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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE
ADMINISTRATION, BOARD OF
MEDICINE,

Petitioner,

v.

HARRY L. SAUERS, M.D.,

Respondent.

Final Order No. AHCA-94-811 Date 12/9/94

FILED

Agency for Health Care Administration

AGENCY CLERK

R.S. Power, Agency Clerk

By: Brandon R. Moore
Deputy Agency Clerk

CASE NUMBER: 90-08247
LICENSE NUMBER: ME 0011825

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on December 2, 1994 in Orlando, Florida, for consideration of a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in the above-styled case. Upon consideration of the Consent Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Consent Agreement as submitted be and is hereby approved and adopted in toto and incorporated by reference herein. Accordingly, the parties shall adhere to and abide by all of the terms and conditions of the Consent Agreement.

This Final Order takes effect upon filing with the Clerk of the Agency.

DONE AND ORDERED this 2th day December, 1994.

BOARD OF MEDICINE

Gary E. Winchester, M.D.
GARY E. WINCHESTER, M.D.
VICE-CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by certified U.S. Mail to Harry L. Sauers, M.D., 510 E. Druid Road, Clearwater, Florida 34616, Gail F. Moulds, Esquire, P.O. Drawer 1441, St. Petersburg, Florida 33731-1441, and by interoffice delivery to Larry G. McPherson, Jr., Chief Medical Attorney, Agency for Health Care Administration, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, at or before 5:00 P.M., this _____ day of _____, 1994.

MARM M. HARRIS, Ed.D.
Executive Director

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

DPR CASE NO. 90-008247

HARRY L. SAUERS, M.D.

Respondent.

CONSENT AGREEMENT

Harry L. Sauers, M.D., referred to as the "Respondent," and the Department of Business and Professional Regulation, referred to as "Department," stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 0011825.

2. Respondent was charged by an Administrative Complaint filed by the Department and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 455 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

STIPULATED DISPOSITION

1. FUTURE CONDUCT. Respondent shall not in the future violate Chapters 455, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, Respondent read Chapters 455, 458, and 893, Florida Statutes, and the Rules of the Board of Medicine, at Section 61F6, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of \$3,000.00 against the Respondent. The fine shall be paid by the Respondent to the Executive Director of the Board within thirty (30) days of its imposition by Final Order of the Board.

3. DRUG COURSE. Respondent shall complete the course, "Protecting Your Medical Practice, Clinical, Legal and Ethical Issues in Prescribing Abusable Drugs," sponsored by the Florida

Medical Association and the University of South Florida, or a Board-approved equivalent, within one year following the date of the Final Order in this case.

4. RECORDS COURSE. Respondent shall complete the course, "Quality Medical Record Keeping for Health Care Professionals," sponsored by the Florida Medical Association, or a Board-approved equivalent, within one year of the date of the Final Order in this case.

5. LETTER OF CONCERN. Respondent shall receive a Letter of Concern from the Department concerning the treatment rendered in the cases described in the Administrative Complaint. A Letter of Concern is intended to notify Respondent of the Department's concerns with a case, and to recommend appropriate conduct for such cases in the future, and does not become a part of Respondent's record.

6. It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless a Final Order incorporating the terms of this Agreement is entered by the Board.

7. Respondent shall appear before the Board at the meeting of the Board where this Agreement is considered. Respondent, in conjunction with the consideration of this Agreement by the Board, shall respond to questions under oath from the Board, Board Staff or Department Staff. Respondent shall be prepared to explain the

circumstances involved in this matter and what measures have been taken to prevent a recurrence.

8. Should this Agreement be rejected, no statement made in furtherance of this Agreement by the Respondent may be used as direct evidence against the Respondent in any proceeding; however, such statements may be used by the Petitioner for impeachment purposes.

9. Respondent and the Department fully understand that this joint Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit "A" herein.

10. Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

11. Upon the Board's adoption of this Agreement, the parties hereby agree that each party will bear his own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this matter.

12. This Agreement is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to

review and examine all investigative-file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Furthermore, should this joint Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

SIGNED this 16 day of August, 1994.

