

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

MARK A. HUFFMAN, M.D.,
RESPONDENT.

FINAL DECISION AND ORDER
LS 9506161 MED
94 MED 384

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Mark A. Huffman, M.D.
4421 N. Maryland
Shorewood, WI 53211

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Mark A. Huffman, M.D., Respondent, DOB August 23, 1958, is a physician licensed to practice medicine and surgery in the state of Wisconsin, pursuant to license number 27226, which was first granted October 25, 1985
2. On June 20, 1991, pursuant to stipulation, the Wisconsin Medical Examining Board issued an Order that Respondent not be allowed to examine or treat any patient, in person. This stipulation and Order, resulted from Respondent having been charged in Milwaukee County Circuit Court with counts of having sexually assaulted two male patients.
3. On September 23, 1993, the Wisconsin Medical Examining Board issued a Final Decision and Order which, among other things, limited Respondent's license to practice medicine and surgery in the state of Wisconsin. That Order followed Respondent having been convicted of two counts of fourth degree sexual assault, in the criminal cases mentioned in Finding of Fact 2, above.

4. Prior to November 17, 1994, the only modification to the limitations imposed on Respondent's license to practice medicine and surgery was an extension of time within which Respondent was required to take and successfully complete 30 credit hours of Category I continuing medical education credits in the area of doctor/patient relationships and dual relationship issues. This modification was made by an Order of the Board dated July 4, 1994.

5. Paragraph 3 of the September 23, 1993 Order allowed Respondent to practice only in settings which had been approved by the Board or its designee. The Board approved Respondent's practice in a fellowship in addiction medicine at the Medical College of Wisconsin and at Milwaukee Psychiatric Hospital.

6. Paragraph 4 of the Board's Order of September 23, 1993 required that a physician practicing at the same facility as Respondent serve as Respondent's supervising physician.

7. The supervising physician was required to file reports with the Wisconsin Medical Examining Board every three months, and was required to report "any problems or concerns which have arisen regarding Respondent's practice." (Order of 9/23/93 - paragraph 5).

8. The supervising physician was also required to immediately report the existence and details of "any complaint made against Respondent regarding alleged misconduct in the practice of medicine or surgery." (Order of 9/23/93 - paragraph 9).

9. On October 17, 1994 the Department of Regulation and Licensing and the Medical Examining Board received a letter dated October 13, 1994 from Dr. David Benzer, Respondent's supervising physician and the program director of the Addiction Medicine Fellowship at the Medical College of Wisconsin. Dr. Benzer's letter informed the Department and the Board that Respondent had been suspended from Milwaukee Psychiatric Hospital as well as from the Fellowship in Addiction Medicine at the Medical College of Wisconsin pending investigation of an allegation of inappropriate contact between Respondent and a patient

10. On November 17, 1994, with Respondent's agreement, the Medical Examining Board issued an interim Order in case 94 MED 384, which provided:

"IT IS FURTHER ORDERED, that Mark A. Huffman's license to practice medicine and surgery in the state of Wisconsin is hereby suspended effective immediately.

11. Respondent's license to practice medicine and surgery in the state of Wisconsin has continued to be suspended since November 17, 1994, pending investigation of the October 13, 1994 report.

COUNT I

12. The Board's Order of 9/23/93 placed the following limitation on Respondent's license (page 6, paragraph 2).

"There shall be another health care professional physically present in the room with Respondent for all examinations or treatments provided to patients by Respondent. That health care provider shall sign the patient's medical record and indicate in the record that the health care provider was physically present in the room at the time the Respondent examined or treated the patient."

13. The limitation which required another health care professional to be physically present in the room with Respondent for all examinations or treatments was later clarified by the Board Liaison to apply only when there was physical touching involved in examination or treatment. Another health care provider was not required to be in the room when counseling, with no physical touching, was taking place.

14. Patient A, a 31 year old male, was hospitalized as an inpatient at Milwaukee Psychiatric Hospital from 3/24/94 to 4/5/94 and from 6/17/94 to 6/24/94. Patient A was an outpatient at Milwaukee Psychiatric Hospital between the two inpatient hospitalizations and subsequent to the second hospitalization. Patient A was treated for alcohol and other drug dependence, and was diagnosed as having a major depressive disorder. Respondent provided treatment to Patient A while Patient A was an inpatient and an outpatient.

