

LICENSE NO. F-6580

IN THE MATTER OF
THE LICENSE OF
GARY STEVEN DONOVITZ, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 26 day of August, 2011, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Gary Donovitz, M.D. (Respondent).

On May 20, 2011, Respondent appeared in person, with counsel Cathy Bailey, at an Informal Show Compliance Proceeding and Settlement Conference (ISC) in response to a letter of invitation from the staff of the Board. The Board's representatives were Irvin Zeitler, D.O. and Julie Attebury, members of the Board (Panel). Claudia Kirk represented Board staff.

BOARD CHARGES

1. Respondent's advertisement claimed that bio-identical hormone pellet delivery system reduced the risk of breast cancer and was superior to transdermal hormone administration.
2. Respondent treated one patient with bioidentical hormone treatment for a testosterone hormone deficiency when there was no laboratory evidence the patient had a hormone deficiency. Additionally, Respondent failed to perform and document the patient's history and a physical examination. The patient claimed she sustained numerous side effects due to abnormally high levels of testosterone, including hair loss, facial hair, and cystic ACNE.
3. The use of bioidentical hormones is not FDA approved and there is no scientific evidence of improved efficacy over treatment with traditional hormone replacement therapy.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board. The disciplinary action is as follows:

1. An Agreed Order was entered on October 6, 2006 (2006 Order) due to violation of patient/physician boundaries. The Order required Respondent to complete a professional boundaries course and pay a \$5,000.00 administrative penalty
2. The 2006 Order terminated on February 20, 2007.

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. F6580. Respondent was originally issued this license to practice medicine in Texas on August 24, 1980. Respondent is also licensed to practice in Arizona.
 - c. Respondent is primarily engaged in the practice of obstetrics and gynecology. Respondent is board certified by the American Board of Obstetrics and Gynecology, a member of the American Board of Medical Specialties.
 - d. Respondent is 55 years of age.

2. Specific Panel Findings:

- a. Respondent's advertising in regard to bio-identical hormone pellet delivery system being superior to transdermal hormone administration in reducing osteoporosis and the risk of breast cancer was false advertising.
- b. Respondent's medical records were inadequate in explaining aberrant laboratory results and reasons that physical examinations were not performed.
- c. The Panel found that use of bio-identical hormone replacement was appropriate for the patient and that Respondent's consent form outlined all potential risks and side-effects.

3. Mitigating Factors:

In determining the appropriate sanctions in this matter, the Panel considered that 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 Specific 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)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a rule adopted under this Act, specifically Board Rule(s): 165.1, failure to maintain an adequate medical record for each patient that is complete, contemporaneous, and legible; 164.3(1), advertising material false claims or misrepresentations of material facts which cannot be substantiated; and 164.3(4), making a representation likely to create an unjustified expectation about the results of the service or procedure.

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 shall be subject to the following terms and conditions:

1. Within one (1) year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 12 hours of continuing medical education (CME) approved for Category I credits by the American Medical Association in the topics of medical recordkeeping, for a minimum of eight (8) hours, and risk management, for a minimum of four (4) hours. The courses must be approved in writing in advance by the Compliance Division of the Board. To obtain approval for the course, Respondent shall submit in writing to the Compliance Division of the Board 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 Division of the Board 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.

2. Respondent shall pay an administrative penalty in the amount of \$1,000 within 60 days following the date of the entry of this Order. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas Medical Board and shall be submitted to the Board for routing so as to be remitted to the Comptroller of Texas for deposit in the general revenue fund. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

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

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

8. This Order shall automatically terminate upon Respondent's submission of sufficient evidence to the Compliance Division of the Board that Respondent successfully completed the requirements ordered in Ordering Paragraph Nos. 1 and 2.

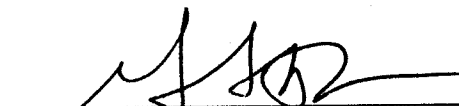
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

[SIGNATURE PAGE(S) FOLLOW]

I, GARY STEVEN DONOVITZ, 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.

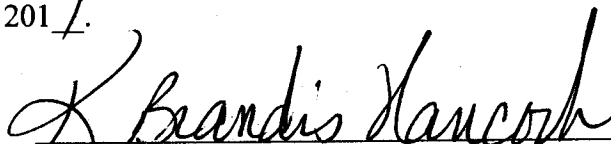
DATED: 7-20, 2011.



Gary Steven Donovanitz, M.D.
Respondent

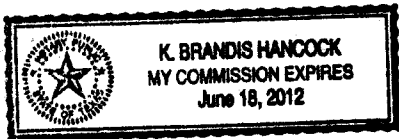
STATE OF Texas §
COUNTY OF Tarrant §
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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 20th day of July, 2011.

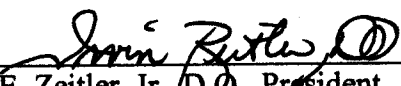


Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
26 day of August, 2011.



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