Harry L Sayers mo
(Respondent's Name)

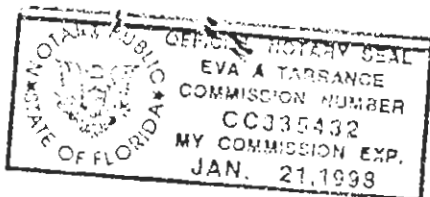
Before me, personally appeared Harry L. Sayers, whose identity is known to me by personally for 12 yrs (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 16th day of August, 1994.

Eva A. Tarrance
NOTARY PUBLIC

My Commission Expires:

APPROVED this 16 day of August, 1994.



George Stuart
Secretary

Larry G. McPherson, Jr.
By: Larry G. McPherson, Jr.
Chief Attorney
Medical Section

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

PETITIONER,

vs.

CASE NO. 9008247

HARRY L. SAUERS, M.D.

RESPONDENT.

_____ /

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Professional Regulation, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against HARRY L. SAUERS, M.D., hereinafter referred to as "Respondent," and alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.30, Florida Statutes; Chapter 455, Florida Statutes; and Chapter 458, Florida Statutes.

2. Respondent is and has been at all times material hereto a licensed physician in the State of Florida, having been issued license number ME 0011825. Respondent's last known address is 510 Druid Road East #D, Clearwater, Florida 34616-3956.

FACTS PERTAINING TO PATIENT #1

3. From around April 1973 to on or about September 12, 1990, Respondent provided psychiatric treatment to Patient #1, a male

born on or about March 21, 1931 for symptoms of refractory depression, narcolepsy, and headaches.

4. From on or about October 12, 1988 until July 3, 1990, Respondent prescribed to Patient #1 Biphedamine 20 mg. #200 capsules on at least, but not limited to, forty-five (45) separate occasions. This is an average of approximately fourteen (14) capsules per day.

5. Biphedamine is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains dextroamphetamine, a Schedule II controlled substance listed in Chapter 893, Florida Statutes.

6. On or about December 7, 1988, Respondent recorded in his medical records of Patient #1 that Patient #1 had been drinking 2.6 liters of wine per day for the previous seven (7) days. Respondent failed to conduct any examination regarding this alcohol usage.

7. The same day, Respondent prescribed to Patient #1 Biphedamine 20 mg. #20 capsules.

8. On or about May 23, 1990, Respondent recorded in his medical records of Patient #1 that Patient #1 had been previously drinking 288 ounces of beer per day. Respondent failed to conduct any examination regarding this alcohol usage.

9. The same day, Respondent prescribed to Patient #1 Biphedamine 20 mg #20 capsules.

10. The prescribing of Biphedamine to known heavy alcohol drinkers is medically contraindicated.

11. From on or about October 25, 1988 until June 20, 1990, Respondent prescribed to Patient #1 Phenaphen with Codeine #4, 100 capsules on at least, but not limited to twenty-eight (28) different occasions for the treatment of Patient #1's recurrent headaches. This is an average of approximately five (5) capsules per day.

12. Phenaphen with Codeine #4 is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains codeine, a Schedule III controlled substance listed in Chapter 893, Florida Statutes.

13. On or about December 21, 1988, approximately fourteen (14) days after Respondent recorded in his medical records of Patient #1 that Patient #1 had been drinking 288 ounces of beer per day, Respondent prescribed to Patient #1 Phenaphen with Codeine #4, #100 capsules.

14. The prescribing of Phenaphen with Codeine #4 to known heavy alcohol drinkers is medically contraindicated.

15. Respondent prescribed excessive amounts of Biphetamine to Patient #1 and prescribed Biphetamine to Patient #1 when it was contraindicated to his condition.

16. Respondent inappropriately failed to address Patient #1's heavy alcohol consumption.

17. Respondent failed to properly evaluate Patient #1 prior to prescribing medication for his headaches.

18. Respondent prescribed excessive amounts of Phenaphen with Codeine #4 to Patient #1 and prescribed the drug to Patient #1 when it was contraindicated to his condition.

19. Throughout Patient #1's treatment, Respondent failed to obtain a neurologic or psychiatric consultation to aid him in his treatment of Patient #1.

