

STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Melisa Nobles*
DATE 9/17/2011

BOARD: Medicine
CASE NUMBER: 2005-62613
COMPLAINT MADE BY: Medicaid Program Integrity
COMPLAINT MADE AGAINST: Wilfred Jorge, M.D.
780 NW 69th St. Apt. 1009
Miami, FL 33138
DATE OF COMPLAINT: March 31, 2006
INVESTIGATED BY: Julio A. Colon, MMI
Miami ISU
ATTORNEY FOR RESPONDENT: Pro Se
REVIEWED BY: Diane K. Kiesling *DKK*
Assistant General Counsel
RECOMMENDATION: Dismiss (4099)

NOTICE OF DISMISSAL/CLOSING ORDER
RECONSIDERATION

THE COMPLAINT: The Complainant, Agency for Health Care Administration (AHCA), Medicaid Program Integrity (MPI), filed a complaint that for the period May 2003 through August 2004, Respondent prescribed antipsychotic medications with a lack of reasonable skill and safety and failed to properly document the patient medical records

THE FACTS: The facts are that an Administrative Complaint was filed on May 30, 2007, alleging that Respondent failed to keep adequate, legible medical records justifying the course of treatment for 9 patients in violation of Section 458.331(1)(m), Florida Statutes (2002, 2003, 2004); that Respondent prescribed drugs inappropriately or excessively in violation of Section 458.331(1)(q), Florida Statutes (2002, 2003, 2004); and that Respondent fell below the standard of care in his treatment of these 9 patients in violation of Section 458.331(1)(t), Florida Statutes (2002, 2003, 2004). All these charges were based on an expert opinion given after review of incomplete medical records provided by MPI and the facility at which Respondent provided this

care. Based on those records, the Department expert opined that Respondent had violated the statutes, but the opinion lacked specific detail as to each patient. It was this information upon which the Administrative Complaint was based.

Subsequent to filing the Administrative Complaint, Respondent submitted additional records for these patients, together with a written response to the expert's opinion. That additional material was furnished to the Department's expert for review. The expert changed his opinion in many regards. As to patient PC, he acknowledged that Respondent's argument that his opinion was based only on the pharmacy records was valid; however, he somehow opined that Respondent had breached the standard of care, even though he had no control of the necessary medical records. The Department cannot sustain a charge based on that opinion. As to patient BE, the expert expressed the same opinion as he had for PC, and the Department is faced with the same problem. As to patient RF, the expert opined that the diagnosis of Bipolar Disorder is unjustified based on the Standard of Care per DSM-IV; however, a review of the DSM-IV reveals that the diagnosis does qualify for Bipolar, Depressed Type 296.52. Also, the DSM-IV says that AIDS exacerbates the disorder and this patient had AIDS (a fact not mentioned by the Department's expert). As to RF, the expert was also wrong that the records do not show the prescriptions. The prescriptions are shown in the progress notes, with the justifications. As to patient JF, the expert opined that the diagnosis of Major Depression with psychosis is unjustified as per the DSM-IV. He also questions the combinations of psychotropic medications without documentation. Again the Department's expert does not accurately state what the records state. The documented diagnosis for Axis I is Major Depression, Recurrent, with Psychotic Features. When the medications are charted, it is clear that the Serax was started in January 2003 and stopped on the day the Ativan was started in April 2003. Ativan was stopped and Serax was restarted in January 2004. There was only one day on which JF received a combination and that was the day of his last visit. Quite simply, the progress notes and orders do not support the Department's expert.

As to patients EG and MH, the only breach of the standard of care that he attributes to the Respondent is the absence of medical records. Again, the medical records were from a facility and were being kept by other physicians as well as Respondent. This medical records problem is not a breach of the standard of care that is attributable to Respondent and one that the Department can take to hearing. Finally, as to patient RP, the expert concedes that since the patient was actually seen by an ARNP, the complaints he made were no longer valid.

