

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
:
ROMAN BEREZOVSKI, M.D., :
RESPONDENT. : *ORDER 0000861*

Division of Enforcement Case No. 10MED280

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

Roman Berezovski, M.D.
10134 N. Foxkirk Circle
Mequon, WI 53097

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 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. Roman Berezovski, M.D., Respondent, (DOB November 5, 1972) is licensed and currently registered by the Wisconsin Medical Examining Board to practice medicine and surgery in the state of Wisconsin pursuant to license number 48739-20, which was first granted November 9, 2005, by endorsement.
2. Respondent's address of record with the Department of Regulation and Licensing is 4131 W. Loomis Road, Suite 300, Greenfield, Wisconsin 53221.

3. During all times relevant to this matter, Respondent practiced medicine and surgery in Milwaukee, Wisconsin, in the area of pain management.

4. On July 23, 2010, a uniformed Milwaukee County Sheriff Deputy, while assigned to General Mitchell International Airport in the City of Milwaukee, discovered that Respondent had passed through a security checkpoint with a spring-loaded knife. Police then searched Respondent's baggage and among hygiene items found an unlabeled medicine container with band-aids and assorted types and quantities of pills, among which were forty-four tablets of the following Schedule II controlled substances:

- a. Oxymorphone
- b. Morphine sulfate
- c. Tapentadol
- d. Acetaminophen/oxycodone hydrochloride.

5. Respondent explained that he carried the knife for his own protection due to the dangerous part of town in which his practice is located. Respondent gave multiple statements explaining his possession of the controlled substances. Among the explanations was Respondent's statement that he obtained some of the medications from his parents for use by himself and family members. He stated that he wanted to avoid visiting other doctors because of his concern that it would affect the cost of his disability and life insurance. Respondent states that he eventually told law enforcement that he did not wish to answer any more questions, that he knew he had violated "some law", that he had made a mistake and did not know how to reverse it.

6. On August 31, 2010, Respondent enrolled himself in an AODA program for assessment of physical and psychological dependency and to determine his treatment needs. Respondent stated that he had been self-medicating his chronic back and neck pain since January 2010, and he eventually became dependent upon the controlled substances, including, inter alia, oxymorphone, zolpidem, morphine, tramadol and acetaminophen/oxycodone.

7. Respondent self-reported the incident and subsequent charges to the Medical Examining Board. On July 23, 2010, Respondent abruptly stopped using the controlled substances. He has since commenced individual outpatient psychotherapy. Respondent reports total abstinence from self-medication or other improper use of controlled substances since that date.

8. Respondent has been fully cooperative with the Board, and has expressed significant remorse. He explains that the medications police found were from a variety of sources and police misunderstood his explanations. At the Division's request, Respondent immediately commenced random urine drug screens. Also at the Division's request, Respondent refrained from the practice of pain management during the pendency of this investigation.

9. A Milwaukee County Circuit Court charged Respondent, in Case No. 2010CF3867, with possession of narcotic drugs in violation of Wis. Stat. § 961.41(3g)(am), which is a Class I felony. Respondent has been accepted into a deferred prosecution program. After six months with full compliance in the deferred prosecution program, the charges may be dismissed.

10. Respondent's acts of possessing and consuming controlled substances without a valid prescription, has violated Wis. Stat. § 961.41(3g)(am), which, under the facts and circumstances of this case, is a violation of a law the circumstances of which are substantially related to the practice of medicine.

11. Respondent explained that on July 23, 2010, right after work he was in a hurry to get to the airport and board his plane. He forgot to take the knife out of the laptop bag. He reported carrying a variety of medication in the container for possible medications he and his family might have encountered while traveling. He explains that his health conditions made the purchase of life insurance difficult in the past. He advised that he never endangered his patients, nor was he under the influence of any substances during patient care. He provided the Division with several character references from co-workers in support of his position. Respondent states that he did not write prescriptions for himself nor in any way did he abuse his prescription writing authority.

CONCLUSIONS OF LAW

1. 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).

2. Pursuant to Wis. Stat. § 961.16(2)(a), oxycodone and oxmorphone are Schedule II controlled substances for which a prescription is required pursuant to Wis. Stat. § 961.38(1r).

