

**BEFORE THE BOARD OF MEDICAL LICENSURE AND DISCIPLINE
OF THE STATE OF DELAWARE**

IN THE MATTER OF:)	
)	
THE COMPLAINT AGAINST)	FINAL BOARD ORDER
ALLEN C. WEISS, M.D.)	COMPLAINT NO.: 10-50-10, 10-69-10 and 10-111-10

NATURE OF THE CASE

A Formal Complaint (Second Amended) referencing Docket Nos. 10-50-10, 10-69-10 and 10-111-10 was filed by the State of Delaware with the Board of Medical Licensure and Discipline (“Board”) against Dr. Allen C. Weiss, M.D. (“Respondent” or “Dr. Weiss”) alleging numerous violations of the violations of the Medical Practice Act including 24 *Del. C.* § 1731(b)(1), (3), (6), (11), (13) and (17) and Board Rules 15.1.4 and 15.1.10. Contemporaneous with the filing of the initial complaint the State also filed a request for a temporary suspension of Dr. Weiss’ license pending a hearing. The Order of Temporary Suspension was issued by the Board President and Secretary of State pursuant to 24 *Del. C.* § 1738(a) on June 16, 2010. A three (3) Board Member Hearing Panel consisting of Thomas Desperito, M.D., Panel Chairperson, Vincent Lobo, D.O. and Mary K. Ryan, Public Member, was appointed to consider the evidence.

Pursuant to the requirements of the Medical Practice Act (24 *Del. C.* § 1734) the evidentiary hearing was scheduled upon due notice to Dr. Weiss and conducted before the designated Hearing Panel on February 25, 2011 and deliberations were conducted on March 11, 2011. Dr. Weiss was present at the Panel Hearing and represented by John R. Garey, Esquire. Barbara J. Gadbois, Deputy Attorney General, presented the evidence in support of the allegations contained in the State’s complaint as provided in 24 *Del. C.* § 1734(e). Following the evidentiary hearing, the Panel prepared

its Hearing Panel Report (the "Panel Report") for consideration by the Board.

The Board conducted a formal public hearing on November 1, 2011. The State elected not to appear to offer any additional argument at the Formal Hearing. Dr. Weiss was present and represented by John R. Garey, Esquire. Mr. Garey stated that he and Dr. Weiss had reviewed the Panel Report and believed that the Hearing Panel put a lot of thought in to the report and that the sanctions were appropriate for the findings. He asked the Board to adopt the Panel's recommendations which took into account that Dr. Weiss' license has been suspended for more than 15 months due to the temporary suspension.

RELEVANT STATUTORY PROVISIONS AND BOARD RULES

The complaint against Dr. Weiss alleged that he has engaged in unprofessional conduct in violation of 24 *Del. C.* § 1731(b) by engaging in conduct that violated the following provisions of Delaware Medical Practice Act:

(1) The use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or unethical practice in connection with a certification, registration, or licensing requirement of this chapter, or in connection with the practice of medicine or other profession or occupation regulated under this chapter;

(3) Any dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public;

(5) The practice of medicine or other profession or occupation regulated under this chapter without a certificate or other authorizing document or renewal of such document, unless otherwise authorized by this chapter;

(6) The use, distribution, or issuance of a prescription for a dangerous or narcotic drug, other than for therapeutic or diagnostic purposes;

(11) Misconduct, including but not limited to sexual misconduct, incompetence, or gross negligence or pattern of negligence in the practice of medicine or other profession or occupation regulated under this chapter; and

(17) The violation of a provision of this chapter or the violation of an order or regulation of the Board related to medical procedures or to the procedures of other professions or occupations

regulated under this chapter, the violation of which more probably than not will harm or injure the public or an individual;

The complaint against Dr. Weiss alleged that he has violated the following Board Rules:

- 15.1.4 Intentional falsification of records maintained for controlled substances and non-controlled drugs; and
- 15.1.10 Any other act tending to bring discredit upon the profession.

FINDINGS OF FACT¹

The unanimous findings of fact and conclusions of law which were made by the Hearing Panel were formally adopted by the Board on November 1, 2011 and are restated below in their entirety:

Complaint Paragraphs 1 and 2:

The allegations in paragraphs 1 and 2 related to Dr. Weiss licensure status.

Panel Finding of Fact and Conclusions of Law

The Panel finds based on the evidence and that Allen C. Weiss, M.D. is a licensed medical doctor in the State of Delaware (license number, C1-0002943). Dr. Weiss' primary specialty is psychiatry. His license was suspended by the Board on June 16, 2010. Dr. Weiss is subject to the disciplinary jurisdiction of the Board.

