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Before the
State Of Wisconsin
Medical Examining Board

In the Matter of the Disciplinary Proceedings
Against Zulfiqar Ali, M.D., Respondent

FINAL DECISION AND ORDER

Order No. 0003813

Division of Legal Services and Compliance Case No. 14 MED 298

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 18th day of March, 2015.

Member
Medical Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against Zulfiqar Ali, M.D., Respondent

DHA Case No. SPS-14-0093
DLSC Case No. 14 MED 298

PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Zulfiqar Ali, M.D.
1601 N. Farwell Ave., #319
Milwaukee, WI 53202

Wisconsin Medical Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Arthur Thexton
Department of Safety and Professional Services
Division of Legal Services and Compliance
P. O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Zulfiqar Ali, M.D., alleging that Respondent engaged in unprofessional conduct under Wis. Admin. Code § Med 10.03(2)(i) by disclosing protected patient health care information and under Wis. Admin. Code § Med 10.03(3)(i) by violating Wis. Stat. §§ 146.82(1) and 146.84(2)(a)2. The Division served Respondent on November 20, 2014, by sending a copy of the Notice of Hearing and Complaint to Respondent's last known address. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09, and failed to appear at the telephone prehearing conference held before the undersigned Administrative Law Judge (ALJ) on December 22, 2014.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the

Complaint and failure to appear at the prehearing conference, the ALJ found Respondent to be in default and on December 23, 2014, issued a Notice of Default against Respondent. In compliance with the Notice of Default, the Division filed a recommended proposed decision on January 5, 2015 and provided an additional copy of same, along with attachments, on January 7, 2015.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-5 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Zulfiqar Ali, M.D., date of birth September 1, 1968, is licensed in the State of Wisconsin to practice medicine and surgery, having license number 47541-20, first issued on November 1, 2004, with registration current through October 31, 2015. This license is currently suspended.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 1601 North Farwell Avenue, #319, Milwaukee, Wisconsin 53202.

3. Respondent was disciplined by the Wisconsin Medical Examining Board (Board) on June 25, 2014, in Case No. 11 Med 299, for improperly evaluating and treating Patient A. His license was suspended, but the suspension may be stayed upon Respondent's meeting certain conditions.

4. In June and July, 2014, Respondent posted or caused to be posted on several public Internet websites, and on his own Facebook page, protected health information of Patient A, including information which identified Patient A by name.

5. At the times of his postings, Respondent did not have authorization to receive or possess protected health information of Patient A, or to make any protected health information of Patient A public.

Facts Related to Default

6. The Complaint and Notice of Hearing in this matter were served on Respondent on November 20, 2014, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing informed Respondent: "If you do not provide a proper Answer within twenty (20) days, you will be found to be in default, and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

7. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

8. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for December 22, 2014. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the telephone number at

which he could be reached for the conference to the ALJ no later than December 17, 2014. The Notice further informed Respondent: "A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent."

9. Respondent failed to provide a telephone number and could not be reached for the prehearing conference.

10. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c) for failure to file an Answer and failure to appear.

11. On December 23, 2014, the ALJ issued a Notice of Default and Order which notified Respondent that he was in default and required the Division to serve no later than January 5, 2015 a recommended proposed decision and order.

12. The Division filed its recommended proposed decision and order on January 5, 2015, which was supplemented on January 7, 2015.

13. Respondent did not file a response to either the Notice of Default and Order or the Division's submission.

DISCUSSION AND CONCLUSIONS OF LAW

Default

Wisconsin Admin. Code § SPS 2.14 provides: "If the respondent fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence." An Answer to a Complaint must be filed within 20 days of service of the Complaint. *See* Wis. Admin. Code § SPS 2.09(4). Service of the Complaint may be made by mailing a copy of the Complaint to the respondent at the respondent's last known address. *See* Wis. Stat. § 440.11(2); Wis. Admin. Code § SPS 2.08(1). "Service by mail is complete upon mailing." Wis. Admin. Code § SPS 2.08(1). Here, Respondent was duly served with the Complaint on November 20, 2014 and failed to file an Answer as required.

Respondent also failed to appear at the prehearing conference held on December 22, 2014 and could not be contacted for the conference. Wisconsin Admin. Code § HA 1.07(3) describes the circumstances which constitute a failure to appear and the consequences for such a failure:

(3) FAILURE TO APPEAR.

...
(b) If a Respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate. . .

(c) For a telephone or video hearing or prehearing the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or video conference line . . . (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

Respondent failed to provide a telephone number and failed to appear for the prehearing conference. As stated in the December 23, 2014 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference held on December 22, 2014. Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violations

The Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 448.02(3). Following an investigation and disciplinary hearing, if the Board determines that a physician is guilty of unprofessional conduct, it may "warn or reprimand that person, or limit, suspend or revoke any license, certificate or limited permit granted by the Board to that person. . . ." Wis. Stat. § 448.02(3)(c).

The phrase "unprofessional conduct" as used in Wis. Stat. § 448.02(3)(c) includes "[t]hose acts or attempted acts of commission or omission defined as unprofessional conduct by the Board under the authority delegated to the Board by s. 15.08(5)(b)." Wis. Stat. § 448.015(4)(am)1. The Board has defined unprofessional conduct in Wis. Admin. Code § Med 10.03.

The Division first alleges that Respondent engaged in unprofessional conduct under Wis. Admin. Code § Med 10.03(2)(i), which defines unprofessional conduct to include "[k]nowingly, recklessly, or negligently divulging a privileged communication or other confidential patient health care information except as required or permitted by state or federal law."

