

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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In the Matter of Disciplinary Proceedings Against  
SHELDON A. CHICKS, M.D.

LS 9403011 MED

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FINAL DECISION AND ORDER  
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The parties to this action for purposes of s. 227.53, Stats., are:

Sheldon A. Chicks, M.D.  
161 West Wisconsin Avenue  
Milwaukee WI 53203

FILE COPY

Medical Examining Board  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison WI 53708

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

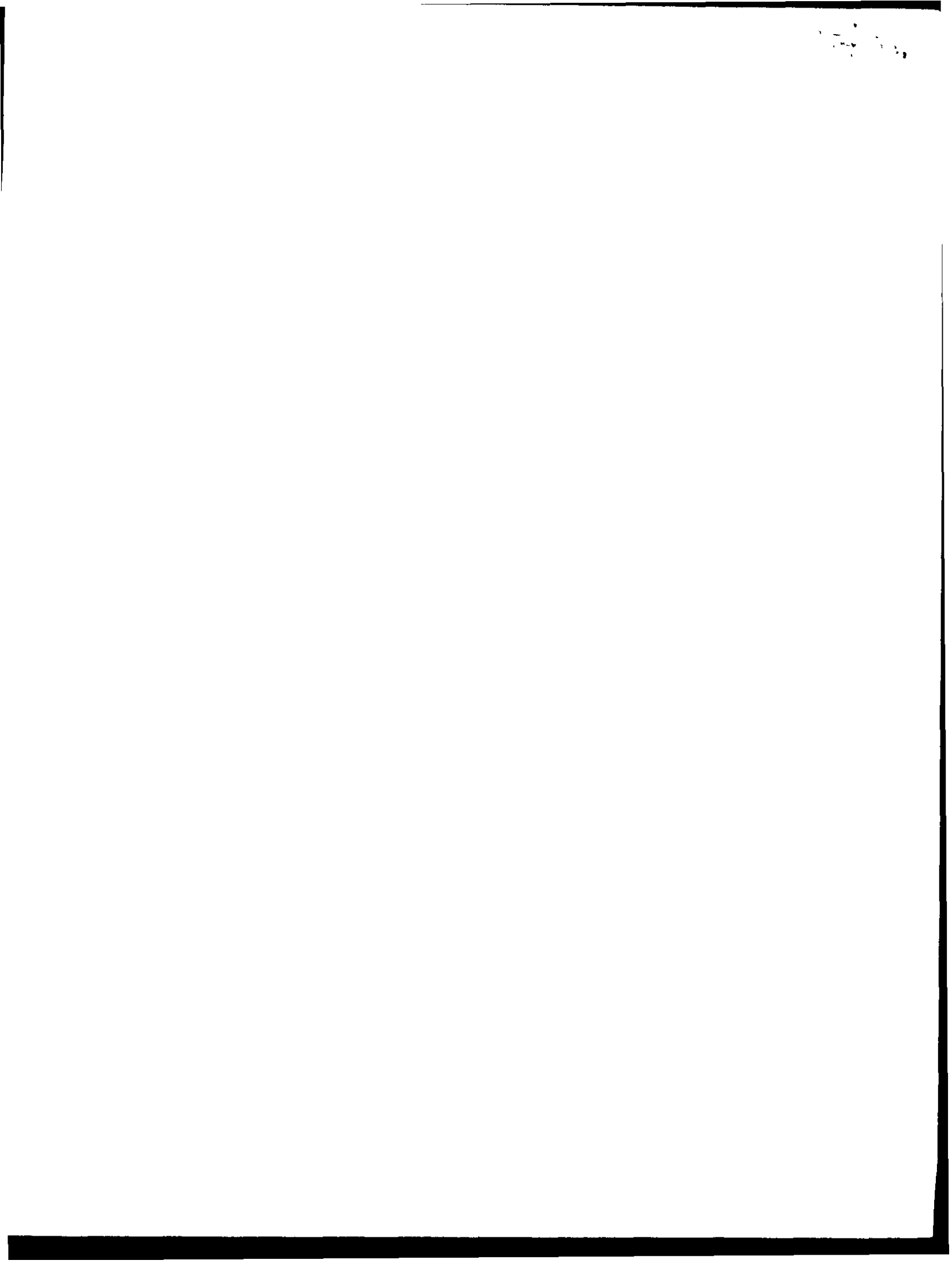
A Class 2 hearing was held in this matter on April 18, 1994. Respondent Sheldon A. Chicks, M.D., appeared in person and with counsel Joseph Fasi, II, of the firm Hinshaw & Culbertson, 100 East Wisconsin Avenue, Suite 2600, Milwaukee, Wisconsin 53202. Complainant Division of Enforcement appeared by Arthur Thexton. The administrative law judge filed his Proposed Decision on September 1, 1994, and the board considered the matter on October 19, 1994.

