



Public

New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

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Office of Professional Medical Conduct

Kendrick A. Sears, M.D.
Chair
Carmela Torrelli
Vice Chair
Katherine A. Hawkins, M.D., J.D.
Executive Secretary

July 7, 2010

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

William Deluca, M.D.
1365 Washington Avenue, Suite 200
Albany, NY 12206

Re: License No. 142157

Dear Dr. Deluca:

Enclosed is a copy of BPMC #10-120 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect July 14, 2010.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Margaret Surowka Rossi, Esq.
Hiscock & Barclay
50 Beaver Street
Albany, NY 12207

IN THE MATTER
OF
WILLIAM DELUCA, M.D.

CONSENT
ORDER
BPMC # 10-120

Upon the application of (Respondent) WILLIAM DELUCA, M.D. in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and it is further

ORDERED, that this Consent Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

REDACTED

DATE: July 3, 2010

KENDRICK A. SEARS, M.D.
Chair
State Board for Professional Medical Conduct

**IN THE MATTER
OF
WILLIAM DELUCA, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

WILLIAM DELUCA, M.D., represents that all of the following statements are true:

That on or about May 23, 1980, I was licensed to practice as a physician in the State of New York, and issued License No. 142157 by the New York State Education Department.

My current address is 1365 Washington Avenue, Suite 200, Albany, New York 12206, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with four specification of professional misconduct. A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I admit the First Specification, in full satisfaction of the charges against me, and agree to the following penalty:

My license to practice medicine will be suspended for a period of two years, and the suspension shall be stayed so long as I comply with the Terms of Probation set out in Exhibit "B", attached hereto, said Terms of Probation to be in effect for a period of three years from the effective date of the Order herein. After 24 months of probation, Respondent may apply to the Director of OPMC for the termination of probation, for good cause. The Director retains full, sole discretion to grant or deny such application.

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, as directed.

Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to N.Y. Pub. Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this

Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 6/24/10

REDACTED
WILLIAM DELUCA, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 6/24/2010

REDACTED

~~MARGARET SUROWKA ROSSI, ESQ.~~
Attorney for Respondent

DATE: 6/28/10

REDACTED

~~MICHAEL A. HISER, ESQ.~~
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 7/2/10

REDACTED

~~KEITH W. SERVIS~~
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
WILLIAM DELUCA, JR, M.D.

STATEMENT
OF
CHARGES

WILLIAM DELUCA JR., M.D., the Respondent, was authorized to practice medicine in New York State on or about May 23, 1980, by the issuance of license number 142157 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent, on or about February 9, 2010, was convicted by plea of guilty of a violation of 21 U.S.C. section 331(k), 21 U.S.C. section 352(i)(3), 21 U.S.C. section 333(a)(1), and 18 U.S.C. section 2, to wit, the misbranding of a drug held for resale after shipment in interstate commerce. Respondent was sentenced to 3 years probation, required to serve 300 hours of community service, and fined \$5,000.
- B. Respondent, at various times in 2004, provided medical care at various times to Patients "A" through "GGG" [patients are identified in the attached Appendix] at his medical office at 1365 Washington Avenue, Suite 200, Albany, New York 12206. Respondent's care and treatment of Patients "A" through "GGG" was contrary to accepted standards of medical practice, in that:
1. Respondent, at various times in 2004, injected Patients "A" through "GGG" with a solution that Respondent represented to the patients was Botulinum Toxin Type A, which was approved for use on human

beings. In fact, Respondent injected Patients "A" through "GGG" with a solution of Botulinum Toxic Type A [TRI-Toxin] that had not been approved for use on human beings by the United States Food and Drug Administration.

2. Respondent, at various times in 2004, obtained written authorizations from Patients "A" through "GGG", prior to injecting said patients as described in Paragraph "1", above. The said authorizations represented that the solution was "Botox", i.e., the approved form of the solution, when in fact the solution being used was unapproved Botulinum Toxic Type A [TRI-Toxin].

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. The facts in Paragraph A.

SECOND SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

2. The facts in Paragraph B and B.1 and/or B and B.2.

THIRD SPECIFICATION

PERFORMING SERVICES NOT DULY AUTHORIZED

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(26) by performing professional services which have not been duly authorized by the patient or his or her legal representative, as alleged in the facts of:

3. The facts in Paragraph B and B.2.

FOURTH SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

4. The facts in Paragraph B and B.2.

DATE: June 28, 2010
Albany, New York

REDACTED

Peter D. Van Buren
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.
7. After 24 months of probation, Respondent may apply to the Director of OPMC for the termination of probation, for good cause. The Director retains full, sole discretion to grant or deny such application.

8. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, electronic records, and/or records of purchase of medications, supplies, and equipment; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
9. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
10. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
11. Respondent shall enroll in and complete a continuing education program in the area of ethics and risk management for a minimum of 20 credit hours. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first 90 days of the probation period.
12. Respondent shall ensure that a written policy, approved by the Director of OPMC, is in effect at his medical office to ensure that any medical products that are to be ingested by or injected into Respondent's patients has been appropriately certified for use on human beings, and that accurate written informed consents relating to the use of such products are created and maintained in each such patient's medical record.
13. Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.