

**STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS**

DEPARTMENT OF HEALTH

**BOARD OF MEDICAL
LICENSURE AND DISCIPLINE**

**IN THE MATTER OF:
BORIS O. BERGUS, M.D.
License Number MD07797
Complaint Numbers C11-466 and C13-160**

CONSENT ORDER

Boris O. Bergus, M.D. (hereinafter "Respondent") is licensed as a physician in Rhode Island. The Board of Medical Licensure and Discipline (hereinafter the "Board") found after the investigative committee's review of the complaint, the records, and the Respondent's written reply to the complaint that Respondent committed acts of unprofessional conduct arising from a complaint about Respondent's representations about some of his credentials. The Board further makes the following:

FINDINGS OF FACT

1. Respondent is a physician who has been licensed in Rhode Island since July 3, 1990, while in his residency. His business address is Americas Vein Centers, 1407 South County Trail, Suite 431, East Greenwich, Rhode Island. He has hospital privileges at Roger Williams Hospital. He graduated from Harvard Medical School on June 9, 1988.
2. Respondent performed and completed a one-year ECMO (extracorporeal membrane oxygenation) Fellowship at Children's Hospital Boston from 1991 to

1992 but it was not a pediatric cardiovascular-related fellowship; and it was supervised by the pediatric surgery department at that hospital. Respondent's clinical responsibilities at Children's Hospital Boston were terminated in September of 1992 in what the clinical director described as a mutual separation.

3. Respondent did not train in the Pediatric Critical Care fellowship program at Children's Hospital Boston, although he did spend a significant amount of clinical time in the intensive care unit, but not under the supervision of its staff or training program.
4. Respondent's 2011 curriculum vitae ("C.V.") stated that he was in a program at Children's Hospital Boston from July 1991 to June 1993. It also said he participated in a residency at Brown University for general surgery from 1989 to 1992.
5. The Chairman and Surgeon in Chief at Rhode Island and Miriam Hospitals, and Director of Graduate Medical Education at those hospitals, both indicated to the Board that Respondent never completed his residency at Rhode Island Hospital. He completed the second year in 1991, and then he left and never returned to complete the program.
6. Brown University's acting Chair of Surgery notified Respondent in April 1993 that in order for Respondent to return to the Brown program in July 1993, he had to show that he satisfactorily completed the fellowship at Children's Hospital Boston. Although Respondent completed the one year ECMO fellowship there, he did not complete the optional remaining year of the two-year fellowship, so the Brown University Residency in Surgery Advisory Committee requested that he be terminated from its program.

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7. Respondent's physician profile at the Massachusetts Board of Registration in Medicine, to which Respondent must supply his own credentials, indicated that Respondent had a fellowship in "general surgery" at Children's Hospital Boston from July 1, 1991 to June 30, 1993, which misstates the time by more than one year. Respondent's physician profile listed by the New Hampshire Board of Medicine lists his year of both internship and residency as 1993 and at Rhode Island Hospital.
8. The Director of Graduate Medical Education at Rhode Island Hospital has indicated that Respondent was given credit for two years of residency at Brown University: one year residency at Medical College of Ohio (now University of Toledo), and one year surgical residency training at Brown/Rhode Island Hospital. The director of the program noted also that Respondent had left the ECMO program in July 1992 without informing the program or Brown of his plans or his whereabouts.
9. Respondent submitted a C.V. to Roger Williams Medical Center (RWMC) on or around November 22, 2008, that correctly indicated he had been in a fellowship at Children's Hospital Boston from June 1991 to June 1992, and his application to RWMC also correctly stated he had been at Children's Hospital for that period. However, his September 23, 1997, application to RWMC incorrectly stated that his residency at Rhode Island Hospital ended in July 1992, and that his fellowship at Children's Hospital Boston occurred between July 1992 and July 1993. Respondent answered in a February 2011 application to Neighborhood Health Plan of Rhode Island that he was board certified as a phlebologist in 1997, and board certified in emergency medicine in 1997. The American Board of Phlebologists (which is now named American Board of Venous and Lymphatic

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Medicine) did not certify phlebologists until 2007. For physicians applying for ABP certification in 2008 and 2009, the ABP waived the requirement for residency. ABP certified Respondent as a Diplomate on May 10, 2008. Another C.V. stated that he served a fellowship from 1992 to 1993 in pediatric cardiovascular surgery at Children's Hospital Boston, which was not accurate.

10. In an advertisement for a Laser-Assisted Liposuction seminar sponsored by Americas Vein Center, which cost \$2000 per person, Respondent claimed to have completed "Fellowship training in a subspecialty of Cardiovascular Surgery at Boston Children's Hospital. Dr. Bergus is a Board Certified Cosmetic Surgeon, Laser Surgeon and Phlebologist."
11. Respondent's website for Americas Vein Centers (when it was visited at <http://americassurgerycenters.com/doctors/b-bergus/> on September 21, 2012) claims that he "completed Fellowship training in a subspecialty of Cardiovascular Surgery at Boston Children's Hospital."
12. Respondent has violated Rhode Island General Laws § 5-37-5.1(2) for advertising of a medical business which is intended or has a tendency to deceive the public.

