

LICENSE NO. D-2355

IN THE MATTER OF  
THE LICENSE OF  
ROBERT MCREE BATTLE, M.D.

BEFORE THE  
TEXAS MEDICAL BOARD

MEDIATED AGREED ORDER

On the 6th day of November, 2009, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Robert McRee Battle, M.D. ("Respondent").

On July 28, 2008, Respondent appeared in person, with counsel Algis K. Augustine, 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 Allan Shulkin, M.D., a member of the Board and Noe Fernandez, a member of a District Review Committee. Mark Martyn represented Board staff. The matter did not initially settle.

The matter was transferred to Scott M. Freshour, who filed a formal complaint at the State Office of Administrative Hearings ("SOAH"). Prior to the matter going to trial the parties agreed to mediate the matter. Melinda McMichael, M.D. and Scott M. Freshour represented board staff at the mediation. 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 of Fact and Conclusions of Law and enters this Agreed Order.

FINDINGS OF FACT

The Board finds that:

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. D-2355. Respondent was originally issued this license to practice medicine in Texas on August 14, 1965. Respondent is not licensed to practice in any other state..

3. Respondent is primarily engaged in family practice. Respondent is not board certified.

4. Respondent is 76 years of age.

5. Respondent has received a prior disciplinary order from the Board.

a. The Board entered an Agreed Order on October 26, 1990, due to failure to perform physical examinations before testing or treating patients. Respondent had treated patients with an "auto immune vaccine" without approval by the Federal Food and Drug Administration.

b. Respondent also received an administrative penalty of \$1,000 in 2006 for improper termination of the physician/patient relationship

6. The issue presented in the formal complaint related to Respondent's testing and treatment of one patient.

7. Respondent utilized a number of tests (such as blood pH levels and nocturnal pulse oximetry tracing) and treatments (such as Apple Juice fast and neural peptides), which he used in his complimentary medicine practice, but are not generally recognized by traditional medical practice.

8. The Respondent's medical records were not adequate.

9. Respondent denies any violation of the Medical Practice Act, and asserts that he met the standard of care for the patient identified in the Board's Complaint.

10. 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 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 rules adopted under this Act, specifically Board Rule 165, which requires the maintenance of adequate medical records.
3. Section 164.051(a)(6) of the Act, as defined by Board Rule 190.8(1)(C), authorizes the Board to take disciplinary action against Respondent based on failure to use proper diligence in one's professional practice.
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.

## ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. Within 180 days following the date of the entry of this Order, Respondent shall enroll in and successfully complete a course(s) in medical record keeping of at least 10 hours in duration and a course(s) in family practice of at least 10 hours in duration, both of which courses shall be approved in writing in advance by the Executive Director of the Board. To obtain approval for the course(s), Respondent shall submit in writing to the Director of Enforcement for the Board information on the course(s), 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 Director of Enforcement for the Board on or before the expiration of the time limit set forth for

completion of the course. The courses are in addition to the annual requirement to maintain licensure.

2. Respondent shall maintain adequate medical records on all patient office visits, testing, and treatment rendered by Respondent. The records shall include, at a minimum the following information about the patient:

- (a) name and address,
- (b) vital signs and statistics,
- (c) chief complaints,
- (d) history and physical findings,
- (e) diagnosis or impression and basis for each,
- (f) treatment plan for each patient visit or operative procedure,
- (g) a notation of all medications, supplements, treatments prescribed, administered, or otherwise provided to the patient including the quantity, dosage, method of administration, location of administration, and observation of reactions, if any, and
- (h) detailed records of all follow-up visits.

Provisions (a)-(h) are consistent with Board Rule 165 regarding content of medical records.

The provisions of this Ordering Paragraph are on-going as long as the Respondent practices medicine.

3. Following successful completion of requirements of Ordering Paragraph No. 1, Respondent's medical records shall be subjected to a one-time monitoring review by a physician ("chart monitor"). This monitoring review shall be undertaken within one year after the completion of the requirements of Ordering Paragraph Nos. 1 and 4.

The scope of the chart monitor shall be limited to verification of adequacy of medical records consistent with requirements as outlined in Ordering Paragraph No. 2, and the inclusion of the approved Informed Consent Form in each record.

