

E-3781

IN THE MATTER OF	§	BEFORE THE
	§	
THE LICENSE OF	§	TEXAS STATE BOARD
	§	
TOMMY E. SWATE, M.D.	§	OF MEDICAL EXAMINERS

AGREED ORDER

On this the 2 day of March, 1996, came on to be heard before the Texas State Board of Medical Examiners ("the Board"), duly in session the matter of the license of Tommy E. Swate, M.D. ("the Respondent"). On August 5, 1994, Respondent appeared in person with Mark White and Travis Phillips, legal counsel, at an Informal Settlement Conference/Show Compliance Proceeding in response to the Board's letter of invitation dated July 5, 1994.

The Texas State Board of Medical Examiners was represented at the Informal Settlement Conference/Show Compliance Proceeding on August 5, 1994, by Penny Angelo, a member of the Board, and Nalin Tolia, M.D., a District Review Committee member. Upon recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Tommy E. Swate, M.D. holds Texas medical license E-3781.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied.

3. On January 11, 1993, a federal hearing was held regarding Respondent's operation of methadone clinics in Houston, Texas. On 2/17/93 a Federal Administrative Law Judge issued an Opinion and Recommended Decision. The Decision was forwarded to the Department of Health and Human Services administrator. It was the administrator's final order that:

The Orders to Show Cause alleged the Respondent had engaged in various violations of DEA, FDA, and Texas State Regulations including falsification of medical records, inadequate testing and documentation, dispensing methadone to an undercover agent for no legitimate medical purpose, failing to account for methadone received and dispensed, and failing to maintain proper documentation of treatment records. Before evidence was presented at the hearing, the government indicated that Respondent had relinquished control over both sites where the methadone clinics were located. The government maintained, therefore, that even if the administrator were to reinstate the DEA certificates of registration there would be no locations to register. As the government noted, registrations for narcotic treatment programs are issued to locations, not to individuals.

4. In response to the motion, Respondent stipulated that should he seek any further employment with a narcotic treatment program it would be as a program director or sponsor, a position which would require him to be the applicant for a DEA certificate of registration. The government agreed that if the Motion for Summary Disposition were granted, the DEA would take no action against Respondent's individual DEA certificate of registration as a practitioner based solely on the violations alleged in the Orders to Show Cause. The government further agreed that it would not attempt to apply 21 CFR 1301.76(a), which restricts employment of individuals with revoked DEA registrations, against Respondent for any employment in a traditional office setting in which he would have access to controlled substances.

5. Based on these stipulations and in light of the fact that there was no longer any issue to be resolved at the hearing, the Administrative Law Judge granted the government's Motion for Summary Disposition. The Administrative Law Judge noted that where no question of fact is involved, or when the facts are agreed upon, an administrative proceeding, including submission of evidence and cross-examination, is not required.

6. The Administrative Law Judge recommended that the DEA certificates of registration be revoked subject to the conditions mentioned above.

7. The DEA administrator adopted the Opinion and Recommended Decision of the Administrative Law Judge in its entirety. Accordingly, the administrator ordered that DEA certificates of registration issued to Chemical Dependence Associates of Houston (both Pinedale and Park Place locations) were revoked, and any pending applications for registration were denied. The order was made effective July 12, 1993.

8. Through their own investigation and subsequent to the final decision by the DEA administrator revoking the registration of both locations, the Texas Department of Health Division of Food and Drugs found the Drug Enforcement Administrations Order and Decision of the DEA Administrative Law Judge as Findings of Fact. The Texas Department of Health ratified the federal government's interpretation as referring only to registration of the two narcotic treatment programs and agreed that it did not affect Respondent's employment as a physician with access to controlled substance in a normal physician setting. The State registrations for both methadone clinic locations were permanently revoked by the Texas Department of Health.

