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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

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| IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST | : | **FINAL DECISION AND ORDER** |
| KENNETH J. KURT, D.O., RESPONDENT. | : | Order 0000009 |

Division of Enforcement Case #08 MED 283

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

Kenneth J. Kurt, D.O.
740 College Avenue
Racine, WI 53403

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

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.

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

## FINDINGS OF FACT

1. Respondent Kenneth J. Kurt (dob 5/26/37) is and was at all times relevant to the facts set forth herein an osteopathic physician licensed in the State of Wisconsin pursuant to license #14968, first granted on 7/1/64. Respondent is a general practitioner.

2. Respondent was disciplined by the Board on January 24, 1990, in file 84 Med 131, for inappropriate sexual contact with a patient; his license was suspended for one year but not otherwise limited.

3. Respondent was also previously disciplined by the Board on January 24, 2007, in file 06 Med 17, for inappropriate prescribing of controlled substances, inadequate recordkeeping, and failure to comply with a records request from the Board. Respondent was reprimanded, ordered to take an approved course in charting, and his prescribing privileges were limited as to opioids and opiates as follows:

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of Respondent is LIMITED as provided in Wis. Stat. § 448.02(3)(e), and as follows: Respondent shall not order, prescribe, or administer any opioid or opiate, including any product containing tramadol, for more than 30 days in any 12 month period, for any patient. Notwithstanding this limitation, Respondent may prescribe FDA approved buprenorphine products to patients for the purpose of office based opioid treatment (OBOT), within the labeling of Subutex® and Suboxone®.

4. Since 1/24/07, Respondent has prescribed propoxyphene, an opioid and a Schedule IV controlled substance, to patients for more than thirty days in a twelve month period. Respondent represents to the Board that he was unaware that propoxyphene was intended to be covered by the Order, and that he did not intend to violate the Board's Order in this respect.

5. On and between 2/19/08 and 4/21/08, Respondent provided care to patient J.M., a man born in 1987. At the initial visit, Respondent charted "Chief complaint: opioid dependency, start w/ recreational (see intake chart)". A "Patient Treatment Contract" was signed. Several "Assessment" sheets appear in the chart, but there is no history of drug use including the amounts and duration of use, routes of use, and other information normally gathered on patients seeking treatment for addiction. Respondent charted: "Dx: "Opiate and drug dependence, polysubstance abuse. Poss [illegible] Personality Disorder." There are no signs, symptoms, or history which support a diagnosis of Personality Disorder. Respondent had the patient's urine tested for drugs, and the results were positive for THC, opioids, cocaine, and benzodiazepines, but there is no discussion in the chart of where the patient obtained these drugs, how long or how often they were being used, or if or where he had been treated before. Respondent notes that the patient states he is dependent upon oxycodone ["Oxiconton"] but there is no discussion of whether this is physical dependence because of prescribed use, or represents a true addiction. Respondent prescribed Suboxone® 8mg, 1 or 2 per day.

6. On 2/26/08, the patient returned to care and Respondent noted that the patient's urine was positive for cocaine and benzodiazepines, but there is no discussion of the patient's use of these substances, including whether he had been prescribed a benzodiazepine by another practitioner. Respondent charted an impression of "panic disorder" but there is no charted sign, symptom, or history to support this. Respondent prescribed Suboxone® 8-12 mg daily, and Xanax® 1mg q6h, and noted that he counseled the patient concerning the dangers of using multiple drugs, but there is no indication of what these dangers might be, or which drugs presented this danger. Respondent charted "pt has not slept the night before, otherwise doing better, Mother concerned about behavior" but there is no discussion of the patients functioning, or what the behavioral concerns might be or how they might be addressed, or whether they are connected with the medication regimen.

7. On 3/6/08, the patient returned to care, and Respondent's regimen was changed to "Suboxone® 8mg 1-2 per day" without any comment on why the dosage of this medication has been increased. Respondent continued the Xanax® prescription, and noted that the patient had "some improvement" but did not chart any specifics.

8. On 3/25/08, the patient returned to care, and submitted a sample of urine for testing. The patient's urine was positive for THC, benzodiazepines, oxycodone, and

buprenorphine; Respondent notes "discussed w/ pt." but does not say what was discussed, nor is there any apparent consequence for the patient's continued use of illicit drugs or oxycodone. There is no discussion as to where the patient obtained oxycodone, or what the purpose of its use is; his note in this regard is limited to: "He did try Percocet on one occasion with no adverse effects." There is a note that the patient exhibits bizarre behavior, but no discussion concerning what this means or whether it may be related to the patient's drug or medication use, or how it is to be addressed. Respondent charts: "He is still using other peoples Xanax and I told him it was problematic he should stay with the 2mg 2x day and not buy any other one on the street." He increased the patient's Suboxone to 8mg 2-3x/day, without explanation.

9. On 4/21/08, the patient returned to care. The chart notes: "2 daily Xanax for panic, still has problems with anxiety." There is no discussion of what the history, signs, or symptoms of this anxiety are, when it occurs, how long it lasts, or how it has been treated in the past. Respondent diagnoses the patient with chronic anxiety, and continues his prescription for Xanax® at the same dosage, together with his prescription for Suboxone® 8mg BID. A two-week supply of each medication was prescribed.

