

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
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**FILE COPY**

**STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD**

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS  
AGAINST  
**SANFORD J. LARSON, M.D., Ph.D.,**  
RESPONDENT.

**FINAL DECISION AND ORDER**  
Case No. LS-9609261-MED

The parties in this matter for purposes of review under sec. 227.53, Stats. are:

State of Wisconsin  
Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
1400 East Washington Avenue  
Madison, WI 53708-8935

Sanford J. Larson, M.D., Ph.D.  
9200 West Wisconsin Ave.  
Milwaukee, WI 53226

State of Wisconsin Medical Examining Board  
P.O. Box 8935  
1400 East Washington Ave.  
Madison, WI 53703

This case was initiated by the filing of a complaint with the Medical Examining Board on September 26, 1996; and the disciplinary proceeding was conducted on July 15, 1997, before Administrative Law Judge John N. Schweitzer. Dr. Larson appeared in person and by Attorney Michael Malone. The Board appeared by Attorney Arthur Thexton.

The Administrative Law Judge thereafter filed his Proposed Decision in the matter on September 29, 1997, and the Board considered the matter at its meeting of November 19, 1997.

Based upon the entire record in this matter, the Medical Examining Board makes the following Findings of Fact, Conclusions of Law and Order:

## FINDINGS OF FACT

1. The respondent, Sanford J. Larson, M.D., Ph.D., is licensed to practice medicine and surgery in the state of Wisconsin, under license number 14590. Dr. Larson practices as a neurological surgeon.

2. Dr. Larson is registered with the Drug Enforcement Agency as a prescriber of controlled substances, under DEA # AL3098414.

3. Since 1978, Dr. Larson has treated Joan A. as a patient. Ms. A. has a history of back pain, lives some distance from Dr. Larson's office, and has to take public transportation to his office.

4. Over an unspecified period of years prior to the end of 1990, Dr. Larson routinely issued undated prescriptions for oxycodone, a Schedule II controlled substance, to Ms. A. as a convenience to her so that she would not have to come to his office monthly.

5. Dr. Larson stopped issuing undated prescriptions as soon as the problem was brought to his attention in 1990. Since that time his practice has been to have Ms. A. call his office approximately one week before she needs a new prescription. Dr. Larson then prepares a prescription, places on it the date in the future when Ms. A. is to have the prescription filled, and mails the prescription to her.

6. The board advisor who reviewed the undated prescription issue in 1993 recommended to the board that no disciplinary action be taken, and none was taken at the time although the board did not close the file. When the complaint in this case was issued in 1996, it contained the allegation regarding the undated prescriptions, along with an allegation of inadequate charting for the same patient. [This fact is by stipulation.]

7. The issuance of undated prescriptions is a problem in the medical profession which is not unique to Dr. Larson's practice. [This fact is by stipulation.]

## CONCLUSIONS OF LAW

1. The Medical Examining Board has personal jurisdiction over Dr. Larson, based on his holding a credential issued by the board, and based on notice under sec. 801.04 (2), Stats.

2. The Medical Examining Board is the legal authority responsible for issuing and controlling credentials for the practice of medicine and surgery, under ch. 448, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)©, Stats., sec. 448.02(3), Stats., and ch. Med 10, Wis. Admin. Code.

3. No evidence was presented to support the allegation of unprofessional conduct based on inadequate charting contained in paragraph 6 of the complaint, and it must be dismissed.

4. Dr. Larson's issuance of undated prescriptions for controlled substances violates 21 CFR section 1306.05, a provision of the Code of Federal Regulations which is applicable to any physician who has registered with the federal Drug Enforcement Agency as a prescriber of controlled substances. Dr. Larson thus prescribed a controlled substance other than as required by law, which constitutes unprofessional conduct under sec. Med 10.02(2)(p), Wis. Admin. Code. Discipline may be imposed by the Medical Examining Board, under sec. 448.02(3)©, Stats.

### ORDER

NOW, THEREFORE, IT IS ORDERED that the allegation in the complaint based on inadequate charting is hereby dismissed.

IT IS FURTHER ORDERED that Sanford J. Larson, M.D., be, and hereby is, reprimanded.

IT IS FURTHER ORDERED that Dr. Larson pay one-half of the costs of this proceeding, within a time period to be specified later by the board.

### EXPLANATION OF VARIANCE

The board has adopted the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in their entirety. The board has, however, substituted a reprimand for the ALJ's recommended Order requiring continuing education. There is no question but that Dr. Larson improperly issued undated prescriptions for one patient until approximately seven years ago, at which time he stopped the practice. The ALJ correctly points out in his opinion that the board decided not to take any action on this violation in 1993, and that, inasmuch as there was no misuse or inappropriate use of the medication in question by the patient, the board probably viewed the conduct as constituting nothing more than a *de minimus* violation.

Nonetheless, the ALJ recommends that Dr. Larson be required to complete a course in prescribing controlled substances. The basis for that recommendation is that, after ceasing to issue undated prescriptions to the patient in question, Dr. Larson issued prescriptions postdated by one week for the convenience of the patient and to avoid any problem with the patient's presenting a prescription for filling after the last date upon which it could legally be filled. It is true that the procedure utilized by Dr. Larson after 1990 for this patient is inconsistent with sec. Phar 8.05(4), Code, which states as follows:

(4) A prescription containing a controlled substance listed in schedule II may be dispensed only pursuant to a written order signed by the prescribing individual practitioner, except in emergency situations. No prescription containing a controlled substance listed in schedule II shall be dispensed unless the order is presented for dispensing within 7 days following the date of its issue. A prescription for a controlled

substance listed in schedule II may not be dispensed more than 60 days after the date of issue on the prescription order.

