

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
 :
JOHN M. HALE, M.D., :
RESPONDENT. : ORDER 0002143

Division of Enforcement Case No. 11MED331

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

John M. Hale, M.D.
Respondent
2845 Greenbrier Road, Suite 430
Green Bay, WI 54308

Division of Enforcement
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Medical Examining Board
Department of Safety and Professional Services
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 Medical Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. John M. Hale, M.D., Respondent, date of birth November 11, 1957, is licensed and currently registered by the Medical Examining Board (Board) to practice medicine and surgery in the State of Wisconsin, pursuant to license number 34129-20, which was first granted March 25, 1993.
2. Respondent's last address reported to the Department of Safety and Professional is 2845 Greenbrier Road, Suite 430, Green Bay, WI 54308.
3. On or about October 8, 2011, Respondent presented at the Aurora Baycare Medical Center emergency department in Green Bay, Wisconsin, with a complaint of altered mental

status. An MRI was ordered. During preparation for the MRI, a small pipe and two empty medication bottles labeled Morphine solution were discovered in Respondent's clothes. A urine drug screen was positive for the presence of opiates.

4. During a consultation with an intensivist on that same date, Respondent advised that he had smoked marijuana and ingested Morphine. He obtained the Morphine from a supply of medications that was intended for a medical missions trip to Haiti. He was in charge of the surgical crew for the missions trip and was responsible for getting the Morphine and other injectable narcotics/painkillers for the trip.

5. Wis. Stat. § 961.01(4) of The Uniform Controlled Substances Act defines controlled substances as a drug, substance or immediate precursor included in schedules I to V of subchapter II.

6. Morphine is a schedule II controlled substance as defined by Wis. Stat. § 961.16(2)(a)(10).

7. Tetrahydrocannabinol, which is contained in marijuana, is a schedule I controlled substance as defined by Wis. Stat. § 961.14(4)(t).

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02(3), and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. §§ 227.44(5).

2. Respondent, by engaging in the conduct set out above, has obtained a controlled substances as defined in section 961.01(4), Wis. Stats., other than in the course of legitimate professional practice or as otherwise prohibited by law, which is unprofessional conduct, as defined by Wis. Adm. Code § MED 10.02 (2)(p) and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

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 John A. Hale, M.D., to practice medicine and surgery in the State of Wisconsin is SUSPENDED for an indefinite period, beginning on November 18, 2012.
- A.2. 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.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, the Board may grant a petition by the Respondent under paragraph D.6. for return of full Wisconsin licensure. The Board may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension will be stayed after **90 days** upon Respondent providing information to the Board or its designee that Respondent is in full continuous, compliance with this Order, and 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 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 Safety and Professional Services 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. SPS 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

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 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 Safety and Professional Services, 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 Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater. 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 enter into and continue in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § SPS 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 **20 times during the first 90 days of the Suspension**, pending a demonstration of continuous, successful compliance for a period of at least **90 days** with the terms of this Order. After demonstrating compliance, the Approved Program shall require the testing of urine specimens, at a frequency of not less than **80 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, 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 § SPS 7.11.

Controlled Substance Privileges

C.19. This Order does not impose any limitations on Respondent's prescribing, dispensing, administering or ordering of controlled substances.

Reporting Required

C.20. 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.21. 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.22. 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.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.

Neuropsychological Examination

C.24. Within 30 days of the date of this Order, Respondent shall provide the Department Monitor with proof that he has scheduled a neuropsychological examination by a professional pre-approved by the Board or its designee, and will undergo the examination not more than 30 days thereafter. Respondent shall, within 10 days of scheduling the examination, inform the Department Monitor of the facility, contact information and dates during which the examination will occur.

- (a) The neuropsychological examination shall be performed by a doctorate-level, fully credentialed neuropsychologist, whose license to practice remains in good standing, and who has no personal or business association with Respondent, his staff or family members.
- (b) Respondent shall execute necessary documents authorizing the Division to obtain records of examination, and to discuss Respondent and his case with the examiner.
- (c) Respondent shall identify and provide the examiner with authorization to communicate with all physicians, mental health professionals, and facilities at which Respondent has been treated.
- (d) Respondent shall comply with any and all requests by the examiner for purposes of scheduling and completing the evaluation/assessment, including additional testing the examiner deems helpful. Any lack of reasonable and timely

cooperation, as determined by the examiner, may constitute a violation of an order of the Medical Examining Board.

- (e) The examiner's report shall specifically address whether Respondent's alcohol consumption has resulted in any neuropsychological condition or another damage which would prevent him from being able to safely and competently engage in the practice of medicine.
- (f) Respondent is responsible for timely payment of the costs of the examination. Payment shall be made directly to the examiner(s).
- (g) Respondent shall execute all releases necessary to permit disclosure of the final examination report to the Board or its designee. Certified copies of the final examination report shall be admissible in any future proceeding before the Medical Examining Board.

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 Safety and Professional Services
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 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.
- D.6. Respondent may petition the Board for termination of this Order anytime after five years from the date of the initial stay of the suspension. However, no petition for termination shall be considered without a showing of continuous, successful compliance with the terms of the Order, for at least five years.

Costs of Compliance

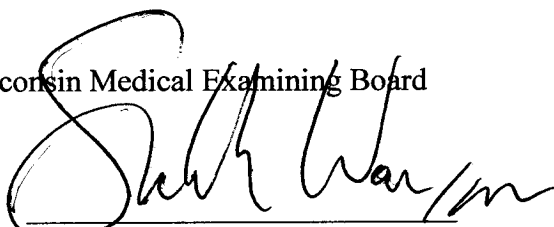
- D.6. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

- D.7. Respondent shall pay costs of \$ 500.00 to the Department of Safety and Professional Services, within ninety (90) days of this Order. 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).

Wisconsin Medical Examining Board
By: 
A Member of the Board

11/14/12
Date