

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2015-28395

RANDALL B. WHITNEY, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health files this Administrative Complaint before the Board of Medicine against Respondent Randall B. Whitney, M.D., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.

2. At all times material to this Administrative Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 8859.

3. Respondent's address of record is P.O. Box 290489, Port Orange, Florida 32129.

4. At all times material to this Administrative Complaint, Respondent was a physician at the Family Planning Center, located in Daytona Beach, Florida.

5. At all times material to this Administrative Complaint, K.S., a thirty-one (31) year-old male, was a patient of Respondent.

6. On or about January 14, 2014, June 3, 2014, and August 19, 2014, Respondent prescribed K.S. 31 Alprazolam¹ 2 mg pills.

7. On or about February 10, 2015, Respondent prescribed K.S. 60 Norco² 10/325 pills.

8. On or about March 16, 2015, and April 17, 2015, Respondent prescribed K.S. 60 MS Contin³ 30 mg pills.

¹ Alprazolam is prescribed to treat anxiety. According to Section 893.03(4), Florida Statutes, alprazolam is a Schedule IV controlled substance that has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III.

² Norco is a brand name for Hydrocodone/APAP. Hydrocodone/APAP contains hydrocodone and acetaminophen, or Tylenol and is prescribed to treat pain. According to Section 893.03(3), Florida Statutes, hydrocodone, in the dosages found in hydrocodone/APAP is a Schedule III controlled substance that has a potential for abuse less than the substances in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

³ MS Contin is the brand name for a drug that contains morphine and is prescribed to treat pain. According to Section 893.03(2), Florida Statutes, morphine is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of morphine may lead to severe psychological or physical dependence.

9. During the course of K.S.'s treatment:

a. Respondent failed to perform or failed to document performing a patient history and/or physical exams;

b. Respondent failed to address or failed to document addressing lab testing;

c. Respondent failed to provide or failed to document providing a diagnosis in some progress notes;

d. Respondent completed progress notes which were illegible;

e. Respondent failed to address or failed to document addressing K.S.'s compliance with and/or responses to medications prescribed; and/or

f. Respondent failed to provide or failed to document a clear plan of treatment for K.S. to include managing the risk for continued opioid and benzodiazepine abuse and dependence.

10. On or about August 11, 2015, Respondent submitted a prescription for K.S. via telephone for Alprazolam and Promethazine syrup⁴ to a Target Pharmacy.

11. The pharmacist at the Target Pharmacy refused to fill the prescription because it was not written. Respondent then presented to the Target Pharmacy and wrote a prescription for K.S.'s Alprazolam and Promethazine syrup.

12. On or about August 11, 2015, K.S. filled the written prescription at another pharmacy and received the medications.

13. On or about August 11, 2015, at approximately 6:10 p.m., K.S. was found unconscious in a Walmart store in possession of a bag containing Alprazolam pills and a bottle of Promethazine syrup approximately one quarter empty.

14. Respondent failed to conduct and/or failed to document conducting an office visit for K.S. on or about August 11, 2015.

⁴ Promethazine VC contains codeine and is prescribed to treat the symptoms of an upper respiratory infection, such as cough. According to Section 893.03(5), Florida Statutes, codeine, in the dosages found in Promethazine VC is a Schedule V controlled substance that has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule IV.

15. Respondent failed to document conducting a telephone encounter with the Target Pharmacy for K.S. on or about August 11, 2015.

16. At all times relevant to this case, the prevailing professional standard of care required that, when dealing with patients such as K.S., a physician should complete medical records that justify the course of treatment utilized in the care of the patient to include history, examination, diagnosis, and a treatment plan to include medications prescribed. The physician should provide a clear delineated treatment plan to include accounting for the risk of opioid abuse.