3. Pursuant to Wis. Stat. § 961.20(2)(p), zolpidem is a Schedule IV controlled substance for which a prescription is required pursuant to Wis. Stat. § 961.38(3).

4. Wisconsin Stat. § 961.38(5) prohibits self-prescribing of controlled substances.

5. Under the facts and circumstances of this case, Wis. Stat. § 961.38(3), is a violation of a law the circumstances of which are substantially related to the practice of medicine.

6. Respondent's conduct as set forth above establishes that Respondent engaged in unprofessional conduct as that term is defined by Wis. Admin. Code §§ Med 10.02(2) (p) [obtaining controlled substance outside legitimate practice], and (z) [violation of related law or rule]. Respondent is therefore subject to discipline pursuant to Wis. Stat. § 448.02(3)(c).

ORDER

IT IS HEREBY ORDERED that the license of Roman Berezovski, M.D., to practice medicine and surgery in the State of Wisconsin is SUSPENDED for an indefinite period, and further:

A.1. Respondent shall not engage in the practice of medicine and surgery in any capacity unless his suspension is stayed and he is in full compliance with this Order. Respondent shall mail or physically deliver all indicia of registration to the Department Monitor within 14 days of the effective date of this Order.

- A.2. 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 violation of any provision of Sections C or D of this Order.
- A.3. 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 is stayed immediately, based upon information that Respondent is in full compliance with this Order. The suspension shall continue to be stayed so long as Respondent remains in compliance with the provisions of Sections C and D of this Order.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in violation of any provision of Sections C or D of this Order. 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 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.

LIMITATIONS/RESTRICTIONS

The license to practice medicine and surgery of Respondent is LIMITED in that he shall NOT engage in the practice of chronic pain management for a period of 6 months from January 14, 2011, nor shall he, during the same time period, be present in a facility in which chronic pain management is practiced except when Respondent is a patient.

Respondent's license to practice medicine and surgery is further LIMITED, as set forth in Wis. Stat. § 448.02(3)(e), and as follows:

Treatment Required

- C.1. Respondent shall continue in a drug and alcohol treatment program 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. 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 with Treater, all treatment facilities and personnel, laboratories and collections sites, and as otherwise requested by the Board or its designee. 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. Respondent shall obtain written verification of attendance at such meetings as directed by the Department Monitor, 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 continue in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Admin. 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 **48 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 such 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. Admin. Code § RL 7.11.

Reporting Required

- C.19. 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.
- C.20. 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.21. 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.22. 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.23. 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.

Education Required

- C.24. Within 9 months of the date of this Final Decision and Order, Respondent shall take and complete the Case Western Reserve University—Continuing Medical Education course in prescriptive practices or its equivalent. Any other course must be pre-approved by the Medical Examining Board or its designee. Respondent will within 60 days of completion of this educational requirement, file an affidavit with the Medical Examining Board stating under oath that he has attended in its entirety the course approved for satisfaction of this requirement along with supporting documentation of attendance from the sponsoring organization.
- C.25. All certifications, affidavits or other documents required to be filed with the Medical Examining Board will be deemed filed upon receipt by the Department Monitor.
- C.26. Respondent will be responsible for paying the full cost of attendance at this course. Respondent will not apply any of the continuing education credits earned in satisfaction of this Order toward satisfaction of the Wis. Stat. § 448.13 biennial training requirements.

MISCELLANEOUS

Department Monitor

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

Department Monitor
Wisconsin Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
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.

- D.3. 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.

Change of Treater or Approved Program by Board

- D.4. 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.5. 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 be granted 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.6. 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.7. Respondent shall pay costs of \$1,275.00 to the Department of Regulation and Licensing, within 90 days of this Order. Costs shall be sent to the Department Monitor at the address in D.1. above. In the event Respondent fails to timely submit full payment of costs, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has paid them in full, together with any accrued interest.

Additional Discipline

- D.8. 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).

D.9 Respondent shall comply fully with all requirements of the Milwaukee County District Attorney's Office deferred prosecution program. A violation of the deferred prosecution agreement, as determined by the Milwaukee County District Attorney or his designee, shall constitute a violation of this Board Order, without regard for whether or not the District Attorney elects to take action on the violation.

This Order is effective upon the date of its signing.

Wisconsin Medical Examining Board

By: Shailap MD MBA 5/18/11
A Member of the Board Date