

IN THE MATTER OF
THE LICENSE OF
ELI T. ANDERSON, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 9th day of April, 2010, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Eli T. Anderson, M.D. ("Respondent").

On February 23, 2010, Respondent appeared in person, with counsel Louis Leichter, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board and pursuant to Section 164.059, in regard to an Order of Temporary Suspension With Notice entered by the Board on November 14, 2008, a copy of which Order is referred to and incorporated herein. The Board's representatives were David Baucom, a member of the Board, and Harry K. Wallfisch, M.D., a member of a District Review Committee. Sarah Tuthill represented Board staff.

Upon the recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order.

FINDINGS OF FACT

The Board finds that:

1. 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.

2. Respondent currently holds Texas Medical License No. E-6214. Respondent was originally issued this license to practice medicine in Texas on August 29, 1976. Respondent is not licensed to practice in any other state.

3. Respondent is primarily engaged in the practice of psychiatry. Respondent is not board certified.

4. Respondent is 65 years of age.

5. On November 14, 2008, the Board entered an Order of Temporary Suspension With Notice and suspended Respondent's license. The Board's action was based upon findings that Respondent had started abusing cocaine in 2002, received a five-year adjudication for possession of cocaine in 2005, was arrested and charged with possession of drug paraphernalia in 2007, and had abused cocaine as recently as November of 2008.

6. In December of 2008, Respondent successfully completed an in-patient substance abuse treatment program. He was diagnosed with depression and cocaine dependence, secondary to stressors that included the death of his mother in 2000.

7. After his discharge from the treatment program, Respondent began regular and ongoing participation in out-patient treatment programs, which include group and individual psychotherapy treatment. He presently obtains individual psychotherapy on a monthly basis.

8. In January of 2009, Respondent started to attend regular Caduceus meetings, and in February of 2009, started participation in Alcoholics Anonymous ("AA") programs. He presently attends one Caduceus and three AA meetings on a weekly basis.

9. On January 12, 2009, Respondent appeared before a panel of Board representatives to review Respondent's substance abuse history. The Panel recommended that Respondent participate in the Board's drug and alcohol testing program in order to demonstrate continuing sobriety before requesting a termination of his suspension. The Panel encouraged Respondent to return to the Board and make such a request after his successful completion of at least six months in the testing program.

10. Respondent agreed, and began participation in the Board's drug and alcohol testing program in May of 2009. To date, all screens have been negative for prohibited substances.

11. From January of 2009 to present, Respondent has maintained his competency levels through self study and the completion of 31.25 continuing medical education credits.

CONCLUSIONS OF LAW

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

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.
2. Sections 164.051(a)(4) and 164.056 of the Act authorize the Board to take disciplinary action against Respondent based on Respondent's inability to practice medicine with reasonable skill and safety to patients because of illness; drunkenness; excessive use of drugs, narcotics, chemicals, or another substance; or as a result of any mental or physical condition.
3. 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 of Fact and Conclusions of Law and the recommendation of the Board's representatives, the Board ORDERS that the Temporary Suspension Order With Notice entered on November 14, 2008 is hereby superceded with this Agreed Order.

It is further ordered that Respondent's Texas license is hereby SUSPENDED; however, the suspension is IMMEDIATELY STAYED and Respondent is placed on PROBATION under the following terms and conditions for 10 years from the date of the signing of this Agreed Order by the presiding officer of the Board:

1. Respondent shall limit Respondent's medical practice, including any office and inpatient practice, to a group or an institutional setting approved in advance in the discretion of the Executive Director of the Board. Respondent shall provide a copy of this Order to the group or institutional setting administrator(s). If there are any personnel or scheduling changes related to the approved setting, the Respondent shall notify the Board in writing of those changes within 14 days.
2. 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 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, through either a saliva, urine, blood, sweat, or hair specimen, 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.**

3. The Respondent shall continue to participate in the activities and programs of AA, (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 five times per week. Respondent may substitute one weekly AA meeting with a Caduceus meeting. Respondent shall maintain

documentation as to the number and location of meetings attended and make such documentation available to the Board staff upon request.

4. Psychiatric Care and Treatment. Within 30 days after the date of 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 one time 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 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 Board or to an independent monitoring psychiatrist.
- (k) The treating psychiatrist shall immediately report, either directly to 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.
- (m) 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 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 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 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 Compliance Division of the Board, either directly to 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. Respondent shall not treat or otherwise serve as a physician for Respondent's immediate family, and Respondent shall not prescribe, dispense, administer or authorize controlled substances or dangerous drugs with addictive potential or potential for abuse to Respondent or Respondent's immediate family. Respondent may self-administer or administer to Respondent's immediate family only such drugs as prescribed by another physician for legitimate medical purposes and in compliance with the orders and directions of such physician.

7. Respondent shall personally appear before the Board, a committee of the Board, or a panel of Board representatives at least one time the first year and each year thereafter that this Order is in effect upon written request, mailed to Respondent's last known address on file with the Board at least 10 calendar days before the requested appearance date. Such appearances shall be for the purpose of reporting on and addressing issues related to Respondent's compliance with the terms and conditions of this Order.

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

9. 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.

10. Respondent shall inform the Board in writing of any change of Respondent's mailing or practice 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.

11. 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. 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).

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

13. 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 the date of the entry of this Order. If, after the passage of the 12-month period, 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]

LICENSE NO. E-6214

IN THE MATTER OF
THE LICENSE OF
ELI T. ANDERSON, M.D.

