

LICENSE NO. E-4598

IN THE MATTER OF

THE LICENSE OF

MICHAEL STEPHEN PHILLIPS, M.D.

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BEFORE THE

TEXAS STATE BOARD

OF MEDICAL EXAMINERS

AGREED ORDER

On this the 10 day of October, 2003, came on to be heard before the Texas State Board of Medical Examiners ("the Board" or "the Texas Board"), duly in session the matter of the license of Michael Stephen Phillips, M.D. ("Respondent"). On October 23, 1998, Respondent appeared in person without counsel at an Informal Settlement Conference/Show Compliance Proceeding in response to a letter of invitation from the staff of the Board. Kerstin Arnold represented Board Staff.

A formal Complaint against the Respondent was filed at the State Office of Administrative Hearings on April 24, 2002. On April 30, 2003, Respondent and Board staff engaged in mediation at the State Office of Administrative Hearings in an effort to resolve the matters addressed herein. The Board was represented at the mediation by Lee S. Anderson, M.D., a member of the Board. Board staff was represented by Jean M. DeLoach. Respondent was present and represented by attorneys Courtney Newton and Michael Sharp. The Board meeting on June 6, 2003 did not ratify the mediated order.

Modification of the order was instituted and upon recommendation of the Board's staff and with the consent of Respondent, the Board makes the following findings of fact and conclusions of law and enters this Order as set forth herein:

FINDINGS OF FACT

1. Respondent, Michael Stephen Phillips, holds Texas medical license E-4598.
2. Requirements have been satisfied under TEX. OCC. CODE ANN., Title 3, Subtitle B (Vernon's 2002), (hereinafter the "Act"). By entering into this Agreed Order, Respondent waives any defect in the notice and any further right to notice or hearing under the Act; TEX. GOV'T

CODE ANN. 2001.051 through .054; and the Rules of the State Board of Medical Examiners (22 TEX. ADMIN. CODE Chapter 187).

3. Respondent has been in the practice of medicine for approximately 27 years.
4. Respondent is primarily engaged in the practice of gynecological medicine.
5. Respondent is 53 years of age.
6. Respondent has entered into this Agreed Order pursuant to the provisions of Section 164.002 the Act.

7. In 1995, Baylor Richardson Medical Center initiated peer review disciplinary measures against the Respondent. It was recommended by the Medical Executive Committee that Respondent's practice be monitored and restricted, to include a prohibition from performing symphysiotomies and cesarean sections in deliveries with a nonreplaceable head. Respondent resigned from his privileges and relocated out of the area. The hospital board took no final action on the recommendation of the Medical Executive Committee.

8. During two deliveries, severe shoulder dystocia occurred and Respondent performed symphysiotomies on the women in an attempt to deliver the babies. Both infants died as a direct result of the injuries they sustained at the births. A Board consultant found that Respondent should have performed timely cesarean sections on each of the women.

9. A Board consultant found that Respondent failed to properly manage and deliver a twin pregnancy that ultimately resulted in the death of one of the twins. Respondent knew that Twin B was in a transverse lie prior to delivery. During the delivery, Twin B moved into a breech presentation and was delivered by Respondent. Twin B sustained severe birth injuries, including a dislocated elbow and spinal injuries. Twin B died from complications arising from the birth injuries. Respondent should have performed a timely Cesarean section.

10. A Board consultant found that Respondent failed to promptly recognize, diagnose and treat a post-operative infection. The patient required hospitalization to drain an abdominal abscess and ultimately had to undergo a total hysterectomy.

11. In two additional cases reviewed, a Board consultant found that Respondent failed to properly assess, vigilantly monitor and treat a breech delivery of an infant showing signs of fetal distress and a patient with a prolonged second stage of labor that may have resulted in her subsequent hemorrhage that necessitated a hysterectomy.

12. Respondent has cooperated with Board staff in the investigation of the allegations related to this Agreed Order.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes the following:

1. Respondent is subject to disciplinary action by the Board pursuant to Section 164.051(a)(6) of the Act by failing to practice medicine in an acceptable professional manner consistent with public health and welfare.

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

3. 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.

