WISCONSIN DEPARTMENT OF
SAFETY AND PROFESSIONAL SERVICES

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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
DAVID L. WERWATH, M.D., RESPONDENT.	:	00024[illegible]5

Division of Legal Services and Compliance Case No. 13 MED 016

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

David L. Werwath, M.D.
1788 Republic Road, Suite 400
Virginia Beach, VA 23454

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Medical Examining Board (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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent David L. Werwath, M.D., (dob August 2, 1955), is licensed in the State of Wisconsin to practice medicine and surgery, having license number 26516-20, first issued on October 26, 1984, with registration current through October 31, 2013. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 1788 Republic Road, Suite 400, Virginia Beach, Virginia 23454.

2. On November 5, 2012, the Virginia Board of Medicine accepted Respondent's stipulation to a limitation of Respondent's license to practice medicine in the Commonwealth of Virginia. This action was based on Respondent's prescribing practices as well as his addiction to

controlled substances. Terms and conditions placed on Respondent's license included the following:

a. Respondent shall submit certification to the Board that he transitioned his remaining chronic pain management patients to another treatment provider.

b. Respondent shall remain in the Virginia Health Practitioners' Monitoring Program (HPMP) and continue to comply fully with the terms of his contract, and any addenda thereto, until he successfully completes the program.

A true and correct copy of the Virginia Board Order is attached and incorporated by reference into this document as Exhibit A.

3. On December 13, 2012, the Virginia Board of Medicine notified Respondent by letter that the terms and conditions placed on his license were terminated effective immediately. The letter stated that even though the matter was closed by the Board, the Board did not relieve him of his responsibility to continue to fully comply with the terms and conditions of his Recovery Monitoring Contract and any addenda thereto with the HPMP. Respondent is expected to complete his contract in January 2015.

4. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

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. By the conduct described in the Findings of Fact, Respondent David L. Werwath, M.D., engaged in unprofessional conduct pursuant to Wis. Admin. Code § Med 10.02(2)(q) by having discipline taken by another jurisdiction against his license to practice medicine and surgery.

3. As a result of the above conduct, David L. Werwath, M.D., is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

1. The attached Stipulation is accepted.

2. Respondent David L. Werwath, M.D., is REPRIMANDED.

3. The license to practice medicine and surgery in Wisconsin of David L. Werwath, M.D., (license number 26516-20) is LIMITED as follows:

> a. Respondent is to maintain full and complete compliance with all terms and conditions of his Recovery Monitoring Contract and any addenda thereto with the Virginia Health Practitioners' Monitoring Program.
>
> b. Respondent shall provide the State of Wisconsin Medical Examining Board with a copy of any document issued by the Virginia Health Practitioners' Monitoring Program which alters the conditions of Respondent's Recovery Monitoring Contract.
>
> c. Upon Respondent providing proof sufficient to the Board, or its designee, that he has successfully complied with all terms and conditions of the Recovery Monitoring Contract and any addenda thereto with the Virginia Health Practitioners' Monitoring Program, the Board or its designee shall issue an order reinstating full licensure.

4. In the event Respondent decides to practice medicine and surgery in the State of Wisconsin while the limitations set out in paragraph 3 remain in effect, he shall notify the Board or its designee of his intentions and practice address at least ninety (90) days prior to commencing the practice of medicine and surgery in the State of Wisconsin. Upon Respondent's commencement of the practice of medicine and surgery in the State of Wisconsin, all limitations under paragraph 3 are removed and his license shall be SUSPENDED and LIMITED as described below.

SUSPENSION

A.1. The license of David L. Werwath, M.D., to practice medicine and surgery in the State of Wisconsin is SUSPENDED for an indefinite period.

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 (with credit for demonstrated continuous compliance with his Recovery Monitoring Contract and any addenda thereto with the Virginia Health Practitioners' Monitoring Program, as verified by that Board), including at least 600 hours of active practice for every year the suspension is stayed, the Board may grant a petition by Respondent under paragraph D.4. for return of full licensure. At the Board's discretion, the 5-year period may be started anew for every substantial or repeated violation of any provision of Sections C or D of this Order.

A.4. The Board may, on its own motion or at the request of the Department Monitor, grant full licensure at any time.

STAY OF SUSPENSION

B.1. The suspension may be stayed based upon Respondent having provided proof, which is determined by the Board or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order.

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 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 Legal Services and Compliance 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 Alcoholics/Narcotics 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. Admin. 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 48 times per year, for the first year of Respondent's return to practice in Wisconsin. 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. Admin. 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 and surgery as defined at Wis. Stat. § 448.01(9).

C.22. It is Respondent's responsibility to arrange for written reports from her 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.

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
Division of Legal Services and Compliance
Wisconsin Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone: (608) 267-3817; Fax: (608) 266-2264
DSPSMonitoring@wisconsin.gov

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

Costs of Compliance

D.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.

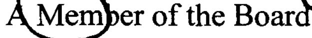
Costs of Proceeding

D.7. Respondent shall pay costs of $200.00 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

Date

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

IN RE: DAVID LEE WERWATH, M.D.
License No.: 0101-034422

ORDER

In accordance with Sections 54.1-2400(10), 2.2-4019 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code"), an informal conference was held with David Lee Werwath, M.D., on November 1, 2012, in Henrico, Virginia. Members of the Virginia Board of Medicine ("Board") serving on the Special Conference Committee ("Committee") were: Stuart Mackler, M.D. Chair; Robert Hickman, M.D.; and Valerie Hoffman, D.C. Dr. Werwath appeared personally and was represented by legal counsel, Michael Goodman, Esquire. Kelley W. Palmatier, Adjudication Specialist, was present as a representative for the Administrative Proceedings Division of the Department of Health Professions. The purpose of the informal conference was to inquire into allegations that Dr. Werwath may have violated certain laws and regulations governing the practice of medicine in the Commonwealth of Virginia, as set forth in a Notice of Informal Conference dated August 13, 2012.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now, having properly considered the evidence and statements presented, the Committee makes the following Findings of Fact and Conclusions of Law:

1. David Lee Werwath, M.D., was issued license number 0101-034422 to practice medicine in Virginia on June 17, 1982. Said license is currently active and will expire on August 31, 2014, unless renewed or acted upon.

EXHIBIT A

2. Dr. Werwath violated Sections 54.1-2915.A(1), (8), (10), and (17), to include the felony contained in Section 18.2-250 of the Code, and 54.1-3408.A of the Code, in that, on multiple occasions from about January 2008 through January 2010, Dr. Werwath diverted Dilaudid (C-II), lorazepam (C-IV), and Demerol (C-II) for his personal and unauthorized use. Specifically, during interviews with two Department of Health Professions' ("DHP") investigators, on or about January 6, 2010 and May 4, 2010, Dr. Werwath admitted that for the past two years he had been self-medicating with: Dilaudid 20-30mg subcutaneously a.m. and p.m., as recently as that morning; lorazepam intramuscularly, as recently as one month prior to the interview; and Demerol 100mg intramuscularly a.m. and p.m., as recently as 1-2 weeks prior to the interview. Dr. Werwath further admitted that the controlled substances diverted for his personal use were obtained either from the existing stock of medications kept in his office for patient use, by having Patient A specifically pick up prescriptions Dr. Werwath wrote or authorized at a pharmacy for purported use in his office, or by picking up the controlled substances himself from a pharmacy for purported use in his office.

3. Dr. Werwath violated Section 54.1-2915.A(2) and (14) of the Code, in that he is unable to practice medicine with reasonable skill and safety due to substance abuse. Specifically:

a. Dr. Werwath admitted to the DHP investigators that he self-medicated with Dilaudid, lorazepam, and Demerol, as described in Allegation No. 1 above;

b. Dr. Werwath underwent residential substance abuse treatment from on or about January 6, 2010 to April 16, 2010; and

c. Dr. Werwath signed a Participation Contract with the Virginia Health Practitioners' Monitoring Program ("HPMP") on or about January 21, 2010, and entered

into a Recovery Monitoring Contract ("RMC") with HPMP on September 12, 2011, wherein he acknowledged his alcohol use and/or substance use disorder which may impair his ability to practice his health profession safely.

4. Dr. Werwath violated Sections 54.1-2915.A(17) and 54.1-3404.B, C, and D of the Code in that he failed to maintain an inventory, updated biennially, of all Schedule II-V controlled substances maintained in his office. Further, Dr. Werwath failed to maintain adequate records regarding the receipt, administration, dispensing, and disposal of such controlled substances.

5. Dr. Werwath violated Sections 54.1-2915.A(3), (13), (16), and (17), 54.1-3303.A and 54.1-3408.A of the Code in his care and treatment of Patient A, a 34-year-old male, from approximately March 2005 to July 2009. Specifically:

a. Patient A presented to establish a practitioner-patient relationship on or about March 16, 2005 with a reported history of migraine headaches as a result of skull fractures obtained during a fall in June 2004. Without documenting his reasons for selecting the types and doses of medications prescribed, or developing a treatment plan, Dr. Werwath administered to Patient A an intramuscular ("IM") injection of Phenergan 25mg, Dilaudid 4mg, and Toradol 60mg. Despite the fact that through one of Patient A's frequent hospital visits it was determined that there was nothing to explain his constant headaches and general severe malaise, other than narcotic dependence, Dr. Werwath continued to administer IM and intravenous ("IV") Demerol, Toradol, and Dilaudid in his office, as well as prescribing oxycodone, Fentanyl, MS Contin, MSIR, Percocet and Vicodin, often on a daily basis for the treatment of Patient A's migraine headaches until approximately May 2008.

b. During his continuous treatment of the patient, Dr. Werwath failed to perform physical examinations with documented findings sufficient to warrant the level of narcotic prescribing; failed to coordinate treatment with or obtain records from other physicians involved in the care of Patient A; and failed to monitor the efficacy of the treatment he provided for Patient A by employing pain rating scales or other measures to determine the effect of the prescribed medications, having a pain management contract in place, ordering urine drug screens, or taking other appropriate measures to determine whether Patient A was compliant with his medication regimen.

c. Dr. Werwath regularly prescribed narcotics to Patient A, who exhibited drug-seeking behavior and who he admittedly knew was clinically addicted. Specifically:

i. Dr. Werwath continued to prescribe narcotics after Patient A stole a prescription pad from Dr. Werwath's office;

ii. Dr. Werwath regularly filled or authorized refills of narcotics to Patient A prior to the time he should have run out if taken as prescribed;

iii. Dr. Werwath routinely provided "crash kits" of IM narcotic medications to Patient A to have on hand while he was on vacation so he would not have to visit an emergency department or urgent care center to treat his headaches;

iv. Dr. Werwath continued to prescribe controlled substances to Patient A for pain after Dr. Werwath dismissed him from his practice in January 2009; and despite the fact that Dr. Werwath was aware Patient A attended a court ordered detoxification/rehabilitation program in early 2009, Dr. Werwath resumed

prescribing Patient A narcotics when he re-established himself as a patient in his practice in June 2009.

6. Dr. Werwath violated Sections 54.1-2915.A(3), (13), (16), and (17), 54.1-3303.A and 54.1-3408.A of the Code in his care and treatment of Patient B, a 28-year-old male, from approximately May 2006 to July 2009. Specifically:

a. Patient B presented to establish a practitioner-patient relationship on or about May 16, 2006, with complaints of abdominal pain as 3-4/10 and vomiting. After several visits to the emergency department for abdominal pain over the next few months, Dr. Werwath began prescribing Patient B narcotics on November 6, 2006, based on the hospital's diagnosis of recurrent pancreatitis, alcohol induced. Despite the fact that Patient B was eventually diagnosed by the hospital, on or about January 24, 2007, with acute pancreatitis likely secondary to gallbladder sludge resulting in a cholecystectomy on January 31, 2007, and despite his suspicion that Patient B was still abusing alcohol which might have been causing his abdominal pain, over the next three years Dr. Werwath regularly administered via IM injections, IV, or wrote prescriptions for Vicodin, Dilaudid, Percocet, Lortab, Demerol, Toradol, Fentanyl, Xanax, and Ativan for the treatment of Patient B's abdominal pain, often without requiring an office visit to examine, evaluate, or assess Patient B.

b. Dr. Werwath failed to develop a comprehensive treatment plan or review and monitor the efficacy of his treatment of Patient B's abdominal pain through pain rating scales or other measures, and failed to appropriately monitor Patient B's usage of controlled substances through pain management contracts (instituted in August 2008), urine/drug screens, pill counts or other measures to determine whether Patient B was

compliant with his medication regimen.

c. Dr. Werwath continued to prescribe narcotics to Patient B, who exhibited drug-seeking behavior or who Dr. Werwath knew or should have known was abusing or had become addicted to his medications. Further, Dr. Werwath failed to address signs and symptoms of escalation and abuse of narcotic therapies. For example:

i. Dr. Werwath admitted that he gave Patient B multiple opportunities to ask for help with his addiction instead of treating or referring him for treatment of substance abuse, including alcohol;

ii. Dr. Werwath authorized refills of Patient B's narcotic medications prior to the time they should have run out if taken as prescribed; and

iii. Dr. Werwath continued to prescribe narcotics despite the fact that he became aware that multiple physicians and dentists were providing Patient B with narcotics.

7. Dr. Werwath violated Sections 54.1-2915.A(3), (13), (16), and (17), 54.1-3303.A and 54.1-3408.A of the Code in his care and treatment of Patient C, a 39-year-old female, from approximately March 2005 to November 2009. Specifically:

a. Patient C, Dr. Werwath's medical assistant, presented to establish a practitioner-patient relationship on or about March 24, 2005, complaining of a headache, fever, chills, decreased appetite, fatigue, congestion, sore throat, cough, and joint and muscle pain. Dr. Werwath diagnosed her with influenza and sinusitis and prescribed zithromax, Levall 5.0, Dolgic Plus, and amantadine. Patient C returned for an office visit on March 25, 2005, with complaints that she was not improving and Dr. Werwath administered Phenergan 25mg, Rocephin 2gm, and Demerol 50mg intravenously for her

diagnoses. Over the next four years, Dr. Werwath regularly administered, via IM injections or IV, or prescribed Vicodin, Demerol, Dilaudid, Toradol, Percocet, Lortab, Valium, and Vicoprofen for the treatment of Patient C's diagnoses of headaches, sinusitis, upper respiratory infections ("URI's"), pharyngitis, ear pain, urinary tract infections ("UTI's"), and malaise, often without requiring Patient C to present to his office for an examination, without an adequate medical indication for doing so, and Dr. Werwath failed to document his reasons for selecting the types and doses of medications prescribed for Patient C's complaints.

b. For an approximate four year period Dr. Werwath administered or prescribed narcotics in amounts and for durations not medically necessary or justified for Patient C's symptoms or diagnoses; and Dr. Werwath regularly authorized refills of narcotics to Patient C prior to the time they should have run out if taken as prescribed. For example: on or about March 27, 2006 Patient C presented with complaints of ear pain, congestion, headache, fever, dizziness, green drainage, and sneezing and Dr. Werwath administered IM Demerol 100mg in his office and prescribed Percocet 7.5/325mg #20; on or about February 7, 2007 Patient C presented with complaints of left ear/neck stinging and a headache and Dr. Werwath administered IM Demerol 100mg and IM Toradol 60mg and prescribed Vicoprofen 7.5/200mg #20; on or about October 21, 2009 Patient C presented with complaints of a bee sting and Dr. Werwath administered IM Dilaudid 3mg and IM Toradol 60mg in his office, and prescribed Vicoprofen 7.5/200mg #60.

8. Dr. Werwath violated Sections 54.1-2915.A(3), (13), (16), and (17), 54.1-3303.A and 54.1-3408.A of the Code in his care and treatment of Patient D, a 17-year-old female, from

approximately April 2005 to March 2009. Specifically Patient D, daughter of Patient C, presented to establish a practitioner-patient relationship on or about April 30, 2005 with complaints of strep throat, fever, and migraines. During the next four years, Dr. Werwath regularly administered, via IM injections or IV, or prescribed Vicodin, Demerol, Dilaudid, Toradol, Percocet, Lortab, Valium, and Vicoprofen to treat Patient D for complaints of ear aches, URI's, pharyngitis, malaise, fatigue, sore throats, UTI's, headaches, and mononucleosis, often without requiring her to present to his office for an examination and without an adequate medical indication for doing so.

9. Dr. Werwath violated Sections 54.1-2915.A(3), (13), (16), and (17), 54.1-3303.A and 54.1-3408.A of the Code in his care and treatment of Patient E, a 13-year-old female, from approximately March 2005 to October 2009. Specifically Patient E, daughter of Patient C, presented to establish a practitioner-patient relationship on or about March 12, 2005 with complaints of a sore throat, fever, headache, and fatigue. Dr. Werwath diagnosed her with acute strep, tonsillitis, and dehydration and intravenously administered Toradol 30mg, Phenergan 12.5mg and Rocephin 1 gm, as well as prescribed Lortab elixir and penicillin. During the next four years, Dr. Werwath regularly administered, via IM injections or IV, or prescribed Vicodin, Demerol, Dilaudid, Toradol, Percocet, Lortab, Valium, and Vicoprofen to treat Patient E for complaints of URI's, congestion, toe pain, headaches, dysmenorrhea, UTI, sinusitis, back pain, mononucleosis, pharyngitis, and knee pain, often without requiring her to present to his office for an examination and without an adequate medical indication for doing so.

10. Dr. Werwath violated Sections 54.1-2915.A(3), (13), (16), and (17), 54.1-3303.A and 54.1-3408.A of the Code in his care and treatment of Patient F, a 10-year-old male, from

approximately March 2005 to October 2009. Specifically Patient F, son of Patient C, presented to establish a practitioner-patient relationship on or about March 14, 2005 with complaints of a sore throat, and headache. During the next four years, Dr. Werwath prescribed Vicodin to treat Patient F for complaints of headaches, ear pain, sore throat, cough, and rhinitis, often without requiring him to present to his office for an examination and without an adequate medical indication for doing so.

11. Dr. Werwath violated Sections 54.1-2915.A(3), (13), (16), and (17), 54.1-3303.A and 54.1-3408.A of the Code in his care and treatment of Patient G, a 25-year-old female employed by Dr. Werwath, from approximately January 2004 to November 2009. Specifically, on multiple occasions during the five years Dr. Werwath treated Patient G, he prescribed Vicodin or Percocet to Patient G for pharyngitis, influenza, cervicalgia, and fibromyalgia, often without requiring an office visit. Further, Dr. Werwath continued to prescribe Percocet and regularly authorized early prescriptions for Patient G, despite the fact that the rheumatology consult Dr. Werwath recommended discouraged the use of narcotics for pain management because they are generally not helpful in long-term pain control for fibromyalgia.

12. Dr. Werwath violated Sections 54.1-2915.A(3), (13), (16), and (17), 54.1-3303.A and 54.1-3408.A of the Code in his care and treatment of Patient H, a 32-year-old female, from approximately March 2004 to May 2009. Specifically, Dr. Werwath initially prescribed Vicodin 5/500mg #20 to Patient H on or about November 4, 2004 for a complaint of back pain after sleeping on the couch two days prior to her visit. Patient H next complained on or about August 25, 2005 of right knee pain and left side rib and low back pain as a result of "wresting with her husband" and Dr. Werwath prescribed Percocet 7.5/325mg #20. Subsequently, Dr. Werwath prescribed Percocet 7.5/325mg #10 on September 1, 2005, Percocet 7.5/325mg #10 on September

