committee on physician health and rehabilitation, including weekly meetings as the Texas  
5 Board found Respondent had multiple intoxication-related arrests in 2018. Also, this Texas  
6 Medical Board Agreed Order listed Respondent's mitigating factors: he has been sober since  
7 October 2018; he has accepted responsibility and expressed remorse for his actions; he has  
8 rehabilitative potential and is a value to the community; and, he has cooperated in the  
9 investigation and agreed to the aforementioned Agreed Order.

10 **COUNT I**

11 **(NRS 630.301(3)) - (Out of State Discipline)**

12 3. All of the allegations contained in the above paragraphs are hereby incorporated by  
13 reference as though fully set forth herein.

14 4. NRS 630.301(3) provides that any disciplinary action, including the revocation,  
15 suspension, modification or limitation of a license to practice any type of medicine, taken by  
16 another state, is grounds for initiating disciplinary action against a licensee.

17 5. On June 14, 2019, the Texas Medical Board entered into an Agreed Order with  
18 Respondent regarding his unprofessional conduct in 2018.

19 6. The aforementioned Agreed Order was a disciplinary action taken by another state  
20 (Texas).

21 7. By reason of the foregoing, Respondent is subject to discipline by the Nevada State  
22 Board of Medical Examiners as provided in NRS 630.352.

23 8. By reason of the foregoing, Respondent is subject to discipline by the Board as  
24 provided in NRS 630.352.

25 **WHEREFORE**, the Investigative Committee prays:

26 1. That the Board give Respondent notice of the charges herein against him and give  
27 him notice that he may file an answer to the Complaint herein as set forth in NRS 630.339(2)  
28 within twenty (20) days of service of the Complaint;

1           2.       That the Board set a time and place for a formal hearing after holding an Early  
2 Case Conference pursuant to NRS 630.339(3);

3           3.       That the Board determine what sanctions to impose if it determines there has been  
4 a violation(s) of the Medical Practice Act committed by Respondent;

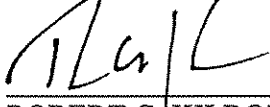
5           4.       That the Board award fees and costs for the investigation and prosecution of this  
6 matter as outlined in NRS 622.400.

7           5.       That the Board make, issue and serve on Respondent its findings of fact,  
8 conclusions of law and order, in writing, that includes the sanctions imposed; and

9           6.       That the Board take such other and further action as may be just and proper in these  
10 premises.

11 DATED this 20 day of October, 2021.

INVESTIGATIVE COMMITTEE OF THE  
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:  \_\_\_\_\_

ROBERT G. KILROY, J.D.  
Senior Deputy General Counsel  
9600 Gateway Drive  
Reno, NV 89521  
Tel: (775) 324-9349  
Email: [rkilroy@medboard.nv.gov](mailto:rkilroy@medboard.nv.gov)  
*Attorney for the Investigative Committee*

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**VERIFICATION**

STATE OF NEVADA        )  
                                  : ss.  
COUNTY OF WASHOE    )

Dr. Bret W. Frey, M.D. having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the Complaint against the Respondent herein; that he has read the foregoing Complaint; and that based upon information discovered in the course of the investigation into a complaint against Respondent, he believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate and correct.

DATED this 26<sup>th</sup> day of October, 2021.

INVESTIGATIVE COMMITTEE OF THE  
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:   
\_\_\_\_\_  
BRET W. FREY, M.D.  
*Chairman of the Investigative Committee*

# EXHIBIT 1

LICENSE NO. L4152

IN THE MATTER OF  
THE LICENSE OF  
KELLY JAMES TURNER, M.D.

BEFORE THE  
  
TEXAS MEDICAL BOARD

AGREED ORDER

On the 14 day of June, 2019, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Kelly James Turner, M.D. (Respondent).

On March 14, 2019, Respondent appeared in person, with counsel Franklin Hopkins, 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 Manuel Quinones, Jr., M.D., a member of the Board, and Lewis Benavides, a member of a District Review Committee (Panel). Claudia Kirk represented Board staff.

