

IN THE MATTER OF
THE LICENSE OF
DAVID GARY JOHNSON, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER

On the 18 day of August, 2023, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of David Gary Johnson, M.D. (Respondent).

On April 28, 2023, Respondent appeared via videoconference, with counsel Darrin Dest, 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 Satish Nayak, M.D. and Sharon Barnes, members of the Board (Panel). Kemisha Williams represented Board staff and prepared this Order.

BOARD CHARGES

Board Staff charged that Respondent failed to meet the standard of care in prescribing to four psychiatric patients, for whom the medical records were inadequate and failed to reflect Respondent's reasoning for polypharmacy, including off-label medications and multiple sedatives. Board Staff further charged that Respondent experienced some age-related medical issue that required ongoing monitoring.

BOARD HISTORY

Respondent has the following Board history:

- a. On August 26, 2000, an Agreed Order was entered publicly reprimanding Respondent and assessing an administrative penalty of \$5,000. This action was due to a failure to adequately supervise those acting under the Respondent's supervision who were responsible for the billing of Medicare for services rendered.

- b. On February 5, 2010, the Board and Respondent entered a Ministerial Order imposing an administrative penalty of \$500 for failure to complete a total of one hour of continuing medical education (CME) in ethics for the audit period of June 1, 2007 to May 31, 2009.
- c. On February 4, 2011, the Board and Respondent entered into a Corrective Order requiring Respondent to complete six hours of CME in the topics of prescribing psychiatric medications to the elderly and informed consent. The Board found Respondent failed to obtain adequate informed consent from one patient for the use of a medication with dangerous side effects.
- d. On March 5, 2021, the Board and Respondent entered into a non-disciplinary Remedial Plan requiring Respondent to complete at least eight CME hours, divided as follows: four hours in the topic of medical recordkeeping; and four hours in the topic of prescribing within one year; and pay an administrative fee per year. This action was based on Respondent's failure to maintain adequate medical records.
- e. On March 4, 2022, the Board entered an Agreed Order requiring Respondent to within one year complete at least eight hours of CME in risk management, with a focus on maintaining professional boundaries. The Board found Respondent admitted to prescribing to one patient without conducting proper evaluations or maintaining adequate medical records. The order was terminated on March 4, 2022 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. F-5243. Respondent was originally issued this license to practice medicine in Texas on August 19, 1979. Respondent is not licensed to practice in any other state.
 - c. Respondent is currently engaged in the practice of Psychiatry and Geriatric Psychiatry. Respondent is board certified by the American Board of Psychiatry and Neurology, a member of the American Board of Medical Specialties.
2. Specific Panel Findings:
- a. The Panel found that Respondent's medical records were either missing or inadequate in treatment of the four patients, some of whom were prescribed multiple sedatives at the same time. Respondent failed to document his logic for prescribing one patient a stimulant.
 - b. Respondent voluntarily underwent a neuropsychological evaluation that ruled out a diagnosis of dementia, but revealed some mild deficits in cognitive efficiency related to Respondent's age. The evaluator recommended re-evaluation after a year.
3. Mitigating Factors:
- In determining the appropriate sanctions in this matter, the Panel considered the following, as mitigating that 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 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent committing a violation of the Act or Board rules, specifically, Board Rule 165.1 requiring maintenance of an adequate, complete, legible and contemporaneous medical record.

3. Section 164.051(a)(4) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's inability to practice medicine with reasonable skill and safety to patient because of (A) illness; and/or (D) a mental or physical condition.

4. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule.

5. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

ORDER

Based on the above Findings and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. Respondent shall 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. 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. Respondent shall have 60 days from the entry of this Agreed Order to wind down his present practice engagements and make appropriate patient referrals.

2. **Independent Medical Evaluation:** Upon entry of this Order, the Executive Director of the Board will designate a physician who is board certified in psychiatry to serve as the Board's evaluating psychiatrist. Within six months thereafter, Respondent shall submit to and obtain an independent medical evaluation from the evaluating psychiatrist with such evaluation to be presented to the Board at a future Informal Settlement Conference, pursuant to Ordering Paragraph No. 3.

