

**TRUE AND EXACT
COPY OF ORIGINAL**

BEFORE THE MINNESOTA

BOARD OF MEDICAL PRACTICE

In the Matter of the
Medical License of
Elizabeth V. Delesante, M.D.
Date of Birth: 2/9/1959
License No.: 34,381

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between Elizabeth V. Delesante, M.D. ("Respondent"), and the Complaint Review Committee ("Committee") of the Minnesota Board of Medical Practice ("Board") as follows:

1. During all times herein, Respondent has been and now is subject to the jurisdiction of the Board from which she holds a license to practice medicine and surgery in the State of Minnesota.

2. Respondent has been advised by Board representatives that she may choose to be represented by legal counsel in this matter. Although aware of this opportunity, Respondent has elected not to be represented by counsel. The Committee was represented by Steven M. Gunn, Deputy Attorney General, 900 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, telephone (651) 757-1244.

FACTS

3. For the purpose of this Stipulation, the Board may consider the following facts as true:

a. Respondent was licensed by the Board to practice medicine and surgery in the State of Minnesota on May 4, 1991. Respondent was previously licensed in Illinois, Maryland, and North Carolina. Respondent is board-certified in psychiatry.

b. In April 2009, the Board received a complaint alleging that Respondent had developed a personal relationship with a patient. The Board initiated an investigation by the Minnesota Attorney General's Office which revealed that Respondent failed to maintain appropriate professional boundaries with a patient.

c. Between 1999 and 2006, Respondent provided psychiatric treatment and medication management for the patient on a periodic basis. During 2007 and 2008, Respondent's professional interactions with the patient began to escalate and Respondent developed a personal relationship with the patient. Respondent frequently provided counseling for the patient, via her cell phone, during evenings and weekends; revealed anecdotes and personal information to the patient during counseling sessions; and continued to authorize medications after she became aware that the patient may have misused some of the drugs. Respondent failed to refer the patient to another practitioner and failed to formally terminate the physician/patient relationship after the inappropriate relationship developed.

d. In June 2009, Respondent underwent a psychological evaluation which revealed that she "failed to maintain her professional objectivity with [the patient], inappropriately expanded her role of medication management provider, mismanaged the transference/counter-transference dynamics in the therapeutic relationship, failed to set reasonable and firm limits congruent with treatment goals, and rendered poor judgment by maintaining an inappropriate relationship with the patient." The evaluation recommended that Respondent: (1) arrange for supervision/peer consultation with another psychiatrist, (2) obtain additional training, preferably individualized coursework, on the management of transference/counter-transference in the psychiatrist-patient relationship, effective limit-setting, and ethical and practice management considerations for professional boundaries, and (3) seek

N.W.2d 68, 84 (Wisc. 1984). Likewise, in South Dakota, with a couple of exceptions, expert testimony is required to establish the proper "competency standards" and whether or not they are met. *In Re Appeal of Schramm*, 414 N.W.2d 31, 36 (S.D. 1987). The South Dakota court noted that this holding is the majority rule in the United States and is supported by three reasons, namely, due process rights of confrontation and cross-examination, the fact that many boards are comprised of lay members as well as professionals, and the necessity to have expert testimony in the record to allow for judicial review. In some states, however, findings of incompetence without expert testimony may still be based solely on the expertise of board members. See, e.g. *Davidson v. State*, 33 Wash. App. 783, 657 P.2d 810 (1983); *Sillery v. Board of Medicine*, 145 Mich. App. 681, 378 N.W.2d 570 (1985). In Minnesota, while the Supreme Court has made it clear that "unprofessional" conduct is that conduct which fails to conform to the standards of professional behavior recognized by a consensus of expert opinion. *Reyburn v. State Board of Optometry*, 78 N.W.2d 351 (Minn. 1956), the Minnesota court has yet to announce a rule requiring expert testimony in the record.

In this case, each of the violations of statute found by the Administrative Law Judge is supported by expert testimony in the record. Accordingly, whatever the present state of the law in Minnesota as to whether a violation of minimum standards can be found without expert testimony to that point in the record, this recommended decision should be found to be consistent with either the majority or minority rule in this country.

