

April 17, 2012

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Gesner Delva, M.D.
REDACTED ADDRESS

RE: License No. 193033

Dear Dr. Delva:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 12-73. This Order and any penalty provided therein goes into effect April 24, 2012.

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 1717
Empire State Plaza
Albany, New York 12237

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED SIGNATURE

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

cc: Amy T. Kulb, Esq.
Jacobson, Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 720
Garden City, NY 11530

IN THE MATTER
OF
GESNER DELVA, M.D.
CO-11-02-0995-A

CONSENT
ORDER

Upon the application of **GESNER DELVA, M.D.**, (Respondent), in the attached Consent Agreement, that is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and it is further

ORDERED, that this Consent Order shall be effective upon issuance by the Board, either by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, or upon facsimile or email transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATED: 4/17/2012 _____

REDACTED SIGNATURE _____

KENDRICK A. SEARS, M.D.
Chair
State Board for Professional
Medical Conduct

IN THE MATTER

CONSENT

OF

AGREEMENT

GESNER DELVA, M.D.
CO-11-02-0995-A

GESNER DELVA, M.D., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about July 22, 1993, I was licensed to practice medicine as a physician in the State of New York and issued license number 193033 by the New York State Education Department.

My current address is (REDACTED ADDRESS) and I will advise the Director (Director) of the Office of Professional Medical Conduct (OPMC) of any change of my address within thirty (30) days, thereof.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with two (2) Specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit A, is attached to and part of this Consent Agreement.

I do not contest the First Specification, and agree to the following sanction:

Censure and Reprimand;

I shall pay a \$2,000 fine, to be paid within thirty (30) days of the effective date of the Consent Order to the NYS Department of Health, Bureau of Accounts Management, Revenue Unit, Empire State Plaza, Corning Tower, Room 1717, Albany, NY 12237-0016.

I agree, further, that the Consent Order shall impose the following conditions:

Respondent shall comply fully with the State of Florida, Florida Board of Medicine (hereinafter "Florida Board") Consent Order (hereinafter

"Florida Order") dated February 14, 2011, and any extensions or modifications thereof.

Respondent shall provide a written authorization for the Florida Board to provide the Director of the Office of Professional Medical Conduct (OPMC) with any/all information or documentation as requested by OPMC to enable OPMC to determine whether Respondent is in compliance with the Florida Order.

Respondent shall submit semi-annually a signed Compliance Declaration to the Director of OPMC, which truthfully attests whether Respondent has been in compliance with the Florida Order during the declaration period specified.

Should Respondent return to the practice of medicine in the State of New York or in any Jurisdiction where that practice is predicated upon Respondent's New York State Medical license, Respondent shall provide ninety (90) days notice in writing to the Director, OPMC. The Director in his sole discretion, may impose whatever limitations, or further conditions, he deems appropriate.

That Respondent shall remain in continuous compliance with all requirements of New York Education Law § 6502 including, but not limited to, the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in New York Education Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 30 days after the effective date of the Consent Order and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall cooperate fully with the OPMC in its administration and enforcement of the Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Agreement. Respondent shall meet with a person designated by the Director, OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of the Consent Order shall constitute misconduct as defined by New York Education Law § 6530(29).

I agree that, if I am charged with professional misconduct in the future, this Consent Agreement and the Consent Order shall be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to New York Public Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that the Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, or upon facsimile or email transmission to me or my attorney, whichever is first. The Consent Order, this Consent Agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department of Health website.

I stipulate that the proposed sanction and Consent Order are authorized by New York Public Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, administratively and/or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director, OPMC, and the Chair of the Board each retain complete discretion either to enter into the proposed Consent Agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

AFFIRMED:

DATED: 4/4/12

REDACTED SIGNATURE

GESNER DELVA, M.D.
Respondent

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 4/9/12

REDACTED SIGNATURE

AMY KULB, ESQ.
Attorney for Respondent

DATE: 4/10/12

REDACTED SIGNATURE

JUDE B. MULVEY
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 4/13/12

REDACTED SIGNATURE

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
GESNER DELVA, M.D.
CO-11-02-0995-A

STATEMENT
OF
CHARGES

GESNER DELVA, M.D., Respondent, was authorized to practice medicine in New York state on July 22, 1993, by the issuance of license number 193033 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 16, 2011, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), inter alia, issued Respondent a Letter of Concern based upon his failure to follow up on a 12 month old patient with a creatinine test level of 2.3 and was ordered to pay a fine of \$10,000, \$3,850.32 costs, perform 50 hours community service and complete five hours of Continuing Medical Education in Risk Management.

B. The conduct resulting in the Florida Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(4) (gross negligence);

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

DATED: *February 21*, 2012
Albany, New York

REDACTED SIGNATURE _____

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct