

IN THE MATTER OF  
THE LICENSE OF  
SERGIO SILVA, M.D.

BEFORE THE  
TEXAS MEDICAL BOARD

ORDER GRANTING MODIFICATION

On the 7<sup>th</sup> day of February, 2014, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Sergio Silva, M.D. (Probationer).

On January 27, 2014, Probationer appeared in person, without counsel, before representatives of the Board to petition the Board for modification of an Agreed Order entered on August 27, 2010 (2010 Order), a copy of which is incorporated herein and attached hereto. On April 13, 2012, the Board entered an order modifying the 2010 Order (2012 Order), a copy of which is incorporated herein and attached hereto. The Board's representatives were Margaret C. McNeese, M.D., a member of the Board, and Phillip Worley, a member of a District Review Committee (Panel). Franklin Hopkins represented Board staff. Barbara Jordan prepared this Order.

Upon the recommendation of the Board's representatives, the Board makes the following Findings and Conclusions of Law and enters this Order.

FINDINGS

The Board finds that:

A. Prior Disciplinary History:

1. On September 8, 2006, the Board issued an order temporarily suspending the Probationer's medical license until superseded by an order of the Board. The action was based upon non-therapeutic prescribing and unprofessional conduct.

2. On August 24, 2007, the Board entered an Agreed Order suspending the Probationer's medical license until at least May 11, 2008 and thereafter until such time as he provides evidence of competency to safely practice medicine.
3. On August 21, 2009, the Board entered an order denying termination of the 2007 suspension order.
4. On August 27, 2010, the Board entered an Agreed Order terminating the suspension and imposing certain terms and conditions for a period of ten years: requiring that the Probationer abstain from prohibited substances including alcohol, dangerous drugs and controlled substances, and participate in the Board's drug testing program; requiring that he receive monthly psychiatric treatment with quarterly reports to the Board; requiring that he participate in Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) not less than three times per week; requiring that he not treat or serve as a physician for himself or his immediate family; requiring that he limit his practice to treating adult patients age eighteen and older; requiring that he limit his practice to a pre-approved group or institutional setting with other psychiatrists; permitting him to reapply for controlled substance registration certificates for Schedules III, IV and V only; requiring that he not possess, dispense, administer or provide, to anyone, samples of medication of any type; and requiring that he complete sixteen pre-approved hours continuing medical education (CME) in the area of recent developments in psychiatry.
5. On April 13, 2012, the Board entered an order modifying the August 2010 order by reducing psychiatric treatment to once every six weeks; and by allowing the Probationer to supervise and delegate prescriptive authority to mid-level practitioners.

B. Status of Compliance with the 2010 Order as modified by the 2012 Order as of January 27, 2014:

Probationer is in compliance with all terms of the 2010 Order as modified by the 2012 Order.

C. Probationer's Request:

Probationer requested modification of the 2010 Order as modified by the 2012 Order. Specifically, Probationer requested to lift the requirement to attend no less than three AA or NA meetings per week, and provide documentation to the Board of same on a quarterly basis. Probationer also requested modification of the requirement that he receive psychiatric treatment every six weeks to every eight weeks.

D. Findings:

The Panel found that Probationer's request was premature, but that Probationer demonstrated the current requirements as written create hardship for Probationer. Additionally, Probationer's psychiatrist recommended Probationer receive treatment every eight weeks, instead of every six weeks.

E. Recommendation:

Based on the above Findings and information available to the Panel at the hearing on January 27, 2014, the Board's representatives recommended that Probationer's petition for modification of the 2010 Order as modified by the 2012 Order be granted in part. The Panel recommended that Probationer receive psychiatric treatment every eight weeks, and that Probationer shall attend a minimum of 12 AA or NA meetings per month, but that Probationer shall attend at least two AA or NA meetings per week.

CONCLUSIONS OF LAW

Based on the above Findings, the Board concludes that:

1. The Board has jurisdiction over this matter and Probationer pursuant to the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the "Act").
2. 22 TEX. ADMIN. CODE §187.43 authorizes the Board to consider petitions for modification of Agreed Orders and Disciplinary Orders.

ORDER

Based on the available information, the above Findings and Conclusions of Law, and the recommendation of the Board's representatives, the Board ORDERS that Probationer's petition for modification of the 2010 Order as modified by the 2012 Order is hereby GRANTED in part.

The 2010 Order as modified by the 2012 Order is hereby MODIFIED as follows:

1. Ordering Paragraph No. 2 shall be modified to read as follows:

“Psychiatric Care and Treatment. Within 30 days after the date of the entry of this Order, Probationer shall submit to the Compliance Division of the Board letters from up to three physicians who are board certified in psychiatry and who agree to serve as Probationer’s approved treating psychiatrist.