The Respondent also argues that he has not received sufficient notice of the charges against him. Under Minn. Rule 1400.5600, subp. 2D., the agency must provide a statement of the allegations or issues to be determined in its Notice of Hearing. The Administrative Procedure Act itself provides that parties must be afforded reasonable notice and if the issues cannot be fully stated in advance of the hearing, they must be fully stated as soon as practical. Minn. Stat. § 14.58. Generally, the details of specific incidents or events need not be described, but sufficient facts must be presented to apprise the Respondent of the grounds on which the charges are based. *Hughes v. Department of Public Safety*, 200 Minn. 16, 21, 273 N.W. 618, 621 (1937); *Schmidt v. I.S.D. No. 1*, 349 N.W.2d 563, 567 (Minn. Ct. App. 1984). The usual remedy for a lack of notice is a motion for a more definite statement. However, if, as the Respondent contends, allegations of misconduct are raised for the first time in post-hearing submissions, a due process problem would be presented.

The Committee did cite to some allegations in its final brief that arguably were not within the Notice of Hearing. However, each of the violations found by the Administrative Law Judge was based upon allegations set out in the Third Amended Notice of Hearing.

Expert Witnesses

Each party argues that the other's expert witness should be disregarded based upon his qualifications, knowledge or bias. The record supports the conclusion that both Dr. Goldman and Dr. Lewis are qualified to render an expert opinion in this case. Each reviewed a large amount of data in this case, mastered it, and offered a logical coherent opinion based upon the facts reviewed. Dr. Goldman is a board certified psychiatrist who maintains a clinical practice along with teaching and research. He has had supervisory responsibility for reviewing and evaluating the treatment provided by other psychiatrists and residents. He has experience in

2) Professional boundaries.

3) A course addressing the transference/counter-transference in the psychiatrist/patient relationship.

Successful completion shall be determined by the Board or its designee.

d. Respondent shall practice in a setting approved in advance by the Committee or its designee.

e. Respondent shall obtain a supervising physician, who is a psychiatrist, approved in advance by the Committee or its designee. Respondent shall meet at least monthly with the supervising physician to review her patient care. The supervising physician shall submit quarterly reports to the Board regarding Respondent's overall work performance. The supervising physician shall specifically note any questions or concerns and specifically indicate the nature of any concerns. Respondent is responsible for ensuring timely submission of all required reports.

f. Respondent shall meet on a quarterly basis with a designated Board member or other Board designee. Such meetings shall take place at a time mutually convenient to Respondent and the designated Board member or Board designee. It shall be Respondent's obligation to contact the designated Board member to arrange each of the quarterly meetings. The purpose of such meetings is to review Respondent's progress under the terms of this Stipulation and Order.

g. Respondent shall pay a civil penalty of \$2,415.00 within six months of the date of this Order.

h. This Stipulation and Order shall remain in effect for a minimum of one year. At the end of this period, Respondent may petition for reinstatement of an unconditional

license. Upon hearing the petition, the Board may continue, modify, or remove the conditions set out herein.

6. Within ten days of signing the Stipulation to this Order, Respondent shall provide the Board with a list of all hospitals and skilled nursing facilities at which Respondent currently has medical privileges, a list of all states in which Respondent is licensed or has applied for licensure, and the addresses and telephone numbers of Respondent's residences and all work sites. Within seven days of any change, Respondent shall provide the Board with the new address and telephone information. The information shall be sent to Robert A. Leach, Minnesota Board of Medical Practice, University Park Plaza, 2829 University Avenue S.E., Suite 500, Minneapolis, Minnesota 55414-3246.

7. In the event Respondent resides or practices outside the State of Minnesota, Respondent shall promptly notify the Board in writing of the location of his residence and all work sites. Periods of residency or practice outside of Minnesota will not be credited toward any period of Respondent's suspended, limited, or conditioned license in Minnesota unless Respondent demonstrates that practice in another state conforms completely with Respondent's Minnesota license to practice medicine.

8. If Respondent shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, including timely submission of required reports, the Committee shall schedule a hearing before the Board. The Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Respondent shall submit a response to the allegations at least three days prior to the hearing. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

At the hearing before the Board, the Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Respondent's practice, or suspension or revocation of Respondent's license.

