



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Howard J. Levine
Docket No.: 99-12-A-1079MD
Document: Amended Statement of Charges

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Adjudicative Clerk Office
P.O. Box 47879
Olympia, WA 98504-7879
Phone: (360) 236-4677
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to Nancy Ellison, Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

MAY 25 2000

Adjudicative Clerk
Office

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of the License to Practice)
as a Physician and Surgeon of)
HOWARD J. LEVINE, M.D.)
License No. 19774)
Respondent.)

Docket No. 99-12-A-1079MD

AMENDED STATEMENT OF CHARGES

The Program Manager of the Medical Quality Assurance Commission, (Commission), on designation by the Commission, makes the allegations below, which are supported by evidence contained in program case files Nos. 98-08-0031MD, 99-02-0016MD and 00-01-0060MD:

Section 1: ALLEGED FACTS

1.1 Howard J. Levine, M.D., was issued a license to practice as a physician and surgeon by the State of Washington in March 1982. The Respondent is currently licensed to practice as a physician in Washington.

1.2 On or about July 25, 1998 and thereafter, the Respondent did medical assessments, prescribed and sold Viagra™ over the Internet through a web page called "www.drviagra.com". "www.drviagra.com" was a URL address that was owned by CapHill Partner, LLC. Until August 31, 1998, the URL address, "www.drviagra.com" forwarded into the functioning "www.confimed.com" web site. Pursuant to an agreement the Respondent made with the owners of the site, the Respondent worked as a contractor doing medical assessments, and also prescribed and distributed Viagra™. The owners of the site were not licensed medical professionals.

1.3 The Respondent later initiated his own web site and operated with the web site of "www.confimed.com" and continued performing the same medical assessments, and prescribing and selling Viagra™.

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1.4 The Respondent's "www.confimed.com" web site offers translations into German, French, Italian, Spanish and Portuguese. The Respondent has done assessments, prescriptions, and sales to persons residing outside of Washington State and outside the United States. The Respondent's "www.confimed.com" web site offers to supply information about Viagra™ and a web site contact to Viagra™'s manufacturer's, Pfizer Labs, web site.

1.5 The Respondent's "www.confimed.com" web site contains a waiver, for participants in the on-line consultations, which "release[s] Confimed and any and all of its employees from any and all liability whatsoever associated with my participation in the VIAGRA™ program."

1.6 The Respondent's "www.confimed.com" web site also purportedly obligates the internet "patient" to have a complete annual history and physical examination with appropriate laboratory studies, to ensure that the internet "patient" is in good health.

1.7 The Respondent, in operating his "www.confimed.com" web site, does not have any in-person contact, either past, present or anticipated, with a person for whom he prescribes Viagra™.

1.8 The Respondent's "www.confimed.com" web site questionnaire specifically asks the "patient" if they have been evaluated by a physician in the last year and have been determined to be in good health. The Respondent's web site charges a \$75.00 (seventy-five dollars) fee for an "online consultation and evaluation by medical staff" which is billed to the recipient's credit card if the recipient is approved for the program. The web site specifically states that the on-line consultation "is in no way a substitute for a general medical history and physical examination determining general good health with special attention to blood pressure and cardio-pulmonary (heart and lung) status." The on-line consultation is simply a series of questions, which includes relevant medical history and specific data regarding compromised sexual function and the use of Viagra™.

1.9 The Respondent, in filling Viagra™ prescriptions after completing this Internet medical assessment, had for a short time packaged the drugs in plastic "baggies" which were sent to the recipients by the U.S. Postal Service. He later packaged the medication in bottles. The Respondent also left packaged Viagra™ at a jewelry store for delivery to the U.S. Postal Service. The Respondent used other

individuals, under his supervision and direction, to package and mail the Viagra™ that were prescribed and dispensed by him.

1.10 On or about May 5, 1999, the Respondent distributed Viagra™ from his Washington State website, under the representations that he is a medical practitioner, to: (1) a sixteen-year-old boy (“Patient A”) without securing parental consent or establishing a physician-patient relationship, and (2) to a woman (“Patient B”) without establishing a physician-patient relationship. The “patients” received the Viagra™ in Kansas, where the Respondent holds no medical license.

1.11 On or about December 13, 1999, the Respondent, through his “www.confimed.com” website, included an online consultation for Xenical and provided advice for using Tagamet.

1.12 On or about January 13, 2000 the Commission ordered the Respondent to cease prescribing any prescription drugs to any person unless he had established a physician-patient relationship with such person. The order was intended to prohibit the Respondent’s use of the internet to prescribe or dispense legend drugs as described above in this Statement of Charges. Notwithstanding the Commission order, the Respondent continued to prescribe and/or dispense drugs for profit through use of the internet, obtaining the services of an out-of-state osteopathic physician as a proxy health care provider in an attempt to avoid the restrictions imposed by the Commission’s order.

1.13 On or about March 24, 2000, the Respondent was convicted after a jury trial of one count of felony wire fraud, a violation of Title 18 U.S.C., Section 1343 and one count of felony interstate communications with intent to extort, a violation of Title 18 U.S.C., Sections 875(d) and 2(b).

Section 2: ALLEGED VIOLATIONS

2.1 The violations alleged in this section constitute grounds for disciplinary action pursuant to RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

2.2 The course of conduct alleged in paragraphs 1.1 through 1.11 constitutes unprofessional conduct in violation of RCW 18.130.180 (4), (6), and (7), which provide that unprofessional conduct is, in part:

- (4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed...

- (6) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself.
- (7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice [RCW 69.41].

2.3 The conduct alleged in paragraph 1.12 constitutes unprofessional conduct in violation of RCW 18.130.180 (1) and (9), respectively, which provide that unprofessional conduct is, in part:

- (1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action...

and

- (9) Failure to comply with an order issued by the disciplining authority . . . ;

2.4 The conduct alleged in paragraph 1.13 constitutes unprofessional conduct in violation of RCW 18.130.180 (1) and (17), respectively, which provide that unprofessional conduct is, in part:

- (1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action...

and

- (17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. . . ;

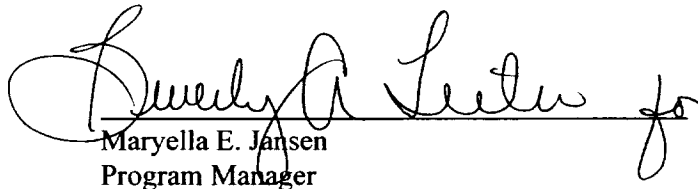
Section 3: NOTICE TO RESPONDENT

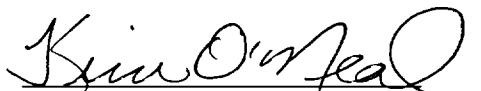
The charges in this document affect the public health, safety and welfare. The Program Manager of the Commission directs that a notice be issued and served on Respondent as provided by law, giving Respondent the opportunity to defend against these charges. If Respondent fails to defend against these

charges, Respondent shall be subject to discipline pursuant to RCW 18.130.180 and the imposition of sanctions under 18.130.160.

DATED this 24th day of May, 2000.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION


Maryella E. Jansen
Program Manager


Kim O'Neal WSBA # 12939
Assistant Attorney General Prosecutor

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