

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF REGISTRATION)
FOR THE HEALING ARTS,)

Petitioner,)

vs.)

SURENDRA CHAGANTI, M.D.,)

Respondent.)

No. 10-0493 HA

DECISION

Surendra Chaganti, M.D., is subject to discipline because he committed unprofessional conduct and because two hospitals took final disciplinary action against him for actions that were related to unprofessional conduct. He is not subject to discipline for any conduct relating to patient care.

Procedure

On April 1, 2010, the State Board of Registration for the Healing Arts (“the Board”) filed a complaint seeking to discipline Dr. Chaganti. On February 15, 2011, the Board filed an amended complaint. On May 25, 26, 27, 2011, and October 15, 2012, we held a hearing on the complaint. Glenn E. Bradford and Nancy Skinner, with Glenn E. Bradford & Associates, P.C., represented the Board. Naren Chaganti represented Dr. Chaganti. The matter became ready for our decision on January 9, 2013, the date the last written argument was due.

Findings of Fact

1. Dr. Chaganti is licensed by the Board as a physician and surgeon. His license is, and was at all relevant times, current and active.

2. Dr. Chaganti currently practices Psychiatry at Mental Health Specialists, 2639 Miami Street, St. Louis, Missouri.

Statute of Limitation

3. By letter dated July 14, 2003, and addressed to the CEO of Alexius Hospital Medical Plaza (“St. Alexius”), Dr. Jitendra M. Patel accused Dr. Chaganti of “[r]epeated unethical behavior[.]”¹ The letter referenced Patient E.E.

4. On August 4, 2003, the Board received a letter dated July 29, 2003. The letter was signed by “Concern [sic] Psychiatrists.”² This letter referred to Dr. Chaganti’s “unethical and fraudulent medical services”³ and enclosed a printout of his patients on the date July 11, 2003.

5. By letter dated December 12, 2003, and addressed to the president and members of the Medical Executive Committee (“MEC”) at St. Alexius, Dr. Patel again accused Dr. Chaganti of unethical conduct, and referenced two patients, W.W. and M.J. The letter stated that Dr. Chaganti had lost his staff privileges at St. Anthony’s Hospital and St. Mary’s Hospital.

6. By letter dated April 28, 2004, the Board informed Dr. Chaganti that it had received a complaint against him.

7. On October 19, 2004, Dr. Chaganti met with the Board. The Board asked Dr. Chaganti if he had ever had action taken by any hospital against his staff privileges and he said that he had not. The Board questioned Dr. Chaganti about the patients referenced in the letters.

¹ Respondent’s ex. A at p. 5.

² *Id.* at p. 8.

³ *Id.*

8. By letter dated October 27, 2004, the Board informed Dr. Chaganti that it had closed the case due to insufficient evidence of any violation.

9. Dr. Chaganti signed and submitted a Missouri Board medical license renewal application (“the Application”), dated November 29, 2007, for the February 1, 2008 through January 31, 2009 renewal period. The Application included information that stated that SSM DePaul Hospital had refused to renew Chaganti’s staff privileges in May or June of 2006, for omitting information. The Application also indicated that SSM St. Mary’s Hospital revoked Chaganti’s staff privileges on or about August 2006.

10. The Application also indicated that in March of 2007, the United States District Court for the Eastern District of Missouri (“the E.D. Court”) entered judgment wherein Dr. Chaganti was to resign from the staff of St. Anthony’s Medical Center as part of a compromise with the Medical Center.

11. On April 1, 2010, the Board filed a complaint seeking to discipline Dr. Chaganti.

Count I – DePaul Hospital

12. On January 3, 2006, Dr. Chaganti submitted a reapplication for staff privileges at DePaul Hospital. On the reapplication form, there is a section for physicians to identify their primary hospital affiliation and another section that asks the physicians to identify other affiliations with hospitals.

13. On the reapplication form, Dr. Chaganti listed St. Alexius Hospital as his primary hospital, and listed affiliations with St. John’s Hospital and DePaul Hospital. Dr. Chaganti did not list St. Mary’s Hospital, Des Peres Hospital, St. Anthony’s Medical Center (“St. Anthony’s”) or Jefferson Memorial Hospitals on the reapplication form.

14. On April 24, 2006, the MEC reviewed and approved the request for reappointment to the Courtesy Staff at DePaul Hospital. The reapplication was approved because, at the time,

DePaul Hospital's policy was to verify only the primary hospital for Courtesy Staff reappointment.

15. The medical staff coordinator noticed that Dr. Chaganti had indicated on his reapplication that he wanted not just a reappointment to the Courtesy Staff, but to have his status changed from Courtesy Staff to Active Staff at DePaul Hospital. He had checked the box: "I wish to remain Courtesy staff at DePaul Health Center," but had typed above that: "I would like to change my current Courtesy Staff Status to Active. Please mail me the necessary forms for completion. Thank you."⁴

16. The reapplication forms for Courtesy Staff and Active Staff were the same, but the policy for an Active Staff reapplication (or, in this case, a change to Active Staff) was to verify all of the hospitals with which the physician was affiliated – not just the primary hospital.

17. Upon investigation, DePaul Hospital discovered that Dr. Chaganti had not included all past hospital affiliations on his reapplication, and noted that Dr. Chaganti had been on the staff of, or had been a member of, the medical staffs of St. Mary's Hospital, DesPeres Hospital, and St. Anthony's.

18. DePaul Hospital inquired as to Dr. Chaganti's status at St. Anthony's, but the hospital would not confirm Dr. Chaganti's presence on its staff, or confirm his current status at the hospital.

19. By letter dated May 22, 2006, DePaul Hospital denied Dr. Chaganti's reapplication and revoked his staff privileges based on his failure to provide updated information on his DePaul Hospital reapplication form. The letter stated:

As a member of the SSM DePaul Health Center Medical Staff, you agreed to Section 3.3.6 of the Credentials Manual which requires you to provide updated information at the time of any significant

⁴ Petitioner's ex. 3 at 3219.

change in the information provided in your most recent application form. You also agreed to Section 3.3.7 of the Credentials Manual which states that any misrepresentation or misstatement in or omission from the application, reapplication and any required updates, whether intentional or not, shall constitute cause for automatic and immediate rejection of the application/reapplication, if applicable, and result in denial or revocation of previously granted Medical Staff membership and clinical privileges. Such denials or revocations are not subject to the procedural rights set for the in Article 9 of the Credentials Manual, and the Health Center President may, in his or her discretion, refuse to accept subsequent applications from the affected Practitioner. We have attached those Sections of the Credentials Manual for your reference.^{5]}

