

State of New Hampshire
Board of Medicine
Concord, New Hampshire

In the Matter of:
Jayakumar Patil, MD
License No.: 7955
(Adjudicatory/Disciplinary Proceeding)

Docket No 19-04

FINAL DECISION AND ORDER

By the Board: Gilbert Fanciullo, MD, Presiding Officer

Board Members: Emily Baker, MD, President
Michael Barr, MD, Board Member
David Conway, MD, Board Member
Susan Finerty, PA, Board Member
Linda Tatarczuch, Public Member
Nina Gardner, Public Member
Don LeBrun, Public Member

Not Participating: Daniel Potenza, MD, Vice President
Jonathan Ballard, MD, MPH, Board Member
John H. Wheeler, D.O.

Appearances: Kathryn M. Bradley, Esq.
Bruce J. Marshall Law Offices, PLLC
Counsel for Respondent

Sheri Phillips, Esq.
Administrative Prosecutions Unit
Hearing Counsel

Also Present: Penny Taylor, Administrator
Board of Medicine

Laura Lombardi, Esq.
Department of Justice
Counsel for Board of Medicine

Hearing Counsel Witness: David Coursin, M.D.

Respondent Witnesses: Jayakumar Patil, MD, Respondent
Leonard Korn, MD

Background Information

The New Hampshire Board of Medicine (“Board”) first granted a license to Jayakumar Patil, MD (“Respondent”) on August 10, 1988. Respondent holds license number 7955.

Respondent has been exclusively practicing psychiatry since 1988. Respondent currently maintains his own private practice in Bedford, where he specializes in treating ADHD, bipolar disorders, major depression, and anxiety disorders.

In July 2018, the Board received a complaint from a prior patient of Dr. Patil, C.C. The patient alleged that Dr. Patil failed to provide adequate care, that he overcharged, and that he wrote repeated prescriptions containing errors regarding the brand, dosage, or quantity of medication. The patient further alleged a HIPAA violation. See Ex. 3 at 1. As a result, the Board ordered an investigation. In November of 2018, the Medical Review Subcommittee (“MRSC”) completed a Report of Investigation (“ROI”), using MRSC member Dr. David Coursin as the complaint reviewer. In preparing the ROI, Dr. Coursin reviewed the complaint, the medical records from the Respondent, records from the Controlled Drug Prescription Health and Safety Program (“PDMP”) from 2/8/17 to 5/23/18 written by the Respondent for C.C., the case log, the response from the Respondent and from his office secretary, Mr. DeFrest, and past ROIs regarding the Respondent. See Ex. 3 at 1.

After reviewing the ROI, the Board voted to proceed with a hearing and issued a Notice of Hearing on March 11, 2019. The Notice of Hearing contained allegations against the Respondent relative to his care of patient C.C. See Notice of Hearing paragraph 5, subparagraphs A–X. The Notice of Hearing also indicated the specific issues to be determined at the hearing, including the ten issues found at paragraph 6, subparagraphs A–J, claiming potential violations of RSA 329:17, VI(c), (d) (i) or (k), or Med 501.02(d) or (e).

The hearing was scheduled for April 3, 2019. At the request of counsel for Dr. Patil, however, the hearing was continued until June 5, 2019. Dr. Patil appeared and was represented by his attorney, Kathryn M. Bradley, Esq. Dr. Patil submitted the following exhibits:

A. Medical Records of CC (**filed under seal**)

B. “Amphetamine (AMPH) in ADHD: Optimizing Dosing”, contained in Pharmacologic Treatment of ADHC Across Life Cycle: Stimulants, by Thomas J. Spencer, M.D.

C. Medication Prescription Record (**filed under seal**)

D. Curriculum Vitae of Leonard Korn, MD

Hearing Counsel, Sheri Phillips, Esq., submitted the following exhibits:

1. Medical Records of CC (**filed under seal**)

2. PDMP Report for CC dated 11/26/2018 (**filed under seal**)

3. MRSC Report of Investigation dated 11/24/2018 (**filed under seal**)

4. Settlement Agreement dated 11/3/2017

5. Curriculum Vitae of David Coursin, MD

6. Blood Pressure Tracker

Hearing Counsel called Dr. David Coursin as a witness. Dr. Patil testified himself, and also called Dr. Korn to testify on his behalf. The testimony of the three witnesses is discussed below.

