

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	
NOEMI A. PRIETO, M.D.,	:	
RESPONDENT.	:	ORDER 0000151

Division of Enforcement Case No. 07 MED 052

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

Noemi A. Prieto, M.D.
8532 West Capitol Drive
Milwaukee, WI 53222

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Medical Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The Division opened this case for investigation on May 15, 2007. On March 17, 2010, the Medical Examining Board (the Board) found probable cause to believe violations occurred. On April 16, 2010, the Division filed a formal complaint.

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 adopts its recommendation as reasonable.

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

FINDINGS OF FACT

1. Noemi A. Prieto, M.D., Respondent, date of birth 04/24/1952, is licensed and currently registered by the Wisconsin Medical Examining Board to practice medicine and surgery in the State of Wisconsin pursuant to license number 26529, which was first granted 12/13/1984. At all relevant times, Respondent was certified by the American Board of Pediatrics.

2. Respondent's address of record with the Wisconsin Medical Examining Board is 8532 West Capitol Drive, Milwaukee, WI 53222.

3. At the time of the events set out below, Respondent, as Noemi A. Prieto, M.D., S.C., operated and was employed as a physician at Southeastern Pediatric & Adolescent Medicine,, 8532 West Capitol Drive, Milwaukee, WI 53222 and was its chief executive officer.

4. On February 24, 2006, an unlicensed physician, Dr. Rafael Nunez, M.D., signed an employment contract with Noemi A. Prieto, M.D., S.C., DBA Southeastern Pediatric & Adolescent Medicine. The contract provided that, effective March 5, 2006, Dr. Nunez would provide services as a physician.

5. Between approximately March 5, 2006 and March 2007, Dr. Nunez engaged in the practice of medicine, as that phrase is defined by Wis. Stat. § 448.01(9), at the Southeastern Pediatric & Adolescent Medicine clinic located at 1725 College Avenue, South Milwaukee, WI 53172. Specifically, Dr. Nunez examined into the fact, condition and cause of human health and disease, and additionally treated, prescribed and advised for the same; and Dr. Nunez applied principles and techniques of medical sciences in the diagnosis of human illness, health and disease, for persons presenting themselves as patients. Patients were charged for Dr. Nunez's services, including by billing third-party payers.

6. At the time of his hire, Dr. Nunez was an Assistant Professor in Medicine/Hematology/Oncology at the University of Illinois at Chicago. Dr. Nunez is a 1979 graduate of the University of Caldas, School of Medicine, Manizales, Colombia, where he did his internship and two residencies in pediatrics and immunology. Dr. Nunez is a graduate of the University of Iowa College Of Medicine, from which he received an MS in microbiology (immunology) and had a postdoctoral research fellowship in molecular immunology. Dr. Nunez was a Fulbright Scholar in the field of immunology. Respondent was aware that Dr. Nunez had not completed any residencies in the United States, and was not licensed to practice medicine in Wisconsin.

7. On February 24, 2007, Dr. Nunez submitted his application for a license to practice medicine and surgery in Wisconsin. Dr. Nunez subsequently withdrew his application and never obtained Wisconsin licensure.

8. At times during his employment with Southeastern Pediatric & Adolescent Clinics, Dr. Nunez provided health services to patients while an advanced practice nurse prescriber purportedly supervised Dr. Nunez. The advanced practice nurse prescriber is not licensed to practice medicine.

9. At times Dr. Nunez provided health services to patients at Southeastern Pediatric & Adolescent Clinics while only one other physician was on site. That physician did not direct, supervise or inspect Dr. Nunez's practice. On these occasions, Respondent was not on site and was not immediately available to direct, supervise, or inspect Dr. Nunez's practice.

10. At no time during the course of respondent's employment of Dr. Nunez did Respondent cause or require the clinic or Dr. Nunez to identify Dr. Nunez as an unlicensed physician or delegate to the patients seen by Dr. Nunez. At no time were patients Dr. Nunez treated told that he was an unlicensed physician or delegate.

11. Records of the Southeastern Pediatric & Adolescent Medicine clinic located at 1725 College Avenue, South Milwaukee, Wisconsin, indicate that AZ was one of the patients Dr. Nunez treated. Dr. Nunez saw AZ on September 8, 2006. The medical record indicated that Dr. Nunez was the treatment provider and the medical note was electronically entered and sealed solely by Dr. Nunez.

12. On September 8, 2006, AZ received a prescription with two refills from Southeastern Pediatrics & Adolescents Clinic, written by Dr. Nunez and signed by a nurse prescriber. On that date, AZ did not see the nurse prescriber or any physician other than Dr. Nunez.