- (a) The letters from proposed treating psychiatrist(s) shall state that they:
  - (1) have been provided a copy of this Order;
  - (2) agree to provide psychiatric treatment to Probationer; and
  - (3) agree to provide periodic reports regarding Probationer’s compliance with treatment and rehabilitation to (a) the Board or (b) an independent monitoring psychiatrist.
- (b) A proposed treating psychiatrist may not be approved unless the proposed treating psychiatrist agrees to provide periodic reports either to the Board or to an independent monitoring psychiatrist.
- (c) The Executive Director may reject all of the proposed treating psychiatrists and require the submission of additional letters or approve one or more to be the approved treating psychiatrist.
- (d) Probationer shall begin the recommended care and treatment within 30 days after notification of approval of the treating psychiatrist.
- (e) Probationer shall receive care and treatment from the treating psychiatrist no less than one time every eight weeks. Probationer shall not unilaterally withdraw from treatment.
- (f) Probationer shall pay all fees charged by the treating psychiatrist.
- (g) Probationer shall follow all recommendations made by the treating psychiatrist regarding continued care and treatment.
- (h) Board staff may furnish to the treating psychiatrist any Board information that it determines, in its discretion, may be helpful or required for the treatment of Probationer.

- (i) The treating psychiatrist shall provide periodic written reports no less than quarterly, on March 15, June 15, September 15, and December 15 of each year, during Probationer's treatment, either directly to the Board or to an independent monitoring psychiatrist. Periodic reports shall include (a) current diagnosis; (b) treatment regimen; (c) treatment compliance; (d) follow-up recommendations; and (e) prognosis. The Board or an independent monitoring psychiatrist may request clarification of periodic reports and may request additional reports.
- (j) The treating psychiatrist may require Probationer to participate in alcohol and/or drug screens and shall immediately report any positive results either directly to the Board or to an independent monitoring psychiatrist.
- (k) The treating psychiatrist shall immediately report, either directly to the Board or to an independent monitoring psychiatrist, any unilateral withdrawal from treatment by Probationer.
- (l) Probationer shall execute any and all releases for medical records and authorizations necessary to effectuate the provisions of this Order.

Probationer's failure to cooperate with the treating psychiatrist, failure to follow the treating psychiatrist's recommendations, or withdrawal from treatment without consent of the Executive Director of the Board shall constitute a violation of this Order."

2. Ordering Paragraph No. 4 shall be modified to read as follows:

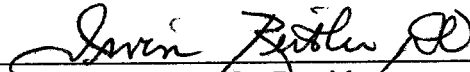
"Probationer shall continue to participate in the activities and programs of Alcoholics Anonymous (AA) or Narcotics Anonymous (NA), (or any other substantially similar program that has been approved in writing by the Executive Director of the Board), on a regular basis of not less than 12 times a month. Probationer shall attend at least two meetings per week. Probationer shall maintain documentation as to the number and location of meetings attended and make such documentation available to the Board staff upon request."

3. All other provisions of the 2010 Order as modified by the 2012 Order remain in full force and effect until superseded by subsequent Order of the Board.

**THIS ORDER IS A PUBLIC RECORD.**

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this

7<sup>th</sup> day of February, 2014.



---

Irvin E. Zeitler, Jr., D.O., President  
Texas Medical Board

LICENSE NO. J-8773

IN THE MATTER OF  
THE LICENSE OF  
SERGIO SILVA, M.D.

BEFORE THE  
  
TEXAS MEDICAL BOARD

TERMINATION OF SUSPENSION GRANTED AND  
ENTRY OF AGREED ORDER

On the 27 day of August, 2010, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Sergio Silva, M.D. ("Probationer").

On August 2, 2010, Probationer appeared in person, with counsel Penny Hobbs, before representatives of the Board to petition the Board for termination of an Agreed Order of Suspension entered on August 24, 2007, ("2007 Order") pertaining to Probationer's Texas Medical License J-8773, a copy of which Order is referred to and incorporated herein. The Board's representatives were Melissa Tonn, M.D., and Russell Parker, members of a District Review Committee ("Panel"). Wendy A. Pajak represented Board staff.

Upon the recommendation of the Board's representatives and with the consent of Probationer, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order.

FINDINGS OF FACT

The Board finds that:

1. Probationer received all notice required by law. All jurisdictional requirements have been satisfied. Probationer waives any defect in notice and any further right to notice or hearing under the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the "Act") or the Rules of the Board.

2. Probationer currently holds Texas Medical License No. J-8773. Probationer was originally issued this license to practice medicine in Texas on December 8, 1995. Probationer is not licensed to practice in any other state.

