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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

MARK D. HUBER, P.A.,
RESPONDENT.

Case No. LS0004193MED

FINAL DECISION AND ORDER

The parties to this action for the purposes of § 227.53, Stats., are:

*Mark D. Huber, P.A.
2224 Main Street
Bloomer, WI 54724*

*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 Medical Examining 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 D. Huber, P.A., Respondent, date of birth May 4, 1964, is certified by the Wisconsin Medical Examining Board as a physician assistant in the state of Wisconsin, pursuant to certificate number 796, which was first granted December 29, 1994.
2. Respondent's last address reported to the Department of Regulation and Licensing is 2224 Main Street, Bloomer, WI 54724.
3. At the time of the events set out below, until his dismissal on February 1, 2000, Respondent was employed as a physician assistant at the Midelfort Clinic in Bloomer, Wisconsin, which was formerly known as the Blue Diamond Family Practice Clinic (Clinic).

COUNT I

4. On February 14, 1996, Ms. A, who was then 13 years of age, first saw Respondent for medical care at the Clinic. Respondent saw Ms. A for an eye irritation/infection. Respondent diagnosed persistent bacterial

conjunctivitis and treated Ms. A with Bacitracin ophthalmic ointment. Respondent continued to be Ms. A's health care provider until January 23, 2000.

5. On January 12, 1998, Ms. A saw a physician, not Respondent, at the Clinic for a sports physical and a breast exam because of her concern regarding the density of her breast tissue. The results were normal.

6. Although Respondent did not note them in Ms. A's medical record, Respondent issued the following prescriptions to Ms. A:

Date Drug Filled Purpose

| | | | |
|--------|-------------------------------------|---|-------------------|
| 7/6/98 | Triamcinolone 0.5% (Kenalog) | 7/6/98 and refilled 8/26/98 & 12/23/98 | rash |
| 3/5/99 | Cyclobenzaprine 10 mg (Flexeril) | 3/8/99 | muscle relaxer |
| 3/5/99 | Triamcinolone 0.5% (Kenalog) | 3/8/99 | rash |

7. On April 26, 1999, Ms. A, who was then 16, had a pelvic exam and her first pap smear performed at the Chippewa Falls office of Planned Parenthood of Wisconsin. On that same date, Ms. A completed a Medical Information Transfer Form authorizing Planned Parenthood of Wisconsin, Chippewa Falls, to send a copy of the exam form and the laboratory results to Respondent at the Clinic. Those results, which were normal, were sent to the Clinic addressed

"Att - Dr. [Respondent]."

8. During the summer of 1999, Ms. A's parents moved from Bloomer to another city in Wisconsin. Ms. A wanted to continue to attend the same high school and did not want to move with her parents. Although Ms. A's parents wanted her to reside with them, Respondent and his wife offered to allow Ms. A to reside with them at their residence in Bloomer and Ms. A's parents agreed to allow her to do so for the 1999-2000 school year.

9. On August 31, 1999, Ms. A's parents executed a Grant of Authority re' Minor Child, allowing Ms. A to reside with Respondent and authorizing Respondent and his wife to exercise their judgment "in matters pertaining to the well being, discipline, care, comfort, education, and health care of [Ms. A] while she is in their charge. . ." The document also stated that in the absence of Ms. A's parents, Respondent and his wife "shall stand in the place of parents with the authority and responsibility of parents." A copy of the document was filed in Ms. A's medical record at the Clinic.

10. Ms. A resided with Respondent and his wife until approximately October 5, 1999 when she again resided with her parents in the other city.

11. Sometime in early September 1999, just after Ms. A turned 17 years of age, Respondent engaged in sexual intercourse with Ms. A. The sexual activity occurred in the family room of Respondent's home. On that occasion, Respondent had provided Ms. A with alcoholic beverages and Ms. A and Respondent were under the influence of alcohol at the time of the sexual intercourse.

12. Although Respondent did not note them in Ms. A's medical record, Respondent issued the following prescriptions to Ms. A:

Date Drug Units Filled Purpose

| | | | | |
|---------|----------------------|----|---|---------------|
| 9/6/99 | Doxycycline H 100 mg | 68 | 9/6/99 and refilled 10/25/99 | acne |
| 9/29/99 | Paxil 10mg | 30 | 9/29/99 and refilled 10/25/99, 12/2/99 & 12/28/99 | depression |
| 10/8/99 | Triamcinolone 0.5% | 30 | 10/11/99 | eczema |
| 10/6/99 | Benzamycin | 23 | 10/11/99 and refilled 10/25/99, 11/24/99 & 12/28/99 | acne |
| 10/6/99 | Ovral -28 | 28 | 10/11/99 | birth control |

13. During this time, Ms. A obtained birth control pills from Planned Parenthood. Despite using birth control pills, after engaging in sexual intercourse with Respondent on one particular occasion, Ms. A was concerned that she might become pregnant. It was for that reason that Respondent, on October 6, 1999, prescribed Ovral, an oral contraceptive medication, for Ms. A to use as a morning after pill. Respondent instructed Ms. A to take two of the Ovral for two days, in addition to her regular daily pill. Ms. A took the pills as instructed by Respondent.

14. Following that first act of sexual intercourse, Respondent and Ms. A had sexual contact and sexual intercourse on several occasions up to, and including, January 22, 2000, including:

- a. Super 8 Motel, Baldwin, Wisconsin – 10/2/99
- b. Badger Motel, Hallie, Chippewa County, Wisconsin – 10/15/99
- c. Green Tree Inn, Eau Claire, Wisconsin – 10/31/99 & 12/10/99

15. On October 26, 1999, Ms. A called Respondent at the clinic and reported "feeling dizzy and weak as of late" and that she admitted to having had "some bulimia type episodes again in the last week." Respondent noted that Ms. A was presently seeing an eating disorder specialist at Luther Midelfort Clinic.

16. On December 17-18, 1999, the following occurred:

- a. Respondent, with Ms. A in his vehicle, stopped at Respondent's friend's house in Colfax, Wisconsin to obtain cocaine. Respondent instructed Ms. A to stay down on the floor of the car so she would not be seen while Respondent was in the house.
- b. Respondent and Ms. A then went to the Dalles House Motel in St. Croix Falls, Wisconsin, where they checked into a room. Ms. A was angry with Respondent because he told her that he had sex with his wife, but had previously told Ms. A that he was not having sex with his wife. Ms. A cried, stayed away from Respondent and slept on the bathroom floor. Respondent consumed one half of the cocaine that night.
- c. The following day, December 18, 1999, Respondent and Ms. A made up. Respondent had purchased alcohol for them which they consumed. Ms. A became intoxicated. Respondent and Ms. A then each consumed half of the remaining cocaine.
- d. Respondent and Ms. A then had sexual contact and intercourse.

17. During those months of 1999, Respondent also provided Ms. A with tobacco cigarettes. Pursuant to § 938.983(2), Stats., no person under 18 years of age may possess any cigarette or tobacco product.

18. The following occurred on January 22, 2000:

- a. Respondent consumed cocaine and then met Ms. A for a sexual encounter.
- b. Respondent and Ms. A were naked in the back of Respondent's Ford Explorer having sexual intercourse, when a police officer on patrol found them.
- c. The officer requested Ms. A to exit the vehicle and take a seat in the back of the police car. When questioned by the officer, Ms. A admitted to drinking beer and having sexual intercourse with Respondent in the parked vehicle. Ms. A told the officer that she and Respondent were boyfriend and girlfriend. The officer later learned from Ms. A that she considered Respondent to be her medical provider.
- d. When the officer questioned Respondent, Respondent admitted to being naked with Ms. A and that

they both engaged in hugging, kissing and petting but denied performing sexual intercourse. Respondent also stated to the officer that he was Ms. A's legal guardian, which was not true.

19. Respondent, by engaging in the above conduct with Ms. A, who was then his patient, engaged in conduct which is below the minimal standards of the profession of physician assistant.

20. Respondent, by engaging in the above conduct with Ms. A, exposed Ms. A to unreasonable risks of harm to which a minimally competent physician assistant would not expose a patient.

COUNT II

21. On January 23, 2000, as a result of the events of January 22, 2000, Respondent was arrested.

22. On February 22, 2000, Respondent was charged in Chippewa County Wisconsin Circuit Court case number 00CM76 with one count of violating § 948.09, Stats. (Sexual intercourse with a child age 16 or older), a class A misdemeanor, for the conduct of January 22, 2000. That charge is pending at this time.

23. Respondent's conduct, as set out in paragraphs 11 through 18 above, violated § 948.09, Stats.

24. § 948.09, Stats., is a law the circumstances of which substantially relate to practice by a physician assistant.

