



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Howard J. Levine
Docket No.: 99-12-A-1079MD
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:

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.

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice as a Physician and Surgeon of)	Docket No. 99-12-A-1079MD
)	
HOWARD J. LEVINE, MD)	STIPULATED FINDINGS OF
License #19774)	FACT, CONCLUSIONS OF LAW,
)	AND AGREED ORDER
)	
Respondent.)	
_____)	

The Medical Quality Assurance Commission ('Commission') by and through Department of Health Staff Attorney Marcia G. Stickler, and Howard J. Levine, M.D., by and through his attorney Jeffrey R. Johnson, stipulate and agree to the following:

Section 1: PROCEDURAL STIPULATIONS

- 1.1 Howard J. Levine, M.D., was licensed to practice medicine in the State of Washington at all times relevant to this action.
- 1.2 On May 7, 1999, the Commission issued a Statement of Charges regarding the professional practice of the Respondent.
- 1.3 The Statement of Charges alleged that Respondent violated RCW 18.130.180 subsections (1), (4), (7), (10) and (24).
- 1.4 On November 4, 1999, the Commission accepted a Stipulated Findings of Fact, Conclusions of Law and Agreed Order entered into by the Respondent on November 3, 1999. By the terms of that Order, the Respondent's license to practice medicine was

suspended indefinitely, but such suspension was stayed in its entirety so long as the Respondent complied with the numerous other terms and conditions of the Order.

1.5 On January 10, 2000, the Commission issued a second Statement of Charges regarding the professional practice of the Respondent.

1.6 The Statement of Charges alleged that Respondent violated RCW 18.130.180 subsections (1), (3), (4), (7), (10) and (13).

1.7 On January 13, 2000, the Commission issued a Corrected Ex Parte Order of Summary Action that summarily imposed conditions on the Respondent's license to practice medicine, specifically regarding prescribing or dispensing Viagra™ or other prescription drugs to individuals with whom he has not established a physician-patient relationship, as defined further in the Order of Summary Action.

1.8 On June 1, 2000, the Commission issued an Amended Statement of Charges regarding the professional practice of the Respondent, adding two additional allegations of misconduct and eliminating allegations of violation of RCW 18.130.180 (3), (10), and (13).

1.9 The Amended Statement of Charges alleges that Respondent violated RCW 18.130.180 subsections (1), (4), (6), (7), (9) and (17).

1.10 Respondent understands that the State is prepared to proceed to a hearing on the allegations in the Amended Statement of Charges.

1.11 Respondent understands that he has the right to defend himself against allegations in the Amended Statement of Charges by presenting evidence in his behalf at a formal hearing.

1.12 Respondent understands that, should the State in fact prove at the hearing the allegations in the Amended Statement of Charges, the Commission has the power and authority to impose sanctions under RCW 18.130.160.

1.13 Respondent and the Commission agree to expedite the resolution of this matter by means of Stipulated Findings of Fact, Conclusions of Law, and Agreed Order.

1.14 Respondent waives the opportunity for a hearing on the Amended Statement of Charges contingent upon the entry of the following Agreed Order.

1.15 Respondent and the Commission each acknowledge that the Agreed Order is not binding unless and until the Commission accepts it.

1.16 Respondent acknowledges that should this Stipulated Findings of Fact, Conclusions of Law and Agreed Order be accepted it will be subject to the reporting requirements of RCW 18.130.110 and interstate/national reporting, including, but not limited to, Section 1128E of the Social Security Act and the National Practitioner Data Bank per 45 CFR 60.

1.17 WAIVER OF OBJECTION: Respondent is informed and understands that:

- a. At the presentation of this Agreed Order the Commission may ask the parties for information regarding the facts of this case. The parties have the right to be present, ask and answer questions and make argument to the Commission regarding the appropriateness of this Agreed Order.
- b. Respondent waives any objection to the participation on a hearing panel of all or some of the Commission members who hear the Stipulation

presentation in the event that the Stipulation is rejected and this matter proceeds to a hearing.

Section 2: STIPULATED FACTS

The State and Respondent stipulate to the following facts:

2.1 That Respondent is currently licensed to practice medicine and surgery in the state of Washington and has been so licensed at all times material hereto.

2.2 That if this matter were to proceed to hearing, the State would introduce evidence that the following occurred:

a. On or about July 25, 1998 and thereafter, the Respondent did medical assessments and prescribed and sold Viagra™ over the Internet without face-to-face contact, either past, present or anticipated, with any person for whom he prescribed Viagra™.

b. The Respondent, in filling Viagra™ prescriptions after completing an 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. On several occasions, the Respondent left packaged Viagra™ at a retail store for the patient to pick up. The Respondent used other individuals, under his supervision and direction, to package and mail the Viagra™ that were prescribed and dispensed by him.

c. 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.

d. 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. Notwithstanding the Commission order, after January 28, 2000, the Respondent allowed the use of the ConfiMed.Com website by doctors in Nevada, for the purpose of selling of Viagra™ over the Internet.

e. 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).

2.3 That if this matter were to proceed to hearing, the State would introduce evidence that the conduct described in the Amended Statement of Charges took place.

2.4 The Respondent has indicated that if this matter were to proceed to hearing, he would introduce evidence that he did not commit unprofessional conduct.