3. Probationer is primarily engaged in the practice of psychiatry. Probationer is not board certified in this area of practice.

4. Probationer is 42 years of age.

A. Prior Disciplinary History:

1. The Board entered an Agreed Order of Temporary Suspension on September 8, 2006, after a disciplinary panel of the Board determined that Probationer's continued practice would constitute a continuing threat to the public welfare. The action was based on the Probationer's non-therapeutic prescribing, standard of care violations and unprofessional conduct.

2. On September 15, 2006, an ISC Panel deferred a decision on Probationer's Temporary Suspension until Probationer underwent a 96-hour psychiatric evaluation. The ISC Panel reconvened on May 7, 2007, to consider the results from the psychiatric evaluation and subsequent positive drug screen found by Talbotts Recovery Center.

3. On August 24, 2007 ("2007 Order"), the Probationer entered into an Agreed Order of Suspension suspending his license until at least May 11, 2008, and until he was able to provide evidence of his ability to safely practice medicine. The action was based on the findings of the disciplinary panel at the Temporary Suspension Hearing held on September 8, 2006 and his impairment due to his use of cocaine.

4. Probationer neither admits nor denies the findings of facts and conclusions of law in previous board orders related to this matter.

B. Status of Compliance with the 2007 Order as of August 2, 2010:

1. The Probationer is in compliance with Ordering Paragraph No. 1 of the 2007 Order, requiring that the Probationer remain suspended until such time as he provides clear and convincing evidence that he is competent to safely practice medicine, as he has not been practicing medicine since the entry of the 2007 Order.

2. The Probationer is in compliance with Ordering Paragraph No. 2 of the 2007 Order, requiring that the Probationer refrain from requesting that his suspension be lifted until he is able to provide the Board with clear and convincing evidence that he is able to safely practice



medicine, as he has refrained from such requests until now, and has submitted sufficient evidence to the Board for considering his request to lift his suspension.

3. The Probationer is in compliance with Ordering Paragraph No. 3 of the 2007 Order, requiring that the Probationer forward a copy of the report resulting from the 96-hour psychiatric evaluation conducted by Talbott Recovery Campus to the Board, as we have received all requested documentation.

C. Probationer's Requested Relief: Probationer requested a termination of the 2007 Order based on his continued sobriety, vast improvement in his mental and physical health, and occupational stability and performance. Furthermore, he has been sober since January 18, 2008, and, through his recovery, he has gained insight into his substance abuse issues and has made lifestyle changes to prevent relapse. Additionally, he indicated that he is ready to get back to work and begin the task of rebuilding his career in medicine.

D. Recommendation: Based on the above-mentioned Findings of Fact and information available at the hearing on August 2, 2010, the Board's representatives determined that Probationer: is in compliance with the terms of the 2007 Order; has demonstrated two years of sobriety including one year under the Board's Drug Testing program; has had no positive screens since participating in the Board's drug testing program; has been seeing his psychiatrist on a regular basis and attends a 12 step program regularly; and has strong recommendations from his treating psychiatrist and AA/NA sponsors that he is stable. Accordingly, the Board's representatives recommended that the Probationer's request for termination of the 2007 Order be granted and recommends entry of this Agreed Order.

#### CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Probationer pursuant to the Act.
2. 22 TEX. ADMIN. CODE §187.43 authorizes the Board to consider petitions for Modification and/or Termination of Agreed Orders and Disciplinary Orders.

3. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

ORDER

Based on the above Findings of Fact and Conclusions of Law and the recommendation of the Board's representatives, the Board ORDERS that Probationer's request for termination of his suspension and reinstatement of his medical license is hereby granted and Probationer shall be subject to the following terms and conditions for a period of 10 years:

1. Probationer shall abstain from the consumption of prohibited substances as defined below, except as prescribed by another physician to Probationer for legitimate and documented therapeutic purposes. As used in this provision, "consumption" means any manner of ingestion, including oral, injection, topical, inhalation, or otherwise.

(a) Prohibited substances, as used in this order, includes:

- (1) Alcohol in any form;
- (2) Dangerous drugs, as defined in Chapter 483, TEX. HEALTH & SAFETY CODE;
- (3) Controlled substances, as defined in Chapter 481, TEX. HEALTH & SAFETY CODE;
- (4) any substance, in any form, including over-the-counter (OTC) agents and food products, that may cause a positive drug or alcohol test.

(b) The following is an illustrative, but not exclusive, list of prohibited substances:

- (1) Stimulants
- (2) appetite suppressants
- (3) medication for ADD/ADHD
- (4) Anti-anxiety agents
- (5) Antidepressants
- (6) Antihistamines
- (7) Anticholinergics
- (8) Antispasmodics
- (9) Recreational, mind-altering drugs
- (10) Any product containing pseudoephedrine or epinephrine
- (11) Alcohol
- (12) Any product containing alcohol, including mouthwashes, cough medicines, after shave lotions, colognes, hand sanitizing formulas, and dietary and herbal supplements
- (13) Food containing any of the above and/or poppy seeds.