9. On January 28, 1993 Respondent entered into a Consent Order with the Louisiana Board of Medical Examiners. The Louisiana Board determined that the public interest of Louisiana citizens were properly served by Respondent's execution of a Consent Order with Louisiana by virtue of which Respondent's Louisiana medical license would be placed on probation consistent with the specified terms and conditions imposed by the Texas Board, together with the requirement that Respondent notify the Louisiana Board of any intention to locate Respondent's practice of medicine to Louisiana. The Louisiana Order was drafted in response to the action taken by TSBME with the TSBME Board Order effective January 24, 1992. The Louisiana Order specifically states that the license of Respondent is revoked, with revocation stayed, and his license placed on probation for four years to run concurrent with the probationary period ordered by the Texas Board. In addition, the Louisiana Consent Order contains conditions indicating that Respondent must maintain strict adherence to the terms and conditions of the Texas Board Order and that if he wished to practice medicine in Louisiana he shall provide written notification to the Louisiana Board at least 60 days prior to his relocation to Louisiana. It also mandated that Respondent would appear personally before the Louisiana Board prior to that time should he wish to commence the practice of medicine in the Louisiana and provide the Louisiana Board access to his compliance and to discuss his intended plans for the practice of medicine in Louisiana.

10. On January 20, 1994 a Superseding Consent Order was entered by the Louisiana Board. Said Order is incorporated herein by reference and attached hereto as Exhibit A. The Consent Order was in response to a March 25, 1993 meeting by Respondent with the Louisiana Board in which he advised them that he had been offered a position to practice obstetrics and gynecology in Louisiana. At that time Respondent expressed his desire to develop a practice in Louisiana. The Superseding Consent Order specifically states that

Respondent acknowledged that he has not engaged in the practice of medicine in any form for the past three years and that he had failed to report the pendency of the investigation which led to the Texas Board Order of January 24, 1992 on several of his renewal applications for Louisiana licensure.

11. The Superseding Consent Order continued to mandate Respondent's compliance with a complete and continuing satisfaction of the Louisiana Board Order. The Superseding Consent Order placed his license on probation for four years subject to Respondent's acceptance of strict compliance with the terms and conditions in the Texas Board Order. Respondent was ordered to not practice medicine in any form in the State of Louisiana until the Louisiana Board issues and serves Respondent a written order reinstating his license to practice medicine. It also ordered Respondent to complete a mini-residency program concentrating in obstetrics and gynecology of at least three months continuance duration. Respondent must supply the Louisiana Board with written certification from the physician or supervising physician in the mini-residency evidencing Respondent's completion of and satisfactory performance in the mini-residency before he would be considered to practice obstetrics and gynecology in Louisiana as was his request with the position offered in Franklin, Louisiana.

12. Respondent was indeed practicing medicine for the three years since his TSBME Board Order in 1992. It was documented that Respondent continued to function as a physician in the position of Medical Director at two methadone clinics he owned and operated in Houston, Texas. Furthermore, Respondent withheld additional information during his meeting with the Louisiana Board regarding the revocation of the narcotic registrations for both Methadone clinics. The registrations were revoked by DEA and Texas Department of Health for multiple violations. Respondent has submitted false statements to the Louisiana Board, indicating to

them that he had not practiced medicine for three years in any form or fashion and also withheld information regarding the revocation of the methadone narcotic registrations along with information pertaining to the investigation and hearing procedure regarding that revocation of those permits.

13. Respondent has been licensed in Louisiana since 6/17/71. A review of the annual Louisiana renewals by Respondent from 1987 to 1994 show that he falsified his application by indicating annually that he has not been the subject of any type of disciplinary action or inquiry by any licensing authority, institution or society. A review of the Respondent's Texas summary of complaints indicates that Respondent has had an investigation filed with TSBME every year with the exception of 1984, from 1982 through 1994. Some years have contained multiple investigations. Respondent was notified by mail of each investigation.

14. While not admitting that he has violated the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, Respondent has chosen to avoid the expense and difficulties associated with litigation by entering into this Agreed Order, and agreeing to comply with the terms and conditions set forth herein. Respondent enters into this Order only for purposes of his Texas license and not for purposes of any other state/federal licensure registration.

