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BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : LS0306181MED
DELBERT L. SCHAEFER, :
RESPONDENT. :

FINAL DECISION AND ORDER

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

Delbert L. Schaefer
50 14th Street
Fond du Lac, WI 54935

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 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. Delbert L. Schaefer, Respondent, date of birth July 12, 1943, is certified by the Wisconsin Medical Examining Board as a respiratory care practitioner in the state of Wisconsin, pursuant to certificate number 1034, which was first granted

April 29, 1992.

2. Respondent's last address reported to the Department of Regulation and Licensing is 50 14th Street, Fond du Lac, WI 54935.

3. At the time of the events set out below, until his dismissal on March 12, 2001, Respondent was employed by Agnesian HealthCare and worked as a respiratory care practitioner at St. Agnes Hospital (Hospital) in Fond du Lac, Wisconsin.

4. Ms. A, a 39-year-old woman, was given a pulmonary function test by Respondent on July 21, 1999. Later, Ms. A complained to the Hospital about Respondent and contended that during the test:

- Respondent used language containing sexual innuendoes, which made her uncomfortable.
- Among other things, Respondent told her to think of him when he told her to pant as part of the test.
- Respondent used language she described as vulgar and unprofessional.
- She did not breathe as hard as she could during the test because she was concerned she might become light headed and faint and didn't know what Respondent might do to her if that occurred.

5. Ms. B, a 34-year-old woman, was given a pulmonary function test by Respondent on March 1, 2001. Five days later, Ms. B complained to the Hospital about Respondent and contended that during the test Respondent:

- After asking where she went to school, said: "Oh, one of those Christian girls" and made reference to boys from here doing girls from there.
- Mentioned having been on a farm, and after Ms. B said she had lived on a farm, he made reference to farm girls being "fun." Respondent told Ms. B that he used to sit up in the loft of the barn and watch animals "together" and said "you can learn a lot that way."
- Told Ms. B that she slouched a little. He pushed her shoulders back to make her sit up straight and said "you girls like to stick out your breasts, but that doesn't matter anymore, you need to breathe right."
- Talked about a lady in the newspaper who had several children, and said the woman should have been sterilized and that she must be easy.
- Told Ms. B that he has grandchildren and that their dad is getting a 'big fuel tank' (like him), and said he is good at "lovin" because of his 'big fuel tank' (referring to his belly).
- Told Ms. B about his ex-wife, calling her a "bitch" and that she and her new husband were sleeping around.
- Tried to get Ms. B to breathe and said "just think of me, that will make you breathe heavy." When Ms. B was supposed to pant, she was to pretend Respondent was chasing her up a flight of stairs and was going to pinch her.
- Said to Ms. B "I better stop talking like this or you'll get me for sexual harassment."

6. Respondent agrees that he made some of the comments, but denies making all of the comments attributed to him. Respondent contends that he was trying to put the women at ease, but now recognizes that the comments he did make were inappropriate and that he "had crossed the line."

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 making the comments to Ms. A and Ms. B as set out above, has engaged in conduct which tends to constitute a danger to the health, welfare, or safety of a patient, which is unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(h) and is subject to discipline pursuant to § 448.02(3), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Delbert L. Schaefer, is hereby REPRIMANDED for the above conduct.

2. Respondent shall, within 90 days of the date of this Order, take and complete a course or courses, equivalent to a one day program addressing the issue of health care provider - patient relationship boundaries, which shall first be approved by the Board or its designee. Respondent shall, within 30 days of completion of such course or courses, provide evidence of compliance with this paragraph to the Department Monitor.

3. If Respondent is unable to take or complete the course or courses required by the preceding paragraph within 90 days because of illness or other circumstances acceptable to the Board or its designee, Respondent shall, within six months of the date of this Order, take and complete the required course or courses, which shall first be approved by the Board or its designee. Respondent shall, within 30 days of completion of such course or courses, provide evidence of compliance with this paragraph to the Department Monitor.

4. Requests for approval of educational programs and notification of completion of educational programs 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

5. Violation of any term or condition of this Order may constitute grounds for revocation of Respondent's certification to practice respiratory care 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 certificate 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 18th day of June, 2003.

Alfred L. Franger, M.D.

Secretary

Medical Examining Board