20. DePaul Hospital's Credentialing Manual contains the following provisions – that the physician:

3.3.6 – Agrees to provide and update the information requested on the original application and subsequent reapplications or clinical privileges request forms at the time of any significant change in the information provided on the most current application form, and to provide all information requested by Health Center or its Medical Staff regarding the Practitioner's or Independent Provider's ability to continuously meet the qualifications, standards, and requirements of Health Center and its medical Staff. Information that must be provided and updated includes voluntary relinquishment of Professional Staff appointment or clinical privileges at any health care facility; voluntary or involuntary limitations, reduction, suspension or termination of appointment or clinical privileges at another health care facility; all professional liability claims, settlements and judgments; any limitation on or cancellation of professional liability insurance; any challenges, stipulations, suspensions, relinquishments or termination of any license or registration; and any charges of a felony. Failure to provide and update information as required in this Section 3.3.6 or in other sections of this Manual shall be grounds for automatic termination of Professional Staff appointment and clinical privileges and/or such other corrective action as health Center and its Medical Staff deem appropriate. A Practitioner or Independent Provider whose Professional Staff appointment and clinical privileges are automatically termination pursuant to this Section 3.3.6 shall not be entitled to the procedural rights set forth in Article 9 of the Manual.

⁵ Petitioner's ex. 3 at 3173.

3.3.7 – Agrees that any misrepresentation or misstatement in, or omission from the application, reapplication, or any required updates, whether intentional or not, shall constitute cause for automatic and immediate rejection of the application/reapplication, if applicable, and result in denial of appointment and clinical privileges or revocation of previously granted Professional Staff membership and clinical privileges. In the event of such a denial or revocation the affected Practitioner or Independent Provider is not entitled to any of the procedural rights provided in Article 9 of this Manual and the Health Center President may, in his or her discretion, refuse to accept subsequent application form the affected Practitioner or Independent Provider.^[6]

21. On May 30, 2006, Dr. Chaganti’s attorney e-mailed a scanned copy to the hospital of Dr. Chaganti’s reapplication which listed the missing hospitals on a separate page. This page was not included in the initial reapplication.

Count II – St. Mary’s Hospital

22. By letter dated June 26, 2006, St. Mary’s Hospital, which is affiliated with DePaul Hospital, informed Dr. Chaganti that his staff membership and clinical privileges were revoked and terminated for failure to report DePaul Hospital’s disciplinary action.

23. Dr. Chaganti had his St. Mary’s Hospital medical staff privileges revoked and terminated based on the DePaul Hospital finding that Dr. Chaganti omitted past hospital affiliations in violation of hospital regulations.

Count III – St. Anthony’s Medical Center/E.D. Court Order

24. In 2003, St. Anthony’s revoked and terminated Dr. Chaganti’s staff privileges based on recommendations made by the MEC investigation into Dr. Chaganti.⁷

25. Dr. Chaganti appealed the revocation and termination of his medical staff privileges at St. Anthony’s Medical Center, and after four years, his appeal was ruled on by the United States District Court for the Eastern District of Missouri (the Court), who ordered Dr. Chaganti

⁶ Petitioner’s ex. 3 at 3175-76.

⁷ The Board’s complaint lists specific findings from that investigation, but the Board failed to introduce anything in evidence that even sets forth the bases for the decision to revoke and terminate.

to resign his staff privileges at St. Anthony's Medical Center, according to a settlement agreement that was worked out between the parties.

26. Dr. Chaganti resigned from the staff at St. Anthony's on March 29, 2007.

Count IV – Patient T.L.

27. Patient T.L. was admitted to St. Anthony's Medical Center on July 17, 2001, for problems with schizoaffective disorder, chemical dependency, and end stage renal disease.

28. T.L. was undergoing hemodialysis every three days because his kidneys did not function.

29. Dr. Chaganti was T.L.'s attending physician.

30. Dr. Chaganti started patient T.L. on Ritalin, Symmetral, Anibien and Celexa, and Remeron.

31. The medications that Dr. Chaganti prescribed did not contribute to T.L.'s death.

32. On July 31, 2001, T.L. was given medications intended for another patient. Those medications included Lopressor 100 milligrams, Phenobarbital 100 milligrams, Neurontin 1200 milligrams, Trazodone 100 milligrams, Prevacid, and Lactulose.

33. A nurse made the mistake of giving T.L. the incorrect medications.

34. Dr. Chaganti had no role in providing T.L. with the incorrect medications.

Count V – Patient B.G.

35. Patient B.G. was admitted to the hospital on April 17, 2001.

36. Dr. Chaganti was B.G.'s attending physician.

37. Dr. Chaganti diagnosed B.G. with bipolar disorder, cocaine abuse, cannabis abuse, alcohol abuse, and anti-social personality disorder.

38. Chaganti treated patient B.G. with Librium, Ativan, Klonipin (1 mg three times a day), Nuerontin (900 mg three times a day), Gabitril (6 mg twice a day), Remeron (15 mg at bedtime), and Prozac (30 mg once a day).

Count VI – Patient N.C.

39. N.C. was admitted to a “partial hospitalization program” on January 3, 2002.

40. The “partial hospitalization program” is conducted by social workers, psychologists, and activity therapists in order for the patient to develop coping methods for his problems.

41. The “partial hospitalization program” is an outpatient program in which patients come in during the morning.

42. There was no direct physician involvement during the “partial hospitalization program.”

43. The “partial hospitalization program” did not require direct physician involvement.

44. . Kimberly Estes, an assessment counselor, made a note that N.C. needed a medication adjustment.

45. Dr. Patel determined that N.C. did not need a medication adjustment after a review of his case.

Count VII – Patient C.L.

46. Patient C.L. was admitted to the hospital on February 13, 2002.

47. Dr. Chaganti was her attending physician.

48. Dr. Chaganti started C.L. on Marinol (4 mg twice a day) as an appetite stimulant.

49. Marinol is synthetic THC, the active ingredient in marijuana.

50. Marinol had the desired effect on C.L. and increased her appetite.

51. Marinol had no harmful effects on C.L.

Count VIII – Patient A.W.

52. Patient A.W. was admitted to the hospital on August 11, 2002.

53. Patient A.W. was treated by Dr. Patel.

54. Dr. Patel diagnosed A.W. with schizoaffective disorder, mild mental retardation, psychological stress, hypothyroidism not otherwise specified, and tobacco use.

55. Dr. Patel’s dictation for admission for patient A.W. was dated August 18, 2002.

56. Patient A.W. was discharged on August 23, 2002.

57. Dr. Patel’s discharge summary accurately stated that A.W. was discharged on August 23, 2002. May 3, 2003, was the date the summary was dictated.

