

**BEFORE THE BOARD OF MEDICAL EXAMINERS
STATE OF MONTANA**

_____)	Docket No. CC-03-0082-MED
IN THE MATTER OF THE DISCIPLINARY)	Hearings Bureau Case No. 743-2003
TREATMENT OF THE LICENSE OF)	
R. MICHAEL HANNON, M.D.,)	PROPOSED FINDINGS OF FACT;
License No. 4775)	CONCLUSIONS OF LAW;
)	AND ORDER
_____)	

I. INTRODUCTION

This matter stems from a complaint issued by the Screening Panel of the Board of Medical Examiners that found probable cause to believe that Dr. R. Michael Hannon, M.D., (licensee) had engaged in unprofessional conduct in violation of Mont. Code Ann. § 37-1-316(7) and Mont. Code Ann. § 37-1-316(18). This matter proceeded to contested case hearing before Hearing Examiner Gregory L. Hanchett on February 10, 2003. Jack Atkins, agency legal counsel, represented the licensing bureau of the Department of Labor and Industry. The licensee appeared *pro se*.

Department Exhibits 1 through 4 were admitted into evidence without an objection. Lavelle Potter, an investigator for the Board of Medical Examiners, testified on behalf of the department. The licensee testified on his own behalf. Based on the evidence adduced at the hearing, the following findings of fact, conclusions of law, and recommended decision are made.

II. FINDINGS OF FACT

1. At all times relevant to this proceeding, the licensee has been licensed to practice medicine in the state of Montana.

2. From December 9, 1997 until November 8, 1998, the licensee worked as a physician at the Sea View Family Medical Center in Craig, Prince of Wales Island, Alaska. While there, the licensee began treating a female patient, P.P., who suffered from bipolar disease and experienced hallucinations. During their first visit, the licensee established a treatment plan for P.P. to stabilize her condition.

3. On April 30, 1998, P.P. saw the licensee for a follow-up visit regarding her psychiatric condition. On May 7, 1998 and July 9, 1998, the licensee ordered blood tests on P.P. to determine whether P.P.'s Lithium levels were appropriate.

4. On August 31, 1998, the licensee saw P.P. for a follow-up visit. During that visit, the licensee invited P.P. to his house for dinner that evening. P.P. accepted. After having dinner together, P.P. and the licensee engaged in sexual intercourse.

5. On September 3, 1998, the licensee telephoned P.P. to inform her of the results of a recent Lithium level test he had ordered. On that date, the licensee noted in P.P.'s medical chart that P.P. had an appropriate level of Lithium in her system and he did not "feel inclined to adjust her Lithium dose." Exhibit 2, p. 4. The licensee further noted that "the plan will be to just treat with Traxene for when she gets into spells that last any period of time." He also prescribed Ativan for "peak activities." There is no notation in P.P.'s chart to indicate that the licensee had ceased treating her.

6. The licensee's sexual relationship with P.P. while still treating her led the state of Alaska to institute a disciplinary proceeding against the licensee's Alaska medical license. The licensee voluntarily surrendered his Alaska medical license on August 29, 2000 as a result of this proceeding. Exhibit 1, Certified copy of "Agreement to Voluntary Surrender of Medical License."

7. The licensee's sexual relationship with P.P. while still treating P.P. also resulted in disciplinary proceedings against the licensee's Wisconsin medical license. On November 14, 2001, the licensee surrendered his license to practice in Wisconsin as a result of those proceedings. Exhibit 2, Certified copy of Wisconsin "Final Decision and Order."

III. CONCLUSIONS OF LAW

A. The Licensee Committed Unprofessional Conduct

1. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(7) denial, suspension, revocation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

* * *

(18) conduct that does not meet the generally accepted standards of practice.

2. The Department bears the burden of proof in this matter to show by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 289 Mt. 407, 961 P.2d 126 (1998).

3. The disciplinary action undertaken by Wisconsin and Alaska and the resulting surrender of the licensee's medical licenses in those states demonstrates a violation of Mont. Code Ann. § 37-1-316(7).

4. Sexual contact occurring while the physician-patient relationship is ongoing falls below generally accepted standards of practice and constitutes unprofessional conduct. Sexual

contact that occurs during the physician-patient relationship constitutes sexual misconduct as such conduct "detract[s] from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgement concerning the patient's health care, and ultimately may be detrimental to the patient's well being." American Medical Association Ethical rule E-8.14.

5. The licensee's physician-patient relationship with P.P. did not end before his sexual liaison with her occurred. He continued to treat P.P. even after the sexual encounter with her. Because his sexual relationship with P.P. occurred while he continued to treat her, the licensee violated Mont. Code Ann. § 37-1-316(18).

B. The Appropriate Sanction

6. Upon a finding that a licensee has committed unprofessional conduct, the regulatory board may impose any or all of a wide variety of sanctions including placing a licensee on probation and satisfactory completion of remedial education. Mont. Code Ann. § 37-1-312. To determine which sanctions are appropriate, a regulatory board must first consider sanctions that are necessary to protect the public and only after that determination has been made can the board then consider remedies designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

7. The licensee does not yet acknowledge that his conduct violated professional standards despite clear evidence that it does. Furthermore, at the hearing the licensee attempted to shift responsibility for his sexual misconduct to P.P. by suggesting that she seduced him. Whether or not that happened, the licensee was ethically bound not to engage in a sexual relationship with P.P. while he treated her and maintained a physician-patient relationship with her. His inability to control his conduct, together with his continued refusal to accept responsibility for his conduct, militates in favor of the imposition of probation, required continuing medical education, and monitoring.

8. Counsel for the board has recommended that (1) the licensee be placed on probation for a period of five years, (2) that the licensee be ordered to attend 30 hours of continuing medical education which addresses boundary issues and successfully complete that education within six months of the issuance of the final order in this matter, and (3) that the licensee be ordered to enter into a program with the Montana Professional Assistance Program (MPAP) to address appropriate boundary issues and monitor the licensee's progress toward rehabilitation. Counsel for the board has not suggested why five years of probation is necessary as opposed to some lesser number. In light of the fact that the board seeks only 30 hours of continuing medical education that must be completed within six months, a three-year term of probation is adequate to protect the public.

IV. RECOMMENDED ORDER

Based on the foregoing, the hearing examiner recommends that the board enter its order placing the licensee on three years probation with the terms that (1) the licensee at his own expense enroll in and successfully complete 30 hours of remedial education within six months of the final order issued in this matter, the type of education to be determined by the Board of

Medical Examiners, and (2) that the licensee enter into a contract with MPAP which addresses boundary issues and ensures MPAP monitoring of the licensee's practice as determined by the Board of Medical Examiners for a period of three years, to run concurrently with the licensee's probation.

DATED this 11th day of March, 2003.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.