COUNTS III and IV

25. By providing Ms. A with cocaine, as set out in paragraph 16 above, Respondent violated § 961.41(1)(cm)1, Stats., which prohibits the distribution or delivery of cocaine, a controlled substance, and makes such an act a crime punishable by a fine of not more than \$500,000 and imprisonment for not more than 10 years.

26. § 961.41(1)(cm)1, Stats., is a law the circumstances of which substantially relate to practice by a physician assistant.

COUNT V

27. At all times relevant, the legal minimum age for drinking alcohol beverages in Wisconsin was 21 years of age, pursuant to § 125.02 (8m), Stats.

28. Respondent's conduct, as set out in paragraphs 11, 16 and 18 above, was in violation of § 125.07(1)(a)1, Stats. (1994), which states that "no person may give away any alcohol beverages to any underage person not accompanied by his/her parent, guardian or spouse who has attained the legal drinking age."

29. Respondent's conduct was also in violation of § 125.07(1)(a)3, Stats., which states that "no adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on the premises owned by the adult or under the adult's control."

30. §§ 125.07(1)(a)1 and 125.07(1)(a)3, Stats., are laws substantially related to practice by a physician assistant.

COUNT VI

31. Wis. Adm. Code § MED 8.08(2)(e) allows a physician assistant to issue a prescription only if the physician assistant's supervising physician reviews and counter-signs the patient record prepared by the physician assistant.

32. Respondent did not make entries in Ms. A's patient record documenting the issuance of the prescriptions set out in paragraphs 6, 12 and 13, above.

33. Neither Respondent's supervising physician nor any other physician ever supervised or reviewed Respondent's issuance of the prescriptions to Ms. A or signed Ms. A's patient record regarding those prescriptions.

CONCLUSIONS OF LAW

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

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

3. Respondent, by engaging in the conduct with Ms. A as set out in Count I above, has engaged in conduct which tends to constitute a danger to the health, welfare, or safety of a patient, which is unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(h) and is subject to discipline pursuant to § 448.02(3), Stats.

4. Respondent, by having engaged in sexual contact with Ms. A, who was then less than 18 years of age, as set out in Count II above, has violated § 948.09, Stats., a law the circumstances of which substantially relate to circumstances of the practice of a physician assistant, which is unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(z) and is subject to discipline pursuant to § 448.02(3), Stats.

5. Respondent, by having provided cocaine to Ms. A, as set out in Count III above, has dispensed a controlled substance otherwise than in the course of legitimate professional practice and as otherwise prohibited by law, which is unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(p) and is subject to discipline pursuant to § 448.02(3), Stats.

6. Respondent, by having provided cocaine to Ms. A, as set out in Count IV above, has violated § 961.41(1)(cm)1, Stats., a law the circumstances of which substantially relate to circumstances of the practice of a physician assistant, which is unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(z) and is subject to discipline pursuant to § 448.02(3), Stats.

7. Respondent, by providing alcohol to Ms. A, who was only 17 years of age, as set out in Count V above, has violated §§ 125.07(1)(a)1 and 125.07(1)(a)3, Stats., laws the circumstances of which substantially relate to circumstances of the practice of a physician assistant, which is unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(z) and is subject to discipline pursuant to § 448.02(3), Stats.

8. Respondent, by failing to make a patient record of the prescriptions he issued to Ms. A and by failing to have his supervising physician review and sign a record of the prescription, as set out in Count VI above, violated Wis. Adm. Code § MED 8.08(2)(e), a valid rule of the Board, which is unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(a) and is subject to discipline pursuant to § 448.02(3), Stats.

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Mark D. Huber's certificate to practice as a physician assistant in the State of Wisconsin is hereby **REVOKED**, effective immediately.

2. Respondent's alleged conduct, which is the basis for the criminal charge against Respondent in Chippewa County Wisconsin Circuit Court case number 00CM76, has been considered in the discipline ordered in this matter. The resolution of the criminal charge, whatever it may be, shall not be the basis for either the imposition of any additional discipline or the modification of the discipline ordered herein. The resolution of any other criminal charges based on the facts set forth in this Final Decision & Order shall not be the basis for either the imposition of any additional discipline or the modification of the discipline ordered herein.

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 19th day of April, 2000.

Darold A Treffert, M.D.

Secretary

Medical Examining Board