Possible violations of procedural prescribing requirements by Dr. Larson arising from the procedure utilized by him after 1990 were not alleged in the Complaint in this matter and were therefore quite properly not set forth as a violation in the Conclusions of Law recommended by the ALJ. But even assuming that the procedure utilized may nonetheless be considered as an aggravating factor in this case, considerations of rehabilitation and deterrence do not in the opinion of the board justify a requirement that Dr. Larson submit to a 44 hour mini-residency in the proper prescribing of controlled substances, which is the course usually required by the board (and one of those recommended by the prosecution) in cases where improper prescribing of controlled substances has been found. It may be safely assumed that Dr. Larson is now well educated in the procedural requirements of prescribing Schedule II controlled substances, and that a reprimand will adequately subserve these disciplinary objectives.

Dated this 29 day of Nov., 1997.

STATE OF WISCONSIN  
MEDICAL EXAMINING BOARD

by Glenn Hoberg M.D.  
Glenn Hoberg, D.O.  
Secretary

WRA:9711243.doc

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING  
BEFORE THE MEDICAL EXAMINING BOARD

In the Matter of Disciplinary Proceedings Against

Sanford J. Larson, M.D., Ph.D.,

AFFIDAVIT OF MAILING

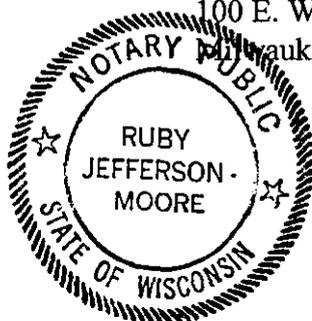
Respondent.

STATE OF WISCONSIN    )  
                                  )  
COUNTY OF DANE        )

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On December 5, 1997, I served the Final Decision and Order dated November 29, 1997, LS9609261MED, upon the Respondent Sanford J. Larson's attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 157 530.

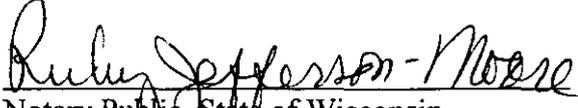
Michael Malone, Attorney  
Hinshaw & Culbertson  
100 E. Wisconsin Avenue, Suite 2600  
Milwaukee WI 53202



  
\_\_\_\_\_  
Kate Rotenberg  
Department of Regulation and Licensing  
Office of Legal Counsel

Subscribed and sworn to before me

this 5<sup>th</sup> day of December, 1997.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is permanent.

## NOTICE OF RIGHTS OF APPEAL

TO: MICHAEL MALONE ATTY

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 12/5/97. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

### A. 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

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

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

### B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

### SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN MEDICAL EXAMINING BOARD  
1400 East Washington Avenue  
P.O. Box 8935  
Madison WI 53708-8935

FILE COPY

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST : ORDER FIXING COSTS  
: Case # LS9609261MED  
SANFORD J. LARSON, M.D., PH.D., :  
RESPONDENT. :

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On November 29, 1997, the Medical Examining Board filed its Final Decision and Order in the above-captioned matter by which the board ordered that pursuant to sec. 440.22, Wis. Stats., 50% of the costs of this proceeding be assessed against respondent. Pursuant to sec. RL 2.18 (4), Wis. Adm. Code, on December 15, 1997, the Medical Examining Board received the *Affidavit of Costs* in the amount of \$4,561.33, filed by Attorney Arthur Thexton. On December 9, 1997, the Medical Examining Board received the *Affidavit of Costs of Office of Board Legal Services* in the amount of \$989.82, filed by Administrative Law Judge John N. Schweitzer. The Medical Examining Board considered the affidavits on January 22, 1998, and orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to sec. 440.22, Wis. Stats., the costs of this proceeding in the amount of \$2,775.58, which is 50% of the costs set forth in the affidavits of costs of Attorney Arthur Thexton and Administrative Law Judge John N. Schweitzer, which are attached hereto and made a part hereof, are hereby assessed against respondent, and shall be payable by him to the Department of Regulation and Licensing. **Failure of respondent to make payment on or before February 21, 1998, shall constitute a violation of the Order unless respondent petitions for and the board grants a different deadline.** Under sec. 440.22 (3), Wis. Stats., the Medical Examining Board may not restore, renew or otherwise issue any credential to the respondent until respondent has made payment to the department in the full amount assessed.

To ensure that payments for assessed costs are correctly received, the attached "*Guidelines for Payment of Costs and/or Forfeitures*" should be enclosed with the payment.

Dated this 22nd day of January, 1998.

