



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Howard J. Levine, MD
Master No.: M2007-58073
Document: Final Order

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:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

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

SUMMARY OF PROCEEDINGS

The Department filed an Amended Statement of Charges on May 30, 2008. The Respondent filed his Answer to Statement of Charges on June 11, 2008. The Respondent admitted to the violations alleged in Paragraphs 1.1 through 1.5 of the Amended Statement of Charges, and denied or did not contest the remaining allegations.

Based on the admissions of the Respondent and the exhibits admitted into evidence, the allegations in the Amended Statement of Charges have been proven except for Paragraphs 1.6 through 1.11, Paragraphs 1.14 through 1.17, the last five sentences of Paragraph 1.18, and Paragraph 1.20, which the Department withdrew at hearing.

At the hearing, the Department presented the testimony of the Respondent as an adverse witness. The Respondent testified on his own behalf.

A. The Presiding Officer admitted the following Department exhibits:

Exhibit D-1: Stipulated Findings of Fact, Conclusions of Law and Agreed Order, Docket No. 98-10-A-1028MD, dated November 4, 1999 (pp. Inv. 242-253).

Exhibit D-2: Statement of Charges, Docket No. 99-12-A-1079MD, dated January 10, 2000 (pp. Inv. 169-173).

Exhibit D-3: Amended Statement of Charges, Docket No. 99-12-A-1079MD, dated May 24, 2000 (pp. Inv. 174-178).

Exhibit D-4: Stipulated Findings of Fact, Conclusions of Law, and Agreed Order, Docket No. 99-12-A-1079MD, dated July 13, 2000 (pp. Inv. 179-188).

Exhibit D-5: Statement of Charges, Docket No. 05-10-A-1037MD, dated January 24, 2006 (pp. Inv. 152-154).

Exhibit D-6: Stipulated Findings of Fact, Conclusions of Law and Agreed Order, Docket No. 05-10-A-1037MD, dated June 1, 2006 (pp. Inv. 155-160).

Exhibit D-7: Harborview Medical Center – Urine Drug Abuse Screen, dated June 17, 2007 (p. Inv. 381).

Exhibit D-9: Judgment, US District Court, Western District of Washington, Docket No. CR-07-0233 JLR, dated February 19, 2008 (pp. Inv. 294-299).

- B. The Respondent did not submit exhibits.
- C. Counsel for the Department and Counsel for the Respondent stipulated to remove pre-admitted Exhibit 8 (Federal complaint, dated June 26, 2007, and affidavit of probable cause) from the hearing notebooks in exchange for a stipulation to the following fact being admitted at the hearing: “[B]etween 2004 and 2006 the DEA conducted an undercover investigation of Dr. Levine’s distribution of controlled substances. This investigation resulted in his indictment and plea of guilty as reflected by Exhibit 9.”¹

I. FINDINGS OF FACT

1.1 The Respondent was granted a license to practice as a physician in the state of Washington on March 11, 1982. The Respondent admitted to this finding.

1.2 The Medical Quality Assurance Commission (Commission) issued a Statement of Charges against the Respondent in Docket No. 98-10-A-1028MD on May 7, 1999. The charges alleged the Respondent violated RCW 18.130.180(1), (4), (7), and (24) and RCW 18.130.190(10). The Respondent was alleged to have

¹ Exhibit No. 9 is the Judgment entered against the Respondent on February 19, 2008, in United States District Court, Western District of Washington.

performed malpractice in the performance of abortions for multiple patients. On November 4, 1999, the Commission accepted the Stipulated Findings of Fact, Conclusions of Law and Agreed Order (the 1999 Agreed Order). The 1999 Agreed Order suspended the Respondent's license indefinitely, but stayed the imposition of the suspension, provided he remained in compliance with all of the terms and conditions of the order. The 1999 Agreed Order included a requirement that the Respondent obey all laws and rules governing the practice of medicine, and to immediately cease performing second-trimester terminations of pregnancy. The 1999 Agreed Order remains in full force and effect. The Respondent admitted to this finding.

