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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINDINGS OF FACT, CONCLUSIONS
 J. MARTIN JOHNSON, M.D., : OF LAW AND ORDER
 RESPONDENT. :

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.16 are:

J. Martin Johnson, M.D.
121 West Fond du Lac Street
Ripon, Wisconsin 54971

Medical Examining Board
1400 East Washington Avenue, Room 176
P. O. Box 8936
Madison, Wisconsin 53708

Department of Regulation &
Licensing, Division of Enforcement
1400 E. Washington Ave, Rm 183
P.O. Box 8936
Madison, Wisconsin 53708

A party aggrieved by this decision may petition the board for rehearing within twenty (20) days after service of this decision pursuant to Wis. Stats. sec. 227.12. The party to be named as respondent in the petition is J. Martin Johnson, M.D.

A party aggrieved by this decision may also petition for judicial review by filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings will be held and serving the board and other parties with a copy of the petition for judicial review within thirty (30) days after service of this decision pursuant to Wis. Stats. sec. 227.16. The party to be named as a respondent in the petition is the State of Wisconsin, Medical Examining Board.

These proceedings were commenced by the filing of a Notice of Hearing and Complaint on October 11, 1978. A hearing was held upon the six counts contained in the Complaint on April 17, 1979. A proposed decision was issued by the Hearing Examiner, William Dusso, on October 7, 1979. A copy of the proposed decision by Hearing Examiner Dusso is contained in the Appendix (hereinafter, "App.") to this decision. Written objections to the proposed decision were filed with the Medical Examining Board by the respondent, Dr. J. Martin Johnson; respondent's attorney, Charles K. Wildermuth; and complainant's attorney, Gilbert C. Lubcke. Oral arguments on the written objections were heard by the

Medical Examining Board on December 12, 1979. The Board took no final action upon the proposed decision and objections filed; but rather, rendered an Order dated January 15, 1980, stating in part:

"As a result of all of the proceedings, argument and record, it is the opinion of the Board that further evidence should be submitted and made a part of the record to further apprise the Board of the respondent's prescription practices other than the incidents charged in the Complaint.

"IT IS THEREFORE ORDERED that the hearing examiner hold a further hearing at which time all evidence including records and documents in the possession of the Medical Examining Board relating to any investigation of the respondent's prescription practices be made available to him and made a part of the record and that the respondent be afforded adequate opportunity to rebut or offer countervailing evidence as provided in sec. 227.08(2), Stats." (App., pp. 11-12).

The result of the board's foregoing Order was to substantially expand the factual circumstances of Dr. Johnson's prescriptive practices to be investigated and made subject to a disciplinary hearing, and to hold in abeyance the disciplinary recommendation Hearing Examiner Dusso made upon his findings of respondent's unprofessional conduct until a further investigation, hearing and proposed decision were conducted and prepared for future board consideration.

Hearing Examiner Dusso informed counsel for the parties of the Order of the board by written notice dated January 23, 1980. Scheduling Orders were issued by Hearing Examiner Dusso in order to set dates for conducting the necessary further investigation by the parties on the new matters to be considered at the future hearing.

On September 12, 1980 the First Amended Complaint was filed. It consisted of 21 counts, the first 6 setting forth the allegations contained in the original Complaint which were previously heard and the subject of the hearing examiner's proposed decision. A prehearing conference was held on October 2, 1980, resulting in an Order by the hearing examiner that no additional evidence be offered at the future hearing with respect to the first 6 counts in the First Amended Complaint -- again, said allegations having been previously heard and determined by Hearing Examiner Dusso. The Order also required respondent to file an Answer to the First Amended Complaint by October 17, 1980 and scheduled the remaining 15 counts for hearing on November 19, 1980. (See, Memorandum on Prehearing Conference, dated October 14, 1980).

On November 18, 1980, Donald R. Rittel was substituted as the hearing examiner in the case. The subsequent hearings in this proceeding were held on November 19, 1980; November 20, 1980; December 15, 1980; March 5, 1981; March 12, 1981; and July 17, 1981. Respondent, Dr. J. Martin Johnson, was represented by Attorney Charles K. Wildermuth, 533 Mill Street, P. O. Box 565, Green Lake, Wisconsin 54941. Complainant, Stuart R. Engerman, was represented by Attorney Gilbert C. Lubcke, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8936, Madison, Wisconsin 53708. Examiner Rittel filed the Second Proposed Decision in the matter on February 10, 1982.

