

LICENSE NO. L-6256

IN THE MATTER OF

BEFORE THE

THE LICENSE OF

LISA DIANE FAIRWEATHER, D.O.

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 Lisa Diane Fairweather, D.O. (Respondent).

On March 11, 2019, Respondent appeared in person, with counsel Kenda Dalrymple, 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 Margaret McNeese, M.D., a member of the Board, and Nancy Seliger, a member of a District Review Committee (Panel). Jared Brehmer represented Board staff.

BOARD CHARGES

Board Staff charged that Respondent's care and treatment of two patients failed to meet the standard of care with regard to her prescribing Lunesta and Ambien to one patient who was concurrently consuming alcohol; and Ritalin and Adderall to another patient who was also concurrently consuming alcohol. Respondent also failed to properly dispose of medications given to her to by a patient for appropriate disposal.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board.

On May 17, 2002, an Agreed Order was entered restricting Respondent's institutional permit license as follows: Respondent was required to abstain from the consumption of alcohol, drugs, or controlled substances; be screened for such substances; refrain from possessing, administering, dispensing, or prescribing medications with potential for abuse; obtain a psychiatric evaluation and follow recommendations for continued care and treatment; participate in Alcoholics

Anonymous (AA) or Narcotics Anonymous (NA) at least five times per week; participate in the TOMA Physician Assistance Program Committee; and comply with her continuing care contract with John Peter Smith Hospital. This action was due to intemperate use of alcohol or drugs that, in the Board's opinion, could endanger a patient's life.

On April 15, 2003, an Agreed Order (2003 Order) was entered granting full licensure upon Respondent's passage of the jurisprudence examination and placing certain terms and conditions on her license for seven years. Those terms and conditions were largely the same as what was required under the 2002 Order and this action was also due to Respondent's intemperate use of alcohol or drugs.

On April 11, 2008, the Board entered an Agreed Order Modifying Prior Order modifying the 2003 Order as follows: publicly reprimanding Respondent; suspending Respondent's license for one month; requiring that Respondent attend AA five times a week; complete an intensive outpatient treatment program for substance abuse; attend 90 AA meetings in 90 days; pay an administrative penalty of \$5,000; and complete 120 hours of community service at a public health clinic or public health service facility that provides counseling/psychiatric services related to substance abuse issues. The action was based on Respondent's violation of her 2003 Order.

On August 27, 2010, the Board entered a Mediated Agreed Order (2010 Order) modifying the 2003 Order as follows: publicly reprimanding Respondent; extending Respondent's 2003 Order from seven years to 10 years; restricting Respondent from prescribing most schedule II, III and IV drugs; changing the provisions of previous board orders requiring drug testing; continue psychiatric treatment and AA participation; pay an administrative penalty of \$5,000 within three years; requiring that Respondent refrain from practicing medicine more than 35 hours per week; and have a physician monitor Respondent's practice. The Order was based upon Respondent's failure to comply with her 2003 Order.

On December 6, 2013, the Board entered an Agreed Order Modifying Prior Order, modifying the 2010 Order as follows: extending the 2010 Order for three years; requiring Respondent to complete at least 12 hours of continuing medical education (CME), within one year, divided as follows: 8 hours in boundaries and 4 hours in medical record keeping; requiring Respondent to personally appear before a committee of the Board or panel of Board representatives at least two times each year the order is in effect; participate in the Board's drug testing program; continue psychiatric care and treatment; and refrain from possessing, administering, dispensing,

or prescribing any controlled substances from schedules II, III, or IV. This action by the Board was based on findings that Respondent violated the terms of her 2010 Order by prescribing dangerous drugs to herself and controlled substances to her husband; by failing to maintain medical records for her self-prescribing and treatment of her husband; and was cited by the Drug Enforcement Agency (DEA) for records-keeping deficiencies.

On December 6, 2016, the orders dated April 11, 2008, August 27, 2010, and December 6, 2013, were terminated due to completion of all requirements.

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. L-6256. Respondent was originally issued this license to practice medicine in Texas on June 6, 2003. Respondent is not licensed to practice in any other state.
- c. Respondent is primarily engaged in the practice of psychiatry. Respondent is not Board certified.
- d. Respondent is 50 years of age.

2. Specific Panel Findings:

- a. Respondent prescribed Lunesta and Ambien to a patient whom Respondent had diagnosed with alcohol use disorder and had continued to consume alcohol during the course of treatment.
- b. Respondent treated a different patient for alcohol use disorder, despite indications that the patient was at high risk of noncompliance and medication misuse, with

Ritalin, and Adderall while he was still consuming alcohol. Respondent continued to prescribe to this patient despite documenting that the patient had continual alcohol consumption, noncompliance with probationary requirements, incarceration during the treatment course, a history of repeated assault charges, and refusal of chemical dependency counseling.

c. Respondent failed to create and maintain adequate and legible medical records.

3. Mitigating Factors:

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

- a. Respondent has cooperated in the investigation of the allegations related to this Agreed Order.
- b. The Panel found no evidence or concerns over Respondent's potential impairment.
- c. 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.

4. Aggravating Factors:

In determining the appropriate sanctions in this matter, the Panel considered the aggravating factor that Respondent has a prior history of violations.

CONCLUSIONS OF LAW

Based on the above Findings, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.
2. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 165.1(a), failure to create and maintain adequate medical records.
3. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice medicine in an acceptable

professional manner consistent with public health and welfare, as defined by the following Board Rules: 190.8(1)(C), failure to exercise proper diligence in one's professional practice; and 190.8(1)(D), failure to safeguard against potential complications.

4. 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 of the Act, or injure the public.

5. 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.

