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Before The
State Of Wisconsin
MEDICAL EXAMINING BOARD

In the Matter of the Disciplinary Proceedings
Against **RONALD PLEMMONS, M.D.**,
Respondent

FINAL DECISION AND ORDER
Order No. **0002621**

Division of Legal Services and Compliance Case No. 12 MED 231

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 18 day of September, 2013.

Member
Medical Examining Board



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Disciplinary Proceedings
Against **RONALD PLEMMONS, M.D.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-13-0022

000262 1

Division of Legal Services and Compliance Case No. 12 MED 231

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Ronald Plemmons, M.D.
3 McDowell Street
Asheville, N.C. 28801

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

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by:

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

PROCEDURAL SUMMARY

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Ronald Plemmons, M.D. (Respondent), alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 448.02(3) and Wis. Admin. Code § Med 10.02(2)(q). The Division served Respondent on May 23, 2013 by sending a copy of the Notice of Hearing and Complaint to his last known address. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09, failed to appear at the telephone prehearing conference held for the Division of Hearings and Appeals on June 26, 2013, and failed to provide a telephone number at which he could be reached for the conference as required by the June 13, 2013 Notice of Telephone Prehearing Conference.

At the prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). The undersigned administrative law

judge (ALJ) issued a Notice of Default on June 26, 2013, finding Respondent to be in default and the Division filed a recommended Proposed Decision and Order on July 1, 2013.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-6 are taken from the Division's Complaint against Respondent filed in this matter and the North Carolina Medical Board Order incorporated into the Complaint.

1. Respondent Ronald Plemmons, M.D. (d.o.b. July 8, 1949), is licensed in the State of Wisconsin to practice medicine and surgery, having license number 20-47965. His license was first issued on March 29, 2005 and his license registration expired on October 31, 2011. Respondent retains the right to renew this registration.

2. Respondent's most recent address on file with the Department is 3 McDowell Street, Asheville, North Carolina 28801.

3. On June 4, 2012, Respondent entered into a Consent Order with the North Carolina Medical Board. Respondent had prescribed a controlled substance to Patient A, without a legitimate medical purpose and outside the normal course of professional practice.

4. According to the facts contained in the Consent Order signed by Respondent on June 1, 2012, Patient A attempted to obtain OxyContin from a pharmacy in the Asheville, North Carolina area on October 28, 2011. When the pharmacist informed Patient A that the pharmacy would not fill her out-of-state prescription, Respondent, who happened to be in the pharmacy at the time and overheard the conversation, identified himself as a physician to Patient A and offered to write Patient A a prescription. Respondent and Patient A met outside the pharmacy, whereupon Respondent wrote Patient A a prescription for OxyContin. On October 31, 2012, Patient A presented the prescription written by Respondent to the same pharmacy that had refused to fill the out-of-state prescription.

5. Prior to writing the prescription, Respondent had not seen Patient A in his office as a patient, did not conduct a physical examination of her and did not create or maintain a patient chart for her.

6. As a result of the conduct described in paragraphs 3-5, Respondent's license to practice medicine in North Carolina was indefinitely suspended.

Facts Related to Default

7. The Complaint and Notice of Hearing in this matter were served on Respondent on May 23, 2013, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing advised Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default and default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

8. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

9. Following expiration of the 20-day time period in which to file an Answer, the ALJ scheduled a telephone prehearing conference for June 26, 2013. The June 13, 2013 Notice of Telephone Prehearing Conference was sent to Respondent at his last known address. The Notice instructed Respondent to provide the ALJ with a telephone number at which he could be reached for the conference no later than June 24, 2013. The Notice further informed Respondent: **“A respondent’s failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent.”**

10. Respondent failed to provide a telephone number and could not be reached for the prehearing conference.

11. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

12. On June 26, 2013, the ALJ issued a Notice of Default and ordered the Division to serve no later than July 8, 2013 a recommended proposed decision in this matter, which the Division filed on July 1, 2013.

DISCUSSION AND CONCLUSIONS OF LAW

Jurisdiction

The Wisconsin Medical Examining Board (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 448.02.

Default

Pursuant to Wis. Admin. Code § SPS 2.14, when a respondent fails to file an Answer as required by Wis. Admin. Code § SPS 2.09 or fails to appear at the hearing at the time fixed therefore, the respondent is in default and findings may be made and an Order entered on the basis of the Complaint and other evidence. Moreover, pursuant to Wis. Admin. Code § HA 1.07(3) when a respondent fails to appear, which includes failing to provide a telephone number for a telephonic conference when requested by the administrative law judge, the administrative law judge may “take the allegations in an appeal as true as may be appropriate” and may find the respondent to be in default.

