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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

RICHARD F. HEARN, M.D.

Respondent

FINAL DECISION AND ORDER

LS9805071MED

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

State of Wisconsin

Department of Regulation and Licensing

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708-8935

Richard F. Hearn, M.D.

2368 Quail Hollow Court, Apt. C

Delafield, WI 53018

State of Wisconsin Medical Examining Board

1400 East Washington Ave.

P.O. Box 8935

Madison, WI 53703

The hearing in the above-captioned matter was conducted on July 18 and 19, 2000. The administrative law judge filed his Proposed decision in the matter on September 6, 2000, and objections to the Proposed Decision were timely filed by both the respondent and the complainant. Oral arguments on the objections were heard by the board on October 18, 2000, and the board considered the matter on that date.

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, Richard F. Hearn, M.D., is licensed to practice medicine and surgery in the state of Wisconsin, under license number 14649.
2. On July 22, 1988, the Medical Examining Board limited Dr. Hearn's license. Under the terms of the limitation, Dr. Hearn was not to engage in the practice of general surgery and was to restrict his practice to emergency medicine, and "in providing such medical services Respondent will perform only those surgical procedures usual and customary in standard emergency medical practice." As part of the stipulation, the board required supervision of Dr. Hearn's practice of emergency medicine for a period of one year and, if deemed necessary by his supervisor during that time, to take additional training in any areas of deficiency. The terms of the limitation on Dr. Hearn's license do not mention prescribing, nor was that medical practice a concern in the disciplinary proceeding which led to the stipulation. The one-year period of supervision has expired, but the limitation has not been otherwise modified or removed. Dr. Hearn is employed as an emergency physician at Lakeland Medical

Center in Elkhorn, Wisconsin.

3. Emergency medicine is a recognized specialty within medicine and physicians may be certified in emergency medicine, but the settings in which Dr. Hearn may practice emergency medicine are not clearly defined. Under the terms of his limited license, Dr. Hearn may certainly practice medicine in an emergency room setting. By extension of that order as stated by Mr. Thexton in the hearing [transcript, p. 12], Dr. Hearn may practice in an urgent care clinic setting and may provide emergency services, for example, at the scene of an accident.

4. As an aspect of his practice of emergency medicine, Dr. Hearn issues prescription orders for emergency patients, both from the emergency room and from other locations, including his home.

5. In June of 1995, Dr. Hearn had been acquainted with John Krueger for approximately two years through golf and other social events. Mr. Krueger was never Dr. Hearn's patient. Around that time, Mr. Krueger sustained serious injuries in an automobile accident which required surgery and extensive medical treatment. Mr. Krueger experienced great pain as a result of the injuries and the surgery.

6. On or about June 23, 1995, Dr. Hearn and another golf acquaintance visited Mr. Krueger at his home. During the visit, Dr. Hearn observed that Mr. Krueger was in pain and he stated that if he could help Mr. Krueger as a friend, he would be happy to do so, or words to that effect.

7. On June 26, 1995, Mr. Krueger's primary physician issued a prescription order for 40 Percocet® tablets for relief of pain, and this prescription was dispensed by a pharmacy to Mr. Krueger's wife on the same day. Percocet® is a tradename for a combination of acetaminophen and oxycodone. Oxycodone is a narcotic controlled substance.

8. On June 27, 1995, Mr. Krueger's wife called Dr. Hearn about pain her husband was feeling and his inability to sleep. She said that she had tried to reach her husband's primary physician, but had reached only a nurse who had not been responsive to the need for additional pain relief. In her conversation with Dr. Hearn, Mrs. Krueger did not inform him about the prescription for Percocet®.

9. On June 27, 1995, Dr. Hearn telephoned a pharmacy and issued prescription orders for Mr. Krueger for Vicodin® for pain and Ambien® for sleeplessness. Vicodin® is a trade name for a combination of acetaminophen and hydrocodone. Hydrocodone is a narcotic controlled substance.

10. Overdoses of acetaminophen may cause liver damage.

11. Overdoses of narcotics may cause unconsciousness and respiratory failure.

12. If Dr. Hearn had known about the prescription for 40 Percocet® tablets the day before, he would not have issued the prescription for Vicodin®.

13. Prior to prescribing Vicodin® and Ambien® for Mr. Krueger, Dr. Hearn did not conduct a physical examination of Mr. Krueger. Dr. Hearn did not speak directly to Mr. Krueger on June 27th, and he did not obtain a medical history. Dr. Hearn did not recommend that Mr. Krueger go to an emergency room or an urgent care center. Dr. Hearn did not create a chart for Mr. Krueger or make an official medical record of prescribing for Mr. Krueger. Mr. Krueger was not a patient of Dr. Hearn on June 27, 1995.

14. On July 9, 1995, either Mr. Krueger or his wife called Dr. Hearn and told him that Mr. Krueger had had further surgery, was again experiencing intense pain, and was unable to contact his primary physician. Dr. Hearn again called a pharmacy and issued a prescription order for Vicodin® and Ambien®.

15. Prior to prescribing Vicodin® and Ambien® on July 9, 1995, Dr. Hearn did not conduct a physical examination of Mr. Krueger, he did not obtain a medical history, he did not recommend that Mr. Krueger go to an emergency room or an urgent care center, and he did not create a chart for Mr. Krueger or make an official medical record of prescribing for Mr. Krueger. Mr. Krueger was not a patient of Dr. Hearn on July 9, 1995.

16. Sometime after July 9, 1995, either Mr. Krueger or his wife called Dr. Hearn to request additional pain medication and Dr. Hearn declined to issue the prescription, citing the addictive nature of Vicodin®. Dr. Hearn advised Mr. Krueger to seek assistance from his primary physician or from a pain clinic.

17. Joan Borchert has resided with Dr. Hearn for approximately fifteen years. During that time, Dr. Hearn has provided medical care for minor illnesses for Ms. Borchert.

18. On occasion over the years, and on at least one occasion in 1998, Dr. Hearn has issued prescriptions for Pyridium® for urinary tract irritability for Ms. Borchert. Pyridium® is a prescription medication but not a controlled substance.

19. Prior to prescribing Pyridium®, Dr. Hearn did not conduct a physical examination of Ms. Borchert other than observing symptoms consistent with urethral irritability which were consistent with a history with which he was familiar. Dr. Hearn did not recommend that Ms. Borchert go to an emergency room or an urgent care center, and

he did not create a chart for Ms. Borchert or make an official medical record of prescribing for Ms. Borchert. Ms. Borchert was not Dr. Hearn's patient. Ms. Borchert is a registered nurse and Pyridium® was originally prescribed for her by a urologist in 1968.

20. On at least one occasion in 1998, Dr. Hearn issued a prescription for Claritin® for seasonal allergies to Amy Borchert. Claritin® is a prescription medication but not a controlled substance. Amy Borchert is the daughter of Joan Borchert. Amy Borchert lived with Dr. Hearn and Joan Borchert for approximately four years but she was no longer living with Dr. Hearn and Joan Borchert by 1998.

21. Prior to prescribing Claritin®, Dr. Hearn did not conduct a physical examination of Amy Borchert other than observing symptoms consistent with a "hay fever" allergic reaction which were consistent with a history with which he was familiar. Dr. Hearn did not recommend that Amy Borchert go to an emergency room or an urgent care center, and he did not create a chart for Amy Borchert or make an official medical record of prescribing for Amy Borchert. Amy Borchert was not Dr. Hearn's patient. Amy Borchert had been treated by at least three ear, nose and throat physicians and at least one allergist and she had received allergy medications similar to Claritin®.

22. On the night of April 13-14, 1996, Dr. Hearn was on duty as the emergency room physician at Lakeland Hospital in Elkhorn, Wisconsin. On duty with him in the emergency room at the time were two nurses and one clerical staff person. A security person was present in the hospital and available as needed.

23. At approximately 4:20 A.M. on April 14, 1996, local police brought Raymond Krahn to the emergency room in custody. The police had placed restraints on Mr. Krahn's arms and legs. Mr. Krahn was highly intoxicated, combative and violent. Mr. Krahn was a large person, weighing approximately 300 pounds, and powerful. Mr. Krahn refused to answer questions or cooperate with any medical examination. Mr. Krahn responded to any physical contact with violent physical activity. While detained at the Lake Geneva Police Department, Mr. Krahn had pulled a row of chairs and their anchors out of a wall and swung them around, threatening deputies with them. The medical staff was informed that the police had used pepper spray three times to subdue Mr. Krahn, and that on the way to the hospital from the police department, even though his arms and legs had been restrained, Mr. Krahn had head-butted an attendant. When placed on a gurney, Mr. Krahn attempted to rise or to roll the cart; to further restrain him at that point, sheets were tied around the cart and around his midsection and his legs.

24. The police requested that Dr. Hearn examine Mr. Krahn to determine if he was medically able to be confined in the county jail, or if he needed to go to the detox center.

25. The nurse assigned to assist Dr. Hearn with Mr. Krahn, Christine Turek, R.N., attempted unsuccessfully to talk to Mr. Krahn, i.e., she attempted to calm Mr. Krahn verbally. Her notes indicate that Mr. Krahn said "Don't be nice to me. Get the f___ out of here."

26. "Vital signs" for a patient include heart rate (pulse), blood pressure, temperature, respiration rate, and possibly oxygen saturation.

27. Ms. Turek was unable to obtain vital signs other than respiration for Mr. Krahn, because of Mr. Krahn's combativeness and her concern for her own safety. His respiration rate was noted to be 20, which is within normal range.

28. Standard medical practice does not require medical personnel to place themselves in danger to administer to a patient.

29. Dr. Hearn also attempted to examine Mr. Krahn with similar results.

30. At approximately 4:40 A.M., Dr. Hearn ordered an intramuscular injection of 7.5 mg of droperidol, a tranquilizer. The injection was administered by Nurse Turek.

31. An intramuscular injection can be administered by an experienced nurse in a few seconds.

32. Mr. Krahn reacted to the droperidol by calming down within 5 minutes, and at 4:45 the police left.

33. Two minutes after the police left, at 4:47 A.M., Mr. Krahn started causing problems again and the hospital security guard requested that the police return.

34. Droperidol has a rapid tranquilizing effect, which may be followed by "rebound", in which the initial rapid sedating effect is diminished.

35. The emergency room supply of droperidol was depleted following the 4:40 injection, and at approximately 4:52, Dr. Hearn ordered an intramuscular injection of 10 mg. of haloperidol. The injection was administered by Nurse Turek.

36. Haloperidol is a tranquilizer similar to droperidol, but longer-lasting and with a slower onset.

37. Mr. Krahn reacted to the haloperidol by calming down, and at 5:00 he was described by Nurse Turek in the clinical notes as "sleeping". Dr. Hearn described his state as "sedated", not "unconscious", and he was also described as calm but arousable.

38. When EMT personnel arrived at 5:33 A.M. to transport Mr. Krahn, Dr. Hearn noted that his respirations were easy and clear, and he approved Mr. Krahn's transfer to a detox unit in Rock County, approximately 30 to 40 minutes away. Dr. Hearn did not at that time perform a physical exam on Mr. Krahn, nor did he order any laboratory tests to determine the level of alcohol or other drugs in Mr. Krahn's blood.

39. When stimulated by being transferred to the ambulance cart, Mr. Krahn attempted to flail his arms or strike people.

40. After Mr. Krahn was transported to the ambulance cart, Dr. Hearn observed that his airway was clear and that he was breathing regularly, and he advised the EMTs to leave him on his side in case he would vomit.

41. The EMTs removed Mr. Krahn from Lakeland Hospital at 5:55 A.M.

42. Toward the end of the ride to the detox center in Rock County, the EMTs noted that Mr. Krahn's color changed and he went into distress.