13. During the time Respondent employed Dr. Nunez, Respondent sometimes provided Dr. Nunez with pre-signed but otherwise blank prescription forms. Respondent sometimes permitted Dr. Nunez to use the pre-signed forms to prescribe medications when no physician was present to direct, supervise and inspect his actions.

14. During the time Respondent employed Dr. Nunez, she relied on an electronic record-keeping system that, for a time, incorrectly designated Dr. Nunez as the provider for all patients at a particular clinic,. As a result, the medical records inaccurately identified Dr. Nunez as having seen patients who were actually seen by other providers who were not identified. At times when Respondent was to have been supervising Dr. Nunez, the medical records did not indicate that she had delegated performance of health services and/or that Respondent supervised and was responsible for the service provided.

15. There is no evidence that prescriptions written by Dr. Nunez caused harm to a patient or resulted in diversion of controlled substances.

16. Respondent recruited Dr. Nunez since a qualified Spanish speaking pediatrician was needed to treat the underserved minority children in metropolitan Milwaukee and to conduct a study of childhood obesity among Hispanic children. At the time that Dr. Nunez was recruited, Respondent's intent was that a qualified physician and/or nurse practitioner would direct, supervise, and inspect Dr. Nunez' actions. Since the date that the investigation opened, Respondent has recruited and hired a new practice manager.

CONCLUSIONS OF LAW

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

2. No person may practice medicine and surgery, or attempt to do so or make a representation as authorized to do so, without a license to practice medicine and surgery granted by the Board. Wis. Stat. § 448.03(1)(a).

3. An exception to licensing requirements for the practice of medicine exists for any person who provides patient services “as directed, supervised and inspected by a physician who has the power to direct, decide and oversee the implementation of the patient services rendered.” Wis. Stat. § 448.03(2)(e).

4. Section 448.03(2)(e) does not permit delegation of the practice of medicine, but permits only delegation of identified patient services directed, supervised and inspected by a physician with the power to direct, decide and oversee implementation of the patient services rendered.

5. Section 448.03(2)(e) does not permit physicians to delegate supervision of delegated patient services to any other person.

6. Respondent purported to delegate supervision of an unlicensed physician, Dr. Rafael Nunez, M.D., who was performing medical services, to an advanced practice nurse prescriber. In doing so she aided and abetted the unlicensed practice of medicine, which is prohibited by Wis. Admin. Code § MED 10.02(2)(g). She is subject to discipline pursuant to Wis. Stat. § 448.02(3).

7. Respondent delegated patient services to Dr. Rafael Nunez, M.D., under her own supervision, without directing, supervising and inspecting the services he provided. In doing so she aided and abetted the unlicensed practice of medicine, which is prohibited by Wis. Admin. Code § MED 10.02(2)(g). She is subject to discipline pursuant to Wis. Stat. § 448.02(3).

8. Respondent, by failing to maintain health care records that accurately identified the practitioner(s), as required by Wis. Admin. Code § MED 21.03(3), has engaged in conduct prohibited by Wis. Admin. Code § MED 10.02(2)(za). Respondent is therefore subject to discipline pursuant to Wis. Stat. § 448.02(3).

9. Respondent, by failing to clearly identify Dr. Rafael Nunez, M.D., as unlicensed when he purportedly performed delegated services or acts, engaged in conduct prohibited by Wis. Admin. Code § MED 10.02(2)(t). Respondent is therefore subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

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

IT IS FURTHER ORDERED that Noemi A. Prieto, M.D., is hereby REPRIMANDED.

IT IS FURTHER ORDERED pursuant to Wis. Stat. § 448.02(3)(e), that the license of Noemi Prieto, M.D., Respondent, to practice as a physician in the State of Wisconsin is LIMITED for a period of 2 years from the date of this Order as follows:

1. EDUCATION: Respondent shall take and successfully complete the following pre-approved courses. Respondent may, with pre-approval of the Board or its designee, take any course which is substantially equivalent to the following specified courses:

a. Respondent shall, on June 3 and 4, 2010 take and successfully complete "Intensive Course in Medical Record Keeping," with preceptorship, a continuing education activity sponsored by Case Western Reserve University School of Medicine;

b. Respondent shall, within 180 days, take and satisfactorily complete the Intensive Course in Medical Boundaries & Professionalism and Follow Up (20.5 cr) a continuing education activity sponsored by Case Western Reserve University School of Medicine;

c. Respondent shall, within 180 days, take and satisfactorily complete an intensive course on legal aspects of prescribing. The Intensive Course in Controlled Substance Management and Follow Up (39 cr.) sponsored by Case Western Reserve University School of Medicine is pre-approved;

d. Respondent shall cause the program sponsors to communicate directly with the Department Monitor or other designee of the Board, and shall permit the Board, its designee, and Department staff to confer with the course instructors and program sponsors regarding Respondent's performance in the program.

e. Respondent is responsible for any costs or fees associated with the education activities, which may not be submitted for credit toward continuing education requirements of any licensing entity, hospital or association.