- (c) Within five days after receipt of this Order, Probationer shall:
- (1) Provide, to the Compliance Division of the Board, a list of all prohibited substances that Probationer is currently consuming, whether by prescription or otherwise;
  - (2) give any treating physician a copy of this Order;
  - (3) cause any treating physician to report all prescriptions and orders for any prohibited substance within five days after the treating physician receives this Order. The report shall include the medical condition being treated; the substance prescribed, dispensed or administered; the amount of such substance; and any refills authorized.
- (d) During the term of this Order, Probationer shall:
- (1) provide, to the Compliance Division of the Board, a list of all subsequent prescriptions and any subsequent orders for prohibited substances within 24 hours after receipt of the subsequent prescription or order; and
  - (2) give any subsequent treating physician a copy of this Order within five days after the initiation of treatment, and Probationer shall cause the subsequent treating physician(s) to report all prescriptions and any orders for prohibited substances to the Compliance Division of the Board no later than five days after receipt of this Order by the treating physician. The report shall include the medical condition being treated; the substance prescribed, dispensed or administered; the amount of such substance; and any refills authorized.
- (e) If Probationer consumes any prohibited substance in any form without a prescription or order authorized by a physician for a legitimate medical purpose, Probationer shall immediately report Probationer's consumption in writing within 24 hours to the Compliance Division of the Board.
- (f) The Probationer shall participate in the Board's drug testing program. In addition, at the request of a representative of the Board, with or without prior notice, Probationer shall submit to appropriate examinations, including screenings for alcohol and drugs, through either a saliva, urine, blood, sweat, or hair specimen, to

determine by laboratory analysis whether Probationer is free of prohibited drugs and alcohol. Probationer shall pay any costs associated with these analyses.

(g) A violation of this Order under this provision shall include: (i) a positive or a positive-dilute screen for prohibited drugs or alcohol, or a metabolite of prohibited drugs or alcohol; (ii) an adulterated specimen; (iii) a substituted specimen; or (iv) a refusal or failure to submit to random screenings. Should a specimen be reported as negative-dilute, Probationer may be required to undergo additional testing and may be subject to further Board action. A violation may be based on drug and alcohol screening under the Board's program or any other drug and/or alcohol testing.

(1) Evidence of a violation of this Order under this provision and any other information related to Probationer's violation of this Order may be presented to Board representatives at a Probationer's Show Compliance Proceeding, held in accordance with 22 TEX. ADMIN. CODE, §187.44.

(2) If the Board representatives at such Probationer's Show Compliance Proceeding determine that Probationer is in violation of this Order pursuant to this provision, the Board representatives may direct the Executive Director to immediately **SUSPEND** Probationer's medical license. **THIS SUSPENSION SHALL BE EFFECTIVE IMMEDIATELY WITHOUT THE NEED FOR A FORMAL HEARING BEFORE THE BOARD, A PANEL OF THE BOARD, OR THE STATE OFFICE OF ADMINISTRATIVE HEARINGS OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE MEDICAL PRACTICE ACT OR THE ADMINISTRATIVE PROCEDURE ACT. PROBATIONER WAIVES ANY SUCH HEARING OR ANY SUCH DUE PROCESS AND ALL RIGHTS OF APPEAL IN REGARD TO THE SUSPENSION.**

If Probationer is suspended under this provision, a Board representative shall file a formal complaint under Section 164.005 of the Medical Practice Act as soon as practicable, alleging the violations of this Order under this provision and seeking such disciplinary action as may be appropriate, including revocation of Probationer's license. The formal complaint may also

include allegations of other violations of this Order and other violations of the Medical Practice Act. The parties may resolve the issues by an agreed order, either before or after the filing of a formal complaint. **PROBATIONER DOES NOT WAIVE AND SPECIFICALLY RESERVES THE RIGHT TO A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS, WITH ALL RIGHTS PROVIDED BY THE MEDICAL PRACTICE ACT OR THE ADMINISTRATIVE PROCEDURE ACT AND THE RIGHT TO SEEK JUDICIAL REVIEW OF THE FINAL ORDER.**

2. Psychiatric Care and Treatment. Within 30 days after the date of the entry of this Order, Probationer shall submit, to the Compliance Division of the Board, letters from up to three physicians who are board certified in psychiatry and who agree to serve as Probationer's approved treating psychiatrist.