43. Approximately one year prior to the events in this complaint, on April 1, 1995, Mr. Krahn had been similarly intoxicated, arrested for disorderly conduct, and transported by police to the Lakeland Medical Center to obtain medical clearance before transporting him to jail. Mr. Krahn was similarly belligerent on that occasion, and his hands were cuffed behind his back, but it was apparently not considered necessary to restrain his legs or to tie him to a cart. He was treated by Dr. Fikree, who administered 10 mg of droperidol. He was then transported to jail rather than to a detox unit. Pulse and respiration were observed, but the medical notes say that the staff were "unable to get" other vital signs [ex. 32, p. 44]; on the other hand, Dr. Fikree did conduct a fairly complete physical exam of Dr. Krahn which included observations about his heart rate, lungs, head, eyes, ears, nose, throat and abdomen [ex. 32, p. 46].

CONCLUSIONS OF LAW

1. The Medical Examining Board has personal jurisdiction over Richard F. Hearn, M.D., 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 medical doctors, 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.

3. The conduct described in paragraphs 9 and 14 above violated sec. Med 10.02 (2) (b), Wis. Adm. Code, in that such prescribing did not constitute the practice of emergency medicine within the meaning of the Order of the Board of July 22, 1988. The conduct described in paragraphs 9 and 14 above also violated sec. Med 10.02 (2) (h), Wis. Adm. Code, in that Dr. Hearn prescribed controlled substances for a person whom he had never physically examined and whom he knew only socially, and who he knew or should have known was already receiving treatment from another doctor for pain; the prescribing therefore carried the risk of providing the patient with too much medication. The conduct described in paragraphs 9 and 14 above further violated sec. Med 10.02 (2) (p), Wis. Adm. Code, in that Dr. Hearn prescribed controlled substances for a person who was not a patient; the prescribing was therefore not within legitimate medical practice. These violations constitute unprofessional conduct under sec. 448.02 and chapter Med 10, Wis. Admin. Code, and discipline is appropriate, under sec. 448.02(3), Stats.

4. The conduct described in findings of fact 18 and 20 above violated § Med 10.02 (2) (b), Wis. Adm. Code, in that such prescribing did not constitute the practice of emergency medicine within the meaning of the Order of the Board of July 22, 1988. These violations constitute unprofessional conduct under sec. 448.02 and chapter Med 10, Wis. Admin. Code, and discipline could be imposed, under sec. 448.02(3), Stats. It cannot be concluded that the prescribing created any risk to the patient(s). Although the persons for whom the prescriptions were written were not patients, there appears to be an unwritten exception in the medical profession for family members or quasi-family members. There may have been a violation of the record-keeping requirement in sec. Med 10.02 (za), Wis. Admin. Code, but this was not charged in the complaint and it is unclear whether the unwritten family member exception might override this requirement.

5. Dr. Hearn's treatment of Raymond Krahn on April 14, 1996 did not fall below the minimum standard of care of an emergency room physician.

ORDER

THEREFORE, IT IS ORDERED that Richard F. Hearn, M.D., be reprimanded for engaging in conduct which tended to

constitute a danger to the health of a person who was not his patient, and for prescribing a controlled substance outside the scope of legitimate medical practice.

IT IS FURTHER ORDERED THAT count two of the complaint be dismissed.

IT IS FURTHER ORDERED THAT Dr. Hearn pay two-thirds the costs of this proceeding.

EXPLANATION OF VARIANCE

The Medical Examining Board has accepted the Findings of Fact and Conclusions of Law recommended by the administrative Law Judge (ALJ). The board has also accepted the ALJ's recommended discipline, except that the board assesses only two-thirds of the costs of the proceeding rather than the entire costs as recommended by the ALJ. The basis for this variance is the board's adoption of the ALJ's recommended order dismissing Count two of the Complaint. While sec. 440.22, Stats., does not compel reduction of the costs assessed based upon the respondent's having prevailed as to one of the counts, the board considers that result appropriate in this instance.

Dated this 25th day of October, 2000.

STATE OF WISCONSIN

MEDICAL EXAMINING BOARD

Darold A. Treffert, M.D.

Secretary