15. During that period of time, on at least one occasion, Respondent performed a physical examination of Patient A, which included touching Patient A's genitals, which Respondent states was medically appropriate.

16. No other health care provider was physically present in the room with Respondent and Patient A when the physical examination was performed.

COUNTS II and III

17. Respondent took a history from Patient A on 3/24, in which Patient A told Respondent that Patient A had been sexually abused as a child by female baby-sitters and that it had resulted in Patient A having problems regarding trust with females in general and difficulty with relationships.

18. During Patient A's March, 1994 hospitalization Patient A disclosed that prior chemical dependency treatment had resulted in sexual abuse of Patient A by a female therapist. Respondent discussed future treatment in a sexual abuse program with Patient A.

19. That during outpatient treatment sessions, while Patient A and Respondent were alone with no other health care professional in the room, Respondent touched Patient A on several occasions:

- a. All sessions ended with the Respondent and Patient A mutually hugging each other, which the Respondent stated was for therapeutic purposes.
- b. On two occasions, Respondent kissed Patient A on the cheek.

c. Patient A states that the Respondent stroked Patient A's hair. Respondent denies stroking Patient A's hair.

20. On October 3, 1994, Patient A, who had a history of suicide attempts, asked to see Respondent because Patient A was feeling very suicidal. Respondent saw Patient A on that date. No other health care provider was physically present in the room with Respondent and Patient A during the October 3, 1994 session.

21. During the October 3, 1994 session:

a. Respondent placed his hands on Patient A's thighs. Patient A contends that Respondent rubbed Patient A's thighs throughout the October 3, 1994 session. Respondent denies rubbing Patient A's thighs during the session.

b. When the session was complete Respondent gave Patient A a hug, as occurred at the end of other sessions.

c. Patient A states that the Respondent attempted to kiss Patient A on the mouth, but Patient A turned his head and Respondent kissed Patient A on the cheek. Respondent states that this was one of the two occasions that Respondent kissed Patient A on the cheek, but denies intending to kiss Patient A on the mouth.

d. Respondent contends that his kissing Patient A on the cheek was a reflex reaction and a social convention among the Respondent's social peer group. Respondent acknowledges the inappropriateness and potential harm of the physical touching to the extent it occurred with Patient A.

ALL COUNTS

22. Dinshah Gagrat, M.D. has been Respondent's psychiatrist since May 21, 1991. Cynthia C. Valentin, Ph.D. has been Respondent's psychologist since August 15, 1994. Their diagnosis of Respondent's condition is bipolar disorder, type II, with intermittent episodes of hypomania, and post traumatic stress disorder (PTSD) resulting from childhood sexual abuse.

23. It is Dr. Gagrat's opinion that these disorders led to Respondent's behavior and lack of judgment that resulted in Respondent's falsification of medical credentials to the Army in 1990 and the two sexual assaults to patients in 1991.

24. Dr. Gagrat prescribed Lithium for Respondent and Respondent has maintained therapeutic lithium levels. For a period of time, which included most of 1994 through March of 1995, Dr. Gagrat also prescribed Prozac to Respondent. It is Dr. Gagrat's opinion that the Prozac caused Respondent to experience "rapid cycling", which is the occurring of hypomanic and depressive episodes more rapidly and with greater frequency. When Dr. Gagrat became aware of this effect of the Prozac, he discontinued the Prozac in March of 1995.

25. Both Dr. Gagrat and Dr. Valentin have expressed their opinions that during such episodes of hypomania Respondent would be more prone to euphoric moods, making snap

decisions, increased impulsivity and exercising poor judgment. Dr. Valentin has expressed her opinion that during such episodes Respondent exhibited a diminished capacity to exercise good judgment. The conduct set out in Counts I, II and III occurred during the period of time that Respondent was "rapid cycling".

26. In May of 1996 Dr. Valentin wrote that since the time that the Prozac was discontinued that the rapid cycling of moods has diminished, and that by continuing therapy on his own traumatic issues, Respondent has shown marked stabilization and remission of his traumatic issues. Dr. Valentin states that Respondent has been relatively symptom free for nearly a year and one half.