Having conceded all these points, the expert, however, then reiterates his original opinion that the lack of records is a breach of the standard of care. Case law is clear that inadequacy in medical records does not constitute a violation of the standard of care. Therefore, the evidence no longer shows by clear and convincing evidence that Respondent violated the standard of care, prescribed excessive or inappropriate medication or maintained inadequate medical records.

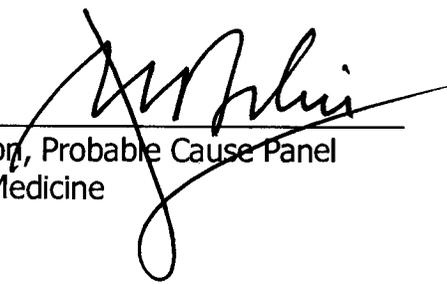
Therefore, sufficient evidence no longer exists to support the prosecution of the allegations contained in the Administrative Complaint and it should be dismissed. Because the charges that Respondent practiced below the standard of care were based

on the failure to maintain medical records that justified the course of treatment, both charges as to all patients must be dismissed.

THE LAW: There was sufficient evidence for the Panel to have found probable cause in this case. However, based on the above facts and analysis, the Department, pursuant to the provisions of Section 20.43(3), Florida Statutes, has determined that there is insufficient evidence to support the prosecution of the allegations contained in the Administrative Complaint. Therefore, pursuant to Section 456.073(2), Florida Statutes, this case is hereby DISMISSED.

It is, therefore, ORDERED that this case should be and the same is hereby DISMISSED.

DONE AND ORDERED this 26 day of August, 2011.



Chairperson, Probable Cause Panel
Board of Medicine

DKK

PCP Members: El-Bahri, Nuss, Mullins

PCP: August 26, 2011

DOH v. Wilfred Jorge, M.D., DOH Case No. 2005-62613

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

WILFRED JORGE, M.D.,

CASE NO. 2005-62613

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Health, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against Wilfred Jorge, M.D., hereinafter referred to as "Respondent," and alleges:

1. Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes. Pursuant to the provisions of Section 20.43(3), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services

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required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

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 10491.

3. Respondent's last known address is 780 NW 69th Street, Apt. 1002, Miami, FL 33138.

MEDICATION RELEVANT TO THESE PROCEEDINGS

4. Abilify is a legend drug as defined in Section 465.003(8), Florida Statutes contains aripiprazole which is used to treat the symptoms of schizophrenia (a mental illness that causes disturbed or unusual thinking, loss of interest in life, and strong or inappropriate emotions). It is also used to treat episodes of mania (frenzied, abnormally excited, or irritated mood) or mixed episodes (symptoms of mania and depression that happen together) in patients with bipolar disorder. Aripiprazole is in a class of medications called atypical antipsychotics. It works by changing the activity of certain natural substances in the brain.

5. Ativan contains lorazepam which is a Schedule IV controlled substance listed in Chapter 893, Florida Statutes. Lorazepam is used to

treat anxiety and is in the class of medications known as benzodiazepine.

The abuse of lorazepam can lead to physical and psychological dependence.

6. Aricept contains Donepezil which is a legend drug as defined in Section 465.003(8), Florida Statutes is used to treat dementia associated with Alzheimer's disease. Donepezil is in a class of medications called cholinesterase inhibitors. It improves mental function by increasing the amount of a certain naturally occurring substance in the brain.

7. Lexapro is a legend drug as defined in Section 465.003(8), Florida Statutes and contains escitalopram which is used to treat depression and generalized anxiety disorder (excessive worrying that is difficult to control). Escitalopram is in a class of antidepressants called selective serotonin reuptake inhibitors (SSRIs). It works by increasing the amount of serotonin, a natural substance in the brain that helps maintain mental balance.