Based upon consideration of the record in this matter, including review of the previous proceedings and the proposed decision of the hearing examiner; along with all pleadings, evidence received and argument of the parties, the Medical Examining Board adopts as its final decision in this case the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. J. Martin Johnson, M.D. (Johnson), respondent, is a physician licensed by the State of Wisconsin Medical Examining Board holding license number 5714 and has been so licensed since 1944. Johnson was born on August 8, 1896. Johnson practices medicine in an office located at 121 West Fond du Lac Street, Ripon, Wisconsin.

UNDERCOVER AGENTS

2. On April 6, 1978, Gary Martine, an investigator for the State of Wisconsin, Department of Justice Division of Criminal Investigation went to Johnson's office at 121 West Fond du Lac Street in Ripon, Wisconsin to perform an undercover investigation of Johnson using the name Gary Mathews. In his investigation of Johnson, Martine was not acting as an agent or employee of the Medical Examining Board and was not directed or controlled by the Medical Examining Board.

3. Martine, hereinafter referred to as "Mathews," told Johnson on April 6, 1978 that he wished to obtain some Percodans from him because he wanted to feel good. Johnson told Mathews that Percodans were a narcotic drug and that he, Johnson, wasn't in the practice of prescribing drugs such as Percodans to patients upon request. Johnson asked Mathews about his health which Mathews said was satisfactory. Johnson checked Mathews' blood pressure, pulse and heart but not his eyes, ears, nose or abdomen. Johnson asked Mathews about past medical problems. Mathews said he had no past medical problems. Johnson asked Mathews if he had difficulty sleeping or suffered insomnia. Mathews told Johnson he was having no problem sleeping and that he just wanted to feel good while he was awake.

4. On April 6, 1978, Johnson, at his office at 121 West Fond du Lac Street, Ripon, Wisconsin, wrote a prescription for 30 Seconal capsules (100 mg.) for Mathews and a prescription for 30 Valium tablets (5 mg.) for Mathews and delivered said prescriptions to Mathews.

5. The prescriptions for 30 Seconal capsules and 30 Valium tablets described in paragraph 4, above, were not written for legitimate medical purpose and not written in the course of legitimate professional practice in that the use of neither Seconal nor Valium was medically indicated by the medical history, the physical examination or the subjective complaints of Mathews or by any other information then available to Johnson.

6. On April 17, 1978 Mathews went to Johnson's office and told Johnson he wanted more Seconals. Johnson reviewed Mathews' file and told him that he had not followed the directions for use of the first prescription. Mathews said he had given some of the Seconal to a roommate. Johnson told Mathews that he could be arrested for giving controlled substances to the roommate. Johnson told Mathews he would not give Mathews more Seconal.

7. On April 17, 1978, Johnson did not conduct any physical examination of Mathews.

8. On April 17, 1978, Johnson, at his office at 121 West Fond du Lac Street, Ripon, Wisconsin, wrote a prescription for 30 Doriden (.5 mg.) for Mathews and delivered said prescription to Mathews.

9. The prescription for 30 Doriden (.5 mg.) described in paragraph 8, above, was not written for legitimate medical purpose and was not written in the course of legitimate professional practice in that the use of Doriden was not medically indicated by the medical history, the physical examination or the subjective complaints of Mathews or by any other information then available to Johnson.

10. Johnson prepared a patient record for Mathews, a copy of which is annexed to these findings as Exhibit I. (App., pp. 7-8).

11. On April 28, 1978, Cheryl Reese, an investigator for the State of Wisconsin Department of Justice Division of Criminal Investigation went to Johnson's office at 121 West Fond du Lac Street, in Ripon, Wisconsin to perform an undercover investigation of Johnson using the name Cheryl Rehboz. In her investigation of Johnson, Reese was not acting as an agent or employee of the Medical Examining Board and was not directed or controlled by the Medical Examining Board.

