

LICENSE NO. L-4728

IN THE MATTER OF

BEFORE THE

THE LICENSE OF

GARY WAYNE SPANGLER, JR., M.D.

TEXAS MEDICAL BOARD

AGREED ORDER

On the 15 day of June, 2018, came to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Gary Wayne Spangler, Jr., M.D. (the "Respondent").

On November 16, 2017, Respondent appeared in person with counsel, Jennifer Papapanagiotou, 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 Surendra Kumar Varma, M.D. and LuAnn Morgan, members of the Board (the "Panel"). Ann Skowronski represented Board staff. Michelle A. McFaddin negotiated this Agreed Order.

BOARD CHARGES

Board staff charged that Respondent had a standing operating procedure to distribute blank pre-signed triplicates to his mid-level delegates who performed home visits for patients.

BOARD HISTORY

Respondent has not previously received a disciplinary order from 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 Tex. Admin. Code, Title 22, Part 9 ("Board Rules").
- b. Respondent currently holds Texas Medical License No. L-4728. Respondent was originally issued this license to practice medicine in Texas on August 16, 2002. Respondent is not licensed to practice in any other state.
- c. Respondent is primarily engaged in the practice of family medicine. Respondent is board certified by the American Board of Family Medicine, a member of the American Board of Medical Specialties.
- d. Respondent is 51 years of age.

2. Specific Panel Findings:

- a. Before changes to applicable statutes in 2013, it was permissible for a physician to pre-sign triplicate prescriptions for controlled substances for use at sites serving medically underserved populations. Respondent's office has been designated by the Texas Department of State Health Services as serving a medically underserved population.
- b. Respondent was unaware of a statutory change in 2013, which prohibits the pre-signing of triplicate prescriptions at sites serving medically underserved populations. As a result, Respondent continued to have a standing practice of pre-signing prescriptions for his mid-levels after 2013.

3. Mitigating Factors:

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

- a. Respondent accepted responsibility for having been unaware of the statutory changes in 2013. Once this issue came to Respondent's attention, Respondent changed his protocols and is no longer pre-signing prescriptions for his mid-levels.

- b. Respondent practices at a site serving a medically underserved population.
- c. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. 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 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine, specifically:
 - a. 37 TAC § 13.185(b)(2), prohibiting a practitioner from pre-signing a prescription form for a controlled substances.
 - b. 37 TAC § 13.185(b)(ii) prohibiting a physician from leaving an official prescription blank in a location where the practitioner should reasonably believe another person could steal or misuse a prescription.
 - c. 37 TAC § 13.185(c) prohibiting a physician from maintaining or storing the book at a location so the book is easily accessible for theft or other misuse while an official prescription blank is not in immediate use.
 - d. 21 CFR § 1306, prohibiting a practitioner from pre-signing a prescription for a controlled substance.
 - e. 21 CFR § 1306.05, requiring all prescriptions for controlled substances shall be dated as of, and signed on, the day when issued bearing the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address, and registration number of the practitioner.

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.

5. 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. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least eight hours of continuing medical education (CME) approved for Category I credits by the American Medical Association or American Osteopathic Association in risk management, approved in writing in advance by the Board. 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.

2. 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.

3. 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 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 proving that the Order was delivered to all such facilities.

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

5. 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.

6. 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 45-day notice requirement provided by Section 164.003(b)(2) of the Act and agrees to 10 days' notice, as provided in Board Rule 187.44(4).

7. 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.

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

9. 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, 2, and 3.

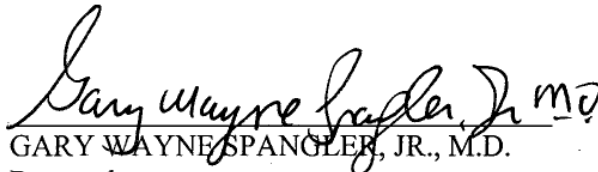
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

(SIGNATURE PAGES FOLLOW)

I, GARY WAYNE SPANGLER, 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: 5/03, 2018.

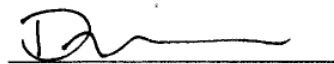

GARY WAYNE SPANGLER, JR., M.D.
Respondent

STATE OF TEXAS

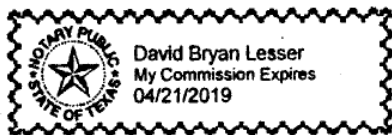
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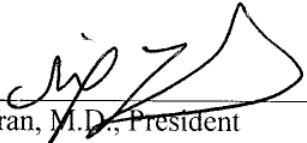
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 3 day of MAY, 2018.


Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the president of the Texas Medical Board on this 15
day of June, 2018.



Sherif Zaafran, M.D., President
Texas Medical Board