

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

MARK L. THAYER, M.D.,
RESPONDENT.

FINAL DECISION AND ORDER
94 MED 83

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

Mark L. Thayer, M.D.
1380 Northpoint Road
St. Croix Falls, WI 54024

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 Mark L. Thayer (dob 10/29/53) 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 #32528, first granted on 7/24/91. Respondent is a general surgeon. Respondent is licensed only in Wisconsin and Minnesota.

2. The Respondent did, on January 15, 1994, have his license to practice medicine and surgery in the state of Minnesota suspended and subjected to other discipline, on grounds that respondent is chemically dependent. A copy of the Order is attached, for information and reference. On April 8, 1994, the Minnesota Board of Medical Practice lifted the suspension, under conditions and restrictions which remain in force, effective April 15, 1994.

CONCLUSIONS OF LAW

3. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to §448.02(3), Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

WOMAN'S CLUB

4. The conduct described in paragraph 2, above, violated § Med 10.02(2)(q), 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 to practice medicine and surgery of Mark L. Thayer, M.D., is LIMITED in the following respects:

A. The Wisconsin Medical Examining Board adopts the paragraphs 4(a) through and including (6) of the order of the Minnesota Board of Medical Practice as its own. Respondent shall comply with all conditions of licensure imposed by the Minnesota Board of Medical Practice and shall not practice medicine and surgery unless in full compliance with those conditions.

B. Respondent shall keep on file with the Wisconsin Board current releases for his Minnesota Board disciplinary compliance file and all his medical charts and records, including those held by the Minnesota Board.

C. Respondent is subject to §448.02(3)(e), Wis. Stats.

D. Respondent shall cause all reports of his therapists, treating and supervising practitioners, and screening laboratories, to be sent directly to the Wisconsin Board simultaneously with their being sent to the Minnesota Board.


E. Before respondent's Wisconsin license is restored to unlimited status, respondent shall request and arrange for a personal meeting with the Wisconsin Medical Examining Board, and shall satisfy the Board that he will practice medicine with skill and safety to the public and avoid future unprofessional conduct.

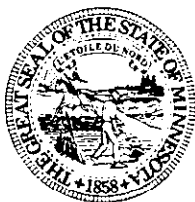
IT IS FURTHER ORDERED, that respondent shall pay the costs of investigating and prosecuting this matter in the amount of \$150, within 30 days of this order.

IT IS FURTHER ORDERED, that pursuant to §448.02(4), Wis. Stats., if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license and registration of respondent be summarily suspended pending investigation of the alleged violation.

Dated this 22 day of Jan, 1994.

WISCONSIN MEDICAL EXAMINING BOARD

by: 
Clark O. Olsen, Secretary



MINNESOTA BOARD OF MEDICAL PRACTICE

2700 University Avenue West, #106 St. Paul, MN 55114-1080 (612) 642-0538

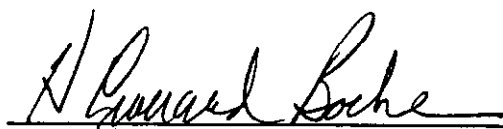
CERTIFICATION OF DISCIPLINARY ACTIONS

ORDER DATED January 15, 1994

IN THE MATTER OF: Mark L. Thayer, M.D.

CITY AND STATE OF: St. Paul, MN

I, H. Leonard Boche, Executive Director of the Minnesota Board of Medical Practice, Do hereby certify that the attached Board Order is a copy of the original official record on file in the office of the Minnesota Board of Medical Practice. As Executive Director, I am the official custodian of such documents and I have personally compared the attached copy with the original and find it to be a true and correct copy thereof.



H. Leonard Boche,
Executive Director
Minnesota Board of Medical Practice

(S E A L)

**BEFORE THE MINNESOTA
BOARD OF MEDICAL PRACTICE**

In the Matter of the
Medical License of
Mark L. Thayer, M.D.
Date of Birth: 10-29-53
License Number: 31,570

**STIPULATION AND
ORDER**

IT IS HEREBY STIPULATED AND AGREED, by and between Mark L. Thayer, M.D. ("Respondent"), and the Minnesota Board of Medical Practice ("Board") as follows:

1. At all times herein, Respondent was and now is duly licensed to practice medicine and surgery in the State of Minnesota and is subject to the jurisdiction of the Minnesota Board of Medical Practice ("Board").

