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Before the
State Of Wisconsin
Medical Examining Board

In the Matter of Disciplinary Proceedings Against
Roger A. Pellmann, M.D., Respondent

FINAL DECISION AND ORDER

Order No. 0004485

Division of Legal Services and Compliance Case No. 15 MED 025

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 20th day of January, 201~~6~~¹⁶. *KJ*

Member
Medical Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Roger A. Pellmann, M.D., Respondent

DHA Case No. SPS-15-0057
DLSC Case No. 15 MED 025

PROPOSED DECISION AND ORDER

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

Roger A. Pellmann
901 N. Hawley Road, Apt. 1
Milwaukee, WI 53213

Wisconsin Medical Examining Board
P.O. Box 8366
Madison, WI 53708-8366

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

Attorney Joost Kap
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

These proceedings were initiated on June 30, 2015, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal Complaint on Respondent Roger A. Pellman, M.D. (Respondent). The Division's Complaint alleged that Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § Med 10.03(1)(a) by violating a valid order of the Board; engaged in unprofessional conduct pursuant to Wis. Admin. Code § Med 10.03(2)(a) by practicing or attempting to practice under any license when unable or unwilling to do with reasonable skill and safety; and violated Wis. Stat. § 448.03(1) by practicing medicine and surgery, or attempting to do so or making a representation as authorized to do so, without a license to practice medicine and surgery granted by the Wisconsin Medical Examining Board (Board). As a result, the Division alleged that Respondent is subject to discipline pursuant to Wis. Stat. § 448.02(3).

Respondent filed an Answer to the Division's Complaint on July 10, 2015, and, consistent with a notice issued on July 13, 2015, a prehearing conference was held on July 23, 2015. At the conference, a hearing date and related deadlines were established, as was a briefing schedule related to a motion to dismiss which Respondent indicated he would file. On August 2, 2015, Respondent filed a request to extend the deadline in which to file his motion on grounds that the Division had not provided him with information he had requested in a public records request. The Division denied that it withheld information, and the undersigned administrative law judge (ALJ) convened a telephone conference on August 6, 2014, at which, over the Division's objection, Respondent was given another ten days to file his motion and a new briefing order was issued.

Following briefing by the parties, on August 28, 2015, the ALJ issued an order denying Respondent's motion to dismiss. Following communications from Respondent, an additional telephone conference was held on October 7, 2015 to discuss Respondent's claim that the Division was withholding information, which the Division successfully refuted at the telephone conference. The contested case hearing was held on October 26, 2015, at which the Division presented the testimony of its investigator, Regina Reynolds, and also called Respondent adversely. Respondent also testified on his own behalf.

FINDINGS OF FACT

Prior Disciplinary Action Against Respondent

1. Respondent Roger A. Pellman, M.D. (DOB August 16, 1954), is licensed in the State of Wisconsin to practice medicine and surgery, having license number 25006-20, first issued on October 22, 1982, with registration expired as of October 31, 2011, and suspended indefinitely since September 19, 2012. (Complaint, ¶ 1; Answer, ¶ 1)

2. Respondent's license to practice medicine and surgery was indefinitely suspended on September 19, 2012, by a Board Final Decision and Order which adopted this ALJ's Proposed Decision and Order dated August 2, 2012 (Board Order). (Div. Ex. 1, p. 12; Div. Ex. 2)

3. The Board Order was based on a 2010 federal conviction by the United States District Court for the Eastern District of Wisconsin convicting Respondent of 16 federal felonies, 10 related to possession and distribution of fentanyl outside of his medical practice and not for legitimate medical purposes, and six related to obtaining morphine sulfate by fraud and deception. Respondent was sentenced to federal prison. (*United States v. Pellman*, 668 F.3d 918 (7th Cir. 2012); Div. Ex. 1; Hrg. Tr., pp. 51-52)

4. The convictions were upheld by the Court of Appeals for the Seventh Circuit, which stated that the convictions were supported by such overwhelming evidence that an expert witness was not required. (*Id.*)

5. The Board Order included as a condition of license reinstatement that Respondent appear before the Board and demonstrate to the Board's satisfaction that he could safely and competently practice medicine. (Div. Ex. 1, pp. 11-12; Hrg. Tr., p. 53)

6. Since that time, Respondent has asked the Board on three occasions to reinstate his license and each time the Board has denied his request because it found that Respondent had "not presented to the Board evidence sufficient to establish his ability to safely and competently resume the practice of medicine and surgery." In its last denial dated September 23, 2014, the Board stated that it would not consider any further request to terminate or rescind the suspension prior to March 31, 2015. (Div. Ex. 3, pp. 1-3; Hrg. Tr., pp. 53-56)