- (a) The letters from proposed treating psychiatrist(s) shall state that they:
  - (1) have been provided a copy of this Order;
  - (2) agree to provide psychiatric treatment to Probationer; and
  - (3) agree to provide periodic reports regarding Probationer's compliance with treatment and rehabilitation to (a) the Board or (b) an independent monitoring psychiatrist.
- (b) A proposed treating psychiatrist may not be approved unless the proposed treating psychiatrist agrees to provide periodic reports either to the Board or to an independent monitoring psychiatrist.
- (c) The Executive Director may reject all of the proposed treating psychiatrists and require the submission of additional letters or approve one or more to be the approved treating psychiatrist.
- (d) Probationer shall begin the recommended care and treatment within 30 days after notification of approval of the treating psychiatrist.
- (e) Probationer shall receive care and treatment from the treating psychiatrist no less than one time each month. Probationer shall not unilaterally withdraw from treatment.
- (f) Probationer shall pay all fees charged by the treating psychiatrist.

- (g) Probationer shall follow all recommendations made by the treating psychiatrist regarding continued care and treatment.
- (h) Board staff may furnish to the treating psychiatrist any Board information that it determines, in its discretion, may be helpful or required for the treatment of Probationer.
- (i) The treating psychiatrist shall provide periodic written reports no less than quarterly, on March 15, June 15, September 15, and December 15 of each year, during Probationer's treatment, either directly to the Board or to an independent monitoring psychiatrist. Periodic reports shall include (a) current diagnosis; (b) treatment regimen; (c) treatment compliance; (d) follow-up recommendations; and (e) prognosis. The Board or an independent monitoring psychiatrist may request clarification of periodic reports and may request additional reports.
- (j) The treating psychiatrist may require Probationer to participate in alcohol and/or drug screens and shall immediately report any positive results either directly to the Board or to an independent monitoring psychiatrist.
- (k) The treating psychiatrist shall immediately report, either directly to the Board or to an independent monitoring psychiatrist, any unilateral withdrawal from treatment by Probationer.
- (l) Probationer shall execute any and all releases for medical records and authorizations necessary to effectuate the provisions of this Order.

Probationer's failure to cooperate with the treating psychiatrist, failure to follow the treating psychiatrist's recommendations, or withdrawal from treatment without consent of the Executive Director of the Board shall constitute a violation of this Order.

3. Monitoring Continued Care and Treatment. During any continued care and treatment, the Board shall monitor Probationer's compliance with treatment and rehabilitation, either directly through the treating psychiatrist or through an independent monitoring psychiatrist designated by the Executive Director.

- (a) If the approved treating psychiatrist agrees to provide reports directly to the Board, with the consent of Probationer, the Executive Director may authorize the

treating psychiatrist to serve in the dual capacity as treating psychiatrist for Probationer and monitoring psychiatrist for the Board.

- (b) If the approved treating psychiatrist does not agree to provide periodic reports to the Board, or if Probationer does not consent, or if the Executive Director requires an independent monitoring psychiatrist, the Executive Director shall designate a physician who is board certified in psychiatry to serve as the Board's independent monitoring psychiatrist. Probationer shall pay all fees charged by an independent monitoring psychiatrist.
- (c) An independent monitoring psychiatrist may require Probationer to present for a personal interview up to twice each year during treatment.
- (d) Probationer shall authorize the treating psychiatrist to provide information necessary for monitoring by the Compliance Division of the Board, either directly to the Board or through an independent monitoring psychiatrist. The information shall be limited to the minimum information necessary to ensure adequate assessment of Probationer's compliance with treatment, rehabilitation, and compliance with the terms of this Order.
- (e) An independent monitoring psychiatrist shall provide periodic written reports to the Compliance Division of the Board no less than semi-annually, on March 15 and September 15 of each year, during Probationer's treatment. The monitoring reports shall include: (a) current diagnosis; (b) treatment regimen; (c) treatment compliance; (d) follow-up recommendations; and (e) prognosis.
- (f) Board staff may furnish to the monitoring psychiatrist any Board information that it determines, in its discretion, may be helpful or required for the effective monitoring of Probationer's compliance with treatment, rehabilitation, and compliance with this Order.
- (g) Probationer's failure to cooperate with the monitoring psychiatrist shall constitute a violation of this Order.

4. The Probationer shall continue to participate in the activities and programs of Alcoholics Anonymous ("AA") or Narcotics Anonymous ("NA"), (or any other substantially similar program that has been approved in writing by the Executive Director of the Board), on a

regular basis of not less than three times per week. Probationer shall maintain documentation as to the number and location of meetings attended and make such documentation available to the Board staff upon request.

