

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



## Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

### Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- 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>.
- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DRL website:** An individual who believes that information on the website is inaccurate may contact the webmaster at [web@drl.state.wi.gov](mailto:web@drl.state.wi.gov)

STATE OF WISCONSIN

BEFORE THE MEDICAL EXAMINING BOARD

-----  
-----  
IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

DAVID MICHAEL THOMAS, D.O.,

**FINAL DECISION AND ORDER**

RESPONDENT

LS9902081MED

-----  
-----  
The parties to this action for the purposes of section 227.53 of the Wisconsin statutes are:

*David Michael Thomas, D.O.  
10240 W. National Ave. Ste. 172  
West Allis, WI 53227*

*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.

In resolution of this matter, Respondent has amended his Answer to the Complaint in these proceedings to neither admit nor deny the allegations against him. The Board therefore for the purposes of this action is authorized to make findings consistent with the formal complaint in this action. Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. David Michael Thomas, D.O. (DOB 03/11/62) is duly licensed to practice medicine and surgery in the state of Wisconsin (license #30511). This license was first granted on July 1, 1989.
2. Dr. Thomas' most recent address on file with the Wisconsin Medical Examining Board is 10240 West National Avenue, Suite 172, West Allis, WI 53227. Dr. Thomas' most recent address known to the Division of Enforcement is 1331 South St., Madison, WI 53715-1989.
3. On or about April 27, 1992, Respondent engaged in inappropriate physical contact with two minor boys while Respondent was the guest of a missionary in New Guinea. At the time of this contact, the victims of this contact were aged approximately 8 years old and 10 years old.
4. On or about September 13, 1994, the United States Army issued a Court-Martial Order against Respondent. A true and correct copy of the 9/13/94 Court-Martial Order is attached to this document as Exhibit A. Exhibit A is incorporated into this document by reference.
5. The circumstances of the Court-Martial Order referred to in paragraph 4 above relate to a relationship between Respondent and AAM, a Somali citizen.

6. At all times relevant to the Court-Martial Order, Respondent served as a doctor with the United States Army assigned to 46th CSH, Mogadishu, Somalia as a part of Operation Restore Hope.
7. In October 1993, Respondent met AAM. AAM was at that time between 15 and 17 years old. It is Respondent's contention that Respondent believed AAM was over 16 at the time of their meeting, and that this was the age of consent in Somalia at that time. Respondent first met AAM as a patient, when AAM was taken to the hospital for vaccinations and X-rays.
8. Respondent and AAM subsequently developed a social relationship. Shortly after the announcement was made of the March 1994 pullout of United States troops from Somalia, Respondent decided to adopt AAM. AAM was aware of the adoption plans.
9. When the hospital compound moved to the airport in Mogadishu, AAM moved with the facility. At the Airport Compound, Respondent and AAM were the sole occupants of the tent in which they lived.
10. On or about January 29, 1994 Respondent engaged in inappropriate physical contact with AAM, including Respondent rubbing AAM's body from his shoulders to the top of his legs and including AAM's groin area.
11. On or about January 30, 1994, Respondent engaged in inappropriate physical contact with AAM, as described below:
  - a. While AAM was changing clothes and was unclothed, Respondent told AAM that Respondent had paid \$500 for a visa and \$500 for lawyer's fees, so that Respondent could adopt AAM. Respondent further informed AAM that as soon as they were in the United States, AAM would be Respondent's son and everything Respondent owned would also belong to AAM. Respondent then kissed AAM on the mouth.
  - b. Respondent then performed oral sex on AAM. Respondent then placed AAM's penis in Respondent's anus; Respondent then had AAM perform oral sex on Respondent.
12. After the sex acts referred to in ¶11 were completed, Respondent informed AAM that if AAM told anyone about the sexual contact, Respondent would not be able to adopt AAM and take AAM to America.
13. Later in the evening of January 30, 1994, Respondent went with AAM to the compound chaplain, where Respondent indicated to the chaplain that AAM had something to tell the chaplain. AAM then reported the incidents referred to in ¶¶ 11 and 12. When AAM reported the incidents, he was obviously traumatized. He was stuttering and crying. AAM stated Respondent was a bad man who had done bad things to him, and that AAM did not want to be adopted by Respondent.
14. At least between April 22, 1996 and January 1, 1997, Respondent was acting as medical director for National Treatment Services, Inc., 1327 North Wright Street, Janesville, Wisconsin. National Treatment Services was at all times relevant to this action a certified AODA Outpatient and Methadone Facility.
15. On or about April 22, 1996, Patient RB transferred to National Treatment Services as a patient. She met with Respondent on that date for intake evaluation. Respondent performed no physical examination of RB at that time.
16. RB presented with a history of multi-drug abuse and anorexia.
17. On an exact date unknown, but in June 1996 Respondent started RB on a regimen of fenfluramine and phentermine, in addition to her methadone medication. Neither RB's weight nor other vital signs were taken prior to her commencement of fenfluramine and phentermine medication.
18. RB was informed the fenfluramine and phentermine were prescribed to her to augment her treatment for chemical dependency.
19. RB was initially provided the fenfluramine and phentermine free of charge. RB was informed that the drugs would be provided to her because she was part of a research program by Respondent.
20. RB at no time signed any consent forms regarding her participation in a research program, nor was she informed of any potential risks in association with her consumption of fenfluramine and phentermine.
21. Initially, fenfluramine and phentermine were dispensed to RB in conjunction with her methadone dosing. Subsequently, RB received take home doses of these medications that were dispensed to RB in plastic baggies. These medication baggies were not labeled.
22. During the time RB was receiving fenfluramine and phentermine from Respondent, Respondent saw RB approximately every two weeks. Respondent himself did not weigh RB or obtain her vital signs at these visits. RB was weighed at the clinic approximately one time per month. Other vital signs were not routinely taken.
23. On an exact date unknown, but approximately one month after her commencement of taking fenfluramine and

