

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST : **FINAL DECISION AND ORDER**
:
SCOTT H. CONANT, M.D. : Order 0000212
RESPONDENT. :

Division of Enforcement Case #08 MED 130

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

Scott H. Conant, MD
1694 Hazelwood Dr
Sobieski, WI 54171

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

PROCEDURAL HISTORY

A disciplinary proceeding was commenced in this matter by the filing of a Notice of Hearing and Complaint with the Board on 10/21/09. Prior to the hearing on the Complaint, the parties in this matter agreed to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the 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. Respondent Scott Henry Conant (dob 5/18/1957) is and was at all times relevant to the facts set forth herein a physician and surgeon licensed in the State of Wisconsin pursuant to license #26948, first granted on 7/2/1985. The Board's records indicate that respondent is an internist; he is not certified by any Board recognized by the American Board of Medical Specialties. He is also licensed in Michigan, and was formerly licensed in Montana and Oklahoma. Respondent was, on October 20, 1999, disciplined by the Board in file 99 MED 48, for engaging in a scheme in which he obtained and self-prescribed hydrocodone products

including by issuing prescription orders for them in the names of co-workers or friends; Respondent was criminally convicted in federal court of obtaining a controlled substance by fraud as a result of those actions. Respondent engaged in treatment and monitoring and his unlimited license was restored on December 20, 2004.

2. Respondent did, on and between July, 2007, and May, 2008, engage in a scheme whereby he issued prescription orders for oxycodone products, all of which are Schedule II controlled substances, purportedly for a relative, but actually for himself. He had the orders filled at local pharmacies and kept and ingested these medications, without an order from another practitioner; he had these substances in his body while practicing medicine.

3. On 3/17/08, Respondent took and carried away \$60 in currency from the cash box of the Oconto Medical Center, his employer, without consent and with intent to permanently deprive the owner of possession thereof. Respondent specifically denies this; the Board finds that it occurred.

4. On 4/3/08, Respondent was involved in a one-car accident in Green Bay, Wisconsin, in which his vehicle struck a traffic sign but did not stop at the scene, and resulting in his being arrested for operating a motor vehicle while under the influence of an intoxicating drug. At that time, Respondent was found to be in possession of a Schedule II oxycodone product dispensed by a pharmacy, bearing a label showing that Respondent had prescribed it for the relative referred to in par. 2, above. That relative lived in a distant state, at that time. When asked about the bottle of medication, Respondent falsely stated to the investigating officer that he did not know why the medication was in his vehicle. The pharmacy container also contained several pills of Adderall®, a Schedule II controlled substance. He was subsequently criminally convicted in the Brown County Circuit Court on 7/1/09 of two counts of misdemeanor possession of controlled substances; sentence was withheld and Respondent was placed on probation for three years. Sentence was withheld and Respondent was placed on probation for three years; conditions include absolute sobriety, 200 hours of community service, that his driver's license was suspended for 6 months, that he is not to possess alcohol or be in a place where alcoholic beverages are dispensed, and that he submit to an AODA evaluation and comply with all treatment recommendations.

5. On May 15, 2008, Respondent agreed, through his attorney, that he would not practice medicine until this matter was resolved. Respondent represents to the Board that he has not practiced medicine since this assurance was given.

6. On 2/12/09, Respondent was arrested for operating a motor vehicle while influenced by an intoxicant (second offense), for possessing a controlled substance without lawful authority, and for violating the conditions of his release on bond in the case described in par. 4, above. On 8/7/09, he was convicted of all these offenses, as misdemeanors, in the Circuit Court for Brown County, Wisconsin, on his plea of guilty. Sentence was withheld and Respondent was placed on probation for three years; conditions include absolute sobriety, 200 hours of community service, revocation of his driver's license for 13 months (in the OWI case), that he is not to possess alcohol or be in a place where alcoholic beverages are dispensed, and that he submit to an AODA

evaluation and comply with all treatment recommendations. This probation is to run concurrent with his probation in the 2008 case, described above.

7. Respondent has been comprehensively evaluated at Hazelden and diagnosed with polysubstance dependence; he successfully completed residential treatment and represents to the Board that he is complying with all aftercare recommendations. Respondent represents to the Board that he has not ingested any unprescribed psychoactive or controlled substance, nor has he ingested any prescribed psychoactive or controlled substance in a manner inconsistent with the prescriber's dosage instructions, since 2/12/09.

CONCLUSIONS OF LAW

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

B. The conduct described in paragraphs 2-4 and 6, above, violated Wis. Stat. § 961.38(5) [self-prescribing controlled substances], Wis. Adm. Code § Med 10.02(2)(p) [obtaining controlled substance outside legitimate practice], and (z) [violation of related law or rule]. 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 Scott H. Conant, M.D., to practice as a physician and surgeon in the State of Wisconsin is **SUSPENDED** from the date of this Order, and until such time as he can demonstrate three months of monitored and uninterrupted sobriety and recovery, and then 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.

STAY OF SUSPENSION

- B.1. The suspension shall be stayed upon Respondent providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months..
- 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 medicine and surgery of Respondent is LIMITED as set forth in Wis. Stat. § 448.02(3)(e), and 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. A physician affiliated with Professional Recovery Network is acceptable to the Board as 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 (or other required) 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 specimens at a frequency of not less than 56 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. 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, saliva, hair or breath specimens, (c) wear a skin patch and provide it for testing in the manner designated, or (d) 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, nor supervise any physician assistant with such privileges, nor have a collaborative agreement with a nurse prescriber who has such privileges. Respondent shall surrender any DEA registration to prescribe, dispense, administer and order controlled substances to the Drug Enforcement Administration. Respondent has completed the attached DEA surrender form, which shall be held by the Department 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 clinically only under the 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 before engaging in the clinical practice of medicine. The Professional Mentor shall be the individual responsible for reviewing Respondent's practice of medicine and surgery 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, shall be board certified by an ABMS-recognized board in a specialty relevant to Respondent's field of practice, 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 physician or other health care provider 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.23. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel where Respondent is engaged in the practice of medicine or surgery as defined at Wis. Stat. § 448.01(9).

- C.24. It is Respondent's responsibility to arrange for written reports from his employer or practice partner(s) to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active practice worked during that quarter.
- C.25. Respondent shall obtain agreement from his employer or practice partner(s) to monitor Respondent's access to and accountability for handling of controlled substances and other abusable prescription drugs in order to reasonably detect loss, diversion, tampering, or discrepancy relating to controlled substances and other abusable prescription drugs. Respondent's supervisor shall include in the quarterly reports a description of Respondent's access to controlled substances and other abusable drugs and the monitoring thereof. Any loss, diversion, tampering, or discrepancy shall be immediately reported to the Board; this includes any sample medication.
- C.26. In addition to the foregoing subparagraph, Respondent shall obtain from his employer or practice partner(s) agreement to conduct a full and exact (not estimated) count of the following substances in inventory immediately, and accountability audits of the following substances every six months for the duration of this Order: all opioids and opiates, both controlled and legend. The audit shall be conducted by and certified by a licensed health care professional other than Respondent, who shall be approved by the Board or its designee. A summary of all audits required under this subparagraph shall be included in the quarterly report following the audit, however, any discrepancy or missing drugs indicated by the audits shall be immediately reported in writing to the Board.
- C.27. Respondent shall arrange for agreement by his employer or practice partner(s) 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.28. 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.29. Respondent shall, no later than 9/30/10, demonstrate successful completion of an ethics course pre-approved by the Board or its designee; the following courses are approved and Respondent may propose alternatives. Respondent shall cause the program sponsors to communicate directly with the Department Monitor or other designee of the Board, and shall permit the Board, its designee, and Department staff to confer with the course instructors and program sponsors regarding Respondent's performance in the program.
- a. Medical Ethics and Professionalism, Case Western Reserve University, Office of Continuing Medical Education.
 - b. Professional Renewal in Medicine through Ethics (PRiME), University of Medicine and Dentistry of New Jersey.
 - c. Professional/Problem Based Ethics (ProBE), Competency Assessment & Educational Intervention, Denver, Colorado.

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

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, 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. 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 \$3,250, to the Department of Regulation and Licensing, no later than 9/5/11.

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. § 448.02(3).

Dated this May 19, 2010.

WISCONSIN MEDICAL EXAMINING BOARD

by: Skarls MD
a member of the Board

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