BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL FROM THE ALASKA STATE MEDICAL BOARD

In the Matter of:	)	
	)	
VICTOR BARTLING, D.O.,	)	
	)	
Respondent.	)	OAH No. 12-0221-MED
	)	Board Case No. 2010-000882

DECISION

I. Introduction

Victor Bartling is a Doctor of Osteopathic Medicine practicing in Fairbanks, Alaska. One of his elderly patients, R.H.,[1] was residing in an Assisted Living Home. She has chronic pain from degenerative bone disease, and had been taking vicodin for several years. Without first examining her, Dr. Bartling switched her pain medication to a Duragesic patch, which contains the narcotic drug fentanyl. He then re-prescribed that patch over a period of several months, again without conducting an in-person physical examination. R.H. subsequently developed a decubitus ulcer and was transferred to Fairbanks Memorial Hospital. She is now residing in the Denali Center in Fairbanks, where she remains one of Dr. Bartling's patients.

The Division of Corporations, Business and Professional Licensing (division) issued a five count accusation against Dr. Bartling on July 13, 2012. This accusation alleged several problems with the prescriptions written for R.H. Dr. Bartling denied that grounds for discipline existed and requested a hearing. The evidence presented at the hearing was insufficient to meet the division's burden of proving that Dr. Bartling was incompetent, or had engaged in negligent or unprofessional conduct as alleged in the accusation.

II. Facts

A. Procedural History

A hearing was held beginning on March 11, 2013, and ending on March 14, 2013. During the course of the hearing, the division withdrew the allegations in Count I of the original accusation. The remaining counts concerned prescribing Duragesic patches to R.H. During the hearing, Dr. Bartling's exhibits 1 – 12 and the division's exhibits A – X were all admitted. On

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[1] Initials other than the patient's actual initials are used to protect the patient's privacy.

the last day of the hearing, the division filed an amended accusation. The amended accusation was accepted over Dr. Bartling's objections.[2]

B. Dr. Bartling

Dr. Bartling is an osteopathic physician.[3] He was first licensed in Alaska in 1990.[4] Dr. Bartling is certified in geriatrics by the American Board of Family Practice, and is a Certified Medical Director.[5] He also serves as an adjunct clinical professor for the Pacific Northwest University College of Osteopathic Medicine.

Dr. Bartling first worked as a family practitioner for the Norton Sound Health Corporation in Nome. He was asked to be the medical director of a local nursing home that was in the process of being closed by the state for various deficiencies. Under his leadership, the nursing home was able to reopen. Dr. Bartling was subsequently named the Norton Sound Health Corporation Employee of the Year.

After five years in Nome, Dr. Bartling and his family went to Papua New Guinea so he could work as a medical missionary for one year. He then worked for two years in rural Idaho as a physician and was the medical director for a nursing home. Dr. Bartling and his family returned to Alaska in 1998, where he joined the Tanana Valley Clinic (TVC). He also became the medical co-director at the Denali Center, and for the past three years has been Denali Center's sole medical director.

While serving as Denali Center's medical director, Dr. Bartling helped develop an interdisciplinary team approach to patient care that has led to very positive results. Gina Edmiston is currently the Chief Nursing Officer for Fairbanks Memorial Hospital, and previously worked with Dr. Bartling at the Denali Center. She credits Dr. Bartling with making many positive improvements.[6] She described him as a uniquely involved medical director who is also very responsive to patients. She was part of the committee who selected Dr. Bartling as Fairbanks Memorial Hospital's first Physician of the Year. She testified that the selection criterion was for a person who would unarguably be the committee's unanimous choice.

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[2] The amended accusation did not add any allegations. It dropped one count, and clarified the regulation relied on in other counts.

[3] Exhibit A, Div 002. The division's exhibits are numbered using the Bates stamp from the agency record.

[4] Exhibit A, Div 068.

[5] Bartling testimony; Exhibit X. The factual basis for the remaining discussion of Dr. Bartling's qualifications comes from his testimony and Exhibit X unless otherwise noted.

[6] Edmiston testimony.

Dr. Bartling has helped lead the development of the Fairbanks Raven Landing Senior Center, and is working with Fairbanks Memorial Hospital to have the local hospice program become Medicare approved.

Michael Powers is the Chief Executive Officer of Fairbanks Memorial Hospital and Denali Center. He testified that Dr. Bartling is one of the finest members of the medical staff, and among the top one percent of physicians he has ever worked with. He described Dr. Bartling as highly regarded, dedicated, smart, and clinically astute. He said that Dr. Bartling was selected as the first Physician of the Year because he is a great clinician and a good citizen; someone who is above reproach. Mr. Powers described the improvements made at Denali Center, which he attributed to Dr. Bartling and the nurse practitioner who works in tandem with Dr. Bartling.[7]

C. Treatment of R.H.

One of Dr. Bartling's patients is R.H., a woman who was born in 1919.[8] R.H. was first seen by Dr. Bartling in 2002.[9] At that time she was diagnosed with hypertension and degenerative joint disease.[10] She also had a history of lumbar surgery.[11] She was not interested in "health maintenance issues, i.e., colorectal screening, mammogram, or basic diagnostic studies."[12] By 2004, R.H. had suffered a right hip fracture, and was no longer able to walk due to the pain in her hip.[13] On June 18, 2004, she was given a prescription for vicodin 5/500, ½ - 1 tablet, prn (meaning "as needed").[14]

By 2005, R.H. was diagnosed with dementia, lumbosacral spondylosis, osteoporosis, and benign hypertension.[15] She had a prescription for vicodin 5/500, 1 – 2 tablets, PRN.[16] On November 12, 2008, R.H. came to Dr. Bartling's office where he conducted an annual examination.[17] Her vicodin was increased to vicodin ES, which has a strength of 7.5/750, and

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[7] Powers testimony. Dr. Hunter Judkins, Tanana Valley Clinic Medical Director, and Doug Hickman, an LPN at the Pioneer Home, also provided positive testimony about Dr. Bartling's knowledge, skill, and dedication.

[8] Exhibit 5, page 5; Bartling testimony. Exhibit 5 consists of the Tanana Valley Medical Clinic's medical record for R.H.

[9] Exhibit 5, page 26.

[10] Exhibit 5, page 27.

[11] Exhibit 5, page 26.

[12] *Id.*

[13] Exhibit 5, page 29.

[14] Exhibit 5, page 30. Vicodin 5/500 consists of 5 mg of hydrocodone and 500 mg of acetaminophen. Bartling testimony.

[15] Exhibit 5, page 45.

[16] *Id.*

[17] Exhibit 5, page 50.

this was prescribed to be taken every six hours, as needed.[18] On January 19, 2009, R.H. fell and hurt her knee. She was seen by Dr. Green at Tanana Valley Clinic (TVC). He noted that she receives "1 vicodin qid regularly x many mo's = well tol."[19]

On March 24, 2009, R.H.'s caretaker, who is a Licensed Practical Nurse,[20] called TVC and asked whether a stronger pain medication was appropriate. "She has routinely been taking 1 tab every 6 hours, and still has a lot of pain in her shoulders and knees."[21] R.H.'s prescription was changed to Vicodin HP 10/660.[22] Dr. Bartling's notes say "call back next month if this is not helpful at which time we will switch to Duragesic patch."[23] On April 14, 2009, R.H.'s caretaker called again and stated that the Vicodin was making R.H. groggy, but was not reducing her pain.[24] Dr. Bartling prescribed Arthritis Tylenol and Motrin.[25] On June 19, 2009, R.H. was in constant pain, and her caretaker requested a stronger pain medication. Dr. Bartling prescribed a Duragesic patch and the use of vicodin for breakthrough pain.[26] The Duragesic patch was re-prescribed every thirty days for the next several months.[27] On July 9, 2009, R.H. had blisters on her heal and a "red bottom."[28] Dr. Bartling provided a prescription and a letter of medical necessity for a gel mattress.[29] On November 16, 2009, R.H.'s caretaker called to renew two prescriptions. The caretaker stated that it was time for her annual examination, but that R.H. could not tolerate coming into Dr. Bartling's office.[30] Dr. Bartling sent a request to have a home visit scheduled.[31] That request "fell through the cracks" and the annual examination did not occur.[32]

