

**GEORGIA COMPOSITE  
MEDICAL BOARD**

BEFORE THE GEORGIA COMPOSITE MEDICAL BOARD  
STATE OF GEORGIA

NOV 05 2009

IN THE MATTER OF:

RHETT L. BERGERON, M.D.  
License Number 044683

Respondent

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**DOCKET NUMBER**

DOCKET NO. 20100038

PUBLIC CONSENT ORDER

By agreement of the Georgia Composite Medical Board ("the Board") and Rhett L. Bergeron, M.D. ("Respondent"), the following disposition of this matter is entered pursuant to O.C.G.A. § 50-13-13(a)(4).

FINDINGS OF FACT

1.

Respondent is licensed to practice medicine in the State of Georgia and was licensed at all times relevant to the matters stated herein.

2.

On or about April 4, 2003, Respondent entered a Consent Order with the Board under which Respondent was disciplined for administering chelation treatment and IV nutritional therapy to a patient who had not signed an informed consent form as required by law. Respondent received a public reprimand under the terms of the Consent Order for his failure to obtain a properly signed informed consent form.

3.

Patient T.H., a California resident, was treated by Respondent on numerous occasions between August 2005 and May 2008 while visiting family in Georgia. T.H. sustained injuries in a severe automobile accident in 1998. She underwent multiple failed spinal surgeries, and she

complains of constant, chronic pain which greatly impairs her daily activities and affords a very poor quality of life. Respondent states he told T.H. he does not routinely prescribe pain medications and that she should retain a pain specialist, but he failed to document this. Nonetheless, he prescribed unusually high doses of opioids to T.H. to relieve her pain. Medical records show the following:

a) On or about August 4, 2005, T.H. presented to Respondent complaining of lower back pain. The records from that office visit do not indicate that a physical examination was conducted, but Respondent reviewed an MRI and concluded that T.H.'s diagnoses were "spinal stenosis, LBP, DDD, and herniated disk." Respondent prescribed to T.H. Roxycodone 30 mg 2-3 tabs q 4 hrs #150. "8/23 Fentanyl Patch" is also written to the side of the August 4, 2005 record.

b) On or about October 27, 2005, T.H. presented to Respondent complaining of bladder discomfort. The records from that office visit do not indicate that a physical examination was conducted, nor do they indicate a diagnosis, but Respondent prescribed to T.H. Oxycontin 80 mg #60 with a "-450" written off to the side. Respondent prescribed to T.H. at the same visit Roxycodone 30 mg #400.

c) On or about September 27, 2007, T.H. presented to Respondent where Respondent gave her samples of Lyrica. Respondent also prescribed to T.H. Oxycontin 80 mg 2 tabs po q 8 hrs with a total of 180 tablets prescribed.

d) On or about October 18, 2007, Respondent prescribed to T.H. Oxycodone 80 mg, #450, 2-3 tabs q 4-6 hrs.

e) On or about February 8, 2008, Respondent wrote a prescription for 10 Fentanyl patches, 75 mcg/hour for T.H. but did not include treatment notes for that visit.

f) On or about March 3, 2008, Respondent wrote T.H. a prescription for Roxycodone 30 mg, #400, 2-3 tabs q 4-6 hrs prn pain.

g) On or about March 11, 2008, Respondent wrote T.H. a prescription for Oxycodone 30, 2-3 q 4 hrs, #450 and Oxycontin 80, 2 q 8 hrs, #6x30, #180. A note from that visit says "Lyrica-too expensive."

h) On or about March 18, 2008, Respondent prescribed to T.H. Oxycodone 80 mg, 2 po q 8 hrs prn pain, #180.

i) On or about April 10, 2008, Respondent prescribed to T.H. Oxycodone 80 mg 1-2 po q 8 hrs prn pain, #180.

j) On a date in April [the day and year are cut off from the chart], Respondent prescribed to T.H. Roxycodone 30 mg, 2-3 po q 4-6 hrs prn pain, #450.

4.

