

LICENSE NO. G-6913

IN THE MATTER OF
THE LICENSE OF
RICHARD ALAN CARTER, D.O.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 25 day of August, 2006, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Richard Alan Carter, D.O. ("Respondent").

On April 19, 2006, Respondent appeared in person, with counsel Christine M. Ruffner, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. Oscar San Miguel represented Board staff. The Board's representatives were Patricia Blackwell, a member of the Board, and Leah R. Mabry, M.D., a member of the District Review Committee.

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. G-6913. Respondent was originally issued this license to practice medicine in Texas on August 26, 1984. Respondent is not licensed to practice in any other state.
3. Respondent is primarily engaged in the practice of general surgery. Respondent is certified by the American Board of Osteopathic Surgery.

4. Respondent is 54 years of age.
5. Respondent has not previously been the subject of disciplinary action by the Board.
6. Respondent performed a bowel resection procedure on patient R.H. on January 18, 2000.
7. Respondent inquired of his nurses the laparotomy pad count prior to closure. The nursing personnel verbally advised Respondent that the sponge count was correct, and the operating room record showed a correct laparotomy pad count times two. Respondent performed a visual sweep of the operative area prior to closing, but admits that he did not document this sweep.
8. Respondent did not meet the standard of care because a sponge was left in the abdomen.
9. In February of 2000 RH was diagnosed with a retained lap sponge in the abdomen, which was surgically removed at another facility by another physician.
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)(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.
3. Based upon findings of fact 6-9, whereby the panel found Respondent failed to properly document a thorough sweep of the wound for sponges.
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. Such sanctions include:

revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

5. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

6. Section 164.002(d) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.

ORDER

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

1. Within 1 year of entry of this order, Respondent shall obtain 10 hours of Continuing Medical Education (CME) approved for Category I credits by the American Osteopathic Association in medical records/charting. Upon completion of the required CME, Respondent shall submit proof to the Board of successful completion of the CME. A copy of attendance certificates or a detailed report that can be readily verified by the Board shall satisfy this requirement.

2. Respondent shall pay an administrative penalty in the amount of \$1,000.00 within 30 days 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 Director of Compliance for 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. The time period of this Order shall be extended for any period of time that (a) Respondent subsequently resides or practices outside the State of Texas, (b) Respondent's license is subsequently canceled 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 extension ends, Respondent shall be required to

comply with the terms of this Order for the period of time remaining on the extended Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of extension.

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

5. 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.

6. Respondent shall inform the Board in writing of any change of Respondent's mailing or practice address within ten days of the address change. This information shall be submitted to the Permits Department and the Director of Compliance 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.

7. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, and to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act. Respondent agrees that ten 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).

8. 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, 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.

I, RICHARD ALAN CARTER, 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.

DATED: 9/18, 2006.

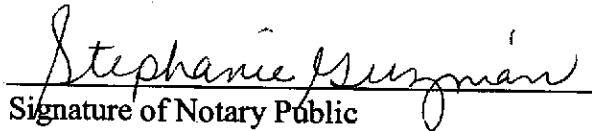


RICHARD ALAN CARTER, D.O.
RESPONDENT

STATE OF TX
COUNTY OF Tarrant

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SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 18th day of September, 2006.


Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
6 day of October, 2006.

Larry Price DO
for Roberta M. Kalafut, D.O., President
Texas Medical Board