

HEARING CONDUCTED BY THE  
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS  
SOAH DOCKET NO. 503-17-0949.MD  
TEXAS MEDICAL LICENSE NO. J-4071

IN THE MATTER OF THE  
COMPLAINT AGAINST  
NORA DAVIS, M.D.

BEFORE THE  
TEXAS MEDICAL BOARD

**FINAL ORDER**

During an open meeting at Austin, Texas, the Texas Medical Board (Board) finds that the above-styled case was assigned to Administrative Law Judge (ALJ) Sarah Starnes of the State Office of Administrative Hearings (SOAH), who presided over the case at the Hearing on the Merits which was held August 21-22, 2017. The ALJ issued a Proposal for Decision (PFD) on December 7, 2017, that contained Findings of Fact and Conclusions of Law. The PFD was properly served on all parties, and all parties were given an opportunity to file exceptions and replies as part of the record herein. Neither party filed exceptions.

The Board, after review and due consideration of the PFD, adopts the Findings of Fact and Conclusions of Law of the ALJ.

**FINDINGS OF FACT**

1. Nora Davis, M.D. (Respondent) is a Texas physician and holds Texas Medical License No. J-4071, originally issued by the Texas Medical Board (Board) on November 20, 1993.
2. Respondent lives in Jacksonville, Texas, a small town in east Texas. She has worked for several years at Rusk State Hospital, a state mental hospital in Rusk, Texas.
3. At the hospital, Respondent treats adult psychiatric patients ranging from 18 years old to the geriatric, and she particularly favors the geriatric patients. Many of her patients have multiple comorbid conditions in addition to their psychiatric problems, making their treatment especially challenging.
4. For most of her adult life, Respondent has alternated between abstaining from alcohol altogether and drinking socially, which Respondent characterized as consuming one or two alcoholic beverages about once a month.
5. In May 1994, Respondent was arrested in Galveston County, Texas, for the offense of driving while intoxicated (DWI). She pleaded no contest and was convicted of the

offense.

6. Following her May 1994 arrest, Respondent cut back on her alcohol consumption until 1997, when she stopped drinking altogether for several years.
7. Respondent resumed drinking socially in early 2001. Less than a month later, in January 2001, she was arrested for DWI a second time in Montgomery County, Texas. Respondent pleaded guilty and was convicted of the second DWI charge.
8. Following her second DWI offense, Respondent again stopped drinking altogether. She resumed drinking socially sometime in 2014 or 2015.
9. On the evening of June 14, 2015, Respondent was home alone and expected her husband to return home from a friend's house. She grew increasingly nervous as the night grew later and he did not arrive.
10. Around 1:00 a.m. on June 15, 2015, Respondent received a phone call from Trinity Mother Frances Hospital in Jacksonville, Texas, informing her that her husband was at the hospital after being injured in a single-vehicle collision.
11. In a panic and looking to calm her nerves, Respondent poured at least one shot of tequila in a glass and drank it quickly.
12. Respondent drank the tequila instead of taking the clonazepam (a benzodiazepine) that she had been prescribed to take as needed for her anxiety disorder.
13. After two unsuccessful attempts to reach friends who might be able to drive her to the hospital, Respondent elected to make the ten-to-twelve-minute drive to the hospital.
14. At the hospital, two state troopers with the Highway Patrol Division of the Texas Department of Public Safety were investigating whether Respondent's husband had been intoxicated at the time of his collision. While they were speaking with him, Respondent arrived at the hospital.
15. One of the officers, Trooper Matthew Poole, observed that Respondent had an odor of alcohol on her breath and had glassy, bloodshot eyes.
16. Respondent truthfully admitted to Trooper Poole that she had consumed tequila before driving to the hospital.
17. Trooper Poole administered standardized field sobriety tests (SFSTs), a series of tests that were developed by the National Highway and Traffic Safety Administration to evaluate drivers who are suspected of DWI.
18. Respondent performed poorly on the SFSTs, exhibiting five of six possible clues of intoxication on the Horizontal Gaze Nystagmus test; four of eight possible clues of intoxication on the Walk and Turn test; and four of four possible clues of intoxication on the One Leg Stand test.
19. Trooper Poole then administered a portable breath test to Respondent, a qualitative test used to evaluate whether a person's suspected intoxication is caused by alcohol or some other substance. The portable breath test indicated that Respondent had consumed alcohol that evening.