12. On April 28, 1978, Reese, hereinafter "Rehboz," requested Johnson to give her a prescription for Phenobarbital. She told Johnson she did not like to go to bars, did not enjoy the taste of alcohol and that she liked to take Phenobarbital to "mellow out". Johnson asked her if she drank whiskey or beer. Rehboz said she did not. Johnson asked her if she had a hard time getting to sleep at night, whether she was nervous, experiencing anxiety or had convulsions. To these questions, Rehboz responded that she slept well, was not nervous and had not had convulsions. Johnson took Rehboz's pulse and blood pressure, but did not check her eyes, ears, nose or abdomen.

13. On April 28, 1978, Johnson, at his office, wrote a prescription for 30 Phenobarbital tablets (1 gr.) for Rehboz and delivered the prescription to Rehboz. While Johnson was typing the prescription for Rehboz on April 28, 1978, he asked her if she was hyperactive. Rehboz replied she was not. Johnson indicated that information was necessary for the label. The prescription for Rehboz includes the statement: "Sig: one or two tablets in 24 hours at least eight hours apart for hyperactivity."

14. The prescription for 30 Phenobarbital tablets (1 gr.), described in paragraph 13, above, was not written for legitimate medical purpose and was not written in the course of legitimate professional practice in that the use of Phenobarbital was not medically indicated by the medical history, the physical examination or the subjective complaints of Rehboz or by any other information then available to Johnson.

15. On June 21, 1978 Rehboz returned to Johnson's office and told Johnson she was there to renew the prescription for Phenobarbital. Johnson took Rehboz's blood pressure, heartbeat and weight and told her she appeared to be normal, in good health. Johnson then wrote a prescription for 30 Phenobarbital tablets (1 gr.) for Rehboz and delivered the prescription to Rehboz.

16. The prescription for 30 Phenobarbital tablets (1 gr.), described in paragraph 15, above, was not written for legitimate medical purpose and not written in the course of legitimate professional practice in that the use of Phenobarbital was not medically indicated by the medical history, the physical examination or the subjective complaints of Rehboz or by any other information then available to Johnson.

17. On June 29, 1978, Rehboz returned to Johnson's office and asked him to renew the prescription for Phenobarbital. Johnson told her the prescription could not be filled for another eight days. Rehboz told Johnson she misunderstood the directions for taking the drug. She requested a prescription for an alternative drug. Johnson suggested and prescribed 30 Valium tablets (5 mg.) for Rehboz and delivered the prescription to Rehboz.

18. The prescription for 30 Valium tablets (5 mg.), described in paragraph 17, above, was not written for legitimate medical purpose and not written in the course of legitimate professional practice in that the use of Valium was not medically indicated by the medical history, the physical examination or the subjective complaints of Rehboz or by any other information then available to Johnson.

19. Johnson prepared a patient record for Rehboz, a copy of which is annexed to these findings as Exhibit II. (App., pp. 9-10).

20. Seconal contains secobarbital, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.16(7)(c).

21. Valium contains diazepam, a Schedule IV Controlled Substance.

22. Doriden contains glutethimide, a Schedule III Controlled Substance.

23. Phenobarbital contains phenobarbital, a Schedule IV Controlled Substance.

JACK JONAS

24. Johnson provided medical consultation and treatment for his patient, Jack Jonas, from September 12, 1956 through November 15, 1976.

25. Johnson dispensed Biphedamine 20 to Jonas from May 1, 1963 through November 15, 1976, as treatment for Jonas' obesity. (App., pp. 13-20).

26. Biphedamine 20 contains amphetamine, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.16(5).

27. Prior to dispensing Biphedamine 20 for obesity treatment of Jonas, Johnson failed to conduct any physical examination of Jonas, or to take Jonas' weight or blood pressure.

28. During the thirteen and one-half years that Johnson dispensed Biphedamine 20 for Jonas as treatment for obesity, Johnson never took Jonas' blood pressure or weight.

29. Johnson instructed Jonas take one Biphedamine 20 in the morning during the obesity treatment. This daily dosage instruction was the same throughout the lengthy period of treatment. In every year after 1973 Johnson dispensed over 400 Biphedamine 20 to Jonas. In 1974 approximately 850 Biphedamine 20 were dispensed to Jonas by Johnson. Johnson knew that he was dispensing more Biphedamine 20 for Jonas than were necessary if Jonas was following Johnson's instructions. Such dispensing of amphetamines to Jonas by Johnson was excessive.

