

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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In The Matter Of
BETTY LOU WHITENER, M.D.
(Certificate No. 009122)
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No. 99-I-059

CONSENT
ORDER

An investigation conducted by the Investigating Officer of the Louisiana State Board of Medical Examiners (the "Board") indicates that Betty Lou Whitener, M.D. ("Dr. Whitener"), was charged with and entered a plea of nolo contendere to Medicaid Fraud, as a result of her submission of deceptive and unfounded claims in connection with her practice of medicine. The information gathered by the Investigating Officer reveals that on November 16, 1998, Dr. Whitener was arrested and charged with twenty (20) counts of Medicaid Fraud and one (1) count of Felony Theft.¹ The charges alleged, more particularly, that Dr. Whitener defrauded the Louisiana Medicaid Program over a two year period from 1996-1998, by submitting billings for numerous face-to-face physician office visits which were in fact conducted by a physician assistant while she was traveling out of state or out of the country.

In response to such charges, on July 2, 1999, the physician entered into an agreement with the government to plead nolo contendere to one (1) count of Medicaid Fraud, in violation of La. Rev. Stat. §14:70.1. In addition, Dr. Whitener agreed to pay restitution to the Louisiana Department of Health and Hospitals in the amount of \$78,083.67 for monies paid to her for which she was not entitled, a civil penalty of \$70,000.00 and \$6,916.33 as the cost of investigation, all of which totaled \$155,000.00.² In conformity with her agreement, on July 2, 1999, the physician appeared in court and entered a plea of nolo contendere to one (1) count of Medicaid Fraud. The court accepted Dr. Whitener's plea, deferred imposition of sentence for a period of three (3) years, placed her on active, supervised probation for three (3) years, required that she satisfy all of the terms of her plea agreement, pay an additional fine of \$1,000.00, court costs and serve fifty (50) hours of community service.³

¹La. Rev. Stat. §§14:70.1 and 14:67; Warrant of Arrest, Affidavit, *State of Louisiana vs. Betty Lou Whitener, M.D.*, 19th JDC, Parish of East Baton Rouge, St. of Louisiana, (Nov. 16, 1998).

²Plea Agreement, *State of Louisiana vs. Betty Lou Whitener, M.D.*, No. 12-98-150, Sec. "H", 19th JDC, Parish of East Baton Rouge, St. of Louisiana (July 2, 1999).

³See: Arraignment, *State of Louisiana vs. Betty Lou Whitener, M.D.*, No. 12-98-150, Sec. "H", 19th JDC, Parish of East Baton Rouge, St. of Louisiana (July 2, 1999).

As evidenced by her subscription hereto, Dr. Whitener acknowledges the substantial accuracy of the foregoing information and that such acknowledgment and the reported information would provide the Investigating Officer herein with probable cause to pursue formal administrative proceedings against her, for violation of the Louisiana Medical Practice Act, La. Rev. Stat. §37:1285A(1),⁴ (2)⁵ and (11),⁶ constituting sufficient cause for the final revocation or suspension of her license to practice medicine in the state of Louisiana.

Nevertheless, on the basis of all of the information and reports received and reviewed, and on the recommendation of the Investigating Officer respecting the pending investigation, the Board has concluded that its responsibility to ensure the health, safety and welfare of the citizens of this state against the unprofessional, unqualified and unsafe practice of medicine, La. Rev. Stat. §37:1261, will be effectively served by entry of the Order set forth hereinafter, by consent.

Recognizing her right to have administrative adjudication of the charges which have been asserted, at which time she would be entitled to be represented by legal counsel, to call witnesses and to present evidence on her own behalf in defense or in mitigation of the charges made, and to a decision thereon by the Board based upon written findings of fact and conclusions of law, pursuant to La. Rev. Stat. §§49:951, *et seq.*, Dr. Whitener, nonetheless, hereby waives her right to formal adjudication and, pursuant to La. Rev. Stat. §49:955(D), consents to entry of the Order set forth hereinafter. By her subscription hereto, Dr. Whitener also acknowledges that she waives any right to which she may be entitled pursuant to the Louisiana Administrative Procedure Act, La. Rev. Stat. §§49:951, *et seq.*, or which otherwise may be afforded to her by law, to contest her agreement to or the force and effect of this document in any court or other forum relating to the matters referred to herein. By her subscription hereto, Dr. Whitener also hereby authorizes the Investigating Officer designated by the Board with respect hereto, as well as his legal counsel assisting him in connection herewith, to present this Consent Order to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation, and she waives any objection to such disclosures under La. Rev. Stat. §49:960. Dr. Whitener expressly acknowledges that the disclosure of information to the Board by the Investigating Officer or his legal counsel shall be without prejudice to the Investigating Officer's authority to pursue formal administrative charges against her or to the Board's capacity to adjudicate such charges, should the Board decline to approve this Consent Order.

