

5. On July 28, 1993, Respondent entered treatment at Talbot Recovery Center in Atlanta, Georgia, for chemical dependency.

6. Respondent cooperated in the Board's investigation regarding the allegations against him.

7. Respondent has entered into an aftercare contract with Talbot Recovery Center.

8. Respondent has entered into a contract regarding his recovery with the Impaired Physicians Committee of the Travis County Osteopathic Medical Society.

9. Respondent has stated his intention to apply for admission to a residency training program in psychiatry.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes the following:

1. Section 3.08(3) of the Medical Practice Act of Texas ("the Act"), V.A.C.S., art. 4495b, allows the Board to take disciplinary action against a physician for "intemperate use of alcohol or drugs that, in the opinion of the board, could endanger the lives of patients."

2. Respondent's actions as set out in Finding of Fact 3, above, constitute intemperate use of drugs as contemplated by Section 3.08(3) of the Act.

3. Section 3.08(19) of the Act allows the Board to take disciplinary action against a physician for "being disciplined by a licensed hospital or medical staff of a hospital...."

4. The summary suspension of Respondent's privileges by Midland Memorial Hospital as set out in Finding of Fact 4, above, constitutes his having been disciplined by a licensed hospital or medical staff of a hospital as contemplated by Section 3.08(19) of the Act.

Based on the above findings of fact and conclusions of law, the Board orders that Respondent's Texas medical license is hereby suspended; however, the suspension is stayed and Respondent is placed on probation for a period of five (5) years under the following terms and conditions:

1. Respondent shall abstain from the consumption of alcohol or drugs in any form unless prescribed by another physician to the Respondent for a legitimate and therapeutic purpose. In the event that the Respondent receives alcohol or drugs from another physician for the purpose of treating the Respondent, the Respondent shall cause the treating physician to immediately report to the Board in writing the medical condition being treated, the substance prescribed, dispensed or administered, the amount of such substance and any refills authorized, or shall have the treating physician provide the Board with a copy of the Respondent's medical record which substantially reflects this information. Respondent shall give the treating physician a copy of this Order and shall ensure that a report to the Board is made by the treating physician or that a copy of the Respondent's medical record is provided by the treating physician to the Board.
2. Respondent shall submit himself for appropriate examinations, including screening for alcohol or drugs either through a urine or blood specimen, at the request of a representative of the Board, without prior notice, to determine chemically through laboratory analysis that Respondent is free of drugs and alcohol. Respondent shall pay for the costs of these chemical analyses. A positive urine screen for drugs or alcohol which were consumed in violation of the terms of this order, or a refusal to submit to random screenings shall constitute a violation of this Order and may result in

further disciplinary action pursuant to Section 4.01(a) of the Medical Practice Act.

3. The Respondent shall continue to participate in the activities and programs of Alcoholics Anonymous, or any other substantially similar program which has been approved in writing by the Board, on a regular basis of not less than three (3) times a week. Respondent shall make written reports directly to the Board as to the number and location of meetings attended. Reports shall be submitted in March, June, September, and December of each year or at such other times as the Board may request, until such time as the Board terminates this requirement in writing. All reports and requests for program approval should be addressed to the attention of the Director of Hearings for the Board.
4. Respondent shall surrender to the Board Respondent's Drug Enforcement Administration (DEA) Controlled Substances Registration Certificate and Texas Department of Public Safety (DPS) Controlled Substances Registration Certificate, and shall promptly sign the appropriate DEA and DPS forms to accomplish the cancellation of these registrations. Respondent shall not attempt to reregister or otherwise obtain Controlled Substances Registrations without prior written authority from the Board. Such authority may be granted after Respondent's personal appearance before the Board or a committee of the Board. The granting of such authority for reregistration is discretionary with the Board.
5. Respondent shall submit himself for appropriate examinations, including screening for alcohol or drugs either through a urine or blood specimen, at the request of a representative of the Board, without prior notice, to determine chemically

through laboratory analysis that Respondent is free of drugs and alcohol. Respondent shall pay for the costs of these chemical analyses. A positive screen for drugs or alcohol consumed in violation of the terms of this Order, or a refusal to submit to random screenings shall constitute a violation of this Order and may result in further disciplinary action pursuant to Sections 4.01(a) and 3.08 of the Medical Practice Act.