Section 3: CONCLUSIONS OF LAW

The State and the Respondent do not object to entry of the following Conclusions of Law:

3.1 The Commission has jurisdiction over the Respondent and the subject matter of this proceeding pursuant to Chapter 18.130 RCW.

3.2 The state's evidence, if proven, is sufficient to justify a finding of unprofessional conduct as described in paragraph 2.2 above, in violation of RCW 18.130.180 subsections (1), (4), (6), (7), (9) and (17).

3.3 The Commission has authority to issue an order in this case providing for sanctions in accordance with RCW 18.130.160.

Section 4: AGREED ORDER

Based on the preceding Stipulated Facts and Conclusions of Law, the Commission hereby orders:

4.1 The Respondent is hereby REPRIMANDED for unprofessional conduct relating to the practice of medicine.

4.2 The stay of suspension granted in the Commission's Order dated November 4, 1999 is hereby lifted to the extent that such SUSPENSION shall be in full force and effect for the time during which the Respondent is confined in an out-of-state correctional institution as a result of the conviction referenced in paragraph 2.2e. above.

4.3 Upon Respondent's release from out-of-state incarceration and his return to the state of Washington, such SUSPENSION shall be in effect for a period of SIX MONTHS from the date of return to the state of Washington, followed by a minimum THREE-YEAR period of PROBATION in lieu of the previously imposed stayed indefinite suspension, during which the Respondent is permitted to resume the practice of medicine subject to the terms and conditions of this Agreed Order.

4.4 At the end of the probationary period Respondent may petition in writing for modification/termination of the terms and conditions of this Agreed Order. Failure to comply with the terms and conditions of this Agreed Order may constitute cause for imposition of additional sanctions, and/or a Statement of Charges.

4.5 Respondent agrees to participate in and successfully complete the 18-hour Professional/Problem Based Ethics program (ProBE) by the end of the probationary period, or earlier, as agreed between the Respondent and the Medical Consultant. The Medical Consultant, based on the final essay and staff assessment provided to the Commission by the Ethics Group, LLC, will review successful completion of the program. This course will not count toward Respondent's statutory CME requirement.

4.6 Respondent shall continue to abide by the terms and conditions imposed by all prior Orders of the Commission not modified by this Order from which he has not been otherwise released in writing. Specifically, he shall not perform termination of pregnancy procedures nor shall he practice medicine in any form by means of any website or otherwise through the Internet, including performing medically-related services for others,

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whether for profit or not, who are or may reasonably be construed to be using the Internet for the purported practice of medicine.

4.7 In the event the Respondent should leave Washington to reside or to practice outside the state, he shall notify the Commission in writing of the date of departure and return. Periods of residency or practice outside Washington will not apply to any reduction of the three-year probationary period referenced in paragraph 4.3 above.

4.8 The Respondent shall bear all costs associated with compliance with this Order unless otherwise stated herein.

4.9 Respondent shall pay an administrative fine to the Commission in the amount of five thousand dollars (\$5000.00) within THREE YEARS of the effective date of this Order. The fine shall be payable to the State Treasurer and sent to the following address:

Department of Health
Medical Quality Assurance Commission
Post Office Box 1099
Olympia, Washington 98507-1099

4.10 The Respondent shall inform the Commission and the Adjudicative Clerk Office, in writing, of changes in his residential address.

4.11 The Respondent shall see to it that all care delivered to his patients falls within acceptable standards of medical practice. Respondent shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in Washington State.

4.12 Violation of Order. If the Respondent violates any provision of this Order, the Commission, after giving the Respondent notice and the opportunity to be heard, may take further action against Respondent's license.

4.13 This Stipulation and Agreed Order shall become effective ten (10) days from the date it is signed by the Commission Panel Chair, or upon service of the Order on the Respondent, whichever date is sooner.

I, Howard J. Levine, MD, hereby certify that I have read this Agreed Order in its entirety; that my counsel of record has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it, and in witness thereof I affix my signature this

30 day of June, 2000.

Howard J. Levine, MD.

Howard J. Levine, M.D.
Respondent

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Section 5: ORDER

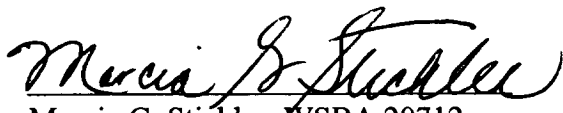
The Commission accepts the Stipulated Findings of Fact, Conclusions of Law, and Agreed Order. IT IS ORDERED that all parties shall be bound by the terms and conditions of section 4.

DATED this 13th day of July, 2000.

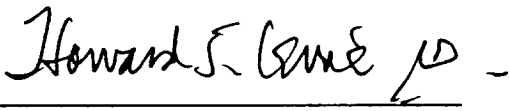
MEDICAL QUALITY
ASSURANCE COMMISSION

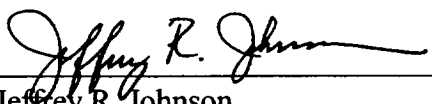
By: 
Panel Chair

Presented by:


Marcia G. Stickler, WSBA 20712
Department of Health Staff Attorney

STIPULATED TO AND APPROVED FOR ENTRY:


Howard J. Levine, M.D.
Respondent


Jeffrey R. Johnson
Counsel for Respondent

REDACTED