Complaint Paragraph 3

Paragraph 3 of the complaint alleges that "Since at least June 2009, Respondent has been prescribing and overprescribing controlled substances to patients without conducting proper medical examinations, without creating and maintaining proper records or logs, without requesting medical

¹ As permitted by 24 *Del. C.* §1734 (h) the Hearing Panel's summary of the evidence has not been restated but is incorporated herein by reference. In addition, due to the omission of the summary of evidence the footnote numbers differ from the Panel Report.

records, without contacting the patient's primary care physician, with little or no discussion or establishment of any underlying medical or psychiatric basis or need for medication, and/or simply on request."

Panel Finding of Fact and Conclusions of Law

The Panel does not believe the evidence established overprescribing as alleged in paragraph 3 of the complaint. The quantities of the prescriptions were not excessive, for example prescribing Oxycodone to a patient to be taken 6 times a day for legitimate substantiated complaints of pain is not an excessive amount. Instead, the Panel finds that Dr. Weiss exhibited a pattern of bad prescribing by not following the standards of the Federation of State Medical Board's *Model Policy for the Use of Controlled Substances for the Treatment of Pain* ("Model Policy") adopted by the Board for prescribing controlled substances. Although he stayed within acceptable limits for the actual prescriptions, he fell down in many other areas. For example, he refilled prescriptions for patients when they claimed to have lost them and he prescribed for a patient with drug abuse, rehab and jail even after he learned of the patient's history.

The Panel does finds that all of the remaining allegations in paragraph 3 of the complaint have been sustained by a preponderance of the evidence. Dr. Weiss admitted that he was not trained in pain management or prescribing narcotics. Until 2009 he limited his prescribing to psychiatric medicines. He did not know until recently that Adderall and Xanax have a street value. Because he is a psychiatrist he did not have a standard of care for physical exams that he followed. He did not verify the physical complaints and did not follow with any of the criteria or standards outlined in the Model Policy. He did not keep proper records or logs and had no real treatment plan. For each of the files reviewed, Dr. Weiss wrote the words "medication and therapy" under the patient's treatment

plan. However, his treatment plan for each of the patients for whom he prescribed narcotics consisted of simply prescribing the medication. There was no evidence in the records or the testimony as to any actual therapy or behavior modification provided to the patients. Nor was there any evidence that he obtained consent to treatment forms for pain management from any of the patients.

All of the patient records considered by the Panel, contained poor documentation, no reasoning, no true treatment plan and they were illegible to the point that Investigator Kemmerlin and Dr. Weiss himself had difficulty reading them. His pattern of prescribing was out of the realm of acceptable. Patients went to his office to seek narcotics and he provided them based on their unverified complaints of pain. There was nothing in the way of actual diagnoses of pain. He was not adequately prepared and/or trained to do physicals or to make appropriate referrals to determine the legitimacy of the patient complaints. If the patient told Dr. Weiss they had plans to see a pain doctor he gave them pain medicine. Even more egregious, he continued to write the prescriptions again and again. As an example, he first saw patient Tia on December 11, 2009. By his own testimony she told him she was going to see a pain doctor in 2 months. Dr. Weiss told the Panel he only prescribed pain medication for Tia "...because she was going to see a pain management doctor who would do a thorough workup on her. Because I'm not going to do that kind of workup; I do psychiatric evaluations, not pain management evaluations." However, State's Exhibit 2 shows that he repeatedly provided her with prescriptions for Oxycodone without ever referring Tia to a pain management doctor. The first reference to sending the patient to a pain specialist is in Dr. Weiss' note to the file dated June 17, 2010. State's Exhibit 1 at 60. In that note Dr. Weiss wrote "I treated her for approximately 8 mos but she needs more professional attention." Despite his acknowledgement that

pain management requires a thorough work up he continued to provide pain medication without making sure a physical was done. The pattern is repeated throughout the other patient records.

Complaint Paragraph 4

Paragraph 4 of the complaint alleges that “Since at least early 2009, Respondent has been providing patients with controlled substances he maintains in his office.”

Panel Finding of Fact and Conclusions of Law

The Panel finds that the allegations of paragraph 4 of the complaint have not been sustained by a preponderance of the evidence. There was no evidence presented that Dr. Weiss maintained controlled substances in his office that he provided to patients. The only testimony regarding the allegation came from Dr. Weiss who denied the charge. Mr. Kemmerlin did not testify to finding any controlled substances in the office.