20. Respondent's medical records of Patient #1 fail to justify the treatment he rendered to him.

COUNT ONE

21. Petitioner realleges and incorporates paragraphs through twenty (20) as if fully set forth herein this Count One.

22. Respondent is guilty of gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances in that Respondent prescribed excessive amounts and contraindicated legend drugs to Patient #1; failed to address Patient #1's heavy alcohol consumption; and failed to obtain a neurologic or psychiatric consultation to aid him in his treatment of Patient #1.

23. Based upon the preceding allegations, Respondent violated Section 458.331(1)(t), Florida Statutes in that he is guilty of gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT TWO

24. Petitioner realleges and incorporates paragraphs one (1) through twenty (20) and twenty-two (22) as if fully set forth herein this Count Two.

25. Respondent is guilty of prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice in that Respondent prescribed excessive amounts of Biphedamine to Patient #1 and prescribed Biphedamine to Patient #1 when it was contraindicated to his condition; and Respondent prescribed excessive amounts of Phenaphen with Codeine #4 to Patient #1 and prescribed Phenaphen with Codeine #4 to Patient #1 when it was contraindicated to his condition.

26. Based on the preceding allegations, Respondent violated Section 458.331(1)(q), Florida Statutes, in that he is guilty of prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice.

COUNT THREE

27. Petitioner realleges and incorporates paragraphs one (1) through twenty (20), twenty-two (22) and twenty-five (25) as if fully set forth herein this Count Three.

28. Respondent is guilty of failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations in that Respondent's medical records fail to justify the treatment he rendered to Patient #1.

29. Based on the preceding allegations, Respondent violated Section 458.331(1)(m), Florida Statutes, in that he is guilty of failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

FACTS PERTAINING TO PATIENT #2

30. From on or about December 1, 1984 until on or about September 11, 1990, Respondent provided psychiatric treatment to Patient #2, a female born on or about December 23, 1956, for the following symptoms: a major depressive episode in remission; a chronic pain syndrome with cephalgia; severe, dependent personality disorder; seizure disorder; and tension headaches.

31. On or about December 1, 1984, Respondent admitted Patient #2 to Horizon Hospital, St. Petersburg, Florida, for symptoms of major depressive disorder, severe chronic pain syndrome, hysterical personality, seizure disorder and migraine /tension headaches.

32. Upon admitting Patient #2 to the hospital, Respondent conducted physical and mental examinations and noted Patient #2 to have symptoms of migraine headaches, depression, decreased psychomotor activity, pain in head, neck, and bifrontal area, and a painful expression on her face.

33. Respondent then obtained a neurological consultation with a Dr. Pappas, who noted that Patient #2 had a history of seizure disorder with multiple surgeries and opined these symptoms might represent a Munchausen-type character and a headache disorder. Dr. Pappas advised Respondent to avoid the use of Phenobarbital, Valium, or other narcotics with Patient #2.

34. Munchausen syndrome is the convincing fabrication of illness or injury by a patient. Symptoms may include self-induced hemorrhage, addiction to unnecessary operation, simulated fits, faints, spells, anesthetics, hallucinations, or delusions.

35. Respondent subsequently obtained a medical consultation, a physical therapy consultation, a psychological evaluation, an occupational therapy evaluation, and a biofeedback evaluation. Respondent then treated Patient #2 with the use of psychotherapy, and the prescription of Dilantin, 100mg three times a day; Pamelor, 25 mg at 8 pm; L-Tryptophane 500 mg three times a day; and Limbitrol 5-12.5 four times per day.

36. Dilantin is a legend drug as defined by Section 465.003(7), Florida Statutes.

37. Pamelor is a legend drug as defined by Section 465.003(7), Florida Statutes.

38. L-tryptophane is a legend drug as defined by Section 465.003(7), Florida Statutes.

39. Limbitrol is a legend drug as defined by Section 465.003(7), Florida Statutes, which contains chlordiazepoxide, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

40. On or about December 13, 1984, Respondent discharged Patient #2 with orders to see her as an outpatient approximately once per month. Respondent gave Patient #2 the following discharge diagnoses: major depressive episode; chronic pain syndrome; dependent personality disorder; seizure disorder; and tension headaches.

