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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
: FINAL DECISION AND ORDER
RUDY V. BYRON, JR, M.D., :
RESPONDENT. : **ORDER 0000899**

Division of Enforcement Case No. 09MED144

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

Rudy V. Byron, Jr., M.D.
3807 Spring Street
Racine, WI 53405

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

Wisconsin Medical Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
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. Rudy V. Byron, Jr., M.D., Respondent, date of birth October 11, 1970, 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 42218-20, which was first granted on June 23, 2000. Respondent's license to practice medicine and surgery in Wisconsin is current through October 31, 2011.
2. Respondent's address of record with the Department of Regulation and Licensing is 3807 Spring Street, Racine, WI 53405.
3. Respondent is not now, and has never been, licensed to practice medicine and surgery in North Dakota.

4. Respondent's specialty listed with the Department is family practice.

5. Between August 16, 2008 and December 19, 2009, Respondent filled prescriptions for a controlled substance, Fioricet, through an online pharmacy for a patient who resided in North Dakota. Patient M.M. was on parole and could not leave North Dakota. Respondent never met or evaluated Patient M.M., and relied on an online questionnaire as the sole source of information about the patient.

6. Respondent relied on his Wisconsin license to practice medicine and surgery as authority to prescribe for the Patient MM. Respondent does not now, and never had a license to practice medicine and surgery in North Dakota.

7. Patient M.M. was hospitalized from 3-3-09 through 3-9-09 for a serious condition from a barbiturate overdose. Patient M.M. did eventually recover.

8. On January 24, 2010, Respondent explained that there was a clerical error written on the prescription for Patient M.M. and should have stated, "take a maximum of 6 tabs/day" and not, "take a maximum of 12 tabs/day in 24 hours."

9. Fioricet contains butalbital, which is a Schedule III controlled substance. Wis. Stat. § 961.18(3)(m).

10. Between August 16, 2008 and April 13, 2009, Title 21, Code of Federal Regulations, Section 1306.04(a) provided:

A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner...An order purporting to be a prescription issued not in the usual course of professional treatment...is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

11. Effective April 13, 2009, the Controlled Substances Act (CSA), 21 U.S.C. 801, et seq, was amended by the Ryan Haight Online Pharmacy Consumer Protection Act (Ryan Haight Act, Pub.L.No. 110-425). Since April 13, 2009, the federal statute requires at least 1 in-person medical evaluation of the patient (meaning, an evaluation conducted with the patient in the physical presence of the practitioner). Section 829(e)(1) & 2(A) defines a valid prescription as:

A prescription that is issued for a legitimate medical purpose in the usual course of professional practice by (i) a practitioner who has conducted at least 1 in-person medical evaluation of the patient; or (ii) a covering practitioner.

12. Respondent acknowledges that he prescribed Fioricet for an out-of-state patient he never met, and for whom he had no collaborative relationship with a treating physician who has examined, or is in a position to examine the patient. Instead, Respondent relied solely on information provided in an online questionnaire.

13. The practice of medicine and surgery is defined at Wis. Stat. § 448.01(9)(a) to include:

To examine into the fact, condition or cause of human health or disease; or to treat, operate, **prescribe** or advise for the same, by any means or instrumentality.

14. On January 31, 2010, Respondent notified the Department that he discontinued his practice of prescribing controlled substances via the internet based on an online questionnaire, without a bona fide physician-patient relationship. He acknowledged that the practice was not compatible with the way he was trained to practice medicine.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02(3) and authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by engaging in the conduct as set out above, has prescribed a controlled substance as prohibited by law, which is unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(p). He is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license to practice medicine and surgery and registration of Rudy V. Byron, Jr., M.D. is hereby REPRIMANDED.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of Respondent is LIMITED as provided in Wis. Stat. § 448.02(3)(e), and as follows:

1. Respondent shall not attempt to prescribe medications over the internet.
2. Respondent shall successfully complete the Intensive Course in Controlled Substance Management (including the pre-test, post-test, reflective essay and post-reflective essay), a 39 credit CME program offered December 6 - 9, 2011 by Case Western Reserve University School of Medicine. Alternately, not more than 180 days from the date of this Order, Respondent may, with prior approval of the Board or its designee, take a course that is deemed by the Board or its designee to be substantially equivalent to the aforementioned course.
 - a. Remedial coursework may not be used to satisfy biennial training requirements.
 - b. Respondent is responsible for all costs associated with the remedial education.

- c. Respondent, shall, within 30 days of completing the coursework, provide the Department Monitor with proof acceptable to the Board or its designee, of satisfactory completion.

3. Unless and until Respondent completes the education required above, Respondent shall not prescribe controlled substances to any patient for a total of more than 30 days in any 365 day period, except as otherwise authorized, in advance, in writing, by the Board or its designee.

IT IS FURTHER ORDERED that, within 90 days from the date of this Order, Respondent shall pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$900.00, pursuant to Wis. Stat. § 440.22(2).

4. Correspondence concerning the required education, payment and other matters pertaining to this Final Decision and Order shall be mailed or delivered to:

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

5. 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 Respondent fails to timely submit payment of the costs as set forth above, the Respondent's license (no. 42218-20) may, in the discretion of the board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs.

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

MEDICAL EXAMINING BOARD

By:

Skailap MD MBA
A Member of the Board

6/15/11
Date