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In The Matter Of
:
FORTUNATO J. PADUA, M.D.
:

FINAL DECISION

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As evidentiary hearing was convened before the Louisiana State Board of Medical Examiners (Board) to adjudicate alleged, specified violations of the Louisiana Medical Practice Act, La. Rev. Stat. 37:1261-91, by Fortunato J. Padua, M.D. (Dr. Padua), to-wit: "[c]onviction of a crime . . .," La. Rev. Stat. 37:1285(1); "[p]rescribing, dispensing or administering habit-forming or other legally controlled substances in other than a legal or legitimate manner," La. Rev. Stat. 37:1285(6); and "[p]rofessional or medical incompetency," La. Rev. Stat. 37:1285(12). The entire Board was present. Dr. Padua was present and was represented by legal counsel, Charmagne Padua, Esq.¹

Upon consideration of the evidence presented and the arguments and representations of Dr. Padua's legal counsel, pursuant to La. Rev. Stat. 49:958 and La. Rev. Stat. 37:1285, the Board renders the following findings of fact, conclusions of law and decision.

¹The hearing was conducted on December 17, 1982, but the record was thereafter held open to permit Dr. Padua to introduce additional documentary evidence and a written brief in his behalf. Following receipt of such materials, and in consideration of a request made by the physician's attorney, the Board determined to defer its decision pending Dr. Padua's exhaustion of appellate review of a criminal conviction which prompted institution of these proceedings.

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Findings of Fact

1. Dr. Padua is a physician duly licensed by the Board to practice medicine in the state of Louisiana. By virtue of state licensure and Federal registration, he is authorized, as a practitioner, to prescribe, dispense or administer controlled substances. At all times material to the activities which this administrative proceeding concerns, Dr. Padua was so licensed and authorized and engaged in the practice of medicine in Kenner, Louisiana.

2. By Federal grand jury indictment brought on May 6, 1982, Dr. Padua was charged with 59 counts of knowingly and intentionally dispensing and causing to be dispensed controlled substances not in the usual course of professional practice and not for a legitimate medical purpose, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2.² Each count of the indictment related to a separate prescription issued by Dr. Padua for controlled substances from February 11, 1981 to February 12, 1982. Such prescriptions included 21 prescriptions for Adipex-P (phentermine hydrochloride), 11 for Fastin (phentermine hydrochloride), 11 for Didrex (benzphetamine hydrochloride), seven for Valium (diazepam), six for Darvon Compound (propoxyphene hydrochloride), and one each for Tenuate Dospan (diethylpropion hydrochloride), Sanorex (mazindol) and meprobamate. United States v. Fortunato Joseph Padua, M.D., No. 82-167 (U.S.D. Ct., E.D. La.).

3. The Board takes administrative notice, supported by the record before it in this case, that Adipex-P, Fastin, Didrex and Tenuate Dospan are sympathomimetic amines with pharmacologic activities similar to amphetamines. They are indicated for use, as is the chemically distinct Sanorex, exclusively in management of exogenous obesity as a short-term (a few weeks) adjunct in a regimen of weight reduction based on caloric restrictions. Darvon and meprobamate are analgesics indicated in the short-term

²21 U.S.C. § 841(a)(1) makes it unlawful for any person knowingly and intentionally "to manufacture, distribute, or dispense . . . a controlled substance." Criminal liability as a "principal" is imposed by 18 U.S.C. § 2 on anyone who "aids, abets, counsels, commands, induces or procures" the commission of an offense or who "willfully causes an act to be done which if directly performed by him or another" would be a crime.

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treatment of mild to moderate pain. Valium as indicated for the management of anxiety disorders or the short-term relief of anxiety symptoms.

4. Dr. Padua's criminal trial, on a superseding indictment alleging the same substantive counts, commenced August 23 and concluded September 1, 1982. The evidence adduced at the trial, before a jury, indicated that some 13 law enforcement agents, associated with the Diversion Investigative Unit of the Louisiana State Police, had posed as patients under assumed names, appearing at Dr. Padua's office without appointments to obtain prescriptions for controlled substances. Virtually without exception, each of the agents on each visit to the physician was able to obtain a prescription for a controlled substance without providing any medical history and following only a cursory physical examination. In no instance did the agents provide any information to Dr. Padua indicating a condition which would provide medical justification for the prescription ultimately issued. In several instances, the drug prescribed had been specifically requested by name by the undercover agent. And on other occasions, agents received prescriptions despite the fact that they had advised him that they were buying or selling controlled substances illicitly. The record of prescriptions issued to such agents by Dr. Padua, moreover, indicates that additional prescriptions were issued to such agents upon their repeated returns to his office without regard to their individual record of weight loss and for a substantially longer period of time than is medically indicated even in a case where such prescriptions are justified.

5. Based upon its review of the evidence introduced at the physician's criminal trial,³ the Board finds that such evidence clearly and convincingly established that the several prescriptions issued by Dr. Padua to the law enforcement agents were issued in the total absence of any arguable or articulable medical justification therefor. We are not dissuaded from this finding of medical fact by Dr. Padua's testimony and evidence before the Board.⁴ Indeed, the physician's purported explanation of his justification for such prescriptions leaves us with the conviction, supported as well by the criminal trial record, that Dr. Padua's misunderstanding or

³The transcript of the criminal trial was introduced into evidence in the hearing before the Board.