phentermine, RB informed respondent that she had lost 20 pounds and that she weighed 120 pounds. RB is 5'8" tall. Respondent did not weigh her or take other vital signs. Respondent told her that her weight loss would taper off. He did not change her medication program.

24. In August 1996, Respondent began issuing prescriptions for fenfluramine and phentermine to RB. Respondent issued RB the following prescriptions:

DATE	RX	REFILLS
08/15/96	100 Pondimin 20 mg	3
08/15/96	100 Phentermine 30 mg	3
10/14/96	150 Pondimin 20 mg (5 per day)	0
10/14/96	30 Phentermine SR 30 mg	0
11/01/96	50 Pondimin 20 mg	0
11/08/96	50 Pondimin 20 mg	1
11/27/96	50 Pondimin 20 mg (5 per day)	0
11/29/96	100 Phentermine 30 mg	3
12/14/96	7 Zoloft 100mg	0

25. In November 1996, RB informed Respondent that she wanted to stop taking fenfluramine and phentermine. Respondent instead suggested RB take tryptophan (5HTTP) in addition to her fenfluramine and phentermine medication regimen and dispensed a trial dose of tryptophan to RB.

26. At least in August 1996, Respondent was working as a physician and medical director at an office clinic at 9900 West Bluemound Road, #204, Wauwatosa, Wisconsin.

27. On or about August 23, 1996, Respondent prescribed medications for the treatment of fibromyalgia to patient LB while Respondent was in an unfit condition and unable to practice medicine with reasonable skill and safety to his patient.

28. Respondent did, as a part of his practice known as "Primary Care Associates," routinely dispense prescription medication to patients through delegees during the year 1997.

29. During this period, respondent (through his delegees) did not, from time to time, label the medications provided to patients with a label meeting the requirements of § Med 17.04(1), Wis. Adm. Code, in that the labels omitted the date and the name of the patient.

30. During April 1998, respondent caused to be advertised his services as a physician-prescriber of Viagra®. Respondent's advertisements stated, in essence, that he would prescribe Viagra® for any male who was over 18 and was not taking a nitroglycerin-type medication, upon request, without ever having personally seen the patient, for a \$50 consultation fee.

31. Pursuant to the policy set forth above, respondent's office received hundreds of telephone calls from men from all over the world, desiring such prescriptions.

32. Respondent's staff made only the following medical inquiries of each caller, the answers to which were to be noted upon a standard form: "Are you allergic to any medication (if so, list)? List all medications you are taking. List all surgeries you have had." Respondent did not personally speak to the overwhelming majority of these callers.

33. Respondent then reviewed the written materials prepared by staff for each caller, and then wrote a prescription for each caller, which prescription was either mailed to the caller, or faxed or telephoned to the pharmacy of the caller's choice, at the patient's option.

34. The conduct described above in ¶¶31-33 increased the risk of the following unacceptable risks to the patient: failure to detect serious disease processes including diabetes, heart disease, prostate cancer, and neurologic diseases which can all cause impotence and be previously undetected. If undetected or untreated,

these diseases can worsen and be fatal.

35. A minimally competent physician would have avoided the unacceptable risks to the patient by: personally seeing and evaluating the patient, taking a history relating to sexual and medical issues which may affect erectile function, and performing a focused physical examination which would include blood pressure and abdominal examination for masses or pathological processes such as cardiovascular disease, taking a femoral pulse, checking the genitalia and perineal region for abnormalities, and prostate exam and basic neurological examination.

36. As a separate method of operation, respondent entered into an agreement with J&D Pharmacy of Warsaw, Missouri. Under this agreement, J&D obtained identifying and health information from applicants for Viagra® prescriptions by its own means, which included having the person seeking Viagra® enter the information on J&D's web site, by use of the internet. J&D then e-mailed the applicant-provided information to respondent, who printed it out and reviewed it. Respondent then wrote prescriptions for Viagra® for the applicants and faxed them to J&D Pharmacy, or telephoned prescription orders to the pharmacy. Respondent had no contact with any such applicant, either personally or through respondent's own staff. During April 1998, respondent issued Viagra® prescription orders for at least 120 persons as a result of this arrangement.

37. On at least 13 occasions on April 20-21, 1998, respondent faxed or telephoned prescriptions to J&D Pharmacy for Viagra® for the following men for whom respondent has no patient health care records: PDM, TJS, RBB, JC, KH, DJK, JL, HJN, DP, JS, RGT, DAW, and JRW.

38. A minimally competent physician would have avoided the unacceptable risks to the patient by: personally seeing and evaluating the patient, taking a history relating to sexual and medical issues which may affect erectile function, and performing a focused physical examination which would include blood pressure and abdominal examination for masses or pathological processes such as cardiovascular disease, taking a femoral pulse, checking the genitalia and perineal region for abnormalities, and prostate exam and basic neurological examination.

39. On at least one occasion, respondent issued prescriptions for Viagra® for persons for whom respondent's records indicate that they did not meet his own criteria, in that the screening questions were not answered (or the answers were not documented), or in that respondent's records record that the patient indicated that nitroglycerin was being currently prescribed. These patients came from both J&D Pharmacy and from respondent's telephone practice.

40. On at least one occasion, respondent issued prescriptions for Viagra® for persons for whom respondent's records indicate that it was clearly inappropriate, in that the patient had diabetes or was taking insulin and had not been examined by respondent to determine if there were other conditions, frequently associated with diabetes, which would contraindicate the prescription.

41. A minimally competent physician would have avoided the unacceptable risks to the patient by: personally seeing and evaluating the patient, taking a history relating to sexual and medical issues which may affect erectile function, and performing a focused physical examination which would include blood pressure and abdominal examination for masses or pathological processes such as cardiovascular disease, taking a femoral pulse, checking the genitalia and perineal region for abnormalities, and prostate exam and focused basic examination.

42. Respondent failed to routinely inform patients or callers that Viagra® only worked well for some patients, worked somewhat for some patients, and was completely ineffective for a significant percentage of patients.

43. On no occasion did respondent inform any patient or caller that sexual dysfunction had alternative treatments, including some which may be directly related to other medications the patient may be taking or other medical conditions which the patient may have (which could not be determined without seeing the patient). In such cases, the patient might be successfully treated without resort to additional medication at additional expense.

### **CONCLUSIONS OF LAW**

A. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to sec. 448.02(3), Stats. and is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Stats.

B. By the conduct described in paragraph 3, above, Respondent is subject to disciplinary action against his license to practice medicine and surgery in the state of Wisconsin, pursuant to sec. 448.02(3), Stats. and Wis. Adm. Code § Med 10.02(2)(h).

C. By the conduct described in ¶¶ 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 above, David Michael Thomas is subject to disciplinary action against his license to practice medicine and surgery in the state of Wisconsin, pursuant to sec. 448.02(3), Stats. and Wis. Adm. Code § Med 10.02(2)(h) and (r).