The chart monitor will have knowledge and experience in the field of Alternative and Complimentary Medicine. The Compliance Division of the Board shall designate the chart monitor. 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 records ("selected records"). The Compliance

Division shall select records for 30 new patients seen by Respondent after completing the requirements of Ordering Paragraph No. 1.

b. The monitor shall:

1. Personally review the selected records for the limited purpose of verification of adequacy of medical records consistent with requirements as outline in Ordering Paragraph No. 2, and the inclusion of the approved Informed Consent Form;
2. Prepare written reports identifying any perceived deficiencies and any recommendations to improve Respondent's documentation as noted in Ordering Paragraph No. 2.
3. The written reports shall be provided to the Compliance Officer for the Board, with a copy provided to Respondent.

c. Respondent shall be allowed to file a response to the report within 60 days of receiving the chart monitor report. The written response shall indicate those measures implemented in response to the recommendations of the monitor's report, or response to the board indicating why the recommendations were not implemented. If the monitor does not agree with rationale for not implementing any recommendations, then parties agree that the matter shall be set for an Informal Settlement Conference/Show Compliance Proceeding.

d. The monitor shall be the agent of the Board, but shall be compensated by the Respondent, at the usual and customary rate, 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. Within 90 days from the date of the entry of this Order, Respondent shall present an Informed Consent Form to the Executive Director for review. The Informed Consent Form shall be provided to each and every patient who will undergo any Complimentary and Alternative Medicine testing and treatment by Respondent, and shall include written disclosures that explicitly state the following information:

- a. testing being recommended is not recognized as traditional, but is an alternative testing method;

- b. treatment being recommended is not recognized as traditional, but is an alternative treatment method;
- c. the treatment being offered is not FDA approved,;
- d. the medical/scientific proof of effectiveness/therapeutic value of the treatment is disputed;
- e. a disclaimer that treatment prescribed are not FDA approved;
- f. a disclaimer that formulations prescribed have never been tested by the FDA for determination of the actual contents or the medical effectiveness;
- g. the following Disclaimer shall be made all in 14-point, capitalized and bolded:

**“THE TESTING AND TREATMENT BEING UTILIZED AND DESCRIBED BY RESPONDENT IN THIS DISCLOSURE STATEMENT IS NOT ENDORSED, APPROVED, ACCEPTED, OR SUPPORTED BY THE TEXAS MEDICAL BOARD.**

The provisions of this Ordering Paragraph are on-going as long as the Respondent practices medicine.

The Executive Director shall within 40 days of receiving the submission of Respondent shall either approve the Informed Consent Form in writing, or identify any deficiencies in the submission. Respondent shall then have 20 days to submit revisions to address deficiencies identified by the Executive Director. If these revisions are not submitted, then parties agree that the matter shall be set for an Informal Settlement Conference/Show Compliance Proceeding.

5. Respondent shall provide to each patient a pamphlet, hand-out, or other written directory of estimated costs for recommended treatments and/or therapies offered by Respondent. The provisions of this Ordering Paragraph are on-going as long as the Respondent practices medicine.

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

7. 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.

8. 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 Registration Department and the Compliance Department 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.

9. 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.

10. Respondent shall be provided 30 days notice of a Respondent Show Compliance Proceeding to address any allegation of non-compliance of this Order as provided by §164.003(b)(2) of the Medical Practice Act.

11. Respondent shall be permitted to supervise or delegate prescriptive authority to a physician assistant or advanced practice nurse

12. The requirements of each Ordering Paragraph Nos.1-5, will terminate as specifically delineated in each respective Ordering Paragraph.

