

LICENSE NO. E-2962

IN THE MATTER OF
THE LICENSE OF
PHILIP L. ZBYLOT, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 3RD day of JUNE, 2011, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Philip L. Zbylot, M.D. ("Respondent").

On February 28, 2011, Respondent appeared in person, with counsel Mark Cohen, 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 Margaret C. McNeese, M.D., a member of the Board, and Sharon J. Barnes, a member of a District Review Committee. Lee Bukstein represented Board staff.

BOARD CHARGES

The Board charged that Respondent had aided and abetted the practice of medicine by unlicensed providers and had failed to adequately supervise the providing of medical care by persons under his direction as medical director of the Holistic Health Care Center ("HHCC") in Boerne, Texas.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board as follows:

1. On December 8, 1976, the Board entered an Order ("1976 Order") that revoked and cancelled Respondent's medical license due to felony arrest and conviction of cocaine possession with intent to distribute.

2. On August 23, 1981, the Board entered an Order ("1981 Order") that reinstated Respondent's medical license with probation of ten (10) years under the following terms and conditions: Respondent was prohibited from applying for controlled substances registration without permission from the Board. Respondent was required to obtain advance approval from the Board for changing his practice setting. Respondent was prohibited from being found guilty of habits of intemperance. On June 10, 1985; the Board terminated the 1981 Order without restrictions or limitations.
3. On April 5, 2002, the Board entered an Agreed Order due to Respondent's failure to renew his medical license timely and ordered Respondent to pay an administrative penalty of \$2,500.

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. E-2962. 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.
 - c. Respondent is primarily engaged in the practice of general preventative medicine. Respondent is not board certified.
 - d. Respondent is 63 years of age.

2. Specific Panel Findings:

a. Standard of Care and Failure to Adequately Supervise:

1. On March 19, 2009, the Texas Department of State Health Services (TDSHS) conducted an inspection of HHCC after they received a complaint that HHCC was offering cancer treatment using colon hydrotherapy, without medical supervision, without valid orders issued from a licensed physician, and for unapproved uses. The inspection confirmed these allegations and HHCC's three colon hydrotherapy devices were confiscated.
2. The owner-operators of HHCC contacted Respondent and requested him to become the medical director of the HHCC. On March 27, 2009, Respondent signed an agreement with HHCC to assume the role as Medical Director.
3. On April 27, 2010, a state district court entered an agreed Final Judgment and Agreed Permanent Injunction with the State of Texas that required HHCC to develop, adopt, and implement protocols in conjunction with a licensed practitioner. Specifically, it was ordered by TDSHS that HHCC shall have a written order for each patient, obtained before the use of the colon irrigation systems or other prescription device, from a practitioner licensed under Texas law to order the use of such prescription devices.
4. On July 22, 2010, in response to an inquiry from the Board investigator as to Respondent's role as Medical Director for HHCC, Respondent stated that there were no standing orders directing any activity at HHCC, but there was an understanding that the colonic equipment would only be used in accordance with the manufacturer's operation manual. Additionally, Respondent reported that he was not conducting any part of his medical practice at HHCC, nor had he ever seen any patient there or directly supervised the personnel at HHCC. Respondent had only been to HHCC twice, and both times were days when no patients were being treated. Respondent later provided copies of protocols that he had helped develop and that HHCC was using.
5. At the time that he became Medical Director of HHCC, Respondent knew that the personnel at HHCC were not licensed health care providers.

6. The unlicensed personnel at HHCC were providing medical care to patients at that site, including giving Vitamin B12 shots and diagnostic testing, without informing Respondent. The personnel at HHCC denied to Respondent that they were performing any medical care activities there.
7. Respondent failed to properly supervise, including the use of prescriptive devices, by his failure to spend any time directly supervising the activities of personnel using those devices at the HHCC site.

b. Documentation:

Respondent failed to maintain adequate medical records by his failure to review the records of HHCC regarding the actual use of the prescriptive devices, the colonic irrigation equipment, and to document his reviews.

