

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

IN THE MATTER
OF
NELSON LUGO, M.D.

CONSENT
ORDER
BPMC # No. #08-127

Upon the application of (Respondent) NELSON 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 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.

DATE: 7-18-2008

Redacted Signature

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
NELSON LUGO, M.D.

CONSENT
AGREEMENT
AND
ORDER

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

That on or about September 7, 1989, I was licensed to practice as a physician in the State of New York, and issued License No. 179836 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 address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with three 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. I agree to the following penalty:

Pursuant to Public Health Law §230-a(6), a limitation shall be placed precluding the issuance of any further license or registration to me to practice medicine in New York State and I shall not engage in any practice of medicine in the State of New York, whether as a licensee, resident, holder of a permit, or exempt person, beginning upon the effective date of this Consent Order.

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

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 6/12/2008

Redacted Signature

NELSON LUGO, M.D.
RESPONDENT

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

DATE: 6/17/08

Redacted Signature

STEVENS INGRAHAM, ESQ.
Attorney for Respondent

DATE: 6/30/08

Redacted Signature

JUDE BREARION MULVEY
Associate Counsel
Bureau of Professional Medical Conduct

DATE: July 11, 2008

Redacted Signature

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER
OF
NELSON LUGO, M.D.

STATEMENT
OF
CHARGES

Nelson Lugo, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 7, 1989, by the issuance of license number 179836 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent provided medical care and treatment to Patient A, a 15 year old, at Elmira Psychiatric Center, Elmira, New York ("EPC"), from June 8, 2005 through on or about October 19, 2005. Respondent's care and treatment of Patient A failed to meet acceptable standards of care in that:
1. Respondent prescribed Geodon, Haldol and/or Seroquel for Patient A in excessive amounts and/or excessive dosages;
 2. Respondent prescribed Seroquel for Patient A without adequate assessment, indication and/or in inappropriate amounts;
 3. Respondent prescribed Geodon for Patient A erratically and/or without adequate assessment, indication and/or in inappropriate amounts;
 4. Respondent inappropriately discontinued Patient A's Clonidine, Seroquel, Lithium and/or Buspar;
 5. Respondent failed to consider Patient A's medical and psychiatric history in his prescriptions for Patient A;
 6. Respondent failed to address and/or document the propriety for

prescribing excessive amounts and/or dosages of Geodon, Haldol and/or Seroquel for Patient A; and/or

7. Respondent failed to maintain a record which accurately reflects his care and treatment of Patient A.

B. Respondent provided medical care and treatment to Patient B, a 14 year old, at EPC on October 17, 2005. Respondent's care and treatment of Patient B failed to meet acceptable standards of care by prescribing and/or administering Haldol to Patient B without adequate assessment, indication and/or in an inappropriate amount.

C. Respondent provided medical care to Patient C at Samaritan Medical Center, Watertown, New York, from on or about April 16, 2007 through on or about April 27, 2007. Respondent's care and treatment of Patient C failed to meet acceptable standards of care in that:

1. Respondent failed to obtain and/or record an initial Mental Health history of Patient C;
2. Respondent failed to timely record the care and/or treatment provided to Patient C; and/or
3. Respondent failed to record the treatment plan for Patient C.

D. Respondent provided medical care to Patient D at Samaritan Medical Center, Watertown, New York, from on or about April 12, 2007 through on or about April 29, 2007. Respondent's care and treatment of Patient D failed to meet acceptable standards of care in that:

1. Respondent failed to obtain and/or record an initial Mental Health history of Patient D;

2. Respondent failed to timely record the care and treatment provided to Patient D; and/or
 3. Respondent failed to appropriately document Patient D's discharge.
- E. Respondent provided medical care to Patient E at Samaritan Medical Center, Watertown, New York, from on or about April 10, 2007 through on or about April 19, 2007. Respondent's care and treatment of Patient E failed to meet acceptable standards of care in that:
1. Respondent failed to obtain and/or record an initial Mental Health history of Patient E; and/or
 2. Respondent failed to timely record the care and treatment provided to Patient E.
- F. Respondent provided medical care to Patient F at Samaritan Medical Center, Watertown, New York, from on or about April 15, 2007 through on or about April 27, 2007. Respondent's care and treatment of Patient F failed to meet acceptable standards of care in that:
1. Respondent failed to obtain and/or record an initial Mental Health history of Patient F; and/or
 2. Respondent failed to timely record the care and treatment provided to Patient F.
- G. Respondent provided medical care to Patient G at Samaritan Medical Center, Watertown, New York, from on or about April 9, 2007 through on or about April 27, 2007. Respondent's care and treatment of Patient G failed to meet acceptable standards of care in that Respondent failed to timely record the care and treatment provided to Patient G.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined by New York Education 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:

1. The facts alleged in Paragraph A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7 and/or Paragraph B.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

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

2. The facts alleged in Paragraph A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7 and/or Paragraph B.

THIRD SPECIFICATION

FAILURE TO MAINTAIN AN ADEQUATE RECORD

Respondent is charged with committing professional misconduct as defined by New York Education 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 following:

3. The facts alleged in Paragraphs A and A.6, A and A.7, C and C.1, C

and C.2, C and C.3, D and D.1, D and D.2, D and D.3, E and E.1, E
and E.2, F and F.1, F and F.2 and/or Paragraph G.

DATE: *July*
May 11, 2008
Albany, New York

Redacted Signature

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

EXHIBIT "B"

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 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 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 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 6 years after the last date of service, and, for minors, 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 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 75 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 15 days of the Consent 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 unused DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within 15 days of the Consent 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 15 days of the Consent 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 Consent 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 6 months or more pursuant to this Consent Order, Respondent shall, within 90 days of the Consent Order's effective date, divest himself/herself of all financial interest in such professional services corporation in accordance with N.Y. Bus. Corp. Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Consent 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 years, under N.Y. Educ. Law § 6512. 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 N.Y. Pub. Health Law § 230-a.