Conclusions of Law

We have jurisdiction over this complaint.⁸ The Board bears the burden of proving that Chaganti’s license is subject to discipline by a preponderance of the evidence.⁹ A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.”¹⁰ Dr. Chaganti has the burden of proving his affirmative defenses.¹¹

I. Motion to Strike Proposed Findings of Fact and Conclusions of Law

On January 3, 2013, Chaganti filed Respondent’s Objections and Motion to Strike Complainant’s Proposed Findings of Fact and Conclusions of Law. Chaganti asks us to strike parts of the Board’s written argument because he alleges those parts are not supported by facts and law.

⁸ Section 621.045. Statutory references, unless otherwise noted, are to the 2012 Supplement to the Revised Statutes of Missouri.

⁹ See *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-30 (Mo. App. W.D. 2012) (dental licensing board demonstrates “cause” to discipline by showing preponderance of evidence).

¹⁰ *Id.* at 230.

¹¹ *Kansas City Power & Light Co. v. Bibb & Assocs., Inc.*, 197 S.W.3d 147, 156 (Mo. App., W.D. 2006).

This Commission relies on the record, not the parties' written arguments, and we make our findings of fact and conclusions of law based on that record. We deny the motion to strike.

II. Exhibits H, I, J, K, and P

In its written argument, the Board objected to Exhibits H, I, J, K, and P on the basis of relevance. On January 7, 2013, Dr. Chaganti filed his opposition to the objections. We allow the exhibits in the record.

III. Statute of Limitation

Dr. Chaganti argues that Counts III-IX are barred by § 324.043, the professional licensing statute of limitations:

1. Except as provided in this section, no disciplinary proceeding against any person or entity licensed, registered, or certified to practice a profession within the division of professional registration shall be initiated unless such action is commenced within three years of the date upon which the licensing, registering, or certifying agency received notice of an alleged violation of an applicable statute or regulation.
2. For the purpose of this section, notice shall be limited to:
 - (1) A written complaint;
 - (2) Notice of final disposition of a malpractice claim, including exhaustion of all extraordinary remedies and appeals;
 - (3) Notice of exhaustion of all extraordinary remedies and appeals of a conviction based upon a criminal statute of this state, any other state, or the federal government;
 - (4) Notice of exhaustion of all extraordinary remedies and appeals in a disciplinary action by a hospital, state licensing, registering or certifying agency, or an agency of the federal government.
3. For the purposes of this section, an action is commenced when a complaint is filed by the agency with the administrative hearing commission, any other appropriate agency, or in a court; or when a complaint is filed by the agency's legal counsel with the agency in respect to an automatic revocation or a probation violation.
4. Disciplinary proceedings based upon repeated negligence shall be exempt from all limitations set forth in this section.

5. Disciplinary proceedings based upon a complaint involving sexual misconduct shall be exempt from all limitations set forth in this section.

6. Any time limitation provided in this section shall be tolled:

(1) During any time the accused licensee, registrant, or certificant is practicing exclusively outside the state of Missouri or residing outside the state of Missouri and not practicing in Missouri;

(2) As to an individual complainant, during the time when such complainant is less than eighteen years of age;

(3) During any time the accused licensee, registrant, or certificant maintains legal action against the agency; or

(4) When a settlement agreement is offered to the accused licensee, registrant, or certificant, in an attempt to settle such disciplinary matter without formal proceeding pursuant to section 621.045 until the accused licensee, registrant, or certificant rejects or accepts the settlement agreement.

7. The licensing agency may, in its discretion, toll any time limitation when the accused applicant, licensee, registrant, or certificant enters into and participates in a treatment program for chemical dependency or mental impairment.

Dr. Chaganti argues that the letters the Board received, the investigation (including a subpoena of records), the meeting, and the resolution of the case was notice to the Board that should start the running of this statute of limitations.

Even if the statute of limitations had run, we would be authorized to hear the evidence to determine whether Dr. Chaganti committed repeated negligence. Section 324.043.4. But we agree with the Board that the time deadline did not start until November 29, 2007. The letters did not specifically reference any of the patients in this case. The Board accepted Dr. Chaganti's testimony that he had never had his staff privileges revoked at any hospital. The Board only undertook further investigation when it learned via the Application that there were additional issues.

We find that the Board timely filed this complaint.

IV. Objections Taken With the Case

Objections to Hospital Records

Dr. Chaganti objected to admission of the records from DePaul (Petitioner's ex. 5), St. Mary's (Petitioner's ex. 3), and St. Anthony's (Petitioner's ex. 7-11) hospitals. The Board argues the hospitals' records are admissible under § 536.070:

(10) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect the weight of such evidence, but such showing shall not affect its admissibility. The term "business" shall include business, profession, occupation and calling of every kind;

and under § 490.680:¹²

A record of an act, condition or event, shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

Dr. Chaganti argues that the records were not business records, but were created in anticipation of litigation. We agree with the Board that records, including credentialing information about the hospital staff, appear to be made in the ordinary course of the business of a hospital; thus, they are business records. As noted in § 536.070(10), circumstances of the making of the documents will go to the weight of the evidence.¹³

¹² RSMo. 2000.

¹³ See also our discussion in *State Bd. of Reg'n for the Healing Arts v. McKenzie*, No. 02-0530 HA (Nov. 24, 2003).

Dr. Chaganti also argues that the records are incomplete, but provided no evidence to support this claim.

We admit Petitioner's exs. 3, 5, and 7-11 into evidence.

Hearsay Objection

Dr. Chaganti objected to the testimony of Dr. Kevin Johnson on the basis of hearsay. We overrule the objection.

Interpreting a Witness's Answer

Dr. Chaganti cross-examined Dr. Johnson:

Q: Okay. Has the entirety of the credentialing manual ever been provided to Dr. Chaganti? Yes or no.

A: I don't know.

MR. CHAGANTI: Well, your Honor, then, you know, the witness is charged with the knowledge. Therefore, if he says he doesn't know, I'd respectfully request the Commission to interpret his answers as no to the extent that the answer is to the – adverse to the interest of the party making such statements and yes to the extent that such an answer will be adverse to the party making such answer. There is case law, recent case law coming from the Eastern District Court of Appeals –¹⁴

We asked Dr. Chaganti to brief this issue and present it at the hearing the next day. Dr. Chaganti failed to do so, and we consider the request waived.

Discipline at the Hospital Level

The Board objected to testimony about the reasoning behind the discipline at the hospital level. We will allow the testimony. Whether we “relitigate” what happened at the hospital level will be discussed later in this decision.

¹⁴ Tr. at 192-93.

Respondent's Exhibits I, J, K and P

The Board objected to Respondent's Exhibits I, J, K, and P on the basis of relevancy. We overrule the objection.

Petitioner's Exhibit 12

Dr. Chaganti objected to Petitioner's Exhibit 12 on the basis that it is overbroad. We overrule the objection.

V. Constitutional Issues

Dr. Chaganti argues that § 334.100.2(4)(g) is unconstitutional because it is vague and deprived him of due process rights. This Commission does not have authority to decide constitutional issues.¹⁵ We have no authority to declare a statute unconstitutional.¹⁶ The issue has been raised and may be argued before the courts if necessary.¹⁷

VI. Procedures Followed by Hospitals/Selective Prosecution

Dr. Chaganti argues that the Board was racially biased against him because he is from India. He argues that the patients in the Board's complaint were treated by other doctors and that those doctors were not accused of improper treatment. Dr. Chaganti also argues that one of the Board members had a conflict of interest.

We find no evidence of racial bias or conflict of interest. While bias or prejudice of the Board members may affect agency determinations, we are not bound by what the Board did, and the relevance of why the Board acted would go to the credibility of any Board member who was a witness in a case. The parties start over in a proceeding before this Commission by presenting evidence as to whether the licensee is subject to discipline.

¹⁵ *Sprint Communications Co., L.P. v. Director of Revenue*, 64 S.W.3d 832, 834 (Mo. banc 2002); *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955, 957 (Mo. banc 1999).

¹⁶ *State Tax Comm'n v. Admin. Hearing Comm'n*, 641 S.W.2d 69 (Mo. banc 1982).

¹⁷ *Tadrus v. Missouri Bd. of Pharmacy*, 849 S.W.2d 222 (Mo. App., W.D. 1993).

We have no authority over the Board's actions or the actions of the hospitals that resulted in the limitation of Dr. Chaganti's staff privileges.¹⁸ We have no power to superintend another agency's procedures.¹⁹ As noted above with regard to constitutional issues, the issue of race discrimination has been raised at this administrative level, even if we have no authority to remedy it directly.²⁰

VII. Cause for Discipline

The Board alleges that there is cause for discipline under § 334.100:

2. The Board may cause a complaint to be filed with the administrative hearing commission as provided by Chapter 621 against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate or registration or authority, permit or license for any one or any combination of the following causes:

(4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter, including, but not limited to, the following:

(g) Final disciplinary action by any professional medical or osteopathic association or society or licensed hospital or medical staff of such hospital in this or any other state or territory, whether agreed to voluntarily or not, and including, but not limited to, any removal, suspension, limitation, or restriction of the person's license or staff or hospital privileges, failure to renew such privileges or license for cause, or other final disciplinary action, if the action was in any way related to unprofessional conduct, professional incompetence, malpractice or any other violation of any provision of this chapter;

¹⁸ See *Mishler v. State Bd. of Medical Examiners*, 849 P.2d 291 (Nev. 1993) ([T]his court may set aside an administrative agency's decision if the agency has prejudiced substantial rights." *Id.* at 292 (emphasis added)).

¹⁹ *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W.2d 445, 450 (Mo. banc 1985).

²⁰ See *State Bd. of Reg'n for the Healing Arts v. Brown*, 121 S.W.3d 234 (Mo. 2003).

* * *

(5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public; or incompetency, gross negligence or repeated negligence in the performance of the functions or duties of any profession licensed or regulated by this chapter. For the purposes of this subdivision, “**repeated negligence**” means the failure, on more than one occasion, to use that degree of skill and learning ordinarily used under the same or similar circumstances by the member of the applicant’s or licensee’s profession;

(8) Revocation, suspension, restriction, modification, limitation, reprimand, wanting, censure, probation or other final disciplinary action against the holder of or applicant for a license or other right to practice any profession regulated by this chapter by another state, territory, federal agency or country, whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, the denial of licensure, surrender of the license, allowing the license to expire or lapse; or discontinuing or limiting the practice of medicine while subject to an investigation or while actually under investigation by any licensing authority, medical facility, branch of the armed forces of the United States of America, insurance company, court, agency of the state or federal government, or employer[.]

A. Counts I to III – Final Disciplinary Action by a Hospital/Court

The Board argues that there is cause for discipline under § 334.100.2(4) and (4)(g) because DePaul Hospital and St. Mary’s Hospital took final disciplinary action against Dr. Chaganti. The Board argues that there is cause for discipline under § 334.100.2(4), (4)(g), and (8) because of the actions taken by St. Anthony’s and the E.D. Court.

Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.²¹ It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.²² Misrepresentation is a falsehood or untruth

²¹ *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

²² MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

made with the intent and purpose of deceit.²³ Misconduct is the intentional commission of a wrongful act.²⁴

Unethical conduct and unprofessional conduct include “any conduct which by common opinion and fair judgment is determined to be unprofessional or dishonorable.”²⁵ “Ethical” relates to moral standards of professional conduct.²⁶ With respect to the definition of “unprofessional conduct,” the Missouri Supreme Court criticized that definition, calling it “circular,” and stated:

This Court interprets “unprofessional conduct” in this case to refer, first, to the specifications of the matters “including, but not limited to” those 17 grounds specified in as subparagraphs (a)-(q) of section 334.100.2(4).^[27]

As we noted in *State Bd. of Reg’n for the Healing Arts v. Johnson*, No. 10-2118 HA (Dec. 22, 2011), the definition of unprofessional conduct is worded very broadly in § 334.100.2(4)(g). The final disciplinary action taken by a hospital must be “*in any way* related to unprofessional conduct[.]”²⁸ To relate is to have a logical connection.²⁹ This is clearly a low threshold. Supporting this broad reading of the statute, there is no requirement that the unprofessional conduct be intentional.³⁰

Incompetency is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation.³¹ We follow the analysis

²³ *Id.* at 794.

²⁴ *Grace v. Missouri Gaming Comm’n*, 51 S.W.3d 891, 900 (Mo. App., W.D. 2001).

²⁵ *Perez v. Missouri Bd. of Regis’n for the Healing Arts*, 803 S.W.2d 160, 164 (Mo. App., W.D. 1991).

²⁶ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 429 (11th ed. 2004).

²⁷ *Albanna v. State Bd. of Regis’n for the Healing Arts*, 293 S.W.3d 423, 431 (Mo. banc 2009).

²⁸ (Emphasis added.)

²⁹ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1050 (11th ed. 2004).