FACTS

2. For the purpose of this stipulation, the Board may consider the following facts as true.

a. On January 11, 1990, Respondent was charged with DWI. Respondent was smoking a marijuana cigarette while driving at the time of his arrest on the DWI charge. Respondent had had two drinks several hours before smoking the marijuana. Respondent provided a urine sample following the arrest. A urine analysis performed by the Bureau of Criminal Apprehension, Minnesota Department of Public Safety, revealed the presence of morphine in addition to the alcohol and marijuana. Respondent denies having used morphine. The charge was continued for dismissal and was dismissed in January, 1991.

b. On June 30, 1991, Respondent was arrested for DWI and careless driving. The report of the arresting officer stated that Respondent's eyes were bloodshot and very watery, that Respondent had a hard time speaking and that, when the officer asked Respondent to step away from the vehicle, Respondent almost fell over.

Respondent refused to provide a blood, breath or urine sample. Respondent subsequently pled guilty to careless driving.

c. In August 1991, Respondent began his employment with St. Croix Valley Memorial Hospital, St. Croix Falls, Wisconsin and River Valley Medical Center, St. Croix Falls, Wisconsin.

d. On numerous occasions after Respondent began his employment, hospital staff, clinic staff and patients reported observing numerous signs that Respondent had been drinking, including the odor of alcohol on Respondent's breath, bloodshot eyes, inappropriate demeanor, profuse sweating, being short-tempered, having a flushed face, repeated use of breath mints, chewing gum or LifeSavers and erratic behavior. The reports of these signs referenced times when Respondent was:

- 1.) performing surgery;
- 2.) responding to a code involving a patient who arrested in ICU;
- 3.) driving a staff member from one location back to the hospital;
- 4.) consulting on a patient in ER;
- 5.) performing duties, including seeing patients, at the hospital;
- 6.) performing duties, including seeing patients, at the clinic;
- 7.) commencing an emergency cesarean delivery at 2:00 a.m.;
- 8.) at his home.

e. Staff also reported that there were "deficiencies" in Respondent's surgical skills. For example, Respondent could not do hernia operations by himself; he did not seem to know where body structures were. Respondent's surgical skills seemed weak at the beginning of his employment at the hospital. At the time, staff thought that Respondent's deficiencies might be due to inadequate training; however, Respondent's skills seemed to get worse over time, to the point where Respondent called a second physician in to assist on almost every surgery Respondent performed.

f. Another physician attempted to teach Respondent how to do the hernia operations, but it was apparent that Respondent could not learn it. The physician also

tried to train Respondent in other surgeries, e.g., vaginal hysterectomy, but it was very difficult for Respondent to learn this.

g. In the summer of 1993, Hospital Administration received written complaints alleging Respondent's breath smelled like alcohol while on duty. The complaints also alleged that Respondent exhibited erratic behavior while on duty. Subsequently, in August 1993, Respondent underwent a professional alcohol assessment at Fairview Riverside. The Evaluation Counselor's impression was that, "There is insufficient evidence to make a diagnosis at this time." However, several recommendations were made, including follow-up meetings with an evaluation counselor and random drug screens. Respondent agreed to follow through with the recommendations. Respondent failed to inform the Evaluation Counselor of his two DWI arrests.

h. Respondent has offered many excuses to explain why someone would mistakenly detect the odor of alcohol on his breath. Those excuses include: he has borderline diabetes which causes Ketosis; he uses mouthwash and tic tacs; and he has halitosis.

i. On November 10, 1993, Respondent left the facility for lunch. When Respondent returned to the facility at approximately 1:00 p.m., staff noticed Respondent had a very strong odor of alcohol, very red eyes and an unsteady gait. Staff refused to take call with Respondent because he had been staggering, his eyes were glossy, and his face was flushed.

j. Effective November 16, 1993, Respondent resigned from St. Croix Valley Memorial Hospital, St. Croix Falls, Wisconsin and River Valley Medical Center, St. Croix Falls, Wisconsin. On December 1, 1993, he reported to work at the clinic and hospital in Mora, Minnesota.