Based on the entire record in this matter, the Medical Examining Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Sheldon A. Chicks, M.D., was licensed to practice medicine and surgery in the state of Wisconsin on July 30, 1964. He specializes in the practice of psychiatry, and practices in the city of Milwaukee.

2. On Monday, February 7, 1994, at approximately 10:30 a.m., Dr. Chicks testified under oath in a proceeding before the department of regulation and licensing that for the previous week, he had consumed 1/2 liter of vodka each day, including having a glass of vodka that morning. At approximately 10:30 a.m. on February 7, 1994, Dr. Chicks submitted to a breath alcohol test on a



standard police portable breathalyzer, and tested 0.17% breath alcohol by weight. Respondent also testified that he had practiced medicine the previous week, but was unsure of which days he had practiced.

3. On certain days before February 7, 1994, Dr. Chicks practiced medicine while he was an untreated alcoholic who was consuming alcoholic beverages on a daily basis.

4. Between November 1, 1993, and February 7, 1994, Dr. Chicks practiced medicine while he was not registered to do so, having neglected to pay all assessments due to the Patients Compensation Fund.

### CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this matter pursuant to §448.02, Stats.

2. By practicing medicine while being an untreated alcoholic consuming alcoholic beverages on a daily basis, Dr. Chicks has violated §MED 10.02(2)(j), Wis. Admin. Code, practicing while unable to do so with reasonable skill and safety to his patients.

3. By practicing medicine without current registration because of failure to pay the assessments of the Patients Compensation Fund, Dr. Chicks was practicing without adequate malpractice insurance, posing a danger to the welfare of his patients, in violation of §MED 10.02(2)(h), Wis. Admin. Code.

### ORDER

NOW THEREFORE IT IS ORDERED that the license to practice medicine and surgery previously granted to Sheldon A. Chicks be and hereby is **SUSPENDED** for a period of not less than 5 years. The Board in its discretion may restore respondent's license to full, unlimited status upon petition by respondent, on a showing that respondent has complied with all terms and conditions of this Order, and a demonstration sufficient to the Board that respondent may practice medicine without limitation with reasonable skill and safety to his patients and the public.

1. **STAY OF SUSPENSION.** The suspension is **STAYED** for a period of three months, conditioned upon compliance with the conditions and limitations outlined in paragraph 2., below.

a. Respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the respondent for rehabilitation and practice during the prior three (3) month period.

b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that respondent has

violated any of the terms or conditions of this Order. If the Board denies the petition by the respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

c. Upon a showing by respondent of successful compliance for a period of five years with the terms of paragraph 2., below, the Board may grant a petition by the Respondent for return of full licensure.

d. The applications for extension under 1.a. and all required reports under 2.a-c. shall be due on each and every October 1st, January 1st, April 1st and July 1st for the period that this Order remains in effect.