⁴The physician did not testify during his criminal trial.

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ignorance of the proper uses, indications, and contraindications of the subject controlled substances, and his failure to recognize their dependence or addiction-inducing potential are indicative of medical incompetency in that respect.

6. Following trial, on September 1, 1982, the jury returned a verdict of guilty as to each of the 59 counts charged against Dr. Padua. By virtue of such verdict, on September 29, 1982, Dr. Padua was sentenced by the Hon. Edward J. Boyle, Sr., District Judge, to a concurrent term of five (5) years imprisonment on each of 12 counts, with imposition of sentence suspended as to the remaining counts. The physician was also sentenced to a two-year special term of parole following each of the counts on which he was sentenced to imprisonment to commence upon his release from custody. Finally, it was ordered by the court that Dr. Padua, during the term of his probation, "not engage in the practice of medicine as defined by Section 1262 of Title 37 of the Revised Statutes of the State of Louisiana." Judgment and Probation/Commitment order, United States v. Fortunato Joseph Padua, M.D., No. 82-167 (U.S.D. Ct., E.D. La., Sep. 29, 1982).

7. Following his conviction, Dr. Padua prosecuted an appeal to the United States Court of Appeals for the Fifth Circuit. The Board takes administrative notice that on May 23, 1983, the conviction was affirmed by the appellate court without opinion. United States v. Fortunato Joseph Padua, M.D., No. 82-3593, 707 F.2d 513 (U.S. Ct. App., 5th Cir., May 23, 1983).

8. The Board takes further notice that thereafter Dr. Padua petitioned the United States Supreme Court for certiorari. His petition was denied on October 3, 1983, sub nom. Fortunato Joseph Padua v. United States, No. 83-242, 104 S.Ct. 165, 78 L.Ed.2d 150 (Oct. 3, 1983). As of such date, accordingly, Dr. Padua's conviction became inarguably "final."

Conclusions of Law

Based on the foregoing findings of fact, the Board concludes, as a matter of law, that:

1. Adipex-P (phentermine hydrochloride), Fastin (phentermine hydrochloride), Didrex (benzphetamine hydrochloride), Valium (diazepam), Darvon Compound (propoxyphene hydrochloride), Tenuate Dospan (diethylpropion hydrochloride), Sanorex (mazindol)

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and meprobamate⁵ are controlled substances under both Louisiana and Federal law.

2. State and Federal law, recognizing the substantial hazards inherent in controlled substances, uniformly condition their use by physicians on strict adherence to statutes and regulations governing records, security, and the form of and cause for prescriptions. Federal regulations, for example, provide that

[a] prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual scope of his professional practice An order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of section 390 of the Act (21 U.S.C. 829) and the . . . person issuing it shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

21 C.F.E. § 1306.04(a). A virtually identical policy is embraced by Louisiana law.⁶

3. The law, thus, severely circumscribes a physician's privilege to make controlled substances available by explicitly requiring that a prescription may be issued (1) only within the usual scope of a physician's professional practice, (2) only for a legitimate medical purpose, and (3) only when the physician is acting in good faith in the administration of a bona fide treatment for a physical, mental or bodily ailment. Together, these requirements make it clear that controlled substances licensure and registration do not license a physician to disregard the demonstrated abuse and dependency-inducing potential of dangerous

⁵See La. Rev. Stat. 40:964; 21 C.F.R. § 1308.

⁶La. Rev. Stat. 40:961 (30) defines "prescription" as a written request for a drug or therapeutic aid issued by the licensed physician . . . for a legitimate medical purpose, for the purpose of correcting a physical, mental, or bodily ailment, and acting in good faith in the usual course of his professional practice.

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drugs. When a physician does so, he can no longer claim that the treatment is bona fide or that his prescription is issued in good faith in medical justification.

4. The prescriptions issued by Dr. Padua, as described in the foregoing findings of fact and in the record of the criminal proceedings against the physician, were issued without adequate or legitimate medical justification. As a result, such prescriptions were issued in other than a legal or legitimate manner. Accordingly, just cause exists for action against Dr. Padua's license, as provided by La. Rev. Stat. 37:1285(6).

5. We have concluded as a matter of fact, established by the evidence of record, that Dr. Padua's prescription of the controlled substances which are the subject of this proceeding and of his prior criminal trial, together with his purported explanations therefor, were indicative of medical incompetency in that regard. Accordingly, just cause exists for action against his license, as provided by La. Rev. Stat. 37:1285(12).

6. Dr. Padua has been convicted of a crime arising directly out of his practice of medicine in the state of Louisiana and, therefore, just cause exists for action against his license as provided for by La. Rev. Stat. 37:1285(1).

Decision

Considering the foregoing,

IT IS ORDERED that the license of Fortunato J. Padua, M.D. to practice medicine in the state of Louisiana, as evidenced by Certificate No. 7580, be and the same is hereby, revoked.

New Orleans, Louisiana, this 25 day of July, 1984.

LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS

By:


CHARLES B. ODOM, M.D.
President