

NAME: FRANCIS WILLIAM MUELLER

TMB Actions

The Texas Medical Board has the following board actions against this individual. (This may include any formal complaints filed by TMB, as well as petitions and/or responses related to licensure contested matters, at the State Office of Administrative Hearings.)

Action Date: 10/29/2013

Description: STATUS CLEARED 10/29/2013

Action Date: 10/29/2010

Description: ON OCTOBER 29, 2010, THE BOARD AND FRANCIS WILLIAM MUELLER, M.D., ENTERED INTO A THREE-YEAR AGREED ORDER PUBLICLY REPRIMANDING DR. MUELLER AND RESTRICTING HIM FROM PRESCRIBING OR DISPENSING SCHEDULE II DRUGS IN AN OUT-PATIENT SETTING. IN ADDITION, DR. MUELLER MUST COMPLETE WITHIN ONE YEAR 12 HOURS OF CME IN THE TREATMENT OF SUBSTANCE ABUSE; AND PAY AN ADMINISTRATIVE PENALTY OF \$5,000 WITHIN 30 DAYS. THE BASIS FOR ACTION WAS DR. MUELLER'S FAILURE TO COMPLY WITH BOARD GUIDELINES FOR TREATMENT OF PAIN; FAILURE TO MEET THE STANDARD OF CARE AND SAFEGUARD AGAINST POTENTIAL COMPLICATIONS; DISHONORABLE CONDUCT AND NON-THERAPEUTIC PRESCRIBING IN HIS TREATMENT OF A PATIENT WITH A HISTORY OF OVERDOSES AND SUICIDE ATTEMPTS.

LICENSE NO. G-5412

IN THE MATTER OF
THE LICENSE OF
FRANCIS WILLIAM MUELLER, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 29 day of October, 2010, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Francis William Mueller, M.D. ("Respondent").

On June 22, 2010, Respondent appeared in person, with counsel Edward P. Waller Jr., 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 John D. Ellis, a member of the Board, and Harry K. Wallfisch, M.D., a member of a District Review Committee. Kyle Smith, represented Board staff.

BOARD CHARGES

Board Staff charged that Respondent failed to properly evaluate, and treat, including prescribing methadone, to a patient. Respondent also failed to provide follow-up and communicate with the patient's family regarding the methadone treatment.

BOARD HISTORY

Respondent has previously not been the subject of disciplinary action by the Board.

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. G-5412. Respondent was originally issued this license to practice medicine in Texas on August 27, 1983. Respondent is not licensed to practice in any other state
- c. Respondent is primarily engaged in the practice of family practice. Respondent is board certified by the American Board of family practice, a member of the American Board of Medical Specialties.
- d. Respondent is 52 years of age.

2. Specific Panel Findings:

Standard of Care:

- a. Respondent saw the patient regularly from June 2000 to July 2009.
- b. The patient had a history of overdoses or suicidal ideation; substance abuse; non-compliance; and suicide attempts with recent thoughts of helplessness and isolation.
- c. Respondent prescribed Methadone to patient without appropriate training in the use of the medication.
- d. Respondent's delegation of medication distribution to the patient's mother was inappropriate in view of patient's history of stealing medications from his mother.
- e. Family members of the patient called and informed Respondent that they could not wake the patient and that they were not sure how many pills he had taken.

- f. Respondent failed to appropriately assess patient at the time of the overdose and should have insisted that the patient be sent to the emergency room based on the patient's symptoms and that he was unable to ascertain the amount of methadone or other drugs that the patient had ingested.

3. Mitigating Factors:

In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:

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 a rule adopted under this Act, specifically Board Rule 170.3, failure to comply with Board guidelines for treatment of pain.
3. 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, as further defined by Board Rules: 190.8(1)(A), failure to treat patient according to the generally accepted standard of care; 190.8(1)(B), negligence in performing medical services; 190.8(1)(C), failure to use proper diligence in one's professional practice; 190.8(1)(D), failure to safeguard against potential

complications; 190.8(1)(G), failure to disclose reasonably foreseeable side effects; and 190.8(1)(H), failure to disclose reasonable alternative treatment.

4. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive, defraud or injure the public.

5. Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug or treatment that is non-therapeutic in nature or non-therapeutic in the manner the drug or treatment is administered or prescribed.

6. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing, administering, or dispensing in a manner inconsistent with public health and welfare.

7. 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.

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

9. 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 Respondent shall be subject to the following terms and conditions for a period of three years:

1. This Agreed Order shall constitute a PUBLIC REPRIMAND of Respondent, and Respondent is hereby reprimanded.

2. Respondent's Texas license is hereby RESTRICTED under the following terms and conditions for three years from the date of the signing of this Agreed Order by the presiding officer of the Board: The Respondent is restricted from issuing prescriptions for or dispensing Schedule II, narcotic drugs in an out-patient setting.

3. Within one 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 topic of treatment of

substance abuse , and 8 hours of CME in the topic of professional boundaries. All CME is to 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.

4. Respondent shall pay an administrative penalty in the amount of \$5000 within 30 days of 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.

5. The time period of this Order shall be extended for any period of time that: (a) Respondent subsequently practices exclusively outside the State of Texas; (b) Respondent's license is subsequently cancelled for nonpayment of licensure fees; (c) this Order is stayed or enjoined by Court Order; or (d) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine. If Respondent leaves Texas to practice elsewhere or ceases active practice for more than 60 consecutive days, Respondent shall immediately notify the Board in writing. Upon Respondent's return to active practice or return to practice in Texas, Respondent shall notify the Board in writing. 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 Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of extension or tolling.

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 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).

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 permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants.

11. The above referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for one year following the date of the entry of this Order. If, after the passage of the one-year 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, FRANCIS WILLIAM MUELLER, 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: 9/30, 2010.

Francis W. Mueller

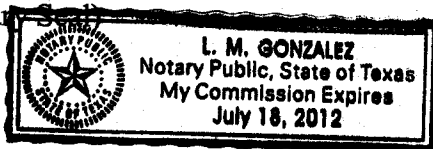
FRANCIS WILLIAM MUELLER, M.D.
Respondent

STATE OF Texas §
COUNTY OF Bexar §
§

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 30 day of September, 2010.

L. M. Gonzalez
Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
29 day of October, 2010.

Melinda McMichael MD for
Irvin E. Zeitler, Jr., D.O., President
Texas Medical Board