8. Restoril contains temazepam which is a Schedule IV controlled substance listed in Chapter 893, Florida Statutes. Temazepam is a

sedative-hypnotic medication used to induce and/or maintain sleep. The abuse of temazepam can lead to physical and psychological dependence.

9. Risperdal contains risperidone which is a legend drug as defined in Section 465.003(8), Florida Statutes and is used to treat the symptoms of schizophrenia (a mental illness that causes disturbed or unusual thinking, loss of interest in life, and strong or inappropriate emotions). It is also used to treat episodes of mania (frenzied, abnormally excited, or irritated mood) or mixed episodes (symptoms of mania and depression that happen together) in patients with bipolar disorder.

Risperidone is in a class of medications called atypical antipsychotics.

10. Seroquel is a legend drug as defined in Section 465.003(8), Florida Statutes and contains quetiapine which is used to treat the symptoms of schizophrenia (a mental illness that causes disturbed or unusual thinking, loss of interest in life, and strong or inappropriate emotions). It is also used to treat episodes of mania (frenzied, abnormally excited or irritated mood) or depression in patients with bipolar disorder.

Quetiapine is in a class of medications called atypical antipsychotics.

11. Serax contains oxazepam which is a Schedule IV controlled substance listed in Chapter 893, Florida Statutes. Oxazepam is used to treat anxiety and is in the class of medications known as benzodiazepine. The abuse of lorazepam can lead to physical and psychological dependence.

12. Zyprexa is a legend drug as defined in Section 465.003(8), Florida Statutes and contains olanzapine which is used to treat the symptoms of schizophrenia and bipolar disorder. Olanzapine is in a class of medications called atypical antipsychotics. It works by changing the activity of certain natural substances in the brain. If Olanzapine is taken with certain other drugs, such as benzodiazepines, the effects of either can be increased, decreased, or altered.

13. Substances designated as legend drugs are required by federal or state law to be dispensed only upon presentation of a prescription written by a licensed health care professional authorized to prescribe prescription medications.

Patient P.C.

14. During the time that Respondent was treating patient P.C., Respondent prescribed numerous controlled substances and other legend drugs for the patient, including, but not limited to Risperdal and Zyprexa.

15. Respondent failed to maintain medical records justifying the combination of medications prescribed to patient P.C.

Patient B.E.

16. During the time that Respondent was treating patient B.E., Respondent prescribed numerous controlled substances and other legend drugs for the patient, including, but not limited to Risperdal and Zyprexa.

17. Respondent failed to maintain medical records justifying the combination of medications prescribed to patient B.E.

Patient R.F.

18. Patient R.F. presented to Respondent and was diagnosed with bipolar disorder. Respondent's diagnosis is not justified by the medical records he maintained and/or consistent with the criteria of the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition (DSM-IV).

19. During the time that Respondent was treating patient R.F., Respondent prescribed numerous controlled substances and other legend drugs for the patient.

Patient J.F.

20. Patient J.F. presented to Respondent and was diagnosed with major depression with psychosis. Respondent's diagnosis is not justified by the medical records he maintained and/or consistent with the criteria of the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition (DSM-IV).

21. During the time that Respondent was treating patient J.F., Respondent prescribed numerous controlled substances and other legend drugs for the patient, including but not limited to Zyprexa, Aricept and Seroquel.

Patient E.G.

22. Patient E.G. presented to Respondent and was diagnosed with schizophrenia. Respondent's diagnosis is not justified by the medical records he maintained and/or consistent with the criteria of the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition (DSM-IV).

23. During the time that Respondent was treating patient E.G., Respondent prescribed numerous controlled substances and other legend drugs for the patient, including but not limited to Risperdal, Seroquel and Zyprexa.

Patient M.H.

24. Patient M.H. presented to Respondent and was diagnosed with psychotic disorder. Respondent's diagnosis is not justified by the medical records he maintained and/or consistent with the criteria of the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition (DSM-IV).