³⁰ The surgeon’s conduct at issue in *Albanna* that we found to be “unprofessional” was not intentional misconduct, but related to medical judgment.

³¹ *Tendai v. Missouri State Bd. of Reg’n for the Healing Arts*, 161 S.W.3d 358, 369 (Mo. 2005).

of incompetency in a disciplinary case from the Supreme Court, *Albanna v. State Bd. of Reg'n for the Healing Arts*.³² Incompetency is a “state of being” showing that a professional is unable or unwilling to function properly in the profession.³³

“[E]xpert testimony [is] necessary to determine what standard of care was required of [the professional] and whether he met that standard of care” when a case deals with “complex issues as to the appropriate medical care for patients” and those issues cannot be understood by lay persons.³⁴

1. Count I – DePaul Hospital

The Board argues Dr. Chaganti had his DePaul Hospital medical staff privileges revoked and terminated based on his omission of past hospital affiliations on his reapplication for staff privileges at that hospital.

Dr. Chaganti argues that DePaul Hospital was looking for a reason to deny his reapplication, and points to the fact that the same reapplication form could be used for both Courtesy and Active Staff, and he was initially approved for Courtesy Staff. But the difference was not the application itself, it was the level of scrutiny given to that application based on what staff privileges the physician was seeking. DePaul Hospital’s deficient review of physician applications is a matter for their board. Verification of hospital affiliations for the Courtesy Staff was less than for the Active Staff. In any event, such allegations as bias, improper hospital procedures, and lack of notice or right of appeal from the hospital’s decision are not within our authority to decide or remedy.

³² 293 S.W.3d 423 (Mo. 2009).

³³ *Id.* at 435.

³⁴ *State Bd. of Registration for the Healing Arts v. McDonagh*, 123 S.W.3d 146, 158 n.16 (Mo. 2003).

a. Discipline under Subdivision (4)

Section 334.100.2(4) allows discipline for misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter.

We do not find that Dr. Chaganti intentionally failed to list the hospitals on his reapplication to DePaul Hospital. Therefore, we do not find fraud, misrepresentation, dishonesty or unethical conduct. As discussed below, we find that this conduct was unprofessional, which does not require a finding of intent. We find cause for discipline under § 334.100.2(4).

b. Discipline under Subdivision (4)(g)

i. Final Disciplinary Action

The first question is whether this is a final disciplinary action taken by a hospital. In *Bhuket v. State Bd. of Reg'n for the Healing Arts*, 787 S.W.2d 882 (Mo. App., W.D. 1990), the court discussed what would constitute a disciplinary action, noting that statutes authorizing license discipline are enacted in the interest of the public health and welfare and should be construed “with a view to suppression of wrongs and mischiefs undertaken to be remedied.” *Id.* at 885. In *Bever v. State Bd. of Reg'n for the Healing Arts* 2001 WL 68307 (Mo. App., W.D. 2001),³⁵ the court found that Dr. Bever’s resignation from a hospital pursuant to a settlement agreement was a final disciplinary action without regard to alleged violations of the hospital’s bylaws.³⁶

DePaul Hospital revoked and terminated Chaganti’s medical staff privileges. This was a final disciplinary action.

³⁵ Rehearing Denied March 27, 2001, Sustained and Cause Ordered Transferred March 27, 2001. Cause Voluntarily Dismissed July 19, 2001. While this case cannot be cited as precedent, we find it instructive in making our decision.

³⁶ The court addressed these alleged violations, but did not contend that the Administrative Hearing Commission would have had any authority to do so.

ii. Related to Professional Conduct

The next question is whether the action was in any way related to unprofessional conduct.³⁷ DePaul based its disciplinary action on Dr. Chaganti's omission of past hospital affiliations on his reapplication for staff privileges at that hospital.

Guilty of Underlying Conduct

In Counts I-III, Dr. Chaganti argues that he was not guilty of the underlying conduct that formed the bases of the hospitals' discipline. We are not required to make that finding. In *Holdredge v. Missouri Dental Board*, 261 S.W.3d 690 (Mo. App., W.D. 2008), the court analyzed § 332.321.2(8), which authorizes discipline for:

Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter imposed by another state, province, territory, federal agency or country upon grounds for which discipline is authorize in this state[.]

The court stated that this statute did not require a finding of guilt. "The only limitation placed upon a disciplinary action from another state is that it must be based upon grounds for which discipline is authorized in Missouri." *Holdredge*, 261 S.W.3d at 695.

While this is a different statute, we believe the same rationale applies. Section 334.100.2(4)(g) authorizes discipline for discipline by certain entities if that discipline was in any way related to unprofessional conduct, professional incompetence, malpractice or any other violation of any provision the Chapter 324. Much as we do not go back to review the entity's procedures, we do not retry the reason that discipline was imposed. A physician has other options for attacking a hospital's procedure or decision that he or she believes is infirm. DePaul

³⁷ The Board does not argue that the omission constitutes professional incompetence, malpractice or any other violation of any provision Chapter 334.

Hospital imposed a final disciplinary action. Our determination is limited to whether the **reason** for that action is one that supports discipline under § 334.100.2(4)(g).

No New Information

Dr. Chaganti argues that DePaul already had the information about all the hospitals he was affiliated with, and thus he was not required to provide it because there had been no change that would trigger the Credential Manual requirement. But there was a change. Prior to the time Dr. Chaganti submitted his reapplication on January 3, 2006, he had been disciplined by St. Anthony's Medical Center. That hospital had revoked and terminated Dr. Chaganti's staff privileges in 2003. This clearly fits within the requirements of 3.3.6, which requires updated information for "voluntary relinquishment of Professional Staff appointment or clinical privileges at any health care facility; voluntary or involuntary limitations, reduction, suspension or termination of appointment or clinical privileges at another health care facility[.]" Dr. Chaganti was required to provide information about all hospitals he was affiliated with or had been and about the change in his relationship with St. Anthony's on his reapplication.

Information Not Material

Dr. Chaganti argues that he was granted Courtesy Staff privileges and thus the omitted information was not material. We disagree. DePaul Hospital granted the Courtesy Staff privileges only because it did not check all of the hospitals listed – only the primary hospital. In ***Matter of Moyo v. Ambach***, 136 A.D.2d 811, 523 N.Y.S.2d 645 (N.Y. App. Div. 1988), the court supported imposition of discipline, finding that the State Board for Professional Medical Conduct was free to reject the physician's contention that supplying information was unnecessary or not material. We find that information about all of the hospitals, and particularly information about discipline at St. Anthony's, was necessary and material.

