

with patient L.W., an adult female suffering from bipolar disorder. Respondent saw patient L.W. for six therapy sessions over a two week period. Respondent reported to his case supervisor that Respondent experienced strong feelings of countertransference and the therapy was terminated.

5. Two days after the therapy was terminated, L.W. contacted Respondent. A social relationship was initiated which led to a sexual relationship between Respondent and L.W. Respondent subsequently terminated the relationship and reported his actions to his supervisor.

6. Respondent has admitted to a history of polysubstance abuse as recently as June of 1993, and dating back to his college days. Respondent has admitted to substance abuse during his relationship with L.W., including engaging in the abuse of street drugs with her.

7. Based on the behavior set out in Findings of Fact 3 through 6, above, Respondent's hospital privileges were suspended by Terrell State Hospital on June 17, 1993.

8. On June 1⁵, 1993, Respondent entered into treatment at the St. Paul Hospital Chemical Dependency unit, Dallas, Texas. On June 21, 1993, Respondent was admitted to the Metro Atlanta Recovery Residences facility in Atlanta, Georgia, for treatment of alcohol dependence and polysubstance abuse. Respondent was discharged from that facility on December 15, 1993.

9. Respondent claims a sobriety date of June 13, 1993.

10. Respondent has cooperated fully with all phases of the Board's investigation of the allegations against him.

CONCLUSIONS OF LAW

Based on the above findings of fact, the Board makes the following conclusions of law:

1. Respondent has violated Sections 3.08(3), 3.08(4), 3.08(18) and 3.08(19) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b.

2. Section 3.08(3) of the Act authorizes the Board to discipline a licensed Texas physician based on intemperate use of drugs or alcohol.

3. Section 3.08(4) of the Act authorizes the Board to discipline a licensed Texas physician based on unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public.

4. Section 3.08(18) of the Act authorizes the Board to discipline a licensed Texas physician based on professional failure to practice medicine in an acceptable manner consistent with public health and welfare;

5. Section 3.08(19) of the Act authorizes the Board to discipline a licensed Texas physician based on being removed, suspended, or having disciplinary action taken by his peers in any professional medical association or society, whether the association or society is local, regional, state, or national in scope, or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if that action in the opinion of the board was based on unprofessional conduct or professional incompetence that was likely to harm the public, provided that the board finds that the actions were appropriate and reasonably supported by evidence submitted to it.

6. Section 4.02(h) of the Act authorizes the Board to make a disposition of this matter by an Agreed Order.

Based on the above findings of fact and conclusions of law, it is therefore ORDERED that Respondent's Texas Medical license is hereby suspended until such time as Respondent personally appears before the Board and provides sufficient evidence which in the discretion of the Board adequately indicates that Respondent is physically, mentally and otherwise competent to safely practice medicine. Such evidence shall include at a minimum, but shall not be limited to, complete medical records and reports of psychological and neuropsychiatric evaluations

conducted by or under the direction of a psychiatrist certified by the American Board of Medical Specialties in Psychiatry approved in writing by the Executive Director of the Board, addressing Respondent's current mental and physical status which reflects that Respondent is able to safely practice medicine. Such records, reports, and evaluations shall specifically address any potential or actual impairment of Respondent due to substance abuse or an organic mental condition, and shall address any tendencies toward compulsive behavior or recidivism in regard to the potential for misconduct similar to that described in Findings of Fact 3 through 6, above. A copy of this order shall be provided to the approved psychiatrist as a reference in the evaluation and as authorization for the psychiatrist to provide to the Board the required records and reports.

Upon an adequate showing before the Board that Respondent is able to safely practice medicine, the suspension of Respondent's Texas Medical license shall be stayed and Respondent placed on probation for ten (10) 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 immediately report to the Director of Hearings for the Board by telephone, to be followed by a letter within 24 hours, an explanation of any incident in which Respondent partakes of any type of alcohol or uses any chemical substance, in any manner not prescribed by another physician for a legitimate and therapeutic purpose.
3. Respondent shall submit himself for appropriate examinations, including screening for alcohol or drugs either through a urine, blood, or hair 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.
4. Respondent shall not treat or otherwise serve as physician, prescribe, dispense or administer controlled substances or any other drugs that may be subject to abuse for Respondent or any member of Respondent's immediate family. Respondent may administer to Respondent or to Respondent's immediate family only such drugs as are prescribed by other physicians, and in compliance with the orders and directions of such other physicians.
5. If he has not already done so, 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.

