

H-2853

IN THE MATTER OF
THE LICENSE OF
JOHN M. TYLER, JR., M.D.

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BEFORE THE
TEXAS STATE BOARD
OF MEDICAL EXAMINERS

AGREED ORDER

On this the 16 day of May, 1998, came on to be heard before the Texas State Board of Medical Examiners ("the Board" or "the Texas Board"), duly in session the matter of the license of John M. Tyler, Jr., M.D., ("Respondent"). On April 17, 1998, Respondent did not appear personally or through counsel at an Informal Settlement Conference/Show Compliance Proceeding in response to a letter of invitation from the staff of the Board.

The Board was represented at the Informal Settlement Conference/Show Compliance Proceeding by Charles Monday, Jr., M.D., a member of the Board, and Larry Price, D.O., a member of the Board. Upon 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 Order as set forth herein:

FINDINGS OF FACT

1. Respondent, John M. Tyler, Jr., M.D., holds Texas Medical license H-2853.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied.
3. Respondent is certified by the American Board of Medical Specialties in Physical Medicine and Rehabilitation.
4. Respondent has been in the practice of medicine in Texas for approximately ten (10) years.
5. Respondent is thirty-eight (38) years of age.
6. Respondent has cooperated with Board staff in the investigation of the allegations

related to this Agreed Order.

7. On or about March 20, 1997, Respondent into an Agreed Order with the Colorado Board of Medical Examiners, which stipulated that from approximately May through August, 1996, Respondent consumed 1-2 alcoholic drinks over lunch once or twice weekly. Respondent was diagnosed with alcohol abuse in early remission. The Colorado Board placed Respondent on probationary status for 5 years. Said Order is incorporated for any and all purposes and is attached hereto as Exhibit A.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes the following:

1. Respondent has violated Section 3.08(21) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, which authorizes the Board to take disciplinary action against Respondent based on Respondent's suspension, revocation, or restriction by another state of a license to practice medicine, or disciplinary action by the uniformed services of the United States, based upon acts by the licensee similar to acts described in this section.

2. Section 4.02(h) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

3. Section 4.02(I) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Civil Evidence for purposes of civil litigation.

4. Section 4.12 of the Act authorizes the Board to take action in regard to Respondent and Respondent's medical license as set forth below.

ORDER

Respondent shall not practice medicine in Texas until such time as Respondent requests permission in writing to resume the practice of medicine in Texas, personally appears before the Board to orally petition for permission to resume such practice, and provides sufficient evidence and information which in the discretion of the Board adequately indicates that Respondent is physically, mentally, and otherwise competent to safely practice medicine. Such evidence and information shall include at a minimum, but shall not be limited to the following:

1. Evidence that Respondent has abstained from the use of alcohol, dangerous drugs, and controlled substances in any form unless prescribed by another physician to Respondent for a legitimate therapeutic purpose as evidenced by appropriate negative screens for alcohol or drugs either through a urine, blood, or hair specimen.

2. Evidence that Respondent has completed the terms of his probation of his Colorado Board Order.

Upon an adequate showing before the Board that Respondent is able to safely practice medicine, Respondent shall be granted permission to practice medicine in Texas under such terms and conditions which the Board in its discretion determines are necessary to adequately protect the public.

The Board further ORDERS the following:

1. To verify that Respondent has complied with and is in compliance with the terms and conditions of this Agreed Order, Respondent shall fully cooperate with the Board and the Board staff, including but not limited to, Board attorneys, investigators, compliance officers, consultants, and other such employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Agreed Order. Failure to cooperate as required by this paragraph and the terms of this Agreed Order shall constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

2. Upon request by the Board or a member of the Board staff, Respondent shall provide copies of any reports, documents, or other materials that Respondent has submitted to or received from the Colorado Board of Medical Examiners. If requested by the Board or a member of the Board staff, Respondent shall request in writing that the Colorado Board of Medical Examiners provide the Texas Board with copies of any such reports, documents, or other materials to which Respondent may not have direct access. Upon the request of the Colorado Board of Medical Examiners, the staff of the Texas Board may provide any documentation or information which the staff of the Texas Board believes is responsive to the request.

3. The terms and conditions of this Agreed Order are independent of the terms and conditions of any order, restriction, condition, or probation imposed by any other governmental agency or entity. Only the Texas Board may terminate or modify the terms and conditions of this

Agreed Order.

4. Respondent shall comply with this Agreed Order and any terms and conditions imposed by the Colorado Board of Medical Examiners. In the event that Respondent violates the terms and conditions of this Agreed Order or any terms and conditions imposed by the Colorado Board of Medical Examiners, the Texas Board may take disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

5. Respondent shall comply with all the provisions of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, and other statutes regulating the practice of medicine, as is required by law for physicians licensed by the Board.

6. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within ten (10) days of the address change. This information shall be submitted to the Verification Department and the Director of Hearings 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 Sections 3.08, 4.01, and 4.11 of the Act.

7. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute a basis for disciplinary action by the Board against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute evidence of unprofessional or dishonorable conduct likely to deceive or defraud the public or injure the public.


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. 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. NOTHING IN THIS ORDER SHALL BE DEEMED A WAIVER OF RESPONDENT'S RIGHTS UNDER STATUTE OR THE UNITED STATES OR TEXAS CONSTITUTIONS TO APPEAL AN ORDER OR ACTION OF THE BOARD SUBSEQUENT TO THIS AGREED ORDER EXCEPT AS RESPONDENT MAY HAVE OTHERWISE AGREED TO HEREIN. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, JOHN M. TYLER JR., 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: April 25, 1998


JOHN M. TYLER JR., M.D.
RESPONDENT

STATE OF Colorado

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COUNTY OF El Paso

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BEFORE ME, the undersigned Notary Public, on this day personally appeared JOHN M. TYLER JR., M.D., known to me to be the person whose name is subscribed to this instrument, an Agreed Order, and who after being by me duly sworn, on oath, stated that he executed the same for all purposes expressed therein.

Given under my hand and official seal and office this 25 day of April, 1998.

Kari Brown

Signature of Notary Public

(Notary Seal)

KARI BROWN

Printed or typed name of Notary Public

My commission expires: 11.3.2001

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 16 day of May, 1998.

William H. Fleming, III

William H. Fleming, III, M.D.
President, Texas State Board of
Medical Examiners

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE
LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF
JOHN M. TYLER, JR., M.D., LICENSE NO. 30232.

Respondent.

IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel B ("Panel") of the Colorado State Board of Medical Examiners ("Board") and John M. Tyler, Jr., M.D. ("Respondent") as follows:

JURISDICTION AND CASE HISTORY

1. Respondent was licensed to practice medicine in the state of Colorado on June 8, 1990, and was issued license no. 30232 which Respondent has held continuously since that date.

2. The Panel and the Board have jurisdiction over Respondent and over the subject matter of this proceeding.

3. On or about October 7, 1996, a complaint was initiated into matters brought to the attention of the Board by an inquiry from another physician (Case No. 5197020860). On or about December 19, 1996, the Panel reviewed Respondent's response to the 30-day letter sent on October 7, 1996, as well as an evaluation by the Colorado Physician Health Program (CPHP). The Panel found that the disclosed facts warranted proceeding by formal complaint, as provided in § 12-36-118(5), C.R.S. The Panel thereupon referred the complaint in case no. 5197020860 to the Attorney General.

4. Respondent understands that:

a. Respondent has the right to be represented by an attorney of the Respondent's choice;

b. Respondent has the right to a formal disciplinary hearing pursuant to § 12-36-118(5), C.R.S.

c. By entering into this Stipulation and Final Agency Order (hereinafter, the "Order"), Respondent is knowingly and voluntarily giving up the right to a hearing, admits the facts

contained in this Order, and relieves the Panel of its burden of proving such facts; and

d. Respondent is knowingly and voluntarily giving up the right to present a defense by oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Panel.

5. It is the intent of the parties and the purpose of this Order to provide for a settlement of all facts disclosed by the investigation in case no. 5197020860, without the necessity of holding a formal disciplinary hearing. This Order constitutes the entire agreement between the parties, there are no other agreements or promises, written or oral, which modify, interpret, construe or affect this Order.

6. Respondent admits and agrees as follows:

a. From approximately May through August, 1996, Respondent consumed 1-2 alcoholic drinks over lunch once or twice weekly.

b. In September 1996, Respondent agreed to an evaluation by the Colorado Physician Health Program and began appropriate outpatient treatment. Respondent was diagnosed with alcohol abuse in early remission.

c. The Board has not received patient complaints or other information that Respondent's care to any patient fell below generally accepted standards of medical practice.

7. Respondent admits that his alcohol abuse constitutes a mental disability which, if continued and not treated, could render him unable to practice medicine with reasonable skill and safety to patients, a condition defined as unprofessional conduct in § 12-36-117(1)(o), C.R.S.

8. Based upon the above, the Panel is authorized by § 12-36-118(5)(g)(III), C.R.S. to order probation and such conditions upon Respondent's practice which it deems appropriate.

PROBATIONARY TERMS

9. Respondent's license to practice medicine in the state of Colorado is hereby placed on probationary status for a period of five years. During the probationary period, Respondent agrees to be bound by the terms and restrictions set forth in the paragraphs below.

