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BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : LS030521MED
JOHN D. WHELAN, M.D., :
RESPONDENT. :

FINAL DECISION AND ORDER

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

John D. Whelan, M.D.
3490 Finger Road # 4
Green Bay WI 54311

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 Wisconsin Medical Examining 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. John D. Whelan, M.D., Respondent, date of birth September 4, 1946, is licensed and currently registered by the Medical Examining Board to practice medicine and surgery in the state of Wisconsin pursuant to

license number 36165, which was first granted November 18, 1994.

2. Respondent's last address reported to the Department of Regulation and Licensing is 3490 Finger Road #4, Green Bay, WI 54311.

3. Respondent's practice specialty is psychiatry.

4. Respondent is employed by Brown County Human Services Department as a staff psychiatrist in the Brown County Mental Health Center, Green Bay, Wisconsin. Respondent does not maintain an office for his own private practice of psychiatry.

5. In approximately July 2000, Respondent met Ms. A. Respondent and Ms. A developed a personal and sexual relationship and resided together from approximately September 2000 to September 2001.

6. During this period, Ms. A admitted herself to Bellin Memorial Hospital for psychiatric care. During her hospital stay, Ms. A was under the care of another psychiatrist who prescribed anti-depressant and anti-psychotic drugs for Ms. A.

7. Upon her release from the hospital, Ms. A returned to live with Respondent.

8. In December 2000, Ms. A was terminated from her employment and lost her health insurance. Ms. A asked Respondent's assistance in obtaining her medications without charge. Respondent helped Ms. A complete paperwork necessary to obtain Zoloft, an antidepressant, from the manufacturer without charge.

9. Respondent began prescribing medications for Ms. A until she could obtain a job and health insurance. Respondent also began paying for Ms. A's health insurance so she could have follow up with her treating psychiatrist regarding her medications.

10. Pharmacy records show that Respondent issued the following prescriptions to Ms. A:

- a. 1/27/01: Zyprexa, a brand of olanzapine an antipsychotic, 2.5 mg., 14 tablets.
- b. 1/27/01: Amitriptyline, an antidepressant, 25 mg., 60 tablets.
- c. 3/15/01: Seroquel, a brand of quetiapine an antipsychotic, 25 mg., 60 tablets.
- d. 3/15/01: Cephalexin, an antibiotic, 500 mg., 60 capsules.
- e. 4/10/01: Cephalexin, an antibiotic, 500 mg., 60 capsules.
- f. 4/12/01: Zoloft, an antidepressant, 100 mg., 15 tablets.
- g. 4/30/01: Geodon, a brand of ziprasidone an antipsychotic, 20 mg., 60 tablets.
- h. 5/7/01: Cephalexin, an antibiotic, 500 mg., 56 tabs.
- i. 5/21/01: Levaquin, an antibiotic, 500 mg., 10 tablets.
- j. 5/21/01: Zoloft, an antidepressant, 100 mg., 15 tablets.
- k. 5/21/01: Prednisone, a corticosteroid, 5 mg., 100 tabs.
- l. 5/31/01: Cephalexin, an antibiotic, 500 mg., 56 tabs.

- m. 5/31/01: Prednisone, a corticosteroid, 5 mg., 100 tabs.
- n. 8/25/01: Prednisone, a corticosteroid, 5 mg., 100 tabs.
- o. 8/25/01: Zoloft, an antidepressant, 100 mg., 15 tablets.

11. Respondent did not consult with Ms. A's treating psychiatrist regarding the medications that psychiatrist was prescribing or regarding the various medications Respondent was prescribing to Ms. A.

12. Respondent, by diagnosing and treating Ms. A with the prescribed medications, provided her with health care services and created a physician patient relationship with her.

13. Respondent neither created nor maintained any patient health care records regarding the care he provided to Ms. A.

14. Wis. Adm. Code § MED 21.03 requires:

"(1) A physician or physician assistant shall maintain patient health care records on every patient administered to for a period of not less than 5 years after the date of the last entry, or for such longer period as may be otherwise required by law.

(2) A patient health care record prepared by a physician or physician assistant shall contain the following clinical health care information which applies to the patient's medical condition:

(a) Pertinent patient history.

(b) Pertinent objective findings related to examination and test results.

(c) Assessment or diagnosis.

(d) Plan of treatment for the patient.

(3) Each patient health care record entry shall be dated, shall identify the practitioner, and shall be sufficiently legible to allow interpretation by other practitioners for the benefit of the patient."

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to § 448.02(3), Stats.

2. The Wisconsin Medical Examining Board has authority to enter into this stipulated resolution of this matter pursuant to § 227.44(5), Stats.

3. Respondent, by violating Wis. Adm. Code § MED 21.03 as set out above, has violated a valid rule of the Board which is unprofessional conduct as defined by Wis. Adm. Code § MED 10.02(2)(a) and is subject to discipline pursuant to § 448.02(3), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. John D. Whelan, M.D., is hereby REPRIMANDED for the above conduct.

2. Respondent shall, within six months of the date of this Order, take and complete six credit hours of education addressing appropriateness of boundaries between health care professionals and their patients or clients. Prior to taking the program, Respondent shall provide information about the program to the Department Monitor and receive approval from the Board or its designee that the education meets the requirements of this paragraph.

3. Respondent shall on June 5 and 6, 2003 take and complete "Intensive Course in Medical Record Keeping," a continuing education activity sponsored by Case Western Reserve University School of Medicine (13.5 hours of Category I credit).

4. Respondent shall arrange for course sponsors to report directly to the Department Monitor, within 30 days of completion of the course, on Respondent's performance. Respondent shall take all pre- and post-tests, even if optional, and release all course performance records and permit department staff to discuss Respondent's performance with course sponsors and staff.

5. If Respondent is unable to complete the continuing education described in paragraphs 2 and 3 of this Order, Respondent shall, prior to the required completion date, petition for a reasonable extension of time within which to take and complete the course or an equivalent course. An extension shall be granted only in the event of an illness or other circumstance which is found to be acceptable by the Board or its designee.

6. Any requests for approval of continuing education, extension of the time within which to complete the continuing education and evidence of completion of the education required by this Order shall be mailed, faxed or delivered to:

Department Monitor

Department of Regulation and Licensing

Division of Enforcement

1400 East Washington Ave.

P.O. Box 8935

Madison, WI 53708-8935

Fax (608) 266-2264

7. Violation of any term or condition of this Order may constitute grounds for revocation of Respondent's license to practice medicine and surgery in Wisconsin. Should the Board determine that there is probable cause to believe that Respondent has violated the terms of this Order; the Board may order that Respondent's license be summarily suspended pending investigation of and hearing on the alleged violation.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for

judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin this 21st day of May, 2003.

Alfred L. Franger, M.D.

Secretary

Medical Examining Board