MEDICAL EXAMINING BOARD

By: Wanda Roever  
A Member of the Board 

**STATE OF WISCONSIN**  
**BEFORE THE MEDICAL EXAMINING BOARD**

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS	:	<b>AFFIDAVIT OF COSTS</b>
AGAINST	:	Case No. LS-9609261-MED
<b>SANFORD J. LARSON, M.D., Ph.D.,</b>	:	
RESPONDENT.	:	

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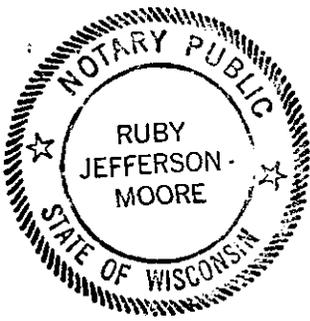
John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

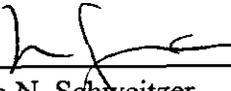
1. I am an attorney licensed to practice law in the State of Wisconsin, and am employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.
2. In the course of my employment, I was assigned as the administrative law judge in the above-captioned matter.
3. Expenses for the Office of Board Legal Services are set out below:
  - a. Court Reporter Costs, paid by the Office of Board Legal Services. \$398.40
  - b. Administrative Law Judge Expense @ \$28.85/hour.

10-22-96 Telephone Conference	20 min.
2-24-97 Telephone Conference	15 min.
4-7-97 Motion hearing	1 hr.
4-8-97 Research and writing	1 hr.
4-9-97 Prepare order	30 min.
4-14-97 Telephone conference	10 min.
4-18-97 Telephone conference	5 min.
7-7-97 Telephone conference	10 min.
7-15-97 Hearing	2 3/4 hrs.
9-8-97 Research, reading and writing	1 hr.
9-18-97 Research, reading and writing	1 hr.
9-22-97 Research, reading and writing	2 1/4 hrs.
9-23-97 Research, reading and writing	3 3/4 hrs.
9-25-97 Research, reading and writing	4 3/4 hrs.
9-29-97 Research, reading and writing	1 1/2 hrs.

Total: 20 1/2 hrs. = \$591.42

**Total allocable costs for Office of Board Legal Services = \$989.82**



  
\_\_\_\_\_  
John N. Schweitzer  
Administrative Law Judge

Sworn to and signed before me this 9<sup>th</sup> day of December 1997.

Ruby Jefferson-Moore, Notary Public, State of Wisconsin.

My commission is permanent.

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

-----  
IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
: :  
SANFORD J. LARSON, M.D., :  
RESPONDENT. :  
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**AFFIDAVIT OF COSTS**

91 MED 23

STATE OF WISCONSIN )  
COUNTY OF DANE )

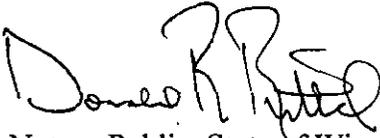
I, Arthur Thexton, being on affirmation, say:

1. That I am an attorney licensed in the state of Wisconsin and am employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;
2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter; and
3. That set out on the attached record are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.



Arthur Thexton, Prosecuting Attorney

Subscribed to and affirmed before me this December 15, 1997.



Notary Public, State of Wisconsin  
My Commission is permanent.

STATE OF WISCONSIN  
Department of Regulation & Licensing  
Division of Enforcement  
1400 East Washington Avenue  
Madison, WI 53708-8935

Sanford J. Larson MD  
91 Med 23

Page: 1  
12/15/97  
10N

	HOURS
06/11/91 INV Memo to MEB by Inv. W. Neverman re: case opening.	.50
07/16/91 AKT Review case opening materials, screen. (Atty Stach)	.40
08/05/91 INV Letter to respondent by Inv. McDonald.	1.00
08/08/91 INV Telephone conference with respondent by Inv. McDonald, memo of same.	1.00
08/14/91 INV Received and reviewed correspondence from respondent re: CME compliance.	.30
05/20/93 INV Telephone conference with respondent by Inv. Schaut, memo of same.	.70
05/25/93 INV Letter to Case Advisor Olsen from Inv. Schaut with file materials for review.	1.00
06/23/93 INV Present for closing. MEB refused to close.	.50
06/28/93 INV Telephone conference with Case Advisor Olsen, by Inv. Schaut. Memo of same.	.50
09/02/93 INV Letter to Case Advisor Olsen by Inv. Schaut.	.50
10/04/93 INV Conference with Case Advisor Olsen, memo of same,	

	HOURS
by Inv. Schaut.	.50
INV Telephone conference with Case Advisor Olsen re: expert witness possibilities, by Inv. Schaut.	.50
11/01/93	
INV File Summary Memo by Inv. Schaut, PIC to Atty Stach.	2.00
05/24/95	
AKT Memo to Atty Berndt re: transfer of file to Alpha Team, by Atty Stach.	.30
09/08/95	
AKT Telephone conference with Dr. Thos. Lyons, prepare file materials, expert witness letter to Dr. Lyons.	3.00
09/15/95	
AKT Telephone conference with Dr. Lyons, declining to serve because he is acquainted with respondent.	.30
12/01/95	
AKT Leave telephone message for Dr. Kriss, potential expert.	.20
12/07/95	
AKT Telephone conference with Dr. Kriss, he declines the case.	.20
12/08/95	
AKT Review other possible experts: run SQUAD checks.	1.00
AKT Review file, letter to Case Advisor.	.50
12/14/95	
AKT Conference with Case Advisor: change Case Advisor to Dr. Mehr.	.10
12/18/95	
AKT Telephone conference with Case Advisor Mehr.	.30
12/22/95	
AKT Left message for Case Advisor Mehr.	.10