20. Trooper Poole placed Respondent under arrest for DWI, and asked her to provide a sample of her blood.
21. Respondent consented to provide the blood sample, and her blood was drawn at 1:43 a.m., approximately thirteen minutes after she arrived at the hospital.
22. Laboratory analysis subsequently showed that, at the time of her arrest, Respondent's blood-alcohol level was .094 grams of alcohol per liter of blood.
23. Because she had two prior DWI convictions, Respondent was charged with felony DWI when she was arrested on June 15, 2015.
24. Respondent was intoxicated when she drove to the hospital in the early-morning hours of June 15, 2015.
25. The County Attorney declined to prosecute Respondent, but did not give any reason for her decision to dismiss the DWI charge.
26. Respondent initially stopped drinking following her June 2015 arrest. However, at the hearing in this case, she testified that she has since resumed drinking socially.
27. Respondent's admission that she continues to drink socially shows there is an increased potential for her to harm the public by driving while intoxicated again.
28. The night of her third DWI arrest, Respondent was off-duty and was not scheduled to work the following day. She was also not on call that night.
29. There was no evidence that Respondent has ever gone to work impaired or hungover, or been accused of doing so.
30. Following her arrest, Rusk State Hospital monitored Respondent's patient records for a few months, but did not restrict or monitor her patient care while the criminal charge was pending.
31. Respondent has never been disciplined by medical staff at Rusk State Hospital and has received good performance reviews from her supervisors.
32. Respondent was not disciplined by the hospital for her arrest, and her hospital privileges have since been renewed.
33. Rusk State Hospital reported Respondent's June 2015 arrest to the Board. Respondent did not self-report her arrest because her lawyer advised against it.
34. Many people in Respondent's community are indigent and few have insurance.
35. Respondent's community is medically underserved because so few physicians, particularly psychiatrists, are willing to live there.
36. If Respondent lost her job, it would be very difficult for Rusk State Hospital to replace her, and her absence could negatively impact the hospital's patients.
37. All three of Respondent's DWI offenses occurred while Respondent was away from work, and thus her alcohol use on those occasions did not impact or endanger her patients.
38. There is no evidence that Respondent's medical practice or patients have ever been impacted by her off-duty drinking.

39. There is no evidence that Respondent has abused drugs, narcotics, or any substance other than alcohol.
40. On October 29, 2010, the Board entered into an Agreed Order with Respondent that found Respondent violated the standard of care and/or medical recordkeeping requirements with respect to her treatment of four patients. The order required Respondent to: complete 24 hours of continuing medical education in specified subjects; take a course in "Maintaining Proper Boundaries"; take and pass the Medical Jurisprudence Examination; and pay a \$1,000 administrative penalty.
41. On August 7, 2017, the staff (Staff) of the Board sent a Notice of Adjudicative Hearing and Complaint to Respondent, containing a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the factual matters asserted.
42. The hearing on the merits was convened on August 21-22, 2017, before Administrative Law Judge Sarah Starnes at the hearings facility of the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff Attorney Johnathan Stone represented Staff, and Respondent was represented by attorney Louis Leichter. The record closed on November 30, 2017, after the parties filed their written closing briefs.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Medical Practice Act (Act), Texas Occupations Code, title 3, subtitle B.
2. SOAH has jurisdiction to hold a contested case hearing and to issue findings of fact and conclusions of law, subject to the provisions of § 164.007 of the Act, pursuant to Texas Government Code chapter 2003.
3. Respondent was adequately and timely apprised of the hearing and the allegations against him. Tex. Occ. Code § 164.005(f); Tex. Gov't Code §§ 2001.051-.052.
4. Staff had the burden to prove the alleged violations by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.
5. The preponderance of the evidence established that, on June 15, 2015, Respondent committed the offense of felony DWI. Tex. Penal Code §§ 49.04, .09.
6. Respondent's June 2015 DWI offense involved substance abuse. 22 Tex. Admin. Code § 190.8(2)(R)(xii).
7. By committing the June 2015 DWI offense, Respondent engaged in unprofessional or dishonorable conduct that is likely to deceive or defraud the public. Tex. Occ. Code §§ 164.051(a)(1), .052(a)(5), .053(a)(1); 22 Tex. Admin. Code § 190.8(2)(R)(i), (xii).
8. Aggravating and mitigating factors may be considered by the Board in disciplinary actions. Staff had the burden to present evidence regarding aggravating factors, while Respondent had the burden to present evidence regarding mitigating factors. 22 Tex. Admin. Code § 190.15.

9. Pursuant to 22 Tex. Admin. Code § 190.15(a)(5), (7), and (10), as aggravating factors that may warrant more severe or restrictive action, the Board may consider that the evidence established:
- Respondent has been subject to a previous disciplinary action by the Board;
  - Respondent's decision to drink tequila before driving to the hospital following her husband's accident was an intentional, knowing, or grossly negligent act; and
  - Respondent's continued drinking poses an increased potential to harm the public.
10. Pursuant to 22 Tex. Admin. Code § 190.15(b)(5) and (7), as mitigating factors that may warrant less severe or restrictive actions, the Board may consider that the evidence established:
- Respondent's medical practice is valuable to her community; and
  - Respondent's violation has little direct bearing on her qualifications or abilities as a physician.

### ORDER

The Board hereby adopts the Findings of Fact and Conclusions of Law as proposed by the ALJ and ORDERS the following:

1. 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, 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

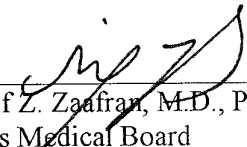
pursuant to this provision, the Board representatives may direct the Executive Director to immediately **SUSPEND** Respondent's medical license. **THIS SUSPENSION SHALL BE EFFECTIVE IMMEDIATELY WITHOUT THE NEED FOR A FORMAL HEARING BEFORE THE BOARD, A PANEL OF THE BOARD, OR THE STATE OFFICE OF ADMINISTRATIVE 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.**

2. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for five years 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.



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this  
2 day of March, 2018.

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