30. The dosage of Biphedamine 20 dispensed by Johnson for Jonas, as well as the duration of the use of Biphedamine 20 for obesity, was excessive, and the failure of Johnson to conduct an initial physical examination prior to treating obesity with drugs, or to monitor Jonas' condition during treatment, tended to constitute a danger to the health, safety and welfare of Jonas.

31. The excessive dispensing of Biphedamine 20 to Jonas, and the duration of drug treatment for Jonas' obesity, were contrary to a course of legitimate medical practice.

CARLA HUNGER JACKOWSKI

32. Johnson provided medical consultation and treatment for obesity for his patient, Carla Hunger Jackowski, from March 12, 1976 through July 19, 1976.

33. Upon Johnson's first consultation with Jackowski on March 12, 1976, Jackowski indicated a desire to lose 10 pounds in weight. Jackowski's height was five feet six inches and her weight was 140 $\frac{1}{4}$ pounds at that time. Johnson examined Jackowski by taking her blood pressure and examining her heart and lungs. Johnson further took a medical history, determining that Jackowski had lost approximately 27 pounds over the previous year, seldom drank alcohol and was not on contraceptives, and had a good past history of health. Johnson dispensed Biphedamine 20 to Jackowski for treatment of what Johnson diagnosed as "mild obesity".

34. Johnson dispensed Biphedamine 20 to Jackowski from March 12, 1976 through July 19, 1976. (App., p. 21).

35. Biphedamine 20 contains amphetamine, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.16(5).

36. Jackowski's next consultation with Johnson occurred on March 19, 1976. Johnson was informed that Jackowski was about to take a vacation in Florida. Upon the rationale that Jackowski would probably eat and drink more than normal while vacationing, Johnson dispensed Dexamyl 5 mg. to Jackowski in addition to Biphedamine 20. Jackowski was instructed to take one Biphedamine 20 at 9:30 a.m. and the Dexamyl 5 mg. at 3:00 p.m.

37. Johnson dispensed Dexamyl 5 mg. to Jackowski from March 19, 1976 through July 19, 1976.

38. Dexamyl 5 mg. contains dextroamphetamine sulfate and amobarbital, Schedule II Controlled Substances as defined in Wis. Stats. secs. 161.01(4), and 161.16(5) and (7).

39. The use by Jackowski of Biphedamine 20 in conjunction with Dexamyl 5 mg. continued from March 19, 1976 through July 19, 1976.

40. On April 20, 1976, approximately five weeks after her initial consultation with Johnson and approximately three months prior to the conclusion of treatment, Jackowski weighed 124½ pounds, indicating a loss of 16 pounds since her initial visit to Johnson's office when she had expressed a desire to lose 10 pounds.

41. Johnson failed to check the blood pressure of Jackowski at any time subsequent to her initial consultation on March 12, 1976. (App., p. 22).

42. The simultaneous use of Biphedamine 20 and Dexamyl 5 mg. and the failure to check the blood pressure of Jackowski for 4 months, exhibits excessive use by Johnson of amphetamines in treatment for mild obesity and a failure to adequately monitor Jackowski's condition during the course of treatment, thereby tending to constitute a danger to the health, safety and welfare of Jackowski.

43. The dispensing of Dexamyl 5 mg., in addition to Biphedamine 20, to Jackowski by Johnson solely because Jackowski might eat and drink more while on vacation in Florida, and continuing the use of both amphetamines after Jackowski had reached a weight of 124½ pounds, was contrary to a course of legitimate professional practice.

MARY KLINZING

44. Johnson provided medical consultation and treatment for obesity for his patient, Mary Klinzing, from June 5, 1975 through November 4, 1976. On June 5, 1975 Klinzing weighed 137½ pounds and was five feet five and three-quarters inches in height. Johnson took no medical history, blood pressure, nor examination of the heart of Klinzing.

45. Johnson dispensed Biphedamine 12½ to Klinzing at the initial visit on June 5, 1975.

46. Biphedamine 12½ contains amphetamine, a Schedule II Controlled Substance as defined in Wis. Sttas. sec. 161.01(4) and 161.16(5).

47. Johnson dispensed or prescribed Biphedamine 20 for Klinzing from December 3, 1975 through August 17, 1977. Between February 17, 1976 and November 4, 1976, Johnson dispensed or prescribed Dexamyl 5 mg. for Klinzing. (App., p. 23).