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[18] Exhibit 5, page 52.
[19] Exhibit 5, page 54. Exhibit 5, page 63 lists a vicodin 5/500 prescription beginning in 2007 for one tablet 4 times per day.
[20] Two LPNs are the owners and primary caretakers at this assisted living home. The names of the LPNs and the name of the assisted living home are not included in this decision to further protect R.H.'s identity.
[21] Exhibit 5, page 206.
[22] *Id.*
[23] *Id.*
[24] Exhibit 5, page 207.
[25] *Id.*
[26] Exhibit 5, page 213.
[27] Bartling testimony.
[28] Exhibit 5, page 216.
[29] *Id.*
[30] Exhibit 5, page 229.
[31] *Id.*; Bartling testimony.
[32] Bartling testimony.

R.H. had last been examined by Dr. Bartling in November of 2008, and by Dr. Green in January of 2009. On February 2, 2010, she had a 5x5 centimeter ulcer near her rectum.[33] Dr. Bartling referred her to Home Health, which specializes in wound care in the Fairbanks area.[34] On February 16, 2010, Dr. Bartling increased the Duragesic patch dose to two patches.[35] On February 19, 2010, R.H. was admitted to the hospital for treatment of a necrotic sacral ulcer.[36]

It was undisputed at the hearing that R.H. has long-standing instructions that she did not want any unnecessary medical treatment, that she was not to be resuscitated or intubated in the event of a medical emergency, and that she wanted to receive only comfort care and pain relief treatment.

D. Investigation

The Office of Long Term Care Ombudsman (OLTCO) conducted an investigation of R.H.'s care at the assisted living home.[37] As a result of that investigation, OLTCO recommended the issuance of several notices of violation to the assisted living home.[38] The OLTCO report did not make any recommendation concerning Dr. Bartling, but did note its concerns "regarding Dr. Bartling's lack of personal assessment of R.H. during her declining state and the issuance of an Expected Home Death Report without an examination of any kind."[39] These concerns were repeated in a complaint filed with the division.[40] After conducting its own investigation and hiring an expert consultant, the division issued an accusation against Dr. Bartling.

E. Expert Witnesses

The division's expert witness was Dr. Gordon Glasgow. Dr. Glasgow has been licensed to practice medicine since 1977, and has been licensed in California since 1979. He is Board Certified in Internal Medicine by the Royal College of Physicians in Canada, and in Hospice and Palliative Medicine by the American Board of Hospice and Palliative Medicine. Dr. Glasgow

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33 Exhibit 5, page 236.
34 Exhibit 5, page 236; Bartling testimony.
35 Exhibit 5, page 239.
36 Exhibit 5, page 240.
37 Exhibit C, Div 173.
38 Exhibit C, Div 181.
39 Exhibit C, Div 180. The original accusation included a count alleging that the issuance of the Expected Home Death Report was improper. After testimony on this issue was presented, the division withdrew that allegation.
40 Exhibit B.

serves as the medical director for skilled nursing facilities, hospice, and assisted living homes, and has his own geriatric patients as well.[41]

Two experts testified on behalf of Dr. Bartling: Dr. John Fullerton and Dr. Karl Steinberg. Dr. Fullerton has been Board Certified in internal medicine since 1988. He is also certified by the American Academy of Home Care Physicians and by the American Board of Hospice and Palliative Medicine. He has several other board certifications and currently serves as the Director of Geriatric and Palliative Education and Training at St. Mary's Medical Center. He is also an Assistant Clinical Professor of Medicine for Yale University Medical School, and an Associate Clinical Professor of Medicine for the University of California San Francisco Medical School.[42]

Dr. Steinberg is a Board Certified family physician, with an added qualification in Hospice and Palliative Medicine. He has practiced in geriatrics since 1992. He currently supervises six providers attending patients in 12 nursing homes and multiple residential care facilities for the elderly in California. He has worked as a medical director for several different facilities in the past.

