

LICENSE NO. J-6315

IN THE MATTER OF
THE LICENSE OF
DEBORAH Z. BAIN, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 4th day of November, 2011, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Deborah Z. Bain, M.D. ("Respondent").

On June 13, 2011, Respondent appeared in person, with counsel Algis Augustine, 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 Russell Parker, a member of a District Review Committee. Roger Calhoun represented Board staff.

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.

BOARD CHARGES

Board Staff alleged that Respondent failed to appropriately evaluate and/or refer a patient for evaluation of "failure to thrive." Respondent denies the charges, but for the purposes of this Agreed Order, agrees the Board may make a finding.

BOARD HISTORY

Respondent has not previously received a disciplinary order from 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. J-6315. Respondent was originally issued this license to practice medicine in Texas on November 5, 1994. Respondent is not licensed to practice in any other state.
- c. Respondent is primarily engaged in the practice of pediatrics. Respondent is board certified by the American Board of Pediatrics, a member of the American Board of Medical Specialties.
- d. Respondent is 45 years of age.

2. Specific Panel Findings:

- a. Respondent saw an infant patient and diagnosed "failure to thrive" when the infant was approximately eight months old. Respondent's treatment of the infant was focused primarily on nutritional intervention. The Board found that the patient's condition did not improve despite being treated by the Respondent for over a 12-month period. However, Respondent and the patient's family disagree, and believe that the patient's condition did improve.
- b. Respondent did not refer the patient for a more extensive workup to look for genetic, endocrine or neurological etiologies, as Respondent opted to try conservative therapy first. Respondent states that she later did the tests proposed by the Board, and they proved negative. Respondent did, however, refer the patient to Early Childhood Intervention, and the patient was dismissed early from the program due to complete normalization of development skills under Respondent's care.
- c. Respondent practices a combination of traditional and complementary medicine; however, there was insufficient documentation in the medical record to show full informed consent. Respondent stated, however, that she gave complete information orally and that the family was fully informed. Furthermore, the patient's parents sought out the services of Respondent

specifically for her integrative approach, as they felt uncomfortable with their previous pediatric care.

3. Mitigating Factor:

Respondent has cooperated with Board staff 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 of the Act, will save money and resources for the State of Texas. Respondent does not admit or deny the Findings and Conclusions of Law set forth in this Agreed Order. However, 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 a Board rule, specifically Board Rule 165.1, which requires the maintenance of adequate medical records.
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 Board rule, specifically Board Rule 200.3, regarding the standards for physicians practicing complementary and alternative medicine.
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 and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. 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 American Osteopathic Association in the topics of medical record keeping (**four hours**), and diagnosis and treatment of failure to thrive according to the American Academy of Pediatrics (**eight hours**) approved in writing in advance by the Executive Director or their designee. 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.

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

3. 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.

4. 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).

5. 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.

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

7. This Order shall terminate upon the successful completion of Ordering Paragraph No. 1.

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.

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