9. In the event the Board in its discretion does not approve this settlement, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any disciplinary action by either party hereto except that Respondent agrees that should the Board reject this Stipulation and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation or of any records relating hereto.

10. Respondent waives any further hearings on this matter before the Board to which Respondent may be entitled by Minnesota or United States constitutions, statutes, or rules and agrees that the Order to be entered pursuant to the Stipulation shall be the final Order herein.

11. Respondent hereby acknowledges that she has read and understands this Stipulation and has voluntarily entered into the Stipulation without threat or promise by the Board or any of its members, employees, or agents. This Stipulation contains the entire

agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Stipulation.

Dated: 4-9-10

Dated: _____

Elizabeth V. Delesante
ELIZABETH V. DELESANTE, M.D.
Respondent

[Signature]
FOR THE COMMITTEE

ORDER

Upon consideration of this Stipulation and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the terms of this Stipulation are adopted and implemented by the Board this 8th day of May, 2010.

MINNESOTA BOARD OF
MEDICAL PRACTICE

By: [Signature]

**TRUE AND EXACT
COPY OF ORIGINAL**

BEFORE THE MINNESOTA

BOARD OF MEDICAL PRACTICE

In the Matter of the
Medical License of
Elizabeth V. Delesante, M.D.
Date of Birth: 2/9/1959
License Number: 34,381

**ORDER OF
UNCONDITIONAL LICENSE**

The Minnesota Board of Medical Practice ("Board"), having convened on May 14, 2011, to review the petition of Elizabeth V. Delesante, M.D. ("Respondent"), for reinstatement of an unconditional license to practice medicine and surgery makes the following:

FINDINGS OF FACT

1. By Stipulation and Order dated May 8, 2010 ("Order"), Respondent's license to practice medicine and surgery in the State of Minnesota was conditioned and restricted based upon her unethical and unprofessional conduct. In accordance with the Order, Respondent was reprimanded and required, in part, to successfully complete coursework in chemical dependency awareness, transference/counter-transference in the psychiatrist/patient relationship, and professional boundaries; refrain from engaging in close personal or social relationships with patients; practice in a pre-approved setting; meet with a supervising physician, who is a psychiatrist, on a monthly basis to review her patient care; meet with a designated Board member on a quarterly basis; and pay a civil penalty of \$2,415.00.

2. On March 8, 2011, the Board received a written petition from Respondent for consideration of an unconditional license.

3. On April 6, 2011, the Complaint Review Committee met to discuss Respondent's petition for reinstatement of an unconditional license. The Committee concluded that

Respondent had complied with the terms and conditions imposed on her license and recommended that the Board issue an unconditional license to practice medicine and surgery in the State of Minnesota.

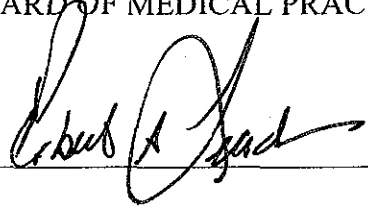
4. Based on the foregoing, the Board concludes that Respondent has complied with and fulfilled the Order issued by the Board on May 8, 2010, and hereby issues the following:

ORDER

IT IS HEREBY ORDERED that an unconditional license to practice medicine and surgery in the State of Minnesota be conferred upon Respondent, such license to carry all duties, benefits, responsibilities, and privileges inherent therein through Minnesota statute and rule.

Dated: May 14, 2011

STATE OF MINNESOTA
BOARD OF MEDICAL PRACTICE



AFFIDAVIT OF SERVICE BY U.S. MAIL

Re: In the Matter of the Medical License of Elizabeth Delesante, M.D.
License No. 34,381


STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

KATHLEEN DAVIS, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on May 16, 2011,
s/he caused to be served the ORDER OF UNCONDITIONAL LICENSE, by depositing the same in the
United States mail at said city and state, true and correct copy(ies) thereof, properly enveloped
with prepaid first class postage, and addressed to:

PERSONAL AND CONFIDENTIAL

Elizabeth Delasante, M.D.
Behavior Wizards
2131 Troop Drive
Sartell, MN 56377


KATHLEEN DAVIS

Subscribed and sworn to before me on
May 16, 2011.


NOTARY PUBLIC