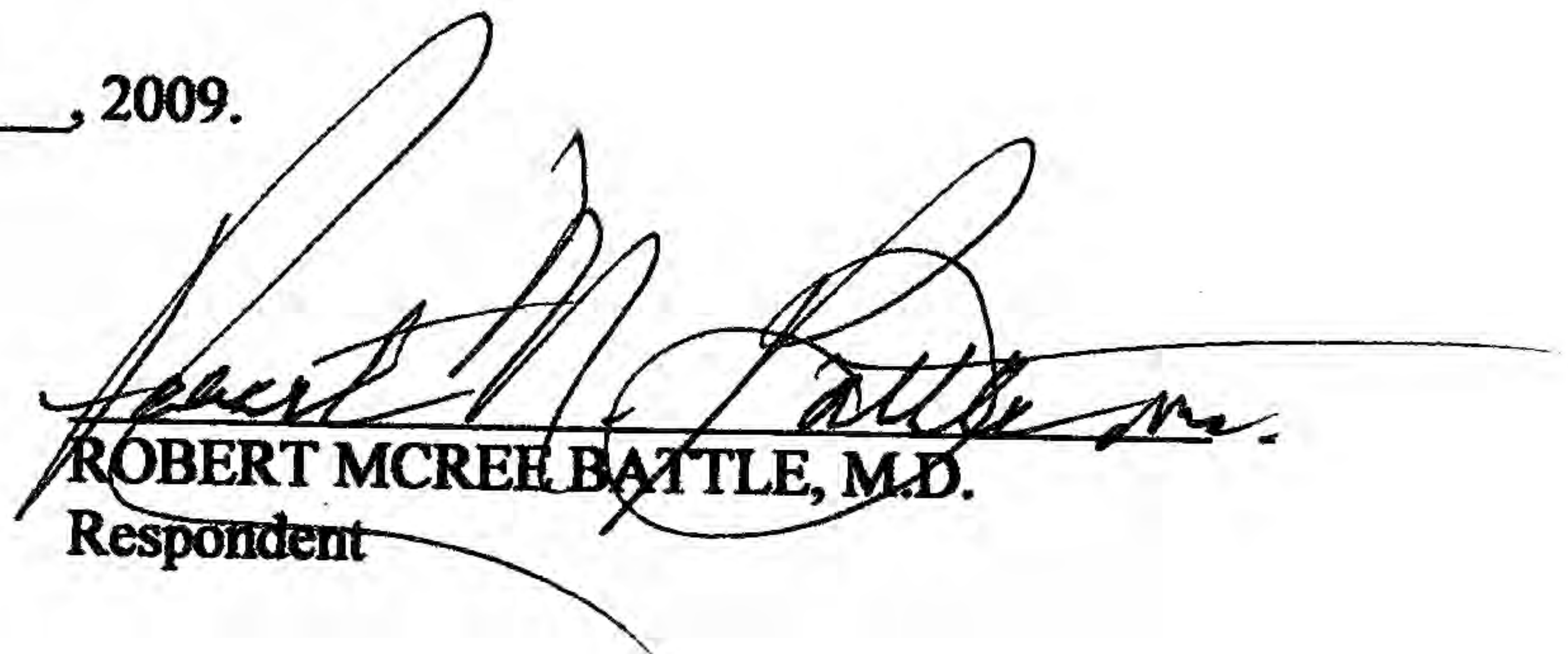
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RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

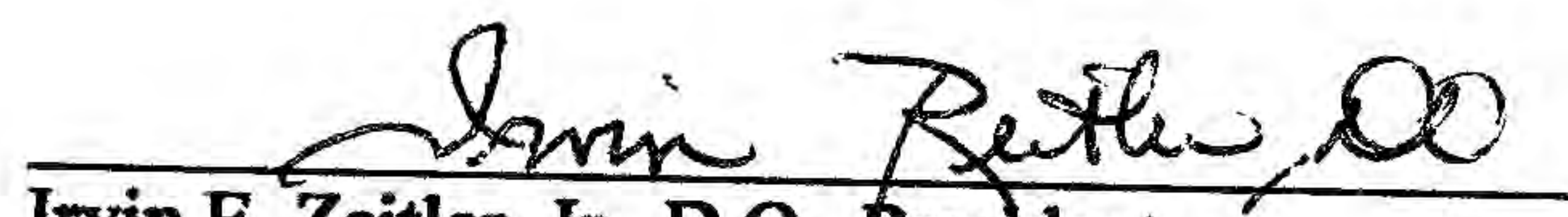
THIS ORDER IS A PUBLIC RECORD.

I, ROBERT MCREE BATTLE, 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: 10/16, 2009.

  
ROBERT MCREE BATTLE, M.D.  
Respondent

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 16th day of November, 2009.

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