BOARD CHARGES

Board Staff charged that Respondent is unable to safely practice medicine due to excessive use of drugs and alcohol. In addition, Respondent was writing false or fictitious prescriptions of Xanax under another doctor's name for himself.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by Board as follows:

1. On December 6, 2013, the Board and Respondent entered into an Agreed Order (2013 Order) due to Respondent prescribing controlled substances to patients for the treatment of pain without maintaining proper medical records or ordering medical records from the patients' previous treating physicians. The 2013 Order required Respondent to: limit his practice to a group or institutional setting; not treat or otherwise serve as a physician for his immediate family; not prescribe, dispense, administer or authorize controlled substances or dangerous drugs with addictive potential or potential for abuse to himself or his immediate family; not treat

acute/chronic pain except in a pre-approved group or institution setting; have his practice monitored by a physician for four consecutive monitoring cycles; and within one year complete 28 hours of CME. On March 4, 2016, the Board entered an Order Granting Termination of the 2013 Order.

2. On October 22, 2018, the Board entered an Order of Temporary Suspension (without notice) due to Respondent's continuation in the practice of medicine constituting a continuing threat to the public welfare due to an impairment.

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. L4152. Respondent was originally issued this license to practice medicine in Texas on May 17, 2002. Respondent also licensed to practice in Nevada.
- c. Respondent is primarily engaged in the practice of emergency medicine. Respondent is board certified by the American Board of Emergency Medicine, a member of the American Board of Medical Specialties.
- d. Respondent is 60 years of age.

2. Specific Panel Findings:

- a. On May 9, 2018, Respondent was arrested in Colorado. Respondent was charged with Felony Menacing, Theft, Criminal Mischief, and Domestic Violence. The police report notes that there was a strong odor of an alcoholic beverage coming

from Respondent's breath and his speech was slurred. Respondent's wife told the police Respondent has been drinking alcohol for the good majority of the day. On August 23, 2018, Respondent entered into a Plea Agreement. Respondent pled guilty to Prohibited Use of a Weapon, a Class 2 Misdemeanor. Respondent was sentenced to unsupervised probation for a term of 24 months.

- b. On May 29, 2018, Respondent was arrested for Driving While Intoxicated (DUI) by the Keller Police Department. Respondent was charged with Driving While Intoxicated, a Class B Misdemeanor, and Unlawful Carry Handgun License Holder, a Class A Misdemeanor.
- c. According to Respondent, on both June 13, 2018, and July 9, 2018, he was arrested at the airport in Grapevine, Texas for being too intoxicated for air travel.
- d. On August 4, 2018, Respondent was arrested for DUI by the Southlake Police Department. The police report notes that Respondent was walking unsteady and had slurred speech. Respondent told police he had taken Alprazolam the night before.

3. Mitigating Factors:

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

- a. Respondent has been sober since October 2018.
- b. Respondent accepted responsibility and expressed remorse for his actions.
- c. Respondent has rehabilitative potential and is a value to the community.
- d. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. 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 164.052(a)(4) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's use of alcohol or drugs in an intemperate manner that, in the opinion of the Board, could endanger the lives of patients.

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 condition:

1. Respondent's Texas license is hereby SUSPENDED. However, the suspension shall be automatically STAYED and Respondent shall be placed on PROBATION under the following terms and conditions for 10 years.

2. Respondent shall limit his practice to administrative medicine. Respondent shall not have patient contact, prescribe to patients, or supervise or delegate prescriptive authority to a physician assistant or advanced practice nurse or supervise a surgical assistant for patient care.

3. 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 epinephrine
- (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~~
- (4) 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.**

4. Psychiatric Care and Treatment. Within 30 days after the entry of this Order, Respondent shall submit to the Compliance Division of the Board letters from up to three physicians who are board certified in psychiatry and who agree to serve as Respondent's approved treating psychiatrist.