48. Biphedamine 20 contains amphetamine, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.16(5).

49. Dexamyl 5 mg. contains dextroamphetamine sulfate and amobarbital, Schedule II Controlled Substances as defined in Wis. Stats. secs. 161.04, and 161.16(5) and (7).

50. Beginning on February 17, 1976 dispensed or prescribed for Klinzing Dexamyl 5 mg., in addition to Biphedamine 20, with instructions that she take one of each per day. The added use of Dexamyl 5 mg. was ordered by Johnson because Klinzing had gained three pounds since her last visit.

51. On March 5, 1976 Klinzing weighed 121-3/4 pounds.

52. Beginning on April 14, 1976, Johnson instructed Klinzing to take two Dexamyl 5 mg. and one Biphedamine 20 per day. Klinzing weighed 121-1/2 pounds on April 14, 1976. This dosage instruction continued until November 4, 1976.

53. Johnson never checked Klinzing's blood pressure between June 5, 1975 and November 4, 1976. (App., p. 24).

54. The failure of Johnson to perform an initial physical examination on June 5, 1975 or take the blood pressure of Klinzing prior to, and during the time, she was taking amphetamines, along with the simultaneous use of both Biphedamine 20 and Dexamyl 5 mg. for obesity treatment, tended to constitute a danger to the health, safety and welfare of Klinzing.

55. The failure of Johnson to perform an initial examination and to never take the blood pressure of Klinzing, along with the continued dispensing and prescribing by Johnson of both Biphedamine 20 and Dexamyl 5 mg. after Klinzing had reached a weight of 121-3/4 pounds on March 5, 1976, and increasing her dosage further on April 14, 1976 when Klinzing weighed 121-1/2 pounds, was contrary to a course of legitimate professional practice.

BRIAN BALGIE

56. Johnson provided medical consultation and treatment for his patient, Brian Balgie, from September 11, 1975 through January 28, 1980.

57. On June 23, 1976 Balgie weighed 211-1/2 pounds, was six feet in height, and contacted Johnson for obesity treatment. Johnson examined Balgie and found his pulse to be 110 and blood pressure 145/94. (App., p. 25). A blood pressure of 145/94 is indicative of treatable hypertension.

58. Johnson prescribed Biphedamine 20, along with Dexedrine 5 mg., to Balgie from June 23, 1976 through October 25, 1977. (App., pp. 27-28).

59. Biphedamine 20 contains amphetamine, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.16(5).

60. Dexedrine 5 mg. contains amphetamine, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.16(5).

61. Between June 23, 1976 and October 25, 1977, Balgie's highest weight was 211-1/2 pounds on June 23, 1976 and July 23, 1976; while his lowest weight was 202-3/4 pounds on June 28, 1977. On October 10, 1977, the last date of Balgie's weight was taken while being prescribed amphetamines, Balgie weighed 206 pounds. (App., pp. 25-26).

62. Johnson never checked Balgie's blood pressure, other than at the initial consultation concerning Balgie's obesity, between June 23, 1976 and October 25, 1977.

63. The initial prescribing by Johnson of amphetamines to Balgie when Johnson was aware of Balgie's pulse of 110 and blood pressure of 145/94, and continuing to prescribe both amphetamines to Balgie for more than a year without checking Balgie's blood pressure, was contrary to a course of legitimate professional practice and tended to constitute a danger to the health, safety and welfare of Balgie.

DALE FINK

64. Johnson provided medical consultation and treatment for obesity for his patient, Dale Fink, from August 19, 1976 through September 21, 1977. On August 19, 1976 Fink weighed 183 pounds and was five feet five inches in height. Johnson's physical examination indicated that Fink's heart and lungs were good, but that his blood pressure was 134/104. Johnson did not measure Fink's pulse.

65. Johnson dispensed Biphedamine 20 to Fink from August 19, 1976 through September 21, 1977; Dexedrine 5 mg. from August 19, 1976 through September 1, 1976; Dexamyl 5 mg. from September 10, 1976 through September 21, 1977; and prescribed Quaalude 300 mg. from September 10, 1976 through September 21, 1977. (App., pp. 29-30).