DISCUSSION

Dr. Coursin testified that he was the MRSC member who had been assigned to investigate the complaint at issue at the hearing. Dr. Coursin testified consistent with the information contained within the Notice of Hearing.

Dr. Coursin first testified that he had reviewed Dr. Patil’s psychiatric evaluation form on C.C., which was completed February 8, 2017. See Ex. 1 at 2–5. Dr. Coursin explained that this was a self-report from the patient himself, and that Dr. Patil had not obtained C.C.’s past treatment records to verify C.C.’s verbal report. Dr. Coursin indicated that it is insufficient to

rely solely on self-reported information for a new patient, particularly when prescribing that patient controlled drugs. Dr. Coursin explained that he found several other issues with the psychiatric evaluation.

First, Dr. Coursin was concerned that C.C. had presented in Dr. Patil's office with a pulse rate of 118 beats per minute, but that Dr. Patil had failed to note the elevated pulse on the evaluation form and had not noted that he had discussed this issue with C.C. Dr. Coursin explained that a normal pulse rate is usually between 70–80 beats per minute. A patient has tachycardia if he or she has a pulse rate over 100 beats per minute when those beats have a regular, rhythmic rate. Dr. Coursin explained that unexplained tachycardia is a medical concern. Dr. Coursin was concerned because in Dr. Patil's evaluation, there was no reference regarding tachycardia – no reference to it being an issue, that Dr. Patil was aware of it when deciding on a course or action, or that it should be monitored. Dr. Coursin explained that this should have been noted on the initial evaluation and discussed with the patient.

Second, Dr. Coursin disagreed with Dr. Patil's diagnosis for C.C. Dr. Patil had diagnosed C.C. with ADHD combined type. After reviewing the psychiatric evaluation form, Dr. Coursin stated that the symptoms identified on the record did not support that diagnosis, and that C.C.'s symptoms were consistent with DSM5 symptoms for inattentive type of ADHD. Dr. Coursin explained:

There are two types [of ADHD], inattentive types and in an adult you need five of a range of symptoms and those were clearly documented. You could also have a hyperactive compulsive type that would have needed five of those selective symptoms. We could have a combined type which would be five from both.

After reviewing the record, Dr. Coursin found that at least five of the symptoms for inattentive type ADHD were clearly documented, but found only one symptom that could be considered consistent with ADHD hyperactive compulsive type. Dr. Coursin therefore determined that Dr.

Patil had diagnosed C.C. with ADHD, combined type with insufficient documentation to support the diagnosis.

Third, Dr. Coursin was concerned with what Dr. Patil had prescribed C.C. at the conclusion of the visit. Dr. Patil had prescribed C.C. with a longer acting Adderall, one 30 mg tablet on a daily basis as needed, as well as an immediate release Adderall tablet to be taken as needed. Dr. Coursin stated it was not appropriate to prescribe these controlled substances solely on a patient self-report, with no supporting documentation. In particular, though, Dr. Coursin was concerned that Dr. Patil had prescribed this medication to a patient exhibiting tachycardia. Dr. Coursin expressed concern that the patient had a pulse rate of 118, was already on stimulants which can increase the heart rate, and Dr. Patil prescribed him Adderall, a stimulant. There was no indication that Dr. Patil had taken this elevated pulse rate into account when prescribing C.C. medication. Dr. Coursin stated that if he had been confronted with such a situation, “it would have made me pause and say I think we need to get a better sense of this before I would even know what to do.” Transcript at 37–38. Dr. Coursin explained that given the tachycardia, he would have worked to quickly obtain supporting records from C.C.’s primary care physician before prescribing him stimulants.

Dr. Coursin explained that in his opinion, this initial evaluation did not meet best practices for a psychiatrist performing an initial evaluation on a new patient. He stated: “Not with a pulse rate of 118 and sending someone out on stimulants that could have been the cause of that pulse rate without further documentation, further assessment, red-flagging it, further discussion of it, no. That’s a major red flag.”