CONCLUSIONS OF LAW

1. Based on the above Findings of Fact, the Board concludes Respondent has violated the following Sections of the Medical Practice Act of Texas ("the Act"), V.A.C.S., article 4495b:

3.08(4) unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public;

3.08(21) suspension, revocation, restriction, or other disciplinary action by another state of a license to practice medicine, or disciplinary action by the uniformed services of the United States, based upon acts by the licensee similar to acts described in this section; and

3.08(18) professional failure to practice medicine in an acceptable manner consistent with public health and welfare.

2. These violations subject Respondent to discipline under Section 4.12 of the Act.

3. Section 4.02(h) of the Act authorizes the Board to make a disposition of this matter by an agreed order.

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that:

Respondent's license to practice medicine in Texas is suspended, however, the suspension is immediately stayed and Respondent is placed on probation for ten (10) years effective the date of the signing of this Order by the Board's presiding officer, under the following terms and conditions:

1. Within one year from the entry of this Order, and prior to practicing medicine in Texas:

- a. Respondent shall enroll in and thereafter successfully complete a full time three year residency program, approved by the American Council on Graduate Medical Education. If Respondent chooses this option, the ten (10) year probationary term imposed herein shall be reduced to five (5) years probation from the date of entry of this Order upon successful completion of the 3

year program by Respondent as evidenced by a letter from the program director indicating same. Furthermore, the requirements of paragraphs 6 and 11 below shall not apply while Respondent is in a 3 year program allowed herein; or

- b. Respondent shall enroll in and thereafter successfully complete a 6 month mini-residency program approved in advance by the Executive Director of the Board. The Executive Director is hereby authorized to accept a substantially equivalent remedial program if, after reasonable efforts by Respondent, Respondent is unable to locate a suitable program. However, the Executive Director shall have reasonable discretion to approve or disapprove any program. Upon successful completion of the program as evidenced by a letter from the program director indicating same, the ten (10) year probation imposed herein shall be reduced to seven (7) years probation from the date of entry of this Order; or

In lieu of the above options:

- c. Respondent may practice medicine in an institutional setting acceptable to the Executive Director of the Board. The ten year probationary term imposed herein shall not be reduced except as subsequently modified or terminated by further Order of the Board; or
- d. Respondent may practice emergency room medicine including moonlighting with such in conjunction with his remedial training as allowed by paragraph 1(a) above, provided however that Respondent shall attend at least 25 hours CME (of the kind specified by paragraph 6 below) in emergency room medicine in addition to those hours

required by paragraph 6 below and shall also meet the requirements of paragraphs 8-9 prior to practicing emergency room medicine. The ten year probationary term imposed herein shall not be reduced except as subsequently modified or terminated by the Board.

All terms and conditions in paragraphs 2-18 of this Order shall continue in full force and effect regardless of the option chosen by Respondent unless otherwise specified above.

2. Respondent shall comply with all statutes, rules and regulations, both State and Federal, pertaining to the prescribing, administering, dispensing or supplying of dangerous drugs or controlled substances and other aspects of the practice of medicine.

3. Respondent shall not operate a methadone clinic within the State of Texas.

4. Respondent shall maintain adequate medical records on all patient office visits. These records will include, at a minimum, the patient's name and address, vital statistics, chief complaint of patient, history and physical findings, diagnosis, treatment plan for each patient visit, a notation of all medications prescribed, administered or dispensed, and detailed records of all follow-up visits including date. Respondent shall make patient medical records available for copying and evaluation by investigators, consultants or staff of the Board.

5. Respondent shall not sign or indicate directly or indirectly, in any manner on any patient record, any visit, evaluation, medical treatment, medical opinion, or medication order unless Respondent has, on the date indicated or noted on the patient's records, actually personally seen and examined the

patient, or performed the service, or unless the patient's chart clearly reflects Respondent did not personally examine the patient or perform the services in question. Respondent shall not "back date" any patient entry or record. If it should later become necessary to make a retroactive correcting or clarifying entry, the entry will specifically note the date and time the later entry was actually made.

6. 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. Each year Respondent shall submit to the Board proof of the prior year's CME attendance by the Order's anniversary date. 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.

7. Respondent shall obtain 6 hours of an ethics course or courses or an ethics program for each year Respondent is on probation. Documentation of attendance and successful completion of each yearly requirement for ethics shall be delivered to the Director of Hearings for the Board on or before the end of each year this Agreed Order is in effect. This ethics instruction is not limited to medical ethics.