D. By the conduct described in ¶¶ 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 above, David Michael

Thomas is subject to disciplinary action against his license to practice medicine and surgery in the state of Wisconsin, pursuant to sec. 448.02(3), Stats. and Wis. Adm. Code § Med 10.02(2)(h) and (p).

E By the conduct described in ¶ 27, above, David Michael Thomas is subject to disciplinary action against his license to practice medicine and surgery in the state of Wisconsin, pursuant to sec. 448.02(3), Stats. and Wis. Adm. Code § Med 10.02(2)(h) and (i).

F. The conduct described in ¶¶ 28 and 29, above, violated § Med 17.04(1), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

G. The conduct described above in ¶¶30-35 violated § Med 10.02(2)(h) and (j) Wis. Adm. Code, in that it was below the minimum level of competence for a physician in the following respects: it is inappropriate to prescribe for a patient without having ever seen and evaluated the patient, and in that respondent could not take steps to reasonably ensure that the prescriptions were for legitimate medical purposes but were instead for recreational or experimental or other non-medical uses, and thus the providing of a prescription for Viagra®, a prescription-only drug, was outside the scope of a physician's legitimate practice and thus beyond the scope of licensure, and/or was unprofessional conduct not otherwise specified. This conduct violated § Med 10.02(2)(o), Wis. Adm. Code, in that the advertising was directed at vulnerable persons (in that men who are experiencing sexual difficulties are, as a group, insecure and susceptible to undue influence concerning this problem which is seen as embarrassing), and that the advertising was deceptive and misleading in that it falsely implied that such medication could be safely prescribed without an in-person consultation with a physician.

H. The conduct described above in ¶¶36-38 violated § Med 10.02(2)(h), Wis. Adm. Code, in that it was below the minimum level of competence for a physician in the following respects: it is inappropriate to prescribe for a patient without having ever seen and evaluated the patient. The conduct described above in ¶¶36-38 increased the risk of the following unacceptable risks to the patient: failure to detect disease processes which are more serious including diabetes, heart disease, prostate cancer, and neurologic diseases which can all cause impotence and be previously undetected. If untreated, these diseases can worsen and be fatal. The conduct described in ¶¶36-38 violated § Med 10.02(2)(j), Wis. Adm. Code, in that respondent could not reasonably ensure that the prescriptions were for legitimate medical purposes but were instead for recreational or experimental or other non-medical uses, and thus the providing of a prescription for Viagra®, a prescription-only drug, was outside the scope of a physician's legitimate practice and thus beyond the scope of licensure, and/or was unprofessional conduct not otherwise specified. The conduct described above in ¶¶36-38 violated § Med 10.02(2)(m), Wis. Adm. Code, in that respondent does not have a legitimate physician-patient relationship with the persons for whom he prescribed. His providing a prescription for a person for whom he does not have a legitimate professional relationship is a representation to the pharmacist that such a relationship exists, made for the purpose of inducing the patient to pay respondent a professional fee. The conduct described in ¶37 violated § Med 10.02(2)(za), Wis. Adm. Code.

I. The conduct described above in ¶¶38-39 violated § Med 10.02(2)(h), Wis. Adm. Code, in that it was below the minimum level of competence for a physician in the following respects: it is inappropriate to prescribe for a patient without having ever seen and evaluated the patient, and these patients should have been evaluated by an internist and/or cardiologist, in view of the special risks that such patients have because of their impaired cardiovascular systems. The conduct described above in ¶¶38-39 increased the risk of the following unacceptable risks to the patient: failure to detect disease processes which are more serious including diabetes, heart disease, prostate cancer, and neurologic diseases which can all cause impotence and be previously undetected. If untreated, these diseases can worsen and be fatal. In the cases of these patients, Viagra® can cause a drop in blood pressure leading to sudden loss of consciousness.

J. The conduct set forth in ¶¶42-43 above is unprofessional conduct pursuant to §448.30, Wis. Stats., and § Med 10.02(2)(u) and ch. Med 18, Wis. Adm. Code.

## ORDER

A. NOW, THEREFORE, IT IS HEREBY ORDERED that the attached Stipulation of the parties to this action is accepted. This Order resolves all pending disciplinary charges and informal complaints currently known to the Board and the Division of Enforcement, i.e., 95 MED 358, 96 MED 408. 97 MED 028, 97 MED 030, 97 MED 135, 98 MED 111, 99 MED 036..