5. Probationer shall not treat or otherwise serve as a physician for Probationer's immediate family, and Probationer shall not prescribe, dispense, administer or authorize controlled substances or dangerous drugs to Probationer or Probationer's immediate family. Probationer may self-administer or administer to Probationer's immediate family only such drugs as prescribed by another physician for legitimate medical purposes and in compliance with the orders and directions of such physician.

6. Probationer shall limit his practice to treating adult patients, age 18 and over, only.

7. Probationer shall limit Probationer's medical practice, including any office and inpatient practice, to a group or an institutional setting, with other psychiatrists, approved in advance in the discretion of the Executive Director of the Board. Probationer shall provide a copy of this Order to the group or institutional setting administrator. If there are any personnel or scheduling changes related to the approved setting, the Probationer shall notify the Board in writing of those changes within 14 days.

8. Probationer is hereby authorized to reapply to the Drug Enforcement Administration (DEA) and the Texas Department of Public Safety (DPS) to obtain controlled substance registration for Schedules III, IV and V. The decision to grant or deny Probationer's application shall remain a matter for appropriate determination by the DEA and DPS.

Probationer shall not reregister or otherwise obtain Controlled Substances Registrations for additional schedules until Probationer has received written authorization from the Board. Authority to register for such additional schedules Controlled Substances Registration Certificates may be granted only after Probationer makes written petition and a personal appearance before the Board, a committee of the Board, or authorized Board representatives. The



granting of such authority is discretionary with the Board and shall not control any decision by DEA or DPS in regard to granting or denying any application by Probationer for the return of additional controlled substance registrations.

9. Probationer shall not possess, dispense, administer or provide, to anyone, samples of medication of any type.

10. This Agreed Order constitutes a restriction on Probationer's license and Probationer shall not be permitted to supervise or delegate prescriptive authority to a physician assistant or advanced practice nurse or supervise a surgical assistant.

11. Within one year from the date of the entry of this Order, Probationer shall enroll in and successfully complete at least 16 hours of continuing medical education (CME) approved for Category I credits by the American Medical Association in the topics of recent developments in psychiatry, approved in writing in advance by the Compliance Division of the Board. To obtain approval for the course, Probationer shall submit in writing to the Compliance Division of the Board information on the course, to include at least a reasonably detailed description of the course content and faculty, as well as the course location and dates of instruction. Probationer shall submit documentation of attendance and successful completion of this requirement to the Compliance Division of the Board on or before the expiration of the time limit set forth for completion of the course. The CME requirements set forth in this paragraph shall be in addition to all other CME required for licensure maintenance.

12. Probationer shall comply with all the provisions of the Act and other statutes regulating the Probationer's practice.

13. Probationer shall fully cooperate with the Board and the Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Probationer's compliance with this Order. Failure to fully cooperate shall constitute a violation of this order and a basis for disciplinary action against Probationer pursuant to the Act.

14. Probationer shall inform the Board in writing of any change of Probationer's mailing or practice address within 10 days of the address change. This information shall be submitted to the Permits Department and the Director of Enforcement for the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Probationer pursuant to the Act.

15. Any violation of the terms, conditions, or requirements of this Order by Probationer shall constitute unprofessional conduct likely to deceive or defraud the public, or to injure the public, and shall constitute a basis for disciplinary action by the Board against Probationer pursuant to the Act. Probationer agrees that 10 days notice of a Probationer Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Probationer waives the 30-day notice requirement provided by §164.003(b)(2) of the Medical Practice Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code §187.44(4).

16. Probationer shall personally appear before the Board, a committee of the Board, or a panel of Board representatives at least one time the first year and each year thereafter that this Order is in effect upon written request, mailed to Probationer's last known address on file with the Board at least 10 calendar days before the requested appearance date. Such appearances shall be for the purpose of reporting on and addressing issues related to Probationer's compliance with the terms and conditions of this Order.

17. The above referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following the date of the entry of this Order. If, after the passage of the 12-month period, Probationer wishes to seek amendment or termination of these conditions, Probationer may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition without further appeal or review. Petitions for modifying or terminating may be filed only once a year thereafter.

PROBATIONER WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. PROBATIONER AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, SERGIO SILVA, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 8-9, 2010.

*Silva, MD*

\_\_\_\_\_  
SERGIO SILVA, M.D.  
Probationer

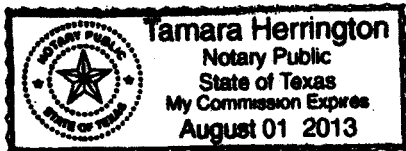
STATE OF Texas  
COUNTY OF Travis

§  
§  
§

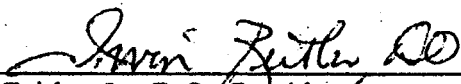
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 9<sup>th</sup> day of August, 2010.