2. CONDITIONS OF STAY AND LIMITATIONS. The initial stay of suspension and any subsequent stay shall be conditioned upon the following terms and limitations:

a. Non-Prescription Use of Drugs and Alcohol Prohibited. Respondent shall remain free of alcohol, prescription drugs and controlled substances not prescribed by a practitioner for legitimate medical purposes. Respondent shall have his physician report in writing to the supervising physician or therapist under paragraph 2.b.(1) all medications prescribed to the respondent within 3 days of such prescribing.

b. Rehabilitation, Monitoring and Treatment Program. Respondent shall continue to participate in a rehabilitation, monitoring and treatment program acceptable to the Board for the treatment of chemical abuse and dependency. Such program shall consist of the following elements and requirements:

(1) AODA Rehabilitation. Respondent shall continue to participate in an AODA rehabilitation program under the care and supervision of a qualified physician or therapist (hereinafter, "supervising physician or therapist"), at an accredited drug and alcohol abuse/dependency treatment facility. Respondent shall obtain from the Medical Examining Board prior approval of the drug and alcohol abuse/dependency treatment facility and the supervising physician or therapist. The McBride Center of Milwaukee Psychiatric Hospital, where respondent has been evaluated, is an approved facility. The supervising physician or therapist shall be responsible for the Respondent's total rehabilitation program. Respondent shall immediately provide a copy of this order to his supervising physician or therapist. Respondent shall participate in and comply with all recommendations for treatment, subject to the requirements of this order. If the supervising physician deems it appropriate, respondent shall consume Antabuse or other medication, as the supervising physician prescribes.

(2) Individual/Group Therapy. The rehabilitation program shall include and respondent shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the

supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the license under sec. 227.01(3) or 227.42, Wis. Stats., or Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

(3) AA Meetings. Respondent shall attend Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

(4) Screening. Respondent's rehabilitation program shall include and Respondent shall participate in a program of random, witnessed collection of breath, urine and/or blood specimens for monitoring for the presence of alcohol in his breath, blood and/or urine on a frequency of not less than twice per week:

All urine screens shall include testing and reporting of the specific gravity of the urine specimen, and shall be conducted by a NIDA-certified facility.

The random screening program shall include weekends and holidays for collection of specimens, and random timing of such screening throughout the hours of the day and evening. Failure of the screening program to be conducted on a random basis shall be deemed a violation of this Order and may result in denial of extension of Stay of Suspension, disapproval of the monitoring facility or program, or other action as deemed appropriate by the Board.

Respondent shall appear and provide a specimen not later than 5 hours following a request for a body fluid specimen, but in no event later than the same calendar date that the request is made. If a breath sample is requested, respondent shall immediately provide the sample.

If the physician or therapist supervising the respondent's plan of care, respondent's employer, the Medical Examining Board or the Department of Regulation and Licensing, Division of Enforcement deems that additional breath, blood or urine screens are warranted, including for controlled substances or other drugs, respondent shall submit to such additional screens as requested or recommended. The supervising physician or therapist shall

exceed the above stated minimum frequency for obtaining drug and alcohol screens to prevent ability of respondent to predict that no further screens will be required for a given period because the minimum frequency for that period has been met. Respondent shall also submit to such alcohol tests as an agent of the Board or department shall, from time to time, request, including by taking a standard police breath alcohol test (including by portable breathalyzer or by Intoxilyzer).

Respondent is responsible for obtaining a monitoring facility and reporting system acceptable to the Board. Respondent shall immediately provide a copy of this Order to the monitoring facility conducting the collection of specimen and/or chemical analyses upon specimens for the random witnessed drug and alcohol screening program.