Under federal law, namely, the Health Insurance Portability and Accounting Act (HIPPA), a "covered entity" may not use or disclose a patient's "protected health information," except as consented to by the patient or as provided under other exceptions, inapplicable here. See 45 C.F.R. § 164.502(a). See also *State v. Straehler*, 2008 WI 14, ¶ 5, 307 Wis. 2d 360, 745 N.W.2d 431. "Covered entities" under HIPPA include health care providers such as Respondent. See 45 C.F.R §§ 160.102(a), 164.104(a). See also *Straehler*, 307 Wis. 2d 360, ¶ 5.

It is undisputed that Respondent posted Patient A's protected health information on internet websites and on his Facebook page without Patient A's consent. In so doing, Respondent violated federal HIPPA provisions and has thereby also engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(2)(i).

The Division further alleges that the Respondent's actions described above constitute unprofessional conduct under Wis. Admin. Code § Med 10.03(3)(i), which describes the following as unprofessional conduct: "a violation or conviction of any laws or rules of this state, or of any other state, or any federal law or regulation that is substantially related to the practice of medicine and surgery." According to the Division, the laws Respondent violated which substantially relate to the practice of medicine are Wis. Stat. §§ 146.82(1) and 146.84(2)(a)2. Wisconsin Stat. § 146.82 states in relevant part:

146.82 Confidentiality of patient health care records.

(1) Confidentiality. All patient health care records shall remain confidential.

Patient health care records may be released only to the persons designated in this

section or to other persons with the informed consent of the patient or of a person authorized by the patient.

Wisconsin Stat. § 146.84(2)(a)2. states, in relevant part:

146.84 Violations related to patient health care records.

(2) PENALTIES.

(a) Whoever does any of the following may be fined not more than \$25,000 or imprisoned for not more than 9 months or both:

...

2. Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

The plain language of Wis. Stat. § 146.82 states that the provision applies to patient health care *records*. Patient health care records are defined as “all records related to the health of a patient prepared by or under the supervision of a health care provider.” Wis. Stat. § 146.81(4). This section does not reach beyond protection of health care records. *See Straehler*, 2008 WI App 14, ¶¶ 15-20 (nurse’s verbal statements based upon her observations are not protected by Wis. Stat. § 146.82). There is no indication that Respondent released patient records. Therefore, Wis. Stat. § 146.82 is inapplicable. With regard to Wis. Stat. § 146.84(2)(a)2., I note that the title of the statute is “Violations related to patient health care records,” indicating that this provision is likewise applicable only to records. However, the statutory language describing the violation is broader, covering “confidential information.” The Division has not provided a definition of “confidential information” under this provision and I am unaware of one. Whether this language is intended to cover more than “records,” contrary to the title’s suggestion, is unknown. Because the Division has not developed this argument in any meaningful way and I have already concluded that Respondent’s conduct constituted unprofessional conduct as defined in Wis. Admin. Code § Med 10.03(2)(i), I need not determine whether Respondent’s conduct was also unprofessional conduct as defined in Wis. Admin. Code § Med 10.03(3)(i).

Based on the foregoing, it has been established that Respondent engaged in unprofessional conduct as defined in Wis. Admin. Code § Med 10.03(2)(i) and is therefore subject to discipline pursuant to Wis. Stat. § 448.02(3).

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent’s license to practice medicine be revoked. Under the criteria set forth in *Aldrich* and the facts of this case, the discipline recommended by the Division is warranted.

With respect to rehabilitation, I note that Respondent was disciplined by the Board on June 25, 2014 in Case No. 11 Med 299 for improperly evaluating and treating Patient A. His license was suspended with the possibility of a stay upon Respondent’s meeting certain

conditions. Despite the serious discipline imposed on Respondent, he continued to engage in misconduct directly on the heels of the Board's June decision. In June and July of 2014, he posted protected health information regarding that same patient on internet websites and his Facebook page. It is evident that license suspension was insufficient to rehabilitate or deter Respondent, and that revocation is the only way of protecting the public.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings. The factors to be considered in assessing costs are: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and (7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz, D.C.*, LS0802183CHI (Aug. 14, 2008).

Based on the factors delineated in the *Buenzli-Fritz* decision and the facts of this case, Respondent should be assessed the full amount of recoverable costs in this case. The Division has proven that Respondent engaged in unprofessional conduct. That conduct was serious in nature -- violating a patient's privacy rights by posting her protected health information on the internet. In addition, the level of discipline sought by the Division is the highest level possible, revocation, and Respondent has failed to cooperate in any way in this proceeding. Also, as noted, Respondent was disciplined in the past, during or shortly before the conduct at issue here, but nonetheless continued to engage in misconduct. Finally, it would be unfair to impose the costs of these proceedings on those members of the medical profession who, unlike Respondent, have not engaged in misconduct.

ORDER

Accordingly, IT IS HEREBY ORDERED:

1. Respondent's license to practice medicine and surgery in the State of Wisconsin is REVOKED.
2. Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

**Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190**

IT IS FURTHER ORDERED THAT the terms of this Order are effective the date the Final Decision and Order is signed by the Board.

IT IS FURTHER ORDERED that the above-captioned matter is hereby closed as to Respondent Zulfiqar Ali, M.D.

Dated at Madison, Wisconsin on January 26, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Tel. (608) 266-7709
Fax (608) 264-9885

By: _____

A handwritten signature in black ink, appearing to read "J. Nashold", is written over a horizontal line.

Jennifer E. Nashold
Administrative Law Judge