

IN THE MATTER OF
THE APPLICATION FOR A
TEXAS MEDICAL LICENSE BY
FRED A. AVILA, M.D.

E-6986

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 9th day of April, 2010, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the application for a Texas medical license by Fred A. Avila, M.D. ("Respondent").

On April 8, 2010, Respondent appeared in person, without counsel, before the Licensure Committee of the Board. The Committee, after hearing from Respondent and after considering Respondent's application, recommended that Respondent be granted a Texas medical license with certain terms and conditions, as set forth below, subject to the consideration and approval of the Board.

Based on the recommendation of the Committee, and with the consent of Respondent, as evidenced by Respondent's signature on this Agreed Order, the Board makes the following Findings of Fact 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 (the "Act") or the Rules of the Board.
 - b. Respondent filed a written application for a Texas medical license with the Board on September 13, 2008.

- c. Respondent was previously licensed by the Board in 1976 and the license was subsequently cancelled in 2000 for nonpayment. Respondent is licensed to practice medicine in New York.
- d. Respondent is primarily engaged in the practice of gynecology. Respondent is board certified by the American Board of Obstetrics and Gynecology, a member of the American Board of Medical Specialties.

2. Specific Panel Findings:

- a. In 1995, Respondent was named in a lawsuit that alleged Respondent had negligently and improperly performed an episiotomy on November 14, 1994. Respondent settled the matter for \$75,000 with no finding of liability.
- b. In 2000, Respondent was named in lawsuit that alleged improper performance of treatment in relation to a first trimester suction abortion in 1996. The matter was settled for \$30,000 with no finding of liability.
- c. In 1998, Respondent was named in a lawsuit for care provided in 1996 with the allegation of deviation in delivery of a newborn that resulted in birth defects, specifically brain damage and erbs palsy. The matter was settled for \$300,000 with no finding of liability.
- d. In 1998, Respondent resigned all hospital privileges and limited his practice to office Gynecology only and has not practice Obstetrics since.
- e. 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)(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.
3. 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.
4. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent's application for a Texas medical license is GRANTED. The Board FURTHER ORDERS that the Respondent is subject to the following terms and conditions:

1. Practice Restriction. Respondent's practice of medicine is limited to the area of gynecology. Respondent may not have this restriction lifted until he receives additional training in another field of medicine or otherwise demonstrates medical competency to have the restriction lifted.
2. Extension of Order. 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.

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

4. Cooperation with the Board. 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.

5. Change of Address. 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 §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).

6. Violation of Order. 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.

7. Supervision of Midlevel Professionals. Respondent shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses consistent with his restricted field of medicine.

8. Modification and Termination of Order. 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.

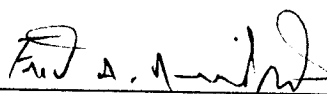
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

SIGNATURE PAGE(S) FOLLOW

I, FRED A. AVILA, 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.

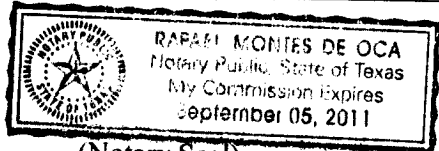
DATED: 5-5, 2010.



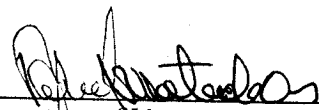
FRED A. AVILA, M.D.
Respondent

STATE OF TEXAS §
COUNTY OF TARRANT §
§

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 5 day of MAY, 2010.

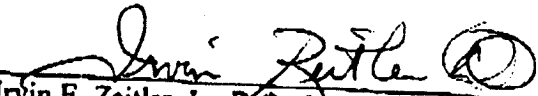


(Notary Seal)



Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 11th day of May, 2010.


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