LICENSE NO. H-7724

IN THE MATTER OF
THE LICENSE OF
BARBARA DOYLE MARINO, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

MEDIATED AGREED ORDER

On the _______ day of ____________________, 2012, came on to be heard before the Texas Medical Board (the “Board”), duly in session, the matter of the license of Barbara Doyle Marino, M.D. (“Respondent”).

On February 22, 2011, Respondent appeared in person, with counsel Tony A. Cobos, 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 Timothy J. Turner and Allan Shulkin, M.D., members of the Board (“Panel”). Joseph M. Tabaracci represented Board staff.

On July 6, 2011, Respondent appeared in person at an ISC, with counsel Tony A. Cobos, in response to a letter of invitation from the staff of the Board. The Board’s representatives were Manuel Guajardo, M.D., and David Baucom, members of the Board. Sandra M. Zimmerman represented Board staff.

On December 15, 2011, Respondent appeared in person at an ISC, with counsel Tony A. Cobos, in response to a letter of invitation from the staff of the Board. The Board’s representatives were Melinda McMichael, M.D., a member of the Board, and Russell Parker, a member of a District Review Committee. Joseph M. Tabaracci represented Board staff.

On September 13, 2012, Respondent appeared in person at an ISC, with counsel Tony A. Cobos, in response to a letter of invitation from the staff of the Board. The Board’s representatives were Allan Shulkin, M.D., and Carlos Gallardo, members of the Board. Robert Blech represented Board staff.

A formal complaint was subsequently filed at the State Office of Administrative Hearings (“SOAH”). Prior to the matter going to hearing the matter was referred to mediation. As a result of the mediation this order was agreed upon. John R. Guerra, D.O. represented the Board at the
Mediated Settlement Conference. Tony A. Cobos represented Respondent. Claudia Kirk represented Board staff.

BOARD CHARGES

Respondent failed to meet the standard of care and had inadequate documentation for four patients for whom she performed cosmetic surgical procedures. Additionally, Respondent used misleading and deceptive advertising.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board. On April 7, 2006, the Board entered a five-year Agreed Order ("2006 Order") that required Respondent to have a chart monitor, undergo the National Board of Medical Examiner Post-Licensure Assessment, and complete 20 hours of continuing medical education ("CME") in the subject of gynecological complications and 20 hours of CME in the subject of high risk obstetrics. The Board’s action was based upon findings that Respondent failed to meet the standard of care and maintained inadequate medical records for three patients.

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 that:

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. H-7724. Respondent was originally issued this license to practice medicine in Texas on August 17, 1990. Respondent is not licensed to practice in any other state.

c. Respondent is primarily engaged in the practice of cosmetic surgery. Respondent is board certified by the American Board of Obstetrics and Gynecology, a member of the American Board of Medical Specialties.

d. Respondent is 50 years of age.

2. Specific Findings:

a. Patient 1:

i. Respondent performed several cosmetic procedures on Patient 1 in her office. It took Respondent 7.5 hours to complete the procedures, and the patient spent approximately 11 hours in Respondent’s office preparing and completing the procedures.

ii. Respondent’s medical records lacked documentation that the patient’s vital signs were monitored throughout the surgery.

b. Patient 2:

i. Respondent performed “smart liposuction” on the patient’s arms, stomach, back, and thighs as out-patient procedures. Due to previous liposuction procedures the patient had obvious areas of over-resection, poor skin re-draping and retraction, persistent laxity and redundancy.

ii. Respondent exposed the patient to an excessive level of Lidocaine and Epinephrine.

c. Patient 3:

i. Respondent performed liposuction although the patient had a body mass index (“BMI”) of 36.4.

ii. Respondent used a Fentanyl patch for post-operative pain control although it is not a common medication in the clinical cosmetic setting.
iii. Respondent indicated that she used the patch because the patient did not respond to traditional pain medication and that the use of the patch was an isolated occurrence.

iv. The patient expired two days after the procedure was done. The medical examiner determined the cause of death was acute toxicity due to the combined effects of Fentanyl, Tramadol, Diazepam, and Promethazine. Respondent provided an expert opinion from a Board certified toxicologist that the drugs administered to Patient 3 did not contribute to his death. Based on the lab results in the autopsy report, the opinion stated that the tranquilizers were found only in trace amounts and the narcotics were within the therapeutic range.

d. **Patient 4:**

   Respondent performed two breast fat graft augmentation procedures on the patient without adequately informing the patient that she may form cysts or nodules in the graft area as a possible complication from the procedure. Patient subsequently developed prominent cysts and nodules in the graft area that resulted in a poor contour.

e. **Deceptive and Misleading Advertising:**

   Respondent disseminated advertising statements that were misleading.