7. Respondent's license to practice medicine and surgery in Wisconsin remains suspended, and has been suspended continuously since September 19, 2012. (Complaint, ¶ 5; Answer, ¶ 5)

Current Disciplinary Proceeding

8. The Department opened case number 15 MED 025 against Respondent upon receiving information that Respondent was identified as the Medical Director of Renu Medical Laser Clinic. (Resp. Ex. I; Hrg. Tr., pp. 22, 35)

9. A "teaser sheet" for RENU Medical Laser Clinic created by David Church¹ for the purpose of securing investors, states as follows. "Business objective is to open a Medical laser Clinic with a focus on cosmetic/aesthetic laser procedures performed by highly skilled medical personnel using the latest technology at a price point that is affordable by the masses." According to the teaser sheet, the clinic would focus on "hair, age spots, tattoo removal, face/neck lift, cellulite and vein treatments." Pellman is listed as the "Medical Director" and he is characterized as follows: "Dr. Pellman has 20 years experience in this field as a leading practitioner and multi-clinic business owner." The sheet lists as an investor bonus: "Every investor of at least one Class A Unit will be able to access all of the center's laser services at no cost, to include spouse or significant other." Div. (Div. Ex. 4, p. 2)

10. Regina Reynolds is a consumer protection investigator for the Department, and was assigned to investigate this matter. (Hrg. Tr., p. 22)

11. Reynolds used the fictitious name, "Ann Kramer," for a Google email account while investigating this matter. Reynolds, using the name Ann Kramer, posed as a prospective investor in, and patient of, Respondent's business. (Div. Ex. 5; Hrg. Tr., pp. 23-24)

12. Reynolds had also approached Respondent's associate, David Church, to express an interest in both being a patient and a potential investor in this business. (Hrg. Tr., p. 25)

¹ The Division served Church with a subpoena to appear for the hearing; however, he failed to appear. (Hrg. Tr., pp. 28-29)

13. An email from Respondent to Reynolds dated May 19, 2015 states:

[F]rom 2006 through 2010 I was the leading physician in the entire nation in laser treatments of varicose veins, then very unfortunate circumstances occurred in my life however it has resulted in this business opportunity, there have been recent significant advances in laser technology, I can explain all of the above in very great detail however in the meantime I will offer you a free consultation to evaluate your needs and come up with a treatment plan, as an investor all of these treatments would be free, David Church as the venture capitalist is handling all of the business dealings, we are looking forward to proceeding with this new clinic ASAP so if you do have an interest please contact David Church, thank you

[sic] (Div. Ex. 5, p. 1; Hrg. Tr., p. 25)

14. An email from Reynolds to Respondent dated May 29, 2015 states:

I won't be able to make it over to Milwaukee for a few weeks and hope you can share some more information as I prepare for a consult. Will you be conducting the evaluation, or is there another physician who does that? How many procedures have you completed? What type of technology is involved? How many physicians will be involved with the clinic? Will the veins be gone for good or is there a chance they can reoccur? What kind of risks are involved?

(Div. Ex. 5, p. 1; Hrg. Tr., p. 26)

15. A few hours after the preceding email was sent from Reynolds on May 29, 2015, Respondent responded by email:

I do the consultations. I was the first physician trained in the state of Wisconsin to perform endovenous laser ablation of varicose veins, I am one of the leading physicians in the entire nation, having performed more than 7000 of these procedures, great saphenous vein laser ablation enjoys a success rate of 99%. You can expect some bruising and having to wear compression stockings for one week post procedure. We offer a total of five distinct treatments for varicose vein's and we customize these treatment procedures to provide the best outcome for our patients. I am a solo independent physician and no other physicians are involved. I do house calls so as there is no need for you to come to Milwaukee I can come to your place, do the consultation, and also present this very lucrative opportunity to be part of this medical service, we are in the final stages of proceeding with this investment opportunity, of course, David Church is the venture capitalist and he is the best person to answer all of your financial questions, expected return of investment, etc. part of our incentive package is to perform all laser services provided by the clinic to investors and their significant others at no charge.

