

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, he denied previous or current use of cocaine.

12. A report issued on January 16, 2007, by Dr. John Doyle, Clinical 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.

Silva, MD

SERGIO SILVA, M.D.
Respondent

STATE OF Texas

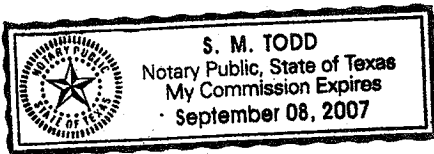
§

COUNTY OF Travis

§

§

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



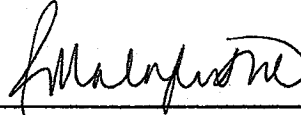
(Notary Seal)

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