

LICENSE NO. J-7058

IN THE MATTER OF
THE LICENSE OF
SERGIO H. LUNA, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 21st day of August, 2009, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Sergio H. Luna, M.D. ("Respondent").

On March 30, 2009, Respondent appeared in person, with counsel Laurie L. York, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. The Board's representatives were Margaret C. McNeese, M.D., a member of the Board, and Kathy C. Flanagan, M.D., and Sharon Barnes, members of a District Review Committee. Darrin Dest represented Board staff.

Upon the recommendation of the Board's representatives and with the consent of Respondent, 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. Respondent received all notice 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-7058. Respondent was originally issued this license to practice medicine in Texas on November 5, 1994. Respondent is also licensed to practice in the states of New York and Vermont, and in the District of Columbia.

3. Respondent is primarily engaged in the practice of psychiatry. Respondent is board certified by the American Board of Psychiatry and Neurology, a member of the American Board of Medical Specialties.
4. Respondent is 53 years of age.
5. Respondent has not previously been the subject of disciplinary action by the Board.
6. On November 18, 2004, Respondent first saw Patient A, a seven-year old boy, for behavioral problems at the request of the child's mother and his pediatrician. Respondent diagnosed Patient A with Bipolar Disorder NOS.
7. Respondent initially prescribed two psychotropic drugs to Patient A: Klonopin and Risperidone. When Patient A came back for a return visit, complaining of drowsiness and sedation, Respondent prescribed Patient A: Concerta, Clonidine, and Risperidone. Respondent continued to prescribe psychotropic drugs to Patient A throughout 2005 and 2006, adjusting medications and doses over time. Respondent also prescribed Patient A Depakote on May 31, 2006.
8. The Respondent's medical records for Patient A failed to document sufficient justification for the medications and amounts prescribed to a pediatric patient.
9. Respondent's communication with Patient A's pediatrician and Patient A's school was very limited in regard to Respondent's findings or treatment plans for Patient A. Respondent also did not seek verification of behavior problems from Patient A's school or other external sources. As a result, the Respondent was not able to take into account all sources of information as the treatment plan was developed and implemented.
10. In May of 2006, the Vermont Board of Medical Practice began a formal investigation into Respondent's prescribing practices, based on a complaint from Patient A's school nurse, who disagreed with the care being provided to Patient A by Respondent.
11. On October 3, 2007, the Vermont Board of Medical Practice took a disciplinary action in regard to Respondent, in which restrictions were placed on Respondent's capacity to engage in the practice of medicine with regard to pediatric psychiatry patients. Specifically, the Vermont restrictions included that: Respondent's license in Vermont should be designated as "conditioned;" pediatric patients for whom Respondent prescribed medicine must be seen at least monthly for a face-to-face visit; Respondent will actively communicate and collaborate with other doctors, nurses, and teachers having contact with the a pediatric patient; and Respondent

will meet at least monthly with a pediatric psychiatrist peer, but only if Respondent is currently treating pediatric psychiatry patients.

12. Respondent has cooperated 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)(C), failure to exercise proper diligence in one's professional practice.
3. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of a direct or indirect violation of a rule adopted under this Act, either as a principal, accessory, or accomplice, specifically Board Rule 165.1, regarding maintenance of adequate medical records.
4. Section 164.051(a)(9) of the act authorizes the Board to take disciplinary action against Respondent based on Respondent holding a license to practice medicine subject to disciplinary action by another state, based upon acts by the licensee that are prohibited under Section 164.052 or similar to acts described by this subsection.
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.

7. Section 164.002(d) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. For a period of one year commencing with the date of the approval of a physician monitor ("monitor") as provided in this Order, Respondent's practice shall be monitored by the physician monitor in accordance with §164.001(b)(7) of the Act. The Compliance Division of the Board shall designate the monitor and may change the monitor at any time for any reason. The monitor shall have expertise in a similar specialty area as Respondent. The Compliance Division shall provide a copy of this Order to the monitor, together with other information necessary to assist the monitor.

a. As requested by the Compliance Division, Respondent shall prepare and provide complete legible copies of selected patient medical and billing records ("selected records"). The Compliance Division shall select records for at least 30 patients seen by Respondent during each three-month period following the last day of the month of entry of this Order ("reporting period"). The Compliance Division may select records for more than 30 patients, up to 10 percent of the patients seen during a reporting period. If Respondent fails to see at least 30 patients during any three-month period, the term of this Order shall be extended until Respondent can submit a sufficient number of records for a monitor to review.

b. The monitor shall perform the following duties:

- 1) Personally review the selected records;
- 2) Prepare written reports documenting any perceived deficiencies and any recommendations to improve Respondent's practice of medicine or assist in the ongoing monitoring process. Reports shall be submitted as requested by the Compliance Division; and
- 3) Perform any other duty that the Compliance Division determines will assist the effective monitoring of Respondent's practice.

c. The Compliance Division shall provide to Respondent a copy of any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division.

d. The monitor shall be the agent of the Board, but shall be compensated by the Respondent through the Board. Such compensation and any costs incurred by the monitor shall be paid by Respondent to the Board and remitted by the Board to the monitor. Respondent shall not charge the compensation and costs paid to the monitor to any patients.

2. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete 10 hours of continuing medical education ("CME") approved for Category I credits by the American Medical Association or American Osteopathic Association in the subject of medical recordkeeping, approved in writing in advance by the Board. To obtain approval for the course, Respondent shall submit in writing to 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. Respondent shall submit documentation of attendance and successful completion of this requirement to 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 or CME required elsewhere in this Order.

3. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete 10 hours of CME approved for Category I credits by the American Medical Association or American Osteopathic Association in the subject of child and adolescent psychiatry, approved in writing in advance by the Board. To obtain approval for the course, Respondent shall submit in writing to 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. Respondent shall submit documentation of attendance and successful completion of this requirement to 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 or CME required elsewhere in this Order.

4. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete 10 hours of CME approved for Category I credits by the American

Medical Association or American Osteopathic Association in the subject of child and adolescent psychopharmacology, approved in writing in advance by the Board. To obtain approval for the course, Respondent shall submit in writing to 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. Respondent shall submit documentation of attendance and successful completion of this requirement to 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 or CME required elsewhere in this Order.

5. The time period of this Order shall be extended for any period of time that: (a) Respondent subsequently practices exclusively outside the State of Texas; (b) Respondent's license is subsequently cancelled for nonpayment of licensure fees; (c) this Order is stayed or enjoined by Court Order; or (d) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine. If Respondent leaves Texas to practice elsewhere or ceases active practice for more than 60 consecutive days, Respondent shall immediately notify the Board in writing. Upon Respondent's return to active practice or return to practice in Texas, Respondent shall notify the Board in writing. 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 Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of extension or tolling.

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

7. 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.

8. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within 10 days of the address change. This information shall be submitted to the Registration Department and the Compliance Department of 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.

9. 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.

10. Respondent shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants.

11. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for one year following the date of the entry of this Order. If, after the passage of the one-year period, 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 H. LUNA, 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: JULY 21st, 2009

Sergio H. Luna, M.D.
SERGIO H. LUNA, M.D.
Respondent

STATE OF FRANCE §
COUNTY OF Département §
D' EURE ET LOIR §

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 21st day of juillet (July), 2009.



Signature of Notary Public
vu pour certification matérielle de la
signature de Monsieur H.LUNA Sergio
apposé ci-dessus.

[Handwritten Signature]

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 21st day of August, 2009.

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