To be an acceptable program, the monitoring facility and supervising physician and therapist shall agree to provide random and witnessed gatherings of specimens for analysis for all controlled substances and alcohol under NIDA collection guidelines. Any specimen that yields a positive result for any controlled substance or alcohol shall be immediately subjected to a gas chromatography-mass spectrometry (hereinafter, "GC-MS") test to confirm the initial positive screen results. The monitoring facility and supervising physician and therapist shall agree to immediately file a written report directly with the Medical Examining Board and the respondent's supervising physician upon any of the following occurrences: if the respondent fails to appear for collection of a specimen as requested; or if a drug or alcohol screen and confirmatory GC-MS test prove positive; or if the specific gravity of a urine specimen is below 1.008; or if respondent fails or refuses to give a specimen for analysis upon a request authorized under the terms of this Order. Respondent shall arrange for quarterly reports from the monitoring facility directly to the Board and to Respondent's supervising physician or therapist providing the dates and results of specimen analyses performed. Such reports shall be due on dates specified in paragraph 1.d. above.

The monitoring facility shall further agree to keep a record of all specimens collected and subjected to analysis. The facility shall further agree to preserve any blood or urine specimens which yielded positive results for any controlled substance or alcohol, or specific gravity below 1.008, pending further written direction from the Board, not to exceed one year.

Respondent understands and agrees that the accuracy of the monitoring facility obtained is respondent's responsibility. For purposes of further board action under this order, it is rebuttably presumed that all confirmed positive reports are valid. Respondent has the burden of proof to establish by a preponderance of the evidence an error in testing or fault in the chain of custody regarding a positive monitoring report.

(5) Quarterly Reports. Respondent shall arrange for quarterly reports from his supervising physician or therapist directly to the Board evaluating and reporting:

- (a) A summary of Respondent's progress in his rehabilitation program to date, and all recommendations for continuing rehabilitation treatment,
- (b) Respondent's attendance in AA or other similar program meetings,
- (c) Respondent's participation in and results of his random witnessed screening program.

Such quarterly reports shall be due on the dates specified under paragraph 1.d. of this Order.

(6) Immediate Reports. Respondent shall arrange for agreement by his supervising physician or therapist, and his employer, partners, associates, office sharing professionals, and personal staff, to report immediately to the Board any conduct or condition of respondent that may constitute a danger to the public in his practice of medicine, and any occurrence that constitutes a failure on the part of respondent to comply with the requirements of this Order or treatment recommendations by the supervising physician or therapist, including any indications of consumption of alcohol or unauthorized use of any controlled substances, failure to appear for a screening, notice of any positive breath, blood and/or urine screen for alcohol or controlled substances, and any urine specimen that is below a specific gravity of 1.008.

c. Practice of Medicine: Limitations and Conditions. Any practice of medicine by respondent during the term of this Order shall be subject to the following terms and conditions:

- (1) Full Compliance with Order Required. Respondent shall not practice as a physician in any capacity unless he is in full compliance with the rehabilitation and treatment programs as specified and approved under this Order.
- (2) Provision of Copy of Order to Employers. Respondent shall provide any employer, professional associate, or partner; any prospective employers, professional associates, or partners; any health care professional with whom he shares office space; and his personal office staff, with a copy of this Stipulation and Final Decision and Order immediately upon issuance of this Order, and upon any change in employment, or partnership status.
- (3) Monitoring of Access to Drugs. Respondent shall not receive or maintain an office supply, including samples, of any controlled substance.



(4) Immediate Reports. Respondent shall arrange for agreement by his office staff and any health care professional with whom he shares offices to report to the board any conduct or condition of respondent that may constitute a violation of this Order or a danger to the public.

d. Consents for Release of Information. Respondent shall provide and keep on file with his supervising physician/therapist and all treatment facilities and personnel current releases which comply with state and federal laws, authorizing release of all his medical and drug and alcohol counseling, treatment and monitoring records to the Medical Examining Board and the Department of Regulation and Licensing, Division of Enforcement, and permitting his supervising physician/therapist and treating physicians and therapists to disclose and discuss the progress of his treatment and rehabilitation and all matters relating thereto with the Medical Examining Board or its duly authorized representatives or agents. Copies of these releases shall be filed simultaneously with the Medical Examining Board and the Division of Enforcement. Respondent shall also provide and keep on file with his current employer(s) current releases authorizing release of all employment records and reports regarding respondent to the Medical Examining Board and the Division of Enforcement, and authorizing his employer to discuss with the Board or its authorized agents and representatives Respondents employment history, progress and status and all matters relating thereto. Copies of these employment records releases shall be filed simultaneously with the Board and the Division of Enforcement.

e. Notification of Change of Address and Employment. The Respondent shall report to the Board any change of employment status, residence address or phone number within five (5) days of any such change.

