

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 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 Richard Alan Carter, D.O. ("Respondent").

On November 12, 2010, Respondent appeared in person, with counsel Paige A. Lueking, 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 Timothy Webb, J.D., a member of the Board, and Janet Tornelli-Mitchell, M.D., a member of a District Review Committee. Amy McNamara represented Board Staff.

BOARD CHARGES

Board Staff charged that Respondent failed to adequately treat a patient's post Lap-Band procedure complications. Additionally, Respondent failed to maintain adequate medical record documentation.

BOARD HISTORY

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

1. On August 8, 2006, the Board entered an Agreed Order ("2006 Order"), requiring that Respondent obtain 10 hrs of CME in medical record-keeping and pay an administrative fine of \$1,000. The action was due to Respondent's failure to properly document that he made a visual sweep of the operative area

prior to closing during a bowel resection procedure, which resulted in a lap sponge being retained in the patient's abdomen.

2. On February 6, 2009, the Board entered an Agreed Order ("2009 Order"), requiring that Respondent revise his advertisements and pay an administrative fine of \$5,000. The action was due to deceptive and misleading advertising in an infomercial and website promotion for a weight-loss meal replacement program.

Upon the recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings and Conclusions of Law.

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. G-6913. Respondent was originally issued this license to practice medicine in Texas on August 26, 1984. Respondent is not licensed to practice medicine in any other state.
 - c. Respondent is primarily engaged in general surgery. Respondent is board certified by the American Board of Osteopathic Surgery, a member board of the American Board of Medical Specialties.
 - d. Respondent is 58 years of age.

2. Specific Panel Findings:

Failure to Maintain Adequate Medical Records: Respondent's records did not adequately document: his rationale for the timing of the removal of the lap band, or counseling of patient.

3. Mitigating Factor:

a. Respondent ordered EDG, but patient did not submit to the test until approximately one month after it was ordered.

b. 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 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 Board rule, specifically Board Rule 165.1, which requires the maintenance of adequate medical records.

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 two years following the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 20 hours of continuing medical education ("CME") in the following subjects: 5 hours of CME in the subject of medical record keeping; 5 hours of CME in the subject of risk management; and 10 hours of CME in the subject of physician/patient communication. The CME shall be approved for Category I credits by the American Medical Association or American Osteopathic Association, approved in writing in advance by the Executive Director or their designee. 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 comply with all the provisions of the Act and other statutes regulating the Respondent's practice.

3. 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.

4. 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).

5. 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.

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

7. 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 No 1.

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.

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