

LICENSE NO. L-3820

IN THE MATTER OF
THE LICENSE OF
DAVID PAUL SHERIDAN, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 9th day of April, 2010, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of David Paul Sheridan, M.D. ("Respondent").

On November 1, 2007, Respondent appeared in person, with counsel Clay Nance, 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 Julie Attebury and Manuel Guajardo, M.D., members of the Board. Joseph M. Tabaracci represented Board staff.

The matter did not settle initially. The matter was transferred to Scott M. Freshour who filed a formal complaint at the State Office of Administrative Hearings ("SOAH"). After the filing at SOAH Respondent retained new counsel, Jennifer House. Prior to the matter being heard at SOAH the parties reached a settlement.

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.

BOARD CHARGES

The subject matter of the initial complaint related to the treatment of, and communication with one patient, who presented with documented menopause-related symptoms, including but not limited to, decreased mental acuity, irritable bowel issues, weight gain, hair thinning, sleep difficulties, and general fatigue.

After engaging in the discovery process pursuant to a SOAH scheduling Order, the presenting issues were narrowed to specific concerns related to patient communication. Specifically, pre-treatment literature was provided to the patient, which contained certain

statements that were allegedly inaccurate or misleading. There was also concern expressed by the patient regarding the business relationship between the pharmacy where she was recommended to fill her prescriptions and Respondent's employer.

BOARD HISTORY

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

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. L-3820. Respondent was originally issued this license to practice medicine in Texas on April 5, 2002. Respondent is not licensed to practice in any other state.
- c. Respondent is primarily engaged in alternative and complimentary medicine and general medicine. Respondent is not currently board certified by any medical specialty board.
- d. Respondent is 55 years of age.
- e. Respondent did not compose the pre-treatment materials provided to the patient but was aware of the content of same.

2. Specific Findings:

- a. Communication:
 - i. Literature

Respondent's practice provides patient consult materials, which contain potentially inaccurate statements relating to treatment approaches offered to patients

of the practice. These statements include the following: treatment has the “inevitable effect of promoting health and wellness.” “as long as our natural hormones are supplemented appropriately they have only positive effects,” “...there are no long term or adverse side effects, rather there will only be positive benefits to your health.” The patient did experience temporary adverse side effects from desiccated Thyroid supplementation therapy, prescribed by Respondent. Respondent addressed the patient’s concerns about such side effects immediately.

Further, the use of the term “natural” and “bio-identical” are used interchangeably in the literature and in common usage among physicians who practice in this area of medicine. Respondent admits that these terms are not medically equivalent. Clarification of the distinction between these two terms would benefit patients who are receiving Bio-Identical hormone therapy.

ii. Disclosures:

Another issue presented relates to the concern that the patient was provided prescriptions that she was told would be filled at Premiere Pharmacy. Premiere Pharmacy is owned by a trust, which is financially connected to the owner of the Health and Wellness Center, Respondent’s employer. The patient was not given any written prescriptions or advised that she could take her prescriptions to a different compounding pharmacy. The patient was also offered a vitamin supplement which she was advised was a special formula, only available from Physician Preference. Physician Preference is another business entity, which is financially related to the owner of the Health and Wellness Center. In both circumstances (vitamins and prescriptions) the patient was not told of the inter-relationship between the businesses and the Health and Wellness Center.

3. Aggravating Factors/Mitigating Factors

a. In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factor:

Respondent used a proper, known and clinical approach to titration of desiccated Thyroid hormones. Desiccated thyroid was the medication which, when increased in dosage, led to the temporary adverse side effects.

Respondent addressed the temporary side effect experienced by the patient as soon as he was notified of same.

None of the literature was intentionally misleading or inaccurate.

The patient did experience a reported increase in well-being outside of her issue with the Desiccated Thyroid treatment.

- b. In determining the appropriate sanctions in this matter, the Panel considered the following aggravating factors:
 - i. The patient did experience a temporary short-term adverse side effect possibly attributable to an increase in the dosage of Desiccated Thyroid hormone.

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 a Board Rule, to wit; Board Rule 164 related to advertising.
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 of Fact and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. Within 90 days from the date of the entry of this Order, Respondent shall present revised Patient consult form to the Executive Director for review. The revised Patient consult form shall be provided to each and every new patient who will undergo treatment with bio-identical hormones (Bio-identical Therapy) by Respondent and shall include written disclosures that explicitly state the following information in 14-point, capitalized and bolded print:

- a. information regarding possible outcomes of Bio-identical Therapy, both positive and negative;
- b. there are no guarantees regarding the effectiveness of the Bio-identical Therapy;
- c. that there may be possible adverse side effects of Bio-identical Therapy; and
- d. listing of the common, generally known side effects of Bio-identical Therapy.

2. Respondent shall clearly disclose, in writing, the policy regarding the filling of prescriptions: including a disclosure of the business interrelationship between the Health and Wellness Center and Premiere Pharmacy; unless instructed otherwise the practice of the Health and Wellness Center is to automatically fill prescriptions with Premiere Pharmacy; however, that the patient retains the option to take prescriptions to another compounding pharmacy.

3. Respondent shall clearly disclose, in writing, the policy regarding recommendations concerning supplements and vitamins: including a disclosure of the business interrelationship between the Health and Wellness Center and Physician's Preference; that certain formulations are available only through Physician's Preference; and the option of going to another supplier for supplements.

4. Respondent must have each new patient sign an acknowledgment that the patient received and was given the disclosures as ordered in Paragraphs No. 1, 2 and 3, above. This revised acknowledgement is specifically applicable only to Respondent as it relates to Bio-identical Therapy. This is a one-time signature requirement; however, the signed acknowledgement shall be kept in the patient's medical record.

5. Respondent shall pay an administrative penalty in the amount of \$2000 within 60 days 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 Director of Compliance for 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

6. Respondent shall adequately supervise the activities of all other individuals under Respondent's supervision to ensure that each individual is complying with all provisions in this Order related to the mandated disclosures specified herein.

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


8. 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.

9. Respondent shall inform the Board in writing of any change of Respondent's mailing or practice address within 10 days of the address change. This information shall be submitted to the Permits Department and the Director of Enforcement 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.

10. 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 30 days notice of a Probationer Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order as provided by §164.003(b)(2) of the Medical Practice Act.

11. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following the date of the entry of this Order. If, after the passage of the 12-month 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.

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
9th day of April, 2010.



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