Final Order No. DOH-99-00131 Date 2-1-99
FILED
Department of Health
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STATE OF FLORIDA
DEPARTMENT OF HEALTH

BOARD:	Medicine
CASE NUMBER:	96-02449
COMPLAINT MADE BY:	DOH
DATE COMPLAINT RECEIVED:	April 9, 1996
COMPLAINT MADE AGAINST:	Eli Mark Kolp, M.D. 3105 West Waters Avenue Tampa, FL 33614
INVESTIGATED BY:	Richard Hess, Region VI Tampa
REVIEWED BY:	Kristina Sutter Senior Attorney
STAFF RECOMMENDATION:	CLOSE (PL-82)

CLOSING ORDER

THE COMPLAINT: The Administrative Complaint in this case alleges violations of Sections 458.331(1)(t)(m)(q), Florida Statutes.

The circumstances of this case are: Patient D.C. , a 41 year old female, has an extensive history of psychiatric bipolar disorder and chemical dependency. A bipolar disorder exhibits extreme ranges of behavior between depression and mania. Patient D.C. had a history of numerous admissions to psychiatric facilities and was under the care of an attending psychiatrist when she came under the care of the Respondent.

In July, 1995, Patient D.C. was admitted to a psychiatric facility due to uncontrolled behavior, non-compliance with medication, suicidal ideation and cocaine abuse. She was at the facility for fourteen (14) days. She was under the care of her attending psychiatrist while at the psychiatric facility. He initially placed her on Navane 10 mg four times a day (40 mg a day) in order to get her under control. Navane is a psychotropic drug used to manage psychotic behaviors. In addition, she was placed on Lithium (drug commonly used in bipolar disorders to balance mood), Cogentin (drug used in conjunction with psychotropics to decrease side effects), and Synthroid (Synthetic thyroid). Her psychiatrist gradually reduced the dose of Navane as her condition improved until she was down to five milligrams (5mg) twice a day (10 mg/day).

The plan was for Patient D.C. to enter a residential drug treatment program upon discharge from the psychiatric facility however, due to other medical problems and her history, there was difficulty placing her. She was discharged to her mother's residence while plans continued to find her a treatment facility. She was discharged on Navane 5 mg twice a day with a follow-up appointment with her psychiatrist.

Twelve days after her discharge from the psychiatric hospital Patient D.C. was admitted to a residential treatment facility, LaMarah Recovery Center. The Respondent was the staff psychiatrist for the treatment facility and evaluated D.C. upon admission. This particular treatment facility was set up where the residents had there own apartments. The resident had to have their medications filled by a pharmacy. Furthermore, the *residents kept their medicine with them and were responsible for taking it as prescribed.* The facility did not dispense medication.

On admission to the drug treatment facility Patient D.C. signed a form designating the treatment center's physicians, including the Respondent, to be her attending physician. The Respondent evaluated D.C. and dictated both an admission and discharge evaluation. On admission, according to Respondent's notes, *Patient D.C. informed him she was currently taking 40 mg of Navane a day.*

Patient D.C. was prescribed 40 mg of Navane a day during the month she was at the treatment facility.. She picked up her medication from a local Eckerd drug store via transportation provided by the treatment facility van. Respondent denies prescribing the medication for Patient DC claiming her regular psychiatrist, Dr. Walker, was responsible for prescribing it. Dr. Walker denies prescribing the Navane for Patient DC during the time she was at the treatment facility.

In his deposition, the pharmacist for Eckerd Drugs, Stephen Tanski, testified that all of the prescriptions for Patient DC during the time in question were "call in" prescriptions. Although the pharmacy print-out and the written prescriptions the pharmacy maintains indicate Respondent prescribed the Navane for Patient DC, the pharmacist testified that there is no way to verify that the call was actually from Respondent or his staff. He stated that anyone could have called in the medication. (Depo pg. 12, line1) Mr. Tanski did not take the order over the phone himself and could not positively identify the signature of the person who did. (Depo pg. 5, Line 21, pg. 17, line 23, pg. 21, line 3) Furthermore, Mr., Tanski stated that the person who takes the order over the phone is not necessarily the person who fills the prescription. It could have been an intern who no longer works there. (Depo pg. 7, line 17, pg. 9, line 20. The DEA number was not required since Navane is not a controlled substance. (Depo pg. 17, line 11) Mr. Tanski also testified that it is not uncommon for patients to attempt to phone in their own prescriptions. (Depo pg. 21, line 21).