1.3 The Commission issued an Amended Statement of Charges against the Respondent in Docket No. 99-12-A-1079MD in May 2000. The charges alleged the Respondent violated RCW 18.130.180(1), (4), (6), (7), (9), and (17). The Respondent was found to have prescribed and dispensed Viagra and other legend drugs over the internet to individuals with whom he had not established a physician-patient relationship. The Respondent was convicted of extortion and wire fraud in violation of federal law on March 24, 2000, and sentenced to a federal penitentiary. On July 13, 2000, the Commission accepted the Stipulated Findings of Fact, Conclusion of Law, and Agreed Order (the 2000 Agreed Order). Under the 2000 Agreed Order, the Commission suspended the Respondent for the remainder of his time of confinement in a correctional institution for the wire fraud conviction. Upon completion of his criminal sentence, the suspension was lifted and a reprimand went into effect, with three years probation. The Respondent was prohibited from practicing medicine in any form by

means of the internet. The Respondent was further admonished to see that all care delivered to his patients fall within the acceptable standards of medical practice, and the Respondent shall obey all state, federal, and local laws and rules governing the practice of medicine. The Respondent's license to practice medicine was reinstated August 5, 2002, followed by three years of probation. The Respondent admitted to this finding.

1.4 The Commission issued a Statement of Charges against the Respondent on January 26, 2006, in Docket No. 05-10-A-1037MD. The charges alleged the Respondent violated RCW 18.130.180(9) for failure to comply with the terms of the 2000 Agreed Order by not taking a required ethics course and paying his fine of seven thousand eight hundred dollars (\$7,800.00). On June 1, 2006, the Commission accepted the Stipulated Findings of Fact, Conclusions of Law and Agreed Order (the 2006 Agreed Order). Under the 2006 Agreed Order, the Commission censured the Respondent and required he pay his fine of seven thousand eight hundred dollars (\$7,800.00) and attend an ethics course. The Respondent complied with the June 1, 2006 order by paying his fine and completing the ethics course. The Respondent admitted to this finding.

1.5 Section 5 of the 2006 Agreed Order provides that if Respondent violates the terms and conditions of the Agreed Order in any way, the Commission may suspend the Respondent's license to practice medicine. Section 4.5 of the Agreed Order, required the Respondent to obey all federal, state, and local laws and all administrative rules governing the practice of medicine in Washington. The Respondent admitted to this finding.

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1.6 On August 5, 2005, a male patient called the Respondent to place an order for three 10 mL vials of Trenbolone.² The Respondent was not aware this patient was an undercover law enforcement agent. The Respondent offered the patient no exam, took no history or physical, and took no blood test to detect if the patient required hormones or growth hormone for medical reasons. Later that day, the patient visited the Respondent's office and picked up three 10 mL vials of Trenbolone. The Respondent's actions violated the standard of care and placed the patient at risk of harm.

1.7 On October 20, 2005, a male patient set up an e-mail account and sent an e-mail to the address on the Respondent's business card seeking steroids. The Respondent replied "whatever you nweed (sp) simply let me know.. If I dont (sp) have it it generally only takes a day." The Respondent was not aware this patient was an undercover law enforcement agent. The Respondent offered the patient no exam, took no history or physical, and took no blood test to detect if the patient required hormones or growth hormone for medical reasons. The Respondent's actions violated the standard of care and placed the patient at risk of harm.

1.8 On July 5, 2006, a male patient called the Respondent to place an order for anabolic steroids. He said he had previously purchased Trenbolone through the Respondent, and wanted to obtain a refill. The Respondent discussed buying

² Trenbolone is an anabolic steroid.

Trenbolone through a veterinarian. The Respondent was not aware this patient was an undercover law enforcement agent. When the patient visited the Respondent later that day, the Respondent offered no exam, took no history or physical, and took no blood test to detect if the patient required hormones or growth hormone for medical reasons. The patient visited the Respondent at his office and purchased two syringes of Nandrolone Decanoate and two syringes of testosterone gel. By not examining the patient, taking a history or a blood test, the Respondent's actions violated the standard of care and placed the patient at risk of harm.

1.9 From approximately October 2004 through June 2007, the Drug Enforcement Administration (DEA) conducted an undercover operation purchasing Schedule III controlled substances from the Respondent. Many of the drugs were purchased over the internet, using email and web sites to make contact with patients and complete sales. None of these patients were examined and the Respondent did not keep a medical chart for any of these patients. The terms and conditions of the 2000 Agreed Order specifically prohibited the Respondent from using the internet for the practice of medicine. The Respondent's actions violated this 2000 Agreed Order. The Respondent's actions violated the standard of care and created a risk of harm to these patients.

