



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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NYS Department of Health

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NYS Department of Health

Dennis J. Graziano, Director
Office of Professional Medical Conduct

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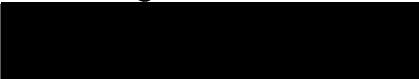
Ansel R. Marks, M.D., J.D.
Executive Secretary

Public

July 7, 2005

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Emma Lugo, M.D.



RE: License No. 152081

Dear Dr. Lugo:

Enclosed is a copy of Order #BPMC 05-134 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect July 14, 2005.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days or receipt of the of the Order to:

Board for Professional Medical Conduct
New York State Department of Health
Hedley Park Place, Suite 303
433 River Street
Troy, New York 12180

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 1258
Empire State Plaza
Albany, New York 12237

Sincerely,



Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

cc: Amy Kulb, Esq.
Jacobson, Goldberg & Kulb, LLP
585 Stewart Avenue
Garden City, NY 11530

IN THE MATTER
OF
EMMA LUGO, M.D.

CONSENT
ORDER

BPMC No. 05-134

Upon the application of (Respondent) Emma Lugo, 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 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.

DATED: 7-7-2005


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

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
EMMA LUGO, M.D.

CONSENT
AGREEMENT
AND
ORDER

Emma Lugo, M.D., representing that all of the following statements are true, deposes and says:

That on or about October 29th, 1982, I was licensed to practice as a physician in the State of New York, and issued License No. 152081 by the New York State Education Department.

My current address is [REDACTED], 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 has charged me with two (2) specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I agree not to contest the Statement Of Charges, in full satisfaction of the charges against me, and further agree to the following penalty:

Pursuant to §230-a(2) of the Public Health law, my license to practice medicine in the State of New York shall be suspended for a period of five (5) years, with the first nine (9) months to be served as a period of actual suspension and with the last fifty-one (51) months of said suspension to be stayed. I shall be subject to a condition that I comply with Exhibit "C," "Guidelines For Closing a Medical Practice Following a Revocation, Surrender or Suspension (Of 6 Months or More) of a Medical License,"

attached hereto."

Pursuant to §230-a(9) of the Public Health Law, I shall be placed on probation for a period of five (5) years, commencing upon the completion of the 9 month period of actual suspension. with leave to request an early termination of probation after three (3) years, subject to the terms set forth in attached Exhibit "B."

Pursuant to §230-a(8) of the Public Health Law, I shall be required to complete an intensive review course in radiology that provides a fundamental review of all facets of diagnostic radiology. This course is subject to approval by the Director of OPMC and must be completed during the period of active suspension and prior to resuming clinical practice.

I shall be subject to a fine in the amount of ten thousand dollars (\$10,000), pursuant to §230-a(7) and (9) of the Public Health Law, to be paid in two installments of \$5,000.00 each. The first such payment shall be paid no later than six months after the effective date of this order. The second such payment shall be paid no later than 12 months after the effective date of this order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1245
Albany, New York 12237

Pursuant to §230-a(3) of the Public Health Law, my license to practice medicine in the state of New York shall be limited so as to preclude the use and/or interpretation of video^{FLOY}endoscopy, and to permit only such employment as a physician in New York State that has had prior written approval of OPMC, with the express prohibition of employment with any person or entity as an "independent contractor".

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

That Respondent shall maintain active registration of Respondent's license with the New York State Education, Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed 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 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 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 Order shall constitute misconduct as defined by New York State Education 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 the Public 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 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 Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

I stipulate that the proposed sanction and Order are authorized by Public Health Law Sections 230 and 230-a and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct 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 ask that the Board adopt this Consent Agreement.


DATED

6/11/05


EMMA LUGO, M.D.
Respondent

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

DATE: 6/15/05


AMY KULB, ESQ.
Attorney for Respondent

DATE: 6/20/2005


CHRISTINE M. RADMAN
Assistant Counsel
Bureau of Professional Medical Conduct

DATE: 6/30/2005


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

NEW YORK STATE
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

DEPARTMENT OF HEALTH

IN THE MATTER

OF

EMMA LUGO SANTIAGO, M.D.

STATEMENT
OF
CHARGES

Emma Lugo Santiago, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 29th, 1982, by the issuance of license number 152081 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. During periods between on or about December 15, 1997 and on or about April 17, 1998, working in mobile vans for various medical services, Respondent performed videoflouroscopy of the cervical spines of Patients A-F, who had been in motor vehicle accidents previously, which Respondent thereafter documented for Triborough Medical Diagnostics, P.C. (Patients A, B and D) and Allenwood Medical Services, P.C. (Patients C, E and F). (The identities of Patients A-F are set forth in attached Appendix "A".)
1. Respondent deviated from minimally acceptable standards of care in that she: documented positive findings that were not present, or, if present, Respondent failed to immediately cease the videoflouroscopy, immobilize the patient's cervical spine and make appropriate recommendations for specialized evaluation and treatment; failed to appreciate and document positive findings consistent with degenerative disc disease and/or failed to make or note appropriate related findings.