ABSTINENCE FROM ADDICTIVE SUBSTANCES

10. Respondent shall totally abstain from the use of alcohol and the use of any habit-forming drug or controlled substance, other than as administered, dispensed or prescribed by an authorized person other than Respondent. Respondent shall use such habit-forming drug or controlled substance only as directed by such authorized person and only for the condition identified by such authorized person.

11. Except in the case of a bona fide medical emergency, the Respondent shall not use a habit-forming drug or controlled substance given by an authorized person unless Respondent has received prior written approval of the use from the treatment monitor. In the case of a bona fide medical emergency, Respondent may use the habit-forming drug or controlled substance as prescribed by the authorized person, but must notify the treatment monitor within 24 hours of the use and obtain written approval from the treatment monitor for continued use of the habit-forming drug or controlled substance.

12. Approvals for the use of habit-forming drugs or controlled substances made by the treatment monitor shall go only to the particular medication, indication, dosage and amount of refills understood and acknowledged by the treatment monitor. The burden shall be on the Respondent to assure that the treatment monitor understands fully the drug regimen the treatment monitor is approving.

TREATMENT MONITORING

13. Respondent shall receive such medical treatment as is determined to be appropriate by the Colorado Physician Health Program ("CPHP"). All treatment recommendations by CPHP shall constitute terms of this Order. CPHP shall also function as the "treatment monitor" as that term is used in this Order and CPHP shall monitor Respondent's compliance with this Order in the following manner:

a. CPHP shall test Respondent's urine to insure compliance with this Order. CPHP shall require Respondent to submit to urine tests on randomly selected days on a frequency of twelve times per month. Upon notice to Respondent by CPHP that a urine sample must be given, Respondent must provide a urine sample as soon as possible, but in no event later than 7:00 p.m. that same day. Within these guidelines, CPHP shall make reasonable effort to insure that the Respondent will not be able to predict which days Respondent will be tested. CPHP shall take all reasonable measures, including observation of the giving of the urine sample, to insure that the urine testing is effective.

b. CPHP shall submit quarterly written reports to the Panel. The reports shall briefly describe Respondent's treatment with CPHP. The reports shall also state whether Respondent is in compliance with this Order. If at any time CPHP has reasonable cause to believe that Respondent has violated the terms of this Order, is unable to practice with skill and with safety to patients or has committed unprofessional conduct as defined in § 12-36-117(1), CPHP shall immediately inform the Panel.

14. Nothing in this agreement shall limit the ability of CPHP to test more frequently or for more substances than set forth above or to impose any other condition as part of its treatment of Respondent.

15. Respondent shall complete a release permitting CPHP to disclose to the Panel all privileged information concerning Respondent in its possession, including information generated by other sources. Any revocation of such release by Respondent shall constitute a violation of this Order.

16. If at any time, CPHP feels that any of the above requirements are no longer necessary to Respondent's recovery or to insure Respondent can practice with skill and with safety to Respondent's patients, CPHP may petition the Panel to relax the above requirements. If the Panel agrees to such a relaxation, it shall so inform CPHP by written notice. Thereafter, Respondent may comply with this Order as set forth in that notice.

PRACTICE MONITORING

17. Respondent's medical practice at all office and hospital locations in Colorado shall be monitored by a "practice monitor." The practice monitor shall be a physician licensed and currently practicing medicine in Colorado. The practice monitor must be knowledgeable in Respondent's area of practice. Most importantly, the practice monitor must function as the eyes of the Board and must not feel an allegiance to Respondent that would prevent a fair and impartial review of Respondent's practice to insure that Respondent is practicing within the standard of care and in compliance with this Order. The practice monitor shall have no financial interest in Respondent's practice of medicine. The practice monitor may be selected by Respondent but must be approved by the Panel. Prior to the Panel's approval, the practice monitor shall submit to the Panel a current curriculum vitae and letter to the Panel. In the letter, the practice monitor shall state that the practice monitor has read this Order, and understands and agrees to perform the obligations as set forth herein.

18. The practice monitor shall perform the following:

a. At least once each month, the practice monitor shall visit all the offices at which Respondent practices medicine, and review at least five charts maintained by Respondent. The practice monitor shall make reasonable efforts to insure that Respondent has no notice of which charts will be selected for review. The practice monitor is authorized to review such other medical records maintained by Respondent as the practice monitor deems appropriate.

b. At least once each month, the practice monitor shall review at least five hospital charts of patients whom Respondent has admitted to hospitals. If Respondent has admitted fewer than five patients to the hospital in the previous month, the practice monitor shall review all the patients so admitted, if any. The practice monitor shall make reasonable efforts to insure that Respondent has no notice of which charts will be selected for review. The practice monitor is authorized to review such other hospital charts as the practice monitor deems appropriate.

c. The practice monitor shall submit quarterly written reports to the Panel.

d. The practice monitor's reports shall include the following:

(1) a description of each of the cases reviewed;

(2) a description of the condition of Respondent's office facilities.