[sic] (Div. Ex. 5, p. 1; Hrg. Tr., pp. 26-27, 66-67)

16. During Reynolds' correspondence with Respondent, Respondent never indicated that his license was suspended. (Hrg. Tr., pp. 27-28, 67)

17. At some point during her investigation, Reynolds went to the address of the building where she believed Respondent's business would be; however, there was no medical center there. (Hrg. Tr., p. 43 Resp. Ex. B)

18. At hearing, Respondent introduced what he claimed to be a screen shot from his cell phone. The screen shots contain no names of the senders of the texts; however, Respondent represented that they were between himself and Church, with Respondent's texts appearing in blue. The exchange also does not contain dates, although it appears to be sometime on or prior to May 31, 2015, as a date of May 31 (no year) appears at the bottom of the exchange, prior to another text which does not appear on the screen shot. The exchange at issue states:

[Respondent] Tony Corona got cold feet until I talked to him about the judgments so I want you to follow up with him and he was going to talk to Brett Rose this weekend also please email Ann Kramer and see if there's anything viable there

[Church] Ann Kramer is a ghost. I will circle back w Tony and my others in a day or do. Brent is out in my opinion

[Respondent] Ok I think ann Kramers is a federal agent

[Church] Fed????? What ru doing wrong?

[Respondent] Nothing I'm just paranoid & they are evil

[sic] (Resp. Ex. F; Hrg. Tr., pp. 45-46, 92-93, 103-104)

DISCUSSION

Burden of Proof

The burden of proof in disciplinary proceedings is on the Division to show by a preponderance of the evidence that the events constituting the alleged violations occurred. Wis. Stat. § 440.20(3); *see also* Wis. Admin. Code § HA 1.17(2). To prove by a preponderance of the evidence means that it is "more likely than not" that the examined action occurred. *See State v. Rodriguez*, 2007 WI App. 252, ¶ 18, 306 Wis. 2d. 129, 743 N.W.2d 460, citing *United States v. Saulter*, 60 F.3d 270, 280 (7th Cir. 1995).

Violations

If the Board determines that a licensee has engaged in unprofessional conduct, it may warn or reprimand the licensee, or limit, suspend or revoke any license granted by the Board. Wis. Stat. § 448.02(3)(c). Unprofessional conduct is defined by Wis. Admin. Code § Med 10.03, which states, in relevant part:

Unprofessional conduct. "Unprofessional conduct" includes the following, or aiding or abetting the same:

(1) DISHONESTY AND CHARACTER.

(a) Violating or attempting to violate ch. 448, Stats., or any provision, condition, or term of a valid rule or order of the board.

(2) DIRECT PATIENT CARE VIOLATIONS.

(a) Practicing or attempting to practice under any license when unable or unwilling to do so with reasonable skill and safety. A certified copy of an order issued by a court of competent jurisdiction finding that a person is mentally incompetent is conclusive evidence that the physician was, for any period covered by the order, unable to practice medicine and surgery with reasonable skill and safety.

Respondent practiced medicine without a valid license, in violation of Wis. Stat. § 448.03(1)(a), and thereby also engaged in unprofessional conduct in violation of Wis. Stat. § 448.02(3) and Wis. Admin. Code § Med 10.03(1)(a).

Wisconsin Stat. § 448.03(1)(a) states that "[n]o person may practice medicine and surgery, or attempt to do so or make a representation as authorized to do so, without a license to practice medicine and surgery granted by the board." The phrase, "practice of medicine and surgery," is defined by Wis. Stat. § 448.01(9), which states:

448.01 Definitions. In this chapter:

(9) "Practice of medicine and surgery" means:

(a) To examine into the fact, condition or cause of human health or disease, or to treat, operate, prescribe or advise for the same, by any means or instrumentality.

(b) To apply principles or techniques of medical sciences in the diagnosis or prevention of any of the conditions described in par. (a) and in sub. (2).

(c) To penetrate, pierce or sever the tissues of a human being.

(d) To offer, undertake, attempt or do or hold oneself out in any manner as able to do any of the acts described in this subsection.

