

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF MEDICINE**

IN RE: :
 :
BENSON W. YU, M.D. :
 :
License No.: MD19992 :
 :
Respondent :

AMENDED CONSENT ORDER

This matter comes before the District of Columbia Board of Medicine (the “Board” or “D.C. Board”) pursuant to the Health Occupations Revision Act (HORA). D.C. Official Code § 3-1201.01, *et seq.* (2009). The HORA authorizes the Board to regulate the practice of medicine in the District of Columbia and, in doing so, the Board has broad jurisdiction to impose a variety of disciplinary sanctions upon a finding of a violation of the HORA. D.C. Official Code, § 3-1201.03; *Mannan v. District of Columbia Board of Medicine*, 558 A.2d 329, 333 (D.C.1989). The Council of the District of Columbia, in amending the HORA, “intended to strengthen enforcement of its licensing laws.” *Davidson v. District of Columbia Board of Medicine*, 562 A.2d 109, 113 (D.C.1989). And the HORA “was designed to ‘address modern advances and community needs with the paramount consideration of protecting the public interest.’” *Joseph v. District of Columbia Board of Medicine*, 587 A.2d 1085, 1088 (D.C.1991) (*quoting* Report of the D.C. Council on Consumer and Regulatory Affairs on Bill 6-317, at 7 (November 26, 1985)) (emphasis added by court).

Background

Respondent has been licensed to practice medicine and surgery in the District of Columbia since February 11, 1993. Respondent is also licensed in Virginia.

By an order dated August 29, 2013 (the “Virginia Suspension Order”), the Virginia Board of Medicine (the “Virginia Board”) summarily suspended Respondent’s license to practice medicine in Virginia, because his prescription habits demonstrated an “incompeten[ce] to practice medicine and surgery with reasonable skill and safety and represent[ed] a danger to patients and the public,” as evidenced by the factual allegations set forth in the Statement of Particulars supporting the summary suspension of Respondent’s Virginia license. The summary suspension of Respondent’s license to practice medicine in Virginia, therefore, was based on allegations of professional incompetence, mismanagement and the prescription of scheduled controlled substances without legitimate medical purposes.

The Board received notice of the Virginia Suspension Order and subsequently recommended to the Director of the District of Columbia Department of Health (D.C. Department) that Respondent’s license to practice medicine in the District be summarily suspended under D.C. Official Code § 3-1205.15. Respondent did not contest the D.C. summary suspension.

Subsequent to the District of Columbia action, Respondent voluntarily entered into a Consent Order with the Virginia Board (the “Virginia Consent Order”) on September 25, 2014 to resolve the allegations stated in the aforementioned Statement of Particulars. In the Statement of Particulars, the Virginia Board chronicled information regarding 13 patients (one of whom expired in connection with Respondent’s prescription of Xanax (alprazolam) and Oxycontin (oxycodone)), to whom Respondent provided patient care from 2005 until 2013. Specific information as to each of the allegations regarding each patient is set forth in the Statement of Particulars. The Virginia Board specifically alleged the following:

- Respondent treated a patient for bipolar disorder, including depression and anxiety, by prescribing Zyprexa (olanzapine), Celexa (citalopram), Ativan (lorazepam) (Schedule IV), and Xanax (alprazolam) (Schedule IV), despite the fact that there was no evidence of proper screening or evaluation of such disorder to reach this diagnosis at any time prior to or during the relevant treatment period, nor was there any evidence of a referral to a mental health practitioner for proper assessment and treatment at any time during the relevant treatment period.
- Respondent prescribed Xanax (alprazolam) for anxiety, at times concomitantly with Ativan (lorazepam) (Schedule IV), from October 8, 2009, when the patient was 13 years old, and continuing through approximately February 15, 2013, instead of referring the patient for appropriate evaluation and/or adjunct psychological counseling.
- Respondent failed to adequately respond to indications that a patient required immediate treatment from a mental health care practitioner.
- Respondent prescribed, from October 10, 2006 through December 28, 2012, benzodiazepines, including Xanax (alprazolam), Klonopin (clonazepam) (Schedule IV) and/or Ativan (lorazepam), to treat a patient's anxiety, panic attacks and "stress-related symptoms," instead of referring the patient for appropriate evaluation and treatment, and/or adjunct psychological counseling.
- Respondent concomitantly prescribed to four patients multiple benzodiazepine medications and/or failed to cancel refill prescriptions, after diagnosing these patients with Attention Deficit Disorder with Hyperactivity (ADHD), and prescribing to them ADD/ADHD medications without sufficient objective evidence or diagnostic testing or studies to support those diagnoses. Respondent prescribed to some of these patients

Adderall (amphetamine salts) (Schedule II) and/or Concerta (methylphenidate) (Schedule II) and/or Vyvanse (lisdexamfetamine) (Schedule II) in escalating doses and/or quantities throughout the relevant period, and continued to prescribe these medications despite the patients' behavior that indicated abuse and/or misuse of these medications.

- Respondent failed to follow up on referrals to other practitioners or to consult and coordinate his care and treatment of these patients with physicians to whom he referred his patients or with physicians who were otherwise involved in the care of his patients.
- Contrary to sound medical judgment, on or about December 19, 2008, Respondent prescribed Percocet (oxycodone/ADAP) (Schedule II) 10 mg #45 and Xanax (alprazolam) 2 mg #90 to a then 17 year-old patient two days after she was treated at a hospital emergency department for a closed head injury following a physical assault by the patient's father (another of Respondent's patients), causing the 17 year-old patient to hit her head on a concrete wall. This patient's sister (another of Respondent's patients) had previously reported (on or about September 3, 2008) to Respondent that family members were abusing pills, marijuana and other substances, and that the 17 year-old patient had stolen all of the sister's Ambien (zolpidem) (Schedule IV). Moreover, the sister reported (on or about December 2, 2008) to Respondent that the 17 year-old patient had taken the sister's Ambien (zolpidem) and Lexapro (escitalopram) medications, and that 20 dosage units of Xanax (alprazolam) were missing. Thereafter, the 17 year-old patient expired on or about December 20, 2008, after ingesting lethal quantities of Xanax (alprazolam) and oxycodone.
- Respondent failed to obtain complete patient histories for 12 of the 13 subject patients whose records were reviewed, and failed to obtain histories for past intervention and

treatment for chronic pain conditions, prior to prescribing controlled substances, for nine of these 12 patients.

- From 2005 to 2013, Respondent regularly prescribed narcotics, benzodiazepines or other controlled substances for 11 of the 13 subject patients whose records were reviewed when those patients did not present to his office for an examination
- Respondent diagnosed medical conditions and prescribed narcotics and/or other controlled substances to seven of the 13 subject patients whose records were reviewed without sufficient objective evidence or diagnostic testing or studies to justify the prescriptions.
- Respondent allowed 11 of the 13 subject patients whose records were reviewed to have access to large quantities of controlled substances and failed to address the escalation or abuse of narcotics and benzodiazepine therapies and other noncompliance with his medication regimen and treatment plan, and failed to appropriately treat or refer these patients for treatment for substance abuse.
- Approximately five months after a patient's last treatment date, Respondent accessed the patient's prescription history from the Virginia Department of Health Professions' Prescription Monitoring Program (PMP) for a purpose not related to establishing a treatment history, and he did not use the PMP report for the care and treatment of this patient.
- Respondent provided deceitful or false information to the personnel/faculty of a dental school related to one of Respondent's patients, for whom Respondent had prescribed Adderall (amphetamine salts) and/or Vyvanse (lisdexamfetamine) between October, 2011 and March, 2013. Respondent reported that this patient exhibited symptoms supporting

hypoglycemic episodes in order for the patient to retake an examination, when there was no documentation of hypoglycemic episodes in the patient's medical record or any history of such events.

- Respondent failed to properly manage and maintain accurate and complete records for 12 of the 13 subject patients whose records were reviewed.

Each of the foregoing allegations was supported by specific factual information set forth in the Statement of Particulars supporting the Virginia order for summary suspension. The foregoing allegations are also the factual basis on which the Virginia Board issued the Virginia Consent Order.