	HOURS
01/10/96	
AKT Left telephone message for Case Advisor Mehr. Telephone conference with Dr. Mehr.	.50
01/11/96	
AKT Letter to respondent with proposed stipulation to reprimand and \$200 costs.	1.00
01/24/96	
AKT Received and reviewed correspondence from Atty Malone, reply.	.70
02/06/96	
AKT Telephone conference with Atty Malone.	.20
02/14/96	
AKT Left message for Atty Malone.	.20
02/16/96	
AKT Telephone conference with Atty Malone: stipulation rejected. Left message for Case Advisor Mehr.	.50
02/22/96	
AKT Conference with Case Advisor Mehr, left message for Atty Malone.	.40
03/14/96	
AKT Left message for Atty Malone.	.20
03/20/96	
AKT Left message for Atty Malone.	.20
03/21/96	
AKT Received and reviewed correspondence from Atty Malone, copy and forward to Case Advisor.	.40
04/03/96	
AKT Telephone conference with Case Advisor Mehr, letter to Atty Malone.	1.00
07/24/96	
AKT Conference with Case Advisor Mehr. Present case to MEB.	.60

	HOURS
AKT Review entire file. Draft formal complaint. Do memo re: former case advisor as expert.	1.00
08/22/96	
AKT Draft letter and stipulation to Atty Malone, sign formal Complaint and Notice of Hearing.	1.00
09/04/96	
AKT Receive message from Atty Malone, leave message for Atty Malone.	.40
10/07/96	
AKT Received and reviewed correspondence from Atty Malone: Answer to Complaint. Mark pleadings.	1.00
10/10/96	
AKT Received and reviewed correspondence from Atty Dusso assigning ALJ Schweitzer to case.	.20
10/22/96	
AKT Pretrial conference with ALJ Schweitzer and Atty Malone.	.30
10/23/96	
AKT Received and reviewed pretrial scheduling order from ALJ, left message for Dr. Mehr re: deposition dates.	.50
11/04/96	
AKT Telephone conference with Dr. Mehr re: deposition dates, left message for Atty Malone re: same.	.40
11/20/96	
AKT Receive message from Atty Malone. Letter to Dr. Mehr. Leave message for Atty Malone.	.60
11/26/96	
AKT Telephone conference with Dr. Mehr.	.30
11/29/96	
AKT Letter to Dr. Mehr with new set of file materials.	2.00

	HOURS
12/11/96 AKT Received and reviewed correspondence from Dr. Mehr, letter to Atty Malone.	.50
12/16/96 AKT Telephone conference with Atty Malone, telephone conference with Dr. Mehr. Send materials to Atty Malone.	.50
12/18/96 AKT Received and reviewed correspondence from Atty Malone, prepare and send additional materials to him.	1.00
12/27/96 AKT Traveled to Wisconsin Rapids, conference with Dr. Mehr, attend deposition, return to Madison.	6.00
12/30/96 AKT Letter to Dr. Mehr. Copy MCMC records for Atty Malone.	.50
01/02/97 AKT Telephone conference with Atty Malone.	.30
01/13/97 AKT Received and reviewed correspondence from Dr. Mehr, copy and forward to Atty Malone.	.30
01/31/97 AKT Received and reviewed correspondence from court reporter (Mehr deposition transcript). Copy and send to Dr. Mehr with letter re: corrections.	.50
02/06/97 AKT Telephone conference with Dr. Mehr re: deposition corrections. Draft correction sheet, send to Dr. Mehr.	.70
02/17/97 AKT Received and reviewed correspondence from Atty Malone (Witness List), letter in response re: deposition scheduling. Receive and review correspondence from Dr. Mehr re: deposition	

	HOURS
corrections, forward to Court Reporter (copy to Atty Malone.)	.50
02/24/97 AKT Pretrial conference with ALJ and Atty Malone.	.30
02/26/97 AKT Telephone conference with Atty Malone re: Listwan deposition.	.20
02/28/97 AKT Received and reviewed correspondence from Atty Malone re: scheduling motion re: expert.	.30
03/11/97 AKT Pretrial conference with ALJ and Atty Giampetro.	.30
03/13/97 AKT Received and reviewed correspondence from Atty Giampetro re: motion to exclude expert. Begin draft of responsive brief.	1.00
03/25/97 AKT Analyze applicable law, work on brief re: expert witness issue.	1.50
03/26/97 AKT Finish brief, file and send.	1.50
04/03/97 AKT Traveled to West Bend, depose Dr. Listwan, return.	6.00
04/07/97 AKT Prepare for and argue motion re: expert witness issue.	2.00
04/09/97 AKT Received and reviewed correspondence from ALJ: Order denying respondent's motion to strike, file same.	.30
04/10/97 AKT Telephone conference with Atty Malone, leave	

	HOURS
message for Case Advisor Johnson.	.30
04/14/97 AKT Pretrial conference with ALJ and Atty Malone.	.20
04/18/97 AKT Pretrial conference with ALJ and Atty Malone.	.20
05/14/97 AKT Telephone messages from and to Atty Malone. Prepare for deposition.	1.00
05/15/97 AKT Traveled to Milwaukee, depose respondent, return.	7.00
05/27/97 AKT Prepare chart compilation and comparison. Receive and review transcript of respondent's deposition. Chart and transcript to Dr. Mehr.	4.00
06/20/97 AKT Received and reviewed correspondence from Atty malone (Notice of Deposition). Letter in reply.	.60
06/26/97 AKT Telephone conference with Dr. Mehr. Telephone conference with Case Advisor Johnson. Leave message for Atty Malone.	.60
07/02/97 AKT Telephone conference with Atty Malone.	.30
07/07/97 AKT Received and reviewed correspondence from Atty Malone, e-mail in reply.	.50
07/15/97 AKT Prepare for and conduct hearing on the merits.	8.00
09/29/97 AKT Received and reviewed correspondence from ALJ: Proposed Decision, Notice of Filing.	1.00