Accordingly, in consideration of the foregoing, and pursuant to the authority vested in the Board by La. Rev. Stat. §37:1285 and La. Rev. Stat. §49:955(D);

⁴La. Rev. Stat. §37:1285A(1) provides that the Board may refuse to issue, or may take action against the license of a physician for '[C]onviction of a crime or entry of a plea of guilty or nolo contendere to a criminal charge constituting a felony under the laws of Louisiana or of the United States.'

⁵La. Rev. Stat. §37:1285A(2) provides that the Board may refuse to issue, or may take action against the license of a physician for '[C]onviction of a crime or entry of a plea of guilty or nolo contendere to any criminal charge arising out of or in connection with the practice of medicine.'

⁶La. Rev. Stat. §37:1285A(11) provides that the Board may refuse to issue, or may take action against the license of a physician for '[M]aking or submitting false, deceptive or unfounded claims, reports, or opinions to any patient, insurance company or indemnity association, company, individual, or governmental authority for the purpose of obtaining anything of economic value.'

IT IS ORDERED that the license of Betty Lou Whitener, M.D., to engage in the practice of medicine in the state of Louisiana, as evidenced by Certificate No. 009122, be, and the same is hereby, effective as of the date of the Board's acceptance of this Order, **SUSPENDED** for a period of **ONE (1) YEAR**;

IT IS FURTHER ORDERED that all but the first three (3) months of the one year period of suspension ordered hereinabove shall be and the same is hereby **STAYED**;

IT IS FURTHER ORDERED that Dr. Whitener shall not practice medicine in any form in the state of Louisiana until and unless the Board issues an order reinstating her license. As a prerequisite to reinstatement consideration by the Board Dr. Whitener shall, in addition to having served the three months of active suspension imposed upon her license hereinabove, demonstrate that she has complied with the following term and condition:

(1) Special Purpose Examination ("SPEX"). Dr. Whitener shall take and successfully pass the Special Purpose Examination ("SPEX") offered by the Federation of State Medical Boards of the United States. In accordance with the Board's rules, should Dr. Whitener fail to successfully complete and pass the SPEX examination on her fourth attempt, she will not be permitted further attempts at passage nor will she be eligible for reinstatement of her license to practice medicine in Louisiana. In such an event, her license to practice medicine shall be suspended indefinitely with reinstatement thereafter conditioned upon her acceptance of and strict compliance with such terms, conditions and restrictions as the Board, in its sole discretion, may determine to be appropriate.

IT IS FURTHER ORDERED that following the actual period of suspension and the successful passage of the SPEX Examination imposed by this Order, the license of Dr. Whitener to practice medicine in the state of Louisiana shall be reinstated **ON PROBATION** for a period of three (3) years from the date of reinstatement; *provided, however*, that the resumption of Dr. Whitener's practice of medicine in the state of Louisiana shall be subject to her acceptance of and strict compliance with the following terms, conditions and restrictions:

(A) PROHIBITION AGAINST SERVING AS SUPERVISING PHYSICIAN FOR PHYSICIAN ASSISTANT. Dr. Whitener shall not, for the duration of her medical career, employ, retain, associate or supervise a physician assistant—either primarily or as *Locum Tenens*. Consistent with this provision, Dr. Whitener shall not be eligible for registration as a supervising physician of a physician assistant. Moreover, this prohibition shall survive the term of probation set forth hereinabove and shall be in force and effect so long as Dr. Whitener holds a license to practice medicine in the state of Louisiana.

(B) SURRENDER OF DISPENSING LICENSE/REGISTRATION. Concurrent with the Board's approval hereof, Dr. Whitener shall surrender for cancellation the dispensing registration issued to her by the Board and she shall not thereafter dispense and/or administer medications in the state of Louisiana. Moreover, Dr. Whitener shall not be eligible for, and shall not at any time in the future seek reinstatement of, registration from the Board to dispense and/or administer medications.⁷ This condition shall survive

⁷See: 46XLV. §§6501-6559.

the term of probation enumerated hereinabove, and shall be in force and effect so long as Dr. Whitener holds a license to practice medicine in the state of Louisiana.

(C) COLLABORATING PHYSICIAN FOR ADVANCED REGISTERED NURSE WITH PRESCRIPTIVE AUTHORITY ("APRN"). Dr. Whitener shall not for the duration of her medical career serve as nor be eligible to serve as a collaborating physician for an APRN with or without prescriptive authority. This prohibition shall survive the term of probation set forth hereinabove and shall be in force and effect so long as Dr. Whitener holds a license to practice medicine in the state of Louisiana.

