

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST : **FINAL DECISION AND ORDER**
 :
ROBERT B. PULTZ, DDS : LS0701312DEN
RESPONDENT. :

Division of Enforcement Case #06 DEN 91

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

Robert B. Pultz, DDS
621 Washington Ave.
Niagara, WI 54151

Wisconsin Dentistry 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

PROCEDURAL HISTORY

The prosecutor and respondent in this matter agreed 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 now reviewed this Stipulation, and approves it.

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

FINDINGS OF FACT

1. Respondent Robert B. Pultz (dob 10/26/60) is and was at all times relevant to the facts set forth herein a dentist licensed in the State of Wisconsin pursuant to license #3804, first granted on 6/26/87. Respondent is a general dentist.

2. Respondent did, on multiple dates between the spring of 2005, and April 30, 2006, self-administer hydrocodone products, which are Schedule III controlled substances, without the prescription of another authorized prescriber. Between the spring of 2005, and April 30, 2006, Respondent ordered approximately 5700 dosage units of various hydrocodone pill-form products from a licensed drug distributor; substantially all of these were for his own use, and were consumed by him. Respondent failed to keep complete and accurate records of the receipt, dispensing, or other disposition of these controlled substances, and did not have any biennial inventories. On occasion, he telephoned prescriptions for such substances purportedly in the names of staff and a family member, to a pharmacy, which he then had the purported patient pick up and return to him, and which he kept for his own consumption, all without knowledge of the purported patient; he also diverted a prescription belonging to another family member. On occasion, he practiced dentistry with this unprescribed product in his body.

3. Respondent also self-administered nitrous oxide for mood-altering purposes, in calendar year 2006. He also self-administered diazepam, a Schedule III controlled substance, without the prescription of another authorized prescriber, in late 2005/early 2006. Respondent has also used alcohol to excess, and was arrested on 8/20/05 for operating a motor vehicle while influenced by an intoxicant; his BAC at that time was 0.09% by weight.

4. Following evaluation at Rush Behavioral Health Center, Oak Park, IL, Respondent was diagnosed with opioid dependence, alcohol dependence, other substance abuse, and substance induced mood disorder. Total abstinence from all unprescribed mood-altering substances was recommended.

CONCLUSIONS OF LAW

A. The Wisconsin Dentistry Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 447.07(3), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

B. The conduct described in paragraphs 2-3, above, violated Wis. Stat. §§ 961.38(5) and 447.03(a), (f), and (g); and Wis. Adm. Code § DE 5.02(4), (6), (15), and (18). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

IT IS ORDERED that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, effective the date of this Order:

SUSPENSION

- A.1. The license of Robert B. Pultz, DDS, to practice as a dentist in the State of Wisconsin is SUSPENDED for an indefinite period.
- A.2. Respondent shall mail or physically deliver all indicia of licensure to the Department Monitor within 14 days of the effective date of this Order.
- A.3. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active practice for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D.4. for return of full licensure. At the Board's discretion, the 5-year period may be started anew for every substantial or repeated violation of any provision of Sections C or D of this Order.
- A.4. The Board may, on its own motion or at the request of the Department Monitor, grant full licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension shall be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order and that Respondent's Treater is of the opinion that Respondent is able to safely practice dentistry under the restrictions of this Order.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
 - (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. RL 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing

being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

The license to practice dentistry of Respondent is LIMITED as follows:

Treatment Required

- C.1. Respondent shall enter into, and shall continue, in a drug and alcohol treatment with a Treater acceptable to the Board or its designee. Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater, but not less than once weekly for the first year of the stayed suspension. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), and all mood-altering or psychoactive substances, except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee.
- C.10. Respondent shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.
- C.11. Within 24 hours of ingestion or administration, Respondent shall report to Treater and the Department Monitor all medications and drugs, over-the-counter or prescription, taken by Respondent, shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs, and shall provide the Department

Monitor with a copy of the prescription. If Respondent has not provided a release as required by C.9 above, within 24 hours of a request by Treater or the Board or its designee, Respondent shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Respondent's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11 ("Approved Program"). A list of Approved Programs is available from the Department Monitor.
- C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program – including any positive test for any controlled substance or alcohol - is a substantial violation of this Order. The requirements shall include:
- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.14. The Approved Program shall require the testing of urine specimens at a frequency of not less than 96 times per year, for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.
- C.15. The Department Monitor, Board or Board designee shall determine the tests to be performed upon the specimens. At least half of all specimens shall be tested for shall be tested for ethyl glucuronide (EtG). If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Treater or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish any specimen in a directly witnessed manner.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.
- C.18. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11.

PRACTICE LIMITATIONS

Controlled substance orders; DEA registration

- C.19. Respondent shall not prescribe, dispense, administer or order any controlled substances. Respondent shall surrender any DEA registration to prescribe, dispense, administer and order controlled substances to the Drug Enforcement Administration. Monitor for submission to DEA upon the effective date of this Final Decision and Order. Respondent shall not make reapplication for DEA registration until the Board permits Respondent to do so, or the Board modifies the terms of this limited license to permit the prescribing, dispensing, administering or ordering of controlled substances.

Professional Mentor

- C.20. Respondent shall practice only under the general supervision of a designated Professional Mentor approved by the Board or in a work setting pre-approved by the Board or its designated agent.

Respondent shall obtain a Professional Mentor acceptable to the Board. The Professional Mentor shall be the individual responsible for reviewing Respondent's practice of dentistry during the time this Order is in effect. A Professional Mentor shall have no prior or current business or personal relationship with Respondent, or other relationship the could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Department (including but not limited to any bartering relationship, mutual referral of patients, etc.). A Professional Mentor shall be actively practicing in Respondent's field of practice, hold a valid Wisconsin license, and shall have read this *Final Decision & Order* and agree to be Respondent's Professional Mentor.

Supervision shall include weekly meetings, review of charts selected by the Professional Mentor, and any other actions deemed appropriate by the Professional Mentor to determine that Respondent is practicing in a professional and competent manner. The Professional Mentor may designate another qualified dentist acceptable to the Board to exercise the duties and responsibilities of the Professional Mentor in an absence of more than three weeks. In the event that the Professional Mentor is unable or unwilling to continue to serve as Respondent's professional mentor, the Board may in its sole discretion select a successor Professional Mentor.

The Professional Mentor shall have no duty or liability to any patient or third party, and the Mentor's sole duty is to the Board.

Reporting Required

C.21. Respondent shall arrange for his Professional Mentor to provide formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance.

Respondent's Professional Mentor shall immediately report to the Department Monitor and the Respondent's Supervising Health Care Provider any conduct or condition of the Respondent which may constitute unprofessional conduct, a violation of this Order, or a danger to the public or patient.

C.23. It is the responsibility of Respondent to promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order, including any failures of the Professional Mentor to conform to the terms and conditions of this Order.

C.24. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to all personnel where Respondent is engaged in the practice of dentistry as defined at Wis. Stat. § 447.01(8), except those employed and expected to serve temporarily (for a period of 4 or fewer weeks). This includes hygienists, assistants, and clerical staff.

C.25. Respondent shall not maintain any office stock or supply, including samples, of any controlled substances or any other mood-altering substances, nor any tramadol products.

C.26. Respondent shall arrange for agreement by his staff to immediately report to the Board and to the Treater any conduct or condition of Respondent that may constitute a violation of this Order or a danger to the public.

C.27. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

C.28. Respondent shall not possess, administer, or otherwise have nitrous oxide on the premises of any location where he practices dentistry.

MISCELLANEOUS

Department Monitor

D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Wisconsin Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817
department.monitor@drl.state.wi.us

Required Reporting by Respondent

D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the

Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Board

- D.3. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.4. Respondent may petition the Board for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than one year from the date of this Order, no such petition shall be made any earlier than three months from the date the Board has acted on the last such petition, and no such petition for termination shall occur other than in compliance with paragraph A.3. Any such petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

- D.5. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

- D.6. Respondent shall pay costs of \$500 to the Department of Regulation and Licensing, within ninety (90) days of this Order. In the event Respondent fails to timely submit any payment of costs, the Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

- D.7. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 447.07(3)(n).

Dated this January 31, 2007.

WISCONSIN DENTISTRY EXAMINING BOARD

by: William R. Skarie
a member of the Board