In the instant case, Respondent offered, attempted and held himself out as able to perform the acts set forth in (a) and (b). He offered, attempted and held himself out to be able to examine Reynold's health condition of varicose veins and to advise and treat her for this condition. He offered, attempted and held himself as able to apply principles or techniques of medical science in the diagnosis of this condition. Specifically, Respondent informed Reynolds that he had been the "leading physician in the entire nation in laser treatments of varicose veins," until some unfortunate circumstances occurred in his life. He further stated that "there have been recent significant advances in laser technology," that he could explain all of this "in very great detail," and that "in the meantime," he could offer her a "free consultation to evaluate [her] needs and come up with a *treatment plan*." (emphasis added) He also represented to Reynolds that he did the consultations, that he was "the first physician trained in the state of Wisconsin to perform endovenous laser ablation of varicose veins," and was "one of the leading physicians in the entire

nation, having performed more than 7000 of these procedures.” He advised that “great saphenous vein laser ablation enjoys a success rate of 99%,” and that she could “expect some bruising and having to wear compression stockings for one week post procedure.” He further informed her that the clinic “offer[s] a total of five distinct treatments for varicose vein[s]” and would “customize these treatment procedures to provide the best outcome for our patients.” He also stated, “I am a solo independent physician and no other physicians are involved,” and that he does house calls and could come to her house to do the “consultation.” This conduct constitutes the “practice of medicine and surgery” under Wis. Stat. § 448.01(9).

At hearing, Respondent first suggested that the emails Reynolds exchanged with Respondent’s email address were not in fact with Respondent, even though he confirmed that the email address used was his. (Hrg., Tr., pp. 33-34, 60) However, he later contradicted this suggestion, stating that he believed “Ann Kramer” to be a federal agent, never saw her as a potential patient or investor, and was attempting to “draw her out” and find out why he was being harassed. (Hrg. Tr., pp. 46, 63-64, 74)

Respondent’s statements are not only contradictory but they also lack credibility. With respect to his first statement, Respondent admitted that the email address used to correspond with “Ann Kramer” was his, and he presented no evidence or argument as to why someone would hijack his account and pretend to be him. In fact, he later admitted that it was indeed he emailing “Kramer” and that he did so because he believed her to be a federal agent and wanted to “draw her out” and find out why she was harassing him. This contention is likewise not credible in light of the very real way in which Respondent attempted to sell himself, his services and his business to her in his emails and did not attempt to gain any information regarding her. Even his own screen shot undermines his statement that he believed “Kramer” to be a federal agent in that he asks Church to contact “Kramer” and find out the extent of her interest. This directive is made at some point prior to making the flip-sounding comment about Ann Kramer being a federal agent, a comment he then attributes to his own “paranoia” and his belief that federal agents are “evil.” Moreover, even if Respondent did believe “Kramer” was a federal agent, this would not change the outcome of this case because Respondent nevertheless held himself out in his emails as a physician currently able and willing to evaluate and treat her for varicose veins, thereby practicing medicine without a valid license.

Respondent has also repeatedly argued that the clinic was not open and that he did not treat patients. However, both the statute and rule are clear that an attempt to do so or holding oneself out as being authorized or able to do so is sufficient to constitute a violation. *See* Wis. Stat. § 448.03(1)(a) (“No person may practice medicine and surgery, *or attempt to do so or make a representation as authorized to do so*, without a license. . . .”) (emphasis added); Wis. Stat. § 448.01(9)(d) (definition of “practice of medicine and surgery” includes “[t]o offer, undertake, attempt or do or hold oneself out in any manner as able to do any of the acts described in this subsection.”). Here, Respondent clearly held himself out as a practicing physician who was currently able to examine, diagnose and treat Reynolds for a health condition, namely, varicose veins. Respondent’s emails used the present tense in referring to his status as a physician and his ability to perform the evaluation and treatments related to varicose veins. He never once indicated to Reynolds that his license to practice medicine and surgery was indefinitely suspended, that he had been denied reinstatement, that he was working toward having his license

reinstated, or that his evaluation or treatment of Reynolds was contingent upon his license being reinstated.

Respondent also suggested in his closing argument that he was the subject of entrapment. (Hrg. Tr., pp. 113-114). Respondent has not shown that this defense, available in criminal proceedings, is applicable in professional disciplinary proceedings, nor has he established that the elements of entrapment were met.

Respondent has also repeatedly suggested that the teaser sheet could have been altered. He offers no proof whatsoever that any alteration occurred. Moreover, even without the teaser sheet, the result in this case would be the same. Based solely on Respondent's own words in his emails to Reynolds, the Division met its burden of establishing that Respondent engaged in the practice of medicine and surgery, or attempted to do so, without a valid license. This is not only a violation of Wis. Stat. § 448.03(1)(a), but also constitutes unprofessional conduct under Wis. Stat. § 448.02(3) and Wis. Admin. Code § Med 10.03.

Respondent engaged in unprofessional conduct under Wis. Admin. Code § Med 10.03(1)(a) and (2)(a) by practicing or attempting to practice under any license when unable or unwilling to do so with reasonable skill and safety.

