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Before The
State Of Wisconsin
MEDICAL EXAMINING BOARD

In the Matter of the Disciplinary Proceedings
Against CHINELO S. UDE, M.D., Respondent

FINAL DECISION AND ORDER

Order No. ~~ORDER 0002064~~

Division of Enforcement Case No. 11 MED 325

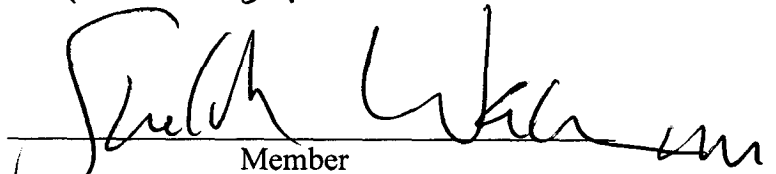
The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 19 day of September, 2012.



Member
Medical Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **CHINELO S. UDE, M.D.**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-12-0026

ORDER 0002064

Division of Enforcement Case No. 11 MED 325

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Chinelo S. Ude
16228 Wintergreen St. N.W.
Andover, MN 55304

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Safety and Professional Services, Division of Enforcement, by

Attorney Susan D. Gu
Department of Safety and Professional Services
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services, Division of Enforcement (the Division), filed a formal Notice of Hearing and Complaint against Respondent Chinelo S. Ude (Respondent), alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Admin. Code § Med 10.02(2)(q). Respondent failed to file an Answer to the Complaint, failed to provide a telephone number at which she could be reached for the telephonic prehearing conference held before the Division of Hearings and Appeals (DHA) on April 25, 2012 and failed to appear at the prehearing conference. As a result, the Division moved for default and filed its motion for default, brief in support thereof and argument and recommendation for discipline and costs on May 4, 2012. The Administrative

Law Judge (ALJ) ordered briefing on the motion in a Briefing Order dated May 7, 2012. Respondent failed to file a response.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-3 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent was born on March 2, 1971 and is licensed to practice medicine and surgery in the State of Wisconsin (license #48523-20). This license was first granted on August 18, 2005.

2. Respondent's most recent address on file with the Wisconsin Medical Examining Board (Wisconsin Board) is 16228 Wintergreen Street NW, Andover, Minnesota.

3. On September 10, 2011, the Minnesota Board of Medical Practice (Minnesota Board) suspended Respondent's license to practice medicine and surgery in the State of Minnesota until such time as Respondent complied with the Order for Mental and Physical Examination, dated August 22, 2011, and demonstrated the ability to resume the competent practice of medicine with reasonable skill and safety to patients. The basis for the suspension included the following:

- a. On April 21, 2007, Respondent was hospitalized for depression, paranoia, and suicidal ideation, for which she has a history. On May 9, 2007, she was discharged against medical advice, pursuant to a May 8, 2007 court order dismissing a Petition for Judicial Commitment.
- b. On February 15, 2008 Respondent entered into a Participation Agreement and Monitoring Plan with the Health Professional Services Program (HPSP). Respondent was monitored for two years and was discharged after successfully completing her Participation Agreement and Monitoring Plan.
- c. In April 2011, Respondent contacted HPSP after she discontinued taking her psychotropic medications and began exhibiting symptoms of paranoia. In June and July of 2011 HPSP reported to the Minnesota Board that Respondent was being uncooperative with HPSP monitoring.
- d. On June 30, 2011, the Minnesota Board initiated an investigation which later revealed that Respondent refused to cooperate with the Board's investigation.
- e. On August 22, 2011, the Board issued to Respondent an Order for Mental and Physical Examination. On September 6, 2011, Respondent sent a

letter to the Minnesota Board indicating she would not attend the requested assessment.

Facts Related to Default

4. The Notice of Hearing and Complaint in this matter were served on Respondent on March 22, 2012, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing stated that Respondent was required to file an Answer to the Complaint within 20 days, failing which she would “be found to be in default, and a default judgment [could] be entered against [her] on the basis of the complaint and other evidence and the Medical Examining Board [could] take disciplinary action against [her] and impose the costs of the investigation, prosecution and decision of this matter upon [her] without further notice or hearing.”

5. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

6. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for April 25, 2012. Notice of this prehearing conference was sent to Respondent at the Andover, MN address, with instructions that Respondent provide the telephone number at which she could be reached for the conference to the ALJ no later than April 20, 2012. The Notice was not returned to DHA as undeliverable.

7. Respondent failed to provide a telephone number and could not be reached for the April 25, 2012 prehearing conference.

8. Based on Respondent’s failure to file an Answer to the Complaint and failure to provide a telephone number and make herself available for the prehearing in this matter, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

9. The ALJ ordered briefing on the motion in a Briefing Order dated May 7, 2012. The Briefing Order was sent to Respondent at the Andover, MN address and was not returned to DHA as undeliverable.