On October 29, 2014, the D.C. Board considered the terms of the Virginia Consent Order and recommended to the Director of the D.C. Department of Health to vacate the summary suspension of Respondent license. On that recommendation, the Director vacated the summary suspension on November 25, 2014. The Board further determined that the Virginia Consent Order warranted reciprocal action with respect to Respondent's District of Columbia medical license. Accordingly, the Board voted to enter into a Consent Order with the Respondent which suspended Respondent's medical license for eighteen (18) months, from October 4, 2013, the date Respondent's license was summarily suspended, until April 3, 2015. During that period Respondent was ordered to comply with the requirements of the Virginia Consent Order dated September 25, 2014, and he also completed the required continuing medical education classes. At the conclusion of the period of suspension, Respondent's medical license was restored but was limited in that he was prohibited from prescribing, administering or dispensing any Schedule II, III and IV controlled substances for a minimum of twenty-four (24) months from the date of reinstatement (April 4, 2015) of his license. At the conclusion of the twenty-four month period

Respondent was authorized to petition the Board for the return of privileges regarding prescribing, administering or dispensing any Schedule II, III and IV controlled substances with good cause shown and a personal appearance before the Board. The Board has now considered his petition to reinstate his Schedule II, III and IV prescribing privileges, taking into consideration that, according to Respondent, those privileges have been restored in the states of Virginia, where the original action occurred, and Maryland, in which he is also licensed and had reciprocal disciplinary action taken against him. The Board has considered his petition and, waiving the appearance of the Respondent before it, agrees to the restoration of his privileges for prescribing, administering or dispensing any Schedule II, III and IV controlled substances as long as Respondent complies with certain required conditions that will enable the Board to monitor Respondent's prescribing practices.

Conclusions of Law

The Board is authorized, pursuant to D.C. Official Code § 3-1205.14(a)(3), to take reciprocal action when a licensee under the Board's governance has been disciplined by a licensing authority of another jurisdiction for conduct that would be grounds for Board action. In pertinent part, D.C. Official Code § 3-1205.14(a)(3) states:

Each board, subject to the right of a hearing as provided by this subchapter, on an affirmative vote of a quorum of its appointed members may take one or more of the disciplinary actions...against any person permitted by this subchapter to practice a health occupation regulated by the board in the District who is **disciplined by a licensing or disciplinary authority...of any jurisdiction for conduct that would be grounds for disciplinary action under this section.**
(Emphasis added)

Respondent demonstrated "incompeten[ce] to practice medicine and surgery with reasonable skill and safety and represent[ed] a danger to patients and the public," which resulted in professional incompetence, mismanagement and the prescription of scheduled controlled

substances without legitimate medical purposes, as evidenced in the Virginia Statement of Particulars. Had they occurred in the District, Respondent's actions would be a violation of numerous statutory and regulatory provisions under D.C. law, including D.C. Official Code §§ 3-1205.14(a)(5), (24), (25), (26) and (37), as well as 17 DCMR §§ 4612.1, 4612.7, 4612.8, 4616.1, 4616.4, 4616.5, 4616.6, 4616.7, 4616.8, 4616.9, 4616.10, 4616.11, 4616.12 and 4616.14. Therefore, Respondent was disciplined reciprocally under D.C. Official Code § 3-1205.14(a)(3). The Board remains concerned about Respondent's prescribing practices and is therefore amending the Consent Agreement in order to enable Respondent to resume his privileges for prescribing, administering or dispensing any Schedule II, III and IV controlled substances while retaining Board oversight of those practices.