In practicing medicine without a valid license, Respondent necessarily also practiced or attempted to practice while unable or unwilling to do so with reasonable skill and safety. Licensure is a necessary component to practicing medicine with reasonable skill and safety. However, even if that were not true, at the time of Respondent's conduct, the Board had recently determined, on four prior occasions that Respondent was unable to practice with reasonable skill and safety, first in its 2012 Final Decision and Order adopting the ALJ's proposed decision and then on three subsequent occasions, when denying Respondent's request for reinstatement. The Board's determination was in effect at the time Respondent attempted and held himself as authorized and able to practice medicine on Kramer/Reynolds. Respondent's conduct constitutes a violation of Wis. Admin. Code § Med 10.03(1)(a) and (2)(a).

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. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division requests that Respondent's license to practice medicine and surgery be revoked. This discipline is appropriate under the circumstances here and the factors set forth in *Aldrich*. With respect to the first factor, it is evident that Respondent has not been rehabilitated, and is unlikely to become so. Respondent's license was indefinitely suspended in 2012 based on his federal convictions for 16 felonies involving possession and distribution of fentanyl outside of his medical practice and not for legitimate medical purposes, and obtaining morphine sulfate by fraud and deception. Despite his conviction, his time served in federal prison, the serious discipline by the Board and its subsequent determination that Respondent was not fit to safely

and competently resume the practice medicine, Respondent continued to violate the laws related to his profession.

The record also demonstrates that the public needs to be protected from Respondent's conduct. He appears to be oblivious to the seriousness of his misconduct, both past and present, and in fact denies that he engaged in any wrongdoing at any time. Despite the fact that his license was suspended, Respondent indicated to at least one member of the public that he was able and willing to practice medicine.

Finally, the interests of deterrence are best served by ordering revocation of Respondent's license when Respondent has ignored Board orders suspending his license and prohibiting him from practicing medicine. Licensees need to be on notice that they cannot flagrantly disregard the Board's orders without consequences commensurate with the seriousness of their misconduct and with prior discipline imposed by the Board.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. With respect to imposition of costs, factors to consider include: (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 cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, Order No. LS 0802183 CHI (Aug. 14, 2008).

The Division requests that full costs of these proceedings be imposed on Respondent. I conclude that the Division's request is appropriate. Although there was only one count charged and proven, Respondent's violation was serious – attempting to practice medicine and surgery without a valid license after having his license indefinitely suspended by the Board. The level of discipline sought by the Division is the most severe available, license revocation, and it has been granted in this case. The only factor operating in Respondent's favor is his cooperation in this proceeding, with Respondent participating at all stages, although denying all wrongdoing. With regard to prior discipline, as noted, Respondent was recently disciplined by the Board in 2012, resulting in indefinite suspension of his license, and was also informed by the Board in three subsequent orders that he was not fit to safely and competently resume his practice of medicine. Finally, it would be unfair to impose the costs of this proceeding on members of the medical profession who have not engaged in such misconduct.

CONCLUSIONS OF LAW

1. The Division met its burden of establishing that Respondent practiced medicine and surgery without a valid license, in violation of Wis. Stat. § 448.03(1)(a), and that he thereby engaged in unprofessional conduct, in violation of Wis. Stat. § 448.02(3) and Wis. Admin. Code § Med 10.03(1)(a).

2. The Division met its burden of establishing that Respondent engaged in unprofessional conduct under Wis. Admin. Code § Med 10.03(1)(a) and (2)(a) by practicing or attempting to practice under any license when unable or unwilling to do so with reasonable skill and safety.

3. Under the facts of record, revocation of Respondent's license is warranted pursuant to the factors delineated in *Aldrich*.

4. Imposition of the costs of these proceedings on Respondent is appropriate under the facts of this case and the Department's prior decision in *Buenzli-Fritz*.

ORDER

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

1. Respondent's license to practice medicine and surgery in the State of Wisconsin (No. 25006-20) is REVOKED.

2. Respondent shall pay all recoverable 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:

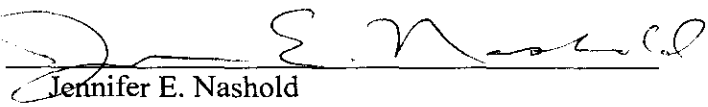
Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

3. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

4. The above-captioned matter is hereby closed as to Respondent Roger A. Pellmann.

Dated at Madison, Wisconsin on November 30, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 
Jennifer E. Nashold
Administrative Law Judge