Unprofessional Conduct

Dr. Chaganti argues that even if the information was omitted, this did not constitute unprofessional conduct. We disagree. In *Kleiner v. Sobol*, 161 A.D.2d 987, 557 N.Y.S.2d 558 (N.Y. App. Div. 1990), the court found that failing to list prior hospital suspensions on an application for privileges was cause for discipline for practicing the physician's profession fraudulently and for committing unprofessional conduct.³⁸ The court in *Moyo*, 136 A.D.2d at 813, 523 N.Y.S.2d at 647, affirmed the decision that omitting earlier suspension of a physician's Canadian medical license on three applications for hospital privileges was "professional misconduct." In *State Bd. of Reg'n for the Healing Arts v. Fischl*, No. 95-1367 HA (AHC Oct. 10, 1995), we found that a hospital's revocation of a physician's staff privileges because he falsified an application for staff privileges was cause for discipline under § 334.100.2(4)(g). We also set forth our position, consistent with this decision, that the truth of the underlying conduct is not relevant to whether there is cause for discipline under this statute. *Id.* at 2.

Dr. Chaganti's omission of the hospitals, particularly St. Anthony's, was related to unprofessional conduct. DePaul Hospital took final disciplinary action against him for this reason. There is cause for discipline under § 334.100.2(4)(g).

c. Cause for Discipline – DePaul Hospital

There is cause for discipline under § 334.100.2(4) and (4)(g).

³⁸ *But see Elmariah v. Dept. of Professional Regulation, Board of Medicine*, 574 So.2d 164 (Fla. Dist. Ct. App., 1st Dist 1990). The court found that misrepresentations made on an application for hospital staff privileges was not made "in the practice of medicine" because the Florida law defined the practice of medicine as "the diagnosis, treatment, operation or prescription for any human disease, pain, injury, deformity or other physical or mental condition." *Id.* at 165. We distinguish this case because of the specific language of the Florida statute.

2. Count II – St. Mary’s Hospital

St. Mary’s Hospital revoked and terminated Dr. Chaganti’s medical staff privileges based on the DePaul Hospital finding that Chaganti omitted past hospital affiliations in violation of hospital regulations.

For the reasons set forth above, there is cause to discipline Chaganti’s license under § 334.100.2(4), and (4)(g).

3. Count III – St. Anthony’s Medical Center

In 2003, St. Anthony’s revoked and terminated Dr. Chaganti’s staff privileges. The Board provided no evidence of the reasons for this action. Therefore, we cannot find cause for discipline under § 334.100.2(4) or (4)(g).

Dr. Chaganti admits that he resigned his medical staff privileges at St. Anthony’s Medical Center pursuant to a court order that related to a settlement made with St. Anthony’s. The Board argues that there is cause for discipline under § 334.100.2(8). We disagree.

Even if ordering Dr. Chaganti to resign his staff privileges at a hospital pursuant to a settlement agreement between the parties were considered a final disciplinary action, it was not taken by **another** state, territory, federal agency or country.

There is no cause to discipline Chaganti’s license under § 334.100.2(4), (4)(g), or (8).

B. Counts IV to VIII – Patient Care

Legal Standard

We have defined incompetence, unethical conduct, and unprofessional conduct above.

Harmful means “of a kind likely to be damaging : INJURIOUS[.]”³⁹ Dangerous means “able or likely to inflict injury or harm[.]”⁴⁰ Conduct that “is or might be harmful or dangerous

³⁹ Merriam-Webster’s Collegiate Dictionary 569 (11th ed. 2004).

⁴⁰ *Id.* at 292.

to the mental or physical health of a patient or the public” pursuant to § 334.100.2(5) is conduct that is or might be *unreasonably* harmful or dangerous to the mental or physical health of a patient or the public.⁴¹

Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.⁴²

1. Count IV – Patient T.L.

The Board alleges that Dr. Chaganti gave patient T.L.⁴³ Remeron and Symmetral in high doses, that the high dose of Symmetral led T.L. to experience delirium, and that T.L.’s delirium was augmented when he received an injection of Cogentin. The Board also alleges that “[o]n July 31, 2001, [Dr. Chaganti] notes that patient T.L. was given incorrect medication, and several hours afterwards, patient T.L. did not have vital signs, failed to respond to resuscitation, and expired.”⁴⁴ The Board alleges that this conduct is a basis for discipline under § 334.100.2(4) and (5).

During the hearing, the Board presented the expert testimony of Dr. Steven Peterson. Dr. Peterson specifically testified that “I did not feel that the medications Dr. Chaganti prescribed in this case contributed to the patient's death.”⁴⁵ Dr. Peterson did not testify at all about whether Remeron and Symmetral were given in the correct doses or whether T.L. should have received Cogentin. Dr. Peterson’s sole findings of negligence with regard to Dr. Chaganti were that Dr. Chaganti erred in not consulting a psychopharmacologic specialist about the impact of the medications before dialysis and that Dr. Chaganti did not timely file a discharge summary

⁴¹ *Albanna v. State Bd. of Regis’n for the Healing Arts*, 293 S.W.3d 423, 434 (Mo. banc 2009).

⁴² *Duncan v. Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs*, 744 S.W.2d 524, 533 (Mo. App. E.D. 1988).

⁴³ The parties referred to this patient as both T.L. and L.T. in the pleadings. The parties agreed at the hearing that the patient should be properly referred to as T.L. We will do likewise.

⁴⁴ Amended Complaint at ¶35.

⁴⁵ Tr. III at 413-414.

for T.L. Dr. Peterson also testified that Dr. Chaganti was not responsible for the incorrect medications given to T.L. and that this error was a nursing administration error in which a nurse gave T.L. another patient's medications.

There is no evidence to support the Board's contention that Dr. Chaganti should not have prescribed Remeron, Symmetrel, and Cogentin in the doses that he did. In fact, Dr. Peterson's expert testimony specifically stated that Dr. Chaganti's medications did not contribute to T.L.'s death. We therefore find that there was no unethical conduct, unprofessional conduct, or unreasonably harmful or dangerous conduct. The expert testimony shows that there was not incompetence, negligence, gross negligence, or conduct below the standard of care with regard to the medications given to T.L.

Dr. Peterson presented expert testimony that Dr. Chaganti erred in not consulting a psychopharmacologic specialist about the impact of the improperly given medications. Dr. Peterson also opined that Dr. Chaganti was negligent because he did not fill out a discharge summary for T.L. until 28 days after T.L. died. These allegations, however, were not presented in the amended complaint. We are restricted to the specific facts and legal theories pled in the amended complaint.⁴⁶

We do not find any cause to discipline Dr. Chaganti under § 334.100.2(4) or (5) with relation to patient T.L.

