

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

BEFORE THE
TEXAS MEDICAL BOARD

ORDER DENYING TERMINATION OF SUSPENSION

On the 21 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 Silva, M.D. ("Respondent").

On June 12, 2009, Respondent appeared in person, with counsel Penny Hobbs, before Representatives of the Board to petition the Board for termination of a Agreed Order entered on August 24, 2007, pertaining to Respondent's Texas Medical License J-8773, a copy of which Order is incorporated herein. The Board's representatives were Allan Shulkin, M.D. and Paulette Southard, members of the Board. Ursula Keen, J.D., 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-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 currently suspended, although Respondent had been 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 40 years of age.

5. Respondent has previously been the subject of disciplinary action by the Board, and Respondent's Texas medical license is currently suspended.

6. 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 patient with Prozac and Strattera; failure to diagnose and treat medication-induced toxicity; 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 addressed disciplinary action (canceled privileges) taken against Respondent by Respondent's peers due to his aggressive behavior that could have affected the patient's care.

7. An ISC hearing was held on September 15, 2006, after the issuance of the Temporary 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.

8. On or about September 28, 2006, Respondent received approval from the Board for Talbott Recovery Campus (Talbott) in Atlanta, Georgia to conduct a 96-hour psychiatric evaluation of Respondent.

9. Respondent participated in the comprehensive Pathways psychiatric and addictive disease evaluations offered at Talbott from January 8, 2007, through January 12, 2007.

10. 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, he denied previous or current use of cocaine.

11. 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.

12. 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.

13. A report issued on January 16, 2007, by Dr. John Doyle, Clinical Director/Assessment Director at Talbott, recommended that Respondent:

- (a) be restricted to the psychiatric treatment of adult patients only;
- (b) not be allowed to prescribe Category 1-5 controlled substances until after boundaries treatment;
- (c) use no samples;
- (d) must work in a situation where other psychiatrists or psychologists are available; and,
- (e) continue weekly professional supervision with monthly reports to the Board.

14. On August 24, 2007, the Board entered an Agreed Order ("2007 Order") that among other terms and conditions: indefinitely suspended Respondent's license 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; stated that Respondent shall not request to have the suspension stayed or lifted before May 11, 2008; and Respondent was to provide the Board with a copy of the Talbott 96-hour Assessment.

15. Respondent did not agree to the Talbott recommended comprehensive residential treatment program geared to healthcare providers that would include psychiatric treatment, disruptive physician treatment, and addiction treatment. To date, Respondent has not done a residential treatment program.

16. On June 12, 2009, the Respondent failed to provide the TMA drug testing records, and based on this and other considerations, the Board concluded the Respondent had not met his burden of providing clear and convincing evidence.

CONCLUSIONS OF LAW

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

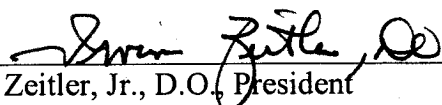
1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.
2. 22 TEX. ADMIN. CODE §187.43 authorizes the Board to consider petitions for Modification and/or Termination of Agreed Orders and Disciplinary Orders.
3. Section 164.002(a) of the Act authorizes the Board to resolve 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 Respondent's request for termination of his suspension and reinstatement of his medical license is hereby DENIED.

THIS ORDER IS A PUBLIC RECORD.

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



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