Complaint Paragraph 5

Paragraph 5 of the complaint alleges that “Between September 3, 2009 and November 19, 2009, Respondent overprescribed Alprazolam to a patient in an amount exceeding safe therapeutic levels and engaged in unethical, illegal, and/or wrongful conduct to hide and cover-up his overprescription.”

Panel Finding of Fact and Conclusions of Law

The Panel finds that the allegations of paragraph 5 of the complaint have not been sustained by a preponderance of the evidence. The Panel could find no testimony or documentary evidence in the record to support this allegation.

Complaint Paragraph 6

Paragraph 6 of the complaint alleges that “The Respondent exhibits bizarre behavior and

verbally abuses patients and pharmacists by conduct including but not limited to shouting, swearing, ranting, threatening, using profane language, and biting his own hand and fingers.“

Panel Finding of Fact and Conclusions of Law

There was no testimony presented to establish that Dr. Weiss verbally abused any pharmacists. However, the Panel did hear testimony from a patient and from Mr. Kemmerlin regarding verbal abuse and hand biting. The Panel also had the opportunity to observe Dr. Weiss.

The patient, MB, scheduled an initial visit with Dr. Weiss for depression. When he arrived for the appointment he heard Dr. Weiss screaming at a patient through a closed door and he saw that the patient was crying when she left. He elected to go through with the appointment despite what he had heard and seen. When [MB] told Dr. Weiss he had consumed a whole bottle of wine earlier in the week in an attempt to commit suicide, Dr. Weiss told him that he was an alcoholic. When he denied it, Dr. Weiss screamed -- slammed his hand down, and said, "You're a fucking alcoholic." Dr. Weiss then put his finger in his mouth and screamed at the top of his lungs, "You're a fucking alcoholic." After the visit ended, MB filed a complaint against Dr. Weiss.

When asked if he yelled and cursed at patients, Dr. Weiss replied "I try not to." Dr. Weiss did not deny that he has occasionally sworn at patient but he did not recall swearing at MB. He did recall that he told MB he was an alcoholic and said that MB went berserk. Although MB's testimony that he wanted to see that Dr. Weiss never practices again could infer some bias, the fact that he immediately filed a complaint lends credibility to his version of the encounter.

Additional credible testimony regarding Dr. Weiss' behavior was provided by Mr. Kemmerlin. Mr. Kemmerlin met with Dr. Weiss 5 or 6 times. Although Dr. Weiss was courteous to Mr. Kemmerlin, Mr. Kemmerlin observed Dr. Weiss become agitated and scream and curse into the

telephone when he was interrupted without attempting to determine who was on the line. Even acknowledging the stress that Dr. Weiss was under in having to respond to subpoenas, Mr. Kemmerlin found the behavior unprofessional and unusual for a doctor. He observed Dr. Weiss biting his hand. He observed that Dr. Weiss had a difficult time communicating and understanding what Mr. Kemmerlin was trying to get from him. At almost every meeting Dr. Weiss exhibited erratic behavior where he would lose his impulse [control] and begin to yell and scream sometimes about what was happening to him, about pain medication being the cause of his predicament, and that he couldn't wait to get out of pain management.

The Panel also had the opportunity to listen to and observe Dr. Weiss. Even though the hearing process can be stressful, he did not bite his hand in front of the Panel. The Panel is not persuaded that his nervous habit of biting his hand constitutes unprofessional conduct in and of itself. However, he exhibits a number of other characteristic that are of concern. He was unfocused and at times agitated during the hearing. His attorney had to tell him to sit down and to listen to the questions when he started going off subject.

He also has a total lack of understanding that his own prescribing practices are the reason he is facing disciplinary action. Dr. Weiss asserted that he was the victim of a drug ring that took advantage of him. He may well have been targeted but that was due to his own failure to take reasonable steps to determine the legitimacy of the claims. He began practicing in an area in which he was incompetent to practice. Dr. Weiss' testimony about the "clan" that targeted him was at times irrational and rambling. He gave nonresponsive rants in response to simple yes or no questions. Although there were many examples throughout his testimony, two are block quoted on pages 19 and 20 of the Panel's summary of evidence.

Dr. Weiss was also asked to read from letters which he represented as closure letters that he wrote after he terminated treatment of the patients. In fact, nothing in the letters resembled an actual discharge letter and none of the letters was actually addressed to the patients. They appeared to be an afterthought by Dr. Weiss to document that he closed the file. At times it was difficult to ascertain the point Dr. Weiss was trying to make in the letter. The letters were hand written, illegible and lacked a logical sequence of thought.