(D) CONTINUING MEDICAL EDUCATION. Dr. Whitener shall obtain not less than fifty (50) credit hours per year for three (3) years through attendance at and participation in continuing medical education programs ("CME") accredited by and qualifying for the Physician's Recognition Award of the American Medical Association, and she shall obtain such award within three (3) years from the date hereof. On or before December 1st of each year for the three (3) years following the effective date of this Consent Order, Dr. Whitener shall cause to be submitted to the Board written certification of the CME programs and credits completed by her during the preceding twelve (12) months.

(E) COMMUNITY SERVICE. Separate from and in addition to the community service imposed by the court in connection with her criminal plea, Dr. Whitener shall perform fifty (50) hours of Board approved medical community service during each of the three (3) years of her period of probation imposed by this Order. Such service shall be delivered in a facility or with an organization equipped to provide medical services and serving a needy or medically under-served population. Dr. Whitener's proposal for the medical community service shall be submitted to the Board in writing for approval within fifteen (15) days from the effective date of this Consent Order.

(F) MEDICAL ETHICS. Dr. Whitener shall, during the first year of her probationary period ordered herein, take a course on the subject of medical ethics, which is acceptable to and approved by the Board in writing.

(G) COOPERATION WITH BOARD'S PROBATION AND COMPLIANCE OFFICER. Dr. Whitener shall immediately notify the Board's Probation and Compliance Officer of any change in her current home and professional addresses and telephone numbers, and she shall direct all matters required pursuant to this Consent Order to the attention of the Probation and Compliance Officer, with whom she shall cooperate on all matters and inquiries pertaining to her compliance with the terms, conditions and restrictions of this Consent Order.

(H) CERTIFICATION OF COMPLIANCE WITH PROBATIONARY TERMS/PERSONAL APPEARANCE BEFORE THE BOARD. At least sixty (60) days prior to the conclusion of the probationary term imposed herein, Dr. Whitener shall provide the Board with an affidavit certifying that she has complied with each of the terms of probation imposed upon her by this Order. She shall, in addition, contact the Board and arrange for a personal appearance before the Board or its designee to consider her compliance with the terms and conditions of this Consent Order.

(I) ABSENCE FROM STATE—EFFECT ON SUSPENSION. Should Dr. Whitener at any time during the period of probation ordered herein be absent from the state of Louisiana, relocate to and/or take up residency in another state or country for a period of thirty (30) days or more, she will so advise the Board in writing. In such instance, the probationary period ordered herein and all terms and conditions thereof shall be deemed interrupted and extended and shall not commence to run until Dr. Whitener notifies the Board in writing that she has returned to, relocated in and/or taken up residency in the state of Louisiana. In such instance, Dr. Whitener shall not receive credit toward the probationary period for the time during which she was absent from the state of Louisiana.

IT IS FURTHER ORDERED that any violation or failure of strict compliance with any of the restrictions set forth by this Order by Dr. Whitener shall be deemed adequate and sufficient cause, upon proof of such violation or failure, for the revocation and cancellation of Dr. Whitener's license to practice medicine in the state of Louisiana or for such other action as the Board may deem appropriate, as if such violations were enumerated among the causes provided in La. Rev. Stat. §37:1285.

IT IS FURTHER ORDERED that this Consent Order shall be, and shall be deemed to be, a public record.

New Orleans, Louisiana, this 24th day of May, 2000.

**LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS**

By:


TRENTON L. JAMES, II, M.D.
Vice-President

In The Matter of:
Betty Lou Whitener, M.D.

CONSENT ORDER

6

ACKNOWLEDGMENT
AND CONSENT

STATE OF LOUISIANA

PARISH OF

East Baton Rouge

I, BETTY LOU WHITENER, M.D., hereby acknowledge, approve, accept and consent
to entry of the above and foregoing Order, this 9th day of May, 2000 ¹⁹⁹⁹.


BETTY LOU WHITENER, M.D.

WITNESSES:

Signature

Signature

Typed Name

Typed Name

Address

Address

Sworn to and subscribed before me, Notary, at Baton Rouge, Louisiana, this

9th day of May, 1999, in the presence of the two stated witnesses.


Notary Public

(Dec. 1999)

STATE OF LOUISIANA
PARISH OF East Baton Rouge

AFFIDAVIT

BEFORE ME, Notary Public, this day appeared

DR. BETTY WHITENER

who attests as follows:

1. That she has read the consent order prepared on behalf of the Louisiana State Board of Medical Examiners, has executed same and understands the terms and conditions of the consent order.

2. That she also attests that she would like the Board to accept the consent order and she waives any appearance she may be entitled to make before said board.


DR. BETTY WHITENER

SWORN TO AND SUBSCRIBED before me this 14th day of December, 1999,
at Baton Rouge, LA


NOTARY PUBLIC