3. TERMS FOR MODIFICATION OF ORDER. Following successful compliance with and fulfillment of the provisions of paragraph 2. of this Order for a period of two years, the Respondent may petition the Board, in conjunction with an application for extension of the stay of suspension, for modification of the conditions or limitations for stay of suspension. Any such petition shall be accompanied by a written recommendation of respondent's supervising physician or therapist expressly supporting the specific modifications sought. A denial of such a petition for modification shall not be deemed a denial of license under §§227.01(3), or 227.42, Wis. Stats., or Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

4. RESPONDENT RESPONSIBLE FOR COSTS AND EXPENSES OF COMPLIANCE. Respondent shall be responsible for all costs and expenses of complying with this Order and for arranging any alternative means for covering such costs and expenses.

5. BOARD/DEPARTMENT INSPECTIONS. The Board or the Department in its discretion may conduct unannounced inspections and/or audits, and make copies of drug records and inventory where respondent is employed (including self-employed) as a physician.

6. VIOLATIONS OF ORDER. Violation of any of the terms of this Order or of any law substantially relating to the practice of medicine may result in a summary suspension of the Respondent's license; the denial of an extension of the stay of suspension or the termination of the stay; the imposition of additional conditions and limitations; or the imposition of other additional discipline, including revocation of license.

7. OTHER CONDITIONS. Respondent is subject to §448.02(3)(e), Wis. Stats., and shall have in force all insurance, and remain current in all payments, required under ch. 655, Wis. Stats.

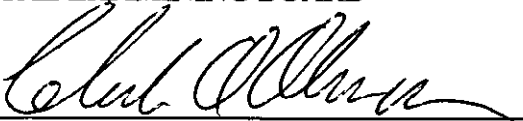
IT IS FURTHER ORDERED that Respondent shall pay the assessable costs of this disciplinary action to the Department of Regulation and Licensing, by November 1, 1995, pursuant to §440.22, Wis. Stats.

#### EXPLANATION OF VARIANCE

The board has accepted the Proposed Decision of the administrative law judge in its entirety, with one exception. The proposed order recommends at section 2.b.(4) that Dr. Chicks participate in a program of random, witnessed collection of breath, urine and/or blood specimens for monitoring for the presence of alcohol on a frequency of not less than four times per month for the first year of the order, with the frequency dropping to two times per month for the second through fifth year of the order. The board considers it imperative that at the early stages of Dr. Chicks' recovery, the frequency of screens be sufficiently frequent to encourage full compliance with the program. Accordingly, the board orders that Dr. Chicks submit to screens a minimum of twice per week during the initial period of the order. The board has also deleted that part of the suggested monitoring provision which would automatically reduce the number of screens after one year. As Dr. Chicks' recovery progresses and stabilizes, he may certainly petition the board to reduce the frequency of required screens, but the board must retain discretion to use its own judgment in determining when that reduction is appropriate.

Dated this 27 day of October, 1994.

STATE OF WISCONSIN  
MEDICAL EXAMINING BOARD

by 

Clark O. Olsen, M.D.

Secretary

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## NOTICE OF APPEAL INFORMATION

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**Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.**

**Serve Petition for Rehearing or Judicial Review on:**

THE STATE OF WISCONSIN MEDICAL EXAMINING BOARD.

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1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708.

**The Date of Mailing this Decision is:**

NOVEMBER 1, 1994.

