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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	
DAVID J. FAGAN, D.O.,	:	LS0304251MED
RESPONDENT.	:	

The parties to this action for the purposes of § 227.53, Wis. Stats., are:

David J. Fagan MD
199 S. Main St.
Thiensville, WI 53092-1902

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

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent David J. Fagan (dob 2/4/55) is and was at all times relevant to the facts set forth herein a physician and surgeon licensed in the State of Wisconsin pursuant to license #24510, first granted on 7/1/82. Respondent is a family practitioner. Respondent was disciplined by the Board on 3/25/93 for inappropriately prescribing opioids to a patient despite knowledge that the patient was abusing them, and had altered one of his prescription orders to obtain more medication than authorized. At that time, respondent took a 45 hour mini-residency in appropriate prescribing of controlled substances.

2. On 1/19/99, respondent undertook the care and treatment of patient D.R., a female born in 1965. The patient presented with acute lower back pain of one week duration, which respondent treated with osteopathic manipulations, muscle relaxants, and hydrocodone/ acetaminophen products. Although respondent did not initially undertake to be the patient's primary care physician, over time he came to function in that capacity.

3. Over the course of the next three years, the patient continued to have lower back pain, which respondent continued to treat with these modalities, increasing the opioid dosage over time. The patient showed intermittent limited improvement but had repeated exacerbations and new injuries. She was referred to other specialists for epidural steroid injections. In March, 2002, respondent was notified that the patient was also receiving opioids from another prescriber, and he immediately ceased prescribing controlled substances for the patient and referred her to a qualified pain specialist, who has taken over that aspect of the patient's treatment. Respondent continues to provide manual treatments for the patient.

4. Respondent's chart on this patient does not contain any medication sheet showing the medications, dosage instructions, dates of prescription and number of refills, ordered for this patient, nor is this information consistently dictated in the progress notes. The chart does not reflect that patient was asked to rate her pain on any recognized scale. No functional goals are charted, nor is there a charted discussion of the efficacy of any of the therapies employed. There are no notes concerning the character, quality, exact location, or intensity of the patient's pain, or stating what actions or activities exacerbate or relieve the pain. There is no charted discussion warning the patient about the danger of acetaminophen overdose, although an analysis of respondent's prescribing pattern, in light of a statement he made to the Board's staff, makes it clear that he is aware of this danger and took steps to avoid having the patient take more than 4 grams of acetaminophen per day.

CONCLUSIONS OF LAW

A. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to §448.02(3), Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

B. The conduct described in ¶4, above, violated § Med 10.02(2)(h), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of David M. Fagan, D.O., is LIMITED as provided in §448.02(3)(e), Wis. Stats., and as follows:

1. Within 12 months of the date of this Order, respondent shall participate in and successfully complete an educational program in medical recordkeeping approved by the Board or its designee. The educational program may be the medical recordkeeping established through the University of Wisconsin Continuing Medical Education Program, or another CME provider pre-approved by the Board .

a. Under tutelage of a mentor selected by the program, respondent shall review a selected text on medical recordkeeping, and shall introduce the mentor's recommendations into both Respondent's clinic and hospital records.

b. The mentor shall review respondent's records on a frequency acceptable to the Board. Respondent shall afford the mentor access to all of respondent's records for review and discussion. Reviews shall evaluate respondent's adequacy of documentation and incorporation of the mentor's recommendations into respondent's system of charting. In addition, the mentor shall examine the records for potential problems in quality of care or related issues.

c. The mentor shall agree to IMMEDIATELY report to the Department Monitor any matter which may constitute a danger to the health, safety or welfare of a patient or public, or any violation of law or this Order by respondent.

d. Respondent's progress shall be reported directly to the Department Monitor on a schedule set by the Monitor and at the conclusion of the program. The mentor shall have authorization to discuss respondent's progress with the mentor.

e. The UW-CME shall certify the results of the program upon completion to the Board.

f. If respondent does not successfully complete the program or UW-CME cannot certify that respondent's recordkeeping now meets minimal standards of competence, the matter shall be referred to the Board to determine any additional appropriate discipline for the conduct set forth in the Findings of Fact. Both respondent and the division shall be heard before any additional discipline is ordered.

2. Respondent shall be responsible for all costs incurred as a result of compliance with the terms of this Order.

IT IS FURTHER ORDERED, that respondent shall pay the COSTS of investigating and prosecuting this matter of \$750 within 30 days of this Order.

IT IS FURTHER ORDERED, that pursuant to §448.02(4), Wis. Stats., if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license and registration of respondent be summarily suspended pending investigation of the alleged violation.

Dated this April 23, 2003.

WISCONSIN MEDICAL EXAMINING BOARD

By: Alfred L. Franger

A Member of the Board