66. Biphedamine 20 contains amphetamine, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.16(5).

67. Dexedrine 5 mg. contains amphetamine, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.16(5).

68. Dexamyl 5 mg. contains amphetamine, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.16(5).

69. Quaalude 300 mg. contains methaqualone, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.16(6).

70. Johnson never checked Fink's blood pressure, other than at the initial consultation concerning Fink's obesity, between August 19, 1976 and September 21, 1977. (App., p. 31).

71. Johnson prescribed Quaalude for Fink's insomnia, in combination with dispensing Biphedamine 20 and Dexamyl 5 mg., between September 10, 1976 and September 21, 1977 without taking any action to alleviate Fink's adverse reaction to the amphetamines which caused the insomnia, such action being contrary to a course of legitimate professional practice and tending to constitute a danger to the health, safety and welfare of Fink.

72. The initial dispensing by Johnson of amphetamines to Fink when Johnson had failed to take Fink's pulse, and was aware that Fink's blood pressure was 134/104, and Johnson's continuing to dispense amphetamines to Fink for more than a year without checking Fink's blood pressure, was contrary to a course of legitimate professional practice and tended to constitute a danger to the health, safety and welfare of Fink.

KATHLEEN KELM

73. Johnson provided medical consultation and treatment for obesity for his patient, Kathleen Kelm, from March 16, 1976 through October 24, 1977. On March 16, 1976 Kelm weighed 129-1/2 pounds and was five feet two inches in height. Johnson's physical examination indicated that Kelm's heart and lungs were good and that her blood pressure was 106/60. Johnson did not take Kelm's pulse. Kelm indicated she wanted to lose about 20 pounds, due to her having gained about 10 pounds over the previous year and one-half after starting to take birth control pills.

74. Johnson dispensed Biphedamine 20 to Kelm between March 16, 1976 and October 14, 1976. Johnson also dispensed Dexamyl 5 mg. to Kelm between March 16, 1976 and April 20, 1976; and again between July 21, 1976 and October 24, 1977. (App., p. 32).

75. Between March 16, 1976 and April 20, 1976, and between July 21, 1976 and October 14, 1976, Johnson instructed Kelm to take one of each amphetamine per day. Between May 4, 1976 and July 6, 1976, she was dispensed only Biphedamine 20; and, between January 17, 1977 and October 24, 1977, she was dispensed only Dexamyl 5 mg.

76. Biphedamine 20 contains amphetamine, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.16(5).

77. Dexamyl 5 mg. contains dextroamphetamine sulfate and amobarbital, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.04, and 161.16(5) and (7).

78. Johnson never checked Kelm's blood pressure, other than at the initial consultation concerning Kelm's obesity, between March 16, 1976 and October 24, 1977. (App., p. 33).

79. Between March 16, 1976 and October 24, 1977, Kelm lost 14 pounds, having reduced her weight from 129-1/2 to 115-1/2 pounds.

80. The failure of Johnson to ever check Kelm's blood pressure during year and one-half that she was taking amphetamines for weight loss, was contrary to a course of legitimate professional practice and tended to constitute a danger to the health, safety and welfare of Kelm.

CURRENT MEDICAL OPINIONS OF JOHNSON CONCERNING USE OF AMPHETAMINES

81. Johnson did not place any of his patients whom he was treating for obesity on fixed or specific calorie diets in conjunction with their use of amphetamines. Johnson believes that calorie diets have no major impact upon weight reduction and that current medical literature supports that opinion. Furthermore, Johnson believes that fixed calorie diets have an adverse impact upon the psychological health of the individual and, accordingly, are not beneficial overall for the patient.

82. Johnson did not monitor the blood pressure of any of his patients during their course of treatment for obesity. In the case of Mary Klinzing, no blood pressure was even taken initially. In the cases of Brian Balgie and Dale Fink, initial blood pressures were taken which

indicated high blood pressures, but blood pressures were never taken again, although both were placed on amphetamines for over a year. The weight and blood pressure of Jack Jonas was never taken by Johnson, yet Jonas was dispensed amphetamines for 13½ years. Johnson believes that monitoring blood pressure while the patient is taking amphetamines is not necessary because a physician can ascertain hypertension due to high blood pressure by merely physically observing the patient.

