

**IN THE MATTER OF
LINDA J. WHITBY, M.D.**

Respondent

License Number: D17162

*** BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS
* Case Number: 7716-0088**

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ORDER AFTER SHOW CAUSE HEARING

On May 20, 2016, Linda J. Whitby, M.D. entered into a Consent Order with Disciplinary Panel A of the Maryland State Board of Physicians ("Panel A") that required her to meet with a panel-approved peer supervisor, who is board-certified in addiction medicine. Dr. Whitby was required to meet in-person with the supervisor at least once each month to review at least five patients' records. In July, 2016, Panel A approved Dr. Whitby's peer supervisor ("Supervisor A"). Dr. Whitby failed to attend two scheduled appointments with Supervisor A and failed to provide Supervisor A with her patient list, thereby failing to comply with the conditions of the Consent Order.

On January 18, 2017, Panel A issued a Violation of Consent Order and Notice to Show Cause why additional sanctions should not be imposed against her license, based on her violation of the Consent Order. Dr. Whitby appeared at a Show Cause hearing on February 8, 2017, before Panel A. The State argued that Dr. Whitby's violation merited a revocation of her license. Dr. Whitby did not deny that she violated the Consent Order but argued against further sanction.

FINDINGS OF FACT

UNDERLYING ACTION

Dr. Whitby was licensed by the Board in 1974. She previously concentrated her practice in obstetrics and gynecology and preventative medicine, but her current

practice is managing opioid dependent patients. In 2014 and 2015, the Board received complaints against Dr. Whitby regarding her treatment of opioid dependent patients. As part of the investigation, the Board subpoenaed the medical records of 11 patients and sent them to two peer reviewers to determine whether her treatment was within the standard of care and whether her medical recordkeeping was adequate. The reviewers both found that Dr. Whitby failed to meet the standard of care and failed to keep adequate medical records in all 11 cases. On February 19, 2016, based on the negative peer review findings, Dr. Whitby was charged with standard of care and medical recordkeeping violations. On May 20, 2016, Dr. Whitby entered into a Consent Order with Panel A, which concluded as a matter of law that she violated the standard of care and that her recordkeeping was inadequate, in violation of Health Occ. § 14-404(a) (22) and (40).

Panel A found that Dr. Whitby failed to document the patients' complaints, did not document medical histories, failed to conduct or document thorough physical examinations, often failed to document drug history and previous drug treatments as part of her pain prescribing, and failed to complete an addiction assessment or psychiatric assessment. In addition, Panel A found that Dr. Whitby failed to document the rationale for prescribing medications, prescribed drugs without addressing or documenting the condition for which it was prescribed, failed to document the reasons for increasing dosages or changes in types of medication, and failed to discuss the benefits, risks, and side effects of treatment. The medical records further revealed that Dr. Whitby's limited history and physical examinations were often inconsistent with her diagnoses. In some instances, Dr. Whitby failed to conduct any initial drug screenings

or periodic drug screenings. For other patients, Dr. Whitby failed to address or even acknowledge patients' failed urine drug screens; failed to address high blood pressure, weight gain, or co-morbid psychiatric conditions; and often wrote that the patient was stable and compliant when there was significant evidence to the contrary, such as failed drug tests, drug cravings, unexplained lapses in treatment, weight changes, and other concerns.

In response to these violations, Panel A and Dr. Whitby agreed to enter into a Consent Order that required Dr. Whitby to obtain the necessary education and supervision to address her practice deficiencies. Under the terms of the Consent Order, Dr. Whitby was reprimanded and placed on probation for a minimum of two years with several terms and conditions. Dr. Whitby agreed to take three courses and subject her practice to chart and/or peer review. Additionally, the Consent Order required Dr. Whitby's practice to be supervised by a peer supervisor as follows:

5. The Respondent's medical practice shall be supervised by a panel-approved peer supervisor who is board certified in addiction medicine. Within thirty (30) days, the Respondent shall provide the panel with the name and professional background information of the supervisor whom she is offering for approval. . . . Each month the supervisor shall review the patient records, chosen by the supervisor, of at least five (5) of the Respondent's patients. The supervisor shall meet in-person with the Respondent at least one (1) time each month. Discussion at their in-person meeting shall include the care the Respondent has provided for specific patients and detailed feedback from the supervisor on the Respondent's practices. The supervisor shall be available to the Respondent for consultations on any patient and shall observe the Respondent's practice and have access to the Respondent's patients' records If there are indications that the Respondent poses a substantive risk to patients, the supervisor shall immediately report his or her concerns to the Board.

The Consent Order also stated that:

if the Board or Panel A determines, after notice and . . . a show cause hearing before the Board or Panel A if there is no genuine dispute as to a material fact, that the Respondent has failed to comply with any term or condition of probation or this Consent Order, the Board or Panel A may . . . revoke the Respondent's license to practice medicine in Maryland. . . .

Dr. Whitby agreed to the conditions and signed the Consent Order.

