

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

JOHN E. Martin, Jr. M.D.,
RESPONDENT.

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FINAL DECISION AND ORDER
91 MED 224

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

John E. Martin, Jr. M.D.
559 Alder Avenue
Delavan, WI 53115

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

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The 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 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

1. Respondent John E. Martin, Jr., M.D., is and was at all times relevant to the facts set forth herein a physician and surgeon licensed in the State of Wisconsin pursuant to license # 11634.

2. The Respondent did, on and after his retirement in August 1990, continue to prescribe Fiorinal for his daughter, with whom he lives. There are no notations in the daughter's medical chart for this medication, although other medications are listed. Since his retirement, at least three prescriptions (representing 1200 Fiorinal) for this medication for his daughter appear to have been made without respondent's authorization, by using his prescription pad imprinted with his DEA number and a rubber stamp of his signature. In total, over 2200 Fiorinal have been provided to the patient between September 1990 and June 1991, with and/or without respondent's prescription.

3. Respondent presently suffers from multiple sclerosis, and is confined to a wheelchair. He is unable to manually write, but can use a typewriter and computer keyboard. He is 62 years old, and has agreed to confine his practice to treating himself and his immediate family, and without prescribing any controlled substances. There is no evidence that respondent's mental faculties are in any way impaired.

CONCLUSIONS OF LAW

3. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to § 448.02(2), Wis. Stats.

4. The Board is authorized to enter into the attached Stipulation pursuant to § 227.44(5), Wis. Stats.

5. The conduct described in paragraph 2, above, violated § MED 10.02(2)(h), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the license of John E. Martin, Jr., M.D. is hereby LIMITED in the following respect: respondent shall forthwith surrender his DEA controlled substances prescribing certificate and privileges, and shall not apply for such privileges in the future. He shall not prescribe or acquire, or attempt to prescribe or acquire, any controlled substance except for a valid medical purpose and as prescribed by another authorized prescriber for his personal use. Respondent shall also surrender to the board's representative all prescription blanks bearing his DEA number, and acquire no other such forms.

Dated this 19th day of November, 1992.

WISCONSIN MEDICAL EXAMINING BOARD

by: B. Ann Nevaizer
B. Ann Nevaizer, Secretary *B*

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ATY2-2961

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

JOHN E. Martin, Jr. M.D.,
RESPONDENT.

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STIPULATION
91 MED 224

It is hereby stipulated between the above Respondent, personally on his own behalf, and the Department of Regulation and Licensing, Division of Enforcement by its undersigned attorney as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.
2. Respondent is aware of and understands his rights with respect to disciplinary proceedings, including the right to a statement of the allegations against him; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel attendance of witnesses by subpoena; the right to testify personally; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. By entering into this Stipulation, Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.
4. Respondent is aware of his right to seek legal representation and has been provided the opportunity to seek legal advice prior to execution of this Stipulation.
5. With respect to the attached Final Decision and Order, Respondent admits the facts set forth in the Findings of Fact, and further agrees that the Board may reach the conclusions set forth in the Conclusions of Law, and may enter the Order.
6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that either the Board or the Respondent has been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. If the Board accepts the terms of this Stipulation, the parties to this Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

8. Respondent agrees that an attorney for the Division of Enforcement may appear at any deliberative meeting of the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, with respect to this Stipulation but that appearance is limited to statements solely in support of this Stipulation, and to answering questions asked by the Board and its staff, and for no other purpose.

9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

10. Respondent is informed that should the board adopt this stipulation, the board's final decision and order adopting the terms of the stipulation will be published in the Monthly Disciplinary Report issued by the department, and a summary of the order adopting the terms of the stipulation shall be published in the Wisconsin Regulatory Digest issued semiannually by the department, all of which is standard Department policy and in no way specially directed at Respondent.

11/12/92
Date

J. E. Martin MD
Respondent

11/10/92
Date

Arthur Thexton
Prosecuting Attorney
Division of Enforcement

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Medical Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Medical Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Medical Examining Board.

The date of mailing of this decision is _____
November 23, 1992.