

IN THE MATTER OF
THE LICENSE OF
MARGO KALINER RESTREPO, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 21 day of August, 2009, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Margo Kaliner Restrepo, M.D. ("Respondent").

On April 27, 2009, Respondent appeared in person, with counsel Suzan Cardwell, 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 Nancy M. Seliger, a member of a District Review Committee. Sarah Tuthill represented Board staff.

Upon the recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order.

FINDINGS OF FACT

The Board finds that:

1. 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.
2. Respondent currently holds Texas Medical License No. E-2815. Respondent was originally issued this license to practice medicine in Texas on August 17, 1974. Respondent is not licensed to practice in any other state.

3. Respondent is primarily engaged in the practice of psychiatry. Respondent is board certified by the American Board of Psychiatry and Neurology, a member of the American Board of Medical Specialties.

4. Respondent is 72 years of age.

5. Respondent has not received a prior disciplinary order from the Board.

6. Respondent admitted and discharged a psychiatric patient without conducting a face-to-face evaluation, mental status examination, or risk assessment. The patient committed suicide within 24 hours of being discharged from the psychiatric unit at St. Joseph's Medical Center ("St. Joseph's").

7. On March 6, 2007, the patient presented to St. Joseph's emergency room expressing plans to shoot herself. The patient arrived directly from the police station where she had been held and questioned for several hours. The patient had just been married the day before. The patient's husband shot and killed himself that next morning and she was the first to find her husband's body.

8. The patient was tearful and disheveled upon presentation to the emergency room. The patient had a history of depression and anxiety and was taking medication to treat these issues. The patient reported to staff that her mother had committed suicide two years prior.

9. The patient was admitted on a voluntary basis to St. Joseph's psychiatric unit. After voluntary admission to the unit, the patient cleaned up, took medication, and was calmer on the unit.

10. According to nursing notes, the patient was placed on suicide precaution per an admission note indicating that she had expressed the desire to kill herself.

11. Respondent was working at her office at the time of the patient's admission. Respondent gave admission orders for the patient over the phone.

12. During the early evening hours of March 6, the patient told staff that she wished to be discharged. Nursing notes indicate that the patient stated she no longer wanted to kill herself and desired to get started on funeral arrangements as soon as possible.

13. Staff telephoned Respondent and informed of the patient's request to be discharged. Instead of conducting a face-to-face mental status examination to evaluate whether the patient should be discharged, Respondent spoke to the patient and staff about her request over the phone.

14. The patient told Respondent that she did not plan to kill herself and expressed feeling great stress at not being able to make funeral arrangements. Nursing staff also reported that the patient denied suicidal ideation.

15. While Respondent recommended to the patient that she stay that evening at the hospital, based upon her assessment conducted over the phone, she felt that the patient did not qualify for involuntary commitment and agreed to her discharge.

16. During her conversation with the patient, Respondent asked her to agree to a plan that would assure her safety once discharged. Respondent's discharge instructions required that a friend or family member would need to pick the patient up from the hospital and verbally agree to stay with the patient that evening. Respondent asked the patient to promise that she would not hurt herself.

17. On the morning of March 7, 2007, Respondent phoned the patient, who stated that she was depressed, but had friends and family present to help her. Later that evening, the patient committed suicide.

18. St. Joseph's Peer Review Committee ("Committee") investigated the matter and graded the incident as a level 5, or "inappropriate quality." As a result of the Committee's findings, the Respondent was required to sign a practice improvement plan agreement and undergo monitoring on her next 10 cases. St. Joseph's now has a written policy requiring face-to-face mental status examination and other necessary evaluation before discharging any psychiatric patient.

19. 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 of Fact, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.

2. 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 Rule(s): 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.

3. Section 164.051(a)(7) of the Act authorizes the Board to take disciplinary action against Respondent based on disciplinary action taken by Respondent's peers.

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. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

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

6. 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 of Fact and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions for a period of two years following the date of the entry of this order:

1. For each year of this Order, Respondent shall enroll in and successfully complete at least 12 hours of continuing medical education ("CME") in the area of suicide risk management, approved for Category I credits by the American Medical Association and approved in writing in advance by the Board. The CME may be completed via the internet. To obtain approval for the course, Respondent shall submit in writing to 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 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.

2. Respondent shall pay an administrative penalty in the amount of \$5,000 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.

3. 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.

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

5. 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.

6. 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).

7. 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.

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

9. 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.

I, MARGO KALINER RESTREPO, 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: July 7, 2009.

Margo Kaliner Restrepo, M.D.
MARGO KALINER RESTREPO, M.D.
Respondent

STATE OF Texas §
COUNTY OF Harris §
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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 7th day of July, 2009.



Susan N. Earhart
Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 21 day of August, 2009.

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