LICENSE NO. G-9878

IN THE MATTER OF

THE LICENSE OF

DOROTHY FRANCOEUR MERRITT, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER

On the 16th day of August, 2019, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Dorothy Francoeur Merritt, M.D. (Respondent).

On April 26, 2019, Respondent appeared in person, with counsel Jennifer Papapanagiotou, 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 Manuel Quiñones, Jr., M.D., and Timothy Webb, J.D., members of the Board (Panel). Kemisha Williams represented Board staff and prepared this Order.

BOARD CHARGES

Board Staff charged that Respondent failed to meet the standard of care with respect to one patient with a family history of breast cancer, when she failed to appropriately evaluate and follow established standards for breast cancer surveillance. Respondent’s failure resulted in a delay in diagnosis of breast cancer in the patient.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board. On August 26, 2005, the Board entered an Agreed Order requiring Respondent to retract misleading advertisements regarding chelation therapy, obtain 10 hours of continuing medical education (CME) in ethics and advertising, and pay a $3000 administrative penalty. The action was based upon Respondent disseminating false advertising regarding chelation therapy.
On August 29, 2008, the Board entered an Administrative Penalty Order requiring Respondent to pay a $1000 administrative penalty as a result of her use of misleading advertising.

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. G-9878. Respondent was originally issued this license to practice medicine in Texas on August 23, 1986. Respondent is not licensed to practice in any other state.
   c. Respondent is currently engaged in the practice of internal medicine. Respondent is Board certified by the American Board of Internal Medicine, a member of the American Board of Medical Specialties.
   d. Respondent is 60 years of age.

2. **Specific Panel Findings:**
   a. Respondent treated one patient for thyroid problems absent objective evidence that the patient needed such treatment. Treatment with thyroid medication was improperly continued even after the patient showed no positive response to the treatment.
   b. Respondent ordered thermography to evaluate the patient’s risk for developing breast cancer and failed to clearly document that she also verbally recommended the patient have a mammogram, although the thermography report did state in writing that thermography did not replace the need for a mammogram.
3. **Mitigating Factors:**

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

a. The allegations involve a single patient.
b. Respondent currently practices in a new practice setting.
c. Respondent has changed the EMR system she uses in her practice.
d. 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)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent’s violation of the Act or Board Rules, specifically, Board Rule 165.1(a) failure to maintain adequate medical records.
3. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as defined by Board Rules 190.8(1)(A) failure to treat a patient according to the generally accepted standard of care; and 190.8(1)(C) failure to exercise proper diligence in one’s professional practice.
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.
5. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.
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. Within one year following the date of the entry of this Order, Respondent shall take and pass with a score of 75 or above the Medical Jurisprudence Examination ("JP Exam") given by the Texas Medical Board. Respondent is allowed three attempts to successfully pass this examination.

Respondent’s failure to take and pass the JP Exam within three attempts within one year following the date of the entry of this Order shall constitute a violation of this Agreed Order. After a committee of the Board or a panel of Board representatives (Board Representatives), has considered the information related to Respondent’s violation of this provision and has determined that Respondent has not fulfilled the requirements of this provision, Respondent’s medical license shall be IMMEDIATELY SUSPENDED pursuant to correspondence to Respondent from the Executive Director or Secretary-Treasurer of the Board indicating that Board Representatives have considered the information related to Respondent’s violation of this provision and have determined that Respondent has not fulfilled the requirements of this provision. Although Respondent shall be invited to provide information or testimony to the Board Representatives, Respondent specifically waives any administrative due process under the Medical Practice Act, or the Administrative Procedure Act, for the Board Representatives to consider this information. THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE MEDICAL PRACTICE ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS AND ALL RIGHTS OF APPEAL. Respondent shall be notified of any suspension by certified mail, return receipt requested to Respondent’s last known address on file with the Board. If Respondent's license is suspended on such a basis, the suspension shall remain in effect until such time as Respondent takes and passes the JP Exam and subsequently appears before the Board in person and provides sufficient evidence which, in the discretion of the Board, is adequate to show that Respondent possesses the skills and knowledge to safely practice in Texas and is otherwise physically and mentally competent to resume the practice in this state.
2. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 12 hours of continuing medical education (CME) approved for Category I credits by the American Medical Association or the American Osteopathic Association, divided as follows: four hours in the topic of medical recordkeeping, and eight hours in the topic of treatment of endocrine disorders; each approved in writing in advance by the Executive Director or a designee. To obtain approval for the course, Respondent shall submit in writing to the Compliance Department 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 Department 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.

3. Respondent shall pay an administrative penalty in the amount of $1000 within 90 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.

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 in Texas 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. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent’s practice.

6. 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.

7. 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 45-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. 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. This Order shall automatically terminate upon Respondent’s submission of sufficient evidence to the Compliance Division of the Board that Respondent successfully completed the requirements ordered in Ordering Paragraph Nos. 1 through 4.

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, DOROTHY FRANCOEUR MERRITT, 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: 7/20/19.

[Signature]

DOROTHY FRANCOEUR MERRITT, M.D.
Respondent

STATE OF

COUNTY OF

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this
__ day of ____________, 2019.

[Notary Seal]

Signature of Notary Public
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
16th day of August, 2019.

(Signature)

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