(3) the practice monitor's opinion whether Respondent is practicing medicine in accordance with generally accepted standards of medical practice; and

(4) any indication that Respondent has violated a term of this Order.

19. If at any time the practice monitor believes Respondent is not in compliance with this Order, is unable to practice with skill and with safety to patients or has committed unprofessional conduct as defined in § 12-36-117(1), C.R.S., the practice monitor shall immediately inform the Panel.

20. Respondent shall nominate the practice monitor within 30 days of the effective date of this Order. Respondent shall insure that all reports by the practice monitor are complete and are submitted to the Panel on time. If, in the Panel's judgment, the practice monitor fails to perform the functions contemplated by this Order, the Panel may require that a new practice monitor

assume the responsibilities specified herein. If Respondent becomes aware that the practice monitor has ceased to perform the functions contemplated by this Order, Respondent shall nominate a new monitor within 30 days.

21. Respondent may petition the Panel to discontinue practice monitoring if, after 18 months of practice, the practice monitor has identified no instances of unprofessional conduct, violations of this Order or conduct which does not conform to generally accepted standards for the practice of medicine in Respondent's specialty.

OTHER TERMS

22. All costs and expenses incurred by Respondent to comply with this Order shall be the sole responsibility of Respondent, and shall in no way be the obligation of the Board or Panel.

23. Respondent shall obey all state and federal laws during the probationary period ordered herein.

24. If, at any time during the probationary period, Respondent does not have in effect a policy of medical malpractice insurance in compliance with § 13-64-301, C.R.S., Respondent shall immediately notify the Panel in writing.

25. At the completion of the probationary term ordered herein, including any extension required by this paragraph, Respondent may make a written request to the Panel to restore Respondent's license to unrestricted status. With such request, Respondent shall supply any outstanding reports from practice or treatment monitors. If Respondent has complied with the terms of probation, such release shall be granted by the Panel in the form of written notice. Absent such written notice from the Panel, Respondent shall continue to comply with the probationary terms. The period of probation shall be tolled by any period of time during which:

a. Respondent is not engaged in the clinical practice of medicine in Colorado;

b. Respondent is not being monitored as required by the terms of this Order; or

c. Respondent is not in compliance with any other term of this Order.

26. Respondent shall report to the Board when gaining hospital privileges so that the Board may notify the hospital pursuant to § 12-36-118(13), C.R.S. Respondent presently holds privileges at the following hospitals:

REHABILITATION HOSPITAL OF COLORADO SPRINGS
MEMORIAL HOSPITAL
PENROSE / ST. FRANK HOSPITALS

27. This Order and all its terms shall have the same force and effect as an order entered after a formal disciplinary hearing pursuant to § 12-36-118(5)(g)(III), C.R.S. Failure to comply with the terms of this Order may be sanctioned by the Inquiry Panel as set forth in § 12-36-118(5)(g)(IV), C.R.S. This Order and all its terms also constitute a valid board order for purposes of § 12-36-117(1)(u), C.R.S.

28. This Order shall be admissible as evidence at any future hearing before the Board.

29. This Order shall be effective upon approval by the Panel and signature by a Panel member. Respondent acknowledges that the Panel may choose not to accept the terms of this Order and that if the Order is not approved by the Panel and signed by a Panel member, it is void.

30. Upon becoming effective, this Order shall be open to public inspection and shall be reported as required by law.

[Signature]
Respondent

2233 ACADEMY PARK SUITE 201

CONCORD SPRINGS, CO 80307
Address

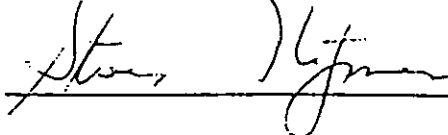
The foregoing was acknowledged before me this 1st day of March, 1997 by John M. Tyler, Jr., M.D.

[Signature]
NOTARY PUBLIC

My Commission expires:-
10-10-98

THE FOREGOING Stipulation and Final Agency Order is approved and effective this 20th day of MARCH, 1997.

FOR THE COLORADO STATE BOARD OF
MEDICAL EXAMINERS
INQUIRY PANEL B



APPROVED AS TO FORM:

FOR THE RESPONDENT

FOR THE BOARD OF MEDICAL
EXAMINERS

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Attorney General

MARTHA PHILLIPS ALLBRIGHT
Chief Deputy Attorney General

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