4. Sections 164.001(a)(1) and 164.001(b)(4) of the Act authorize the Board to revoke Respondent's license or other authorization to practice medicine.

5. Section 164.101 of the Act authorizes the Board to probate an order revoking, canceling, or suspending a license.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent's Texas license is hereby REVOKED; however, the revocation is STAYED and Respondent is placed on PROBATION under the following terms and conditions for ten (10) years from the date of the signing of this Agreed Order by the presiding officer of the Board:

1. Respondent shall not engage in the practice of obstetric medicine. Respondent shall not provide any prenatal care or deliver any babies. Respondent shall limit his practice to gynecological medicine.

2. This Order shall remain in effect for the full term of 10 years without opportunity for early termination. The restriction from the practice of obstetrics as contained in this Order shall be permanent without opportunity for modification. Respondent shall not practice obstetrics until such time as Respondent requests permission in writing to resume practice in obstetrics, personally appears before the Board to orally petition for permission to resume such practice,

and provides sufficient evidence and information which in the discretion of the Board adequately indicates that Respondent is physically, mentally, and otherwise competent to safely practice.

Upon an adequate showing before the Board that Respondent is able to safely practice obstetrics, Respondent shall be granted permission to practice obstetrics under such terms and conditions and for such time which the Board in its discretion determines are necessary to adequately protect the public.

3. While under the terms of this Order, Respondent's practice shall be monitored by a physician ("monitor"), in accordance with §164.001(b)(7) of the Act. The Compliance Division of the Board shall designate the monitor and may change the monitor at any time for any reason. The monitor shall have expertise in a similar specialty area as Respondent. The Compliance Division shall provide a copy of this Order to the monitor, together with other information necessary to assist the monitor.

- a. As requested by the Compliance Division, Respondent shall prepare and provide complete legible copies of selected patient medical and billing records ("selected records"). The Compliance Division shall select records for at least thirty patients seen by Respondent during each three-month period following the last day of the month of entry of this Order ("reporting period"). The Compliance Division may select records for more than thirty patients, up to ten percent of the patients seen during a reporting period.
- b. The monitor shall perform the following duties:
 - 1) Personally review the selected records;
 - 2) Prepare written reports documenting any perceived deficiencies and any recommendations to improve Respondent's practice of medicine or assist in the ongoing monitoring process. Reports shall be submitted as requested by the Compliance Division; and
 - 3) Perform any other duty that the Compliance Division determines will assist the effective monitoring of Respondent's practice.
- c. The Compliance Division shall provide to Respondent a copy of any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division.

d. The monitor shall be the agent of the Board, but shall be compensated by the Respondent through the Board. Such compensation and any costs incurred by the monitor shall be paid by Respondent to the Board and remitted by the Board to the monitor. Respondent shall not charge the compensation and costs paid to the monitor to any patients.

4. Within six (6) months from the signing of this Order by the presiding officer of the Board, Respondent shall enroll in the Institute for Physician Evaluation and successfully complete the standard two (2) day course. To obtain approval for the course, Respondent shall submit in writing to the Director of Compliance for the Board information on the course, to include a reasonably detailed description of the course content and faculty, as well as the course location and dates of instruction. Documentation of attendance and successful completion to this requirement shall be delivered to the Director of Compliance for the Board on or before the expiration of the time limit set forth for completion of the course.

The Board and Respondent shall furnish a copy of this Order to the Institute for Physician Evaluation as authorization to make a full report to the Board regarding Respondent's evaluation and any subsequent reports regarding Respondent's compliance with this Order. Respondent shall follow and initiate within one (1) year all recommendations made by the Institute for Physician Evaluation regarding continued care and treatment, excluding recommendations for obstetrics. Respondent shall report all obstetrics recommendations to the Board for consideration for implementation.

Respondent's failure to report obstetrics recommendations to the Board and/or to follow all recommendations made by the Institute for Physician Evaluation regarding continued care and treatment shall constitute a violation of this Agreed Order. After a committee of the Board, or a panel of 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 a committee of the Board, or a panel of 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. Although Respondent shall be invited to provide information or testimony to the committee of the Board, or the panel of Board

representatives, Respondent specifically waives any administrative due process under the Medical Practice Act, or the Administrative Procedure Act, for the committee of the Board, or the panel of Board representatives, to consider this information. **THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED OF A FORMAL HEARING AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE 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 reports the obstetrics recommendations and/or implements all recommendations made by the Institute for Physician Evaluation regarding continued care and treatment 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.