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### 1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

### 2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

## SECTIONS 227.49 AND 227.53, OF THE WISCONSIN STATUTES

**227.49 Petitions for rehearing in contested cases.** (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

**227.53 Parties and proceedings for review.** (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board or the savings bank review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 5.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

5. The savings bank review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings bank review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board and the savings bank review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

FILE COPY

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

In the Matter of Disciplinary Proceedings Against  
SHELDON A. CHICKS, M.D.

LS 9403011 MED

AFFIDAVIT OF COSTS, OFFICE OF BOARD LEGAL SERVICES

State of Wisconsin,  
County of Dane:


James E. Polewski, being first duly sworn on oath, deposes and says:

1. He is an attorney licensed to practice in the State of Wisconsin, employed by the Office of Board Legal Services, Department of Regulation and Licensing .
2. In the course of that employment, he was assigned to preside as Administrative Law Judge in the above captioned proceeding, and in the course of that assignment he expended the following time and committed the Department to the following costs:


Date	Activity	Time
3/16/94	Preside at prehearing conference	10 min.
3/21/94	Preside at prehearing conference	10 min.
4/5/94	Review, research motion to compel	1.5 hours
4/6/94	Motion hearing	30 min.
	Prepare order and letter	1 hour
4/18/94	Preside at hearing	7.25 hours
4/21/94	Research, writing	45 min.
8/26-31/94	Research, draft decision	5 hours
	TOTAL RECORDED TIME	16.3 hours

Total Assessable costs, Administrative Law Judge, 16.3 hours @\$32.22: \$ 525.19

Court Reporter and Transcript: \$ 989.60  
TOTAL ASSESSABLE COSTS, OFFICE OF BOARD LEGAL SERVICES: \$1514.79

  
James E. Polewski

Sworn and subscribed before me this 1st day of September, 1994.

  
Notary Public  
My Commission is Permanent

# FILE COPY

## STATE OF WISCONSIN BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :

SHELDON A. CHICKS, M.D., :  
RESPONDENT. :

**AFFIDAVIT OF COSTS**  
LS-9403011 MED  
93 MED 309a

STATE OF WISCONSIN)  
COUNTY OF DANE )

I, Arthur Thexton, being on affirmation, say:

1. That I am an attorney licensed in the state of Wisconsin and am employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;
2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter; and
3. That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

### PROSECUTING ATTORNEY EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
1/3/94	Investigative subpoena appearance (respondent did not appear), check license status.	0.8
2/1/94	Telephone conference with respondent, prepare additional copies of Petition and send to respondent.	0.5
2/2/94	Telephone conference with ALJ re: pretrial scheduling	0.3
2/3/94	Leave message for respondent at office re: pretrial.	0.2
2/7/94	Conduct Administrative Injunction hearing	4.0
2/7/94	Draft Complaint and summary suspension documents.	2.0
2/8/94	Telephone conference with PCF staff re: respondent's check.	0.2
2/10/94	Prepare final version of summary suspension petition and file.	
	Telephone conference with Dr. Benzer.	1.0
2/11/94	Letter to Dr. Factor, review Walgreens printout, memo to investigator.	1.5
3/4/94	Telephone conference with Dr. Sorkin. Telephone conference with Attorney Bush. Pretrial conference	0.8
3/7/94	Review file, prepare discovery, letter and stipulation to Attorney Bush.	2.0
3/14/94	Review Milwaukee County Hospital discharge summary, fax to Attorney Bush. Review proposed stipulation with Medical Prosecutor Team, revise and fax to Attorney Bush.	1.5
3/16/94	Pretrial conference. Telephone conference with Dr. Sorkin.	0.5
4/5/94	Receive and review Interrogatory responses and witness list. Prepare witness list, motions, and letter to ALJ.	1.5