	HOURS	
10/13/97		
AKT Prepare and file Objections to Proposed Decision.	5.00	
AKT Received and reviewed correspondence from Atty Malone: respondent's objections. Notify Atty Malone of apparent typographical error.	.50	
10/14/97		
AKT Received and reviewed correspondence from Atty Malone: corrected objections. Begin response draft.	1.00	
10/20/97		
AKT Prepare and file State's Response to Respondent's Objections.	3.00	
12/05/97		
AKT Received and reviewed correspondence from MEB (Final Decision & Order), file same. Copy and send to Dr. Mehr.	.40	
12/15/97		
AKT Prepare Costs.	2.00	
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FOR CURRENT SERVICES RENDERED	88.80	3451.80
12/27/96		85.00
12/27/96		54.00
Deposition of Dr. Mehr.		317.28
Traveled to Wisconsin Rapids (216 mi) for Mehr deposition.		35.00
04/03/97		177.50
05/15/97		440.75
Deposition of Dr. Listwan.		-----
Traveled to Milwaukee for respondent's deposition, 140 mi.		1109.53
05/22/97		
Deposition of Respondent.		
06/23/97		
Expert Witness Bill from Dr. Mehr.		
TOTAL COSTS		
BALANCE DUE		\$4,561.33
		=====

The above records are kept in the ordinary course of business by the Division and are assessable under s.440.22, Wis. Stats. Hourly rates of \$41/attorney and \$20/investigator are set by DOE policy.

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 : NOTICE OF FILING  
 : PROPOSED DECISION  
 : LS9609261MED  
SANFORD J. LARSON, M.D., :  
RESPONDENT. :

---

TO: Michael Malone, Attorney Arthur Thexton, Attorney  
Hinshaw & Culbertson Department of Regulation and Licensing  
100 E. Wisconsin Avenue, Suite 2600 Division of Enforcement  
Milwaukee, WI 53202 P.O. Box 8935  
Certified P 221 159 518 Madison, WI 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Medical Examining Board by the Administrative Law Judge, John N. Schweitzer. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. If your objections or argument relate to evidence in the record, please cite the specific exhibit and page number in the record. Your objections and argument must be received at the office of the Medical Examining Board, Room 178, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before October 13, 1997. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Medical Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, the Medical Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 29<sup>th</sup> day of September, 1997.

  
\_\_\_\_\_  
John N. Schweitzer  
Administrative Law Judge

**STATE OF WISCONSIN**  
**BEFORE THE MEDICAL EXAMINING BOARD**

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IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS  
AGAINST  
**SANFORD J. LARSON, M.D., Ph.D.,**  
RESPONDENT.

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**PROPOSED DECISION**  
Case No. LS-9609261-MED

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**SUMMARY**

This is a disciplinary action by the Medical Examining Board against Dr. Sanford Larson. Dr. Larson was alleged to have fallen below minimum standards of the profession in charting a patient's progress, and to have failed to enter a "date of issue" on controlled substance prescriptions for the same patient. The first allegation was dismissed at hearing, and the second allegation was proven by a preponderance of the evidence. Failing to enter a date of issue on all controlled substance prescriptions violates chapter MED 10 of the Wisconsin Administrative Code which defines unprofessional conduct for the medical profession. Discipline consists of a limitation on Dr. Larson's license requiring him to attend and pass a course in prescribing controlled substances.

**PARTIES**

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

**Complainant:**

Division of Enforcement  
Department of Regulation and Licensing  
Madison, WI 53708-8935

**Respondent:**

Dr. Sanford Larson  
9200 West Wisconsin Ave.  
Milwaukee, WI 53226

**Disciplinary Authority:**

Medical Examining Board  
1400 East Washington Ave.  
Madison, WI 53703

## PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint (DOE case # 91 MED 232) with the Medical Examining Board on September 26, 1996. The complaint was signed by Attorney Arthur Thexton of the Department's Division of Enforcement. A Notice of Hearing, with the date for the disciplinary proceeding (hearing) to be set at a prehearing conference, was sent by certified mail on September 26, 1996 to Dr. Larson, who received it on September 27th. The case was filed with, and scheduled to be heard by, administrative law judge (ALJ) Robert Ganch.

B. An answer was filed on October 3, 1996 on behalf of Dr. Larson by Attorney Michael Malone of Hinshaw & Culbertson, 100 East Wisconsin Avenue, Suite 2600, Milwaukee, WI 53202.

C. On October 9, 1996, the case was reassigned to ALJ John Schweitzer.

D. A prehearing conference was held on October 22, 1996, at which time the hearing was scheduled for May 6th and 7th, 1997, and a schedule for the filing of witness lists was set.

E. A second prehearing conference was held on February 24, 1997. On February 25, 1997, Mr. Malone filed notice by letter that he intended to file a motion to disqualify Dr. Michael Mehr as an expert witness. A scheduling hearing was held on March 11, 1997, to set a schedule for the filing of the motion and briefs. Following filings, a hearing on the motion was held by phone on April 7, 1997, and the motion was denied.

F. Following the motion hearing, Mr. Thexton requested that the hearing be rescheduled due to the unavailability of his expert witness. Scheduling conferences were held on April 14th and 18th, and the hearing was rescheduled to July 15, 1997.