3. **Mitigating Factors:**

   a. Respondent completed eight (8) cycles of chart monitoring ending in 2010 to comply with a recently terminated previous order. The chart monitor did not identify any significant findings of violations in recordkeeping or the standard of care.

   b. Respondent completed risk management and patient communication CME to comply with a recently terminated previous order. Respondent has also completed numerous CME on cosmetic procedures.

   c. Respondent has made significant improvements to her practice of recordkeeping, including a comprehensive operative report.
d. Respondent stated that she filed for Chapter 11 bankruptcy in July 2012.

e. Respondent has received additional education in the topic of tumescent anesthesia and has reduced the amount of Lidocaine utilized for procedures performed with this type of anesthesia in her practice.

f. While Respondent met the standard of care with regard to the “smart liposuction” procedure performed on Patient 2, Respondent was not aware that the equipment was not operating optimally and admits the technology did not work as well as hoped.

g. Respondent provided an expert opinion from a Board certified toxicologist that the drugs administered to Patient 3 did not contribute to his death. However, Respondent admits that sending the patient home with a Fentanyl patch was not good practice and no longer utilizes Fentanyl patches in her practice.

h. Respondent does not admit or deny the Findings and Conclusions of Law set forth in this Agreed Order. However, Respondent has cooperated with Board staff 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 of 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, 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 Rules: 165.1, rules regarding the maintenance of adequate medical records; 164.3, misleading or deceptive advertising.

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 a patient according to the generally accepted standard of care; and 190.8(1)(G), failure to disclose reasonably foreseeable side effect of a procedure or treatment.

4. Section 164.052(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent using an advertising statement that is false, misleading, or deceptive.

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 nontherapeutic in nature or nontherapeutic 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, dangerous drugs as defined by Chapter 483, Health and Safety Code; or controlled substances scheduled in Chapter 481 Health and Safety Code; or controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. § 801 et seq.).

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. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

8. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.
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. Respondent shall observe 30 hours of cosmetic procedures within six months after the entry of this Order. The procedures must be performed in a surgical suite by a Board-approved plastic or cosmetic surgeon. The surgical suite and performing surgeon must be approved in writing in advance by the Executive Director or their designee. To obtain approval, Respondent must submit, in writing, to the Compliance Department, the name of the surgical suite where the procedure is to be observed and the performing physician’s name, license number, and practice location. Within 30 days of completing all observation hours, Respondent shall provide to the Compliance Department documentation from the performing physician certifying that the procedures were observed, including the type of procedures observed, date, time, and length of procedures.

Respondent may substitute up to ten (10) hours of in-person observation-based CME for cosmetic procedures for up to ten (10) hours of observation. All CME requirements set forth in this Ordering Paragraph must be approved for Category I credits by the American Medical Association, in writing, and in advance by the Executive Director or their designee. 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.

2. Within 30 days after the date of the entry of this Order, Respondent must submit to the Compliance Director of the Board written documentation of protocols and procedures for clearance of high-risk patients. The protocols and procedures will address the manner in which
Respondent will obtain medical clearance before performing any cosmetic procedure on any high-risk patient, such as but not limited to a patient with a history of diabetes, infectious disease, hematological abnormalities, pulmonary or cardiological disease, liver dysfunction, hypertension, psychiatric disease, and/or family history of breast cancer.

a. Each patient must undergo an evaluation for medical clearance by another physician that practices in: family practice, internal medicine, psychiatry, or cardiology.

b. The patient must receive the medical clearance for the cosmetic procedure no more than 30 days prior to the scheduled procedure.

c. The evaluating physician must provide the Respondent documentation of the medical clearance, which must be kept in the Respondent’s patient records.

3. Within 30 days after the date of the entry of this Order, Respondent must submit to the Compliance Director of the Board written documentation of protocols and procedures for dealing with intra-operative and post-operative emergencies and complications. The protocols and procedures must include:

d. The names of physicians that can and will support Respondent during and after such operative procedures, should any emergencies arise; and

e. The means by which Respondent will transfer patients to local hospitals should the need arise, including any admitting privileges or transfer agreements that are necessary.

4. Within 30 days from the date of the entry of this Order, Respondent must provide to the Compliance Department representative samples of all advertising used in radio, web, print, and/or television. All advertising must meet the requirements under Board Rule Chapter 164. Respondent must either remove all statements about board certification or amend them to specify the actual board by which she is certified. In addition, such advertising may not include any of the following statements or similar statements:

a. “First and best in Texas;”

b. “85% fat retention;”
c. "Being a board-certified surgeon gives my patients the safest and best surgical experience;"

d. "We are very pleased to be the first in Texas to offer this treatment;"

e. "Average size increase is 1-2 cup sizes;"

f. "Natural-looking volume increase without the risks associated with implants;"

g. "No risk of rejection;"

h. "Allows breast augmentation without the scars and downtime of implant surgery;"

i. "Now the safest way to give you larger, fuller breasts;"

j. "Injection of the fat along with the stem cells results in a permanent 250cc to 500 cc overall breast size increase;"

k. "Will not interfere with future mammograms" (regarding fat transfer); and

l. "Virtually pain free."

5. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 24 hours of CME, including a minimum of four (4) hours in the subject area of patient-physician communication, a minimum of eight (8) hours in the subject area of cosmetic procedures, a minimum of four (4) hours in the subject area of risk management, and a minimum of eight (8) hours in the subject area of breast augmentation procedures. All CME requirements set forth in this Ordering Paragraph must be approved for Category I credits by the American Medical Association, in writing, and in advance by the Executive Director or their designee. 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.
6. Respondent shall pay an administrative penalty in the amount of $1,000 within 1 year 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.

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 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).

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. 1-6.

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 PAGE(S) FOLLOW]
I, BARBARA DOYLE MARINO, 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.


[Signature]

BARBARA DOYLE MARINO, M.D.
Respondent
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
_______ day of __________________, 2012

Irvin E. Zeitler, Jr., D.O., President
Texas Medical Board