Dr. Coursin further testified that he had reviewed Dr. Patil’s prescribing practices during the course of C.C.’s treatment, from 2/8/17 to 5/23/2018. When asked about trends or patterns, Dr. Coursin stated that he found the range of medication options that Dr. Patil prescribed were very limited. Dr. Patil had mainly just prescribed Adderall and Vyvanse, immediate release and

extended release, and an additional medicine called Mydayis, which are all similar medications. These medications all can cause tachycardia and cause hypertension, which C.C. began exhibiting in October 2017. Dr. Coursin explained that there are other groups of medications that Dr. Patil could have been working with that Dr. Patil never tried. Additionally, Dr. Coursin explained that he had reviewed the PDMP records regarding C.C. and found that in a thirteen-month time period, Dr. Patil had prescribed C.C. with an eighteen-month supply of Vyvanse.

Dr. Coursin was also concerned about the dosages that Dr. Patil had prescribed. Dr. Coursin noted that at many times C.C. was given the maximum recommended dosage for the drugs he was prescribed, and on at least on occasion, he was prescribed double the adult dose of Vyvanse. Dr. Coursin explained that there are times when doctors can prescribe “off-label” and prescribe higher doses, but only after proceeding slowly and making small, step-wise changes that justify the reasons for the off-label dosing. Dr. Coursin stated there was little to no notations in Dr. Patil’s records that would support such off label dosing.

Additionally, Dr. Coursin was concerned at the frequency that Dr. Patil changed C.C.’s prescription. Dr. Patil had made frequent changes to C.C.’s prescriptions due to C.C. reporting adverse effects, but there was very little documentation of the positive effects and wanting to optimize those effects. Dr. Coursin stated that in his opinion, it was not appropriate to be changing medications as often.¹

Dr. Coursin also noted that Dr. Patil had prescribed C.C. a 10 mg tablet of Lisinopril, a drug used to treat hypertension. Dr. Coursin stated that treating hypertension is not within the scope of practice for a psychiatrist, and that he should have instead insisted that C.C. be seen by his primary care physician (“PCP”). Dr. Coursin explained that to determine the cause of

¹ Dr. Korn’s later testimony supports Dr. Coursin’s conclusion here. Dr. Korn testified that he had advised Dr. Patil that it is best to make small changes to dosage or medications, and make those changes one at a time, which will allow the doctor to better assess how each medication or dosage change affects the patient.

hypertension would require a full workup, which would appropriately be done by the PCP. Dr. Coursin stated that he believed in attempting to treat C.C. for hypertension, Dr. Patil placed C.C. in danger.

Dr. Coursin explained that he had reviewed previous complaints and investigations against Dr. Patil and found that Dr. Patil was still having some of the same issues in his treatment of C.C. as he had had previously. Dr. Coursin stated that in his opinion, Dr. Patil's care of C.C. did not meet the standard of care for a psychiatrist. Dr. Coursin also stated that he believed Dr. Patil's treatment of C.C. posed a danger to C.C.

Dr. Patil next testified on his own behalf. Dr. Patil explained that he had tried to obtain medical records from C.C. at that first visit, and C.C. had told him that he would get the records. Dr. Patil explained that while he did not obtain the records, he did call the pharmacy directly to verify the medication and dosage that C.C. had told him he had been taking. Dr. Patil further testified that he does believe that C.C. met the criteria for ADHD combined type, but noted that he did not document four of the DSM5 criteria. Dr. Patil also disagreed that he had erred in off-label dosing, stating that he uses off-label dosing at times.

Dr. Patil explained that at the initial visit with C.C., he had some concerns that C.C. had an elevated pulse and high blood pressure, but he thought it could be because C.C. was anxious seeing him for the first time. Dr. Patil stated that he took C.C.'s blood pressure at every visit, and most times C.C. would have been classified as having stage 1 hypertension, which is not a contraindication for using stimulants. Then, when C.C.'s blood pressure became more elevated, Dr. Patil stated he discussed the issue with C.C. and told him he should see his PCP. Dr. Patil stated that on good faith, he started C.C. on 10 mg of Lisinopril, a mild form of a hypertension drug, because he thought C.C. would see his PCP right away.

