

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

CASE NO. 90-007367

v.

LUIS C. BYRNE, 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 Luis C. Byrne, 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 0020531. Respondent's last known address is 6101 Webb Road, Suite 209, Tampa, Florida 33615-2865.

3. On or about February 21, 1987, Patient #1, a forty-four (44) year old female, was admitted to Saint Joseph's Hospital through the emergency room, as a result of an attempted suicide through an overdose of approximately ninety (90) to one hundred (100) Ativan.

4. On or about February 22, 1987, to on or about April 11, 1988, Respondent treated Patient #1 for recurrent major depression.

5. Initially Patient #1 informed Respondent of a past suicide attempt through prescription drugs when she was twenty-seven (27) years old.

6. On or about March 27, 1987, Respondent's office notes indicate patient #1 as depressed.

7. On or about April 2, 1987, Respondent notes Patient #1 as upset and dwells on problems.

8. On or about March 27, 1987, Patient #1's medical records indicate depression.

9. On or about July 2, 1987, Respondent prescribed the following legend drugs to be refilled for three (3) months: 60 Desyrel 200 mg.; 60 Seldane 60 mg.; and Ativan 1 mg., no amount indicated.

10. Desyrel is a legend drug as defined by Section 465.003(7), Florida Statutes. When prescribing Desyrel, physicians should be aware that suicide in seriously depressed patients is inherent in their illness and prescriptions for this drug should be written for small amounts.

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

12. Ativan is a "legend drug" as defined by Section 465.003(7), Florida Statutes, which contains lorazepam, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes. When prescribing Ativan, physicians should be cautious

with patients suffering from depression accompanying anxiety, as a possibility for suicide.

13. On or about August 4, 1987, Patient #1 was admitted to Saint Joseph's Hospital, through the emergency room, for overdose by ingesting large quantities, exact amount unknown, of the following legend drugs: Navane; Desyrel; and Ativan.

14. Navane is a "legend drug" as defined by Section 465.003(7), Florida Statutes. Navane may mask signs of overdose of toxic drugs.

15. On or about August 4, 1987, Patient #1 was diagnosed by the Respondent with severe depression.

16. On or about August 26, 1987, Respondent's medical records reflect Patient #1 as depressed and fragile.

17. On or about August 26, 1987, Respondent prescribed the following legend drugs to Patient #1: 21 Norpramin 100 mg.; 300 Xanax 0.5 mg.; and 21 Navane 2 mg.

18. Norpramin is a "legend drug" as defined by Section 465.003(7), Florida Statutes. Norpramine is to be dispensed in the least possible quantities to outpatients, due to successful suicide attempts which are known to this class of drug.

19. Xanax is a "legend drug" as defined by Section 465.003(7), Florida Statutes, which contains alprazolam, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes. When prescribing Xanax, a physician should be cautious in the size of the prescription for those patients who are severely

depressed or those in whom there is reason to expect concealed suicidal ideation or plans.

20. On or about September 11, 1987, Respondent prescribed 300 Norpramine 100 mg., 300 Xanax 0.5 mg., 200 Navane 2 mg. and gave Patient #1 a sample of 30 Norpramine 100 mg.

21. On or about September 30, 1987, Patient #1 presented to Respondent and Respondent prescribed 60 Norpramine 100 mg., and 50 Xanax 0.5 mg.

22. On or about February 10, 1988, Respondent prescribed to Patient #1 the following legend drugs to be refilled once: 90 Norpramine 100 mg. and 90 Xanax 0.5 mg.

23. On or about March 9, 1988, Respondent prescribed the following legend drugs to be refilled once to Patient #1: 60 Seldane 60 mg. and 60 Navane 2 mg.

24. On or about April 6, 1988, Respondent prescribed 90 Norpramine 100 mg. to Patient #1.

25. On or about April 11, 1988, Patient #1 was taken to Town and Country Hospital where she expired. The autopsy report by the medical examiner revealed Patient #1 died of an acute multiple drug intoxication of Navane, Norpramine, and Xanax.

26. Throughout Patient #1's treatment course with the Respondent, Patient #1 demonstrated a significant pattern of suicidal behavior.