2. ASSESSMENT, EVALUATION, CORRECTION AND MONITORING OF PRACTICE ADMINISTRATION. In the two years following this Order, the administration of any practice with which Respondent is affiliated shall undergo assessment, evaluation and correction. These limitations apply to Respondent, and any out-patient practice or clinic with which Respondent is affiliated, including Southeastern Pediatric & Adolescent Medicine, and Noemi A. Prieto, M.D., S.C.:

a. Within 90 days of the date of this Order, unless otherwise Ordered, Respondent shall arrange for and cause to be commenced, an intensive assessment and evaluation of the administration of Southeastern Pediatric & Adolescent Medicine, and

any other practice operated by Respondent or Noemi A. Prieto, M.D., S.C. The assessment shall be conducted by an independent third party, preapproved by the Board or its designee (Practice Evaluator). The Practice Evaluator shall not be any individual, association, institution or other entity with whom Respondent has or has had a personal or professional affiliation. Respondent shall provide the Practice Evaluator with a copy of this signed Order.

b. Within 180 days of the date of this Order, unless otherwise ordered, the Practice Evaluator shall submit a written report to the Department Monitor. The assessment, evaluation and report shall address all issues relevant to the lawful administration of the practice of medicine to include: financial solvency, billing, staff qualifications and licensing, staff supervision, medical record-keeping, written policies, and security of prescription pads and other items for which security is required by statute or rule.

c. Within one year from the date of this Order, unless otherwise ordered, Respondent shall submit to the Department Monitor, proof that she has implemented and fully complied with any and all recommendations of the Practice Evaluator.

d. After one year from the date of this Order, the Practice Evaluator shall, on a quarterly basis, assess Respondent's ongoing compliance with assessment recommendations and shall provide quarterly written reports to the Department Monitor concerning billing, staff qualifications and licensing, staff supervision, medical record-keeping, written policies and security of prescription pads and other items for which security is required by statute or rule.

e. The Practice Evaluator shall immediately report to the Department Monitor any conduct of the Respondent which may constitute unprofessional conduct, a violation of this Order, or a violation of any law or regulation.

3. INSTITUTION OF WRITTEN PRACTICE POLICIES: Respondent shall, within 180 days of the date of this Order, develop and implement written policies which must be approved by the Board or its designee pertaining to:

- a. qualifications for physician hires;
- b. delegation of medical acts, including patient notification;
- c. timely and accurate record keeping;
- d. security of prescription pads, and other items for which security is required by law or rule.

4. Respondent shall not permit Noemi A. Prieto, M.D., S.C., Southeastern Pediatric & Adolescent Medicine, or any other out-patient practice with which Respondent is affiliated to expand or open additional offices without written approval in advance from the Board or its designee.

5. Respondent must maintain accurate medical records which are current and within two weeks of the date of service. Respondent shall submit to inspections of her practice or medical records at any time with forty-eight hours advance notice from the Division of Enforcement.

6. Respondent shall not employ, whether paid or unpaid, physicians who are not fully credentialed to practice medicine in the state of Wisconsin.

7. Respondent shall not permit, within any practice with which she is affiliated, students or medical residents to provide health care services, whether paid or unpaid, or to be present for educational or observation purposes, without prior written consent of the Department Monitor.

8. Respondent shall not, during the course of the two-year limitation, delegate medical acts except in the hospital setting. The sole exception to this limitation shall be that Respondent may delegate medical acts to fully licensed physicians and registered nurses, including advanced practice nurse prescribers.

9. Respondent shall, within 90 days of the date of this Order, pay costs and fees in the amount of \$4,800.

10. Reports, payments and any other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

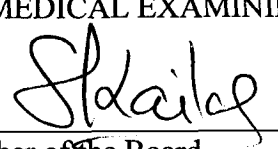
Department Monitor
Wisconsin Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935
Fax (608) 266-2264
Tel. (608) 267-3817

11. IT IS FURTHER ORDERED THAT violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event the Respondent fails to pay costs as ordered the Respondent's license SHALL BE SUSPENDED until the Respondent has complied with the terms of this Order.

12. This Order is effective on the date of its signing.

WISCONSIN MEDICAL EXAMINING BOARD

By:


A Member of the Board

4/21/10
Date