The Panel finds it appropriate to discuss the neuropsychological, neurological and psychiatric evaluations and testimony regarding Dr. Weiss in regard to the allegations dealing with Dr. Weiss' behavior. Dr. Weiss was evaluated first by Dr. Royer (neuropsychological testing), by Dr. Mark (neurological consultation) and finally by Dr. Periera-Ogan (psychiatric evaluation). Although Dr. Periera-Ogan is a well respected psychiatrist, the Panel gave little weight to his testimony and examination. Dr. Weiss chose Dr. Periera-Ogan to do the evaluation and did not provide Dr. Periera-Ogan with the full circumstances of his case. As a result Dr. Periera-Ogan did not have a full understanding of Dr. Weiss' behavioral issues or prescribing practices. He believed that Dr. Weiss was before the Panel due to one incident and acknowledged that he was surprised by the other allegations. His finding that "Dr. Weiss has revealed good impulse control with fair common sense and fair judgment in regard to the chief complaint...with a first-time patient who stated her intention of obtaining pain killers from him" is contrary to the Panel's observations of Dr. Weiss. The results of the neuropsychological testing performed by Christopher Royer, Psy.D, are more consistent with the Panel's own observations of Dr. Weiss.

Dr. Royer noted that Dr. Weiss "has a marked tendency towards tangential speech." When giving his medical history he stated "somebody gave me diabetes" and did not know what a

psychotropic drug was despite being a psychiatrist. Under behavioral observations, Dr. Royer noted many of the behavioral attributes noted by the Panel including but not limited to the following examples:

- He often talked about non-related matters, that is, whatever came to mind at the time.
- As the assessment progressed, he grew progressively more talkative, tangential, with no ability to inhibit internal commentary which he verbalized throughout the entire assessment. He was not easily redirected to task.
- He had considerable difficulty understanding standardized instructions, questioning every part, saying ‘wait,’ and needing, frequent re-clarification.
- While cooperative he, he demonstrated little insight into his abilities, tending to overestimate his performance on tasks confident in his ability to do so.

Dr. Weiss scored in the severely impaired range on a number of the cognitive function tests. Dr. Royer noted that Dr. Weiss “expressive speech was fluent but very tangential and notable for severe word finding problems” and that he scored well on the verbal fluency tests. He scored in the low normal range on the test of rapid visual scanning and tracking and mildly impaired on rapid mental flexibility. He had severe difficulties with the test of complex categorical set shifting. His responses were “perseverative” and he was not able to sort any categories and the test was “discontinued due to his frustration...”

Dr. Royer found Dr. Weiss’ affect “inflated” and his speech “pressured and tangential.” Dr. Weiss was given the Millon Clinical Multiaxial Inventory, 3rd Edition, and “essentially invalidated the test” though his responses denying any problems. Dr. Royer also noted that Dr. Weiss exhibits an

extremely impaired awareness of cognitive deficits, and the extent of which his functional abilities may be impacted by these impairments.”

Finally, Dr. Royer concluded that Dr. Weiss presents with “serious neurocognitive deficits”, “visual construction deficits” and that he has “clear neurobehavioral and/or psychiatric issues.” Dr. Royer listed the possible causes including structural pathology, frontal lobe dementia or frontal lobe variant, as well as possible manic episode or delusional disorder.” Dr. Royer recommended a full neurological work-up including appropriate blood work and neuroimaging to rule out reversible causes. He also recommended a full psychiatric evaluation and concluded that Dr. Weiss “cognitive deficits alone would raise serious concerns about his ability to practice medicine.”²

The psychiatric evaluation was performed by Dr. Periera-Ogan and is discounted by the Panel as previously noted.³

Complaint Paragraph 7

Paragraph 7 of the complaint alleges that “Respondent encourages and/or instructs patients to fill the prescriptions he writes them for controlled substances at different pharmacies and to pay cash for the prescriptions.”

Panel Finding of Fact and Conclusions of Law

The Panel finds that the allegations are not supported by a preponderance of the evidence. Mr. Kemmerlin testified some of Dr. Weiss’ medication records have the names of several

² See Dr. Royer’s report see State’s Exhibit 1 at 5-8.