3. Mitigating Factors

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

4. Aggravating Factors

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

- a. Respondent's actions or omissions in his role of supervising medical care at HHCC were knowing.
- b. In light of his disciplinary history with the Board, Respondent's failure to consult legal counsel or contact appropriate state health care agencies regarding his potential legal responsibilities as Medical Director of HHCC or regarding any problems with that clinic complying with state regulatory authorities

demonstrated indifference regarding the law by relying on nothing other than the statements of HHCC's owners.

- c. Respondent ignored clear warning signs about the arrangement to become Medical Director of HHCC, including the owner's difficulty in securing a medical director and the knowledge that the HHCC clinic had been under investigation by state authorities.

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)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act prohibited under Section 164.052 of the Act.
3. 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 Rule 165.1, related to maintaining adequate medical records and Board Rule 193, related to proper delegation of medical care tasks and adequate supervision of subordinate personnel.
4. 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 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; Board Rule 190.8(1)(B), negligence in performing medical services; Board Rule 190.8(1)(C), failure to use proper diligence in one's professional practice; Board Rule 190.8(1)(D), failure to safeguard against potential complications; Board Rule 190.8(1)(H), failure to disclose reasonably foreseeable side effects of a procedure or treatment; Board Rule 190.8(1)(I), failure to obtain proper informed consent; and Board Rule 190.8(1)(K), prescribing or administration of a drug in a manner not in compliance with Board Rules Chapter 200 related to Complimentary and Alternative Medicine.

5. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public, as further defined by Board Rule 190.8(2)(D), failing to cooperate with Board Staff; and 190.8(2)(J), providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third party payor that the licensee knew or should have known was improper;

6. Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based upon commission of an act that violates any state or federal law if the act is connected with the physician's practice of medicine.

7. Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon non-therapeutic prescribing or treatment.

8. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based upon administering or prescribing in a manner inconsistent with public health and welfare.

9. Section 164.053(a)(7) of the Act authorizes the Board to take disciplinary action against Respondent based upon unprofessional or dishonorable conduct that is likely to deceive or defraud the public, to wit, violation of Section 311.0025, Health and Safety Code: a health care professional may not submit to a patient or a third party payor a bill for a treatment that the facility or professional knows was not provided, or knows was improper, unreasonable, or medically or clinically unnecessary.

10. Section 164.053(a)(8) of the Act authorizes the Board to take disciplinary action against Respondent based upon failure to supervise adequately the activities of those acting under the supervision of the physician.

11. Section 164.053(a)(9) of the Act authorizes the Board to take disciplinary action against Respondent based upon delegation of medical responsibility or act to a person who is not qualified.

12. 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.

13. 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 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 from the date of the entry of the order:

1. Respondent shall not be permitted to supervise or to delegate medical care tasks to other health care providers or unlicensed personnel.

2. 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. 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 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.

3. 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.

4. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least eight hours of continuing medical education (CME) approved for Category I credits by the American Medical Association in the topic of medical recordkeeping and at least eight hours of CME approved for Category I credits by the American Medical Association in the topic of risk management, approved in writing in advance by the Compliance Division of the Board. 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.

5. Respondent shall pay an administrative penalty in the amount of \$3,000 within two years 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.

6. 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.

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 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).

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.

11. 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. 2, 3, 4, and 5.

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, PHILIP L. ZBYLOT, 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: May 5, 2011.

Philip L. Zbylot, M.D.

PHILIP L. ZBYLOT, M.D.
Respondent

STATE OF Texas

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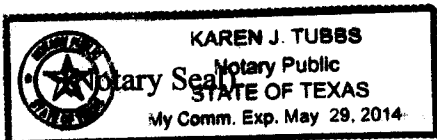
COUNTY OF Travis

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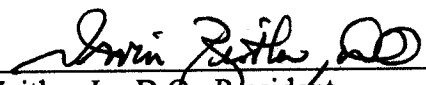
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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 5th day of May, 2011.

Karen J. Tubbs
Signature of Notary Public



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
3RD day of JUNE, 2011.



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