



New York State Board for Professional Medical Conduct

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

Richard F. Daines, M.D.
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NYS Department of Health
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Executive Deputy Commissioner
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Office of Professional Medical Conduct

Public

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

November 23, 2010

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Erlinda P. Vidal, M.D.

REDACTED

Re: License No. 117955

Dear Dr. Vidal:

Enclosed is a copy of BPMC #10-238 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect November 30, 2010.

Sincerely,

REDACTED

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

Enclosure

cc: Randall J. Ezick, Esq.
D'Agostino, Krackeler, Maguire & Cardona, P.C.
The Sage Mansion
116 Sage Estate
Menands, NY 12204

IN THE MATTER
OF
ERLINDA VIDAL, M.D.

CONSENT
ORDER

BPMC No. #10-238

Upon the application of (Respondent) Erlinda Vidal, 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.

DATE: 11/19/10

REDACTED

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

IN THE MATTER
OF
ERLINDA VIDAL, M.D.

CONSENT
AGREEMENT
AND
ORDER

Erlinda Vidal, M.D., represents that all of the following statements are true:

That on or about September 6, 1973, I was licensed to practice as a physician in the State of New York, and issued License No. 117955 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 Sixteen 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 do not contest the Third Specification, in full satisfaction of the charges against me, and agree to the following penalty:

Immediately upon issuance of the Consent Order for which I apply, my license to practice medicine shall be limited, pursuant to N.Y. Pub. Health Law § 230-a, to preclude patient contact and any practice of medicine, clinical or otherwise. I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition. I shall be precluded from further reliance upon my license to practice medicine to exempt me from the licensure, certification or other requirements set forth in

statute or regulation for the practice of any other profession licensed, regulated or certified by the Board of Regents, Department of Education, Department of Health or the Department of State.

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

- That Respondent shall, within 30 days of the issuance of the Consent Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," and shall provide proof of such notification to the Director of OPMC immediately upon having done so; and
- That Respondent shall return any and all official New York State prescriptions to the Bureau of Narcotic Enforcement, and shall surrender Respondent's Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within 15 days of the Order's effective date. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Agency, 99 Tenth Avenue, New York, NY 10011. Further, within 30 days of returning these prescriptions and surrendering the registration, Respondent shall provide documentary proof of these transaction(s) to the Director of OPMC; 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; and
- That Respondent shall comply with all conditions set forth in attached Exhibit "B" ("Requirements for Closing a Medical Practice").

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined in 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 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. As public documents, they may be posted on the

Department's website.

I stipulate that the proposed sanction and Order are authorized by N.Y. Pub. Health Law §§ 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.

I am aware and agree that, regardless of prior communication, the attorney for the Department, the Director of the Office of Professional Medical Conduct, and the Chairperson of the State Board for Professional Medical Conduct each reserve full discretion to enter into the Consent Agreement that I propose in this application, or to decline to do so.

DATE 9/23/10

REDACTED

ERLINDA VIDAL, M.D.
RESPONDENT

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

DATE: 9/28/10

~~REDACTED~~

RICHARD R. MAGUIRE, ESQ.
Attorney for Respondent
D'Agostino, Krackeler, Maguire, & Cardona, P.C.
16 Sage Estate
Albany, NY 12204-2250

DATE: 10/19/10

~~REDACTED~~

RICHARD J. ZAHNLEUTER
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 11/19/10

~~REDACTED~~

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

EXHIBIT "A"

IN THE MATTER
OF
ERLINDA VIDAL, M.D.

STATEMENT
OF
CHARGES

Erlinda Vidal, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 6, 1973, by the issuance of license number 117955 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about January 31, 2005, at Samaritan Medical Center in Watertown, NY, the Respondent provided epidural anesthesia for Patient A¹ while Patient A was in labor. The Respondent's care of Patient A did not meet acceptable standards of medical care in that:
1. The Respondent failed, during the pre-anesthesia surgical evaluation, to take Patient A's vital sign readings.
 2. The Respondent failed, during the pre-anesthesia surgical evaluation, to document Patient A's vital sign readings.
 3. The Respondent failed, during the pre-anesthesia surgical evaluation, to determine Patient A's American Society of Anesthesiologists's patient classification ("ASA status").

¹To preserve privacy throughout this document, patients are referred to by letter designation. An Appendix is attached hereto for appropriate recipients.