41. From on or about March 8, 1989 to on or about September 7, 1989, Respondent prescribed to Patient #2 Mepergan Fortis #100 on at least, but not limited to six different occasions.

42. Mepergan Fortis is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains meperdine, a Schedule II controlled substance listed in Chapter 893, Florida Statutes. Meperdine is a narcotic analgesic with multiple actions similar to those of morphine and can develop psychic and physical dependence upon repeated administration.

43. From on or about January 20, 1989 to on or about May 26, 1989, Respondent prescribed to Patient #2 Valium 10 mg # 100 on at least, but not limited to, six (6) separate occasions.

44. Valium is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains diazepam, a Schedule IV controlled substance as listed in Chapter 893. Florida Statutes.

45. From on or about March 10, 1989 to on or about September 24, 1989, Respondent prescribed to Patient #2 Dilantin with Phenobarbital .25 gr # 100 on at least, but not limited to, six (6) separate occasions.

46. Dilantin with Phenobarbital is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains Phenobarbital, a Schedule IV controlled substance listed in Chapter 893, Florida Statutes.

47. From on or about March 13, 1989 to on or about August 1, 1989, Respondent prescribed to Patient #2 Chlordiazepoxide and Amitriptyline tablets #60 on at least but not limited to six (6) separate occasions.

48. Chlordiazepoxide and Amitriptyline is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains chlordiazepoxide, a Schedule IV controlled substance as listed in Chapter 893, Florida Statutes.

49. Respondent excessively prescribed the aforementioned legend drugs to Patient #1.

50. Respondent prescribed Valium, Phenobarbital, and narcotics to Patient #2 contrary to the advice of a neurologic consultant.

51. Respondent's medical records of Patient #2 fail to justify the treatment he rendered to her.

COUNT FOUR

52. Petitioner realleges and incorporates paragraphs one (1), two (2), and thirty (30) through fifty-one (51) as if fully set forth herein this Count Four.

53. Respondent is guilty of gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances in that Respondent prescribed excessive amounts of legend drugs to Patient #2 and prescribed legend drugs contrary to the advice of a neurological consultant.

54. Based on the preceding allegations, Respondent violated Section 458.331(1)(t), Florida Statutes, in that he is guilty of gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT FIVE

55. Petitioner realleges and incorporates paragraphs one (1), two (2), thirty (30) through fifty-one (51) and fifty-three (53) as if fully set forth herein this Count Five.

56. Respondent is guilty of prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice in that Respondent prescribed excessive amounts of legend drugs to Patient #2, and prescribed Valium, Phenobarbital, and narcotics to Patient #2, contrary to the advice of a neurological consultant.

57. Based on the preceding allegations, Respondent violated Section 458.331(1)(q), Florida Statutes, in that he is guilty of prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice without regard to his intent.

COUNT SIX

58. Petitioner realleges and incorporates paragraphs one (1), two (2), thirty through fifty-one (51), fifty-three (53), and fifty-six (56) as if fully set forth herein this Count Six.

59. Respondent is guilty of failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or

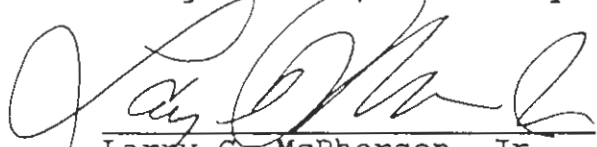
administered; and reports of consultations and hospitalizations in that Respondent's medical records of Patient #2 fail to justify the treatment that he rendered to her.

60. Based on the preceding allegations, Respondent violated Section 458.331(1)(m), Florida Statutes, in that he is guilty of failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an Order imposing one or more of the following penalties: revocation or suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, and/or any other relief that the Board deems appropriate.

SIGNED this 7 day of August, 1992.

George Stuart, Secretary


Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Larry G. McPherson, Jr.
Chief Medical Attorney
Department of Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0750
Florida Bar #788643
CJR/dpb
PCP: July 29, 1992
McEwen, Kaiser and Dauer

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FILED

Department of Professional Regulation
AGENCY CLERK



CLERK _____

DATE 8-7-92