³ During the finalization of the Panel Report it was noted that during its deliberations the Panel did not have a copy of the neurological report performed as a result of Dr. Royer’s recommendation. The Panel was subsequently provided with a copy of the report prepared by Michael H. Mark, M.D. The results ruled out any organic brain disease including frontal dementia. An MRI of the brain was also ordered and ruled out any occult structural defect. Dr. Mark recommended that Dr. Weiss follow through with the psychiatric evaluation recommended by Dr. Royer with the possibility of obtaining a second opinion of neuropsychological testing based on the psychiatric report. No specific treatment was recommended. Respondent’s Exhibit 1 at 3. As a result, the Panel recommends that no further neurological examination be required by the Board.

pharmacies written at the top of the page and that in his experience sending patients to multiple pharmacies one of the hallmarks of diversion and misuse of opiate medications. However, State's Exhibit 1 at 34-48 and State's Exhibit 2 are the only records showing where prescriptions were filled. The records all relate to patient Tia and show that all of the Oxycodone prescriptions filled at the same pharmacy. Also, although Dr. Weiss testified that he accepted cash there was no evidence that he encouraged patients to use different pharmacies or encouraged them to pay in cash.

Complaint Paragraph 8

Paragraph 8 of the Complaint alleges that "Respondent does not refer patients for whom he prescribes controlled substances to other physicians, therapists, counselors or other professionals including but not limited to pain specialists or addiction counselors to evaluate and/or treat their medical, psychological, and/or addiction conditions or problems."

Panel Finding of Fact and Conclusions of Law

For the reason discussed in response to the allegations in paragraph 3 above, the Panel finds that the State has sustained its burden of proving the allegations in paragraph 8 of the Complaint.

Complaint Paragraph 9

Paragraph 8 of the Complaint alleges that "Respondent has admitted that he lacks the training, education, and knowledge to prescribe pain medications including but not limited to Oxycodone."

Panel Finding of Fact and Conclusions of Law

The Panel finds that the allegation was substantiated by Dr. Weiss' testimony. He has practiced as a psychiatrist for over 20 years but has no training in pain management. He was completely unaware of the Model Policy for pain management and prescribed controlled substances

for conditions that were outside of his scope of practice.

Complaint Paragraph 10

Paragraph 10 of the complaint that “Respondent knows or should know that many of the patients for whom he prescribes controlled substances are addicts, criminals, and/or street drug dealers who sell the drugs he prescribes.”

Panel Finding of Fact and Conclusions of Law

The Panel finds that the allegation was substantiated by a preponderance of the evidence. Dr. Weiss testified that he had suspicions but gave patients the benefit of the doubt until he learned of actual criminal charges and then he terminated them.

As a psychiatrist Dr. Weiss should have been able to perceive and filter out the abusers who were repeat patients, many from the same family with similar medical conditions. Examples of Dr. Weiss continuing to prescribe after he knew or should have known of drug abuse are replete throughout the exhibits. To highlight a few, on November 27, 2009, Dr. Weiss recorded “no Adderall” on the chart of patient Christopher and that the patient was a “drug abuser.” Yet his records show that he prescribed Adderall for the patient on March 23, 2010 after he wrote the note. On February 17, 2010, Dr. Weiss wrote a letter to the Board acknowledging that a small percentage of patients came to him that were drug seekers and that he needed to be more suspicious. State’s Exhibit 1 at 24. Yet the records show that even after his letter to the Board, he prescribed Oxycodone Tia T on March 12, 2010, April 9, 2010 and again on May 18, 2020.

Dr. Weiss should have seen the pattern of what was being presented to him and recognized it for what it was. He documented the files after the fact and after he was under investigation. Until that point, and for many months, he was a conduit that allowed for drugs to make it to the streets. Had he

kept appropriate records under the Model Policy and associated protocols, he would have been in a better position to assess the patients and the legitimacy of the claims of pain. Instead, he accepted what the patients told him at face value and had no track record of follow through as evident throughout his records and for all of the drugs he prescribed.

Complaint Paragraph 11

Paragraph 11 of the complaint alleges that “Respondent engages in wrongful, unethical, and/or illegal conduct as described in paragraphs 2 through 18 for his personal financial enrichment.”

Panel Finding of Fact and Conclusions of Law

The Panel finds that it has insufficient evidence to conclude that Dr. Weiss was motivated by personal financial enrichment. The allegations in the complaint involve some ten or eleven patients. Dr. Weiss testified that he charged \$200 for an initial visit and \$80.00 for a medication check. There was no other evidence to suggest that he took on patients strictly for pain management or for personal financial enrichment. With the majority of the records reviewed that patients also reported depression, attention deficit or some other psychiatric condition. They ultimately got pain medication and psychiatric medicines with street value but the Panel cannot conclude that Dr. Weiss was running a pill mill for personal gain based on the record before it.