k. On December 3, 1993, the Board, through its Complaint Review Committee ("Committee"), issued an Order for Mental and Physical Examination based on probable cause to believe Respondent is unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, use of drugs, narcotics, chemicals

or any other type of material or as a result of a mental or physical condition, including deterioration through the aging process or loss of motor skills. The Order required Respondent to submit to the examination by Dr. Richard Irons on the Professional Assessment Team at Abbott Northwestern Hospital on December 12, 1993.

l. On December 10, 1993, while Respondent was driving a motor vehicle, he was involved in an accident. Respondent was charged with Hit and Run and DWI. A urine test at the time revealed Respondent to have had an alcohol concentration of .21.

m. On December 11, 1993, Respondent called Dr. Irons, told him about the December 10 arrest and admitted that he has an alcohol problem.

n. On December 12, 1993, Respondent began the evaluation required by the December 3, 1993 Order. The Professional Assessment Team, under Dr. Irons' direction, concluded that Respondent is chemically dependent with active alcoholism, middle stage and is in need of treatment therefor. Following the assessment, Respondent entered a treatment program at Fairview Riverside, where he acknowledged past cannabis use and a history of alcohol abuse.

STATUTES

3. The Board views Respondent's practices as inappropriate in such a way as to require Board action under Minn. Stat. § 147.091, subd. 1 (g), (k), (l) and (r) (1992) and Respondent agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify the disciplinary action.

REMEDY

4. Upon this stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Respondent does hereby consent that until further order of the Board, made after notice and hearing upon application by Respondent or upon the Board's own motion, the Board may make and enter an Order suspending his license for a period of three (3) months from the date of the Order. Respondent may petition the Committee to lift the suspension at the end of the three month period. Respondent shall appear before the Committee to discuss the petition and Respondent's

progress under the terms of this Stipulation and Order. Respondent must demonstrate compliance with the terms set forth in paragraph 4a-1 below. If the Committee is satisfied that Respondent has complied and progressed, the Committee may, by its own Order, lift the suspension. Upon issuance of the Committee's Order, Respondent's license to practice medicine and surgery in the State of Minnesota shall continue to be conditioned and restricted as follows:

a. Respondent shall obtain a treating physician, approved in advance by the Complaint Review Committee or its designee, to monitor and/or manage all medical or other care provided to Respondent by all health care professionals. Respondent shall provide all necessary records releases to enable Respondent's health care professionals to communicate with the treating physician pursuant to this paragraph. The treating physician shall provide quarterly reports to the Board summarizing medical or other care provided to Respondent and addressing Respondent's progress under any terms of this Stipulation and Order relating to Respondent's health status and recovery;

b. Respondent shall abstain completely from alcohol and all mood-altering chemicals unless they are prescribed by a physician or dentist who has been informed of Respondent's drug use history;

c. Respondent shall not prescribe or administer any legend drug for Respondent's own use or for Respondent's family members' use;

d. Respondent shall be subject, without notice, to unannounced blood and urine tests at the request of Board staff or other Board designee at least twelve (12) times per quarter. Blood and urine screens may be requested at any time. Respondent shall provide the requested sample within the time frame directed. The blood and urine screens shall be:

1) Collected and tested consistent with protocols established by a Board-designated laboratory;

2) Handled through legal chain of custody methods;

3) Paid for by Respondent.

e. The biological fluid collection and testing shall take place at a Board-designated laboratory as directed by the Board or its designee. Testing shall screen for opiates, cocaine, barbiturates, amphetamines, benzodiazepines, marijuana, and other drugs of abuse, including alcohol. The laboratory will provide test results directly to the Board and Respondent's treating physician. Ingestion of poppyseeds will not be accepted as a reason for a positive drug screen;

f. Respondent shall attend meetings of a self-help program such as AA or NA in support of abstinence at least eight (8) times per month. Quarterly reports shall be submitted to the Board from Respondent's designated sponsor(s) regarding attendance and participation;

g. Respondent shall attend monthly meetings of a professional support group such as PSP approved in advance by the Complaint Review Committee or its designee. Quarterly reports shall be submitted to the Board from Respondent's designated sponsor(s) regarding Respondent's attendance and participation;

h. Respondent shall provide to the Board and the treating physician a copy of any treatment or aftercare plan which is in effect at the time of execution of this Stipulation and Order or which is modified or becomes effective during the time Respondent is subject to this Stipulation and Order. The treatment or aftercare plan and any modifications to it shall be approved by the treating physician and shall include at least the following:

- 1) The treatment or aftercare plan activities;
- 2) The name, address, and telephone number for each provider of treatment or aftercare services.

i. The terms of any such treatment or aftercare plan or approved modification thereto, to the extent not superseded by this order, are herewith incorporated by reference. Failure to follow the plan or approved modification shall constitute violation of this order;

j. Upon request by the Board, Respondent shall sign releases authorizing the Board to obtain Respondent's medical, mental health or chemical abuse/dependency records from any treating professional or facility;

k. Respondent shall identify a work quality assessor who shall provide quarterly reports to the Board and to the treating physician regarding Respondent's overall work performance;

l. Respondent and a designated Board member or designee shall meet on a quarterly basis. It shall be Respondent's obligation to contact the designated Board member to arrange each of the meetings. The purpose of such meetings shall be to review Respondent's progress under the terms of this Stipulation and Order;

m. After two (2) years from the date of this Order, Respondent may petition the Complaint Review Committee to modify the terms of this paragraph 4, subparagraphs a-l. Respondent shall provide the Committee with documentation of compliance with the Order. The Committee, at its discretion and in consultation with the treating physician, may reduce the frequency of meetings, reports and biological fluid screens required by this Order;

n. This Stipulation and Order will remain in effect for a minimum of three (3) years from the date of this Order. At the end of this period, Respondent may petition for reinstatement upon proof satisfactory to the Board of three (3) years of documented, uninterrupted recovery. Upon hearing the petition, the Board may continue, modify or remove the conditions set out herein;

o. Upon Board approval of this Stipulation and Order, Respondent shall provide the Board with the addresses and telephone numbers of Respondent's residence and all work sites. Within seven (7) days of any change, Respondent shall provide the Board with new address and telephone number information.

5. Within ten days of the date of this order, Respondent shall provide the Board with a list of all hospitals at which Respondent currently has medical privileges and a list of all states in which Respondent is licensed or has applied for licensure. The information

shall be sent to the Board of Medical Practice, Suite 106, 2700 University Avenue West, St. Paul, Minnesota 55114.

6. It is Respondent's responsibility to ensure that all reports required to be filed with the Board pursuant to this Stipulation and Order are timely filed by those preparing the reports. If Respondent shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, the license of Respondent to practice medicine and surgery in the State of Minnesota shall be suspended immediately upon written notice by the Board to Respondent. The suspension shall remain in full force and effect until the Board terminates the suspension following a hearing on Respondent's petition to terminate. Nothing contained herein shall prevent the Board from revoking or suspending Respondent's license to practice medicine and surgery in the State of Minnesota after any such hearing.

7. In the event the Board in its discretion does not approve this settlement, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any disciplinary action by either party hereto except that Respondent agrees that should the Board reject this stipulation and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records relating hereto.

8. In the event Respondent should leave Minnesota to reside or practice outside the state, Respondent shall promptly notify the Board in writing of the new location as well as the dates of departure and return. Periods of residency or practice outside of Minnesota will not apply to the reduction of any period of Respondent's suspended, limited, or conditioned license in Minnesota unless Respondent demonstrates that practice in another state conforms completely with Respondent's Minnesota license to practice medicine.

9. Respondent has been advised by Board representatives that he may choose to be represented by legal counsel in this matter and has chosen to be so represented.


10. Respondent waives any further hearings on this matter before the Board to which Respondent may be entitled by Minnesota or United States constitutions, statutes, or

rules and agrees that the order to be entered pursuant to the stipulation shall be the final order herein.

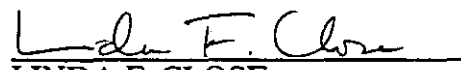
11. Respondent hereby acknowledges that he has read and understands this stipulation and has voluntarily entered into the stipulation without threat or promise by the Board or any of its members, employees, or agents. This stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this stipulation.