8. Within one year of the signing of this Agreed Order by the presiding officer of the Board, if Respondent has not already done so, Respondent shall take and successfully complete an Advanced Cardiac Life Support Course (ACLS) and obtain ACLS certification. Upon completing these ACLS requirements, Respondent shall submit proof to the Director of Hearings for the Board by

providing a true and accurate copy of the certificate issued and other supporting documentation needed to confirm certification.

9. Within one year of the signing of this Agreed Order by the presiding officer of the Board, if Respondent has not already done so, Respondent shall take and successfully complete an Advanced Trauma Life Support Course (ATLS) and obtain ATLS certification. Upon completing these ATLS requirements, Respondent shall submit proof to the Director of Hearings for the Board by providing a true and accurate copy of the certificate issued and other supporting documentation needed to confirm certification.

10. Within one (1) year following the signing of this Agreed Order by the presiding officer of the Board, Respondent shall take and pass the Medical Jurisprudence Examination (JP Exam) given by the Texas State Board of Medical Examiners. In the event that Respondent does not take and pass the JP Exam within one (1) year following signing of this Agreed Order by the presiding officer of the Board, 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 Respondent has not fulfilled the requirements of this provision by passage of the JP Exam within the allotted time period. THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE MEDICAL PRACTICE ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS. Respondent shall be notified of any such suspension by certified mail, return receipt requested, to his last known address on file with the Board. If Respondent's medical license is suspended on such a basis, the suspension shall remain in effect until such time as Respondent takes and passes the JP Exam 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 medicine in Texas and is otherwise physically and mentally competent to resume the practice of medicine in this state.

11. Each year that Respondent is under the terms of this Agreed Order, Respondent shall perform 120 hours per year (10 hours per month) of community service for a non-profit charitable organization which is approved in advance by the Executive Director of the Board. Respondent shall obtain approval for the community service by a written request delivered to the Director of Hearings for the Board which specifically describes the community service to be performed, the anticipated dates of the community service, and the name and address of a person affiliated with the charitable organization who is able to confirm Respondent's performance of the community service. Respondent shall ensure that documentation in the form of a letter or notarized statement is provided by the non-profit charitable organization which confirms Respondent's performance of the community service. This documentation shall be delivered quarterly to the Director of Hearings for the Board. Respondent's community service shall not be limited to service as a physician. Respondent shall not be compensated or reimbursed either directly or indirectly from anyone for any expenses, time, or services in regard to work performed pursuant to this paragraph.

12. Respondent shall follow the terms and conditions of his probation with the Louisiana Board. If Respondent violates his probation with either the Texas or Louisiana Boards, the Texas Board, after affording Respondent notice and an opportunity to be heard, may terminate this probation and revoke Respondent's Texas license.

13. Respondent's Texas probation is independent of Respondent's Louisiana probation. Only the Texas Board may terminate or modify the Texas probation.

14. Upon request and for such period as Respondent maintains a Louisiana license to practice medicine, Respondent shall provide to the Texas Board copies of any reports he has submitted to the Louisiana Board. Respondent shall request in writing that the Louisiana Board provide the Texas Board with copies of any reports which Respondent does not have access to or which the Louisiana Board has generated. The Texas Board will, upon request, provide to the Louisiana Board whatever reports it desires.

15. Respondent shall give a copy of this Order to all hospitals and health care entities where he admits or accepts patients.

16. Respondent shall cooperate with the Board, its attorneys, investigators, compliance officers, and other employees and agents, to verify that Respondent has complied and is in compliance with this Order.

17. Respondent shall advise his Board compliance officer, in writing, of any change of address, mailing or office, within (10) days of such occurrence.

18. The time period of this Order shall be extended for any period of time in which Respondent subsequently resides or practices medicine outside the State of Texas except in fulfilling requirements of paragraph #1(a)(b) above, 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 medicine 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 license cancelled for nonpayment of licensure fees.

19. Respondent shall comply with all the provisions of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, and other statutes regulating the practice of medicine, as is required by law for physicians licensed by the Board.

