

LICENSE NO. G-9878

IN THE MATTER OF
THE LICENSE OF
DOROTHY MERRITT, M.D.

BEFORE THE
TEXAS STATE BOARD OF
MEDICAL EXAMINERS

AGREED ORDER

On the 26 day of August, 2005, came on to be heard before the Texas State Board of Medical Examiners ("the Board"), duly in session, the matter of the license of Dorothy Merritt, M.D. ("Respondent").

On June 14, 2005 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. Mark Martyn represented Board staff. The Board's representatives were Larry Price, D.O., and Melinda Fredricks, members of the Board.

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 TEX. OCC. CODE ANN. Title 3, Subtitle B (Vernon 2004) (the "Act") or the Rules of the Board.
2. Respondent currently holds Texas Medical License No. G-9878. Respondent was originally issued this license to practice medicine in Texas on August 23, 1986. Respondent is not licensed to practice in any other state.
3. Respondent is primarily engaged in the practice of Internal Medicine. Respondent is board certified in this specialty by 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. Respondent disseminated or caused the dissemination of an advertisement that was misleading when she advertised the advantages of chelation therapy, her credentials, and the BioMeridian testing device she uses.

7. It is the responsibility of each physician to carefully scrutinize their advertisements and adhere to the highest ethical standards of truth in advertising.

8. 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 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 or defraud the public or injure the public.

3. Section 164.052(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent using an advertising statement that is false, misleading, or deceptive.

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 of Fact and Conclusions of Law, the Board ORDERS that:

1. Respondent will print a retraction on the misleading advertisements that she has previously disseminated on chelation therapy and the BioMeridian device. The retraction shall state that the prior statements were deceptive and explain why. The retraction shall be published in the Galveston Daily News, Houston Bay Area Magazine, and the Daily News Discover Texas City in a size and format comparable to the prior misleading advertising. The retraction publications will be submitted to Director of Compliance for the Board for review and approval prior to and after publication. Respondent will address, but not be limited to, the following advertising deceptions:

- a. NEJM (New England Journal of Medicine), January 2003 excerpt states that, "...showed that EDTA chelation not only reversed renal insufficiency in patients but also saved 95% of the health care costs over the next three (3) years of observation (including cost of treatment!)."
- b. In the newspaper clippings from The Daily News Discover Texas City, 3/25/04, the article states "BioMeridian: Medical tool of the millennium."

2. Within 1 year from the entry of this Order, Respondent shall enroll in and successfully complete a 10 hour course(s) in the area of ethics or advertising approved in writing in advance by the Executive Director of the Board. To obtain approval for the course(s), Respondent shall submit in writing to the Director of Compliance for the Board information on the course(s), to include at least a reasonably detailed description of the course(s) content and faculty, as well as the course(s) 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 limit set forth for completion of the course(s). These CMEs will be addition to the required CME to maintain licensure.

3. Respondent shall pay an administrative penalty in the amount of \$3000 within 180 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 State Board of Medical Examiners 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. Respondent shall be permitted to supervise and delegate prescriptive authority to a physician assistant, advanced practice nurse, or surgical assistant. Respondent shall be permitted to delegate prescriptive authority to physician assistant and advanced practice nurse.

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

9. Respondent's Agreed Order will automatically terminate upon payment of the administrative penalty, submission of the published retractions, and completion of CME. 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, DOROTHY MERRITT, 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.

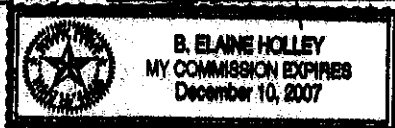
DATED: July 5, 2005.


Dorothy Merritt, M.D.
Respondent

STATE OF Texas
COUNTY OF Galveston

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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 5th day of July, 2005.



(Notary Seal)


Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 26 day of August, 2005.


Roberta M. Kalafit, D.O., President
Texas State Board of Medical Examiners