AGREED ORDER

On the 30 day of November, 2012, came on to be heard before the Texas Medical Board (Board), duly in session, the matter of the license of Hector Oscar Molina, M.D. (Respondent).

On August 08, 2012, Respondent appeared in person, with counsel, John H. Read II, 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 Margaret McNeese, M.D., a member of the Board, and Randall Isenberg, J.D., a member of a District Review Committee (Panel). Trina Richardson represented Board staff.

On October 22, 2012, Respondent again appeared in person, with counsel, John H. Read II, at an ISC in response to a letter of invitation from the staff of the Board. The Board’s representatives were Royce Hill, M.D., and Nancy Seliger, members of District Review Committees (Panel Two). Trina Richardson represented Board staff.

BOARD CHARGES

At the August 8, 2012 ISC, Board staff charged that Respondent violated the standard of care in the treatment of one patient by negligently performing surgery on the patient even though she was not an appropriate candidate for the procedure. Board staff also charged that Respondent exaggerated his credentials and misrepresented his experience, thereby preventing the patient from giving appropriate informed consent. Respondent’s decision to perform surgery on a patient who was not an appropriate candidate for surgery and Respondent’s lack of experience resulted in a surgery that exceeded a reasonable length of time and resulted in the patient’s hospitalization. Respondent also disregarded the patient’s safety by using non-Food
and Drug Administration (FDA) approved breast implants and performing the surgery in his office. Furthermore, the expectation of sterility and no visitors in the operating room was compromised.

At the October 22, 2012, ISe, Board staff charged that Respondent continued to supervise a physician assistant and advanced practice nurse in violation of an Agreed Order of Temporary Restriction, entered by the Board on April 13, 2012. Board staff also charged that Probationer failed to notify the Board of his new practice address.

The Panel found insufficient evidence that Probationer continued to supervise delegates.

BOARD HISTORY

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

1. On February 6, 2004, the Board entered an Agreed Order restricting Respondent’s license for three years and requiring that he pay an administrative penalty of $25,000. The action was based on Respondent’s violation of the Board rule regulating telemedicine and failure to establish a proper doctor-patient relationship before prescribing controlled substances. The Agreed Order was terminated by order of the Board on December 9, 2005.

2. On April 3, 2009, the Board entered an Order Imposing Administrative Penalty, requiring Respondent to pay a penalty of $500.00. The action was based on Respondent’s failure to respond to a Board subpoena.

3. On April 13, 2012, the Board entered an Agreed Order of Temporary Restriction prohibiting Respondent from performing cosmetic, plastic, or reconstructive procedures. The action was based on Respondent’s failure to meet the standard of care and unprofessional conduct. Specifically, Respondent performed liposuction on a patient without adequate training to safely perform the procedure, and the patient suffered complications as a result. The allegations at issue in the Agreed Order of
Temporary Restriction originate from the same event at issue in this Agreed Order, and both orders involve the same patient.

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. K-2755. Respondent was originally issued this license to practice medicine in Texas on August 9, 1997. Respondent is not licensed to practice in any other state.
   c. Respondent is primarily engaged in general practice. Respondent is not board certified.
   d. Respondent is 48 years of age.

2. **Specific Panel Findings:**

   **August 8, 2012 ISC:**
   a. Respondent admitted that the patient was not a good candidate for the surgery he performed in November 2011.
   b. Respondent admitted that he had no formal training in plastic surgery or liposuction.
   c. Respondent had surrendered his Drug Enforcement Agency and Texas Department of Public Safety Controlled Substances Certificates.
d. On April 13, 2012, Respondent's license was restricted after the Board determined that he was a continuing threat to the public welfare based on his treatment of the patient.

e. Respondent was unqualified to perform the surgery he attempted. The patient was not a candidate for the surgery, which took over 17 hours, placing the patient at risk. The surgical suite was not sterile, placing the patient at risk. Respondent used Chinese breast implants that were not approved by the FDA, again placing the patient at risk.

f. As a result of Respondent's actions, the patient was hospitalized for 25 days with life-threatening conditions.

October 22, 2012 ISC:

a. Respondent failed to timely notify the Board of his change in practice address.

b. On July 12, 2012, a Board compliance officer visited Respondent's practice address, which was then on-file with the Board. A sign was posted at this address indicating that Respondent had moved his practice on July 2, 2012.

c. It was not until approximately September 21, 2012, that Probationer formerly notified the Board in writing about the practice address change.

3. Mitigating Factors:

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

a. Respondent has stopped all surgery;

b. Respondent closed the office where he performed the cosmetic surgeries, moved into another office, and is now focused on family practice; and

c. 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.
4. **Aggravating Factor:**

In determining the appropriate sanctions in this matter, Panel Two considered, as an aggravating factor, that Probationer has previously been the subject of disciplinary action by the Board.

**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: 166.1(d), within 30 days of a physician's change of mailing or practice address or professional name from the addresses or professional name on file with the board, a physician shall notify the board in writing of such change and submit additional documentation if requested, and 189.14, any change to the contact information listed under subsection (b) of this section must be reported to the agency within ten calendar days after the effective date of the change.

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 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)(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.

4. 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 any state or federal
law if the act is connected with Respondent's practice of medicine, specifically C.F.R. 838.3540(b)(c), which requires Class III devices to have premarket approval by the FDA.

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 164.001 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.

7. 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 not engage in the practice of surgery. For the purpose of this Order and as defined by Section 151.002(14) of the Act, surgery includes surgical services, procedures, and operations, and the procedures described in the surgery section of the common procedure coding system as adopted by the Health Care Financing Administration of the United States Department of Health and Human Services. Respondent shall limit Respondent's practice to any practice he is qualified in and excludes surgery.

2. Respondent shall not reregister or otherwise obtain a DEA Controlled Substances Registration Certificate or a DPS Controlled Substances Registration Certificate until Respondent has received written authorization from the Board. Authority to register for Controlled Substances Registration Certificates may be granted only after Respondent makes written petition and a personal appearance before the Board, a committee of the Board, or authorized Board representatives. The granting of such authority is discretionary with the Board and shall not control any decision by DEA or DPS in regard to granting or denying any application by Respondent for the return of controlled substance registrations.
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 24 hours of continuing medical education (CME) approved
for Category I credits by the American Medical Association. Of these 24 hours, at least eight hours must be in the topic of risk management, at least eight hours must be in the topic of medical recordkeeping, and at least eight hours must be in the topic of medical ethics. All CME must be attended by Respondent in person and 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 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.

5. Respondent shall pay an administrative penalty in the amount of $1000 within 60 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.

6. 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.
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. 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. THIS ORDER SUPERSEDES ALL PREVIOUS ORDERS OF THE BOARD.
I, HECTOR OSCAR MOLINA, 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: Nov. 21, 2012

HECTOR OSCAR MOLINA, M.D.
Respondent

STATE OF Texas

COUNTY OF Dallas

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this day of , 2012.

(Signature of Notary Public)

(Notary Seal)
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this ______ day of November, 201 [2].

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