10. On 7/24/08, the patient returned to care; there is no notation regarding why the patient has gone for three months before following up with Respondent, or of what the patient did for medication in the intervening time. The chart states: "out of medication 5 days, denies any aberrant behavior." Respondent notes an impression of "depression—latent" but there is no history, sign, or symptom charted which supports this diagnosis, nor is any treatment plan indicated for this condition. Respondent prescribes Suboxone® 8mg BID #60 and Xanax® 2mg q8-12h #60.

11. At no time did Respondent seek to obtain any past treatment records or consult with past providers, or consult with collateral sources regarding the patient's compliance. There is no medication sheet to assist Respondent in tracking the patient's medication. There is no notation as to why the patient did not return after 7/24/08. Although there are notations in the progress notes concerning the results of urine drug screens, the lab sheets are not in the chart.

12. On and between 10/26/07 and 4/30/08, Respondent provided care to patient R.B., a man born in 1987. The patient presented with a chief complaint of opiate withdrawal, and stated that his opiate of choice was "oxycontin." There is no history of treatment, and the patient stated that he had been using the drug for about 1 year, and was also taking Zoloft® for depression. There is no statement regarding the route of administration of the oxycodone, or other history of drug use, treatment for drug abuse/addiction, or depression. Respondent discontinued the Zoloft® and prescribe paroxetine for the patient's depression, and Suboxone® 2mg q4h "until stable." Respondent did not test the patient's urine to see what, if any, other substances the patient was taking.

13. The patient returned to care on 11/5/07, and Respondent charted: "good response with Suboxone 8mg BID." Respondent again charted that the patient should discontinue the Zoloft® and take paroxetine, there is no explanation for why this was not done. The patient's urine was not tested at this visit. There is no record of what the patient's functioning was.

14. On 12/3/07, the patient returned to care, and appeared to be experiencing withdrawal symptoms. There is no discussion of how the patient could be experiencing withdrawal more that 6 weeks after beginning buprenorphine therapy, and the patient's urine was not tested at this time.

15. On 1/9/08, the patient returned to care and reported "anxiety, not controlled with [paroxetine]." This is the first mention of anxiety in the chart, and there is no discussion of what this means, how it manifests itself, its history, its effect upon the patient's functioning, etc. Respondent adds Valium® 5mg q6-8h PRN anxiety, to the patient's regimen, and increased the paroxetine dosage from 20mg to 40mg, daily. The patient's urine was not tested at this time.

16. On 2/6/08, the patient returned to care and Respondent charted: "marked anxiety, relief with Valium, [paroxetine] of little help." There is no discussion of the signs and symptoms which would support this conclusion. However, Respondent continues the paroxetine at the same dosage, together with the patient's other medications (Valium® 5mg 1-2 TID, Suboxone® 8mg 1-2 daily). The patient's urine was not tested at this time. Pharmacy records show a prescription dispensed to the patient, on the order of Respondent, for clonazepam, but there is no mention of any such prescription order in the chart.

17. On 3/5/08, the patient returned to care, and Respondent charted: "Valium seems to [sic] much sedation"; the patient is noted to be taking 10mg TID. There is no discussion of the patient's functioning or other possible causes of sedation. The patient's current medications were noted to be only Valium® and Suboxone®; there is no discussion as to why the patient was not taking the prescribed paroxetine. The patient's urine was not tested at this time.

18. On 3/18/08, the patient returned to care and reported feeling less anxious. Respondent charted an impression of "Attn Deficit Disorder, Rx Adderall 20mg BID." There is no history, sign, or symptom charted which would support this diagnosis. At this visit, for the first time, the patient's urine is noted to be positive for THC, benzodiazepines, oxycodone, and buprenorphine, but there is no lab sheet in the chart. The only charted response to this result is: "Pt desires counseling with Tammy. Pt counseled regarding polysubstance abuse. Pysch referral discussed, possible inpatient. Pt states he wants to try on his own."

19. On 4/11/08, there is a chart note that the patient failed to appear for group therapy, and had been hospitalized because of using oxycodone with buprenorphine, and for constipation, chronic anxiety, and depression. No records of this hospitalization, such as the discharge summary, were obtained for Respondent's chart.

20. On 4/28/08, the patient returned to care, and Respondent charted that the patient was taking naltrexone, Suboxone®, paroxetine, and Wellbutrin®. The patient's urine was noted to be positive for benzodiazepines and buprenorphine. Respondent continued the patient's prescriptions, and referred him for weekly counseling.

21. On 4/30/08, the chart notes that Respondent met with the patient and his mother and stepfather. The parents expressed concern about the patient's depression and excessive sleeping. Respondent recommended a psychiatric consultation, and suggested two psychiatrists,

and noted that the patient had no suicidal ideation at this time. The patient did not return to care, and was discharged on 5/14/08.

22. Respondent did not always have an effective method for assuring that he is complying with the federal 100-patient limit for office-based treatment of patients for addiction with buprenorphine, and in fact a review of pharmacy records shows that he apparently had, at times in the past, more than 100 such patients. The Board is satisfied that Respondent has remedied this problem.

