

LICENSE NO. M-8890

IN THE MATTER OF

THE LICENSE OF

WALESKA DEL CARMEN ORTIZ, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER

On the 12 day of June, 2015, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Waleska Del Carmen Ortiz, M.D. (Respondent).

On February 20, 2015, Respondent appeared in person, with counsel Mark Beaman, 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 Timothy Webb, J.D., and Surendra Kumar Varma, M.D., members of the Board (Panel). Nikki Karr represented Board staff.

BOARD CHARGES

Board staff charged that Respondent's mental and physical conditions, namely ADHD, Anxiety, Depression, and Lupus, impair her ability to practice safe and effective medicine. Board staff charged that Respondent was terminated from the Texas Physician Health Program (TXPHP) due to non-compliance with the submission of monitoring reports and initial enrollment requirements.

BOARD HISTORY

Respondent has not previously received a disciplinary order from the Board.

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. M-8890. Respondent was originally issued this license to practice medicine in Texas on February 8, 2008. 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 38 years of age.

2. Specific Panel Findings:

- a. On August 15, 2013, Respondent signed a five-year agreement with the TXPHP as a result of allegations brought by Board staff regarding her inability to practice due to Lupus, ADHD, anxiety, and depression.
- b. Respondent was referred to the Board from the TXPHP for several late drug tests and late submission of psychiatrist and rheumatologist reports.

3. Mitigating Factors:

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

- a. Respondent never had a positive drug test with TXPHP and did not have any prior history of substance abuse.
- b. Respondent's treating psychiatrist and rheumatologist provided positive reports stating that Respondent's prognosis is good and that she is safe to practice medicine.

- c. Respondent is currently working in a part-time locum tenens position with the Whittaker Medical group that works well for her and provides flexibility when her conditions flair up.
- d. Respondent has no patient care issues since she resumed working.
- e. Respondent has a good support system, including her husband, who is also a physician.
- f. 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)(4)(A)&(D) 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 patients because of illness or as a result of any mental or physical condition.
3. 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.
4. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.
5. Section 164.002(d) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.

## 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. 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 30 days thereafter, Respondent shall submit to and obtain an independent medical evaluation from the evaluating psychiatrist.

- (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 to the evaluating psychiatrist, who shall make a full report to 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 for Respondent, the Executive Director shall notify the Respondent to submit letters from at least three physicians who are board certified in psychiatry and who agree to serve as Respondent's approved treating psychiatrist within 30 days.
  - (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 Compliance Division of 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.

2. 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 Compliance Division of 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 Compliance Division of 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 Board, either directly to the Compliance Division of 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.

3. Upon completion of an Independent Medical Evaluation, Respondent shall personally appear before the Board, a committee of the Board, or 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 appearances shall be for the purpose of reporting on and addressing issues related to Respondent's Independent Medical Evaluation and compliance with the terms and conditions of this Order.

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 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. 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) Respondent's license is subsequently cancelled for nonpayment of licensure fees; (c) this Order is stayed or enjoined by Court Order; or (d) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine. If Respondent leaves Texas to practice

elsewhere or ceases active practice for more than 60 consecutive days, Respondent shall immediately notify the Board in writing. Upon Respondent's return to active practice or return to practice in Texas, Respondent shall notify the Board in writing. When the period of extension ends, 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.

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 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).

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, WALESKA DEL CARMEN ORTIZ, M.D., 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: May 22, 2015.

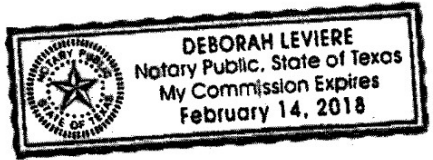
  
WALESKA DEL CARMEN ORTIZ, M.D.  
Respondent

STATE OF Texas §  
COUNTY OF Cameron §  
§  
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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 22nd day of May, 2015.

  
Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this  
12 day of June, 2015.



Michael Arambula, M.D., Pharm.D., President  
Texas Medical Board