5. Respondent shall obtain at least fifty (50) hours per year of Continuing Medical Education (CME) approved for Category I credits by the American Medical Association or by the American Osteopathic Association. The required hours shall be at least forty-nine (49) hours in obstetrics and gynecology and one (1) hour in ethics. Upon request Respondent shall submit to the Board proof of the prior year's CME attendance by the Order's anniversary date. Upon request Respondent shall submit proof to the Board of CME hours attended in the current year even though such may not meet the 50-hour requirement. A copy of the attendance certificate issued or a detailed report which can be readily verified by the Board shall satisfy this requirement.

6. Respondent shall pay an administrative penalty in the amount of Five Thousand dollars (\$5,000.00) within one (1) year from the date of the signing of this Order by the presiding officer of the Board. 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 as provided for in the Act, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

7. Respondent shall personally appear before the Board, a committee of the Board, or panel of Board representatives, upon written request mailed to Respondent's last known address on file with the Board at least ten (10) calendar days before the requested appearance date. Such appearances shall be for the purpose of reporting on and addressing issues related to Respondent's compliance with the terms and conditions of this Order.

8. To verify that Respondent has complied with and is in compliance with the terms and conditions of this Order, Respondent shall fully cooperate with the Board and the Board staff, including but not limited to, Board attorneys, investigators, compliance officers, consultants, and other such 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 cooperate as required by this paragraph and the terms of this Order shall constitute a basis for disciplinary action against Respondent pursuant to the Act.

9. 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.

10. Respondent shall ensure that any inquiries which are made by any person or entity through any means to Respondent or Respondent's employees regarding Respondent's Texas licensure status are answered by accurate reference to this Order.

11. Upon request by any person or entity, either orally or in writing, Respondent shall provide a complete and legible copy of this Order to the requesting party within ten (10) calendar days of the request.

12. The time period of this Order shall be extended for any period of time in which Respondent subsequently resides or practices outside the State of Texas, is in official retired status with the Board, or for any period during which Respondent's license is subsequently cancelled for nonpayment of licensure fees. 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. Upon Respondent's return to practice in Texas or Respondent's relicensure, Respondent shall be required to comply with the

terms of this Order for the period of time remaining on the Order when Respondent left the practice of medicine in Texas, retired, or had his or her license cancelled for nonpayment of licensure fees and shall pay all fees for reinstatement or renewal of a license covering the period of extension or tolling.

13. Respondent shall comply with all the provisions of the Act, and other statutes regulating the Respondent's practice, as is required by law.

14. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within ten (10) 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.

15. 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.

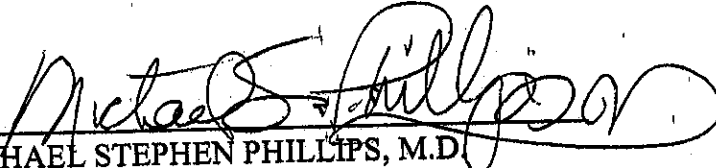
16. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, or impossibility to comply with the examination requirement in paragraph #4 above, for 12 months following entry of this Order. If, after the passage of the 12-month period, Respondent wishes to seek amendment 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, MICHAEL STEPHEN PHILLIPS, 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: 26 Sept, 2003.


MICHAEL STEPHEN PHILLIPS, M.D.
RESPONDENT

STATE OF Texas
COUNTY OF DeWitt

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BEFORE ME, the undersigned Notary Public, on this day personally appeared MICHAEL STEPHEN PHILLIPS, M.D., known to me to be the person whose name is subscribed to this instrument, an Agreed Order, and who after being by me duly sworn, on oath, stated that he executed the same for all purposes expressed therein.

Given under my hand and official seal and office this 26th day of Sept, 2003.

Catherine Kallo
Signature of Notary Public

(Notary Seal)

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 10 day of October, 2003.

Lee S. Anderson
Lee S. Anderson, M.D., President
Texas State Board of Medical Examiners