VIOLATION OF THE CONSENT ORDER

On June 20, 2016, Dr. Whitby submitted the name of Supervisor A for the Panel's approval. Panel A approved Supervisor A as Dr. Whitby's peer supervisor on July 13, 2016. On July 19, 2016, Supervisor A attempted to contact Dr. Whitby by email and asked Dr. Whitby to contact her by telephone or email. Dr. Whitby did not respond to Supervisor A's email. On August 1, 2016 Supervisor A again emailed Dr. Whitby, informing Dr. Whitby that she had received a summary of her duties from the Board and asking Dr. Whitby to call or email regarding logistics of the chart review and monthly meeting. Dr. Whitby replied via email on August 7, 2016, asking about details about how to proceed and attaching the mission statement and other details about the non-profit at which she was working. On August 9, 2016, Supervisor A asked via email for a list of Dr. Whitby's current buprenorphine patients (to randomly select patient records for review), asked for possible dates to meet, and provided dates that she was available. Dr. Whitby did not respond to the email and did not provide the patient list. On August 15, 2016, Supervisor A sent Dr. Whitby a text message asking her to call the following day. On August, 16, 2016, Dr. Whitby called Supervisor A and they agreed to meet on August 19, 2016 at 3:00 p.m.

On August 19, 2016, at 2:00 p.m., Supervisor A sent a text message to Dr. Whitby in order to confirm their 3:00 p.m. appointment. Dr. Whitby replied saying that

she would be 15 minutes late. At 2:50 p.m., she sent a text message from her car, saying that she was stuck in traffic and had a headache. Supervisor A responded that she was already at the meeting location and asked how far away Dr. Whitby was from their meeting site. Dr. Whitby responded by text message that she was 40 minutes away. Supervisor A suggested cancelling the meeting and proposed meeting at the same place and time on September 2, 2016. Dr. Whitby replied by text message: "Okay, that works..." Supervisor A also replied that her hospital had a secure internet document sharing website, similar to Dropbox, and that she could upload a copy of her list of current buprenorphine patients into the online folder.

On August 31, 2016, Supervisor A sent a text message to Dr. Whitby noting that Dr. Whitby had not accepted the invitation to the online folder and had not uploaded the document list. Supervisor A also asked her to confirm that she could meet her on September 2nd. Dr. Whitby did not respond and did not provide Supervisor A with a patient list. On September 2nd, at 3:15 p.m. (15 minutes after the agreed meeting time), Supervisor A sent Dr. Whitby an email stating that the supervisory relationship was not working, Dr. Whitby had not met the conditions of the supervision, and she would inform the Board that she would no longer serve as Dr. Whitby's supervisor. Supervisor A informed the Board of her decision to withdraw as Dr. Whitby's supervisor that same day.

By entering into the Consent Order, Dr. Whitby undertook the responsibility to meet with a peer supervisor and to give that supervisor access to patient records to evaluate Dr. Whitby's treatment. Dr. Whitby failed to comply with the peer supervisor process detailed in the Consent Order. Once her supervisor was approved, Dr. Whitby

passively waited for the supervisor to contact her. Dr. Whitby did not respond to several correspondences from Supervisor A for weeks at a time. Dr. Whitby never complied with Supervisor A's request to send her patient list so that she could review a sampling of cases. Supervisor A asked for the patient list several times but was never given the list. Dr. Whitby failed to attend either scheduled appointment with Supervisor A and did not make any affirmative effort herself to schedule a meeting with Supervisor A.

More recently, Dr. Whitby was told to provide the Board with a name and Curriculum Vitae ("CV") of another supervisor on December 13, 2016 and again in a January 11, 2017 letter. Dr. Whitby had not submitted any proposed supervisors to the Board in response to those messages by the February 8, 2017 hearing. In the nearly nine months since the Consent Order, Dr. Whitby continues to see patients without any supervision.

SHOW CAUSE HEARING

On January 18, 2017, the Attorney General's Office issued a Violation of Consent Order and Notice to Show Cause. Dr. Whitby did not submit any written response. On February 8, 2017, Disciplinary Panel A held a Show Cause hearing at which Dr. Whitby appeared. At the hearing, the State argued that Dr. Whitby's failure to meet with Supervisor A constituted a violation of the Consent Order and that her failure to comply with the terms of the agreement and her lack of supervision for this lengthy period of time merited a revocation of her license.

Dr. Whitby did not deny that she failed to meet with Supervisor A or that she failed to submit her patient list to Supervisor A. Instead, Dr. Whitby claimed that her failure to meet with Supervisor A was due to traffic and due to her medical conditions.

At the hearing, Dr. Whitby also noted that she had successfully complied with the Consent Order provisions regarding the completion of courses. She also presented an email from a Board probation analyst from December 13, 2016, telling her to hold off on making any supervisory arrangements until she received follow-up from the Board. However, the Board probation analyst again emailed Dr. Whitby 45 minutes after her first email and told Dr. Whitby to supply the Board with a name and CV of a new supervisor. Dr. Whitby did not do so. On January 11, 2017, the Board's probation analyst again requested that Dr. Whitby submit a name and CV of a new supervisor. Dr. Whitby had still not offered a new supervisor by the date of the hearing, February 8, 2017. It is uncontroverted that Dr. Whitby failed to meet with Supervisor A, and has not been supervised since the effective date of the Consent Order. It is also uncontroverted that Dr. Whitby never submitted a list of her patients to Supervisor A for review of the medical records. Dr. Whitby's failure to meet monthly and review a minimum of five patient charts with a peer supervisor is a violation of the Consent Order and is undisputed.

CONCLUSIONS OF LAW

Disciplinary Panel A concludes that Dr. Whitby violated probationary condition "5" of the May 20, 2016 Consent Order.

ORDER

On an affirmative vote of a majority of a quorum of Disciplinary Panel A, it is hereby

ORDERED that Linda J. Whitby, M.D.'s license to practice medicine in Maryland is **REVOKED**. The **REVOCATION** goes into effect in **15 business days**; and it is further;

ORDERED that this Order is a public document.

03/08/2017
Date

Christine A. Farrelly
Christine Farrelly, Executive Director
Maryland State Board of Physicians