LICENSE NO. F4557

IN THE MATTER OF

THE LICENSE OF

DAVID WAYNE SPINKS, D.O.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER AFTER FORMAL FILING

On the 4th day of March, 2016, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of David Wayne Spinks, D.O. (Respondent).

On January 13, 2015 Respondent appeared in person, without counsel, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. The Board’s representatives were Stanley S. Wang, M.D., J.D., a member of the Board, and Sharon J. Barnes, a member of a District Review Committee (Panel). Nikki Karr represented Board staff and prepared this order.

This matter did not settle and a formal complaint was filed at the State Office of Administrative Hearings under SOAH Docket 503-15-5421.DO. Prior to the matter going to hearing, the parties reached this settlement. Respondent was represented by Oscar San Miguel in the negotiation of this order.

BOARD CHARGES

Board Staff charged that Respondent failed to meet the standard of care in treating 11 patients. Specifically, Respondent continued to prescribe sedatives and Phentermine for weight loss to a patient despite her history of coronary artery disease (CAD). Respondent also failed to document action on hypertensive patients; prescribed narcotics in a non-therapeutic manner; failed to monitor patients for abuse or diversion of pain medications through urine drugs screens, narcotic contracts, or review of Department of Public Safety (DPS) prescribing reports; refilled prescriptions for controlled substances early; and prescribed hydrocodone to patients who were allergic to codeine. Finally, Board Staff charged that Respondent provided false or misleading information during the course of the investigation.
BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board.

On December 11, 1999, Respondent and the Board entered into an Agreed Order publicly reprimanding Respondent for the improper diagnosis and treatment of one patient.

On October 7, 2005, Respondent and the Board entered into a three year Agreed Order (2005 Order) publicly reprimanding Respondent and requiring Respondent to: pay a $5,000 fine, obtain an additional 20 hours of continuing medical education (CME) each year of the order, have his practice monitored by a physician, refrain from prescribing for any patient unless the drug was clinically indicated, and submit a complete set of written policies and procedures with regard to treating employees and dispensing sample medications. The action was based on Respondent’s failure to keep adequate records for three patients, including one with whom he had a personal relationship and to whom he prescribed controlled substances.

On June 8, 2007, the 2005 Order was modified and extended by two years with a $2,000 penalty for failing to implement the recommendations of his monitor and to obtain the necessary hours of CME.

On August 29, 2008, the 2005 Order was further modified requiring Respondent to obtain 10 hours of CME in medical records-keeping and 10 hours in other subject area by October 7, 2009, and 20 hours of CME approved for Category I credits by October 7, 2010. Further, Respondent was ordered to take and pass the medical jurisprudence exam no later than October 7, 2010. This action was due to Respondent’s difficulty in obtaining 20 hours of CME in record-keeping as required in the 2005 Order.

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:

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 currently holds Texas Medical License No. F4557. Respondent was originally issued this license to practice medicine in Texas on August 19, 1979. Respondent is not licensed to practice in any other state.

c. Respondent is primarily engaged in the practice of General Practice and Occupational Medicine. Respondent is not board certified.

d. Respondent is 62 years of age.

2. Specific Panel Findings:

a. Respondent failed to monitor chronic pain patients for abuse or diversion of controlled substances through urine drugs screens, narcotic contracts, or review of DPS prescribing reports.

b. Respondent prescribed Adipex to a patient with a known history of coronary artery disease (CAD), which is contraindicated, and prescribed hydrocodone for two patients who were both allergic to codeine.

c. Respondent provided early refills of controlled substances without documenting why early refills were necessary.

d. Respondent prescribed a combination of hydrocodone, benzodiazepine and Soma, without well-documented justification.

e. Respondent failed to maintain an adequate medical record of his treatment of hypertensive patients, failing to document any actions or counseling despite adverse clinical findings.

f. Respondent provided false or misleading information to the Board during the course of the investigation. Specifically, in his pre-ISC response dated April 24, 2014, Respondent claimed that he had no knowledge of one patient’s CAD when before he began prescribing Adipex to the patient on September 3, 2013. Again on May 19, 2014, Respondent provided a statement that he “had no knowledge of the patient ever having a past medical history of CAD.” However, Respondent’s office records show that he was aware or should have been aware that the patient
had CAD, as evidenced by billing records, orders to a durable medical equipment company, and at least one referral to a cardiologist.

3. **Aggravating/Mitigating Factors:**
   a. In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:
      i. Respondent has implemented remedial measures such as pain contracts, urine drug screens and informed consents for his patients.
      ii. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent neither admits nor denies the information given above. 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.
   b. The Panel considered Respondent’s prior disciplinary history as an aggravating factor.

**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 107.103 of the Texas Occupations Code, known as the Intractable Pain Treatment Act, states that a physician who treats a patient under this subchapter shall monitor the patient to ensure that a prescribed dangerous drug or controlled substance is used only for the treatment of the patient's painful medical condition.

3. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent’s violation of a Board rule, specifically Board Rule 165.1, which requires the maintenance of adequate medical records; and Board Rule 170.3, failure to adhere to those established guidelines and requirements for the treatment of pain.

4. 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, as further defined by Board Rules: 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(C), failure to use proper diligence in one’s professional practice; 190.8(1)(D), failure to safeguard against potential complications; 190.8(1)(G), failure to disclose reasonably foreseeable side effects or a procedure or treatment; 190.8(1)(H), failure to disclose reasonable alternative treatments to a proposed procedure or treatment; and 190.8(1)(I), failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient’s behalf before performing tests, treatments, or procedures.

5. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent’s unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public, and further defined by Board Rules, including, but not limited to the following: Board Rule 190.8(2)(C), providing false information to the board; and Board Rule 190.8(2)(J), providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third party payor that the licensee knew or should have known was improper.

6. Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.

7. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing, administering, or dispensing in a manner inconsistent with public health and welfare, dangerous drugs as defined by Chapter 483, Health and Safety Code; or controlled substances scheduled in Chapter 481 Health and Safety Code; or controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. § 801 et seq.).

8. 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.
9. 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 and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete the Knowledge, Skills, Training, Assessment, and Research (KSTAR) program offered by the Texas A&M Health Science Center. Upon Respondent's acceptance into the KSTAR program, Respondent shall execute a written request and authorization to KSTAR representatives to provide a complete copy of the final assessment report to the Compliance Division within 15 days of its completion. Respondent shall successfully complete any and all retraining, remedial measures, and/or other recommendations made by KSTAR based upon the assessment. 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.

2. Respondent shall be subject to the following terms and conditions for eight consecutive monitoring cycles (defined below). 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 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 more than 30 patients, 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 any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division. If the chart monitor recommends that Respondent restrict or suspend his or her practice of medicine, Respondent shall be required to personally appear before a panel of Board representatives, upon written request mailed to Respondent's last known address on file with the Board at least 10 calendar days before the requested appearance date. Such appearance shall be for the purpose of consideration of the chart monitor's recommendations of restriction or suspension and held in accordance with 22 TEX. ADMIN. CODE, §187.44. Based upon the panel’s findings and recommendations, the Board may modify this Order so that Respondent’s practice is restricted or suspended in accordance with the chart monitor's recommendations, or take any other action that may be appropriate to resolve the issues presented.

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.

e. 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 and has made payment for the costs of that monitoring cycle.
3. If Respondent has not already done so, Respondent shall request modification of Respondent's Drug Enforcement Administration (DEA) Controlled Substances Registration Certificate and Respondent's Texas Department of Public Safety (DPS) Controlled Substances Registration Certificate to eliminate **Schedule II**, within seven days after the entry of this Order. Respondent's authority to prescribe, administer, possess, or dispense such controlled substances is hereby limited to the remaining schedules. Respondent shall promptly sign and mail to the appropriate agency the necessary DEA and DPS forms to accomplish the required modification of Respondent's controlled substance registration. Respondent has seven days after the date of surrender to provide objective evidence of surrender to the Director of Compliance.

Respondent shall not reregister or otherwise obtain Controlled Substances Registrations for **Schedule II** until Respondent has received written authorization from the Board. Authority to register for Controlled Substances Registration Certificates for **Schedule II** may be granted only after Respondent makes written petition and a personal appearance before the Board, a committee of the Board, or authorized Board representatives. The granting of such authority is discretionary with the Board and shall not control any decision by DEA or DPS in regard to granting or denying any application by Respondent for the return of controlled substance registrations.

4. Within one year following the date of the entry of this Order, Respondent shall take and pass with a score of 75 or above the Medical Jurisprudence Examination (JP Exam) given by the Texas Medical Board. Respondent is allowed three attempts to successfully pass this examination.

Respondent's failure to take and pass the JP Exam within three attempts within one year following the date of the entry of this Order shall constitute a violation of this Agreed Order. After a committee of the Board or a panel of Board representatives (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 Board Representatives have considered the information related to Respondent's violation of this provision and have determined that Respondent has not fulfilled the requirements of this provision. Although Respondent shall be invited to provide information or testimony to the
Board Representatives, Respondent specifically waives any administrative due process under the Medical Practice Act, or the Administrative Procedure Act, for the Board Representatives to consider this information. **THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS 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 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 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 in Texas and is otherwise physically and mentally competent to resume the practice in this state.

5. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 40 hours of CME approved for Category I credits by the American Medical Association or the American Osteopathic Association, as follows: eight hours in the topic of Medical record keeping; eight hours in the topic of weight loss management; four hours in the topic of risk management; four hours in the topic of treating anemia; eight hours in the topic of cardiovascular disease; and eight hours in the topic of pain management, each approved in writing in advance by the Executive Director or a designee. To obtain approval for the course, Respondent shall submit in writing to the Compliance Department 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 Department on or before the expiration of the time limit set forth for completion of the course. The CME requirements set forth in this paragraph shall be in addition to all other CME required for licensure maintenance.

6. At all times while Respondent is under the terms of this Order, 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 pending an application for privileges, applies for
privileges, or otherwise practices. Within 30 days of being first contacted by the Compliance Division of the Board following entry of this Order, Respondent shall provide to the Compliance Division of the Board documentation, including proof of delivery, that the Order was delivered to all such facilities.

7. 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.

8. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent’s practice.

9. 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.

10. 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).

11. 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.

12. Respondent shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants.

13. 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 PAGES FOLLOW.
I, DAVID WAYNE SPINKS, D.O., 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.


DAVID WAYNE SPINKS, D.O.
Respondent

STATE OF Texas
COUNTY OF Travis

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 22nd day of February, 2016.

Signature of Notary Public

[Notary Seal]
ELIZABETH TAYLOR
MY COMMISSION EXPIRES
May 12, 2016
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 
4 day of March, 2016.

Michael Arambula, M.D., Pharm.D., President 
Texas Medical Board