10. The Division filed its motion for default, brief in support thereof and argument and recommendation for discipline and costs on May 4, 2012. Respondent failed to file a response brief as ordered by the May 7, 2012 Briefing Order.

CONCLUSIONS OF LAW

1. The Wisconsin Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02.

2. Wisconsin Stat. § 440.03(1) provides that the Department of Safety and Professional Services “may promulgate rules defining uniform procedures to be used by the department... and

all examining boards and affiliated credentialing boards attached to the department or an examining board, for... conducting [disciplinary] hearings.” These rules are codified in Wis. Admin. Code Ch. SPS.

3. Respondent was duly served with the Notice of Hearing and Complaint pursuant to Wis. Admin. Code § SPS 2.08 and was also served with the Notice of Telephone Prehearing Conference and Briefing Order.

4. When a Respondent fails to file an Answer as required by Wis. Admin. Code § SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the Respondent is in default and findings may be made and an Order entered on the basis of the Complaint and other evidence. Wis. Admin. Code § SPS 2.14.

5. Wisconsin Admin. Code § HA 1.07(3)(b) and (c) further provide: “(b) If a respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate . . .” and “(c) For a telephone or video hearing or prehearing the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or videoconference line.”

6. Respondent has defaulted in this proceeding pursuant to Wis. Admin. Code § SPS 2.14 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § SPS 2.09.

7. Respondent has also defaulted in this proceeding by failing to provide a telephone number at which she could be reached and by failing to appear at the scheduled prehearing conference after due notice, pursuant to Wis. Admin. Code § HA 1.07(3) and Wis. Admin. Code § SPS 2.14.

8. Pursuant to Wis. Admin. Code §§ SPS 2.09(3) and 2.14, and Wis. Admin. Code § HA 1.07(3)(b) and (c), Respondent has admitted to the allegations of the Complaint by not filing an Answer and by failing to appear at the telephone prehearing conference.

9. Following an investigation and disciplinary hearing, if the Wisconsin Board determines that a physician is guilty of unprofessional conduct, it may “warn or reprimand that person, or limit, suspend or revoke any license, certificate or limited permit granted by the board to that person. . . .” Wis. Stat. § 448.02(3)(c).

10. The phrase “unprofessional conduct” as used in Wis. Stat. § 448.02(3)(c) includes “[t]hose acts or attempted acts of commission or omission defined as unprofessional conduct by the board under the authority delegated to the board by s. 15.08(5)(b).” Wis. Stat. § 448.015(4)(am)1.

11. Wisconsin Admin. Code § Med 10.02(2)(q) defines unprofessional conduct to include:

Having a license, certificate, permit, registration, or other practice credential granted by another state or by any agency of the federal government to practice medicine and surgery or treat the sick, which becomes limited, restricted, suspended, or revoked, or having been subject to other adverse action by the state licensing authority or by any agency of the federal government, including but not limited to the denial or limitation of an original credential, or the surrender of a credential, whether or not accompanied by findings of negligence or unprofessional conduct.

12. Respondent, by having an adverse action taken against her license by the Minnesota Board, committed unprofessional conduct as defined by Wis. Admin. Code § Med 10.02(2)(q).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against her and failing to appear at the April 25, 2012 prehearing conference or provide a telephone number at which she could be reached, Respondent has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § § SPS 2.09(3) and 2.14, and Wis. Admin. Code § HA 1.07(3)(b) and (c). As such, it is undisputed that the following events alleged in the Complaint occurred. On September 10, 2011, the Minnesota Board suspended Respondent's license to practice medicine and surgery in Minnesota until such time as Respondent complied with the Order for Mental and Physical Examination and demonstrated the ability to resume the competent practice of medicine with a reasonable skill and safety to patients. The grounds for the suspension, which are serious in nature, are set forth in Finding of Fact 3, above.

By having an adverse action taken against her by the Minnesota Board, Respondent engaged in "unprofessional conduct" under Wis. Stat. §§ 448.02(3)(c) and 448.015(4)(am)1., and Wis. Admin. Code § Med 10.02(2)(q).

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division requests that Respondent's license to practice medicine be suspended indefinitely, pursuant to Wis. Stat. § 448.02(3), and that Respondent's license should remain suspended until:

- a. Respondent has, at Respondent's own expense, undergone an assessment by a mental health care provider experienced in evaluating health care practitioners' fitness for duty, with the following conditions:

- i. The provider performing the assessment must not have treated Respondent and shall have been approved by the Wisconsin Board, with the opportunity for the Division to make its recommendation prior to the evaluation being performed; and
 - ii. Within fifteen (15) days of the completion of the assessment, a written report regarding the results of the assessment shall be submitted to the Wisconsin Board.
- b. Respondent has provided proof sufficient to convince the Wisconsin Board that Respondent is able to practice with reasonable skill and safety of patients and the public and does not suffer from any condition which prevents her from practicing in that manner; and
 - c. The Wisconsin Board has determined to end the suspension.