83. Johnson dispensed amphetamines to Jack Jonas for over 13½ years with the continuing instruction that Jonas take one amphetamine daily. The dispensing records of Johnson indicate that he dispensed more amphetamines to Jonas each and every year than were necessary for Jonas to take only one amphetamine per day, as instructed. In 1974 alone, Johnson dispensed approximately 850 Biphphetamine 20 to Jonas. Johnson believes that it is not a physician's duty to monitor what a patient does with drugs after they are dispensed, but that patients should monitor themselves as to daily dosage. Furthermore, Johnson believes, even in light of Jonas' 13½ years of being dispensed significantly more amphetamines than necessary to follow his instructions as to use, that a physician cannot be, and is not held responsible if a patient disregards the physician's instructions and the physician does not alter his dispensing practices accordingly.

SANDRA PETERMAN

84. Johnson provided medical consultation and treatment for his patient, Sandra Peterman, from July 8, 1969 through March 31, 1980.

85. On July 8, 1974 Peterman consulted with Johnson and informed him that she was experiencing migraine headaches and painful menstrual cramps. Peterman requested a prescription for Percodan. Johnson prescribed Percodan for Peterman from July 8, 1974 through January 27, 1978. (App., pp. 34-35).

86. Percodan contains oxycodone, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4), and 161.16(2)(a) and (b).

87. During the time Johnson prescribed Percodan for Peterman, she informed Johnson of the following information on the dates indicated:

- (a) 8/1/74. Peterman's husband uses some of her Percodan due to a previous accident. In addition, Peterman lost approximately half of her supply of Percodan.
- (b) 1/27/75. Peterman either lost or had stolen from her purse, her supply of Percodan. Johnson informed Peterman that if her husband was continuing to take her Percodan he would not tolerate such incidents in the future.
- (c) 9/26/76. Peterman either lost or had her purse stolen which contained her supply of Percodan. Johnson informed Peterman that she and her husband had complained more than once about losing her Percodan, which seemed strange.

- (d) 2/3/78. Peterman informed Johnson that her Percodan supply had been stolen from her car. Johnson refused to give Peterman another prescription for Percodan until a month had elapsed from January 27, 1978, the date of his previous prescription for Percodan. (On her next visit to Johnson on 2/28/78, Peterman requested Percodan, but Johnson refused indicating that he might prescribe Percodan for her in the future "depending on what the people do down in Madison regarding drugs." Johnson then prescribed Empracet #4 in place of Percodan).
- (e) Between February 28, 1978 and March 31, 1980, Johnson received no reports from Peterman of either a theft or loss of her supply of prescribed drugs.

88. Johnson prescribed Empracet #4 to Peterman from February 28, 1978 through December 4, 1978. From February 28, 1978 through March 3, 1978 the prescription of Empracet #4 was for Peterman's migraine headaches and painful menstrual cramps. From May 2, 1978, the prescription was for migraine headaches and backache.

89. Empracet #4 contains codeine, a Schedule III Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.18(5).

90. Johnson prescribed Empirin #4 to Peterman from January 3, 1979 through March 31, 1980 for migraine headaches and backache.

91. Empirin #4 contains codeine, a Schedule III Controlled Substance as defined in Wis. Stats. secs. 161.01(4) and 161.18(5).

92. Percodan, Empracet #4 and Empirin #4 are not appropriate drugs for the initial treatment of migraine headaches or menstrual cramps.

93. Ergot derivatives should ordinarily be initially used by physicians for treating migraine headaches. If ergot derivatives are not effective, the diagnosis of migraine headaches should be reconsidered by the physician.

94. There are several drugs available for initially treating painful menstrual cramps. If the initial drug used is not successful, then resort to a controlled substance for a short time period may be appropriate.

95. The use by Johnson of Percodan, Empracet #4, and Empirin #4 in treating the migraine headaches and menstrual cramps of Peterman, exceeded the strength of drug and dosage required for the medical condition of Peterman, and was contrary to a course of legitimate professional practice.

LILLIAN KRUEGER

96. Johnson provided medical consultation and treatment for his patient, Lillian Krueger, from May 22, 1928 through August 1, 1980.

97. Krueger has suffered from congenital dislocation of both hips since, or shortly after, her birth on December 27, 1906.

98. Congenital hip dislocation develops due to either a shallow socket of the hip joint or a poorly developed head of the femur that fits into the socket. The joint tends to dislocate with the head of the femur riding above the joint, resulting in an interference with leg motion and causing a severe limp. The pain associated with congenital hip dislocation is minimal at an early age, but gradually increases until the pain may be quite severe in elderly individuals.