G. A final prehearing conference was held on July 7, 1997, and the disciplinary proceeding was held as scheduled on July 15th. Dr. Larson appeared in person and represented by Mr. Malone. The Board was represented by Mr. Thexton. The hearing was recorded, and a transcript of the hearing was prepared and delivered on August 5, 1997. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

## RELEVANT STATUTES AND RULES

### Wisconsin Statutes

#### 448.02 Authority.

...

#### **(3) Investigation; hearing; action.**

...

(c) After a disciplinary hearing, the board may, ... when it finds a person guilty of unprofessional conduct or negligence in treatment, do one or more of the following: warn or reprimand that person, or limit, suspend or revoke any license, certificate or limited permit

granted by the board to that person. The board may condition the removal of limitations on a license, certificate or limited permit or the restoration of a suspended or revoked license, certificate or limited permit upon obtaining minimum results specified by the board on one or more physical, mental or professional competency examinations if the board believes that obtaining the minimum results is related to correcting one or more of the bases upon which the limitation, suspension or revocation was imposed.

### **Wisconsin Administrative Code**

#### **Med 10.02 Definitions.**

...

(2) The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding and abetting the same:

...

(p) Administering, dispensing, prescribing, supplying, or obtaining controlled substances as defined in s. 961.01 (4), Stats., otherwise than in the course of legitimate professional practice, or as otherwise prohibited by law.

...

### **Code of Federal Regulations**

#### **21 CFR § 1306.05 Manner of issuance of prescriptions.**

(a) All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued ....

### **FINDINGS OF FACT**

1. The respondent, Sanford J. Larson, M.D., Ph.D., is licensed to practice medicine and surgery in the state of Wisconsin, under license number 14590. Dr. Larson practices as a neurological surgeon.
2. Dr. Larson is registered with the Drug Enforcement Agency as a prescriber of controlled substances, under DEA # AL3098414.
3. Since 1978, Dr. Larson has treated Joan A. as a patient. Ms. A. has a history of back pain, lives some distance from Dr. Larson's office, and has to take public transportation to his office.
4. Over an unspecified period of years prior to the end of 1990, Dr. Larson routinely issued undated prescriptions for oxycodone, a Schedule II controlled substance, to Ms. A. as a convenience to her so that she would not have to come to his office monthly.

5. Dr. Larson stopped issuing undated prescriptions as soon as the problem was brought to his attention in 1990. Since that time his practice has been to have Ms. A. call his office approximately one week before she needs a new prescription. Dr. Larson then prepares a prescription, places on it the date in the future when Ms. A. is to have the prescription filled, and mails the prescription to her.

6. The board advisor who reviewed the undated prescription issue in 1993 recommended to the board that no disciplinary action be taken, and none was taken at the time although the board did not close the file. When the complaint in this case was issued in 1996, it contained the allegation regarding the undated prescriptions, along with an allegation of inadequate charting for the same patient. [This fact is by stipulation.]

7. The issuance of undated prescriptions is a problem in the medical profession which is not unique to Dr. Larson's practice. [This fact is by stipulation.]

### CONCLUSIONS OF LAW

I. The Medical Examining Board has personal jurisdiction over Dr. Larson, based on his holding a credential issued by the board, and based on notice under sec. 801.04 (2), Stats.

II. The Medical Examining Board is the legal authority responsible for issuing and controlling credentials for the practice of medicine and surgery, under ch. 448, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 448.02(3), Stats., and ch. Med 10, Wis. Admin. Code.

III. No evidence was presented to support the allegation of unprofessional conduct based on inadequate charting contained in paragraph 6 of the complaint, and it must be dismissed.

IV. Dr. Larson's issuance of undated prescriptions for controlled substances violates 21 CFR section 1306.05, a provision of the Code of Federal Regulations which is applicable to any physician who has registered with the federal Drug Enforcement Agency as a prescriber of controlled substances. Dr. Larson thus prescribed a controlled substance other than as required by law, which constitutes unprofessional conduct under sec. Med 10.02(2)(p), Wis. Admin. Code. Discipline may be imposed by the Medical Examining Board, under sec. 448.02(3)(c), Stats.

### ORDER

THEREFORE, IT IS ORDERED that the allegation in the complaint based on inadequate charting is hereby dismissed.

IT IS FURTHER ORDERED that the license issued to Dr. Sanford J. Larson to practice medicine and surgery in Wisconsin be limited as follows:

Within six months of the date of this order, Dr. Larson shall participate in and successfully complete a course in prescribing controlled substances. The time period may be extended by the board if Dr. Larson presents an affidavit that no class is reasonably available during the time specified. Dr. Larson shall send proof of compliance with this requirement to the Medical Examining Board in care of Michelle Neverman, Department Monitor, Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED that Dr. Larson pay one-half of the costs of this proceeding, within a time period to be specified later by the board.

IT IS FURTHER ORDERED that, if Dr. Larson fails to comply with the limitation placed on his license as set forth above or with the order for costs, his license shall be immediately suspended, without further notice, hearing or order of the board, and said suspension shall continue indefinitely until further order of the board.

### OPINION

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the Medical Examining Board alleging that the respondent, Sanford J. Larson, M.D., Ph.D., engaged in unprofessional conduct by (1) failing to meet minimum standards of the profession for charting, and (2) failing to place the date of issue on all controlled substance prescriptions. Both allegations were based on his treatment of one patient, identified as "Joan A.". At the hearing, Attorney Thexton representing the Division of Enforcement moved to dismiss the first of the two allegations. The motion was granted, subject to ratification by the board. No evidence was presented to prove that allegation, and the allegation must be dismissed. The hearing was conducted solely on the second of the two allegations.