9, 2005, Vicodin 5/500mg #20 on September 29, 2005, Vicodin ES 7.5/750mg #30 on October 19, 2005, and Vicodin ES 7.5/750mg #30 on November 28, 2005, without requiring Patient H to present for an office visit on any of those dates. For the next five years Dr. Werwath continued to prescribe narcotics to Patient H for her various complaints of sciatica, abdominal pain, back pain, parathoracic back spasms, hip pain, and muscle spasms often without requiring an office visit and without sufficient objective evidence or diagnostic testing or studies to support the amounts and frequency of his prescription of narcotics. Further, Dr. Werwath failed to take any measures to determine whether Patient H was taking her medication as prescribed, despite the fact that Dr. Werwath was writing prescriptions of narcotics for Patient H prior to the time they should have run out if she was taking them as prescribed.

13. Dr. Werwath violated Sections 54.1-2915.A(3), (13), and (16)of the Code in his care and treatment of Patient I, the 4-year-old daughter of Patient L, from approximately March 2007 to June 2008. Specifically, on or about June 16, 2007 Dr. Werwath prescribed Tylenol #3 to Patient I for a diagnosis of strep pharyngitis and mononucleosis. Then, beginning on June 22, 2007, Dr. Werwath prescribed Lortab Elixir on seven occasions to treat Patient I for various diagnoses of strep throat, mononucleosis, pharyngitis, tonsillitis, acute otitis media, URI, or left clavicle fracture, despite the fact that Dr. Werwath had begun to question whether Patient L, her mother, was exhibiting narcotic seeking behavior.

14. Dr. Werwath violated Sections 54.1-2915.A(3), (13), and (16), of the Code in his care and treatment of Patient J, the 5-year-old son of Patient L, from approximately April 2007 to June 2008. Specifically, Dr. Werwath prescribed Lortab Elixir on six occasions to treat Patient J, whom Dr. Werwath had diagnosed with mononucleosis, pharyngitis, tonsillitis, URI, or cough, despite the fact that Dr. Werwath had begun to question whether Patient L, his mother,

was exhibiting narcotic seeking behavior.

15. Dr. Werwath violated Sections 54.1-2915.A(3), (13), and (16) of the Code in his care and treatment of Patient K, the 3-year-old daughter of Patient L, from approximately April 2007 to June 2008. Specifically Dr. Werwath prescribed Lortab Elixir on six occasions to treat Patient L, whom Dr. Werwath had diagnosed with tonsillitis, pharyngitis, URI, cough, or otaligia, despite the fact that Dr. Werwath had begun to question whether Patient L, her mother, was exhibiting narcotic seeking behavior.

16. Dr. Werwath violated Sections 54.1-2915.A(3), (13), (16), and (17), 54.1-3303.A and 54.1-3408.A of the Code in his care and treatment of Patient L, a 27-year-old female, from approximately March 2007 to June 2008. Specifically, Patient L presented to establish a practitioner-patient relationship on or about March 9, 2007 with complaints of cough, nasal drainage, and right ear ache. Despite the fact that Dr. Werwath was already questioning whether Patient L was exhibiting narcotic seeking behavior on May 31, 2007, over the next year Dr. Werwath regularly prescribed Vicodin and Percocet to treat Patient L for diagnoses of pharyngitis, conjunctivitis, otalgia, and UTI's. Additionally, Dr. Werwath prescribed Vicodin and Percocet for Patient L's complaints of back pain, stomach pain, and right leg pain, despite the fact that an MRI of her lumbar spine was negative and after Dr. Werwath again questioned on March 8, 2008 whether Patient L was exhibiting drug seeking behavior. Further, despite his concerns about whether Patient L was abusing or had become addicted to her narcotic medications, Dr. Werwath failed to order any drug/urine serum screens, conduct pill counts or take other appropriate measures to determine if Patient L was taking her medications as prescribed.

would ask of him.