BEFORE THE DISCIPLINARY PANEL
OF THE
TEXAS MEDICAL BOARD

ORDER OF TEMPORARY SUSPENSION
[WITH NOTICE OF HEARING]

On November 14, 2008, came to be heard before the Disciplinary Panel of the Texas Medical Board (the "Board"), composed of Manuel G. Guajardo, M.D., Chair, Melinda McMichael, M.D., and Alan Shulkin, M.D., members of the Board (the "Panel") duly in session, the matter of the Application for Temporary Suspension of the license of Eli T. Anderson, M.D. ("Respondent"). Respondent did not appear in person and Ursula Keen, J.D., represented Board staff. Based on evidence submitted, the Board through this Panel makes the following Findings of Fact and Conclusions of Law and enters this Order of Temporary Suspension:

FINDINGS OF FACT

1. Respondent is a Texas physician and holds Texas Medical License No. E-6214, issued by the Board on August 29, 1976, which was in full force and effect at all times material and relevant to this Order. All jurisdictional requirements have been satisfied.
2. At the direction and approval of a committee chair, member of the Executive Committee, or member of an ISC Panel, Roberta M. Kalafut, D.O., President of the Board, appointed the Panel to sit as a Disciplinary Panel in this matter, pursuant to the Medical Practice Act, TEX. OCC. CODE ANN. Title 3, Subtitle B (the "Act") §164.059(a) and 22 TEX. ADMIN. CODE §187.56.
3. The Panel convened pursuant to § 164.059(c) of the Act.
4. On or about June 21, 2005, Respondent pled nolo contendere to possession of cocaine a third degree felony, and was placed on a five-year Order of Deferred Adjudication (with Conditions of Probation), including drug testing.
5. On or about February 18, 2007, Dr. Anderson was arrested by the City of Lubbock Police Department and taken into custody due to confirmed outstanding warrants issued

by Clay County, Texas. Further, while in custody, warrants were issued by Lubbock Municipal Court on or about February 18, 2007 for the following: speeding; two counts of failure to appear; and possession of drug paraphernalia.

6. By correspondence dated August 1, 2007, from the Director of Medical Services, Elizabeth Davidson, M.D., of the Lubbock Regional Mental Health and Mental Retardation Center ("LRMHMRC") Dr. Anderson's employment was terminated because Dr. Anderson was ineligible for continued employment due to a drug related arrest in Lubbock county as well as outstanding warrants.

7. On or about June 17, 2008, Respondent tested positive on his drug screen for benzoylecgonine-cocaine metabolite of 87,845 ng/ml.

8. Based on all information available to the Board, Respondent has continued to practice, and is currently practicing medicine.

9. Based on the above Findings of Fact, the Panel, including at least one physician licensed to practice medicine in this state, finds that Respondent is a continuing threat to the public welfare and a real danger to the health of Respondent's patients or to the public from the acts or omissions of Respondent caused through Respondent's lack of competence, impaired status, or failure to care adequately for Respondent's patients.

10. Based on the above Findings of Fact, the Panel finds an imminent peril to the public health, safety, or welfare that requires immediate effect of this Order of Temporary Suspension on the date rendered.

CONCLUSIONS OF LAW

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

1. Respondent's conduct, as described above, shows that Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare, as defined by Section 151.002(a)(2) of the Act.

2. Section 164.059 of the Act authorizes the temporarily suspend or restriction of a person's medical license if the Disciplinary Panel determines from evidence presented to it that the Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.

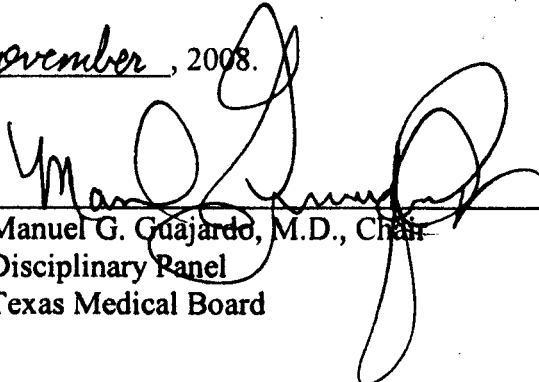
3. Section 164.059(c) of the Act authorizes the Disciplinary Panel to temporarily suspend or restrict the license of the Respondent in a proceeding without notice, if (1) the Board immediately provides notice of the suspension or restriction to the license holder, and (2) a hearing on the temporary suspension or restriction before a disciplinary panel of the Board is scheduled for the earliest possible date after ten days notice of hearing.
4. Based on the evidence presented and the Findings of Fact set forth herein, the Disciplinary Panel finds that Respondent violated various sections of the Medical Practice Act, specifically:
 - a. Sections 164.051 and 164.056 of the Act authorize the Board to take disciplinary action against Respondent based on Respondent's inability to practice medicine with reasonable skill and safety to patients because of illness; drunkenness; excessive use of drugs, narcotics, chemicals, or another substance; or as a result of any mental or physical condition.
 - b. Sections 164.052(a)(4) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's using alcohol or drugs in an intemperate manner that could endanger a patient's life.
5. Based on the evidence presented and the above Findings of Fact and Conclusions of Law, the Panel determines that Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Panel ORDERS that:

1. Respondent's Texas medical license is hereby TEMPORARILY SUSPENDED.
2. This Order of Temporary Suspension without Notice of Hearing is final and effective on the date rendered.
3. This Order of Temporary Suspension shall remain in effect until it is superseded by an Order of the Board.
4. A hearing on the Application for Temporary Suspension is hereby scheduled before a Disciplinary Panel of the Board to be held on Monday, January 12, 2008 at 12:30 p.m., at the offices of the Board.

Signed and entered this 14th of November, 2008.



Manuel G. Guajardo, M.D., Chair
Disciplinary Panel
Texas Medical Board