Dated: January 14, 1994


MARK L. THAYER, M.D.
Respondent


for MARGO S. STRUTHERS
Attorney for Respondent

3400 Plaza VII
45 South Seventh Street
Minneapolis, MN 55402
Telephone: (612) 344-9300

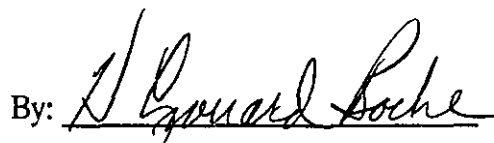

LINDA F. CLOSE
Attorney for Board

500 Capitol Office Building
525 Park Street
St. Paul, Minnesota 55103
Telephone: (612) 297-2040

Upon consideration of this stipulation and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the terms of this stipulation are adopted and implemented by the Board this 15th day of Jan, 1994.

MINNESOTA BOARD OF
MEDICAL PRACTICE

By: 

AFFIDAVIT OF SERVICE BY MAIL

Re: Matter of Mark L. Thayer, M.D.
License No. 31,570

STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss.


Cynthia O. Ransom, being first duly sworn, deposes and says:

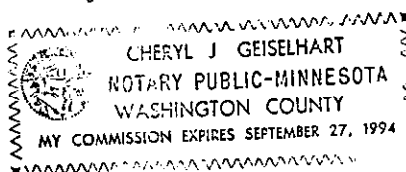
That at the City of St. Paul, County of Ramsey and State of Minnesota, on January 25, 1994, she served the attached STIPULATION AND ORDER by depositing in the United States mail at said city and state, a true and correct copy thereof, properly enveloped, with first class postage prepaid, and addressed to:

Margo S. Struthers
Oppenheimer Wolff & Donnelly
Plaza VII
45 South Seventh Street, Suite 3400
Minneapolis MN 55402


Cynthia O. Ransom

Subscribed and sworn to before me
this 25th day of January, 1994.


Notary Public





MINNESOTA BOARD OF MEDICAL PRACTICE

2700 University Avenue West, #106 St. Paul, MN 55114-1080 (612) 642-0538

PUBLIC DOCUMENT

April 12, 1994

Margo S. Struthers
Attorney at Law
3400 Plaza VII
45 South Seventh Street
Minneapolis, MN 55402

RE: Mark L. Thayer, M.D.
Date of Birth: 10/29/53
License Number: 31,570

Dear Ms. Struthers:

On January 15, 1994, the Minnesota Board of Medical Practice adopted and implemented a Stipulation and Order suspending Dr. Thayer's license to practice medicine and surgery in the State of Minnesota.

According to the terms of this Stipulation and Order, the Complaint Review Committee is authorized to lift Dr. Thayer's suspension after he has satisfied certain conditions.

On April 8, 1994, the Committee met with Dr. Thayer and decided that those certain conditions have been satisfied. Therefore, Dr. Thayer's suspension shall be lifted, effective April 15, 1994.

Dr. Thayer is reminded, however, that the remaining conditions and restrictions set forth in his January 15, 1994 Stipulation and Order remain in full force and effect.

Sincerely,

A handwritten signature in cursive script, reading "H. Leonard Boche".

H. Leonard Boche
Executive Director

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

MARK L. THAYER, M.D., :
RESPONDENT. :

STIPULATION
94 MED 83

It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, 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 agreement and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; 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 respondent; the right to call witnesses on respondent's 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 to respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has been provided the opportunity to seek legal advice before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. 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 the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

7. The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and view of the case acquired during the investigation.

Stipulation
Page 2

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

9. Respondent is informed that should the Board adopt this stipulation, the Board's final decision and order is a public record and will be published in the Monthly Disciplinary Report issued by the department. A summary of the order will be published in the Wisconsin Regulatory Digest issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent.

Mark L. Thayer June 2, 1994
Respondent Date

Arthur Thayer 6/9/94
Prosecuting Attorney Date
Division of Enforcement

John F. Wilcox June 7, 1994
Attorney for Respondent Date