Any violation of the terms, conditions, and requirements of this Order shall constitute conclusive evidence of unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure the public within Section 3.08(4) of the Act, and may result in disciplinary action pursuant to Section 4.01(a) of the Act.

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, the 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. Petitions for modifying or terminating may be filed only once a year thereafter.

In regard to all terms and conditions of this Agreed Order, Respondent waives any further hearings or appeal to the Board or to any court regarding this Order and the terms thereunder. Nothing in this paragraph shall be deemed a waiver of Respondent's rights under rule, statute, or the United States or Texas Constitutions to appeal any decision or action which may later be taken by the Board subsequent to this Order, except as Respondent may have agreed herein. Respondent agrees that this Order is a final Order.

THIS ORDER IS A PUBLIC RECORD.

I, TOMMY E. SWATE, 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: Feb 29, 1996



TOMMY E. SWATE, M.D.,
RESPONDENT

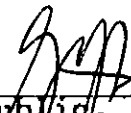
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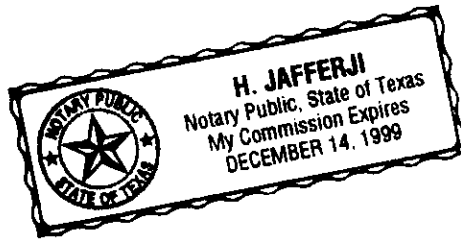
STATE OF TEXAS)
)
COUNTY OF Dallas)

BEFORE ME, on this day personally appeared Tommy E. Swate, M.D., known to me, who, first, being duly sworn, signed the foregoing Agreed Order in my presence.

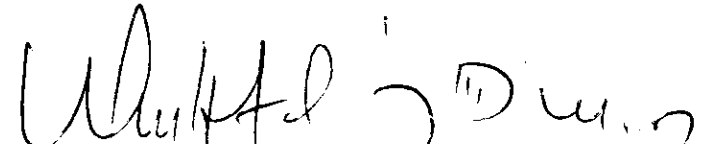
SIGNED on this the 29th day of February, 1996.


Notary Public, in and for
the State of TEXAS

Notary Seal



SIGNED AND ENTERED by the Presiding Officer of the Texas State Board of Medical Examiners on this 2 day of March, 1996.


William H. Fleming, III, M.D.
President, Texas State Board
of Medical Examiners

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TEXAS STATE BD OF MED EXAM'RS

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BEFORE THE LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS

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In the Matter Of	:	No. 92-I-028
TOMMY ERNEST SWATE, M.D.	:	
(Certificate No. 011662)	:	SUPERSEDING
	:	CONSENT ORDER
	:	

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Information was provided to the Louisiana State Board of Medical Examiners ("Board") indicating that Tommy Ernest Swate, M.D. ("Dr. Swate"), was charged with violating state statutory law governing medical practice in the state of Texas, principally arising out of his performance of abortions during the years 1983 through 1988. At an Informal Settlement Conference between the Texas State Board of Medical Examiners ("Texas Board") and Dr. Swate, the Texas Board found, among other items, that the physician failed to meet the applicable standard of care in connection with his performance of abortions and failed to practice medicine in an acceptable manner consistent with the public health and welfare, in violation of the Texas Medical Practice Act. In lieu of formal administrative hearing, Dr. Swate entered into an Agreement with the Texas Board, effective January 24, 1992 ("Texas Board Order"), pursuant to which, among other terms and conditions, the physician's license to practice medicine in the state of Texas was suspended and the suspension itself was stayed; his license was placed on probation for a period of five (5) years; and the physician was prohibited from thereafter performing any abortions of any type.¹

¹In the Matter of the License of Tommy Ernest Swate, M.D., "Order", Jan. 24, 1992. In addition, the Texas Board Order also required Dr. Swate to meet with the Texas Board twice each year, to provide a copy of the Texas Board Order to all hospitals and health care entities where he has privileges, to cooperate with the Texas Board, comply with Texas laws regulating the practice of medicine, and prohibited Dr. Swate from petitioning the Texas Board for modification of the Texas Board Order for at least one year. In addition, the length of time which the restrictions were imposed by the Texas Board Order was expressly stayed during any period in which Dr. Swate was absent from the state of Texas for the purpose of residing or practicing medicine elsewhere.