*[Handwritten Signature]*  
\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this  
27 day of August, 2010.

  
\_\_\_\_\_  
Irvin E. Zeitler, Jr., D.O. President  
Texas Medical Board

LICENSE NO. J-8773

IN THE MATTER OF  
THE LICENSE OF  
SERGIO SILVA, M.D.

BEFORE THE  
TEXAS MEDICAL BOARD

AGREED ORDER

On the 24 day of August, 2007, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Sergio Silva, M.D. ("Respondent").

On May 11, 2007, Respondent last appeared in person, with counsel Penny Hobbs and Stephanie E. Kaiser, at an Informal Show Compliance Proceeding and Settlement Conference (ISC) in response to a letter of invitation from the staff of the Board. The Board's representatives were Keith E. Miller, M.D., a member of the Board, and David Baucom, a member of the District Review Committee. Dinah Brothers represented Board staff at the ISC. The case subsequently was transferred to Nancy Leshikar.

Upon the recommendation of the Board's representatives, the Board makes the following Findings of Fact and Conclusions of Law and enters this Order.

FINDINGS OF FACT

The Board finds that:

1. Respondent received all notices required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the "Act") or the Rules of the Board.
2. Respondent currently holds Texas Medical License No. J-8773. Respondent was originally issued this license to practice medicine in Texas on December 8, 1995. Respondent is not licensed to practice in any other state.
3. Respondent is primarily engaged in the practice of psychiatry. Respondent is board certified in this specialty by the American Board of Psychiatry and Neurology, a member of the American Board of Medical Specialties.

4. Respondent is 39 years of age.

5. Respondent has previously been the subject of disciplinary action by the Board.

6. This Order addresses three cases opened in the Legal Department: Legal Case Nos. 05-0119, 05-0576 and 07-0227.

7. The first Legal Case (No. 05-0119) addressed Respondent's failure to provide records requested by the Board relative to patient B.P. The second Legal Case (No. 05-0576) involved Respondent's failure to: follow through on an assessment of attention deficit hyperactive disorder (ADHD); diagnose and treat medication-induced toxicity; return telephone calls; keep appointments with patients; improper termination of patient-physician relationship; monitor patients while on prescribed antidepressants; and failure to appropriately evaluate, monitor, diagnose and treat patients G. B., D.L., H.L., D. K., and M.C. The third Legal Case addresses other issues identified in an Order of Temporary Suspension discussed below.

8. An Order of Temporary Suspension was entered September 8, 2006, based on numerous findings related to Respondent's: non-therapeutic treatment of a seven-year old (I.N.) with Prozac and Strattera; failure to diagnose and treat medication-induced toxicity in I.N.; endangerment of a member of Respondent's household, who was also one of Respondent's patients, by prescribing controlled substances to that person without a documented medical necessity; and failure to respond to patient calls and missed scheduled patient appointments. Additionally, the Temporary Suspension Order noted that a hospital at which Respondent had privileges canceled those privileges due to his aggressive behavior that could have affected a patient's care.

9. An ISC was held on September 15, 2006, after the issuance of the Temporary Order of Suspension, at which time the Panel deferred any action until the Respondent underwent a 96-hour inpatient psychiatric evaluation. The results of that examination were to be provided to the Panel. The ISC Panel determined that an Agreed Order would be considered by the Panel only after the report of the findings of the psychiatric evaluation was received by the Board.

10. Respondent participated in the comprehensive Pathways psychiatric and addictive disease evaluations offered at Talbott Recovery Campus (Talbott) in Atlanta, Georgia from January 8 through January 12, 2007.

11. Talbott conducted evaluations that included an internal medicine examination, two psychiatric assessments, three addiction medicine assessments, two behavioral assessments and psychological and neurological testing. During the time Respondent was at Talbott, Respondent denied previous or current use of cocaine.

12. A report issued on January 16, 2007, by Dr. John Doyle, Clinic Director/Assessment Director at Talbott regarding recommendations for Respondent.

13. On January 11, 2007, Talbott administered a hair analysis drug screen to Respondent. The test results, which were positive for cocaine, benzoylecgonine, and norcocaine, were not available to Talbott personnel until after their January 16, 2007 report had been completed.

14. After the positive hair analysis, Respondent admitted to the occasional use of cocaine. The Talbott Assessment Team withdrew the recommendations contained in the January 16, 2007 report and instead recommended a comprehensive residential treatment program geared to healthcare providers that would include psychiatric treatment, disruptive physician treatment and addiction treatment. Talbott did not recommend that Respondent be allowed to resume practice.