20. Dr. Werwath stated he has not prescribed narcotics to anyone under age 16 since returning to practice after completing substance abuse treatment. Dr. Werwath stated he sees about 5-6 chronic pain patients currently, and is willing to transfer these patients and stop chronic pain treatment altogether if the Board wishes.

21. Dr. Werwath presented evidence of having attended the course, *Prescribing Controlled Drugs: Critical Issues and Common Pitfalls of Misprescribing*, May 4-6, 2011 at the University of Florida Springhill Health Clinic for 21.25 Category 1 CME credit.

22. Dr. Werwath stated he stopped working on January 6, 2010 and entered residential inpatient treatment from January 6-April 16, 2010. Dr. Werwath signed a Participation Contract with HPMP on or about January 21, 2010, and a Recovery Monitoring Contract on or about April 19, 2010.

23. Dr. Werwath's case manager, Amy Stewart, advised the Board that Dr. Werwath's most recent RMC was signed on March 16, 2012 with an expected completion date of January 2015. Under his RMC, Dr Werwath is subject to random toxicology screens (approximately 36 times year), 12 step meetings (Caduceus, Narcotics Anonymous, Alcoholics Anonymous), and must submit reports regarding group and individual therapy. Dr. Werwath was returned part-time to work in May 2010 with a work site monitor, and subsequently returned to full-time status in October 2010. Additionally, Dr. Werwath has a peer monitor (i.e., a physician either in recovery or familiar with recovery), who submits monthly reports to HPMP. Ms. Stewart said all reports from Dr. Werwath's monitors and therapists have been favorable.

24. Ms. Stewart also advised that Dr. Werwath is prohibited from having any narcotics (e.g., samples or stock medications) in his office or at his work site, but he is not

prohibited from prescribing.

25. Dr. Werwath stated he views his experience as an addict as a blessing, because he has come out of this healthier and closer to his family, and he has been blessed with the opportunity to re-evaluate himself internally. He understands he has a medical issue that he will never be cured of, and he knows he must be vigilant in his recovery.

ORDER

WHEREFORE, based on the above Findings of Fact and Conclusions of Law, it is hereby ORDERED that Dr. Werwath be issued a REPRIMAND. It is further ORDERED that his license is subject to the following TERMS and CONDITIONS:

1. Within 45 days from entry of this Order, Dr. Werwath shall submit certification to the Board that he has transitioned his remaining chronic pain management patients to another treatment provider.

2. Dr. Werwath shall remain in HPMP and continue to comply fully with the terms of his contract, and any addenda thereto, until he successfully completes the program. In accordance with Dr. Werwath's contract, the Board will be notified of any noncompliance with, or dismissal or resignation from HPMP.

3. Upon receipt of evidence that Dr. Werwath has complied with Term No. 1, the Committee authorizes the Executive Director to close this matter.

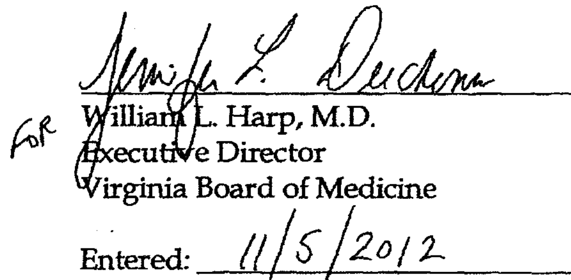
Dr. Werwath shall maintain a course of conduct in his practice of medicine commensurate with the requirements of Title 54.1, Chapter 29 of the Code and all laws of the Commonwealth.

Pursuant to Sections 2.2-4023 and 54.1-2400.2 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

Pursuant to Section 54.1-2400(10) of the Code, Dr. Werwath may, not later than 5:00 p.m., on December 10, 2012, notify William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233, in writing that he desires a formal administrative hearing before the Board. Upon the filing with the Executive Director of a request for the hearing, this Order shall be vacated.

Therefore, this Order shall become final on December 10, 2012, unless a request for a formal administrative hearing is received as described above.

FOR THE BOARD



William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

Entered: 11/5/2012