Respondent's treatment of T.H. was below the minimum standard of acceptable and prevailing medical practice in the following ways: Although Respondent had known T.H. for many years and was very familiar with her level of pain, he failed to review medical records from her treating physician and failed to perform a physical examination and workup sufficient to support a diagnosis and treatment plan. Also, while the dosages prescribed by Respondent were consistent with those prescribed by T.H.'s then primary physician, Respondent prescribed doses of opioids, per the patient's current prescription bottles, which were disproportionately high and outside of the scope of a general practice physician.

5.

Patient D.S., a resident of Michigan, presented to a clinic for which Respondent was the medical director on or about March 10, 2005, complaining of "fighting viruses, fatigue, stomach

discomfort, and jaundice.” D.S. produced lab results showing abnormal liver enzymes. He did not report on his patient information forms that he had cancer, and it is unknown whether D.S. knew he had cancer. However, when he returned home a few weeks later, he presented himself to an oncologist who then diagnosed D.S. with advanced pancreatic cancer. The patient died shortly thereafter from complications resulting from a medical procedure involving the placement of a stent in D.S.’s biliary duct. Patient D.S.’s contact with Respondent’s clinic was as follows:

a) Respondent did not personally provide health care to patient D. S. All health care was provided by Respondent’s nurse practitioner. Medical records indicate that the patient’s cancer was not diagnosed. Respondent contends that D.S. selected Respondent’s holistic clinic for the purpose of building himself up during a short stay before presenting himself to his primary care physician for further evaluation and referral to a specialist when he returned home to Michigan. There is no record that the clinic recommended further testing and/or referral, or that D.S. decided not to act on any such recommendation.

b) Medical records show that D.S. received IV therapy twice a week from Respondent’s clinic between March 10, 2005 and May 3, 2005. Medical records also show that Respondent’s nurse practitioner, without making a diagnosis, prescribed an IV treatment without clearly documenting what was contained in the IV solution.

c) Respondent’s nurse practitioner referred D.S. for tests which utilized an electro-dermal device. When asked by the Board whether the electro-dermal device was a diagnostic or treatment device, Respondent stated that the device was “neither diagnostic nor therapeutic. Its purpose is to provide information to the doctor as part of his examination of the patient.”

d) Respondent referred D.S. to a naturopath named James Hawver who is not licensed to practice medicine in Georgia.

7.

Respondent admits the above findings of fact and waives any further findings of fact with respect to the above-styled matter.

#### CONCLUSIONS OF LAW

Respondent's conduct constitutes sufficient grounds for the imposition of discipline upon his license to practice medicine in the State of Georgia under O.C.G.A. Title 43, Chapters 1 and 34, *as amended*. Respondent hereby waives any further conclusions of law with respect to the above-styled matter.

#### ORDER

The Georgia Composite Medical Board having considered all the facts and circumstances of this case hereby orders, and Respondent hereby agrees, that the following sanctions shall be imposed upon Respondent's license to practice as a physician in the State of Georgia:

1.

Beginning on the effective date of this Consent Order, Respondent's license shall be placed on probation for a period of four (4) years, subject to the following terms and conditions:

(a) DEA RESTRICTION. Respondent shall not utilize a DEA permit or any triplicate forms or other Federal order forms except as follows: Until further order of the Board, Respondent hereby relinquishes his right to prescribe, administer, dispense, order, or possess (except as prescribed, administered, or dispensed to Respondent by another person authorized by law to do so) those controlled substances in classes II and III as defined by the Federal or Georgia Controlled Substances Act except the following non-narcotic medications in class III:

estrogen, testosterone, methyphenidate, phendimetrazine, and phentermine. Six months from the effective date of this Consent Order, Respondent may request a lifting or modification of the restriction. In his petition, Respondent must provide written evidence of successful completion of the mini-residency entitled "Appropriate Prescribing of Controlled Substances" sponsored by the Mercer University College of Pharmacy and Health Sciences or another similar program otherwise pre-approved by the Board. If the Board approves Respondent's request and lifts this restriction, all prescriptions issued by Respondent after the Board's approval shall be governed by paragraphs (b), (c), and (d) below:

(b) TRIPPLICATE PRESCRIPTIONS. Respondent shall utilize a triplicate prescription system for all controlled substances prescribed by him. Each prescription for a controlled substance written by Respondent shall be numbered sequentially and the copies distributed as follows: original to patient, one copy to the Board, and one copy to the patient's chart. Respondent shall not begin renumbering when he reaches 1000, but shall continue to number sequentially. The copies for the Board shall be mailed or delivered to the Board by Respondent once per quarter. A copy of Respondent's dispensing records shall be provided to the Board upon request for all controlled substances dispensed by him or on his order. Two (2) years from the date of the Board's lifting of the DEA restriction, Respondent may petition for removal or modification of this triplicate prescription requirement.

(c) PRESCRIPTION LOG. Respondent shall personally maintain for inspection a contemporaneous log (separate from his clinical records or the clinical records of other health care providers) of all controlled substances prescribed, administered, dispensed, or ordered by him. The prescription log shall include the date, patient name, drug, strength, quantity, and refill status, on a form approved by the Board. The prescription log shall also include the diagnosis

and the reasons for prescribing, administering, dispensing, or ordering each drug. The Board shall be authorized to inspect Respondent's prescription log. If Respondent's prescription log fails to comply with the requirements of this consent order, the Board is authorized to summarily suspend Respondent's license, pending a hearing. Two (2) years from the date of the Board's lifting of the DEA restriction, Respondent may petition for removal or modification of this prescription-logging requirement for all controlled substances.

(d) RECORD KEEPING. Prior to prescribing, administering, ordering or dispensing any controlled substance, Respondent shall detail fully the examination performed and diagnosis reached in the particular patient's file. Respondent shall specifically record all physical data of the patient, and detail the exact nature of Respondent's evaluation of the patient. In addition to this requirement, Respondent agrees to comply with all record keeping requirements of the Board. Respondent further agrees to maintain accurate medical records on each patient including any medications utilized in chelation and other IV treatments.

(e) USE OF PHYSICIAN'S ASSISTANT OR NURSE PRACTITIONER. Respondent may not employ or utilize a physician's assistant or nurse practitioner in Georgia during the probationary period. If Respondent employs or utilizes a physician's assistant or nurse practitioner in Georgia without the express written permission of the Board, Respondent's license shall be subject to revocation, upon substantiation thereof. This provision shall not restrict Respondent from working in a medical practice or hospital where the practice or hospital employs or utilizes a physician's assistant or nurse practitioner that Respondent does not utilize or supervise. This restriction shall remain in effect pending written notification by the Board that the limitation has been lifted. The Board shall have sole discretion whether to lift the practice restriction, and a denial of Respondent's petition shall in no way be considered a contested case

as provided by the Administrative Procedure Act. One (1) year from the effective date of this Consent Order, Respondent may petition the Board for a lifting or modification of this restriction. Should the Board decide not to lift this restriction, the Board shall notify Respondent of its intent to keep this restriction in place per the terms of this Order, and Respondent may respond to such notice in writing or request an appearance before the Board as in a non-contested case. In any event, this restriction shall remain in effect pending a final determination by the Board and written notification that the restriction on the use of physician's assistants and nurse practitioners has been lifted.

(f) RESIDENCY OUTSIDE GEORGIA. In the event Respondent should leave Georgia to reside or practice outside Georgia for periods longer than thirty (30) consecutive days, Respondent shall notify the Board in writing of the dates of departure and return. Periods of residency or practice outside Georgia as well as periods when Respondent is not actively engaged in the practice of medicine or is on inactive licensure status will not apply to the reduction of Respondent's probationary period, except as authorized by the Board. Respondent shall advise the Board of any change in address of record or employment status.

(g) DISCLOSURE. In addition to other disclosures required by this Consent Order, Respondent shall supply a copy of this Consent Order, once approved and docketed, and within ten (10) days from receipt of the docketed copy by Respondent, to each hospital or other institution in Georgia where Respondent maintains staff privileges of any kind, and to any person with whom Respondent is associated in practice, including other physicians or physician's assistants or to any person or entity for whom Respondent is employed as a physician in the State of Georgia. Respondent shall also be required to disclose the existence of and provide a copy of this Consent Order to such individuals or entities in connection with any future application for

institutional appointment, associated practice, utilization of a physician's assistant, or employment as a physician in the State of Georgia while this Consent Order is in effect. By executing this Consent Order, Respondent specifically consents to any such individuals or entities reporting to the Board information which would affect Respondent's ability to practice medicine with reasonable skill and safety to patients, notwithstanding any privilege provided by State or Federal law.

(h) TERMINATION OF PROBATION. Respondent may petition for termination one (1) month prior to the expiration of his probation by certifying under oath before a notary public that Respondent has complied with all conditions of probation and by providing documentation supporting discharge from probation. The Board shall review and evaluate the practice of Respondent prior to lifting the probation. At such time, the Board shall be authorized to restore all rights and privileges to Respondent's license, unless the Board has received information that Respondent has not complied with the terms of the probation or has otherwise failed to comply with the laws and rules regulating his practice as a physician. Should the Board determine that reasonable cause exists for maintaining Respondent's license on probationary status, the Board shall notify Respondent of its intent to extend the probationary period, and Respondent may respond to such notice in writing or request an appearance before the Board as in a non-contested case. In any event, this Consent Order shall remain in effect pending a final determination by the Board and notification that the probationary period has terminated.

2.

Respondent shall submit to the Board a fine of seven thousand five hundred dollars (\$7,500.00) to be paid in full by cashier's check or money order made payable to the Georgia Composite Medical Board within sixty (60) days of the effective date of this Consent Order.

Failure to pay the entire amount by the 60<sup>th</sup> day shall be considered a violation of this Order and shall result in further sanctioning of Respondent's license, including revocation, upon substantiation thereof.

3.

Respondent may not employ, utilize, refer to, or partner with any individual providing naturopathic services unless such naturopath is licensed as a physician in the State of Georgia.

4.

Respondent shall abide by all State and Federal laws regulating the practice of medicine or relating to drugs, the Rules and Regulations of the Composite State Board of Medical Examiners, and the terms of this Consent Order. If Respondent shall fail to abide by such laws, rules, terms or orders, Respondent's license may be subject to immediate summary suspension pending a hearing to revoke his license, and shall be subject to further discipline, including revocation, upon substantiation thereof after notice and a hearing, and if revoked, the Board in its discretion may determine that the license should be permanently revoked and not subject to reinstatement.

5.

This Consent Order and dissemination thereof shall constitute a public reprimand by the Board.

6.

Respondent acknowledges that he is represented by counsel and that he has read this Consent Order and understands its contents. Respondent understands that he has the right to a hearing in this matter and freely, knowingly, and voluntarily waives such right by entering into this Consent Order. Respondent understands and agrees that a representative of the Department

of Law may be present during the presentation of this Consent Order and that the Board shall have the authority to review the investigative file and all relevant evidence in considering this Consent Order. Respondent further understands that this Consent Order will not become effective until approved and docketed by the Georgia Composite Medical Board. Respondent understands that this Consent Order, once approved and docketed, shall constitute a public record evidencing disciplinary action by the Board. However, if this Consent Order is not approved, it shall not constitute an admission against interest in this proceeding, or prejudice the right of the Board to adjudicate this matter. Respondent consents to the terms and sanctions contained herein.

Approved this 5<sup>th</sup> day of November, 2009.

**GEORGIA COMPOSITE MEDICAL BOARD**

BY: [Signature]  
JOHN T. PERRY, M.D.  
President

ATTEST: [Signature]  
LASHARN HUGHES  
Executive Director

(BOARD SEAL)

CONSENTED TO: [Signature]  
RHETT L. BERGERON, M.D.  
Respondent

**AS TO DR. BERGERON'S SIGNATURE:**

Sworn to and subscribed before me this 03 day of

Nov., 2009. (Notary is for Rhett L. Bergeron, MD)

[Signature]

NOTARY PUBLIC

My Commission Expires: Jan 22, 2012

