

IN THE MATTER OF

THE LICENSE OF

JAMES JOSEPH MAHONEY, D.O.

BEFORE THE

TEXAS MEDICAL BOARD

MEDIATED AGREED ORDER

On the 27 day of June, 2008, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of James Joseph Mahoney, D.O. ("Respondent").

On March 30, 2007, Respondent appeared in person, without counsel, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. Mark Martyn represented Board staff. The Board's representatives were Paulette B. Southard, a member of the Board, and Mark C. Maberry, M.D., a member of the District Review Committee.

A mediation conference was held on April 23, 2008. Respondent appeared with counsel, Henry Ackels. The Board was represented by Manuel Guajardo, M.D., a member of the Board. Board staff was represented by Mark Martyn.

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. H-0591. Respondent was originally issued this license to practice medicine in Texas on December 3, 1986. Respondent is not licensed to practice in any other state.

3. Respondent is primarily engaged in family practice. Respondent is board certified in this specialty by the American Osteopathic Board of Family Practice and the American Osteopathic Board of Neuromuscular Skeletal Medicine, members of the American Osteopathic Board of Medical Specialties.

4. Respondent is 48 years of age.

5. Respondent has not previously been the subject of disciplinary action by the Board.

6. Respondent treated patient L.H. for a variety of health-related matters with complementary and alternative therapies. Respondent failed to keep accurate and complete medical records as to documentation and communications with the patient's concurrent healthcare providers informing them of his treatment plans for L.H.

7. 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)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 165, which requires the maintenance of adequate medical records.

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. 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.

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 of Fact and Conclusions of Law, the Board ORDERS that:

1. Within one year from the date of 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 Director of Enforcement for 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 Director of Enforcement for the Board on or before the expiration of the time limit set forth for completion of the course.

2. While under the terms of this Order, and beginning after Respondent has completed the PACE program, Respondent's practice shall be monitored for six months 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 and, if possible, have experience in alternative medicine. 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 new patient medical records ("selected records"). The Compliance Division shall select records for at least 20 new patients seen by Respondent during each three-month period following the completion of the PACE program. The Compliance Division may select records for more than 20 new patients, up to ten percent of the patients seen during a reporting period, if Respondent does not have 20 new patients in the reporting period.

If Respondent fails to see at least 20 new 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 for record keeping efficiency;
- 2) Prepare written reports documenting any perceived deficiencies and any recommendations to improve Respondent's medical record keeping. Reports shall be submitted as requested by the Compliance Division; and
- 3) Perform any other duty that the Compliance Division determines will assist the effective monitoring of Respondent's medical record keeping.

c. The Compliance Division shall provide to Respondent a copy of any deficiencies or recommendations for better medical record keeping submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division.

d. 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.

3. The time period of this Order shall be extended for any period of time that (a) Respondent subsequently resides or practices outside the State of Texas, (b) Respondent's license is subsequently canceled for nonpayment of licensure fees, or (c) this Order is stayed or enjoined by Court Order. If Respondent leaves Texas to live or practice elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. 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 extended Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of extension.

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 mailing or practice address within ten days of the address change. This information shall be submitted to the Permits Department and the Director of Compliance for 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.

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. Respondent agrees that ten 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).

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

9. On completion of the PACE program and the chart monitoring, this Agreed Order will automatically terminate.

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, JAMES JOSEPH MAHONEY, 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.

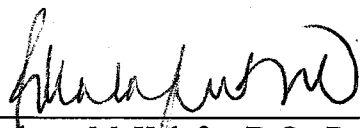
DATED: APRIL 23, 2008.



JAMES JOSEPH MAHONEY, D.O.

Respondent

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
27 day of June, 2008.



Roberta M. Kalafut, D.O., President

Texas Medical Board