

IN THE MATTER OF

THE LICENSE OF

RODNEY THOMAS FRANKLIN, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

MEDIATED AGREED ORDER

On the 8th day of December, 2006, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Rodney Thomas Franklin, M.D. ("Respondent").

On November 3, 2006, Respondent appeared in person, with counsel, Jon Porter and Dan Ballard at a mediated settlement conference. Irvin Zeitler, D.O., represented the Board. Sherry Statman represented Board staff.

Upon the recommendation of the Board's representative 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-0991. 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 Board of Family Practice, a member of the American Board of Medical Specialties.

4. Respondent is 46 years of age.

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

6. Patient D.J., an 80-year old female, had a significant past medical history of chronic obstructive pulmonary disease, asthma and deep vein thrombosis with an internal vena cava filter. She also had a history of congestive heart failure, stroke and Parkinson's disease, osteoarthritis and azotemia. Previous surgeries included a pacemaker and cataract surgeries. D.J. had been non-ambulatory for seven years.

7. D.J. had been residing in an assisted living facility where she had developed non-healing skin wounds. Dr. Wolcott, a wound care specialist, had been seeing D.J. on an out-patient basis. Dr. Wolcott referred D.J. to a long-term acute care facility and asked Respondent to serve as the admitting physician. At the time of her admission on June 27, 2005, D.J. had a sore throat, cough, and mouth sores, and was also suspected of having some congestive heart failure.

8. Care was provided to D.J. by Respondent and an Advanced Nurse Practitioner supervised by Respondent. Respondent's medical records do not provide a completely documented analysis and Respondent did not sign the Advanced Nurse Practitioner's progress notes. On July 2, 2005, D.J.'s family requested that Respondent be replaced by another doctor and Dr. Pirtle assumed care.

9. Dr. Wolcott, Dr. Pirtle, and three physicians retained by Respondent all provided documentation to the Board expressing their opinions that Respondent met the standard of care in his treatment of D.J.

10. Respondent states that he met the standard of care in both his supervision of the Nurse Practitioner and the care provided. Since this event, Respondent has changed his documentation protocols to clarify care and supervision.

11. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent neither admits nor denies through consent to this Agreed Order, and pursuant to the provisions of Section 164.002 the Act, such consent 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 165.001 of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice to maintain adequate medical records for each patient that is complete, contemporaneous and legible.
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 Respondent shall be subject to the following terms and conditions:

1. Respondent shall maintain adequate medical records on all patient consultations, surgeries and procedures performed, drugs provided, and treatment rendered by Respondent. The records shall include, at a minimum the following information about the patient:
  - a. name and address,
  - b. vital signs and statistics,
  - c. chief complaints,
  - d. history and physical findings,
  - e. diagnosis and basis for diagnosis,

- f. treatment plan for each patient visit or operative procedure,
- g. a notation of all medications prescribed or otherwise provided to the patient including the quantity, dosage, and rationale for providing the medications, and
- h. detailed records of all follow-up visits.

2. Respondent shall make all patient medical records available for inspection and copying upon the oral or written request of Board consultants, investigators, compliance officers, attorneys, monitoring physicians or the Executive Director of the Board.

3. Within one year of the entry of this Order, Respondent shall enroll in and successfully complete courses totalling of 20 hours of Category I Continuing Medical Education (CME) in the areas of Risk Management and/or Medical Record Keeping, approved in writing in advance by the Executive Director of the Board. These hours shall be in addition to the CME hours required by Board rule for physicians in good standing. To obtain approval for the courses, Respondent shall submit in writing to the Director of Compliance for the Board information on the courses, to include at least a reasonably detailed description of the course' content and faculty, as well as the location and dates of instruction. Respondent shall deliver documentation of attendance and successful completion of this requirement to the Director of Compliance for the Board on or before the expiration of the time limits set forth for completion of the course.

4. Respondent shall pay an administrative penalty in the amount of \$500 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.

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

6. 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.

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 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.

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, and 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).

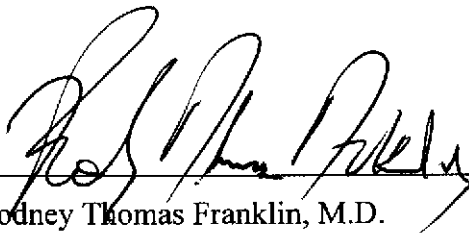
11. This order shall terminate automatically upon satisfactory completion of the requirements noted in paragraph nos. 3 and 4 of the Order section.

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, RODNEY THOMAS FRANKLIN, 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.

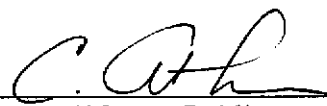
DATED: November 3, 2006.

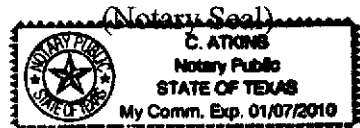
  
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Rodney Thomas Franklin, M.D.  
Respondent

STATE OF TEXAS  
COUNTY OF TRAVIS

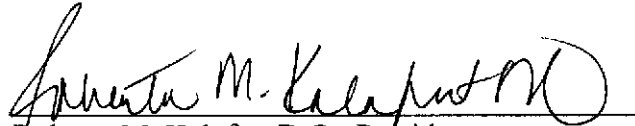
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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 3<sup>rd</sup> day of November, 2006.

  
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Signature of Notary Public



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this  
8th day of December, 2006.

  
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Roberta M. Kalafut, D.O., President  
Texas Medical Board