III. Discussion

A. Introduction

The Alaska State Medical Board licenses and supervises doctors of osteopathy.[43] The Board may impose discipline if it finds a doctor has demonstrated "professional incompetence, gross negligence, or repeated negligent conduct"[44] or for unprofessional conduct.[45]

The division has the burden of proving grounds for discipline.[46] It has alleged that discipline should be imposed based on incompetence, gross negligence, repeated acts of negligence, and unprofessional conduct. The division has the burden of proving facts supporting one or more of those grounds are more likely true than not true.

B. Count I

Count I alleges that Dr. Bartling exhibited professional incompetence or gross negligence when he prescribed the Duragesic patch without first conducting a physical examination of R.H.

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41 Exhibit R; Glasgow testimony.
42 Exhibit 1, Fullerton testimony.
43 AS 08.64.170.
44 AS 08.64.326(a)(8)(A).
45 AS 08.64.326(a)(9). These are not the only reasons discipline may be imposed, but they are the only reasons alleged in the Amended Accusation.
46 AS 44.62.460(e)(1).

The division's expert witness, Dr. Gordon Glasgow, testified Dr. Bartling had an obligation to physically examine R.H. before prescribing Duragesic or to at least examine her very soon after prescribing this medication.[47]

Professional incompetence is defined as

> Lacking sufficient knowledge, skills, or professional judgment in that field of practice in which the physician or physician assistant concerned engages, to a degree likely to endanger the health of his or her patients.[48]

Gross negligence in the medical context means "an extreme departure from the ordinary standard of care," entailing "more than ordinary inadvertence or inattention."[49]

The division did not present any evidence to show Dr. Bartling lacks sufficient knowledge or skills in the areas of family medicine, geriatrics, or palliative care. The division's evidence presented does, however, suggest that the decision to prescribe the Duragesic patch is evidence of a lack of professional judgment.

Dr. Glasgow's opinion was that if a patient's condition is getting worse, it is necessary for the physician to examine the patient before increasing or changing the patient's pain medication. He stated that this was basic medical school training. He also testified that given R.H.'s need for increasing levels of pain medication, Dr. Bartling should have examined her at least every five months if not quarterly. He testified that it was important to reexamine R.H. to see if a diagnostic mistake had been made in the prior examination.

Drs. Steinberg and Fullerton both testified that older patients suffering from degenerative disease tend to get worse over time.[50] The pain gets more severe, and they have increased tolerance for the pain medication being prescribed. This requires more powerful doses or different medication over time.[51]

Both Drs. Steinberg and Fullerton reviewed R.H.'s medical records. They agreed that his decision to prescribe the Duragesic patch without first examining R.H. is something that happens often in the geriatric and palliative care setting.[52] R.H. was already receiving vicodin, and it was

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[47] Glasgow testimony; Exhibit R Div 2646.

[48] 12 AAC 40.970.

[49] *In re Kohler, M.D.*, OAH No. 10-0635-MED (Alaska Medical Board 2011), at 14 (quoting *Storrs v. Lutheran Hospitals and Homes Soc. Of America, Inc.*, 661 P.2d 632, 634 (Alaska 1983)).

[50] Dr. Bartling's testimony was consistent with what these experts stated.

[51] Dr. Glasgow testified that R.H.'s symptoms were not easily cured, and that it was typical for patients like her to need increased doses over time to get the same amount of pain relief.

[52] *See also*, Hickman testimony (prescription for Duragesic patch commonly prescribed by telephone at Fairbanks Pioneer Home).

to be expected that she would need a stronger medication. They found Dr. Bartling's decision to change from vicodin to the lowest available dose of the Duragesic patch to be a conservative choice that was well within the ordinary standard of care. Dr. Fullerton testified that Dr. Bartling's pain management for R.H. was very compassionate, judicious, and careful. Dr. Steinberg described the decision to prescribe the Duragesic patch as somewhat conservative, stating that Dr. Bartling could have started with the 25 mcg/hr patch, rather than the 12.5 mcg/hr patch that was prescribed.