6. 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 conditions:

1. This Agreed Order shall constitute a PUBLIC REPRIMAND of Respondent, and Respondent is hereby reprimanded.

2. Respondent shall be subject to the following terms and conditions for eight consecutive monitoring cycles (defined below). Respondent's practice shall be monitored by a physician (monitor), in accordance with §164.001(b)(7) of the Act. The Compliance Division of the Board shall designate the monitor and may change the monitor at any time for any reason. The Compliance Division shall provide a copy of this Order to the monitor, together with other information necessary to assist the monitor.

(a) As requested by the Compliance Division, Respondent shall prepare and provide complete legible copies of selected patient medical and billing records (selected records). The Compliance Division shall select records for at least 30 patients seen by Respondent during each three-month period following the last day of the month of entry of this Order (reporting period). The Compliance Division may select records for more than 30 patients, up to 10 percent of the patients seen during a reporting period. If Respondent fails to see at least 30 patients during any three-

month period, the term of this Order shall be extended until Respondent can submit a sufficient number of records for a monitor to review.

- (b) The monitor shall perform the following duties:
  - 1) Personally review the selected records;
  - 2) Prepare written reports documenting any perceived deficiencies and any recommendations to improve Respondent's practice of medicine or assist in the ongoing monitoring process. Reports shall be submitted as requested by the Compliance Division; and
  - 3) Perform any other duty that the Compliance Division determines will assist the effective monitoring of Respondent's practice.
- (c) The Compliance Division shall provide to Respondent a copy of any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division. If the chart monitor recommends that Respondent restrict or suspend his or her practice of medicine, Respondent shall be required to personally appear before a panel of Board representatives, 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 appearance shall be for the purpose of consideration of the chart monitor's recommendations of restriction or suspension and held in accordance with 22 TEX. ADMIN. CODE, §187.44. Based upon the panel's findings and recommendations, the Board may modify this Order so that Respondent's practice is restricted or suspended, in accordance with the chart monitor's recommendations, or take any other action that may be appropriate to resolve the issues presented.
- (d) The monitor may recommend that Respondent complete a competency evaluation. A monitor's recommendation for a competency evaluation must be reviewed by the Chair of the Disciplinary Process and Review Committee (DPRC) for the purpose of making a determination of whether a competency evaluation is warranted. The Chair may approve or deny the monitor's recommendation. If the Chair approves the recommended competency evaluation, then the following terms shall apply and shall be a requirement of this Order:

- 1) Within 10 calendar days of being notified by the Compliance Division of the Board that the Chair has approved the monitor's recommendation, Respondent must contact a program approved by the Board and schedule an assessment of at least two days in length to determine Respondent's competence and ability to practice medicine.
  - 2) Respondent shall authorize the approved program to send a written report regarding Respondent's performance and results of the competency evaluation directly to the compliance officer.
  - 3) Upon completion of the competency evaluation, and based upon its results, Respondent must personally appear before a panel of Board representatives, 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. The panel may make recommendations for appropriate action, including that Respondent follow all the program recommendations, comply with other necessary re-training or re-education measures, and may impose any other restrictions or suspension of Respondent's practice. Section 187.44 of this title (relating to Probationer Show Compliance Proceedings) applies to such appearances.
  - 4) The Board may temporarily restrict or suspend Respondent's license based upon the results of the competency evaluation or Respondent's failure to follow any and all requirements set forth in subsection (c) of this section. Chapter 187, Subchapter F of this title (relating to Temporary Suspension and Restriction Proceedings) applies to such proceedings.
- (e) The monitor shall be the agent of the Board, but shall be compensated by the Respondent through the Board. Such compensation and any costs incurred by the monitor shall be paid by Respondent to the Board and remitted by the Board to the monitor. Respondent shall not charge the compensation and costs paid to the monitor to any patients.
- (f) A "monitoring cycle" begins when the Compliance Division selects patient records for review, and concludes when Respondent receives the monitor's report for that group of records and has made payment for the costs of that monitoring cycle.

3. Within in one year following the date of the entry of this Agreed Order, Respondent shall enroll in and successfully complete at least 14 hours of continuing medical education ("CME"), divided as follows: eight hours in the topic of risk management; four hours in the topic of drug interactions; and two hours in the topic of treatment of the impaired patient. The CME shall be approved for Category I credits by the American Medical Association or American Osteopathic Association and approved in writing in advance by the Executive Director or their designee. To obtain approval for the course, Respondent shall submit in writing to the Compliance Division of the Board information on the course, to include at least reasonable detail description of the course content and facility, as well as the course location and dates of instructions. Respondent shall submit documentation of attendance and successful completion of this requirement to the Compliance Division of the Board on or before expiration of the time limit set forth for completion of the course. The CME requirements set forth in this paragraph shall be in addition to all other CME required for licensure maintenance.

4. 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.

5. 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.

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

7. 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.

8. 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).

9. 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.

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

11. The above-referenced conditions 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. If, after the passage of the one-year 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)**

I, LISA DIANE FAIRWEATHER, D.O., 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.

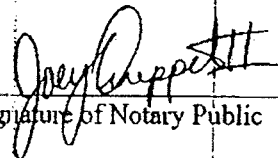
DATED: 6/10/, 2019.

  
LISA DIANE FAIRWEATHER, D.O.  
Respondent

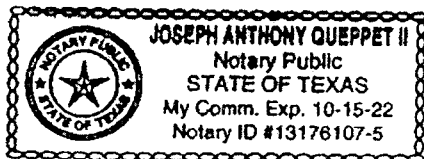
STATE OF Texas §

COUNTY OF Tarrant §

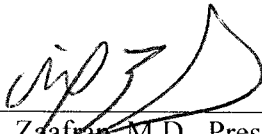
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 10<sup>th</sup> day of June, 2019.

  
Signature of Notary Public

(Notary Seal)



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. Zafraan, M.D., President  
Texas Medical Board