

LICENSE NO. D-2355

IN THE MATTER OF  
THE LICENSE OF  
ROBERT MCREE BATTLE, M.D.

BEFORE THE  
  
TEXAS MEDICAL BOARD

AGREED ORDER ON FORMAL FILING

On the 14 day of June, 2019, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Robert Battle, M.D. (Respondent).

On November 16, 2017, Respondent appeared in person, with counsel, John Richardson, 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 Surendra Varma, M.D., and Luann Morgan, both members of the Board (Panel). Ann Skowronski represented Board staff.

The matter did not settle and was filed at the State Office of Administrative Hearings under docket number 503-18-5102. Prior to a hearing on the merits, the parties engaged in direct negotiation and agreed to this Order. The Board was represented by Surendra Varma, M.D. Respondent was represented by John Richardson. Jerry Bergman prepared this Order.

BOARD CHARGES

Board staff charged that Respondent violated the standard of care during the treatment of one patient.

BOARD HISTORY

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

1. On October 26, 1990, Respondent received a public reprimand and was placed on probation for two years under the following terms: 50 hours of continuing medical education; and perform physical examination & take history before performing other test on or treating any patient. The order was based on Respondent violating statutes and rules related to the provision of complementary and alternative treatment.

2. On December 8, 2006, an Agreed Order (2006 Order) was entered based on Respondent's unprofessional conduct in terminating a physician-patient relationship. Respondent was required to pay an administrative penalty of \$1,000.

3. On November 6, 2009, a Mediated Agreed Order (2009 Mediated Agreed Order) was entered based on the Respondents use of test and treatments not generally recognized in traditional medicine practice and inadequate medical records. Respondent was required to take 20 hours of CME divided as follows: ten hours in medical record keeping and ten hours in family practice; Respondent was required to maintain adequate medical records and submit to an evaluation of the charts by a one-time monitor; within 90 days, create an informed consent form to be provided to complementary and alternative medicine patients to be approved by TMB's Executive Director; and provide patients with a brochure or handout of estimated cost of treatments before engaging in treatment.

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. D-2355. Respondent was originally issued this license to practice medicine in Texas on August 14, 1965.
- c. Respondent is primarily engaged in Complementary and Alternative Medicine.

2. Specific Panel Findings:

- a. Respondent violated the standard of care during the treatment of one patient.
- b. Respondent failed to adequately maintain records for the provision of complementary and alternative medicine during the treatment of one patient.

3. Mitigating Factors:

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

- a. The patient and family believed that the care provided by Respondent was exemplary due to the attentive care and diligence of Respondent throughout the entire treatment process.
- b. There was a Complementary and Alternative Medicine peer review that opined the standard of care was met.
- c. Respondent has cooperated in the investigation of the allegations related to this Agreed Order.
- d. Respondent neither admits nor denies the information given above. 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 violation of Board Rules 165.1(a), failure to maintain adequate medical records.

3. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent for 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 of a procedure or treatment; and 190.8(1)(H), failure to disclose reasonable alternative treatments to a proposed procedure or treatment, 190.8(1)(I), failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, or procedures; and 190.8(1)(K), prescription or administration of a drug in a manner that is not in compliance with

Chapter 200 of this title (relating to Standards for Physicians Practicing Complementary and Alternative Medicine).

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.

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 and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

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

2. Within 30 days of the date of the entry of this Order, Respondent shall provide a copy of any and all consent forms utilized in his practice to the Compliance Division of the Board for review and approval by the Medical Director of the Board.

3. Within one year following the date of the entry of this Order, Respondent shall take and pass with a score of 75 or above the Medical Jurisprudence Examination ("JP Exam") given by the Texas Medical Board. Respondent is allowed three attempts to successfully pass this examination.

Respondent's failure to take and pass the JP Exam within three attempts within one year following the date of the entry of this Order shall constitute a violation of this Agreed Order. After a committee of the Board or a panel of Board representatives (Board Representatives), has considered the information related to Respondent's violation of this provision and has determined that Respondent has not fulfilled the requirements of this provision, Respondent's medical license shall be IMMEDIATELY SUSPENDED pursuant to correspondence to Respondent from the Executive Director or Secretary Treasurer of the Board indicating that Board Representatives have considered the information related to Respondent's violation of this provision and have determined that Respondent has not fulfilled the requirements of this provision. Although Respondent shall be invited to provide information or testimony to the

Board Representatives, Respondent specifically waives any administrative due process under the Medical Practice Act, or the Administrative Procedure Act, for the Board Representatives to consider this information. THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE MEDICAL PRACTICE ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS AND ALL RIGHTS OF APPEAL. Respondent shall be notified of any suspension by certified mail, return receipt requested to Respondent's last known address on file with the Board. If Respondent's license is suspended on such a basis, the suspension shall remain in effect until such time as Respondent takes and passes the JP Exam and subsequently appears before the Board in person and provides sufficient evidence which, in the discretion of the Board, is adequate to show that Respondent possesses the skills and knowledge to safely practice in Texas and is otherwise physically and mentally competent to resume the practice in this state.

4. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete, at least 16 hours of continuing medical education (CME) approved for Category I credits by the American Medical Association or American Osteopathic Association; divided as follows: 8 hours in risk management and 8 hours in medical recordkeeping, approved in writing in advance by the Executive Director or a designee. To obtain approval for the course, Respondent shall submit in writing to the Compliance Department 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 Department 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.

5. At all times while Respondent is under the terms of this Order, Respondent shall give a copy of this Order to all hospitals, nursing homes, treatment facilities, and other health care entities in Texas where Respondent has privileges, has pending an application for privileges, applies for privileges, or otherwise practices. Within 30 days of being first contacted by the Compliance Division of the Board following entry of this Order, Respondent shall provide to the

Compliance Division of the Board documentation, including proof of delivery that the Order was delivered to all such facilities.

6. Pursuant to Board Rule 189.15, 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) this Order is stayed or enjoined by Court Order; or (c) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine and such cessation in practice is NOT due to a suspension of Respondent's license. Respondent shall immediately notify the Board in writing in the event that Respondent leaves Texas to practice elsewhere or ceases active practice for more than 60 consecutive days. Upon Respondent's return to active practice or return to Texas, Respondent shall notify the Board in writing. Upon return to Texas or active practice, 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. Tolling shall be in accordance with Board Rule 189.15.

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

8. 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.

9. 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 Respondent 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 45-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).

10. 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.

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

12. 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 - 5.

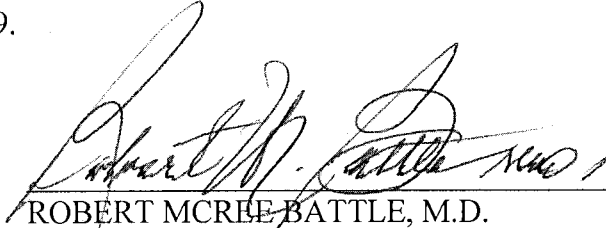
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

**(SIGNATURE PAGES FOLLOW)**

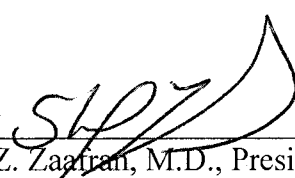
I, ROBERT MCREE BATTLE, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 3/29/19, 2019.

  
ROBERT MCREE BATTLE, M.D.  
Respondent



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this  
14 day of June, 2019.

  
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Sherif Z. Zafran, M.D., President  
Texas Medical Board