B. IT IS FURTHER ORDERED that the Wisconsin license of David Michael Thomas shall be **SUSPENDED** for a period of one (1) year, to commence no later than the effective date of this Order.

C. IT IS FURTHER ORDERED following completion of the period of suspension, the Wisconsin license of David Michael Thomas is **LIMITED** as set forth below.

1. Respondent shall not engage in any practice of medicine that involves the provision of patient care or which includes patient or research subject contact, except as set forth in this paragraph.
  - a. Respondent may only work in settings pre-approved by the Board. Denial in whole or in part of a request for work site approval shall not give rise to a contested case within the meaning of secs. 227.01(3) and 227.42, Stats. The Board shall not unreasonably deny approval of a work setting.
  - b. Respondent's practice shall be limited solely to the provision of limited medical screening and/or evaluation, such as general populace screenings or insurance evaluations.
  - c. Respondent shall not provide or prescribe treatment, nor shall Respondent delegate the provision of patient treatment to others.
  - d. Respondent shall not prescribe devices or medications and shall surrender his DEA registration to the Federal Drug Enforcement Agency.
  - e. Respondent shall not refer patients for treatment, other than to recommend follow-up with the patient's regular physician.
  - f. Respondent shall not meet with patients or research subjects unless another health care employee or other employee acceptable to the Board is present. All employees fulfilling this function shall have training acceptable to the Board in boundary issues. Training shall be completed before the employee fulfills any duties pursuant to this paragraph. Respondent's charting shall show the name of the employee present as well as the times that the employee was present during patient contact. The charting shall in addition be initialed and dated by the employee.
2. Respondent shall provide a copy of this Final Decision and Order to any current or prospective employer or colleague, where the work setting could involve patient contact or contact with human research subjects.
3. Respondent shall report to the Department Monitor any change in employment status, change of residence address or phone number, within five (5) business days of any such change.
4. Dr. Thomas shall immediately surrender all indicia of Wisconsin registration to the Department Monitor. The Department shall reissue registration credentials to Dr. Thomas marked "limited."
5. On a schedule as directed by the Department Monitor, Respondent shall arrange for reports from any and all employer(s) where Respondent's work setting could involve medical evaluation or patient contact. These reports shall include 1) a description of the terms and conditions of Respondent's employment and 2) an evaluation of his work performance. An employer shall report **immediately** to the Department Monitor any violation or suspected violation of the Board's Final Decision and Order.
6. Respondent shall appear before the Board on an annual basis, if requested by the Board, to review the status of his practice of medicine and his compliance with the terms of this Order.
7. Respondent shall pay to the Department of Regulation and Licensing partial costs in this proceeding in the amount of \$5,000.00. Costs shall be submitted by certified check or cashier's check to the Department Monitor by October 31, 1999. Pursuant to sec. 440.22(3), Stats., the Board may not restore, renew or otherwise issue any credential to Respondent until Respondent has made payment to the Department in the full amount assessed, together with any accrued interest. The parties recognize that due to financial constraints, Respondent may not be able to make timely payment of costs.
8. Respondent shall promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order.
9. All reports and payments required by this Order shall be submitted to

Department Monitor

Division of Enforcement

P.O. Box 8935

Madison, Wisconsin 53708-8935

10. Respondent's license is further limited, as set forth in the provisions of sec. 448.02(3)(e), Stats.

C. At any time following four (4) years from the effective date of this Order, Respondent may petition the Medical Examining Board for modification of the terms and conditions set forth above.

1. All petitions shall be addressed to the Medical Examining Board and to the Division of Enforcement and shall be submitted to the Department Monitor. The Division may appear before the Board to contest or otherwise respond to any petition by Respondent. Respondent's petition shall state, under oath, that he practiced medicine or surgery only in compliance with the limitations set forth above, since this Order was issued, that he has complied fully with the terms of this Order and will continue to comply with them until his license may be modified.. He shall account fully for his employment and time not employed, and shall provide information on any continuing medical education undertaken, or describe how he has maintained competence and learning, including a list of specific activities pursued. He shall disclose fully all contacts with the criminal justice system where Respondent potentially is or was the subject of charges. He shall in addition fully disclose any contacts with professional disciplinary authorities in every jurisdiction, and shall show that his conduct since this Order was issued has been exemplary and above reproach. He shall disclose any malpractice or other professional claims made against him, and their outcomes. His filing shall demonstrate that he has a proper understanding of and attitude toward the standards that are imposed upon members of the profession, and will act in conformity with those standards.

