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COPY
IDAHO STATE BOARD
OF MEDICINE

Attorney for the Board

BEFORE THE IDAHO STATE BOARD OF MEDICINE

In the Matter of:)	Case No. BOM-2009-6365
)	
MICHAEL J. APPLEBAUM, M.D.,)	FINAL ORDER DENYING
License No. M-5597,)	RESPONDENT'S
)	PETITION FOR RECONSIDERATION
Respondent.)	
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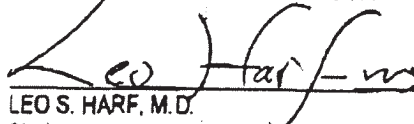
On June 3, 2011, this matter came on for consideration by the Committee on Professional Discipline (hereinafter Committee) and Idaho State Board of Medicine (hereinafter Board). The Board and Committee considered only the administrative record, including, but not limited to, Dr. Michael J. Applebaum's (hereinafter Respondent) Petition for Reconsideration. All members of the Board and Committee who participated in this decision were provided with and read the record as well as signed Certificates of Approval acknowledging so.

Pursuant to Idaho Code § 54-1806A (9) (b), (c), (d) and (e) and based upon the Final Order, dated May 11, 2011, and the Committee's recommendation,

IT IS HEREBY ORDERED That Respondent's Petition for Reconsideration is DENIED. To wit, Respondent's Idaho license, No. M-5597, to practice medicine and surgery is hereby revoked.

DATED This 6th day of June, 2011.

IDAHO STATE BOARD OF MEDICINE


LEO S. HARF, M.D.
Chairman

Cathleen M. Morgan, J.D.
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Attorney for the Board

BEFORE THE IDAHO STATE BOARD OF MEDICINE

In the Matter of:

MICHAEL J. APPLEBAUM, M. D.,
License No. M-~~0177~~, 5597

Respondent.

Case No. BOM-2009-6365

**SCHEDULE FOR REVIEW
OF THE BOARD'S
FINAL ORDER**

Pursuant to Section 67-5246, Idaho Code:

1. This is a Final Order of the agency. Any party may file a petition for reconsideration of the Board's Final Order within fourteen (14) days of the issuance of the Final Order. The Board will dispose of any petition for reconsideration within twenty-one (21) days of its receipt or the petition will be deemed denied by operation of law.
2. The Final Order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the Final Order becomes effective when:
 - (a) the petition for reconsideration is disposed of; or
 - (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
3. A party may not be required to comply with a Final Order unless the party has been served with or has actual knowledge of the Order. If the Order is mailed to the last known address of a party, the service is deemed to be sufficient.

DATED this 12th day of May, 2011.

IDAHO STATE BOARD OF MEDICINE



Cathleen M. Morgan, J.D.
Attorney for the Board

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this day of May 12, 2011, I served a true and correct copy of the within and foregoing *Final Order*, Case No. BOM-2009-6365, entered by the Board on May 12, 2011, by the method indicated below, and addressed to each of the following:

D. Scott Summer, J.D.
ATTORNEY AT LAW
PO Box 1095
Nampa, ID 83606

by U.S. mail
 by hand delivery
 by facsimile (208) 455-8696
 by Certified Mail (No:)

Jean R. Uranga, J.D.
URANGA & URANGA
714 North 5th Street
PO Box 1678
Boise, Idaho 83701-1678

by U.S. mail
 by hand delivery
 by facsimile (208) 455-8696
 by Certified Mail (No:)



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RECEIVED
ORIGINAL
IDAHO STATE BOARD
OF MEDICINE

Attorney for the Board

BEFORE THE IDAHO STATE BOARD OF MEDICINE

In the Matter of:)

MICHAEL J. APPLEBAUM, M.D.,)
License No. M-5597, 5597)

Respondent.)

Case No. BOM-2009-6365

FINAL ORDER

1

Dr. Michael J. Applebaum (hereinafter Respondent) is the holder of an Idaho license to practice medicine and surgery, License No. M-5597, issued by the Idaho State Board of Medicine (hereinafter Board) on September 30, 1989. Said license is subject to the provisions of Title 54, Chapter 18, Idaho Code, commonly known as the Medical Practice Act and the Administrative Code IDAPA 22.01.01 - Rules for Licensure to Practice Board of Medicine & Surgery & Osteopathic Medicine & Surgery (hereinafter IDAPA).

This contested case disciplinary proceeding is before the Board on the Board's *Amended Complaint*, filed October 7, 2010. The purpose of this disciplinary proceeding was to determine whether Respondent's Idaho license to practice medicine and surgery should be suspended, restricted or revoked or other action taken.

II

Respondent has an exceedingly long history of alcohol and chemical abuse, addiction, and major depression. His well documented alcohol and drug abuse, addiction and repeated relapses have caused

serious difficulties in every aspect of his life, and have even resulted in felony convictions. Respondent has undergone many intensive inpatient treatments for substance abuse and depression.