In his answer, Dr. Larson raised two affirmative defenses, (1) laches and (2) "that the Complaint was filed in the above-captioned matter in a manner inconsistent with customary procedures which are intended to insure probable cause exists to file a complaint," but neither of these was found to bar this action. The burden of proof was on the Division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence. I conclude that the division met that burden with regard to the one allegation on which proof was offered, and that discipline should be imposed in the form of a limitation on Dr. Larson's license requiring him to attend and pass a course in prescribing controlled substances.

#### The Affirmative Defense of Laches.

Dr. Larson raised an affirmative defense of laches in his answer. The leading case on this issue is State v. Josefsburg, 275 Wis. 142, 81 N.W.2d 735 (1957) in which the Wisconsin Supreme Court said at 153 that a defense of laches cannot be raised against the state in its capacity of protecting the public. That ruling was repeated in State v. Chippewa Cable Co., 21 Wis.2d 598, 608

(1963). The Supreme Court has also stated that laches is not a bar to an attorney disciplinary proceeding, although the passage of time may be considered in imposing discipline. Disciplinary Proc. Against Eisenberg, 144 Wis.2d 284, 294, 424 N.W.2d 867 (1988). These cases have repeatedly been held to defeat affirmative defenses based on the passage of time in disciplinary actions within this department. Thus, under Wisconsin law, the equitable doctrine of laches is not available to a respondent as a defense against a professional disciplinary proceeding.

#### The Second Affirmative Defense.

In his answer, the respondent stated that "the Complaint was filed in the above-captioned matter in a manner inconsistent with customary procedures which are intended to insure probable cause exists to file a complaint." The board advisor who reviewed the undated prescription issue in 1993 recommended to the board that no disciplinary action be taken, and none was taken at the time although the board did not close the file. The board did include an allegation regarding the undated prescriptions when the complaint was issued in 1996, and paired it with the allegation of inadequate charting. Since the latter allegation was dismissed at the beginning of the hearing, Mr. Malone argued that without the charting allegation, "there may not have been probable cause to move on [the undated prescription allegation] by itself." Mr. Malone essentially inferred, from the fact that no action was taken in 1993, either (1) that the board made a finding of "no probable cause" at that time, (2) that no such finding could possibly be made. As to the first inference, it is far from clear that due process or any other doctrine prevents a regulatory board from reopening and reversing a finding of "no probable cause", and as to the second inference, the finding in this decision that Dr. Larson violated section Med 10.02(2)(p) refutes any argument that probable cause could not exist. Mr. Thexton also argued an inference, that since the file was not closed by the board at that time, no decision was made on probable cause and the board kept the file open for further investigation. Insufficient facts were presented from which either party's position could be proven, and since the burden of proving an affirmative defense is on the respondent, the defense was not proven, and it does not bar this action.

#### The Undated Prescriptions.

No factual disputes were raised in the hearing. The parties agree that Dr. Larson treated the patient in question by issuing undated prescriptions for Percodan, a schedule II controlled substance. Dr. Larson stated in explanation of his practice that "the arrangement was done for the convenience of the patient, there was no misuse or inappropriate use of oxycodone, and the practice was terminated immediately upon notification in 1990." The fact that no-one was harmed is a happy circumstance, but it is not the point, as it frequently is not in disciplinary proceedings before this board. The potential for harm has led to the promulgation of a number of rules which define professional and unprofessional conduct without regard to whether actual harm occurs. In this case the potential for misuse and abuse of controlled substances is great enough that writing a prescription which violates any law violates Med 10.02(2)(p), regardless of whether the substance is actually misused or abused.

Issuing an undated prescription is not a direct violation of any Wisconsin statute or rule, but it is a violation of a federal rule. Mr. Thexton argued that the intention of the Medical Examining

Board in adopting sec. Med 10.02(2)(p) of the Wisconsin Administrative Code was "to incorporate by reference the federal statutes and code relating to the prescribing of controlled substances", but this is another issue on which no facts were presented, and I cannot conclude that the portions of the Code of Federal Regulations which pertain to the DEA have actually been incorporated into Wisconsin law. However, the DEA rules do constitute federal law applicable to any physician who has registered with the federal Drug Enforcement Agency as a prescriber of controlled substances, and Dr. Larson's issuance of undated prescriptions for controlled substances violates 21 CFR section 1306.05. I conclude that Dr. Larson prescribed a controlled substance other than as required by law, and that this constitutes unprofessional conduct under sec. Med 10.02(2)(p), Wis. Admin. Code.

#### The Med 10.02(2)(r) Allegation.

The complaint alleged that Dr. Larson's undated prescriptions were a violation of section Med 10.02(2)(r), Wis. Admin. Code, which defines "unprofessional conduct" as including "conviction of any crime which may relate to practice under any license, or of violation of any federal or state law regulating the possession, distribution, or use of controlled substances ..." Mr. Thexton argued that this sentence includes any violation of federal law, whether or not the respondent has been convicted. I conclude that Mr. Thexton's interpretation is incorrect, and that the construction "conviction of any crime ... or of violation of any federal or state law ..." [emphasis added] means that a conviction is necessary. This is reinforced by the second sentence in the rule, which says "A certified copy of a judgment of a court of record showing such conviction, within this state or without, shall be presumptive evidence thereof." I find that Dr. Larson did not violate section Med 10.02(2)(r).