Patient DC was emotional, defensive, irrational, and inconsistent in her testimony during her deposition. Her complaints to the staff at the treatment center regarding her medication are vague. Petitioner's expert, Dr. Greener , opined that it is impossible to know if her complaints were truly side effects from Navane. (Dr. Greener's written opinion, pg. 2). Patient DC's complaints about the medications she was taking while at LaMarah continue to be somewhat vague. She testified that she was all "doped up". (Depo DC pg. 22, line 14). The counselor's notes indicate she was attending all activities and groups daily. Several breaks had to be taken during her deposition because she would become angry or tearful. In a continuation of her deposition on November 6,

1998, Patient D.C. admitted that she had "quite bad" memory problems. (Patient DC's continued deposition, pg. 4, line 17)

Patient DC's demeanor and memory deficiencies adversely affect her credibility as a witness. There is no testimony or evidence to indicate that Patient DC was actually harmed by the medications she received while at LaMarah.

LC, Patient DC's mother testified as to how Patient DC came to select LaMarah Recovery Center, her interactions with the facility in regards to payment for Patient DC's stay there, and her observations of Patient DC when she visited her. Patient LC stated that Patient DC was lethargic and complained of stiffness when she visited her. LC testified that she had seen the same side effects in her daughter in the past when hospitalized in New York. LC has no personal knowledge as to who prescribed Patient DC's medications while she was at LaMarah or how she obtained them. LC's primary concern was that LaMarah, being a free standing facility, did not have the direct supervision of medical staff that she was accustomed to Patient DC having in the inpatient hospital setting.

LC is a credible witness however a problem arose in the planning of the hearing. LC indicated to Petitioner that she could not travel to Miami for the hearing due to having a wheelchair bound daughter with MS that she cares for at home. She stated she was unable to leave her daughter to go to Miami. LC documented that it would be a hardship for her to travel to Miami in a letter to Petitioner. Petitioner then set up a telephone hearing with the ALJ and defense counsel on this issue. It was agreed that LC's deposition would be admitted into evidence in lieu of her live testimony. A few days before the scheduled hearing, LC notifies Petitioner that she will be going to Miami with Patient DC at her own expense. LC indicated that Patient DC was demanding that LC accompany her due to Patient DC being insecure . This obviously created a credibility issue with witness LC.

EXPERT OPINION: Dr. Greener, a board certified psychiatrist and expert for the Petitioner, states that the forty milligram (40mg) dose of Navane is within the therapeutic limits and in fact the dose can sometimes be increased to 60 mg every day if indicated. The PDR also indicates that 40 mg is within the normal dosage range. In fact, Patient DC's regular psychiatrist, Dr. Walker had prescribed that dose for her initially upon admission to St. Joseph's psychiatric unit just prior to her entering LaMarah. Dr. Greener noted that Patient DC had been treated with the same or similar medications in the past with no "ill effects" except what appeared to be tiredness. (Dr. Greener's opinion, pg. 2).

Dr. Greener opined that Respondent made an appropriate diagnosis and performed a good psychiatric examination. (Depo, pg. 3). Dr. Greener finds fault with the fact that Patient DC's clinical presentation when Respondent evaluated her did not justify the dose of 40 mg of Navane although that dose is within the normal range. He further criticized Respondent's failure to monitor her complaints of "side effects" however, Dr. Greener noted that the record does not indicate Respondent was made aware of Patient DC's complaints other then Patient DC claiming she informed Respondent. (Depo. Pg. 3)

CONCLUSION:

1) Patient DC will not make a credible witness due to irrational, emotional and inconsistent answers to questions and her admitted memory defect.

2) The merit of the case, the standard of care issue, is weak due to the fact that the dose of Navane Patient DC was taking is not an inappropriate dose.

3) Patient DC's complaints are vague and cannot be directly related to the Navane.

4) It is problematic whether Petitioner can prove by clear and convincing evidence that Respondent prescribed the medication for Patient DC.

5) No harm to Patient DC.

6) The credibility of Patient DC's mother, LC, is a concern when she indicated to Petitioner, the defense and the ALJ that she could not attend the hearing then made arrangements to attend, at her own expense, just prior to the hearing date.

7) Respondent has no prior discipline.

THE LAW: There was sufficient evidence for the Panel to have found probable cause in this case. However, based on the above facts and the recent opinion of the Department's expert, it has been determined that there is insufficient evidence to support the prosecution of the allegation contained in the Administrative Complaint. Therefore, pursuant to Section 455.621(2), Florida Statutes, this case is dismissed.

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

DONE AND ORDERED this 29 day of January, 1999.

Robert G. Brooks, M.D.
Secretary

Larry G. McPherson, Jr.
Chief Medical Attorney

PCP: January 29, 1999