(a) The independent medical evaluation shall be conducted as directed by the Board, including, at a minimum:

- (1) Social history and background information;
 - (2) History of present illness;
 - (3) Mental status exam;
 - (4) Review of records and other pertinent information;
 - (5) Current DSM multiaxial diagnosis, and
 - (6) Recommendations regarding continued care and treatment.
- (b) The Compliance Division of the Board shall furnish a copy of this Order, and any other pertinent information, to the evaluating psychiatrist, who shall make a full report to the Compliance Division of the Board regarding the evaluating psychiatrist's evaluation of Respondent and recommendations.
 - (c) Respondent shall pay all fees charged by the evaluating psychiatrist.
 - (d) Respondent shall follow all recommendations made by the evaluating psychiatrist regarding continued care and treatment.
 - (e) Respondent's failure to cooperate with the evaluating psychiatrist or failure to follow the evaluating psychiatrist's recommendations shall constitute a violation of this Order.
 - (f) If the evaluating psychiatrist recommends continued care and treatment, the Executive Director shall notify Respondent to submit within 30 days letters from up to three physicians who are board certified in psychiatry and who agree to serve as Respondent's approved treating psychiatrist.
 - (1) The letters from proposed treating psychiatrist(s) shall state that they:
 - a. have been provided a copy of this Order;
 - b. agree to provide psychiatric treatment to Respondent; and

- c. agree to provide periodic reports regarding Respondent's compliance with treatment and rehabilitation to (a) the Compliance Division of the Board or (b) an independent monitoring psychiatrist.
- (2) A proposed treating psychiatrist may not be approved unless the proposed treating psychiatrist agrees to provide periodic reports either to the Compliance Division of the Board or to an independent monitoring psychiatrist.
- (3) 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.
- (4) Respondent shall begin the recommended care and treatment within 30 days after notification of approval of the treating psychiatrist.
- (5) Respondent shall pay all fees charged by the treating psychiatrist.
- (6) Respondent shall follow all recommendations made by the treating psychiatrist regarding continued care and treatment.
- (7) 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.
- (8) 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.
- (9) 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.

- (10) 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.
- (11) Respondent shall execute any and all releases for medical records and authorizations necessary to effectuate the provisions of this Order.
- (12) Respondent's failure to cooperate with the treating psychiatrist or failure to follow the treating psychiatrist's recommendations shall constitute a violation of this Order.

3. Upon completion of the requirements set forth in Ordering Paragraph No. 2, Respondent shall appear at an Informal Settlement Conference 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 reporting on and addressing issues related to the evaluation required by Ordering Paragraph No. 2.

4. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least eight (8) hours of continuing medical education (CME) approved for Category I credits by the American Medical Association or the American Osteopathic Association, divided as follows: four (4) hours in the topic of medical recordkeeping; and four (4) hours in the topic of prescribing; each approved in writing in advance by the Executive Director or a designee. To obtain approval for the course, Respondent shall submit in writing to the Compliance Department information on the course, to include at least a reasonably detailed description of the course content and faculty, as well as the course location and dates of instruction. Respondent shall submit documentation of attendance and successful completion of this requirement to the Compliance Department on or before the 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.

5. 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.

6. 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.

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

8. 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.

9. Respondent shall inform the Board in writing of any change of Respondent's practice or mailing address within 10 days of the address change. This information shall be submitted to the Registrations 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 with this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent agrees that any proceeding related to this Order may be held in person, by teleconference, or by videoconference at the discretion of the Board.

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

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.

12. This Order shall remain in full force and effect, except for clear error in drafting, until such time as Respondent complies with Ordering Paragraphs Nos. 2 and 3, and a superseding order is entered by the Board.

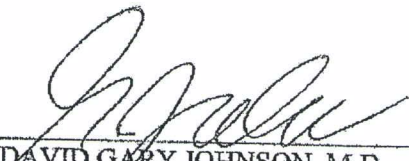
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

(SIGNATURE PAGES FOLLOW)

I, DAVID GARY JOHNSON, M.D., 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: 6-22-23, 2023.



DAVID GARY JOHNSON, M.D.
Respondent

STATE OF Texas §

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COUNTY OF Bexar §

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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 22 day of June, 2023.

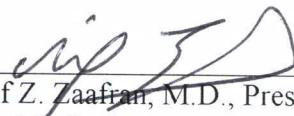


Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
18 day of August, 2023.



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