

LICENSE NO. J-2873

IN THE MATTER OF
THE LICENSE OF
ROBERTA L. FENNIG, D.O.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 8th day of June, 2012, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Roberta L. Fennig, D.O. ("Respondent").

On March 12, 2012, Respondent appeared in person, with counsel Victoria Soto, 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 Michael Arambula, M.D., a member of the Board, and Ruthie Burrus, a member of a District Review Committee ("Panel"). Victoria Pearce represented Board staff.

BOARD CHARGES

Board staff charged that the Respondent violated the standard of care in the treatment of, and failed to maintain adequate medical records for, 12 patients. Specifically, Respondent inappropriately prescribed opiate medications to one patient, and failed to provide appropriate prescriptions to address the patient's opiate addiction. Respondent also prescribed an excessive amount of Xanax to a second patient without justification. Finally, Respondent provided non-emergent treatment to Respondent's spouse.

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. J-2873. Respondent was originally issued this license to practice medicine in Texas on February 27, 1993. 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 58 years of age.

2. Specific Panel Findings:
 - a. Medical records created and maintained by Respondent were severely inadequate.
 - b. Respondent repeatedly prescribed opiates to one patient, despite the patient's known history of substance abuse.
 - c. Respondent failed to document justification for her use of narcotic medications to treat three patients instead of referring the patients to their primary care physician or other specialists.
 - d. Respondent treated her husband on a non-emergent basis.
 - e. Respondent prescribed large quantities of Xanax to one patient, which increased the patient's risk of an adverse outcome.

3. Mitigating Factors:
 - a. In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:

- i. Respondent states that she attempted to treat the patient discussed in Finding 2.b. for substance abuse by changing and reducing his medication, and dismissed the patient when this treatment attempt failed.
- ii. Respondent admitted that records were incomplete, and has taken corrective measures, including the use of a transcription service, decreasing the number of patients she treats to allow more time for recordkeeping, and ceasing treatment of chronic pain with controlled substances.
- iii. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent's cooperation, through consent to this Agreed Order, pursuant to the provisions of Section 164.002 the Act, will save money and resources for the State of Texas. 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's violation of a rule adopted under this Act, specifically Board Rules: 165.1(a), failure to maintain an adequate medical record; and 170.3, failure to adhere to those established guidelines and requirements for the treatment of pain.
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 further defined by Board Rules: 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(B), negligence in performing medical services; 190.8(1)(C), failure to use proper diligence in one's professional practice; 190.8(1)(D), failure to safeguard against potential

complications; 190.8(1)(H), failure to disclose reasonable alternative treatments to a proposed procedure or treatment; and 190.8(1)(M), inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship.

4. Section 164.053(a)(3)(B) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent writing prescriptions for or dispensing to a person who the physician should have known was an abuser of the narcotic drugs, controlled substances, or dangerous drugs.

5. Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.

6. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing, administering, or dispensing in a manner inconsistent with public health and welfare, dangerous drugs as defined by Chapter 483, Health and Safety Code; or controlled substances scheduled in Chapter 481 Health and Safety Code; or controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. Section 801 et seq.).

7. 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.

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

9. 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 for a period of five years:

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

2. Respondent shall not treat any chronic pain patients with the use of controlled substances. "Chronic pain", for purposes of this Order, shall be defined as a state in which pain persists beyond the usual course of an acute disease or healing of an injury and may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years. Respondent shall refer any and all chronic pain patients requiring the use of controlled substances to other appropriate practitioners within 10 days of the date of entry of this Order. Respondent may treat acute pain. When treating acute pain, Respondent shall only prescribe medications for treating pain, including opioids, benzodiazepines, barbiturates and carisprodol, for immediate needs (meaning for no more than 72 hours), and only on a one-time basis, with no refills or additional prescriptions for any patient.

3. 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 monitor shall have expertise in a similar specialty area as Respondent. 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. The monitor shall review Respondent's records regarding documentation and also whether Respondent's treatment of each patient meets the standard of care. Reports shall be submitted as requested by the Compliance Division.

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 the monitor's report describing any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division.

d. 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.

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.

4. Respondent shall not treat or otherwise serve as a physician for Respondent's immediate family, and Respondent shall not prescribe, dispense, administer or authorize controlled substances or dangerous drugs with addictive potential or potential for abuse to Respondent or Respondent's immediate family. Respondent may self-administer or administer to Respondent's immediate family only such drugs as prescribed by another physician for legitimate medical purposes and in compliance with the orders and directions of such physician.

5. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete the medical recordkeeping course offered by the University of California San Diego Physician Assessment and Clinical Education (PACE) program, or an equivalent course approved in advance by the Executive Director. To obtain approval for a

course other than the PACE course, Respondent shall submit in writing to the Compliance Division of the Board information on the course, to include at least a reasonably detailed description of the course content, faculty, course location, and dates of instruction. Respondent shall submit documentation of attendance and successful completion of this requirement to the Compliance Division of the Board on or before the expiration of the time limit set forth for completion of the course.

6. Within one year beginning from the date of the entry of this Order, Respondent annually shall enroll in and successfully complete at least 16 hours of continuing medical education (CME) in the topic psychopharmacology. All CME hours must be approved for Category I credits by the American Medical Association or the 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 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 Division of the Board 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.

7. Respondent shall pay an administrative penalty in the amount of \$2,000 within 60 days of the date of the entry of this Order. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas Medical Board and shall be submitted to the Board for routing so as to be remitted to the Comptroller of Texas for deposit in the general revenue fund. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

8. 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.

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

10. 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.

11. 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).

12. 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.

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

14. 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 TO FOLLOW]

I, ROBERTA L. FENNIG, 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.

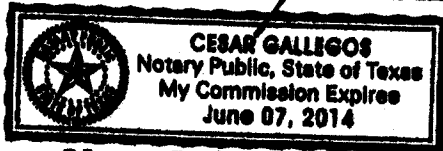
DATED: May 26, 2012.

Roberta L Fennig, D.O.
ROBERTA L. FENNIG, D.O.
Respondent

STATE OF TEXAS
COUNTY OF EL PASO

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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 26 day of May, 2012.



(Notary Seal)

[Signature]
Signature of Notary Public

8 SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
day of June, 2012.



Irvin E. Zeitler, Jr., D.O., President
Texas Medical Board