By Consent Order entered on January 28, 1993, the license of Dr. Swate to practice medicine in the state of Louisiana was **REVOKED**; nevertheless, the revocation was stayed and Dr. Swate was placed on probation for a period of four (4) years, to run concurrent with the probationary period imposed by the Texas Board Order, subject to the physician's strict compliance with and adherence to the terms, conditions and restrictions of the Texas Board Order. In addition, Dr. Swate was required to notify and meet with the Board prior to his commencement of the practice of medicine in Louisiana ("Louisiana Consent Order").²

In compliance with his Louisiana Consent Order, on March 25, 1993 Dr. Swate met with the Board and advised that he had been offered a position to practice obstetrics and gynecology at Franklin Foundation Hospital, Franklin, Louisiana.³ At that time, Dr. Swate expressed his desire to develop a practice largely weighted to obstetrics which would not involve any elective abortions. The physician also acknowledged, however, that he has not engaged in the practice of medicine in any form for the past three (3) years and that he had failed to report the pendency of the investigation which led to the Texas Board Order on several of his renewal applications for Louisiana licensure.

As evidenced by his subscription hereto, Dr. Swate admits the substantial accuracy of the foregoing statements, which acknowledgements and the reported information may provide the Investigating Officer herein with probable cause to initiate formal administrative proceedings against Dr. Swate, charging him with "... [d]ecept . . . in obtaining any . . . license or permit. . . ." and "[p]roviding false testimony before the Board or providing false sworn information to the board," constituting sufficient legal cause for the further suspension or revocation of the physician's license to practice medicine in the state of Louisiana.⁴

Recognizing his right to have notice of the allegations and charges asserted against him, to administrative adjudication of such charges pursuant to La. Rev. Stat. §§49:955-958, and to a final decision rendered upon written findings of fact and conclusions of law, Dr. Swate, nonetheless, hereby waives his right to notice of charges and formal adjudication and, pursuant to La. Rev. Stat. §49:955(D), consents to entry of the Superseding Consent Order set forth hereinafter. By his subscription hereto, Dr. Swate also hereby authorizes the Investigating Officer designated by the Board with respect hereto to present this Superseding Consent Order to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation.

Accordingly, in consideration of the foregoing, and pursuant to the authority vested in the Board by La. Rev. Stat. §37:1285 and La. Rev. Stat. §49:955(D);

²In the Matter of the License of Tommy Ernest Swate, M.D., Certificate No. 011662, Consent Order, No. 92-1-028, Jan. 28, 1993.

³Corr., Tommy E. Swate, M.D., to La. St. Bd. Med. Exam., Mar. 1, 1993.

⁴La. Rev. Stat. Ann. §37:1285A(3) and A(4) (West 1988).

IT IS ORDERED that the license of Tommy Ernest Swate, M.D., to engage in the practice of medicine in the state of Louisiana, as evidenced by Certificate No. 011662, be, and the same is hereby, effective as of the date hereof, **PLACED ON PROBATION**; and Dr. Swate's continuing exercise of the rights and privileges thereunder, including his privilege to practice medicine in the state of Louisiana, shall be subject to his acceptance of and strict compliance with the following terms, conditions and restrictions:

Suspension of Practice/Mini-Residency Training Program/Reinstatement. Dr. Swate shall not practice medicine in any form in the state of Louisiana until and unless the Board issues and serves on Dr. Swate a written Order reinstating his license to practice medicine. Such prohibition shall not, however, extend to Dr. Swate's practice of medicine in connection with and as an adjunct to a mini-residency Program concentrating in obstetrics and gynecology of at least three (3) months continuous duration (the "Program"), in which he may enroll with the prior written authorization of the Board. As an express condition to the issuance of an Order reinstating Dr. Swate's license, he shall provide the Board with written certification from the physician/director and/or his supervising physician in the Program, evidencing Dr. Swate's completion of and satisfactory performance in the Program, and confirming his ability to engage in the practice of obstetrics and gynecology in the state of Louisiana with reasonable skill and safety to patients.