Respondent's residency was interrupted for lengthy hospitalization at the Menninger Foundation from November 1, 1984 until September 30, 1985. On or about December 8, 1986, he was admitted to the St. Benedict's Alcoholism and Treatment Center (hereinafter Benedict's). His medical record recorded a major depressive disorder since childhood and chronic use of hallucinogens, narcotics and alcohol. Respondent's discharge diagnosis included amphetamine dependence, narcotic abuse, history of hallucinogen and alcohol abuse, and major depression.

On his application for Idaho medical licensure, Respondent disclosed he had been hospitalized on two (2) occasions for substance abuse and depression, was subject to Utah State Board of Medicine's *Order* which restricted his prescription privileges and the surrender of his DEA registration. Respondent was issued an Idaho medical licensure contingent upon execution of an indefinite *Stipulation and Order* with the Board, dated October 13, 1989 (hereinafter 1989 S&O). The 1989 S&O required him, among other things, to abstain from use of all mind-altering chemicals and drugs, except those prescribed by another physician, to report all personal use of prescription drugs and any slips from total abstinence.

Via letter dated January 3, 1994, Respondent requested the Board to terminate the 1989 S&O falsely stating he had been in full compliance with its terms and conditions. Unaware of Respondent's false representations, the Board terminated the 1989 S&O by *Order*, dated March 18, 1994.

In September of 1994, Respondent diverted controlled substances from his employer and was charged with three (3) felonies. Respondent pled guilty to a felony count of illegal possession of a controlled substance which is a violation of Idaho Code § 54-1814(1).

On September 25, 1994, he was admitted Springbrook Northwest (Springbrook) for evaluation and treatment. While at Springbrook, Respondent stipulated with the Board that he would not practice medicine until the assessment had been completed and the Board made a final determination regarding necessary or appropriate disciplinary action. The Springbrook record noted Respondent had relapsed into polydrug use, specifically stimulants in the form of Ritalin and opiates - Percodan, Morphine and Demerol - and had been mixing Demerol and Morphine with Ritalin and using it intravenously. The diagnostic summary, dictated October 3, 1994, reveals many addictions: 1) Amphetamine dependent,

continuous; 2) Opiate dependent, continuous; 3) Cannabis dependent, in remission; 4) Alcohol dependent, episodic; and 5) Adjustment Disorder with repressed features. Respondent's assessment severity profile revealed he had severe emotional-behavioral conditions-complications; a severe relapse potential; and a very dire recovery environment.

In October of 1995, Respondent entered Abbott Northwestern Hospital (hereinafter Abbott) for assessment and recommendations regarding possible return to practice. Abbott's records reflect Respondent acknowledged and admitted that he had resumed the use of drugs and alcohol beginning in 1993. Abbott's records concluded Respondent appeared to be in early recovery from chemical dependency, a diagnosis of Attention Deficit Disorder was appropriate, and he was, at that time, unable to return to practice for three (3) to six (6) months. Given Abbott's recommendations, a second *Stipulation and Order* (hereinafter 1996 S&O) was executed with the Board, dated August 14, 1996.

In February of 1999, Respondent was again presenting with relapse behaviors noted by his employer and/or by the Physician Recovery Network. He was admitted to Copac, Inc. for three (3) weeks for evaluation and treatment.

On June 7, 2007, Respondent submitted yet another letter to the Board requesting the 1996 S&O be terminated and again falsely stated he had been in full compliance. Unaware of Respondent's false representations, the Board terminated the 1996 S&O by *Order*, dated June 27, 2007.

Consequently, the Board received information that Respondent has engaged in multiple additional violations of the Idaho Medical Practice Act. The Board's information revealed that between the dates of February 23, 2007 and April 3, 2009, Respondent and a nurse practitioner working in his office ordered significant quantities of controlled substances to be dispensed out of Respondent's office. Under Respondent's DEA registration number there were over 1,000 unaccounted pills, i.e., controlled substances, that were either missing or diverted. Respondent at all times was responsible for recordkeeping, inventorying and recording lawful dispensation of these controlled substances.

Respondent and his nurse practitioner did not comply with the duties imposed upon them by law regarding the receipt, maintenance, inventory and dispensation of controlled substances. Respondent failed to maintain a bi-annual inventory as required by federal law and failed to maintain an inventory of

controlled substance samples as required by Idaho law. By these acts, he violated Idaho Code §54-1814(7), (12), and (17) as well as state and federal pharmacy laws relating to controlled substances.