ORDER

Based upon the foregoing, it is by the District of Columbia Board of Medicine hereby, **ORDERED**, that Respondent's privileges for prescribing, administering or dispensing any Schedule II, III and IV controlled substances are hereby restored; and it is further

ORDERED, that Respondent shall within thirty (30) days of signing this Consent Agreement enroll as a prescriber in the Prescription Drug Monitoring Program (PDMP) of the District of Columbia, Maryland and Virginia and provide an attestation to the Board that he has done so; and it is further

ORDERED, that prior to prescribing any Schedule II, III or IV controlled substance to a patient, Respondent will review that patient's information in the appropriate PDMP to ensure the prescription is medically appropriate and within the standard of care, given the patient's prescription and dispensation history, and document the results of the review in the patient's medical record; and it is further

ORDERED that Respondent will provide to the Board on a quarterly basis, beginning three (3) months after enrolling in each PDMP, a “PDMP Prescriber Report” for the District of Columbia, Maryland and Virginia, from which the Board will determine if Respondent is within the statistical standard of his peer group. The quarterly reports shall be submitted to: Lisa Robinson, Health Licensing Specialist for the Board of Medicine, 899 N. Capitol Street, NE, 2nd Floor, Washington, DC 20002; and it is further

ORDERED, that, if for some reason Respondent is unable to comply with this Order in (1) enrolling in each PDMP or (2) providing quarterly PDMP Prescriber Reports to the Board, he will provide a full written explanation and be available to the Board for further explanation if necessary; and it is further

ORDERED that the investigators from the Department of Health will on behalf of the Board randomly audit ten medical records of Respondent at least once a year for two years to monitor compliance with this Order and appropriate prescribing practices; and it is further

ORDERED, that after two (2) years of satisfactory (i.e. within the average of Respondent’s peer group) reporting and record audits that Respondent may petition the Board to terminate this Consent Order; and it is further

ORDERED, that Respondent shall comply with all laws, rules, and regulations of the District of Columbia; and it is further

ORDERED, that if Respondent fails to satisfactorily fulfill the terms of this Consent Order the Board may issue a notice of intent to take formal disciplinary action against Respondent’s license.

DISTRICT OF COLUMBIA BOARD OF MEDICINE

02/05/18

Date



By: Andrea Anderson, MD, MAAFP
Chairperson

CONSENT OF RESPONDENT

• My signature on the foregoing Amended Consent Order signifies my acceptance of the terms and conditions of the Amended Consent Order and my agreement to be bound by its provisions. By (initial)

• I acknowledge the validity of this Amended Consent Order, as if made after a hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf, and to all other substantive and procedural due process protections provided by the laws of the District of Columbia and the United States of America. By (initial)

• I also recognize that I am waiving my right to appeal any adverse ruling of the Board had this matter gone to a hearing. By (initial)

• I expressly acknowledge that by signing this Amended Consent Order, I am voluntarily waiving my right to require the Board to charge me through a notice of intent to take disciplinary action and to require the government to prove such violation by a preponderance of the evidence. By (initial)

• I also expressly acknowledge by signing this Amended Consent Order, I am waiving my right to confront witnesses, give testimony, to call witnesses on my behalf, and to other substantive and procedural due process protections provided by the laws of the District of Columbia and the United States of America. By (initial)

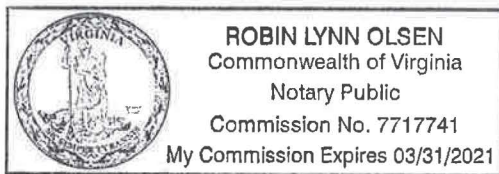
• I further expressly acknowledge that by signing this Amended Consent Order, I am waiving my right to appeal this Amended Consent Order, as well as waiving any and all rights, whatsoever, I would have to challenge or appeal that Board's decision. By (initial)

• I have had an opportunity to review this document and to consult with my own legal counsel. I choose willingly to sign this Amended Consent Order, and I understand its meaning and effect. BY (initial)

11/30/2017
Date

Benson W. Yu
Benson W. Yu, M.D., License No. MD19992

Sworn to and subscribed before me this 30th day of NOVEMBER, 2017.



Robin L Olsen
Notary Public
My Commission Expires: 03/31/2021

THIS CONSENT ORDER CONSTITUTES A DISCIPLINARY ACTION AND SHALL BE DEEMED A PUBLIC DOCUMENT AND SHALL BE DISTRIBUTED AS APPROPRIATE.