1.10 On June 17, 2007, the Seattle Police found drugs at the Respondent's home. The drugs tested positive for crystal methamphetamine. A blood sample taken

from the Respondent the same day tested positive for crystal methamphetamine, benzodiazepines,³ and amphetamines.

1.11 On or about November 27, 2007, the Respondent entered a plea of guilty in response to federal criminal charges in Case No. CR-07-0233-JLR. The Respondent was charged with distribution of controlled substances (Steroids) in violation of 21 USC sec. 841(a)(1) and 841(b)(1)(D), which provides in part that it shall be unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance. The Respondent admitted that he is guilty of the charged offense of distribution of controlled substances (steroids). The Respondent pled guilty to count one of the indictment and did unlawfully, knowingly, and intentionally distribute, dispense, and possess with the intent to distribute nandrolone decanoate gel and testosterone gel, which are performance enhancing anabolic steroids and Schedule III controlled substances. On February 19, 2008, the Respondent was sentenced to 22 months in federal prison. The charged offense is a felony offense.

1.12 Before his disciplinary history, the Respondent's primary areas of practice were in obstetrics and gynecology. The Commission prohibited the Respondent from this area of practice by way of the 1999 Order. The Respondent contends that his obstetric/gynecological training includes the proper training for steroid use and distribution. The Respondent contends the standard of care for the prescription of

³ The **benzodiazepines** are a class of psychoactive drugs with varying hypnotic, sedative, anxiolytic, anticonvulsant, muscle relaxant, and amnesic properties.

steroids for new patients does not always require patient histories or physical exams in order to provide steroids to the patients. The Commission does not find this testimony to be credible. The Respondent testified that he never prescribed steroids for performance enhancement. He also testified that the patients were going to use steroids whether he prescribed them or not, and he prescribed the steroids so that he was able to control the patient's use of steroids. The Commission also does not find this testimony to be credible. Finally, the Commission finds the Respondent's testimony lacks credibility based on the totality of the evidence presented in this matter, and that the Respondent provided patients with steroids for the purpose of performance enhancement.

Sanction Findings.

1.13 The Respondent has a pattern of illegal conduct. The Respondent illegally prescribed controlled substances to individuals who were not patients. These persons were never examined, and no records were created. The Respondent's misconduct creates an unreasonable risk of harm to his patients.

1.14 The Respondent has a history of incompetent medical practice. The Respondent fails to acknowledge that he has acted improperly as a physician. The Commission has provided him with multiple opportunities to rehabilitate his practice habits. The Respondent has failed to improve his practice and has displayed a pattern of incompetency.

1.15 The Respondent has an extensive disciplinary history with serious misconduct. He has had two serious federal convictions: distribution of controlled substances, and extortion and wire fraud.

1.16 The Respondent has failed to timely comply with previous agreed orders. The Respondent has tested positive for use of controlled substances, yet provided no evidence of substance abuse assessment or treatment. The Respondent testified he is on a wait list for a mental health examination at the prison.

1.17 The Commission specifically finds that the Respondent can never be rehabilitated and can never regain the ability to practice medicine with reasonable skill and safety.

II. CONCLUSIONS OF LAW

2.1 The Commission has jurisdiction over the Respondent and subject of this proceeding. RCW 18.130.040 RCW.

2.2 The standard of proof in a professional disciplinary hearing is clear and convincing evidence. *Nguyen v. Department of Health*, 144 Wn.2d 516 (2001); see also *Ongom v. Dept. of Health*, 159 Wn.2d 132 (2006), *cert. denied* 127 S. Ct. 2115 (2007).

2.3 The Commission used its experience, competency, and specialized knowledge to evaluate the evidence. RCW 34.05.461(5).

2.4 The Uniform Disciplinary Act (the UDA) defines what conduct, acts, or conditions constitute unprofessional conduct. RCW 18.130.180. The Department

proved with clear and convincing evidence that the Respondent committed unprofessional conduct as defined in RCW 18.130.180(1), which states:

(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. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW.

2.5 The Department proved with clear and convincing evidence that the Respondent committed unprofessional conduct as defined in RCW 18.130.180(4), which states:

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

2.6 The Department proved with clear and convincing evidence that the Respondent committed unprofessional conduct as defined in WAC 246-919-610 - Use of drugs or autotransfusion to enhance athletic ability, which states:

(1) A physician shall not prescribe, administer or dispense anabolic steroids, growth hormones, testosterone or its analogs, human chorionic

gonadotropin (HCG), other hormones, or any form of autotransfusion for the purpose of enhancing athletic ability.