15. An ISC was convened on May 11, 2007, to consider the results of the hair analysis and the new Talbott recommendation and to complete the ISC held on September 15, 2006. Respondent indicated that going to Talbott had been an eye-opening experience and that he had been following the 12-Step Program since January 22, 2007, and probably would for the rest of his life. Additionally, he was participating in the Texas Medical Association (TMA) drug testing program and undergoing psychiatric counseling.

16. At the May 11, 2007 ISC, Respondent also testified regarding the other investigative logs and legal cases that upon becoming aware of missed telephone calls, he changed his office management policies and that he had determined that many of the messages received by his office were not conveyed to him by his office manager who has since been replaced.

17. Respondent presented evidence on May 11, 2007, that he has been in compliance with his participation in the TMA Program.

18. Respondent indicated that the program at Talbott had allowed him to develop skills that would allow him to interact more positively with others.

19. Respondent does not admit or deny the findings of fact or the conclusions of law set forth in this Order. However, Respondent has cooperated with Board staff in the investigation of the allegations related to this Agreed Order. Respondent's cooperation, through consent to this Agreed Order, pursuant to the provisions of Section 164.002 the Act, will save money and resources for the State of Texas. To avoid further investigation, hearings, and the expense and inconvenience of litigation, Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions.

### CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.

2. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as further defined by Board Rule 190.8(1)(A), (C) and (D).

3. Sections 164.051(a)(4) and 164.056 of the Act authorize the Board to take disciplinary action against Respondent based on Respondent's inability to practice medicine with reasonable skill and safety to patients because of illness; drunkenness; excessive use of drugs, narcotics, chemicals, or another substance; or as a result of any mental or physical condition.

4. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.

5. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

6. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.



## ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board **ORDERS** that:

1. Respondent's Texas medical license is hereby indefinitely **SUSPENDED** until such time as Respondent requests in writing to have the suspension stayed or lifted, and personally appears before the Board and provides clear and convincing evidence and information which in the discretion of the Board adequately indicates that Respondent is physically, mentally, and otherwise competent to safely practice medicine. Such evidence and information shall include at a minimum, but shall not be limited to, complete legible copies of medical records and reports of psychological and neuropsychiatric evaluations conducted by or under the direction of a psychiatrist certified by the American Board of Medical Specialties in Psychiatry.

Upon presentation of clear and convincing evidence to the Board that Respondent is able to safely practice medicine, the suspension of Respondent's license may be lifted and Respondent may be placed on probation for such time and under such terms and conditions which the Board in its discretion determines are necessary to adequately protect the public.

2. Respondent shall not request to have the suspension stayed or lifted as discussed in Ordering Paragraph No. 1 above before May 11, 2008.

3. If Respondent has not already done so, Respondent is ordered to forward a copy of the report resulting from the 96-hour psychiatric evaluation conducted by Talbott Recovery Campus to the Board.

4. The time period of this Order shall be extended for any period of time that (a) Respondent subsequently resides or practices outside the State of Texas, (b) Respondent's license is subsequently canceled for nonpayment of licensure fees, or (c) this Order is stayed or enjoined by Court Order. If Respondent leaves Texas to live or practice elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. When the period of extension ends, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the extended Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of extension.

5. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent's practice.

6. Respondent shall fully cooperate with the Board and the Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Order. Failure to fully cooperate shall constitute a violation of this order and a basis for disciplinary action against Respondent pursuant to the Act.

7. Respondent shall inform the Board in writing of any change of Respondent's mailing or practice address within 10 days of the address change. This information shall be submitted to the Permits Department and the Director of Enforcement for the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

8. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, or to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act. Respondent agrees that 10 days notice of a Probationer Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent waives the 30-day notice requirement provided by §164.003(b)(2) of the Medical Practice Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code §187.44(4).

9. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting until May 11, 2008. If, after May 11, 2008, Respondent wishes to seek amendment or termination of these conditions, Respondent may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition without further appeal or review. Petitions for modifying or terminating may be filed only once a year thereafter.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, SERGIO SILVA, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 8-20- 2007.

*Sergio, MD*

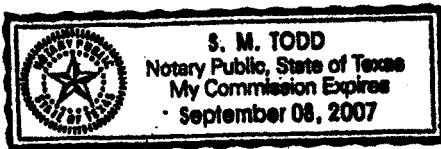
\_\_\_\_\_  
SERGIO SILVA, M.D.  
Respondent

STATE OF Texas

COUNTY OF Travis

§  
§  
§

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 20<sup>th</sup> day of August, 2007.

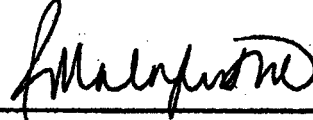


(Notary Seal)

*S. M. Todd*  
\_\_\_\_\_  
Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this

24 day of August, 2007.



---

Roberta M. Kalafut, D.O., President  
Texas Medical Board