Drs. Glasgow, Steinberg, and Fullerton all testified that it was common for physicians to make decisions based on a nurse's assessment. Both Drs. Steinberg and Fullerton testified that in the palliative care setting, it is routine to change pain medications over the phone without examining the patient. Drs. Steinberg and Fullerton testified that Dr. Bartling's decision to change R.H.'s pain medication based on his knowledge of the patient and on the report from R.H.'s nurse without first conducting a physical examination was entirely appropriate.

In the context of this case, Drs. Steinberg's and Fullerton's opinions are persuasive. If R.H. was being treated with medication expected to cure her, then the lack of a cure might suggest the need for an additional examination before changing medications. R.H. was not being treated to cure her condition. She was being given vicodin purely to relieve her pain, and the need for increased amounts of vicodin was entirely expected, as was the eventual need to change from vicodin to a long lasting narcotic such as the Duragesic patch. The reports from R.H.'s caretakers that her pain was getting worse confirmed Dr. Bartling's prior evaluation. Increasing the pain relief medication was also consistent with R.H.'s expressed wishes of only receiving palliative care.

Drs. Steinberg and Fullerton both considered the prescription of the Duragesic patch to be a routine act for a patient such as R.H., and well within the ordinary standard of care. Nothing suggests their testimony should not be credited. Given that testimony, the division has not proven that it is more likely true that Dr. Bartling lacks professional judgment to a degree likely to endanger his patients (definition of incompetence), or that his decision to prescribe the Duragesic patch was an extreme departure from the ordinary standard of care (definition of gross negligence).

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C. Count II

In this count, the division alleges that prescribing the Duragesic patch to R.H. when she was not opioid tolerant was contrary to FDA warnings and demonstrated professional incompetence or gross negligence. As with Count I, this count could be viewed as alleging Dr. Bartling lacked the requisite judgment to determine whether to prescribe the Duragesic patch to R.H., or that his conduct was an extreme departure from the ordinary standard of care.

A boxed warning[53] for the Duragesic patch states that it should only be prescribed for patients who were already receiving opioid therapy and who are opioid tolerant.[54] The warning goes on to define opioid tolerant patients as people "who have been taking, for a week or longer, at least 60 mg of morphine daily, . . . or an equianalgesic dose of another opioid."[55]

Dr. Glasgow testified that R.H. was not opioid tolerant despite her long history of taking vicodin, because vicodin is a Schedule III narcotic while fentanyl, the active ingredient in the Duragesic patch, is a Schedule II narcotic. He testified that it was improper to prescribe the Duragesic patch to someone who was not previously prescribed a Schedule II narcotic. Dr. Glasgow testified it is intellectually dishonest to say that Schedule II narcotics and Schedule III narcotics are both opioids. He testified that he believed R.H. was Schedule III opioid tolerant but not Schedule II opioid tolerant.

Dr. Glasgow's distinction between Schedule II and Schedule III opioids is not stated in the FDA boxed warning, and the other two experts who testified both disagreed with Dr. Glasgow. Hydrocodone, the opioid in vicodin, is a Schedule II narcotic when it is prescribed alone.[56] It becomes a Schedule III narcotic when combined with opium or a nonnarcotic pain medication.[57] Other opioids are similarly classed as Schedule II or Schedule III depending on whether they are combined with other medications.[58] Dr. Glasgow did not explain why R.H. could not become opioid tolerant for purposes of prescribing the Duragesic patch while taking hydrocodone in its Schedule III form.

In addition, Dr. Glasgow conceded during his testimony that prescribing the Duragesic patch would have been proper if Dr. Bartling had first examined R.H. This contradicts his

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53 The Food and Drug Administration provides medication warnings outlined by a black box.
54 Exhibit V, Div 2704.
55 *Id.*
56 21 C.F.R. §1308.12(b)(1)(vi).
57 21 C.F.R. §1308.13(e)(1)(iii) & (iv).
58 *E.g.,* 21 C.F.R.§1308.12(b)(1)(ix) (morphine Schedule II) and 21 C.F.R. §1308.13(e)(1)(viii) (morphine Schedule III).

position that prescribing this patch was inappropriate because R.H. was not opioid tolerant.[59] A physical examination would not have converted R.H. from opioid naive to opioid tolerant.