Thus, pursuant to Wis. Admin. Code §§ HA 1.07(3) and SPS 2.14, Respondent is in default for failing to file an Answer and failing to appear for the prehearing conference held on June 26, 2013. Accordingly, the allegations contained in the Complaint are taken as true.

Violation of Wis. Stat. § 448.02(3) and Wis. Admin. Code § 10.02(2)(g)

Pursuant to Wis. Stat. § 448.02(3)(c), when the Board finds that a licensee has committed unprofessional conduct, the Board may “warn or reprimand that person, or limit, suspend or revoke any license . . . granted by the [B]oard to that person.” The phrase “unprofessional conduct” includes acts “defined as unprofessional conduct by the [B]oard under the authority delegated to the board by s. 15.08(5)(b).” Wis. Stat. § 448.015(4)(am)1. Consistent with that

authority, the Board has defined “unprofessional conduct” to include having a license to practice medicine granted by another state limited, restricted, suspended, or revoked. Wis. Admin. Code § Med 10.02(2)(q). It is undisputed that Respondent had his license indefinitely suspended in North Carolina. Therefore, he is in violation of Wis. Stat. § 448.02 and Wis. Admin. Code § Med 10.02(2)(q) and may be disciplined by the Board pursuant to those provisions.

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *See State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).

The Division requests that Respondent’s license be suspended indefinitely, as was done in North Carolina, and that Respondent be permitted to petition the Board for termination of the suspension only if he can demonstrate that he possesses an unlimited license in the State of North Carolina. Under the circumstances of this case and the factors delineated in *Aldrich*, such discipline is warranted.

Respondent’s conduct, as described in the North Carolina Board’s Order, demonstrates that Respondent is in need of rehabilitation and that the public needs protection from his conduct. Respondent’s license was indefinitely suspended in North Carolina because Respondent approached an individual in a pharmacy when a pharmacist denied her request to fill an out-of-state prescription for OxyContin, and proceeded to write her a prescription for OxyContin without having examined her as a patient. Such behavior demonstrates utter disregard for the appropriate role and ethical duties of a physician. It also places the public in danger of receiving a medication, one which can be highly addictive, without adequate medical justification and without determining whether the medication could in fact be harmful to the person receiving it. Other licensees need to be deterred from such irresponsible and potentially harmful conduct.

Indefinite suspension of Respondent’s license to practice in Wisconsin is consistent with the North Carolina Board’s decision and is appropriate in this matter as it best promotes the three purposes of discipline – rehabilitation, deterrence and protection of the public.

Costs

The Board has the authority to assess costs pursuant to Wis. Stat. § 440.22. The factors to be considered in assessing costs are: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the respondent’s cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department of [Safety and Professional Services] is a “program revenue” agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and (7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS0802183CHI (Aug. 14, 2008).

The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings. Under the factors articulated above, imposition of full costs are appropriate. The count alleged has been proven, the conduct is serious, the requested discipline

is severe and Respondent has not cooperated in any way with this disciplinary process. Finally, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Accordingly, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings.

ORDER

For the reasons set forth above, IT IS ORDERED that:

1. Respondent's license to practice medicine and surgery in the State of Wisconsin is hereby **SUSPENDED FOR AN INDEFINITE PERIOD OF TIME** with the following conditions:

a. Respondent may petition the Board for termination of the suspension only when he can demonstrate that he possesses an unlimited license in the State of North Carolina.

b. In conjunction with a petition by Respondent, Respondent may be required by the Board to demonstrate compliance with the terms and conditions imposed against his license to practice medicine in North Carolina.

c. Respondent may be required to personally appear before the Board to answer any questions in conjunction with his petition.

d. Denial in whole or in part of a petition under this paragraph shall not constitute a denial of a license and shall not give rise to contested case proceedings within the meaning of Wis. Stat. §§ 227.01(3) and 227.42. Upon the Board's completion of review of any petition filed by Respondent, the Board may deny the petition or may grant the petition subject to any terms and conditions on Respondent's license as the Board finds appropriate to protect patient and public health, safety and welfare.

2. Respondent shall pay costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

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

3. The ordered terms of this decision are effective the date the Board signs the Final Decision and Order in this matter.

IT IS FURTHER ORDERED that the above-captioned matter is hereby closed as to Respondent Ronald Plemmons.

Dated at Madison, Wisconsin on August 9, 2013.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: 
Jennifer E. Nashold
Administrative Law Judge