

LICENSE NO. H-8901

IN THE MATTER OF

THE LICENSE OF

MIGUEL ZABALGOITA-REYES, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

CORRECTIVE ORDER

On the 29 day of October, 2010, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Miguel Zabalgoitia-Reyes, M.D. (Respondent).

The matter was reviewed by a Quality Assurance Panel of the Board (QAP) consisting of Board representatives. Upon the recommendation of the QAP and with the consent of Respondent, the Board makes the following Findings and Conclusions of Law and enters this Corrective Order. This Corrective Order was prepared by Kyle E. Smith.

BOARD HISTORY

Respondent has not had a prior order with the Board.

FINDINGS

- a. Respondent was employed by the Department of Veterans Affairs (VA).
- b. Respondent was suspended from employment from January 22, 2007 to January 27, 2007, for allowing research assistants to use his computer system password, resulting in Health Insurance and Portability Accountability Act (HIPAA) violations.
- c. Respondent was notified on July 2, 2007, and July 26, 2007, of his proposed discharge from employment with the VA. This was based on investigation findings that Respondent falsified data on clinical report forms and annual reports to an Institutional Review Board.
- d. Respondent resigned from the VA, effective September 28, 2007.
- e. Respondent received this offer of settlement as allowed by Board Rule 187.14.

- f. By signing and executing this document the Respondent has accepted the offer of settlement.
- g. Respondent holds Texas Medical License No. H-8901.
- h. Respondent does not admit or deny the Findings and Conclusions herein, but rather has agreed to settle in good faith to avoid cost, expense, and uncertainty of litigation.

MITIGATING FACTORS

Respondent cooperated in the investigation of the allegations that resulted in this Corrective Order.

CONCLUSIONS

- 1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.
- 2. 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, defraud or injure the public as defined by Board Rule: 190.8(2)(R)(iii), any criminal violation of the Medical Practice Act.
- 3. Section 164.002(d) of the Act provides that this Corrective Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.

ORDER

Based on the above the Respondent shall:

- 1. 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.

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

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

4. Respondent shall fully cooperate with the 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.

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 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 No. 1.

THIS CORRECTIVE ORDER IS A PUBLIC RECORD.

I, MIGUEL ZABALGOITA-REYES, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CORRECTIVE ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS CORRECTIVE ORDER IS A FINAL, NON-APPEALABLE ORDER THAT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: September 8, 2010.

M. Zabalgotta-Reyes

MIGUEL ZABALGOITA-REYES, M.D.
Respondent

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 29 day of October, 2010.

Irvin E. Zeitler, Jr.

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