#### The 450.11(1) Allegation.

The complaint also alleged that Dr. Larson's undated prescriptions violated section 450.11(1), Stats., which says "No person may dispense any prescribed drug or device except upon the prescription order of a prescriber. All prescription orders shall specify the date of issue ...." Since the actual prohibition in this section is against "dispensing", and the statutory section is found in chapter 450 which regulates the practice of pharmacy, not medical doctors directly, it is not a basis for finding any violation by Dr. Larson.

#### Discipline.

Upon a finding of unprofessional conduct, the board may impose discipline. The purposes of professional discipline have been set forth in Wisconsin Supreme Court Rule SCR 21.03(5), which states: "Discipline for misconduct is not intended as punishment for wrongdoing, but is for the protection of the public, the courts and the legal profession." The Wisconsin Supreme Court has extended this in various attorney discipline cases, including Disciplinary Proc. Against Kelsay, 155 Wis.2d 480, 455 N.W.2d 871 (1990), by saying that the protection was "from further misconduct by the offending attorney, to deter other attorneys from engaging in similar misconduct and to foster

the attorney's rehabilitation." That reasoning has been extended by regulatory agencies, including the Department of Regulation and Licensing, to disciplinary proceedings for other professions.

The discipline in this case is strongly affected by the fact that Dr. Larson continues to violate the same federal regulation. When he was informed of the problem with undated prescriptions in 1990, Dr. Larson immediately changed his practice, and began sending Ms. A. prescriptions which were dated, but dated in the future, on the approximate date when Ms. A. would take the prescription to be filled by a pharmacist. Since the rule reads "All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued ...", Dr. Larson's solution did not bring him into conformity with the law. This was not relevant to the proof of the allegation regarding undated prescriptions, but it is highly relevant to the choice of appropriate discipline. In one sense, of course, Dr. Larson's immediate change in his prescribing practice was a responsible reaction to the situation, and if there had been no continuing violation, Dr. Larson's issuance of undated prescriptions prior to 1991 could have been viewed as a *de minimus* violation. Especially given the passage of time since the violation occurred, as referred to in the Eisenberg decision above, the appropriate outcome of this case would probably have been to impose no discipline at all beyond publication, for the deterrent effect on the rest of the profession, of the finding that Dr. Larson had violated the federal rule. Unfortunately for Dr. Larson, the change he made in his prescription practice did not bring him into compliance with the rule, and shows that he is insufficiently familiar with the restrictions placed by the DEA on the prescription of controlled substances. It is this which leads to the conclusion that Dr. Larson should take and pass a course in prescribing controlled substances, as urged by Mr. Thexton.

The first purpose of professional discipline is to protect the public and the profession from further unprofessional conduct by Dr. Larson. The attorneys for both sides referred to Dr. Larson's distinguished career, and the resume admitted as exhibit 3 gives ample proof that Dr. Larson has been a prominent and well-respected member of the profession. Nevertheless, even the most impressive achievements do not make a person infallible. Even the State Capitol building develops cracks and requires maintenance and repair. Dr. Larson not only made a (relatively minor) mistake by issuing undated prescriptions, he showed that he has a weakness, an area on which he has not focused sufficient attention, i.e. knowing the rules relating to prescribing controlled substances. Education in this area is necessary to protect the public and the profession from Dr. Larson making similar mistakes. As stated above, no harm has been shown in this case, but just as much of medicine is preventive, so too the professional rules regulating doctors are made to operate preventively, and the profession does not have to wait until harm occurs before it can and should act.

The second purpose of professional discipline is to deter other doctors from similar misconduct. This is an important consideration, since by stipulation of the parties' attorneys, the problem of undated prescriptions is not unique to Dr. Larson. The most effective measure to achieve deterrence is publication of the finding that another practitioner, especially a practitioner of Dr. Larson's prominence, was unprofessional in his issuance of undated prescriptions. The fact that remedial education is imposed probably adds somewhat to the deterrent effect.

The third purpose of professional discipline is to foster Dr. Larson's "rehabilitation". That term seems out-of-place in this case, as Dr. Larson is clearly not a miscreant, nor is he "unprofessional" in the vernacular sense of that term. In fact, he acted responsibly by immediately trying to conform his prescribing practice to the rules, but he demonstrated an insufficient understanding of the rules by issuing future-dated prescriptions, and he is in continuing violation of the same section of the Code of Federal Regulations. During the hearing, other solutions to Ms. A.'s situation were suggested, including mailing the prescriptions to a pharmacy designated by the patient, or issuing three prescriptions at a time to the patient, for dispensing on the date presented, 30 days later, and 60 days later; no recommendation is made here on that issue, but it suggests that Dr. Larson should be able to accommodate Ms. A. within the rule. For "rehabilitative" purposes, a class in prescribing controlled substances is appropriate.

Costs.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. The approach which is routinely taken by this board is to impose the costs of investigating and prosecuting unprofessional conduct on the disciplined individual rather than on the profession as a whole. However, since one of the two allegations was dismissed at the start of the hearing, only one-half of the costs of this proceeding should be imposed on Dr. Larson.

Dated and signed: September 29, 1997

  
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John N. Schweitzer  
Administrative Law Judge  
Department of Regulation and Licensing