Drs. Bartling, Fullerton, and Steinberg all testified that R.H. was opioid tolerant as that term is used in the FDA warning for the Duragesic patch. They explained that the boxed warning refers to the 25 mcg/hr[60] dose of fentanyl.[61] The patch prescribed to R.H. was the Duragesic 12, which delivers fentanyl at half the rate; 12.5 mcg/hr.[62] Based on the definition of opioid tolerance in the boxed warning, R.H. would be opioid tolerant if she had been taking at least 30 mg of morphine daily, or the equianalgesic dose of another opioid, for at least a week. R.H. had been taking 40 mg of vicodin daily for much more than a week. Forty mg of vicodin is equivalent to 40 mg of morphine.[63] Thus, according to Dr. Bartling's witnesses, prescribing the Duragesic 12 patch to R.H. was not contraindicated by the boxed warning.[64] Drs. Steinberg and Fullerton also testified that the warning was a guide, and that in some cases it is medically appropriate to prescribe a Duragesic patch to a patient who is not opioid tolerant.

Drs. Steinberg and Fullerton testified convincingly that the decision to prescribe the Duragesic patch was appropriate. They explained that R.H. had clearly indicated a desire for only palliative care, so that the main concern would be controlling her pain. Her progression through stronger doses of pain medication was typical of older patients with degenerative disease. Because the vicodin contained a large amount of acetaminophen, which can cause liver disease in high doses, it became necessary to change her medication. Using a long lasting medication would also provide a more constant dose, which would better control her pain. Both of these experts testified that the switch to the Duragesic patch, using vicodin only for break-through pain, was well within the standard of care.

The division has not met its burden of proving that Dr. Bartling demonstrated incompetence or gross negligence by prescribing the Duragesic patch to an opioid naive patient. It is more likely true than not true that R.H. was opioid tolerant at the time the patch was prescribed, as that term is used in the boxed warning, and it is more likely true than not true that prescribing the Duragesic patch was medically appropriate.

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59 Exhibit R, Div 2647.

60 This abbreviation stands for micrograms per hour, and is the rate at which the fentanyl is delivered by the Duragesic patch.

61 *See* Exhibit V, Div 2704.

62 Exhibit V, Div 2707.

63 Bartling testimony.

64 Steinberg testimony; Fullerton testimony; Bartling testimony.

D. Count III

This count alleges that Dr. Bartling engaged in repeated negligent conduct when he continued to re-prescribe the Duragesic patch to R.H. over a seven month period without conducting a physical examination. Dr. Glasgow stated "I would expect every physician to know that the continued filling of a CII narcotic prescription for thirteen [sic] months without an examination is well below the standard of care."[65]

Dr. Bartling testified that he was in contact with the nurses at the assisted living home. Those nurses were actually caring for R.H. They bathed her, turned her, fed her, and were able to listen to R.H.'s complaints of pain. He had a long term professional relationship with at least one of these nurses, and believed that he could rely on their professional judgment and reports.

Dr. Bartling testified that the increased dosages of vicodin, followed by the change to the Duragesic patch, were expected changes in the course of R.H.'s treatment, and not out of the ordinary, based on his experience in palliative care medicine. He testified that it is normal for a physician to rely on reports from nurses in deciding whether to re-prescribe or change a prescription medication, and in this case he was simply changing from one pain medication to another.

Drs. Fullerton and Steinberg both agreed that there was nothing wrong or unusual in continuing to re-prescribe the Duragesic patch to R.H. over a period of seven months, even without a physical examination. The division has not met its burden of proving that Dr. Bartling engaged in repeated negligent acts when prescribing the Duragesic patch over a seven month period of time without conducting a physical examination.

E. Count IV

The final allegation against Dr. Bartling is that prescribing the Duragesic patch without examining R.H., and then continuing to prescribe this medication over a period of several months without examination, caused harm to R.H. by delaying the discovery of R.H.'s decubitus ulcer. The division alleges that this is unprofessional conduct, which may be sanctioned pursuant to AS 08.64.326(a)(9).