27. Both Dr. Gagrut and Dr. Valentin have expressed their opinions that Respondent requires continued medication management and psychotherapy at this time.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to sec. 448.02(3), Stats.

2. The Wisconsin Medical Examining Board has authority to enter into this stipulated resolution of this matter pursuant to sec. 227.44(5), Stats.

3. By performing a physical examination on Patient A, while no other health care provider was physically present in the room, as set out in Count I of the Findings of Fact, Respondent has violated an order of the Board, which is defined as unprofessional conduct by sec. 448.02(3), Stats., and Wis. Adm. Code sec. MED 10.02(2)(b).

4. By having physical contact with Patient A during outpatient treatment sessions, while no other health care provider was physically present in the room, as set out in Count II of the Findings of Fact, Respondent has violated an order of the Board, which is defined as unprofessional conduct by sec. 448.02(3), Stats., and Wis. Adm. Code sec. MED 10.02(2)(b).

5. Respondent's activities with Patient A, as set out in Count III of the Findings of Fact, is conduct which tends to constitute a potential danger to Patient A and is unprofessional conduct as defined by sec. 448.02(3), Stats., and Wis. Adm. Code sec. MED 10.02(2)(h).

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that the suspension of Respondent's license to practice Medicine and Surgery in the state of Wisconsin is ended, effective the date of this order.

IT IS FURTHER ORDERED that Respondent's license to practice Medicine and Surgery in the state of Wisconsin is limited, effective the date of this order, as follows:

1. Respondent shall not engage in any practice of medicine or surgery, which includes Respondent performing patient care while being in the physical proximity of a patient or in the same room as a patient. This limitation:

- a. Allows the Respondent to be present in a health care facility for work purposes, outside the direct presence of any patient.
 - b. Allows the Respondent to participate in continuing medical education, such as grand rounds, outside the direct presence of any patient.
 - c. Allows the Respondent to visits friends who are hospitalized.
 - d. Allows the Respondent to be present in a health care facility for contacts with professional colleagues, outside the direct presence of any patient.
 - e. Prohibits Respondent from examining or otherwise meeting directly with any patient in person for any purpose.
2. Respondent shall provide a copy of this Final Decision and Order to any employer, prior to commencing employment with that employer.
 3. Respondent shall provide written notice to the Board, or its designee, prior to commencing any employment. The notice shall include: the name of the employer; the physical location(s) where the employment will take place; the name address and telephone number of the person who will be Respondent's immediate supervisor; and, the specific job duties Respondent will have in the employment.
 4. Respondent shall not commence any employment until the Board, or its designee, has notified Respondent that the potential employment is allowed under the limitations of this Order.
 5. After commencing any employment, Respondent shall ensure that his immediate supervisor, at each place of employment, submits reports to the Board, or its designee, beginning within the first 3 months of employment and every 3 months thereafter, as determined by the Department's Monitor. The supervisors' reports shall include any changes in Respondent's specific job duties and any problems or concerns which have arisen regarding Respondent's practice.
 6. After commencing any employment, Respondent shall ensure that his immediate supervisor, at each place of employment, immediately submits a report to the Board, or its designee, of the existence and details of any complaint made against Respondent regarding alleged misconduct in the practice of medicine or surgery or of a violation of this Order
 7. Respondent shall continue with and fully participate in treatment with his psychiatrist, Dinshah Gagrut, M.D., and his psychologist Cynthia C. Valentin, Ph.D., who are approved by the Board. This limitation includes the following.
 - Respondent shall comply with all recommendations of the approved psychiatrist and psychologist for inpatient or outpatient treatment or both and shall comply

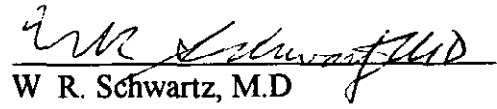
with all aspects of the treatment program, including medication, as recommended by that psychiatrist.