2. Count V – Patient B.G.

The Board alleges that:

42. Respondent treated patient B.G. with high doses of Librium, Ativan, Klonipin 1 mg three times a day, Nuerontin 900 mg three times a day, Gabitril 6 mg twice a day, Remeron 15 mg at bedtime, as well as Prozac 30 mg a day.

⁴⁶ 1 CSR 15-3.350(2)(A)3; *Duncan*, 744 S.W.2d at 538-39.

43. The high doses of medications may have contributed to patient B.G.'s further agitation and disinhibition.^[47]

The Board further alleges that Dr. Chaganti's treatment of patient B.G. was below that standard of care, was unethical or unprofessional conduct, was or might have been harmful or dangerous to the mental health of the patient, or was incompetent or grossly negligent. The Board alleges that this conduct is a basis for discipline under § 334.100.2(4) and (5).

The Board's expert witness testified that he found two problems with Dr. Chaganti's treatment of B.G. Dr. Peterson testified that "it was my assessment that the information that Dr. Chaganti used to generate his medical psychiatric evaluation most likely came almost entirely from the nurse's assessment and the social worker's assessment."⁴⁸ Dr. Peterson opined that "Dr. Chaganti's medical psychiatric evaluation was not original to him. He basically utilized virtually all the information from the other two sources."⁴⁹ Dr. Peterson also concluded that Dr. Chaganti was negligent because he did not complete a discharge summary for B.G. until June 30, 2001, two months after B.G. was discharged.

There is no evidence to support the Board's contention that Dr. Chaganti should not have prescribed Librium, Ativan, Klonopin, Nuerontin, Gabitril, Remeron, and Prozac in the doses that he did. We therefore find there was no unethical conduct, unprofessional conduct, or unreasonably harmful or dangerous conduct. The expert testimony shows that there was no incompetence, negligence, gross negligence, or conduct below the standard of care with regard to the medications given to B.G.

Dr. Peterson presented expert testimony that Dr. Chaganti erred in basing his medical evaluation of B.G. on reports of a nurse and a social worker. Dr. Peterson also opined that Dr. Chaganti was negligent because he did not fill out a discharge summary for B.G. until two

⁴⁷ Amended Complaint at ¶¶42-43.

⁴⁸ Tr. 418.

⁴⁹ Tr. 418-19.

months after B.G. was discharged. These allegations, however, were not presented in the amended complaint. We are restricted to the specific facts and legal theories pled in the amended complaint.⁵⁰

We do not find any cause to discipline Dr. Chaganti under § 334.100.2(4) or (5) with relation to patient B.G.

3. Count VI – Patient N.C.

The Board alleges that there was “no admission history or diagnostic evaluation in the medical record for patient N.C.,” that Dr. Chaganti “failed to see the patient during the ten ... days that the patient was in the hospital,” that there were no changes to N.C.’s medications even though the comprehensive treatment plan for N.C. called for adjustments to medication, and that there was no explanation for the length of N.C.’s stay in the hospital.⁵¹ The Board further alleges that Dr. Chaganti’s treatment of patient N.C. was below that standard of care, was unethical or unprofessional conduct, was or might have been harmful or dangerous to the mental health of the patient, or was incompetent or grossly negligent. The Board alleges that this conduct is a basis for discipline under § 334.100.2(4) and (5).

The records show that Dr. Chaganti never physically saw N.C. while N.C. was in the hospital. There was no discharge summary prepared for N.C. Dr. Peterson, the State’s expert, testified that these deficiencies constituted negligence. Dr. Chaganti testified that N.C. was admitted into a “partial hospitalization program” that did not require physician interaction and was “conducted by social workers, psychologists, activity therapists in order to, for the patient to develop coping mechanisms for his problems.”⁵² The partial hospitalization program was an

⁵⁰ 1 CSR 15-3.350(2)(A)3; *Duncan*, 744 S.W.2d at 538-39.

⁵¹ Amended Complaint at ¶¶50-53.

⁵² Tr. 644.

outpatient program requiring patients to come only for part of the day.⁵³ The admission order for N.C. supports Dr. Chaganti's testimony.⁵⁴ That order states that N.C. was admitted to "day partial hospitalization."⁵⁵ The order and initial treatment plan contains four sections: nursing, social work, activity therapy, and treatment team. That admission order does not require any physician contact or assessment.

Dr. Chaganti also testified that there was no need to adjust N.C.'s medications. Dr. Chaganti testified that the form entry stating that N.C. needed a "medication adjustment" was written by a staff member such as a social worker and that the physician had a duty to determine whether there needed to be an adjustment to N.C.'s medications.⁵⁶ Dr. Chaganti testified that N.C. was on medication and that Dr. Patel stated that there was no need to adjust the medication. We find Dr. Chianti's testimony credible.

We find that N.C.'s partial day hospitalization did not require visits from Dr. Chaganti or other doctors. We find Dr. Chaganti's testimony on this point credible and supported by the evidence. Thus, Dr. Chaganti's failure to personally observe N.C. did not fall below the standard of care and was not incompetent, negligent, grossly negligent, unethical, unprofessional, or unreasonably harmful or dangerous.

Dr. Peterson, the State's expert, also testified that Dr. Chaganti's failure to file a discharge summary constituted negligence. We disagree. This allegation, however, was not

⁵³ Tr. 656.

⁵⁴ Pet. Ex. 9 at 206. We note that there are two sets of Bates numbers on these documents. We will use the ones not preceded by "SAMC/Chaganti."

⁵⁵ *Id.*

⁵⁶ Tr. 694. Dr. Chaganti's testimony is supported by the records. The entry in question was initialed by "KE." Pet. Ex. 9 at 209. Kimberly Estes, an assessment counselor, signed the page. *Id.* We infer that KE is Kimberly Estes, who does not appear to be a physician.

presented in the amended complaint. We are restricted to the specific facts and legal theories pled in the amended complaint.⁵⁷

We also find that there was no medical need to adjust N.C.'s medication. The one reference to medication adjustment was made by an "assessment counselor." Dr. Patel reviewed N.C.'s case and determined that there was no need for a medication adjustment. Dr. Chaganti's decision not to adjust N.C.'s medication did not fall below the standard of care and was not incompetent, negligent, grossly negligent, unethical, unprofessional, or unreasonably harmful or dangerous.

We do not find any cause to discipline Dr. Chaganti under § 334.100.2(4) or (5) with relation to patient N.C.