As an initial matter, there is no evidence that an examination in June, when the Duragesic patch was first prescribed, would have assisted in the discovery of this ulcer which was described as a "red bottom" a few weeks later when the gel mattress was prescribed. There is also no

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[65] Exhibt R, Div 2647. The Schedule II narcotic, fentanyl, was refilled for about seven months. Prior to that, R.H. was receiving vicodin, a Schedule III narcotic.

evidence that any examination at a later date might have prevented or limited the breakdown in R.H.'s skin that led to this ulcer. Thus, the division has not proven that it is more likely true than not true that the Duragesic prescription without an examination caused any harm to R.H.[66]

However, the Board can find unprofessional conduct without proof that the conduct caused harm. Unprofessional conduct means not conforming to the generally acceptable standards of practice.[67] Unprofessional conduct also includes

> (27) providing treatment, rendering a diagnosis, or prescribing medications based solely on a patient-supplied history that a physician licensed in this state received by telephone, facsimile, or electronic format; [and]
>
> * * *
>
> (29) prescribing, dispensing, or furnishing a prescription medication to a person without first conducting a physical examination of that person, unless the licensee has a patient-physician or patient-physician assistant relationship with the person[.[68]]

As discussed above, Dr. Bartling's conduct in prescribing vicodin and then the Duragesic patch without a physical examination was within generally acceptable standards of practice because R.H. had been his patient for several years, the progression of her degenerative condition was not unexpected, R.H. had clearly stated her wishes were for palliative care only, and Dr. Bartling could reasonably rely on the reports about R.H.'s condition from the nurses who were caring for her on a daily basis. The prescription was not based solely on patient supplied history. It was based on the observations of a trained nurse, and on Dr. Bartling's own prior examination of R.H. Thus, his conduct was not unprofessional under either 12.AAC 40.967(27) or (29).

In addition, based on the weight of the evidence, Dr. Bartling's conduct did conform to generally acceptable standards of practice. R.H. was monitored multiple times each day by a licensed practical nurse. When "redness" was observed, Dr. Bartling prescribed a different mattress. When R.H. developed an ulcer, he arranged for Home Health nurses to care for her. The division has failed to meet its burden of proving that Dr. Bartling's conduct was unprofessional.

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[66] The accusation suggested that the pain medication limited R.H.'s ability to detect and complain of the pain from this ulcer. The evidence presented did not support that suggestion, and there was ample evidence that R.H. was able to complain, and did complain, when she was in pain.

[67] 12 AAC 40.967.

[68] 12 AAC 40.967.

IV. Conclusion

No inference should be made from this decision that Dr. Glasgow's testimony was not credible. His testimony, however, was effectively countered by that of Drs. Bartling, Steinberg, and Fullerton, each of whom is at least as well qualified as Dr. Glasgow in the areas of geriatric medicine and palliative care. Where Dr. Glasgow focused primarily on one fact[69] – the length of time without a physical examination – the other experts focused on the record as a whole, which included the facts that R.H. had been a patient of Dr. Bartling for several years, that reliable nurses were working with R.H. and providing reports to Dr. Bartling, that her pain was taking an expected and predicted course, and that the patient did not want intrusive measures taken.

Based on the evidence in this case, Dr. Bartling provided appropriate pain management care and monitoring for his patient, R.H. The division did not meet its burden of proving that Dr. Bartling was incompetent, or that he had acted negligently or unprofessionally.

DATED this 12th day of April, 2013.

Signed
Jeffrey A. Friedman
Administrative Law Judge

Adoption

The Alaska State Medical Board adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 19th day of July, 2013.

By: *Signed*
Name: William Resinger, M. D.
Title: Medical Board

[This document has been modified to conform to the technical standards for publication.]

[69] Dr. Glasgow was also concerned that R.H. was not opioid tolerant, but testified that prescribing the Duragesic patch would have been acceptable if Dr. Bartling had conducted a physical examination.