
IN THE MATTER
OF
SERGIO HORTA LUNA, M.D.

CONSENT
ORDER
BPMC No. #08-226

Upon the application of **SERGIO HORTA LUNA, M.D.**, (Respondent), 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.

DATED: 11-25-2008

Redacted Signature

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

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

IN THE MATTER
OF
SERGIO HORTA LUNA, M.D.
CO-08-02-0893-A

CONSENT
AGREEMENT
AND ORDER

SERGIO HORTA LUNA, M.D., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about November 12, 1997, I was licensed to practice as a physician in the State of New York, and issued license number 208888 by the New York State Education Department.

My current address is Redacted Address and I will advise the Director of the Office of Professional Medical Conduct of any change of my address thirty (30) days, thereof.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with two (2) Specifications of professional misconduct, based solely on the October 3, 2007, State of Vermont, Board of Medical Practice, Stipulation and Consent Order.

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

I do not contest the Factual Allegations A and B(5) and the Second Specification, in full satisfaction of the charges against me, and agree to the following penalty:

Censure and Reprimand; and

Respondent shall comply fully with the October 3, 2007, Stipulation and Consent Order of the State of Vermont, Board of Medical Practice, and any extension or modification thereof.

Respondent shall provide a written authorization for the Vermont Board to provide the Director of OPMC with any/all information or documentation as requested by OPMC to enable OPMC to determine whether Respondent is in compliance with the Vermont Order.

Respondent shall submit semi-annually a signed Compliance Declaration to the Director of OPMC, which truthfully attests whether Respondent has been in compliance with the Vermont Order during the declaration period specified.

Should Respondent return to the practice of medicine in the State of New York or in any jurisdiction where that practice is predicated upon Respondent's New York State medical license, prior to the successful completion of the State of Vermont requirements, Respondent shall provide ninety (90) days notice in writing to the Director, OPMC. The Director in his sole discretion, may impose whatever limitations, or further conditions, he deems appropriate.

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

That Respondent shall remain in continuous compliance with all requirements of New York Education 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 New York Education Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 30 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 New York 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 New York 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 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 New York Public 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.

AFFIRMED:

DATED: NOV 13, 2008

Redacted Signature

SERGIO HORTA LUNA, M.D.
Respondent

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

DATE: 18 November 2008

Redacted Signature

ROBERT BOSAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 11/21/08

Redacted Signature

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
SERGIO HORTA LUNA, M.D.
CO-08-02-0893-A

STATEMENT
OF
CHARGES

SERGIO HORTA LUNA, M.D., Respondent, was authorized to practice medicine in New York state on November 12, 1997, by the issuance of license number 208888 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 3, 2007, the State of Vermont, Board of Medical Practice (hereinafter "Vermont Board"), by a Stipulation and Consent Order (hereinafter "Vermont Order"), interalia, designated Respondent's license to practice medicine as "Conditioned" and required him to fully comply with terms and conditions, based on in the course of treatment of a child, from on or about November 2004 to on or about September 2006, wherein he provided the child with multiple psychotropic medications: it is unclear from the child's medical records whether he was actually seen and given substantive medical attention during each visit for which there is an office note, i.e., "Psychopharmacology Review Notes," the content of many of the notes was sparse and lacking detail; his almost exclusive reliance on the child's mother as a reporter, limited the range of information available to him regarding the child's moods, behavior, and response to medications; his diagnosis of bipolar disorder for the child was not well been supported in the record by detail regarding the intensity and frequency of mood symptoms, as well as detail regarding changes in sleep, cognition, and motor activity; the child's medical record reflected minimal attention by him to his patient's safety and vulnerability; prescribing multiple medications, as well as adjustments of medications and dosages over time necessarily required the patient to be able to reliably comply with dispensing instructions, monitor effects, and consult with practitioners regarding questions or concerns; his manner of prescribing of

psychotropic medications for his patient did not demonstrate and allow for careful monitoring of response and effects on the child; in caring for this child, he failed to collaborate with other medical practitioners and individuals who had knowledge of and experience with the child; he neither actively sought information regarding his patient from others nor provided information to other practitioners regarding the child's medical condition, needs, or medications; his care of this patient demonstrated either indifference to the value of collaboration within the medical field or a passivity of approach that was unhelpful in assessing a child whose home and family circumstances were both difficult and complex.

B. The conduct resulting in the Vermont Board disciplinary actions against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(4) (gross negligence);
3. New York Education Law §6530(5) (incompetence on more than one occasion);
4. New York Education Law §6530(6) (gross incompetence); and/or
5. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

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

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *Sept. 22*, 2008
Albany, New York

Redacted Signature

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct