

IN THE MATTER OF

THE LICENSE OF

ROLANDO GERMAN ARAFILES, JR., M.D.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER

On the 13 day of April, 2007, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Rolando German Arafiles, Jr, M.D. ("Respondent").

On November 16, 2006, Respondent appeared in person, with counsel James Erikson, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. Katie Johnsonius represented Board staff. The Board's representatives were Keith E. Miller, M.D., a member of the Board, and Allan Shulkin, M.D., and Noe Fernandez, members of District Review Committees.

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.

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. K-4855. Respondent was originally issued this license to practice medicine in Texas on April 4, 1998. Respondent is not licensed to practice in any other state.
3. Respondent is primarily engaged in family practice. Respondent is not board certified.
4. Respondent is 54 years of age.

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

6. Respondent contracted with the owner of a weight loss clinic to supervise a physician assistant who was also employed by the weight loss clinic.

7. As Respondent understood his employment responsibilities, he was to review 10% of the physician assistant's files to confirm that the physician assistant's treatment of the clinic's patients was in accordance with the weight loss protocol established by the clinic's owner.

8. The Respondent acknowledged that the protocol developed by the clinic's owner called for the use of phentermine for treatment of obesity, even with some patients whose body mass index (BMI) was less than 30%.

9. The Respondent further acknowledged that the protocol developed by the clinic's owner called for the use of diuretics for treatment of hypertension as a potential side effect of phentermine in obese patients, even patients who were not experiencing hypertension or edema.

10. The Respondent failed to make an independent medical professional decision about the appropriateness of the protocol for the first few months of his employment with the clinic, and signed off on the records of the Physicians Assistant who was under his supervision, even when the records, by themselves, demonstrated that the clinic's practice, in relation to certain patients, did not meet the standard of care.

11. The patients' records created by the physician assistant that the Respondent supervised did not adequately document the physician assistant's efforts to counsel patients regarding other, healthier treatments for obesity than medicine.

12. The clinic was open approximately 40 hours a week. For the first six to seven months, Respondent spent approximately 4 hours every other week reviewing the physician assistant's files. This means that the supervising physician was present in the same location with the physician assistant approximately 5% of the time that the clinic was open. Section 157.0541 of the Act and Board Rule 185.16(c) require a supervising assistant to be on-site with his delegate a minimum of 20% of the site's business hours.

13. Eventually, the Respondent became concerned about the protocol and concerned that the clinic's patients were depending too much on the medication and making too few life

style changes to support weight loss, and he was able to convince the clinic's owner to change the protocol.

14. 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.

### 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 185.15 of the Act provides that a supervising physician retains professional and legal responsibility for the care rendered by the physician assistant.

3. Section 164.053(a)(8), Section 157.0541 of the Act, and Board Rule 185.16(c) authorize the Board to take disciplinary action against Respondent based on Respondent's failure to supervise adequately the activities of those acting under Respondent's supervision.

4. Sections 164.052(a)(5) and 185.15 of the Act authorize the Board to take disciplinary action against Respondent based upon unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure the public, as defined by Board Rule 190.8(1)(A) and (C): failure to meet the standard of care and failure to use proper diligence in one's practice.

5. Section 164.051(a)(6) Sections 164.052(a)(5) and 185.15 of the Act, taken together, authorize the Board to take disciplinary action against Respondent because he, acting through his delegate, failed to practice medicine in an acceptable professional manner consistent with public health and welfare.

6. 164.051(a)(3) and 185.15 of the Act, taken together, authorize the Board to take disciplinary action against Respondent based upon his approval of the physician assistant's charting, which violated Board Rule 165, requiring the maintenance of adequate medical records.

7. Sections 164.052(a)(5), 164.053(a)(5), and 185.15 of the Act, taken together, authorize the Board to take disciplinary action against Respondent based upon his approval of

the physician assistant's prescribing or administering a drug or treatment that is non-therapeutic in nature or non-therapeutic in the manner the drug or treatment is administered or prescribed.

8. Section 164.001 and 185.15 of the Act, taken together, authorize 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.

9. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

10. 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, for a period of three years from the date on which the Board enters this Order:

1. Respondent shall not be permitted to supervise or delegate prescriptive authority to a physician assistant or advanced practice nurse or to supervise a surgical assistant during the term of the agreement.

2. Respondent shall obtain 20 hours of Continuing Medical Education (CME) each year beyond what is otherwise required by the Board for annual license renewal purposes, approved for Category I credits by the American Medical Society, split approximately evenly between the subjects of ethics, medical record-keeping, and treatment of obesity. Upon successful completion of the courses, Respondent shall submit proof to the Board. A copy of attendance certificates or a detailed report that can be readily verified by the Board shall satisfy this requirement.

3. Respondent shall pay an administrative penalty in the amount of \$1,000 within 60 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 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.

4. 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.

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 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.

8. 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 ten days notice, as provided in 22 Texas Administrative Code §187.44(4).

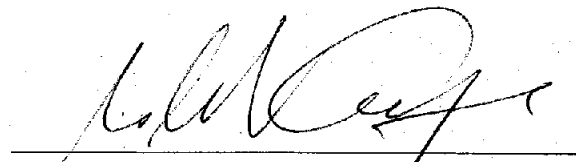
9. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following entry of this Order. If, after the passage of the 12-month period, Respondent wishes to seek amendment or termination of these conditions, 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.

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, ROLANDO GERMAN ARAFILES, JR, 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: Feb. 16, 2007, 2007.



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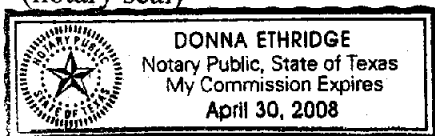
Rolando German Arafiles, Jr. M.D.  
Respondent

STATE OF Texas  
COUNTY OF Victoria

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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this  
16 day of February, 2007.

(notary seal)



Donna Ethridge  
Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 13  
day of April, 2007.

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