2. In conjunction with any petition submitted under this Order, the Board may in addition to the Findings of Fact and Conclusions of Law contained in this Order consider the following:

a. A Board Advisor assigned to this matter has reviewed pending investigations concerning Respondent's provision of mental health treatment to patients in 1998. The evaluation of the advisor was that Respondent's treatment fell below minimal standards in the medical profession and constituted a cause of action under sec. 10.02(2)(h), Wis. Admin. Code.

b. A Board Advisor assigned to this matter has reviewed pending investigations concerning Respondent's provision of care as director of weight loss clinics in 1996-1998. The evaluation of the advisor was that Respondent's use of protocols and delegation fell below minimal standards in the medical profession and constituted a cause of action under sec. 10.02(2)(h), Wis. Admin. Code.

c. The status of United States of America v. David Michael Thomas and Peter Vincent Walter (U.S. District Court, Eastern District of Wisconsin Case # 99-C-0156).

d. Any allegations of unprofessional conduct against Respondent received by the Division subsequent to the effective date of this Order.

3. In conjunction with any petition under this Order Respondent shall, at his own expense, undergo an assessment by a mental health care provider experienced in assessing health care providers who have become involved sexually with patients. Any assessment presented in conjunction with a petition under this Order shall have been completed within no more than thirty (30) days of submission of the petition.

a. Respondent shall execute all releases necessary for the provider to obtain records of Respondent's earlier evaluations and treatment and to discuss those evaluations and treatment with the individuals who provided those services. Respondent shall in addition execute all releases necessary for the provider to discuss his or her assessment results with the Division of Enforcement, the Medical Examining Board, or its designee.

b. The practitioner performing the assessment must have been approved by the Board, with an opportunity for the Division of Enforcement to make its recommendation, prior to the evaluation being performed.

c. The assessor shall submit a written report of his or her findings directly to the Department Monitor, including: a diagnosis of Respondent's condition; recommendations for treatment; an evaluation of Respondent's level of cooperation in the assessment process; ability to work and work restriction recommendations; and Respondent's prognosis. The assessment shall reflect that the assessor has received and reviewed copies of this order and Division investigative materials regarding Respondent's behavior. In addition, the assessment shall reflect that the assessor has consulted with Respondent's prior treatment providers in conjunction with the assessment.

4. In conjunction with any petition under this Order, Respondent shall at the discretion of the Board, appear before the Board for oral examination by the Board or its designee. The Division of Enforcement may at its request attend the examination and present questions for response by Respondent.

5. In conjunction with any petition under this Order, Respondent shall have the burden of proof to establish to the satisfaction of the Board that Respondent can practice with reasonable skill and safety of patients and public within the scope of practice requested by Respondent as petitioner. Completion of a mental health assessment in and of itself shall not constitute prima facie evidence of Respondent's ability to safely practice within the scope requested by his petition.

E. If the Board determines to grant a petition pursuant to this Order, the Board may in its discretion impose such terms and conditions as it deems appropriate to guaranty public health, safety and welfare, including, but not limited to:

1. Psychotherapy, at Respondent's expense, by a therapist approved by the Board, to address specific treatment goals, with periodic reports to the Board by the therapist.
2. Completion of an assessment of practice ability, such as by the Post Licensure Assessment System of the Federation of State Medical Boards or its equivalent, and additional professional education in any identified areas of deficiency.
3. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Board, with periodic reports to the Board by the supervisor. The expenses of a professional mentor shall be the responsibility of Respondent.

F. In order to contest a ruling by the Board on a petition submitted under this Order, Respondent may seek a class 1 hearing pursuant to sec. 227.01(3)(a), Stats., in which the burden shall be on Respondent to show that the Board's decision is arbitrary or capricious. The limitations, terms and conditions on Respondent's license shall remain in effect until there is a final decision in Respondent's favor on the issue.

**G. Pursuant to sec. 448.02(4), Stats, if the Board determines that there is probable cause to believe that respondent has violated any term of this Order, the Board may order that the license and registration of respondent be summarily suspended pending investigation of the alleged violation.**

H. 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".

I. This Order shall become effective on the date of its signing.

MEDICAL EXAMINING BOARD

By: Ronald Grossman, M.D.

A Member of the Board

June 23, 1999

Date