Not only did Respondent divert controlled substances including Adderall, Vyvanse, Provigil and Ambien for his own use but also diverted Lyrica samples for the use of his progeny. In addition, Respondent took for his own use controlled substances that had been returned to the clinic by patients. Respondent violated Idaho Code §54-1814(11) by prescribing or furnishing narcotic or hallucinogenic drugs to himself to maintain an addiction level of usage without attempting to treat the primary condition requiring the use of narcotics. Respondent violated Idaho Code §54-1814(12) by prescribing or furnishing narcotic or stimulating or dangerous drugs to himself for other than treatment of any disease, injury or medical condition. By these actions, Respondent provided health care which fails to meet the standard of health care provided by other qualified physicians by prescribing and distributing controlled substances to himself and family, in violation of Idaho Code §54-1814(7) and IDAPA 22.01.01.101.03.e. By these actions, he also violated the Idaho State Board of Pharmacy regulations prohibiting self-prescribing, administration or furnishing controlled substance to himself. He likewise failed to maintain adequate records of his dispensing of controlled substances to himself and his progeny which violates IDAPA 22.01.01.101.03.h.

On or about June 30, 2009, Respondent abruptly cancelled psychiatric medications prescribed for Patient M.O. because of a billing dispute without providing adequate time or medication for the patient to obtain a new health care provider. By cancelling necessary psychiatric medications, Respondent essentially abandoned this patient and engaged in conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient, in violation of Idaho Code §54-1814(15) and (22) and IDAPA 22.01.01.101.04.b as well as IDAPA 22.01.01.101.03.e.

Respondent admitted altering the medical records regarding three (3) identified patients and adding missing psychotherapy notes, altering progress notes, adding the number of minutes of psychotherapy to the treatment records, adding new sections to the previously dictated notes, and altering patient records indicating that he had in fact dictated progress notes when he had not done so. Respondent's alterations to these patient records was done purely to support prior Medicaid billings and

to deceive the Medicaid. Respondent's alteration of these three (3) patient records is a violation of IDAPA 22.01.01.101.03.e and IDAPA 22.01.01.101.04.a, b and g.

Respondent falsely or fraudulently billed Medicaid for medical services that he did not provide to eleven (11) patients and for which he was not entitled to bill Medicaid. As to each patient, Respondent had not provided the psychiatric care or treatment, had not assisted the nurse practitioner or consulted with her regarding the treatment provided, did not in fact see or interact with these patients, but billed Medicaid under the office billing practices as if he personally had seen the patients and provided the medical care and treatment that he billed. In submitting false or fraudulent billings to Medicaid for physician services not provided, Respondent violated IDAPA 22.01.01.101.03.e and IDAPA 22.01.01.101.04.a, b and g.

III

This matter came on for hearing before the duly appointed Hearing Officer on December 13, 14, 15, 29 and 30, 2010. The case was prosecuted by the Board which was represented by Jean R. Uranga, Boise, Idaho. Respondent was represented by D. Scott Summer, of Caldwell, Idaho. On April 29, 2011, the Hearing Officer issued his *Recommended Findings of Fact and Conclusions of Law*.

On May 3, 2011, this matter came on for consideration by the Committee on Professional Discipline (hereinafter Committee) and Board. The Board, upon the Committee's recommendation, hereby adopts the Hearing Officer's *Recommended Findings of Fact and Conclusions of Law*, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

On May 3, 2011, the Committee and Board considered only the administrative record during their deliberations. Every member of the Committee and Board who participated in this decision were provided with and read the record as well as signed Certificates of Approval acknowledging so. After having reviewed the record in this matter and pursuant to Idaho Code Section 54-1806A, the Committee recommended conclusions and orders for consideration in the above-entitled case to the Board, dispositive of the proceedings.

The Board determined that Respondent's above identified acts and practices constitute multiple, continued and flagrant violations of the Medical Practice Act and IDAPA 22.01.01. Respondent has demonstrated he is either unable or will not comply with any future Stipulation and Order, particularly

given the many opportunities the Board provided him. The Board, after reviewing the record of this matter and the Committee's recommended orders, hereby makes the following Final Order:

FINAL ORDER

IT IS HEREBY ORDERED that the following sanctions to Respondent's license to practice medicine in Idaho shall occur:

1. Respondent's Idaho medical license, License No. M-6997, is hereby immediately revoked.
2. Within ninety (90) days of the date of this *Final Order*, Respondent shall reimburse the Board twenty four thousand two hundred seventy two dollars and seventy four cents (\$24,272.74) for its costs and attorney's fees incurred, unless the Board approves of a prior payment schedule submitted by Respondent.
3. Within ninety (90) days of the date of this *Final Order*, Respondent shall pay the Board a fine of ten thousand dollars (\$10,000), unless the Board approves of a prior payment schedule submitted by Respondent.

This *Final Order* shall be considered a public record as that term is used in the Idaho Code.

DATED This 12 day of May, 2011.

IDAHO STATE BOARD OF MEDICINE


LEO S. HARF, M.D.
Chairman