

IN THE MATTER OF
THE LICENSE OF
JUDSON J. SOMERVILLE, M.D.

BEFORE THE DISCIPLINARY PANEL
OF THE
TEXAS MEDICAL BOARD

ORDER OF TEMPORARY RESTRICTION
(WITH NOTICE OF HEARING)

On December 10, 2013, at the direction and approval of Irvin E. Zeitler, Jr., D.O., President of the Board, three members of the Texas Medical Board ("Board"), Paulette Southard, Chair, Stanley S. Wang, M.D. and Devinder Bhatia, M.D., were appointed to sit as a Disciplinary Panel ("Panel") in this matter, pursuant to §164.059(a) of the Medical Practice Act ("the Act") and 22 TEX. ADMIN. CODE §187.56. Judson J. Somerville, M.D. ("Respondent") appeared in person and with counsel, Karin M. Zaner, Dan Lype and David K. Line. Barbara Jordan and Christopher Palazola represented Board staff. Based on evidence submitted, the Board through this Panel makes the following Findings of Fact and Conclusions of Law and enters this Order of Temporary Restriction.

FINDINGS

1. Respondent is a Texas physician and holds Texas Medical License No. H-6622, issued by the Board on December 6, 1989, which was in full force and effect at all times material and relevant to this Order. All jurisdictional requirements have been satisfied.
2. At the direction and approval of Irvin E. Zeitler, Jr., D.O., President of the Board, three members of the Board, Paulette Southard, Chair, Stanley S. Wang, M.D. and Devinder Bhatia, M.D., were appointed to sit as a Panel in this matter, pursuant to §164.059(a) of the Act and 22 TEX. ADMIN. CODE §187.56.
3. The Panel convened with Notice, pursuant to §164.059(c) of the Act.

4. Respondent practices in Laredo, Texas. On his public profile, Respondent lists his primary specialty as Anesthesiology.

5. Respondent operates pain management clinics in Corpus Christi and Laredo, Texas.

6. Respondent does not hold any pain management clinic registrations with the Texas Medical Board.

7. Board staff conducted audits of Respondent's clinics for the period of June 1, 2013, through June 30, 2013. Based on these audits, which demonstrate that more than 50% of the patients seen were treated for pain with prescriptions only, these clinics should be registered as pain management clinics.

8. During this investigation the Board conducted a site visit at one of Respondent's clinics and found more than 100 prescription forms that had been pre-signed by Respondent, including 93 pre-signed prescription forms for Schedule II medications and 12 prescription forms for Schedule III-V medications.

9. Respondent's employees gave sworn statements to Board investigators regarding Respondent's use of pre-signed prescription forms. Respondent authorized medical assistants in his office to fill out pre-signed prescriptions, including triplicate prescriptions for Schedule II controlled substance medications, and distribute them to patients in Respondent's absence. The employees were permitted to write these prescriptions for previously prescribed medications only.

10. Pharmacy records show that dozens of prescriptions for controlled substances were written for patients while Respondent was on vacation from April 15-19, 2013 and July 22-26, 2013. These prescriptions generally were new prescriptions for medications the patient had previously received from Respondent.

11. During the Board investigators' visit to Respondent's clinics, it was noted that controlled substance medications were stored throughout the office in an unsecured fashion. For example, Board investigators noted that tubes of Baclofen, Fentanyl, Hydromorphone, and

Morphine, purportedly for patients' pending pain pump refills, were stored in a staff member's unlocked desk drawer.

12. Three patients of Respondent died in the latter half of 2012. Respondent's own experts testified that prescription medications, likely provided by Respondent, may have been a contributing factor in the deaths. The official cause of death for each of the patients listed on their death certificates was drug toxicity, including drugs prescribed to the patients by Respondent.

13. Respondent's care and treatment of 36 patients fell below the standard of care. Respondent prescribed high doses of controlled substance medications to the patients, but did not adequately monitor the patients, including prescribing new medications or changes in medication by telephone encounter, failing to conduct timely periodic reviews to assess the patients' progress, and failing to document the indication and benefit of escalating doses or changing medications.

14. Five patients gave urine samples that were either positive for drugs other than prescribed medications or negative for prescribed medications, indicating the patients were not compliant with their treatment. However, Respondent continued to prescribe controlled substance drug therapy to the patients.