25. During the time that Respondent was treating patient M.H., Respondent prescribed numerous controlled substances and other legend drugs for the patient, including but not limited to Risperdal and Zyprexa.

26. Concurrent with Respondent's treatment, patient M.H. was issued Seroquel, Lexapro and Restoril by another physician without appropriate communication between the physician's.

Patient R.P.

27. Patient R.P. presented to Respondent and was diagnosed with major depression with psychosis. Respondent's diagnosis is not justified by the medical records he maintained and/or consistent with the criteria of

the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition (DSM-IV).

28. During the time that Respondent was treating patient R.P., Respondent prescribed numerous controlled substances and other legend drugs for the patient.

Patient M.R.

29. During the time that Respondent was treating patient M.R., Respondent prescribed numerous controlled substances and other legend drugs for the patient, including, but not limited to Risperdal, Abilify and Zyprexa.

30. Respondent failed to maintain medical records justifying the combination of medications prescribed to patient M.R.

Patient G.Z.

31. During the time that Respondent was treating patient G.Z., Respondent prescribed numerous controlled substances and other legend drugs for the patient, including, but not limited to Risperdal, Seroquel and Zyprexa.

32. Respondent failed to maintain medical records justifying the combination of medications prescribed to patient G.Z.

COUNT ONE

33. Petitioner realleges and incorporates paragraphs one (1) through thirty-three (33), as if fully set forth herein **this Count One.**

34. Respondent failed to keep adequate legible medical records that justify the course of treatment of the patients P.C., B.E., R.F., J.F., E.G., M.H., L.R., M.R., and/or G.Z., including but not limited to, patient histories; examination results; test results, records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

35. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2002)(2003)(2004), by failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify 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 of patients P.C., B.E., R.F., J.F., E.G., M.H., L.R., M.R., and/or G.Z.

COUNT TWO

36. Petitioner realleges and incorporates paragraphs one (1) through thirty-three (33), as if fully set forth herein this Count Two.

37. Respondent prescribed, dispensed, administered, mixed, or otherwise prepared a legend drug, including any controlled substance, other than in the course of the physician's professional practice, in that Respondent prescribed legend drugs inappropriately and excessively, without sufficient justification in the medical records, to patients P.C., B.E., R.F., J.F., E.G., M.H., L.R., M.R., and/or G.Z.

38. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2002)(2003)(2004), by 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 a legend drug, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and not in the course of the physician's professional practice, without regard to his intent.

COUNT THREE

39. Petitioner realleges and incorporates paragraphs one (1) through thirty-three (33), as if fully set forth herein this Count Three.

40. Respondent failed 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 in one or more of the following ways, Respondent:

a) failed to maintain medical records justifying the combination of medications prescribed to patients P.C., B.E., R.F., J.F., E.G., M.H., L.R., M.R., and/or G.Z;

b) and/or failed to make an acceptable diagnosis of patients R.P., M.H., E.G., J.F. and/or R.F. that is justified by the medical records he maintained and/or consistent with the criteria of the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition (DSM-IV);

c) and/or failed to design and implement an acceptable treatment plan for patients P.C., B.E., R.F., J.F., E.G., M.H., L.R., M.R., and/or G.Z;

d) and/or utilized inappropriately high starting dosages of prescribed medications and/or atypical combinations of medications without appropriate justification.

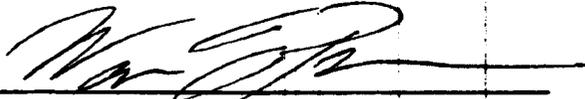
41. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2002)(2003)(2004), by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an order imposing one or more of the following penalties: permanent 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, the assessment of costs related to the investigation and prosecution of this case as provided for in Section 456.072(4), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 29 day of May, 2007.

Ana M Viamonte Ros, M.D., M.B.A.
Secretary, Department of Health

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Rachelle
DATE 5-30-07


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PCP:

PCP Members:

05.26.07
El-Bahn, Davies + Long

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.