6. Respondent shall participate in the activities of a County Medical Society Committee on Physician Health and Rehabilitation, including participation in the weekly meetings. Respondent shall request the chairman of the committee to make written reports of Respondent's attendance and participation in the program to the Board in March, June, September, and December of each year, or more often if so desired by the chairman, until this requirement is terminated in writing by the Board. The chairman shall confer with the Director of Hearings for the Board with regard to Respondent's rehabilitation efforts or failure to participate as directed.
7. Respondent shall participate in all activities as required by his aftercare contract with Talbot Recovery Center. Respondent shall request the supervising physician, medical director, or other physician as assigned by Talbot Recovery Center to make written reports of Respondent's compliance with and participation in the activities required by said aftercare contract to the Board in March, June, September, and December of each year.
8. Respondent shall attend at least fifty (50) hours per year of Continuing Medical Education (CME) approved for Category I

credits by the American Medical Association or by the American Osteopathic Association. Each year Respondent shall submit to the Board proof of the prior year's CME attendance by the Order's anniversary date. Respondent shall submit proof to the Board of CME hours attended in the current year even though such may not meet the 50 hour requirement. A copy of the attendance certificate issued or a detailed report which can be verified by the Board shall satisfy this requirement.

9. Respondent shall give a copy of this Order to all Hospitals and Health Care Entities where he has privileges.
10. Respondent shall cooperate with the Board, its attorneys, investigators, compliance officers, and other employees and agents, to verify that Respondent has complied and is in compliance with this Board Order.
11. Respondent shall advise the Board of any change of address, mailing or office, within (10) days of such occurrence.
12. The time period of this Order shall be extended for any period of time in which Respondent subsequently resides or practices medicine outside the State of Texas, is in official retired status with the Board, or for any period during which Respondent's license is subsequently cancelled for nonpayment of licensure fees. If Respondent leaves Texas to live or practice medicine elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. Upon Respondent's return to practice in Texas or Respondent's relicensure, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order when Respondent left the practice of medicine in Texas,

retired, or had his or her license cancelled for nonpayment of licensure fees.

13. Respondent shall comply with all the provisions of the Medical Practice Act, V.A.C.S., article 4495b, and other statutes regulating the practice of medicine, as is required by law for physicians licensed by the Board.
14. Respondent shall appear before the Board or a committee of the Board once per year during each year of probation to report on Respondent's compliance with this Order and the Medical Practice Act.

Any violation of the terms, conditions and requirements of this Order shall constitute conclusive evidence of unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure the public within Section 3.08(4) of the Act, and may result in disciplinary action pursuant to Section 4.01(a) of the Act.

The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting for 12 months following entry of this Order. If, after the passage of the 12 month period, the Respondent wishes to seek amendment or termination of these conditions, then he may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition. Petitions for modifying or terminating may be filed only once a year thereafter. In the event that Respondent is admitted to a residency training program, Respondent may petition the Board in writing, prior to the passage of the 12 month period, for permission to reapply for Drug Enforcement Administration (DEA) Controlled Substances Registration and Texas Department of Public Safety (DPS) Controlled Substances Registration, and the Board may, in its sole discretion, grant or deny the petition.

In regard to all terms and conditions of this Agreed Board Order, Respondent waives any further hearings or appeal to the Board or to any court regarding this Order and the terms thereunder. Nothing in this paragraph shall be deemed a waiver of Respondent's rights under rule, statute or the United States or Texas Constitutions to appeal any decision or action which may later be taken by the Board subsequent to this Order, except as Respondent may have agreed herein. Respondent agrees that this Order is a final Order.

THIS ORDER IS A PUBLIC RECORD.

I, KEITH KESLER, D.O., HAVE READ AND UNDERSTAND THE FOREGOING AGREED BOARD ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED BOARD ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: January 3, 1994



KEITH KESLER, D.O.
RESPONDENT

