

LICENSE NO. G-3289

IN THE MATTER OF

THE LICENSE OF

KALAMANI RACHEL DHARMA, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

MEDIATED AGREED ORDER

On the 8th day of April, 2011, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Kalamani Rachel Dharma, M.D. ("Respondent").

This matter was originally heard on May 22, 2007, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board.

The matter was transferred to Scott M. Freshour who filed a formal complaint at the State Office of Administrative Hearings ("SOAH"). Upon transfer of the matter to SOAH Respondent retained, Louis Leichter, as counsel. Prior to this matter going to hearing the parties agreed to mediation. The Board was represented Margaret McNeese, M.D. and Scott M. Freshour. The parties reached a settlement at the mediation.

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.

BOARD CHARGES

Board Staff charged that Respondent failed to obtain proper required informed consent prior to performing medical abortions. In addition, certain of Respondent medical records provided revealed a lack of adequate documentation and used incorrect billing codes.

BOARD HISTORY

Respondent previously has not 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:

A. General Findings:

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. G-3289. Respondent was originally issued this license to practice medicine in Texas on February 27, 1983. Respondent is also licensed in Nebraska.
3. Respondent is board certified by the American Board of Obstetrics and Gynecology, a member of the American Board of Medical Specialties.
4. Respondent is 51 years of age.
5. Respondent current practice is that of a hospitalist and she is mostly involved in labor and delivery.

B. Specific Board Findings:

1. **Abortion Consent:**
 - a. During 2005, Respondent performed medical abortions using Cytotec during the first trimester.
 - b. The informed consent forms respondent utilized with the patients were inadequate under Texas Health and Safety Code, Chapter 171.

2. Medical Records:

Certain of Respondent's medical records were not adequate, including hospital records from Mesquite Community Hospital (MCH). The records lacked sufficient documentation as to physical examinations, treatment plans, poor legibility, and information regarding consults.

C. Mitigating Factors:

a. Respondent submitted her abortion consent forms to legal counsel who opined that forms complied with both state law and American College of Obstetrical Gynecology ("ACOG").

b. Respondent currently transcribes all of her medical records and scans written records. This is not a true electronic medical record.

c. Respondent indicated she has not performed an elective medical or surgical abortion since 2006.

d. 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 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 165, which requires the maintenance of adequate medical records.

3. Section 164.053(a)(1) of the Act authorize the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state

that is connected with Respondent's practice of medicine, specifically Texas Health and Safety Code, Section 171.001 *et seq.*, regarding informed consent for abortions.

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.

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's practice shall be monitored by a physician ("monitor"), in accordance with §164.001(b)(7) of the Act, for 8 consecutive monitoring cycles (defined below). 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 30 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 up to 10 percent of the patients seen during a reporting period. If Respondent fails to see at least 30 patients during any three-month period, the term of this Order shall be extended until Respondent can submit a sufficient number of records for a monitor to review.

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 the monitor's report describing any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division.

d. A "monitoring cycle" begins when the Compliance Division selects patient records for review, and concludes when Respondent receives the monitor's report for that group of records.

e. 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.

2. Within one year from the date of the entry of this Order, Respondent shall obtain, in addition to any continuing medical education ("CME") required for licensure renewal, 16 total hours of CME approved for Category I credits by the American Medical Association, as follows: eight hours of CME in the topic of medical recordkeeping and eight hours of CME in the topic of risk management. The courses must be attended in person and shall be approved in writing in advance by the Compliance Division of the Board. To obtain approval for the courses, 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.

3. Respondent shall pay an administrative penalty in the amount of \$5,000 within 90 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 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.

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 10 days of the address change. This information shall be submitted to the Permits Department and the Director of Enforcement 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, or to injure the public, and 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 §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 shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants.

10. 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.

11. This Order resolves SOAH Docket No. 503-08-0879, Legal Case Nos. 06-0431 and 11-0347.

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, KALAMANI RACHEL DHARMA, 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: 3/28/, 2011.

Kalamani Rachel Dharma.

KALAMANI RACHEL DHARMA, M.D.
Respondent

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 8TH day of APRIL, 2011.

Irvin E. Zeitler, Jr.

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