4. Count VII – Patient C.L.

The Board alleges that Dr. Chaganti improperly started patient C.L., an elderly patient, on Marinol even though Marinol is contraindicated for use in elderly patients. The Board alleges that this conduct is a basis for discipline under § 334.100.2(4) and (5).

Dr. Chaganti wrote a note that patient C.L. was delusional and that he would try Haldol and Marinol. Marinol is synthetic THC, the active ingredient in marijuana. Dr. Peterson, the Board's expert witness, testified that he would not use Marinol because Marinol is a mild hallucinogen and C.L. was already delusional. Dr. Peterson testified, however, that within the hospital environment, "something like that might be tried."⁵⁸ Dr. Peterson also found that the

⁵⁷ 1 CSR 15-3.350(2)(A)3; *Duncan*, 744 S.W.2d at 538-39. We would also deny this allegation. As discussed above, N.C. was admitted to a partial day hospitalization program that was run by social workers, psychologists, and activity therapists. Dr. Chaganti was not an instrumental part of that program. Thus, Dr. Chaganti was not reasonably required to file paperwork regarding patients in the partial day hospitalization program. His decision not to do so did not fall below the standard of care and was not negligent, grossly negligent, unethical, unprofessional, or unreasonably harmful or dangerous.

⁵⁸ Tr. 426.

treatment that Dr. Chaganti provided, including Marinol, “certainly had the effect that Dr. Patel and Dr. Chaganti were looking for, and ... I couldn’t find any deleterious effect.”⁵⁹

Dr. Peterson, the Board’s expert, stated that while he personally would not prescribe Marinol to a person in C.L.’s condition, “within the hospital environment where there’s a lot of -- a lot of oversight and personnel to watch a patient, something like that might be tried. It’s just something that I wouldn’t think that would be first choice.”⁶⁰ Dr. Peterson acknowledged that Marinol is used to stimulate appetite and that Dr. Chaganti administered this medication to C.L. because C.L. was not eating.

We find, based on this evidence, that Dr. Chaganti acted in a reasonable manner. The Board’s expert witness admitted as much. Thus, we find that Dr. Chaganti’s administration of Marinol to C.L. did not fall below the standard of care and was not incompetent, negligent, grossly negligent, unethical, unprofessional, or unreasonably harmful or dangerous.

Dr. Peterson also found that Dr. Chaganti’s failure to create a discharge summary for over eight months after discharge constituted negligence. These allegations, however, were not presented in the amended complaint. We are restricted to the specific facts and legal theories pled in the amended complaint.⁶¹

We do not find any cause to discipline Dr. Chaganti under § 334.100.2(4) or (5) with relation to patient C.L.

5. Count VIII – Patient A.W.

The Board contends that patient A.W. was admitted under Dr. Chaganti’s care but was seen by another physician, that Dr. Chaganti’s dictation for A.W.’s admission was dated one

⁵⁹ Tr. 427.

⁶⁰ Tr. 426.

⁶¹ 1 CSR 15-3.350(2)(A)3; *Duncan*, 744 S.W.2d at 538-39.

week after A.W. was admitted, and that A.W.'s discharge was improperly dated May 3, 2003, when the correct date was August 23, 2002. The Board further alleges that Dr. Chaganti's treatment of patient A.W. was below the standard of care, was unethical or unprofessional, was or might have been harmful or dangerous to the mental health of the patient, or was incompetent or grossly negligent. The Board alleges that this conduct is a basis for discipline under § 334.100.2(4) and (5).

Dr. Peterson testified that he had two criticisms of Dr. Chaganti. First, he testified that Dr. Chaganti indicated that he relied on Dr. Patel's admission note in a progress report dated August 12, 2002, and that Dr. Patel dictated his admission note on August 18, 2002. Thus, Dr. Chaganti could not have relied on those notes. Second, Dr. Peterson testified that A.W. was on a number of different medications of the same class. At discharge, after Dr. Chaganti worked with her, her medications included three anti-psychotic medications (Risperdal, Xyprexa and Geodon), and two mood stabilizing anti-seizure medicines (Depakote and Gabitril). Dr. Peterson questioned why A.W. was on similar drugs.

Dr. Peterson's testimony covers issues that were not in the complaint. We are restricted to the specific facts and legal theories pled in the complaint.⁶² We therefore do not find any cause to discipline Dr. Chaganti for the reasons set out by Dr. Peterson.

We also find that the Board has failed to put forth any evidence supporting its allegations in Count VIII of the amended complaint.⁶³ We find that the Board has failed to prove any grounds for discipline under Count VIII. We therefore do not find any cause to discipline Dr. Chaganti under § 334.100.2(4) or (5) with relation to patient A.W.

⁶² 1 CSR 15-3.350(2)(A)3; *Duncan*, 744 S.W.2d at 538-39.

⁶³ We also find that the Board's allegations would fail. Dr. Patil, not Dr. Chaganti, dictated the admission memo one week after admission. Dr. Patil, not Dr. Chaganti, also dictated the discharge summary. The discharge summary had the date of discharge of August 23, 2003 – the correct date. The Board's allegations lack any factual basis in the record.

C. Claim IX – Repeated Negligence

The Board alleges that Dr. Chaganti committed repeated negligence, which is cause for discipline under § 334.100.2(5). Negligent conduct is the failure to use that degree of skill and learning ordinarily used under the same or similar circumstances by a member of the licensee's profession.⁶⁴ Repeated negligence is negligence "on more than one occasion."⁶⁵

We have not found any negligence in counts IV through VIII. Therefore, we have no basis to find repeated negligence. We find no basis for discipline under § 334.100.2(5).

Dr. Peterson, the Board's expert witness, alleges that there was repeated negligence because Dr. Chaganti did not timely complete discharge summaries. We disagree. The Board did not allege in the complaint that Dr. Chaganti failed to file timely discharge summaries for any of the five patients at issue. We are restricted to the specific facts and legal theories pled in the amended complaint.⁶⁶ We therefore cannot find repeated negligence here.

Summary

There is no cause for discipline under § 334.100.2(4), (4)(g) or (8) for the actions taken by St. Anthony's or the E.D. Court. There is cause for discipline under § 334.100.2 (4) and (4)(g) for the actions taken by the other two hospitals. There is no cause for discipline under § 334.100.2(4) or (5) for Dr. Chaganti's care of patients.

SO ORDERED on September 13, 2013.

\s\ Nimrod T. Chapel, Jr.
NIMROD T. CHAPEL, JR.
Commissioner

⁶⁴ Section 334.100.2(5).

⁶⁵ *Id.*

⁶⁶ 1 CSR 15-3.350(2)(A)3; *Duncan*, 744 S.W.2d at 538-39.