- All costs of the treatment program shall be the responsibility of Respondent or his health insurer.
 - The approved psychiatrist and psychologist shall submit formal written reports to the Board every 3 months, with the first report due 3 months from the date of this Order, as determined by the Department Monitor. The reports shall indicate whether Respondent has continued to follow the psychiatrist's and psychologist's recommendations for treatment and shall assess Respondent's progress in treatment. Respondent shall be responsible for the timely filing of these reports.
 - Respondent shall provide and keep on file, with his approved psychiatrist and psychologist and all treatment facilities, current releases which comply with state and federal laws authorizing release of all of his medical and treatment records and reports to the Wisconsin Medical Examining Board and its agents and permit his psychiatrist, psychologist and other health care providers to disclose and discuss the progress of his treatment and rehabilitation with the Wisconsin Medical Examining Board and its agents.
 - Respondent's treatment shall include the medication Lithium, or other medication determined by the psychiatrist as appropriate to control Respondent's bipolar disorder, in therapeutic doses and shall include periodic random blood tests for the medication's blood level, to insure compliance with this requirement.
 - In the event that the approved psychiatrist or psychologist is unable or unwilling to continue to provide treatment to Respondent, Respondent shall find another psychiatrist or psychologist to provide those services, who shall first be found to be acceptable to the Board.
 - In the event that Respondent's approved psychiatrist or psychologist believe that there is no longer a need for Respondent to continue in treatment, that psychiatrist or psychologist shall submit a report to the Medical Examining Board setting out the basis for that conclusion, and the Board shall consider whether to end this requirement regarding treatment.
8. If the Respondent requests that any limitation on his license, which is imposed by this Order, be modified or terminated, it shall be in the sole discretion of the Board whether to modify or terminate the limitation.
9. Respondent shall be permitted to continue practice upon condition that: he will refrain from engaging in unprofessional conduct; he will appear before the Board, its officers or its agents at such times as may be designated by the Board from time to time; he will fully disclose to the Board, or its officers or agents, the nature of his practice and conduct; he will fully comply with the limits placed on his practice and conduct by the Board, and, he will cooperate with the Board. [sec. 448.02(3)(e), Wis. Stats.]

10. Violation of any term or condition of this Order shall constitute grounds for revocation of Respondent's license to practice medicine and surgery in the state of Wisconsin. Should the Board determine that there is probable cause to believe that Respondent has violated the terms of this Order, the Board may order that Respondent's license be summarily suspended, pending hearing and determination of the alleged violation.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information"

Dated at Madison, Wisconsin this 22nd day of August, 1996.


W R. Schwartz, M.D
Secretary
Wisconsin Medical Examining Board

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STATE OF WISCONSIN
BEFORE THE WISCONSIN MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MARK A. HUFFMAN, M.D
RESPONDENT

STIPULATION
LS 9506161 MED
94 MED 384

It is hereby stipulated and agreed, by and between Mark A. Huffman, M D , Respondent, Thomas E Martin, attorney for the Respondent; and John R. Zwieg, as attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows.

1. This Stipulation is entered into as a result of an investigation (94 MED 384) and pending disciplinary proceeding (LS 9506161 MED) against Respondent by the Department of Regulation and Licensing, Division of Enforcement, on behalf of the Wisconsin Medical Examining Board

2. The parties agree that this proposed stipulated resolution may be presented directly to the Wisconsin Medical Examining Board and need not be presented to the administrative law judge appointed in this matter.

3 Respondent understands that by the signing of this stipulation Respondent voluntarily and knowingly waives Respondent's rights, including the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against Respondent; the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena; the right to testify; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

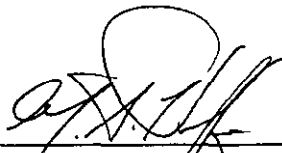
4. Respondent is aware of his right to seek legal representation prior to signing this stipulation, and has done so.

5. Respondent neither admits nor denies the allegations in this matter, but agrees that there is evidence which would support the Findings of Fact in the attached Final Decision and Order and agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

6. If the terms of this stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.


7. The parties to this stipulation agree that the Respondent, Respondent's attorney, the member of the Board appointed as the investigative advisor in these matters, and an attorney for the Division of Enforcement may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation

Dated this 5th day of ~~July~~, 1996.
August FRG




Mark A. Huffman, M.D.
Respondent

Dated this day of ~~July~~, 1996.
5th day of August, 1996



Thomas E. Martin
Attorney for Respondent

Dated this 12th day of ~~July~~, 1996
August



John R. Zwiag
Attorney for Complainant
Department of Regulation & Licensing
Division of Enforcement

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review. The Times Allowed For Each. And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

September 3, 1996

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)