27. Respondent allowed Patient #1 to have large amounts of medication within the patient's control.

28. Respondent admitted to a Department investigator, during an interview, that Respondent was very concerned about Patient #1 having large quantities of medication at the time of Patient #1's August 26, 1987 office visit.

Count One

29. Petitioner realleges and incorporates paragraphs one (1) through twenty-eight (28), as if fully set forth herein this Count One.

30. 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 Respondent allowed Patient #1 to have large quantities and control of legend drugs, when Respondent knew or should have known of Patient #1's past pattern of suicidal behavior.

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

COUNT TWO

32. Petitioner realleges and incorporates paragraphs one (1) through twenty-eight (28), and thirty (30), as if fully set forth herein this Count Two.

33. Respondent prescribed, dispensed, administered, mixed, or otherwise prepared legend drugs, including controlled substances, other than in the course of the physician's professional practice in that Respondent prescribed Navane, Norpramin and Xanax to Patient #1 who Respondent knew or should have known Patient #1 had a past behavior of suicidal attempts and knew or should have known and not allowed Patient #1 to have excessive amounts and control of legend drugs.

34. Based on the allegations, Respondent violated Section 458.331(1)(g), Florida Statutes 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 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.

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 _____ day of _____, 1992.

George Stuart, Secretary

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

COUNSEL FOR DEPARTMENT:

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PCP: May 11, 1992
McEwen, Kaiser and Dauer

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION

BOARD: Board of Medicine
CASE NUMBER: 88-387367
COMPLAINT MADE BY: James W. Clark, Esq.
1715 N. Westshore Blvd., Ste. 700
Tampa, Florida 33623
DATE COMPLAINT RECEIVED: May 29, 1990
COMPLAINT MADE AGAINST: Luis O. Byrne, M.D.
C/O Grover Freeman, Esq.
Tampa, Florida
REVIEWED BY: Michael K. Blazicek
Senior Attorney
STAFF RECOMMENDATION: CLOSE (PL-82)

CLOSING ORDER AND NOTICE OF DISMISSAL

The Complaint: The Administrative Complaint in this matter alleges Respondent failed to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician in that he allowed the patient to have large quantities and control of legend drugs and controlled substances when he knew the patient was suicidal.

The Facts: The Administrative Complaint alleges Respondent failed to appropriately treat the patient by allowing her to maintain control of large quantities of drugs when he knew of her suicidal tendencies. On February 21, 1987 the Respondent assumed the care of this patient from another psychiatrist. Through April 11, 1988, the date of the patient's death, Respondent treated her for recurrent major depression. Respondent had allowed the patient a three month supply of drugs, as she could receive discounted savings through her husband's insurance plan. The patient made an appointment to see the Respondent on April 11, 1988, which she failed to keep, and died later that day from a drug overdose.

The patient's records were sent to two Department experts. Dr. Rosenthal opined that the patient's death was tragic, but that Respondent's assessment and treatment plan for the patient was appropriate. He concluded that suicidal patients have a variety of avenues for their demise, and if they want to succeed, they will, regardless of the controls one places on drugs. The patient was getting medications for medical problems from other practitioners as well, and could just as easily stock-piled the drugs for later use. A second D.P.R. expert, Dr. Gutman, a forensic psychiatrist, disagreed. He opined the Respondent should have instituted controls on the patient's supply of drugs. Experts for the

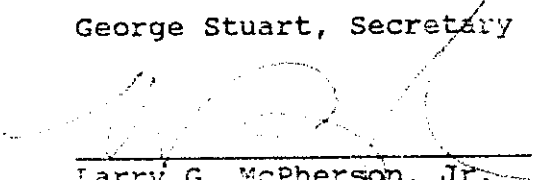
Respondent concluded that his care of this difficult patient was within the standard. Based upon the conflict in the Department's experts and the fact that the prescribing issue is really a judgment call which should rest more appropriately with the treating physician, the Department can not meet its burden of clear and convincing evidence, and the case should 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 the Department has determined there is insufficient evidence to support the prosecution of these allegations. Therefore, pursuant to Section 455.225 (2), Florida Statutes and Rule 21-31.001, Florida Administrative Code, this case is DISMISSED.

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

DONE and ORDERED this 30th day of December, 1993.

George Stuart, Secretary


Larry G. McPherson, Jr.
Chief Medical Attorney