- (a) The letters from proposed treating psychiatrist(s) shall state that they:
  - (1) have been provided a copy of this Order;
  - (2) agree to provide psychiatric treatment to Respondent; and
  - (3) agree to provide periodic reports regarding Respondent's compliance with treatment and rehabilitation to (a) the Board or (b) an independent monitoring psychiatrist.
- (b) A proposed treating psychiatrist may not be approved unless the proposed treating psychiatrist agrees to provide periodic reports either to the Board or to an independent monitoring psychiatrist.

- (c) 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.
- (d) Respondent shall begin the recommended care and treatment within 30 days after notification of approval of the treating psychiatrist.
- (e) Respondent shall receive care and treatment from the treating psychiatrist no less than **two times each month**. Respondent shall not unilaterally withdraw from treatment.
- (f) Respondent shall pay all fees charged by the treating psychiatrist.
- (g) Respondent shall follow all recommendations made by the treating psychiatrist regarding continued care and treatment.
- (h) 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.
- (i) 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 Board or an independent monitoring psychiatrist may request clarification of periodic reports and may request additional reports.
- (j) 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.
- (k) 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.
- (l) Respondent shall execute any and all releases for medical records and authorizations necessary to effectuate the provisions of this Order.

Respondent's failure to cooperate with the treating psychiatrist, failure to follow the treating psychiatrist's recommendations, or withdrawal from treatment without consent of the Executive Director of the Board shall constitute a violation of this Order.

5. Monitoring Continued Care and Treatment. During any continued care and treatment, the Compliance Division of 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 Compliance Division of 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 Compliance Division of 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 Compliance Division of 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.

6. The Respondent shall participate in the activities and programs of Alcoholics Anonymous ("AA") and/or Narcotics Anonymous ("NA") (or any other substantially similar program that has been approved in writing by the Executive Director of the Board), on a regular basis of not less than **three times a week**. Respondent can substitute a Caduceus meeting for one of the three meetings per week. Respondent shall maintain documentation as to the number and location of meetings attended and make such documentation available to the Board staff upon request.

7. Respondent shall participate in the activities of a county or state medical society committee on physician health and rehabilitation, including participation in weekly meetings, if any. Respondent shall request in writing that the chair of the committee or the chair's designee make written quarterly reports of Respondent's attendance and participation in the committee's activities on March 15, June 15, September 15, and December 15 of each year, or more often if desired by the chair or requested by the Compliance Division of the Board or Board staff. The chair shall be provided with a copy of this Order by Respondent and authorization in writing by Respondent to report both orally and in writing to the Compliance Division of the Board or Board staff on Respondent's rehabilitation efforts or failure to adequately participate in committee activities. Respondent shall also immediately submit to drug and alcohol screens upon the request of the chair of the committee or the chair's designee, and shall authorize in writing the chair or the chair's designee to transmit the results of such screens to the Compliance Division of the Board or Board staff.

8. 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 in Texas 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.

9. Pursuant to Board Rule 189.15, 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) this Order is stayed or enjoined by Court Order; or (c) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine and such cessation in practice is NOT due to a suspension of Respondent's license. Respondent shall immediately notify the Board in writing in the event that Respondent leaves Texas to practice elsewhere or ceases active practice for more than 60 consecutive days. Upon Respondent's return to active practice or return to Texas, Respondent shall notify the Board in writing. Upon return to Texas or active practice, 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. Tolling shall be in accordance with Board Rule 189.15.

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

11. 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.

12. 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).

13. 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.

14. This Agreed Order, in accordance with Ordering Paragraph No. 2, constitutes a restriction on Respondent's license and Respondent shall not be permitted to supervise or delegate prescriptive authority to a physician assistant or advanced practice nurse or supervise a surgical assistant.

15. **Ordering Paragraphs Nos. 2 and 14 shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for one year following the date of the entry of this Order. Ordering Paragraphs Nos. 3 through 7, shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for two years following the date of the entry of this Order.** After the passage of the set timelines, 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)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this  
14 day of June, 2019.

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