COUNT ONE

17. Petitioner realleges and incorporates paragraphs one through sixteen (16) as if fully set forth herein.

18. Section 458.331(1)(t)1., Florida Statutes (2015), subjects a licensee to discipline for committing medical malpractice as defined in Section 456.50(1)(g), Florida Statutes. Section 456.50(1)(g), Florida Statutes (2015), states that medical malpractice means the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. Section 766.102, Florida Statutes (2015), provides that the prevailing standard of care for a given

healthcare provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

19. At all times relevant to this case, Respondent failed to meet the prevailing professional standard of care in his treatment of K.S. in one or more of the following ways:

- a. By failing to perform a patient history and/or physical exams;
- b. By failing to provide diagnoses;
- c. By failing to address K.S.'s compliance and/or responses to medications prescribed;
- d. By failing to provide a clear plan of treatment for K.S. to include managing the risk for continued opioid and benzodiazepine abuse and dependence; and/or
- e. By failing to conduct an office visit with K.S. on or about August 11, 2015.

20. Based on the foregoing, Respondent violated Section 458.331(1)(t)1., Florida Statutes (2015), by committing medical malpractice as defined in Section 456.50(1)(g), Florida Statutes.

COUNT TWO

21. Petitioner realleges and incorporates paragraphs one through sixteen (16) as if fully set forth herein.

22. Section 458.331(1)(m), Florida Statutes (2015), subjects a licensee to discipline for failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

23. Section 458.331(1)(nn), Florida Statutes (2015), subjects a licensee to discipline for violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

24. Rule 64B8-9.003, Florida Administrative Code, is an administrative rule adopted pursuant to Chapter 458, Florida Statutes, which outlines the standards of the adequacy of medical records.

25. Rule 64B8-9.003(1), Florida Administrative Code, provides that medical records are maintained for the following purposes:

- a. To serve as a basis for planning patient care and for continuity in the evaluation of the patient's condition and treatment.
- b. To furnish documentary evidence of the course of the patient's medical evaluation, treatment, and change in condition.
- c. To document communication between the practitioner responsible for the patient and any other health care professional who contributes to the patient's care.
- d. To assist in protecting the legal interest of the patient, the hospital, and the practitioner responsible for the patient.

26. Rule 64B8-9.003(3), Florida Administrative Code (2015), provides that medical records shall contain sufficient information to identify the patient, support the diagnosis, justify the treatment and document the course and results of treatment accurately, by including, at a minimum, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; reports of consultations and

hospitalizations; and copies of records or reports or other documentation obtained from other health care practitioners at the request of the physician and relied upon by the physician in determining the appropriate treatment of the patient.

27. Respondent failed to create, keep, and/or maintain medical records that justify the course of treatment of K.S. in one or more of the following ways:

- a. By failing to create, keep, and/or maintain records of performing a patient history and/or physical exams;
- b. By failing to create, keep, and/or maintain records of addressing lab testing;
- c. By failing to create, keep, and/or maintain records of providing diagnoses;
- d. By creating, keeping, and/or maintaining illegible progress notes;
- e. By failing create, keep, and/or maintain records of addressing K.S.'s compliance with and/or responses to medications prescribed;

- f. By failing to create, keep, and/or maintain a clear plan of treatment for K.S. to include managing the risk for continued opioid and benzodiazepine abuse and dependence;
- g. By failing to create, keep, and/or maintain a record of an office visit for K.S. on or about August 11, 2015; and/or
- h. By failing to create, keep, and/or maintain a record of conducting a telephone encounter with the Target Pharmacy for K.S. on or about August 11, 2015.

28. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2015) and/or Section 458.331(1)(nn), Florida Statutes (2015), through a violation of Rule 64B8-9.003, Florida Administrative Code.

{Signature appears on the following page}

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 12th day of May, 2017.

Celeste Philip, M.D., M.P.H.
Surgeon General and Secretary



Natalia S. Thomas
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar Number 83826
(P) 850-245-4640, Ext. 8218
(F) 850-245-4684
(E) Natalia.Thomas@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Amber Greene
DATE MAY 15 2017

NST/rr

PCP Date: May 12, 2017

PCP Members: Dr. Mark Avila, Dr. Enrique Ginzburg, Mr. Donald Mullins

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.