Dr. Patil noted that many of these decisions were made prior to him starting to be mentored from Dr. Korn, and he stated he would approach many of the issues differently today.

Dr. Patil further admitted that in the past he would lose track of the prior medications he had prescribed to a patient, and that that is how he ended up prescribing C.C. with an eighteen-month supply of Vyvanse in a thirteen-month time period.

Dr. Patil had previously signed a settlement agreement with the Board, which was approved by the Board on November 3, 2017. See Ex. 4. As part of that settlement agreement, Respondent agreed to enter into a monitoring agreement with Dr. Leonard Korn, MD.

Dr. Korn testified on Dr. Patil's behalf. Dr. Korn explained that he had not mentored Dr. Patil during his treatment of C.C. and did not advise Dr. Patil on the care or treatment of C.C. Dr. Korn reviewed the records after C.C.'s treatment had ended. Dr. Korn explained that he had already advised Dr. Patil on a number of the issues that are currently in front of the Board. For instance, Dr. Korn had already spoken with Dr. Patil that changing the dosing and frequency of medications too often is not advisable, and to instead make small changes one at a time. Dr. Korn did admit that he would not typically have prescribed a patient 10 mg. of Lisinopril, because the high blood pressure is a matter that needs to be evaluated by a PCP. Dr. Korn also admitted that it is not best practice to ask a patient to obtain the medical records from a previous provider, and instead explained that his practice is to have the patient sign a release so his office could get the records directly.

FINDINGS OF FACT AND RULINGS OF LAW

The first issue before the Board is whether, on or about February 8, 2017, Dr. Patil engaged in professional misconduct by failing to obtain past treatment records to verify C.C.'s verbal report of his treatment history, determine the identity of the previous prescriber, and understand the reasoning and rationale underlying the initial diagnosis of ADHD while treating C.C. for that ADHD. The testimony above indicates that Dr. Patil relied solely on C.C.'s self-report. Dr. Patil did indicate that he called the pharmacy to confirm that the medication and dosage that C.C. had self-reported was correct, but this is insufficient. Particularly where C.C.

has presented with tachycardia and high blood pressure, and where C.C. was reporting he was on stimulants which affect the heart rate, Dr. Patil should have obtained records from C.C.'s previous provider. The Board thus determines that Dr. Patil violated RSA 329:17, VI(c) and (k) and Med 501.02(d) and (e).

The second issue is whether Dr. Patil engaged in professional misconduct by diagnosing C.C. with ADHD, combined type, with insufficient documentation to support the diagnosis. Dr. Patil believed that C.C. did meet the criteria for ADHD combined type and met the five additional criteria in the DSM5 for this diagnosis. However, Dr. Patil admitted that he did not document four of those five criteria. As noted by the Presiding Officer at the hearing, "it's pretty axiomatic that if you don't document it you didn't do it." The Board has to rely on the medical records, and documentation of those four criteria did not appear in the records. Therefore, the Board determines that Dr. Patil committed professional misconduct by diagnosing C.C. with ADHD, combined type with insufficient documentation to support this diagnosis, thus violating RSA 329:17, VI(c).

The third issue to be determined is whether Dr. Patil engaged in a pattern of prescribing medications at inappropriately high doses while failing to assess the effects of the medications on C.C., and implementing changes in C.C.'s medications without properly documenting the underlying rationale for those changes. Dr. Coursin had noted that Dr. Patil had prescribed medications to C.C. at the maximum recommended adult dose, with little to no documentation showing the rationale for such dosing. In particular, at one point Dr. Patil prescribed C.C. with double the recommended adult dose of Vyvanse. The Board agrees that on rare occasions, off-label dosing can be appropriate, but only after a physician proceeds slowly and properly documents the reasons that justify the off-label dosing. There was no such documentation here. Dr. Coursin had also noted that Dr. Patil had implemented changes to C.C.'s medications and dosages without documenting the rationale for those changes. Dr. Korn agreed that when

making changes to medication, it is advisable to make small changes to dosage or medication, and make those changes one at a time, to allow the physician to properly assess how each change has affected the patient. On this basis, the Board determines that Dr. Patil violated RSA 329:17(c) and (k), and Med 501.02(d) and (e)(1).

