

IN THE MATTER OF

BEFORE THE

THE LICENSE OF

ROBERT ANTHONY WEAVER, M.D.

TEXAS MEDICAL BOARD

AGREED ORDER

On the 2 day of May, 2014, came on to be heard before the Texas Medical Board (Board), duly in session, the matter of the license of Robert Anthony Weaver, M.D. (Respondent).

On November 1, 2013, Respondent appeared in person, with counsel, Courtney Newton, 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 Irvin Zeitler, D.O., and Larry Buehler, members of the Board (Panel). Trina Richardson represented Board staff.

BOARD CHARGES

Board staff charged that Respondent failed to meet the standard of care in his treatment of one patient between November 2008 and February 2009. Specifically, Respondent inappropriately treated the patient's brain tumor using medication that was approved by the Food and Drug Administration (FDA) but used the medication off-label. Board staff also charged that Respondent provided the medication from the clinic's pharmacy at a higher rate than elsewhere in the community, and he failed to obtain adequate informed consent for the treatment.

BOARD HISTORY

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

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 (Act) or the Rules of the Board.
- b. Respondent currently holds Texas Medical License No. H-6694. Respondent was originally issued this license to practice medicine in Texas on December 6, 1989. Respondent is not licensed to practice medicine in another state.
- c. Respondent is primarily engaged as the medical director of clinical studies involving generic drugs. Respondent is not board certified.
- d. Respondent is 51 years of age.

2. Specific Panel Findings:

- a. Respondent failed to meet the standard of care in his treatment of the patient. Respondent and his employer, Dr. Stanislaw Burzynski, implemented multiple therapies, which had insufficient evidence of clinical efficacy and high probability of additive toxicities.
- b. Respondent failed to obtain adequate informed consent from the patient in both the clinical trial and, subsequently, as a private patient. Respondent did not adequately inform the patient of all risks, benefits, and uncertainties related to each investigational agent. Respondent also failed to inform the patient of standard alternative treatments.
- c. Once the clinical trial failed and the patient continued treatment as a private patient, Respondent failed to discuss the standard alternative treatments to antineoplastons.
- d. Respondent did not have discussions with the patient regarding the risks, benefits, and alternative treatments, but instead relied upon the patient's discussions with physicians who previously treated the patient.
- e. Respondent was part of the patient's oncological treatment team, and medical records identified Respondent as the physician who recommended particular agents

and combinations of these agents to be administered to the patient. Respondent also signed orders regarding the patient's treatment.

- f. Respondent admitted that he participated in regular meetings with Dr. Burzynski to discuss the patient's case and to formulate a treatment plan, describing the process as a "team effort."
- g. The patient should not have been charged for treatment related to the clinical research. The patient was inappropriately billed for the lab work completed during the clinical trial phase of treatment.

3. Mitigating Factors:

- a. Respondent is no longer employed by the Burzynski Clinic.
- b. Respondent is now a medical director at a clinical research organization, which conducts phase one generic pharmaceutical research. Respondent does not treat patients in his current position.
- c. In determining the appropriate sanctions in this matter, the Panel considered that 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, 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)(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 Rules 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care;; 190.8(1)(C), failure to use proper diligence in one's professional practice; 190.8(1)(H), failure to disclose reasonable alternative treatments to a proposed procedure or treatment; and 190.8(1)(I), failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, or procedures.

4. Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.

5. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing, administering, or dispensing in a manner inconsistent with public health and welfare, dangerous drugs as defined by Chapter 483, Tex. Health and Safety Code; or controlled substances scheduled in Chapter 481, Tex. Health and Safety Code; or controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. § 801 et seq.).

6. 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.

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

8. Section 164.002(d) of the Act 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. This Agreed Order shall constitute a PUBLIC REPRIMAND of Respondent, and Respondent is hereby reprimanded.

2. Respondent is restricted from treating patients in the area of oncology, except in the

context of a Clinical Research Organization.

3. Respondent shall be permitted to supervise and delegate prescriptive authority to a physician assistant, advanced practice nurse and/or supervise a surgical assistant except those who treat oncology patients.

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 in-person CME in the following topics: at least four hours in the topic of informed consent; at least four hours in the topic of ethics. All CME must be approved for Category I credits by the American Medical Association and approved in writing in advance by the Executive Director or a 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.

5. Respondent shall pay an administrative penalty in the amount of \$3,000 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 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 give a copy of this Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Respondent has privileges, has applied for privileges, applies for privileges, or otherwise practices. Within thirty days of entry of this Order Respondent shall provide documentation, including proof of delivery, to the Compliance Division of the Board that the Order was delivered to all such facilities.

7. 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.

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

9. 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.

10. 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 §1 64.003(b)(2) of the Medical Practice Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code § 187.44(4).

11. 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.

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

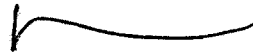
year thereafter.

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.

[SIGNATURE PAGES FOLLOW]

I, ROBERT ANTHONY WEAVER, 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.

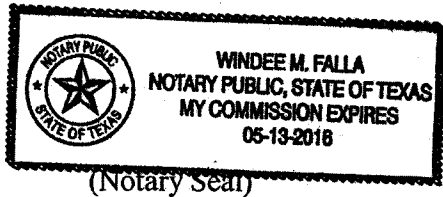
DATED: March 11, 2014.



ROBERT ANTHONY WEAVER, M.D.  
Respondent

STATE OF TEXAS  
COUNTY OF HARRIS

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 11<sup>th</sup> day of MARCH, 2014.

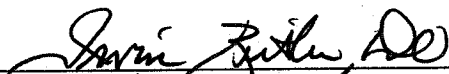


Windee M. Falla  
Signature of Notary Public



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this

2 day of May, 2014.

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