

MODEL EXPERT OPINION #2

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Date

Investigator/Medical Consultant (requesting review)
Medical Board of California
Street Address (of District Office requesting review)
City CA Zip

Re: Jane Doe, M.D.
Case: 17-2008-000000
Patient: Joe Smith

MATERIALS REVIEWED:

1. Investigation report
2. Partially Redacted Memorandum from CCU Medical Consultant
3. Patient Complaint
4. Certified medical records from Dr. Jane Doe
5. Certified medical records from Dr. Jon Deere
6. Certified medical records from Eastside Community Hospital
7. Recorded pretense call between Joe Smith and Jane Doe, M.D.
8. Curriculum vitae of Dr. Jane Doe
9. Memorandum from District Medical Consultant Jones
10. CD of interview of Dr. Jane Doe

SUMMARY OF CASE:

This case was initiated by the Medical Board of California upon receipt of a patient complaint received from Joe Smith. Joe Smith is a 21 year old student attending the University of California, Oxnard. He first received psychiatric treatment on March 15, 2007. At the time, Mr. Smith had sought evaluation at the Eastside Community Hospital for a 1-2 month history of auditory hallucinations critical of him and telling him to kill himself. The patient was placed on a "5150" involuntary hold as a danger to himself, and was admitted on an involuntary basis to Eastside Community Hospital for inpatient psychiatric treatment. [7] He was an inpatient for three days under the care and treatment of the attending psychiatrist Dr. Jane Doe, until his discharge from the hospital on March 18, 2007. The patient's admission and discharge diagnosis from Eastside Community Hospital was "Psychotic Disorder, Not Otherwise Specified." [12] He had been treated with the anti-psychotic medication Zyprexa, and was discharged with instructions to continue Zyprexa at 10mg a day, and pursue psychiatric treatment. [14]

Mr. Smith continued in psychiatric treatment with Dr. Jane Doe as an outpatient after his discharge from the hospital. He attended a total of seven outpatient sessions with Dr. Doe, from April 2007 until August 2007. During their last session on August 18, 2007, Dr. Doe noted that Mr. Smith was "still complaining of depression and sleep problems." [31] She noted that his primary care MD, Dr. Deere, had changed the antidepressant medicine from Prozac to Effexor and had prescribed the anti-anxiety and sleep medicine Ativan, as well as Ambien. [31] She further noted that the patient "needs an antipsychotic medicine", and changed his diagnosis from "Psychotic Disorder, NOS" to "Major Depression with Psychotic Symptoms in partial remission." [32] She wrote that Mr. Smith was to return to her office in one month. At the last session, Dr. Doe did not terminate the treatment, rather Mr. Smith chose not to return for his next scheduled session.

Mr. Smith reports that his next contact with Dr. Doe was about two months later, in October 2007. He states that they ran into each other at a shopping mall, and briefly greeted each other. The next contact was in early December 2007, when they ran into each other at a book store, The Read 'til U Drop. Mr. Smith states that Dr. Doe approached him while he was in the parking lot of the bookstore and gave him her card. A week later, Mr. Smith called and left a message for Dr. Doe, inviting her to attend a concert in Santa Barbara. He states that Dr. Doe met him at the concert, and they had their first sexual encounter later that night. He states that they did not see each other over the holidays. However, from January to March, 2008, they saw each other at least 3-4 times a week, during which time they had sexual relations on a number of occasions.

During this time, Mr. Smith was being treated by Dr. Deere for various issues. On a February 2, 2008

visit, Dr. Deere noted, "I am suspicious that the symptoms the patient complains of with left sided pain is probably related to musculoskeletal tension that might be related to underlying unclear etiology as well as to his depressed mood and the general life stressors that have impinged on him recently. . . I have referred this patient to follow-up with a psychiatrist . . . and I believe that he will benefit from a course of antidepressant medication. . ." [24] On another visit on February 9, 2008, Dr. Deere notes : "I strongly feel that this patient is increasingly depressed, will reevaluate medication." [28]

Dr. Deere informed Sr. Inv. Coe that while Mr. Smith did not provide specific details, he did advise Dr. Deere that he had began a new relationship during this time. This information is noted in Dr. Deere's visit note of January 27, 2008 [15] Mr. Smith states that his disabling symptoms seemed to increase during the time he and Dr. Doe were seeing each other.

On June 15, 2008, Mr. Smith made a pretense call to Dr. Doe. During the conversation Mr. Smith told Dr. Doe that he missed her and wanted to see her again. Dr. Doe does not respond to Mr. Smith's requests, except to state that she is unable to talk to him, and will call him at a later time.

In her recorded interview with the Medical Board, Dr. Doe denies that she had sexual relations with Mr. Smith. Although, she admits that she attended a concert at Mr. Smith's request.

MEDICAL ISSUE(S):

1. Sexual Relations with a Patient or Former Patient

◆ Standard of Care:

The 2001 Code of Ethics of the American Medical Association and the American Psychiatric Association established the standard of care regarding physicians having a sexual relationship with a patient or former patient.

The American Psychiatric Association Principles of Medical Ethics (2001:section 2.1) concludes the following:

"The requirement that the physician conduct himself/herself with propriety in his/her profession and in all actions of his/her life is especially important in the case of the psychiatrist because the patient tends to model his/her behavior after that of his/her psychiatrist by identification. Further, the necessary intensity of the treatment relationship may tend to activate sexual and other needs and fantasies on the part of both the patient and

psychiatrist while weakening the objectivity necessary for control. Additionally, the inherent inequality in the doctor-patient relationship may lead to exploitation of the patient. Sexual activity with a current or former patient is unethical.”

The American Medical Association Code of Ethics, section 8.14 state:

“Sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions or influence derived from the previous professional relationship.”

The standard of care is for a psychiatrist NOT to have a sexual relationship with a patient or former patient.

◆ **Analysis:**

Dr. Doe had an established doctor-patient relationship with Mr. Smith. Several months after his last visit with Dr. Doe, Mr. Smith and she entered into a sexual relationship. Although, neither Dr. Doe nor Mr. Smith terminated the doctor-patient relationship, he was being treated by another psychiatrist at the time they began their sexual liaison, therefore while arguably he may have been considered a patient he was definitely a former patient. In any event, Dr. Doe departed from the standard of care by engaging in a sexual relationship with Mr. Smith.

◆ **Conclusion:**

Extreme departure from the standard of care for engaging in a sexual relationship with a former patient.

(Signature) Anthony Brown, M.D. (Date) 1/5/09

ANTHONY BROWN, M.D.

References:

1. American Medical Association Code of Ethics, 2001
2. American Psychiatric Association Principles of Medical Ethics, 2001
3. xxx