Complaint Paragraph 12

Paragraph 12 of the complaint alleges that “Respondent violated the provisions of 24 *Del.C.* §1731(b)(3) and is guilty of unprofessional conduct in that he engages in dishonorable and unethical conduct likely to harm the public and his patients.”

Panel Finding of Fact and Conclusions of Law

The Panel finds that the allegations in paragraph 12 have been established by a

preponderance of the evidence for the reasons detailed in the Panel's findings with regard to the allegations in paragraphs 3, 6, 8, 9, and 10 above.

In addition Dr. Weiss' lack of prescription monitoring and overall lack of understanding of controlled substances led to Tia experiencing actual harm from opiate withdrawal. Whether or not she was part of a bigger drug issue, Dr. Weiss still took her on as a patient. The records subpoenaed from the physician assistant who saw Tia T on June 21, 2010 showed she was experiencing opiate withdrawal after receiving Oxycodone for 8 months from Dr. Weiss. The physician assistant reduced the Oxycodone to I tablet 3 times a day, for 14 days with no refills, and scheduled a follow up in two weeks in an effort to start weaning the patient and treating her. As previously discussed Dr. Weiss never monitored what he was prescribing and did not have the training to prescribe pain medication.

The Panel finds that Dr. Weiss violated the provisions of 24 *Del.C.* §1731(b)(3).

Complaint Paragraph 13

Paragraph 13 of the complaint alleges that "Respondent violated the provisions of 24 *Del.C.* §1731(b)(1) and is guilty of unprofessional conduct in that he engages in unethical practices in connection with the practice of medicine."

Panel Finding of Fact and Conclusions of Law

For the reasons already discussed above the Panel finds that the State has met its burden of establishing a violation of 24 *Del. C.* § 1731(b)(1) as alleged. The first tenet of ethics is to do no harm. Dr. Weiss allowed himself to become a conduit for drugs by prescribing pain medication without the adequate skills or training to enter into the field of pain management. He also allowed psychiatric drugs with street value to be abused due to his failure to properly document and monitor medications. In addition, the Panel finds that it was an unethical practice to post date two

prescriptions for controlled substances (State's Exhibit 1 at 156) regardless of whether or not Dr. Weiss' motives were pure.

Complaint Paragraph 14

Paragraph 14 of the complaint alleges that "Respondent violated the provisions of 24 *Del.C.* §1731(b)((11) and is guilty of unprofessional conduct in that his actions in prescribing controlled substances to patients in amounts that exceeded safe therapeutic levels and in failing to maintain adequate and appropriate records constitutes misconduct, incompetence, and/or gross negligence in the practice of medicine."

Panel Finding of Fact and Conclusions of Law

Again, the Panel does not believe the evidence established overprescribing or that the actual amounts of the prescriptions exceeded safe therapeutic levels. In addition, to the extent the allegation is premised on paragraph 5, the Panel did not find sufficient evidence to support that allegation. However, the evidence overwhelmingly supports a finding that Dr. Weiss was incompetent to prescribe controlled substance in the first instance and undertaking to do so without the proper training was incompetent. In addition, his record keeping and documentation was incompetent and illegible.

The Panel finds that Dr. Weiss violated the provisions of 24 *Del.C.* §1731(b)((11).

Complaint Paragraph 15

Paragraph 15 of the complaint alleges that "Respondent violated the provisions of 24 *Del.C.* §1731(b)(6) and is guilty of unprofessional conduct in that he prescribes dangerous or narcotic drugs to patients for other than therapeutic purposes."

Panel Finding of Fact and Conclusions of Law

The Panel finds the State has sustained its burden of proving the allegations in paragraph 15 by a preponderance of the evidence. The Panel finds that the records established that Dr. Weiss violated this provision in that he never determined the therapeutic need for the prescriptions he wrote. By his own admission he was not qualified to do so. He did not perform physical exams or make objective findings and failed to document the purpose for the narcotic prescriptions.

The Panel finds that Dr. Weiss violated 24 *Del.C.* §1731(b)(6).

Complaint Paragraph 16

Paragraph 16 of the complaint alleges that that “Respondent violated the provisions of 24 *Del.C.* §1731(b)(17) in that he violates provisions of Chapter 17 and/or the regulations of the Board related to medical procedures and the violations more probably than not harm and/or injure the public and his patients.”