2. Respondent knowingly, and with an intent to mislead, prepared and supplied reports of the radiographic interpretation of the videofluoroscopy of the patients' cervical spines that Respondent knew were false, and knowingly failed to maintain records accurately reflecting her evaluation of Patients A-F.

SPECIFICATION OF CHARGES

FRAUDULENT PRACTICE

FIRST SPECIFICATION

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of:

1. Paragraph A and its subparagraphs.

NEGLIGENCE ON MORE THAN ONE OCCASION

SECOND SPECIFICATION

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:

2. Paragraph A and its subparagraphs.

DATED: May 20, 2005
New York, New York


Roy Nemerson
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 New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public 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 such 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, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
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 section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].

6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (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 thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will 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 are necessary to protect the public health.
7. 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 and/or hospital charts; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. 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.

PRACTICE MONITOR

9. Within thirty days of the effective date of the order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
 - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will

determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

- b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
10. In addition to the terms set forth in paragraph 9 above, during the first year of the probation period, Respondent shall practice medicine only when monitored in her medical practice with respect to the reading of any radiographic films by a licensed physician, board certified in an appropriate specialty, who may be the same individual as the practice monitor (as required by paragraph 8 above), proposed by Respondent and subject to the written approval of the Director of OPMC, who shall independently read the films read by Respondent ("MRI monitor") in accordance with the following terms
- a. The monitor shall independently read radiographic films read by Respondent according to the following schedule, subject to the Director's approval:
 - i. During the first quarter of the first year of probation, the monitor shall independently read 75% of the radiographic films read by Respondent.
 - ii. During the second quarter of the first year of probation, the monitor shall independently read 50% of the radiographic films read by Respondent.

- iii. During the third quarter of the first year of probation, the monitor shall independently read 25% of the radiographic films read by Respondent.
 - iv. During the fourth quarter of the first year of probation, the monitor shall independently read 10% of the radiographic films read by Respondent.
 - b. Respondent shall ensure that the monitor is familiar with the Order and terms of probation, and willing to report to OPMC. Respondent shall ensure that the monitor is in a position to regularly observe and assess Respondent's medical practice with respect to reading of radiographic films. Respondent shall cause the monitor to report within 24 hours any questionable medical practice or possible misconduct to OPMC.
- 11. Respondent shall not resume the practice of medicine until she has completed the required course of education or retraining imposed upon her by this Order and pursuant to §230-a(8) of the Public Health Law. Respondent shall provide written proof, satisfactory to the Director, of such completion.
- 12. Respondent shall enroll in and complete a continuing education program in the area of medical ethics. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the probation period.
- 13. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon successful completion of 36 months of probation, Respondent may petition the Director for an early termination of probation, and the Director shall exercise reasonable discretion in deciding whether to grant the petition. Upon receiving evidence of noncompliance with, or 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.

EXHIBIT "C"

GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more) OF A MEDICAL LICENSE

1. Respondent shall immediately cease the practice of medicine in compliance with the terms of the Consent Order. Respondent shall not represent himself or herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within fifteen (15) days of the Consent Order's effective date, Respondent shall notify all patients that he or she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Within thirty (30) days of the Consent Order's effective date, Respondent shall have his or her original license to practice medicine in New York State and current biennial registration delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within thirty (30) days of the Consent Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least six (6) years after the last date of service, and, for minors, at least six (6) years after the last date of service or three (3) years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or sent at reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be

provided at cost. A qualified person shall not be denied access to patient information solely because of inability to pay.

5. Within fifteen (15) days of the Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender his or her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within fifteen (15) days of the Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at Respondent's practice location, Respondent shall dispose of all medications.
7. Within fifteen (15) days of the Order's effective date, Respondent shall remove from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee provides health care services.
8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by himself or others) while barred from practicing medicine. Respondent may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for six (6) months or more pursuant to this Order, Respondent shall, within ninety (90) days of the Order's effective date, divest himself/herself of all financial interest in such professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the Order's effective date.

10. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four (4) years, under Section 6512 of the Education Law. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to \$10,000 for each specification of misconduct, under Section 230-a of the Public Health Law.