- (2) A physician shall complete and maintain patient medical records which accurately reflect the prescribing, administering or dispensing of any substance or drug described in this rule or any form of autotransfusion. Patient medical records shall indicate the diagnosis and purpose for which the substance, drug or autotransfusion is prescribed, administered, or dispensed and any additional information upon which the diagnosis is based.
- (3) A violation of any provision of this rule shall constitute grounds for disciplinary action under RCW 18.130.180(7). A violation of subsection (1) of this section shall also constitute grounds for disciplinary action under RCW 18.130.180(6).

2.7 The Department proved with clear and convincing evidence that the Respondent committed unprofessional conduct as defined in RCW 18.130.180(6), which states:

- (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;

2.8 The Department proved with clear and convincing evidence that the Respondent committed unprofessional conduct as defined in RCW 18.130.180(7), which states:

- (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;

2.9 The Department proved with clear and convincing evidence that the Respondent committed unprofessional conduct as defined in RCW 18.130.180(9), which states:

- (9) Failure to comply with an order issued by the disciplining authority or a stipulation for informal disposition entered into with the disciplining authority;

2.10 The Department proved with clear and convincing evidence that the Respondent committed unprofessional conduct as defined in RCW 18.130.180(13), which states:

- (13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

2.11 The Department proved with clear and convincing evidence that the Respondent committed unprofessional conduct as defined in RCW 18.130.180(17), which states:

- (17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

2.12 The Department proved with clear and convincing evidence that the Respondent committed unprofessional conduct as defined in RCW 18.130.180(23), which states:

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(23) Current misuse of:

- (a) Alcohol
- (b) Controlled substances; or
- (c) Legend drugs

2.13 As a result of the above Findings of Fact and these Conclusions of Law, the Board may impose sanctions under RCW 18.130.160. Regarding sanctions, the Board must first consider the protection of the public.

Safeguarding the public's health and safety is the paramount responsibility of every disciplining authority and in determining what action is appropriate, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder or applicant.

RCW 18.130.160.

After first determining that the Findings of Fact and Conclusions of Law require the imposition of sanctions to protect the public, the Commission considered aggravating circumstances, including prior discipline pursuant to RCW 18.130.160, failure to comply with previous orders, patterns of misconduct, multiple violations, and multiple felony convictions. The Commission found no mitigating circumstances.

2.14 Permanent revocation of a license is a sanctioning option for the Commission. RCW 18.130.160(12). The Commission concludes that the Respondent can never be rehabilitated and can never regain the ability to practice with reasonable skill and safety. Thus, the Commission permanently revokes the Respondent's license

under RCW 18.130.160(12) and RCW 18.130.150. A permanent revocation is not subject to a petition for reinstatement under RCW 18.130.150, which provides in part:

A person whose license has been suspended under this chapter may petition the disciplinary authority for reinstatement after an interval as determined by the disciplinary authority in the order unless the disciplining authority has found, pursuant to RCW 18.130.160, that the licensee can never be rehabilitated or can never regain the ability to practice with reasonable skill and safety.

III. ORDER

3.1 The Respondent's license to practice as a physician in the state of Washington is PERMANENTLY REVOKED with no right to petition for modification or reinstatement.

Dated this 20th day of April 2009.



LESLIE M. BURGER, M.D.
Panel Chair

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Program No. 2006-11-0014

CLERK'S SUMMARY

<u>Charge</u>	<u>Action</u>
RCW 18.130.180(1)	Violated
RCW 18.130.180(4)	Violated
RCW 18.130.180(6)	Violated
RCW 18.130.180(7)	Violated
RCW 18.130.180(9)	Violated
RCW 18.130.180(13)	Violated
RCW 18.130.180(17)	Violated
RCW 18.130.180(23)	Violated
WAC 246-919-610	Violated

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NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate or national reporting requirements. If discipline is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this order with:

Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Department of Health Medical Program
P.O. Box 47866
Olympia, WA 98504-7866

The petition must state the specific grounds for reconsideration and what relief is requested. WAC 246-11-580. The petition is denied if the Commission does not respond in writing within 20 days of the filing of the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the above 30-day period does not start until the petition is resolved. RCW 34.05.470(3).

The order is in effect while a petition for reconsideration or review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order is "served" the day it is deposited in the United States mail. RCW 34.05.010(19).

For more information, visit our website at <http://www.doh.wa.gov/hearings>.