Panel Finding of Fact and Conclusions of Law

The Panel finds the State has sustained its burden of proving the allegations in paragraph 16 by a preponderance of the evidence for the reasons already detailed above.

The Panel finds that Dr. Weiss violated 24 *Del.C.* §1731(b)(17).

Compliant Paragraph 17

Paragraph 17 of the complaint alleges that “Respondent violated the provisions of 24 *Del.C.* §1731(b)(3) and is guilty of unprofessional conduct in that he violates that following Board Rules:

- a. Rule 15.1.4 in that he intentionally fails to maintain records concerning the prescriptions for controlled substances he wrote for patients; and,
- b. Rule 15.1.10 in that his conduct brings discredit upon the medical profession.”

Panel Finding of Fact and Conclusions of Law

The evidence supports a finding that Dr. Weiss violated 24 *Del. C.* §1731(b)(3) by violating Board Rule 15.1.4 and 15.1.10. As to Rule 15.1.4, Dr. Weiss is the one only responsible for maintaining the records for the controlled substance prescriptions he wrote. His records are abysmal. Records were illegible and incomplete and some did not correspond with the dates he saw the patients. Dr. Weiss had to be cognizant of the poor state of his record keeping and therefore the Panel finds his conduct intentional.

Complaint Paragraph 18

The allegations in paragraph 18 deal with the State's request for an emergency suspension which was granted prior to the Panel Hearing. With the exception of the Panel's finding below to continue the suspension pending the Board hearing, the Panel makes no additional findings.

Panel Finding of Fact and Conclusions of Law

Pursuant to 24 *Del. C.* § 1738 (e) the temporary suspension only remains in effect pending the Board hearing if the Hearing Panel "finds that the facts found by it constitute a clear and immediate danger to public health." The Hearing Panel unanimously found that the facts found by it do continue to present a clear and immediate danger and the emergency suspension remains in effect under the provisions of 24 *Del. C.* § 1738 (e).

Complaint Paragraphs 19 and 20

The allegation in paragraph 19 of the complaint alleges that "On July 5, 2010, Respondent wrote two prescriptions for one patient during the time that his medical license and controlled substances registration were suspended." Paragraph 20 asserts the alleged violations of law.

Panel Finding of Fact and Conclusions of Law

The Panel finds that the state has not sustained its burden of proving that Dr. Weiss wrote the

prescriptions after his license was suspended. The prescriptions at issue are the ones that Dr. Weiss admitted to pre-dating. The Panel finds that Dr. Weiss did not write prescriptions while his license was suspended as such has not violated that statutory provisions alleged in paragraph 20.

RECOMMENDED DISCIPLINARY SANCTION OF THE HEARING PANEL

The Panel recommended the following disciplinary action:

1. Continue the suspension of Dr. Weiss' license to practice medicine for an indefinite period and require him to obtain a full psychiatric evaluation at his expense by an independent psychiatrist designated by the Board's Executive Director who has no personal or professional relationship with Dr. Weiss.
2. Require Dr. Weiss to comply with any treatment recommendations made by the psychiatrist and Dr. Weiss' treating physician.
3. Require Dr. Weiss to take a course in patient medical records and documentation and a separate course in professionalism and communicating with patients during the period of indefinite suspension. These courses are in addition to, and not in lieu of, any continuing education required for license renewal. The courses must pre-approved by the Board's Executive Director.
4. Permit Dr. Weiss to make written application to the Board to terminate the suspension following a hearing before the Board to consider the psychiatric evaluation. The evaluation and the Board's assessment of Dr. Weiss must demonstrate that Dr. Weiss is capable of practicing medicine in a safe, competent and professional manner. Dr. Weiss must also be in

compliance with any treatment recommendations, must have clearance from his treating physician and he must also be in compliance with all of the other terms of the Order.

5. Include in any Order terminating the suspension, that as a permanent restriction of his practice, Dr. Weiss is prohibited from practicing in the field of pain management and is prohibited from prescribing any narcotics including, but not limited to, Oxycodone, any codeines, morphine, dilaudid, etc. In addition, restrict his prescriptive authority to psychiatric medication limited to schedule IV benzodiazepines and schedule II stimulants only.
6. Require that Dr. Weiss' suspension, once terminated, be followed by probation for a minimum period of one (1) year.
7. Order that Dr. Weiss's records be audited at month six (6) of the probationary period for compliance with the Order. Such audit to be unannounced but during regular business hours.
8. Provide that Weiss may make a written request to terminate the probation after the minimum one (1) year period provided he is in compliance with all of the terms and conditions of the Order.
9. Reserve jurisdiction, in connection with any request to terminate probation, to hold a hearing to consider whether any additional conditions or restrictions on Dr. Weiss' license are necessary to protect the public.