The next issue to be determined is whether Dr. Patil engaged in professional misconduct by continuing to prescribe C.C. high doses of stimulants while C.C. continued to experience the adverse side effects of tachycardia and hypertension, thereby creating significant risk to C.C. The records indicate that over the approximately 15 months of treatment, Dr. Patil continued to prescribe C.C. with stimulants such as Adderall and Vyvanse, both of which can adversely affect blood pressure and pulse rate. Dr. Coursin stated that he believed this created a real danger to C.C.'s health. The Board therefore determines that Dr. Patil violated RSA 329:17, VI(c) and (d).

The fifth issue to be determined is whether Dr. Patil's lack of clear documentation of the reasons for, and the rationale behind, his multiple decisions to change or alter C.C.'s medical formulations, and with no documentation of his having considered the alternatives, constitutes unprofessional misconduct. Dr. Coursin noted that Dr. Patil's notes did not clearly indicate his rationale behind making changes to C.C.'s prescriptions. Dr. Coursin also noted that it was odd that Dr. Patil only prescribed from one small family of drugs, whereas other drugs with different base formulations may have been available that may not have had the same detrimental side effects. As such, the Board determines that Dr. Patil violated RSA 329:19, VI(c) and (d), and Med 501.02(d) and (e).

The sixth issue to be determined is whether Dr. Patil engaged in unprofessional misconduct by providing C.C. with a prescription for eighteen months of Vyvanse over a thirteen-month period. Dr. Patil himself acknowledged that he had done so, and that this occurred simply because he lost track of the medications he had prescribed to C.C. The Board therefore determines that Dr. Patil violated RSA 329:17, VI(c) and (d).

The seventh issue to be determined is whether Dr. Patil engaged in professional misconduct by treating C.C. for hypertension and prescribing C.C. Lisinopril, which is outside of the scope of practice for a psychiatrist. Both Dr. Coursin and Dr. Korn testified that treatment for hypertension would require a full workup by C.C.'s PCP, and that this was outside the scope of practice for a psychiatrist. The Board therefore determines that Dr. Patil violated RSA 329:17, VI(c) and (d).

The eighth issue to be determined is whether Dr. Patil engaged in unprofessional misconduct by failing to recommend C.C. for concurrent psychotherapy to assist him with major life stresses. The Board determines that there was insufficient testimony to make a determination on this issue.

The ninth issue to be determined is whether Dr. Patil engaged in unprofessional misconduct by using the same structured EMR template to document each visit with C.C., thereby creating nearly identical reports, which could not be correlated with a sense of progress or with a corresponding narrative report. While Dr. Coursin testified that Dr. Patil's records were lacking, the Board determines there was insufficient evidence presented to make a determination on this issue.

DISCIPLINARY ACTION

Based on the Findings of Fact and Rulings of Law above, given Dr. Patil's history of frequent discipline by this Board, the Board voted to REVOKE Dr. Patil's license. Dr. Patil's care of C.C. did not meet the standard of care expected of a psychiatrist and presented a real and present danger to C.C. Given these circumstances, and given Dr. Patil's past history with the Board, the Board finds revocation the appropriate level of discipline.

THEREFORE, IT IS ORDERED that Dr. Patil's license to practice medicine is REVOKED beginning thirty days from the date of this Order. The thirty days are intended to allow Dr. Patil to wind up his practice, facilitate any referrals of patients to a new provider and

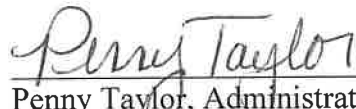
the transfer of patient records, and to notify any patients that he is no longer practicing medicine in New Hampshire;

IT IS FURTHER ORDERED that this Final Decision and Order shall become a permanent part of Dr. Patil's file, which is maintained by the Board as a public document;

IT IS FURTHER ORDERED that this Final Decision and Order shall take effect as an Order of the Board on the date an authorized representative of the Board signs it.

BY ORDER OF THE BOARD*

Date: 1-10-2020



Penny Taylor, Administrator
Authorized Representative of the
New Hampshire Board of Medicine

*Board Members, Daniel Potenza, MD, Jonathan Ballard, MD, MPH and John H. Wheeler, D.O., not participating.