99. Johnson dispensed Percodan to Krueger from March 7, 1963 through August 1, 1980 in order to relieve the pain she was experiencing from congenital hip dislocation. (App., pp. 36-42).

100. Percodan contains oxycodone, a Schedule II Controlled Substance as defined in Wis. Stats. secs. 161.01(4), and 161.16(2)(a) and (b).

101. Around 1970 various techniques became available for treating many hip diseases, particularly in the elderly, including replacement joints and partial replacements. These techniques are effective in treating congenital hip dislocation.

102. Johnson has never consulted with another physician, or advised Krueger, concerning the possibility of a partial or total joint replacement as treatment for Krueger's congenital hip dislocation.

103. Johnson is of the current opinion that medical techniques for congenital hip dislocation, such as partial or total joint replacements, are ineffective for elderly individuals such as Krueger.

104. In either late January, or early February, of 1980 Krueger received consultation for a possible blood clot from Dr. Jay Willett of Green Lake, Wisconsin. Krueger visited Dr. Willett because Johnson was not available at the time.

105. Dr. Willett informed Krueger's son and daughter-in-law that Krueger should consider having a hip joint replacement and that he could refer Krueger to a physician in Green Bay, Wisconsin for possible treatment.

106. Krueger informed Johnson of the recommendation of Dr. Willett and stated that she did not desire to have a joint replacement. Johnson indicated to Krueger that the choice of whether or not to have a joint replacement was Krueger's, and Johnson made no recommendation to Krueger.

107. The records of Johnson indicate that on February 27, 1980,

"Also, I suggested that she be evaluated at the University Hospitals for the painful hips. She said she wanted to wait until after March. Advised her to keep me posted." (Exhibit #G-61).

The records of Johnson do not indicate whether he again discussed the possibility with Krueger of obtaining an evaluation of her hip condition subsequent to February 27, 1980.

108. The failure of Johnson to re-evaluate the congenital hip dislocation condition of Krueger with respect to the various medical techniques available, as an alternative to dispensing Percodan for the

pain resulting from Krueger's condition, was contrary to a course of legitimate practice and tended to constitute a danger to the health, safety and welfare of Krueger.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this proceeding pursuant to Wis. Stats. sec. 448.02.

2. Johnson, in prescribing and dispensing controlled substances otherwise than in the course of legitimate professional practice, as described in the Findings of Fact above, is guilty of unprofessional conduct as that term is used in Wis. Stats. sec. 448.02(3) and Wis. Adm. Code sec. MED 10.02(2)(p).

3. Johnson, in engaging in practices and conduct which tends to constitute a danger to the health, welfare, and safety of his patients, as described in the Findings of Fact above, is guilty of unprofessional conduct as that term is used in Wis. Stats. sec. 448.02(3) and Wis. Adm. Code sec. MED 10.02(2)(h).

4. Johnson was not induced to engage in unprofessional conduct by any agent or employee of the Medical Examining Board or by a person directed or controlled by the Medical Examining Board.

5. Johnson was not induced to engage in unprofessional conduct by investigators Gary Martine or Cheryl Reese.

6. The Medical Examining Board may, in finding Johnson guilty of unprofessional conduct, warn or reprimand Johnson, or limit, suspend or revoke the license granted by the board to Johnson pursuant to Wis. Stats. sec. 448.02(3).

ORDER

NOW, THEREFORE, IT IS ORDERED, that the license to practice medicine and surgery of J. Martin Johnson, number 5714, shall be and hereby is suspended for a period of five (5) years. Upon expiration of the period of suspension, Dr. Johnson shall be required to pass the board's oral examination before said license shall again become operative and effective.

EXPLANATION OF VARIANCE

The board has adopted the hearing examiner's Findings of Fact and Conclusions of Law in their entirety, but has modified the recommended discipline to impose a suspension rather than a revocation. Imposition of a period of suspension of Dr. Johnson's license rather than of a full revocation thereof should adequately deter other licensees and protect the public, while serving as recognition of Dr. Johnson's many years of service to his community and his profession.

Dated at Madison, Wisconsin this 28 day of June, 1982.

STATE OF WISCONSIN MEDICAL
EXAMINING BOARD

BY Walter L. Washburn
Walter L. Washburn, M.D.
Secretary

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