6. If he has not already done so, Respondent shall surrender to the Board all unused triplicate prescription forms in Respondent's possession, which will be forwarded by the Board to the Texas Department of Public Safety for destruction. Respondent shall not attempt to order any more triplicate prescription forms until Respondent has 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 is discretionary with the Board.
7. If he has not already done so, Respondent shall surrender all controlled substances, including samples, in Respondent's office or possession to a representative of the Texas Department of Public Safety Narcotic Service and/or representative of the Board. In the future, Respondent may not possess any controlled substances, including samples.
8. Separate from patient records, Respondent shall maintain a file consisting of a copy of every prescription written by Respondent for dangerous drugs which have potential for abuse, including, but not limited to, Stadol, Nubain, Phenergan, Talwin, Propofol, Soma, Toradol, or their generic

equivalents, by date issued. This file of prescription copies shall be available for inspection by representatives of the Board during regular office hours without notice. Respondent shall not telephone any prescription to a pharmacy for dangerous drugs which may be habit forming, including, but not limited to, Stadol, Nubain, Phenergan, Talwin, Propofol, Soma, Toradol, or their generic equivalents.

9. Respondent shall participate in the activities of the Texas Osteopathic Medical Association, Physicians Assistance Program Committee, and shall abide by the terms of an aftercare program contract as required by the said committee. 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, or his designee, shall confer with the Director of Hearings for the Board, or his designee, with regard to Respondents rehabilitation efforts or failure to participate as directed.

10. The Respondent shall 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.

11. Respondent shall submit in writing to the Executive Director of the Board the names of three (3) American Board Certified psychiatrists for the Executive Director's approval and, when such approval is received, shall expeditiously submit himself for evaluation and treatment by the approved psychiatrist. Respondent shall follow the psychiatrist's recommendations regarding continuing care and treatment and shall see the approved psychiatrist for counseling and follow-up as often as required by the psychiatrist, but in no event less than once each month.

The Board will furnish a copy of this Order to the psychiatrist as authorization for the psychiatrist to make quarterly reports to the Board regarding Respondent's care and such other reports as the Board may request. Board staff shall furnish to the approved psychiatrist any Board information which may be helpful or required for the evaluation, counseling, and care of Respondent. Respondent shall be responsible for ensuring that psychiatric reports are submitted to the Board in a timely manner. Respondent's failure to cooperate with the psychiatrist shall constitute a violation of this Order.

12. Respondent's unilateral withdrawal from treatment or medical care prior to the conclusion of the treatment or medical care may be grounds for further disciplinary action by the Board. Respondent shall immediately notify the Board upon the discontinuation of counseling or medical care.
13. When requested by the Board, Respondent shall furnish written reports to the Board regarding any medical condition of Respondent and Respondent's compliance with this order.
14. 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.

15. Respondent shall appear before the Board or a committee of the Board two (2) times a year during each year of probation to report on Respondent's compliance with this Order and the Medical Practice Act.
16. Respondent shall give a copy of this Order to all hospitals and health care entities where he has privileges.
17. 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 Order.
18. Respondent shall advise the Board of any change of address, mailing or office, within (10) days of such occurrence.
19. 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 license cancelled for nonpayment of licensure fees.

20. Respondent shall comply with all the provisions of the Medical Practice Act ("the 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.

In the event that Respondent fails to actively participate in the practice of medicine for a period of longer than 12 months, due to a suspension by this Board or for any other cause, during the period that any portion of this Order is in effect, the Board is authorized to impose on Respondent such additional terms, conditions, and requirements as the Board, in its discretion, shall deem appropriate to demonstrate Respondent's continued medical competence, including, but not limited to, a requirement that Respondent take and pass the Special Purpose Examination (SPEX) as administered by the Federation of State Medical Boards of the United States.

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 amend-


ment or termination of these conditions, 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 regard to all terms and conditions of this Agreed 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, FRANK STUART MURPHY, 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: April 11, 1994

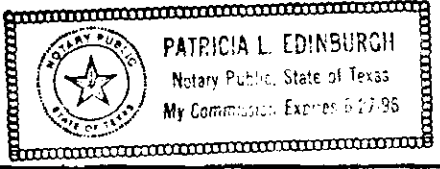


Frank Stuart Murphy, D.O.
RESPONDENT

STATE OF Texas))
))
COUNTY OF Dallas))

BEFORE ME, on this day personally appeared Frank Stuart Murphy,
D.O., known to me, who, first, being duly sworn, signed the foregoing
Agreed Order in my presence.

SIGNED on this the 11th day of April, 1994.



Notary Seal

Patricia L. Edinburg
Notary Public, in and for
the State of Texas

SIGNED AND ENTERED by the Presiding Officer of the Texas State
Board of Medical Examiners on this 15th day of April, 1994.

John M. Lewis, M.D.
John M. Lewis, M.D.,
President, Texas State Board
of Medical Examiners