BOARD DISCUSSION

The Board considered the Hearing Panel's recommendations. Dr. Weiss has not objected to any of the conclusions of law or recommended sanctions. The Board is satisfied that the Panel's recommendations adequately address the violations of law found by the Hearing Panel and adopted

by this Board with the exception of one area. Dr. Weiss has been out of the practice of psychiatry now for more than 17 months. The findings of the Hearing Panel as adopted by the Board suggest a pattern of incompetency that carried over into Dr. Weiss' psychiatric practice. As a result, the Board is requiring that Dr. Weiss complete, at his expense, an evaluation/program in the field of psychiatry through CPEP (The Center for Personalized Education for Physicians) or PACE (Physician Assessment and Clinical Education) or other similar organization approved by the Board's Executive Director.

The Board is also adding a provision that Dr. Weiss must have completed the medical records and professionalism courses before he will be permitted to request that his suspension be lifted. Finally, the Board made a minor clarifying change to the language in paragraph 1 of the order.

ORDER

In accordance with the unanimous vote of the members of the Delaware Board of Medical Licensure and Discipline hearing this matter, the Board enters the following order:

1. Dr. Weiss' license to practice medicine is suspended for an indefinite period. During the period of suspension he must obtain a full psychiatric evaluation at his expense by an independent psychiatrist designated by the Board's Executive Director. The psychiatrist shall have no personal or professional relationship with Dr. Weiss.
2. Dr. Weiss must comply with any treatment recommendations made by the psychiatrist and by Dr. Weiss' treating physician.
3. Dr. Weiss must take a course in patient medical records and documentation and a separate course in professionalism and communicating with patients during the period of indefinite

suspension. These courses are in addition to, and not in lieu of, any continuing education required for license renewal. The courses must pre-approved by the Board's Executive Director.

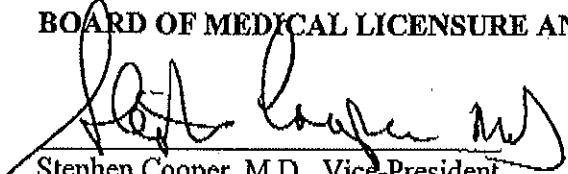
4. Dr. Weiss must complete, at his expense, an evaluation/program in the field of psychiatry through CPEP (The Center for Personalized Education for Physicians) or PACE (Physician Assessment and Clinical Education) or other similar organization approved by the Executive Director.
5. Dr. Weiss may make written application to the Board to terminate the suspension following a hearing before the Board to consider the psychiatric evaluation and the evaluation of his competency to practice psychiatry. The psychiatric evaluation and the competency evaluation in psychiatry must demonstrate that Dr. Weiss is capable of practicing medicine in a safe, competent and professional manner. At the time of his request doctor Weiss must also have completed the record documentation and professionalism courses required under paragraph 3 above. Dr. Weiss must also be in compliance with any treatment recommendations, must have clearance from his treating physician and he must also be in compliance with all of the other terms of the Order. In addition, Dr. Weiss' request to lift the suspension will be reviewed in light of any modifications to the statute and/or rules and regulations in effect at the time of the request.
6. Dr. Weiss is permanently prohibited from practicing in the field of pain management and is prohibited from prescribing any narcotics including, but not limited to, Oxycodone, any codeines, morphine, dilaudid, etc. In addition, his prescriptive authority is restricted to psychiatric medication limited to schedule IV benzodiazepines and schedule II stimulants

only.

7. Dr. Weiss' suspension, once terminated, is to be followed by probation for a minimum period of one (1) year.
8. Dr. Weiss' records will be audited at month six (6) of the probationary period for compliance with the Order. Such audit to be unannounced but during regular business hours.
9. Dr. Weiss may make a written request to terminate the probation after the minimum one (1) year period provided he is in compliance with all of the terms and conditions of the Order.
10. The Board reserves jurisdiction, in connection with any request to terminate probation, to hold a hearing to consider whether any additional conditions or restrictions on Dr. Weiss' license are necessary to protect the public.

SO ORDERED this 28th day of November, 2011.

BOARD OF MEDICAL LICENSURE AND DISCIPLINE


Stephen Cooper, M.D., Vice-President
Pursuant to 24 Del. C. §1734 (h)

Mailing date: 11/29/11