15. Respondent's continued practice of medicine, including his involvement in the improper and illegal operation of pain clinics, and including the method and manner in which controlled substances were prescribed at those pain clinics, poses a continuing threat to public welfare.

Based on the above Findings of Fact, the Panel finds an imminent peril to the public health, safety, or welfare that requires immediate effect of this Order of Temporary Restriction on the date rendered.

CONCLUSIONS OF LAW

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

1. Section 164.059 of the Act authorizes the Panel to temporarily suspend or restrict the medical license of Respondent if the Panel determines from evidence presented to it that the Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.

2. Based on the evidence presented and the Findings of Fact set forth herein, the Panel finds that Respondent violated various sections of the Medical Practice Act, specifically:

- a. Respondent has committed a prohibited act or practice within the meaning of Section 164.051(a)(1) of the Act based on Respondent's commission of an act prohibited under Section 164.052 of the Act;
- b. Respondent has committed a prohibited act or practice within the meaning of Section 164.051(a)(3) of the Act based upon Respondent's violation of a rule adopted under this Act, specifically, Board Rules 170.3, failure to adhere to those established guidelines and requirements for the treatment of pain; and 195.4(c) operation of a pain management clinic without meeting the requirements of the Act;
- c. Respondent has committed a prohibited act or practice within the meaning of Section 164.051(a)(6) of the Act based upon 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 a 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;
- d. Respondent has committed a prohibited act or practice within the meaning of Section 164.052(a)(5) of the Act based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public, as further defined by Board Rule 190.8(2)(R), commission of a

violation of state or federal law whether or not there is a complaint, indictment, or conviction;

- e. Respondent has committed a prohibited act or practice within the meaning of Section 164.053(a)(1) of the Act based upon Respondent's commission of an act that violates state or federal law if the act is connected to the practice of medicine, specifically, TEX. HEALTH & SAFETY CODE §481.129(c), related to prescribing controlled substances without a valid medical purpose and TEX. OCC. CODE Section 107.104, related to documentation and consultation required to treat intractable pain;
- f. Respondent has committed a prohibited act or practice within the meaning of Section 164.053(a)(3) of the Act based upon Respondent writing prescriptions for or dispensing to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs or to a person who the physician should have known was an abuser of the narcotic drugs, controlled substances, or dangerous drugs;
- g. Respondent has committed a prohibited act or practice within the meaning of TEX. OCC. CODE Section 107.052 and Section 164.053(a)(5) of the Act based upon Respondent prescribing or administering a drug or treatment that is nontherapeutic or not for a legitimate medical purpose;
- h. Respondent has committed a prohibited act or practice within the meaning of Section 164.053(a)(6) of the Act based upon Respondent prescribing, administering, or dispensing in a manner inconsistent with public health and welfare dangerous drugs as defined by Chapter 483, Health and Safety Code; or controlled substances scheduled in Chapter 481, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. Section 801 et seq.);
- i. Respondent has committed a prohibited act or practice within the meaning of Section 164.053(a)(8) of the Act based upon Respondent's failure to supervise adequately the activities of those acting under the supervision of the physician;

- j. Respondent has committed a prohibited act or practice within the meaning of Section 168.202 of the Act based upon Respondent's failure to comply with Board regulations regarding operation of pain management clinics;
4. Based on the evidence presented and the above Findings of Fact and Conclusions of Law, the Panel determines that Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.

ORDER

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

1. Respondent's Texas Medical License No. H-6622 is hereby TEMPORARILY RESTRICTED.

2. Respondent shall limit Respondent's pain management practice to interventional procedures performed in an outside surgical facility. Respondent shall not perform office based procedures.

3. Respondent shall not administer, dispense, prescribe or refill a prescription for any controlled substance taken orally in Schedules II, III, IV or V identified in the Health and Safety Code, Chapter 481.

4. This Order of Temporary Restriction (WITH NOTICE OF HEARING) is effective on the date rendered.

3. Notice of this Order of Temporary Restriction (WITH NOTICE OF HEARING) shall be given immediately to Respondent.

4. This Order of Temporary Restriction (WITH NOTICE OF HEARING) shall remain in effect until it is superseded by a subsequent Order of the Board.

Signed and entered this December 11, 2013.



Paulette Southard, Chair
Disciplinary Panel
Texas Medical Board