If the Wisconsin Board determines to end the suspension, the Division recommends that Respondent's license should be limited in a manner to address any concerns the Wisconsin Board has as a result of the conduct set out in the Minnesota Board's suspension order and to address any recommendations resulting from the assessment, including, but not limited to:

- a. Psychotherapy, at Respondent's expense, by a therapist approved by the Wisconsin Board or its designee, to address specific treatment goals, with periodic reports to the Wisconsin Board by the therapist.
- b. Additional professional education in any identified areas of deficiency.
- c. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Wisconsin Board, with periodic reports to the Wisconsin Board by the supervisor.

Under the facts of this case, it is appropriate to impose the indefinite suspension and conditions recommended by the Division set forth above. Respondent's mental instability poses a danger to her patients. The fact that she did not participate at all in these proceedings strengthens concerns that Respondent has not been rehabilitated. In addition, the Minnesota Board's investigation revealed that Respondent refused to cooperate with the Minnesota Board's investigation. When the Minnesota Board issued to Respondent an Order for Mental and Physical Examination in 2011, Respondent sent a letter to the Board indicating she would not attend the requested assessment. These facts demonstrate that at this point, Respondent cannot be trusted to safely and competently practice and that measures must be put in place and complied with by Respondent to ensure her rehabilitation and that patients will not be harmed.

This disciplinary order promotes the rehabilitation of Respondent in that it provides an avenue for her to seek the treatment she needs and demonstrates that she is able to practice in a safe and responsible manner. It protects the public in that it ensures that she only practices under conditions in which patients will not be harmed in her care. Finally, it deters other licensees

from engaging in similar unprofessional conduct, as it is a serious discipline reportable to the public.

Costs

The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings. In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the Chiropractic Examining Board stated:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., is based on the consideration of several factors, including:

1. The number of counts charged, contested, and proven;
2. The nature and seriousness of the misconduct;
3. The level of discipline sought by the parties;
4. The respondent's cooperation with the disciplinary process;
5. Prior discipline, if any;
6. The fact that the Department of [Safety and Professional Services] is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;
7. Any other relevant circumstances.

The respondent, by nature of her being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, her conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of [Safety and Professional Services] is a "program revenue" agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractic profession who have not engaged in such conduct.

For many of the same reasons delineated in the *Buenzli-Fritz* decision, Respondent should be assessed the full amount of recoverable costs. The alleged conduct is of a serious

nature, Respondent did not participate in these proceedings, she has demonstrated a refusal to cooperate with the Minnesota Board, there is no argument that certain factual findings were investigated and litigated unnecessarily, and, given the program revenue nature of the Department of Safety and Professional Services, fairness dictates imposing the costs of these disciplinary proceedings on Respondent, and not on fellow members of the medical profession who have not engaged in such conduct.

If the Wisconsin Board assesses costs against Respondent, the amounts of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS ORDERED that the license of the Respondent Chinelo S. Ude is hereby SUSPENDED INDEFINITELY pursuant to Wis. Stat. § 448.02(3), and that Respondent's license shall remain suspended until:

- a. Respondent has, at Respondent's own expense, undergone an assessment by a mental health care provider experienced in evaluating health care practitioners' fitness for duty, with the following conditions:
 - i. The provider performing the assessment must not have treated Respondent and shall have been approved by the Wisconsin Board, with the opportunity for the Division to make its recommendation, prior to the evaluation being performed; and
 - ii. Within fifteen (15) days of the completion of the assessment, a written report regarding the results of the assessment shall be submitted to the Wisconsin Board.
- b. Respondent has provided proof sufficient to convince the Wisconsin Board that Respondent is able to practice with reasonable skill and safety of patients and the public and does not suffer from any condition which prevents her from practicing in that manner; and
- c. The Wisconsin Board has determined to end the suspension.

IT IS FURTHER ORDERED THAT if the Wisconsin Board determines to end the suspension, Respondent's license should be limited in a manner to address any concerns the Wisconsin Board has as a result of the conduct set out in the Minnesota Board's suspension order and to address any recommendations resulting from the assessment, including, but not limited to:

- a. Psychotherapy, at Respondent's expense, by a therapist approved by the Wisconsin Board or its designee, to address specific treatment goals, with periodic reports to the Wisconsin Board by the therapist.
- b. Additional professional education in any identified areas of deficiency.

- c. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Wisconsin Board, with periodic reports to the Wisconsin Board by the supervisor.

IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

**Department Monitor
Department of Safety and Professional Services
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Chinelo S. Ude.

Dated at Madison, Wisconsin on August 16, 2012.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____

Jennifer E. Nashold
Administrative Law Judge