IT IS FURTHER ORDERED that upon Dr. Swate's compliance with and complete and continuing satisfaction of the terms and conditions hereinabove set forth, his license to practice medicine in the state of Louisiana shall be reinstated by the Board **ON PROBATION** for a period of four (4) years from the date on which it is issued, subject to Dr. Swate's acceptance of and strict compliance with the terms, conditions and restrictions enumerated in the Texas Board Order, which are incorporated herein, as well as those otherwise enumerated hereinafter:

- a) **Prohibition to the Performance of Abortions.** Dr. Swate shall refrain from performing abortions of any type.
- b) **Personal Appearances before the Board or its Designated Committee.** Dr. Swate shall arrange for and meet with the Board, or its designated committee, at least twice annually, commencing from the date of the reinstatement of his license, to allow the Board to assess his competency and performance and his compliance with the terms, conditions and restrictions of the Superseding Consent Order.
- c) **Providing Orders to Hospitals or Other Health Care Entities Where He Seeks Privileges.** Dr. Swate shall provide a copy of the Texas Board Order, as well as this Superseding Consent Order to any hospital and/or health care entity at which he seeks privileges within the state of Louisiana.

d) **Cooperation with the Board's Medical Coordinator/Probation Officer.** Dr. Swate shall make himself available, upon reasonable notice, for personal interviews with the Medical Coordinator or Probation Officer of the Board or their designated representatives. He shall also notify the Board of any change in his personal and business addresses and telephone numbers.

e) **Absence from State - Effect on Suspension.** Should Dr. Swate, at any time during the four (4) year suspension ordered hereinabove be absent from the state of Louisiana, relocate to and/or take up residency in another state, for the purpose of practicing medicine for a period of thirty (30) days or more, then, in such instance, the suspension period ordered hereinabove shall be deemed interrupted and shall not commence to run until Dr. Swate returns to, relocates in and/or takes up residency in the state of Louisiana. In such instance, Dr. Swate shall not receive credit toward the probationary period for the time which he was absent from the state of Louisiana.

f) **Compliance with the Louisiana Medical Practice Act.** Dr. Swate shall comply with each of the provisions of the Louisiana Medical Practice Act, La. Rev. Stat. §37:1261, et seq., regulating the practice of medicine in the state of Louisiana and he shall particularly refrain from violation of any of the prohibitions contained in La. Rev. Stat. §37:1285.

g) **Reports by Chief of Staff.** Dr. Swate shall authorize and cause the physician chief of staff at any hospital or other health care entity at which he holds privileges to submit to the Board semi-annually commencing on the date that his license to practice medicine is reinstated in the state of Louisiana, and throughout the probationary period, written reports on Dr. Swate's professional competency and performance at such institution and his compliance with the terms, conditions and restrictions of this Superseding Consent Order.

IT IS FURTHER ORDERED that any violation of or failure of strict compliance with any of the terms, conditions or restrictions of this Superseding Consent Order by Dr. Swate, shall, upon proof of such violation or failure, be deemed adequate and/or sufficient cause, for the suspension and/or revocation of Dr. Swate's medical license to practice medicine in the state of Louisiana, or for such other disciplinary action as the Board deems appropriate, as if such violations were enumerated among the causes provided in La. Rev. Stat. §37:1285.

IT IS FURTHER ORDERED that this Consent Order shall be, and shall be deemed to be, a public record.

New Orleans, Louisiana, this 20 day of January, 1994.

LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS

By: [Signature]
Bernard L. Kaplan, M.D.
President

ACKNOWLEDGEMENT
AND CONSENT

I, TOMMY ERNEST SWATE, M.D., hereby acknowledge, approve, accept and
consent to entry of the above and foregoing Order this 7 day of June, 1994.

[Signature]
TOMMY ERNEST SWATE, M.D.

Witness:

[Signature]

CERTIFIED TRUE COPY

[Signature]
Mrs. Delmar Rorison, Executive Director
Louisiana State Board of Medical Examiners

Date 2/9/94