## 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 par. 4, above, violated Wis. Adm. Code Med § 10.02(2)(b). The conduct described in pars. 5-21, above, violated Wis. Adm. Code §§ Med 10.02(2)(h) and (z). The conduct in par. 22, above, violated Wis. Adm. Code § Med 10.02(2)(z). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

## ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the license to practice medicine of Kenneth J. Kurt, D.O., is SUSPENDED for ninety days, effective April 1, 2010, for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of Respondent is LIMITED as provided in Wis. Stat. § 448.02(3)(e), and, effective on the date of this Order, as follows:

1. Respondent shall not order, prescribe, or administer any controlled substance except as expressly permitted by the Board, shall not possess any controlled substance except as a *bona fide* patient and for a legitimate medical need, and shall not employ or have a collaborative relationship with any midlevel practitioner which authorizes or permits such prescribing.
2. Respondent may employ a mid-level practitioner who prescribes controlled substances, provided that such prescribing is supervised or collaborated in by a physician who is permitted to prescribe the same substances to the same extent as the mid-level practitioner's actual prescribing.
3. Respondent may prescribe controlled substances as described and permitted by Wis. Adm. Code § Med 10.02(2)(zb), for the purpose of weight loss.
4. Respondent may prescribe Schedule IV non-benzodiazepine hypnotics for the purpose of treating insomnia, within the FDA-approved labeling of such products.
5. Respondent may prescribe benzodiazepines within the FDA-approved labeling of each such medication, for no more than 30 days in any 12 month period. This time shall apply

to all medications with the same indicated purpose, e.g. no more than 30 days of any and all anxiolytic medications, etc. Notwithstanding this limitation, Respondent may prescribe a benzodiazepine without any time limit, for a patient with a documented seizure disorder, and for whom the medication is effective as an anti-convulsant.

6. Respondent may prescribe testosterone products for the treatment of hypogonadism which has been diagnosed by generally accepted laboratory tests.
7. Respondent may prescribe modafinil and pregabalin, within the FDA-approved labeling of each medication.
8. Respondent may prescribe Schedule III, IV, and V, opioids or opiates for the purposes of relieving acute pain, intestinal dysfunction, or as an antitussive, but shall not order, prescribe, or administer any opioid or opiate, including any product containing tramadol, for more than 10 consecutive days at a time without seeing and re-evaluating the patient, nor for more than 30 days in any 12 month period for any patient.
9. Respondent shall obtain a Professional Mentor acceptable to the Board.
   A. The Professional Mentor shall be the individual responsible for reviewing Respondent's practice of medicine and surgery to patients during the time this Order is in effect. A Professional Mentor shall have no prior or current business or personal relationship with Respondent (other than as a supervisor at the facility at which Respondent provides buprenorphine therapy), or other relationship that could reasonably be expected to compromise the ability of the Professional Mentor to render fair and unbiased reports to the Department (including but not limited to any bartering relationship, mutual referral of patients outside of the approved facility, 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.
   B. Review shall include meetings no less than once during each week, 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 with respect to the care and treatment of patients. 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.
   C. The Professional Mentor shall have no duty or liability to any patient or third party as a result of this Order, and the Mentor's sole duty under this Order is to the Board.
   D. 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 practice of medicine and surgery.
   E. Respondent's Professional Mentor shall immediately report to the Department Monitor 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.
   F. 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.

G. Respondent may petition the Board for removal or modification of the limitation requiring a Professional Mentor following receipt by the Board of four quarterly reports from the Professional Mentor. The determination of whether or not to remove or modify the requirement for a Professional Mentor is entirely within the discretion of the Board, and a decision by the Board not to remove or otherwise modify the requirement for a Professional Mentor shall not constitute a denial of licensure, and shall not entitle Respondent to a hearing on the Board's refusal to grant any such petition.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of Respondent is LIMITED as provided in Wis. Stat. § 448.02(3)(e), and as follows: no later than 6/30/10, Respondent shall take and satisfactorily complete one of the following courses listed below. 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.

1. Medical Ethics and Professionalism, Case Western Reserve University, Office of Continuing Medical Education.
2. Professional Renewal in Medicine through Ethics (PRiME), University of Medicine and Dentistry of New Jersey.
3. Professional/Problem Based Ethics (ProBE), Competency Assessment & Educational Intervention, Denver, Colorado.

IT IS FURTHER ORDERED, that respondent shall pay the COSTS of investigating and prosecuting this matter of $3,600, no later than September 5, 2011.

IT IS FURTHER ORDERED, that notwithstanding the limitations of Wis. Stats. §§ 227.51(3) and 448.02(4), violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license which shall continue until the investigation of the violation is concluded by Board action. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order, following notice and an opportunity to be heard. In the event Respondent fails to timely submit full payment of the Costs as set forth above, Respondent's license SHALL BE SUSPENDED,without further notice or hearing, until Respondent has paid them in full, together with any accrued interest.

Dated this January 20, 2010.

WISCONSIN MEDICAL EXAMINING BOARD

by: _____

a member of the Board