

IN THE MATTER OF
THE LICENSE OF
TOMMY ERNEST SWATE, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER MODIFYING
AND EXTENDING TERM OF PRIOR ORDER

On the 9 day of December, 2005 came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Tommy Ernest Swate, M.D. ("Respondent").

On December 2, 2005, Respondent appeared in person, with counsel, Eric Carter before Representatives of the Board to petition the Board for termination of an Agreed Order ("Order") entered on March 2, 1996, pertaining to Respondent's Texas medical license No. E-3781, a copy of which Order is referred to and incorporated herein, and to address issues related to Respondent's compliance with the terms and conditions of the Order. The Board's Representatives were Timothy J. Turner, a member of the Board, and Irvin E. Zeitler, Jr., M.D., a member of the District Review Committee.

Upon the recommendation of the Board's Representatives, the Board makes the following Findings of Fact and Conclusions of Law and enters this Order.

FINDINGS OF FACT

The Board finds that:

1. On March 2, 1996, the Board entered an Order suspending Respondent's Texas medical license. The Board stayed the suspension and placed Respondent on probation for ten years under various terms and conditions. The Order was a result of allegations (1) of violations of DEA, FDA and Texas State Regulations in connection with the operation of methadone clinics in Houston, Texas, and (2) that Respondent failed to comply with all of the terms of a 1993 Order of the Louisiana Board of Medical Examiners.
2. The Order imposed a number of terms and conditions which the Respondent was required to meet.

3. The most significant, and problematic, terms of the Order were:
 - a. Prior to practicing medicine in Texas the Respondent was to: enroll in and successfully complete a full time three-year residency program approved by the American Council on Graduate Medical Education (ACGME), and if successfully completed, the term of the Order would be reduced to five years; enroll in and successfully complete a six-month mini-residency approved by the Executive Director of the Board, and if successfully completed, the term of the Order would be reduced to seven years;
 - b. In lieu of the requirements above, the Respondent could practice in an institutional setting acceptable by the Executive Director or practice emergency room medicine under certain terms and conditions.
4. On June 3, 2005, the Board entered an Order denying the Respondent's request for termination of his Order. A question was later raised, however, as to whether some of the material on which Respondent was relying for support his earlier request for termination was available to the Board's panel who recommended denial of the request.
5. Respondent has met all the requirements of his Order with the exception of the completion of the residency/mini-residency.
6. The ability to participate in a residency/mini-residency is dependent upon the ability to interact with patients, which was specifically precluded by the terms of the Order.
7. Although the Respondent had made numerous attempts to work in an institutional setting or in an emergency room context, the existence of the Order and its terms, as well as the Respondent's history, posed a substantial barrier to the ability to be employed in that context.
8. The Respondent has routinely exceeded the amount of Continuing Medical Education (CME) required by the Order and has completed numerous overseas mission trips during which time he has functioned in a medical role.
9. The Respondent voluntarily underwent the Institute for Physician Evaluation (IPE) assessment, which identified Respondent's strengths and weaknesses.
10. The IPE course suggested that participation in a residency program, development of a consistent longer-term relationship with a community and/or academic-based

preceptor, and a structured environment with frequent opportunities for medical knowledge interchange would be of value prior to returning to practice independent of supervision.

11. Respondent has recognized that appropriate medical record documentation was a prior failing and has sought to obtain training in that area.
12. The terms of the Order under which Respondent is currently operating will expire in March of 2006. Upon the expiration of the Order, Respondent would have no restrictions on his license and would be able to begin practicing medicine with no restriction.
13. However, the Respondent acknowledges the importance of addressing any concerns the Board may have with regard to his resumption of the practice of medicine. To that end, the Respondent has agreed to extend the terms of his Order for one year from the date that he notifies the Board that he has resumed the practice of medicine, under the terms and conditions as outlined in the Order Section found herein.
14. Respondent acknowledges that the ability to work in a group/institutional context will be beneficial in the refinement of his medical skills.
15. Respondent's agreement and cooperation with the Board in the extension of the term of his Order demonstrates his commitment to the development of a good working relationship with the Board and his desire to assist the Board in meeting its obligations to the citizens of the State of Texas.

CONCLUSIONS OF LAW

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

1. The Board has jurisdiction over this matter and Respondent pursuant to the Texas Medical Act.
2. 22 TEX. ADMIN. CODE §187.43 authorizes the Board to consider petitions for Modification/Termination of Agreed Orders and Disciplinary Orders.

ORDER

Based on the available information, the above Findings of Fact and Conclusions of Law, and the recommendation of the Board's Representatives, the Board ORDERS that Respondent's 1996 Order be MODIFIED as follows:

1. The Introductory Paragraph on Page 7 of the Order shall be amended to read as follows: "Respondent shall be subject to the following terms and conditions from the date of this Order and until one year from the date that the Respondent notifies the Board by certified mail that he has resumed the practice of medicine in Texas:"
2. Ordering Paragraph Nos. 1,7,8,9,10,11,12,13,14,18 shall be deleted.
3. The following paragraph shall be added as Ordering Paragraph No. 1:

"While under the terms of this Order, and after Respondent has resumed the practice of medicine, 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. If Respondent fails to see at least thirty 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 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. The following paragraph shall be added as Ordering Paragraph No. 7:

"The Respondent shall only engage in a non-inpatient practice."

5. The following paragraph shall be added as Ordering Paragraph No. 8:

"The time period of this Order shall be tolled if: (a) Respondent subsequently resides or practices outside the State of Texas, (b) Respondent's license is subsequently cancelled for nonpayment of licensure fees, or (c) this Order is stayed or enjoined by Court Order. 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. When the period of tolling 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."

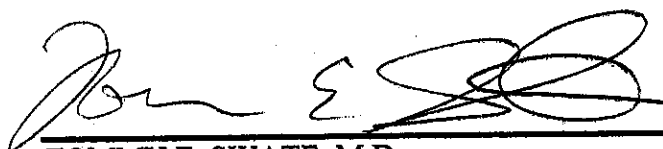
6. All other provisions of the Order remain in full force and effect until superseded by subsequent Order of the Board.

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, TOMMY E. SWATE, M.D., HAVE READ AND UNDERSTAND THIS 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: 12/07/05



TOMMY E. SWATE, M.D.
RESPONDENT

STATE OF TEXAS

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COUNTY OF HARRIS


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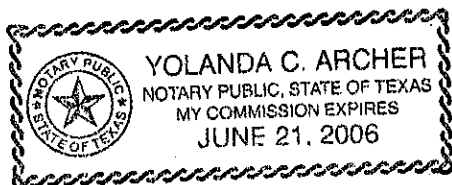
BEFORE ME, the undersigned Notary Public, on this day personally appeared Tommy E. Swate, M.D. known to me to be the person whose name is subscribed to this instrument, an Agreed Order, and who after being by me duly sworn, on oath, stated that he/she executed the same for all purposes expressed therein.

Given under my hand and official seal and office this 7th day of December, 2005.

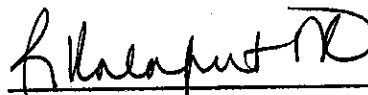
NOTARY SEAL



Signature of Notary Public



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 9th day of December, 2005.



Roberta M. Kalafut, D.O., President
Texas Medical Board