4. The Respondent failed, during the pre-anesthesia surgical evaluation, to document Patient A's ASA status.
5. The Respondent failed, during the pre-anesthesia surgical evaluation, to determine Patient A's nothing-by-mouth ("NPO") status.
6. The Respondent failed, during the pre-anesthesia surgical evaluation, to document Patient A's NPO status.
7. The Respondent failed, during the pre-anesthesia surgical evaluation, to determine Patient A's medical and medication history, specifically depression and Prozac.
8. The Respondent failed, during the pre-anesthesia surgical evaluation, to document Patient A's medical and medication history, specifically depression and Prozac.
9. The Respondent failed, during the administration of Patient A's epidural, to document the spinal interface level at which the epidural was placed.
10. The Respondent failed, during the administration of Patient A's epidural, to document the level of anesthesia that was achieved by the epidural.
11. The Respondent failed, immediately after the administration of Patient A's epidural and then at regular intervals, to take an adequate number of vital sign readings.
12. The Respondent failed, immediately after the administration of Patient A's epidural and then at regular intervals, to document an adequate number of vital sign readings.

B. In or about November 2005, at a pain clinic in Watertown, NY, the Respondent administered two trigger point injections to Patient B. The Respondent's care of Patient B did not meet acceptable standards of medical care in that:

1. The trigger point injections the Respondent administered to Patient B were not indicated.
2. The Respondent failed to document the indications for Patient B's trigger point injections.
3. The Respondent failed, after the administration of Patient B's trigger point injections, to document the site and number of the trigger point injections.
4. The Respondent failed, after the administration of Patient B's trigger point injections, to document the sterile technique used in connection with the trigger point injections.
5. The Respondent failed, after the administration of Patient B's trigger point injections, to document the type and dose of medications used in connection with the trigger point injections.
6. The Respondent failed, after the administration of Patient B's trigger point injections, to devise a plan for appropriate follow-up in connection with the trigger point injections.
7. The Respondent failed, after the administration of Patient B's trigger point injections, to document the Respondent's plan for appropriate follow-up in connection with the trigger point injections.
8. The Respondent failed to create and maintain any medical record in connection with the trigger point injections the Respondent administered to Patient B.

SPECIFICATIONS OF PROFESSIONAL MISCONDUCT

FIRST SPECIFICATION

(NEGLIGENCE ON MORE THAN ONE OCCASION)

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

1. The facts set forth in one or more of the subparagraphs of paragraph A, labeled A, A(1), A(2), A(3), A(4), A(5), A(6), A(7), A(8), A(9), A(10), A(11), and/or A(12), in any combination with the facts set forth in one or more of the subparagraphs of paragraph B, labeled B, B(1), B(2), B(3), B(4), B(5), B(6), B(7), and/or B(8).

SECOND SPECIFICATION

(INCOMPETENCE ON MORE THAN ONE OCCASION)

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the following:

2. The facts set forth in one or more of the subparagraphs of paragraph A, labeled A, A(1), A(2), A(3), A(4), A(5), A(6), A(7), A(8), A(9), A(10), A(11), and/or A(12), in any combination with the facts set forth in one or more of the subparagraphs of paragraph B, labeled B, B(1), B(2), B(3), B(4), B(5), B(6), B(7), and/or B(8).

THIRD SPECIFICATION
(GROSS NEGLIGENCE)

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law §6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the following:

3. The facts set forth in paragraphs B and B(8).

FOURTH SPECIFICATION
(GROSS INCOMPETENCE)

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law §6530(6) by practicing the profession of medicine with gross incompetence as alleged in the following:

4. The facts set forth in paragraphs B and B(8).

FIFTH THROUGH SIXTEENTH SPECIFICATIONS
(FAILURE TO MAINTAIN RECORDS)

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

5. The facts set forth in paragraphs A and A(2).
6. The facts set forth in paragraphs A and A(4).
7. The facts set forth in paragraphs A and A(6).
8. The facts set forth in paragraphs A and A(8).
9. The facts set forth in paragraphs A and A(10).

10. The facts set forth in paragraphs A and A(12).
11. The facts set forth in paragraphs B and B(2).
12. The facts set forth in paragraphs B and B(3).
13. The facts set forth in paragraphs B and B(4).
14. The facts set forth in paragraphs B and B(5).
15. The facts set forth in paragraphs B and B(7).
16. The facts set forth in paragraphs B and B(8).

DATE:

November 9, 2010
Albany, New York

REDACTED

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

EXHIBIT "B"

Requirements for Closing a Medical Practice Following a Revocation, Surrender, Limitation or Suspension of a Medical License

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's current biennial registration to the Office of Professional Medical Conduct (OPMC) at Hedley Park Place, 433 River Street 4th Floor, Troy, NY 12180-2299.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 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 include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's 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 forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.
5. In the event that Licensee holds a Drug Enforcement Administration

(DEA) certificate for New York State, Licensee shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender his/her DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.

6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Licensee shall destroy all prescription pads bearing Licensee's name. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated 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 Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.