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Based on the foregoing, the parties agree as follows:

1. Respondent admits to the jurisdiction of the Board.
2. Respondent has agreed to this Consent Order and understands that it is subject to final approval of the Board, and this Consent Order is not binding on Respondent until final ratification by the Board.
3. If ratified by the Board, Respondent hereby acknowledges and waives:
 - a. The right to appear personally or by counsel or both before the Board;
 - b. The right to produce witnesses and evidence on his behalf at a hearing;
 - c. The right to cross examine witnesses;
 - d. The right to have subpoenas issued by the Board;
 - e. The right to further procedural steps except for those specifically contained herein;
 - f. Any and all rights of appeal of this Consent Order; and
 - g. Any objection to the fact that this Consent Order will be presented to the Board for consideration and review.
4. Respondent agrees to pay within sixty (60) days of the ratification of this Consent Order an administrative fee to the Board with a check for ten thousand dollars (\$10,000.00) made payable to the Rhode Island General Treasurer for costs associated with investigating the above-referenced complaint.

5. Respondent agrees to attend the PROBE course no later than five months from the ratification of this Consent Order. Respondent agrees to follow the recommendations of the PROBE staff as a condition of his probation that is herein imposed.
6. Respondent shall retain Affiliated Monitors within thirty (30) days of ratification, and shall for a period of twelve (12) months retain and cooperate with Affiliated Monitors, for the purpose of reviewing for accuracy all credentialing applications and all advertising and media communications under his control, including but not limited to electronic, written and oral communications; advertising inside and outside of his office, stationery and business cards; television, radio and print media; webpages and social media; and billboards (hereinafter "required materials").
7. Within thirty (30) days of being retained by Respondent, Affiliated Monitors shall perform an initial review of the required materials and determine what required materials, if any, require correction and provide a report to the Respondent on same. Within thirty (30) days of his receipt of the report, all corrections must be made by the Respondent and provided to Affiliated Monitors for their confirmation. Within seven (7) days of their confirmation, Affiliated Monitors must send notice to the Board through its counsel that this required task is complete.
8. In any verbal or written communication in which Respondent refers specifically to any of his certifications, he shall represent that he is a Diplomate of the American Board of Physician Specialists (not ABMS), Diplomate of the American Board of Venous and Lymphatic Medicine (not ABMS), Diplomate of the American Board of Laser Surgery (not ABMS) and a Registered Vascular Specialist with the Cardiovascular Credentialing

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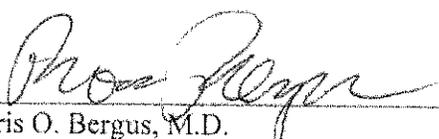
International (not ABMS). If Respondent states that he is "board certified," he must qualify such comment further by indicating that no ABMS board has certified him and that ABMS is the traditionally accepted entity that has developed the national system of standards for evaluating physician specialists, unless he obtains prior permission of the Board for waiver of this provision for good cause. CMS Medicaid regulations qualify specialists for higher reimbursement if they are certified by ABMS, AOA or ABPS certification boards, and Dr. Bergus is certified by ABPS in emergency medicine.

9. If Affiliated Monitors or the Respondent need to petition the Board for advice or information on any issue related to the required materials or additional time, the time periods for completion as stated in paragraph (a) are tolled.
10. Respondent hereby agrees to this reprimand on his physician license.
11. Respondent shall serve a two (2) year probation following ratification of this order by the Board. Respondent is permitted to continue practicing as a physician in Rhode Island with no interruption in such practice.
12. In the event that any term of this Consent Order is violated, after signed and accepted, the Director of the Department of Health shall have the discretion to summarily suspend the Respondent's license and/or impose further disciplinary action. If the Director suspends the license and/or imposes further disciplinary action, Respondent shall be given notice and shall have the right to request an administrative hearing within twenty (20) days of the suspension and/or further discipline. The Director of the Department of Health shall also have the

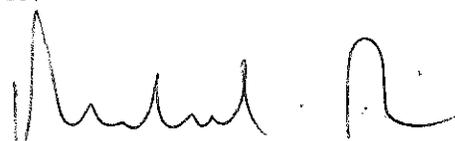
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discretion to request an administrative hearing after notice to Respondent of a violation of any term of this Consent Order. The Administrative Hearing Officer may suspend Respondent's license, or impose further discipline, for the remainder of Respondent's licensing period if the alleged violation is proven by a preponderance of evidence.

Signed this 24 day of September, 2013.


Boris O. Bergus, M.D.

Ratified by the Board of Medical Licensure and Discipline on the 4 day of ~~September~~ ^{October}, 2013.


Michael Fine, M.D.
Director
Rhode Island Department of Health