

J-8773

IN THE MATTER OF

THE LICENSE OF

SERGIO SILVA, M.D.

§ BEFORE THE DISCIPLINARY
§
§
§ PANEL OF THE
§
§ TEXAS MEDICAL BOARD

ORDER OF TEMPORARY SUSPENSION WITH NOTICE

On September 8, 2006, came to be heard before the Disciplinary Panel of the Texas Medical Board (the "Board"), composed of Keith E. Miller, M.D., Chair, Amanullah Khan, M.D. and Melinda Fredricks (the "Panel") duly in session, the matter of the Application for Temporary Suspension or Restriction of the license of Sergio Silva, M.D. ("Respondent"). Respondent appeared in person, without counsel, and Dinah Brothers represented Board staff. Based on evidence submitted at the hearing, the Board through the Panel makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

The Panel finds that:

1. Respondent is a Texas Physician and holds Texas Medical License Number J-8773 issued by the Board in 1995, which was in full force and effect at all times material and relevant to this matter. All jurisdictional requirements have been satisfied.
2. At the direction and approval of a member of the Executive Committee, Roberta Kalafut, D.O., President of the Board, appointed the Panel to sit as a Disciplinary Panel in this matter, pursuant to TEX. OCC. CODE ANN. Title 3, Subtitle (the "Act") §164.059(a) and 22 TEX. ADMIN. CODE §187.56.
3. The Temporary Suspension proceeding was convened under Section 164.059 of the Medical Practice Act, with proper Notice.
4. Respondent prescribed Prozac and Strattera in a nontherapeutic manner to a seven-year old child. Respondent then failed to diagnose and treat medication induced toxicity in this patient which resulted in the patient being hospitalized with active suicidal and homicidal ideation.

5. Respondent accused the patient's mother of sabotaging the patient's treatment by withholding the medications even though the patient's mother communicated to Respondent that the medications were being given to the patient.

6. After the patient's mother filed a complaint with the Board regarding Respondent's treatment of her son and Respondent was notified of the complaint, Respondent filed a complaint against the patient's mother with Child Protective Services.

7. In a separate incident, Respondent endangered a household member and patient by prescribing controlled substances to that person without documented medical necessity. After the patient overdosed, Respondent attempted to manage the patient's medical condition himself without securing emergency medical care.

8. Once the patient was hospitalized, Respondent further interfered with the patient's health and welfare by becoming aggressive with the patient's healthcare team in the Intensive Care Unit. Respondent's aggressive behavior, which occurred in a hospital where Respondent had medical privileges, resulted in Respondent losing his hospital privileges.

9. Respondent had numerous incidents during late 2004 and 2005 where he failed to return patient telephone calls and missed scheduled appointments with patients.

10. Based on the above Findings of Fact, the Panel, including at least on physician licensed to practice medicine in this state, finds that Respondent is a real danger to the health of Respondent's patients or to the public from the acts or omissions of Respondent caused through Respondent's lack of competence, impaired status, or failure to care adequately for Respondent's patients.

11. Based on the above Findings of Fact, the Panel finds an imminent peril to the public health, safety, or welfare that requires immediate effect of this Order of Temporary Suspension on the date rendered.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Panel concludes the following:

1. Section 164.059 of the Act authorizes the Disciplinary Panel to temporarily suspend or restrict the medical license of Respondent if the Disciplinary Panel determines from evidence presented to it that the Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.

2. Based on the evidence presented and the Findings of Fact set forth herein, the Disciplinary Panel concludes that Respondent violated various sections of the Medical Practice Act, specifically:

- a) Section 164.059 of the Act authorizes the temporary suspension or restrictions of a person's medical license upon a determination by a Disciplinary Panel that the person would, by the person's continuation in practice of medicine, constitute a continuing threat to the public welfare.
- b) 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.
- c) Respondent has committed a prohibited act or practice within the meaning of Section 164.052(a)(5) of the Act based upon unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.
- d) Respondent has committed a prohibited act or practice within the meaning of Sections 164.052(a)(5) and 164.053(a)(3) of the Act based on Respondent writing prescriptions for or dispensing to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs or to a person who the physician should have known was an abuser of the narcotic drugs, controlled substances, or dangerous drugs.
- e) Respondent has committed a prohibited act or practice within the meaning of Sections 164.052(a)(5) and 164.053(a)(5) of the Act based on Respondent prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.
- f) Respondent has committed a prohibited act or practice within the meaning of Sections 164.052(a)(5) and 164.053(a)(6) of the Act based on Respondent prescribing, administering, or dispensing in a manner inconsistent with public health and welfare, dangerous drugs as defined by Chapter 483, Health and Safety Code; or controlled substances scheduled in Chapter 481 Health and

Safety Code; or controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. §801 et. seq.).

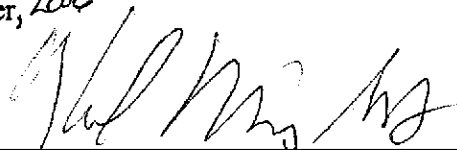
- g) Respondent has committed a prohibited act or practice within the meaning of Section 164.053(a)(1) of the Act based on Respondent violating state law connected with the physician's practice of medicine.
- h) Respondent has committed a prohibited act or practice within the meaning of Section 164.053(a)(8) of the Act based on Respondent failing to supervise adequately the activities of those acting under the supervision of the physician.
- i) Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care.
- j) Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 190.8(1)(C), failure to use diligence in one's professional practice.
- k) Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board Rule 190.8(1)(D), failure to safeguard against potential complications.

ORDER

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

1. Respondent's Texas medical license is hereby Temporarily Suspended.
2. This Order of Temporary Suspension is final and effective on the date rendered.
3. This Order of Temporary Suspension With Notice shall remain in effect until superceded by an Order of the Board.

Signed and entered this 8th day of September, 2006



Keith Miller, M.D., Chair
Disciplinary Panel
Texas State Board of Medical Examiners