## Affidavit of Costs

Page 2

4/7/94	Telephone conference with Attorney Fasi re: Treffert deposition. Arrange court reporter and travel. Telephone conference with Dr. Sorkin, prepare for deposition.	1.0
4/11/94	Telephone conference with Attorney Fasi. Stipulation draft.	1.0
4/12/94	Telephone conference with State Medical Society staff, several telephone conferences with Attorney Fasi, telephone conference with Board Advisor. Revise and send stipulation proposal.	2.0
4/13/94	Locate medical records at several facilities, arrange for pickup by DOE staff. Two telephone conferences with Attorney Fasi. Prepare \$146.82 requests and fax to Inv. Johnson. Prepare for deposition.	4.0
4/14/94	Prepare for deposition, travel to Fond du Lac, depose Dr. Treffert, return.	8.0
4/15/94	Prepare for trial.	8.0
4/16/94	Prepare for trial.	2.0
4/17/94	Prepare for trial.	2.0
4/18/94	Prepare for and conduct trial.	10.5
4/19/94	Negotiate and finalize interlocutory order.	2.0
4/20/94	Present Interlocutory Order stipulation to MEB, arrange issuance of Limited License.	1.5
4/20/94	Letter to ALJ with proposed Order.	1.5
4/26/94	Receive and review letter to ALJ from Attorney Fasi re: proposed Order.	0.3
5/3/94	Receive and review hearing transcript.	1.0
9/1/94	Receive and review Proposed Decision.	0.5
11/1/94	Receive and review MEB Final Order	0.4
2/9/95	Prepare Affidavit of Costs	2.0

## TOTAL HOURS

53.7 hours

Total attorney expense for 53.7 hours at \$41.00 per hour  
(based upon average salary and benefits for Division of Enforcement attorneys) equals:

\$ 2,201.70

## INVESTIGATOR EXPENSE FOR SUE SCHAUT

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
8/12/91	Prepare memos summarizing items received.	1.5
9/4/91	Interview witnesses.	6.0
11/24/93	Travel to Milwaukee, serve subpoena.	4.0
2/2/94	Travel to Milwaukee, serve Petition.	3.5

## TOTAL HOURS

15.0 hours

Total investigator expense for 15.0 hours and minutes at \$20.00 per hour  
(based upon average salary and benefits for Division of Enforcement investigators) equals:

\$ 300.00

**COSTS OF DEPOSITIONS**

Deposition of Darold Treffert, M.D.	\$ 244.30
Treffert Fee \$	472.50

**EXPERT WITNESS FEES**

Milwaukee Psychiatric Hospital examination.	\$ 3,869.81
Sheila Sorkin, M.D..	\$ 1125.00
Addictive Disease Medical Consultants examination	\$ 1408.00

**WITNESS FEES**

Cecilia Dobbs.	\$ 5.80
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**MISCELLANEOUS DISBURSEMENTS**

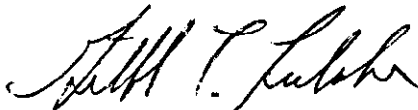
1. Medical records from Gimbel & Bortin	\$ 10.14
2. Medical records from Veterans Administration	\$ 3.00
3. Appearance fee for 1/3/94 court reporter	\$ 50.00
4. Travel to Milwaukee (twice) and Fond du Lac	\$ 120.00

<b>TOTAL ASSESSABLE COSTS</b>	<b>\$ 9,810.25</b>
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Arthur Thexton, Prosecuting Attorney

Subscribed to and affirmed before me this 10 day of February, 1995.



Notary Public  
My Commission is permanent.



STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

SHELDON A. CHICKS, M.D.,  
RESPONDENT.

NOTICE OF FILING  
PROPOSED DECISION  
LS9403011MED

TO: Joseph Fasi, II, Attorney  
Hinshaw & Culbertson  
100 East Wisconsin Avenue  
Milwaukee, WI 53202  
Certified P 205 985 972

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


PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Medical Examining Board by the Administrative Law Judge, James E. Polewski. A copy of the Proposed Decision is attached hereto.

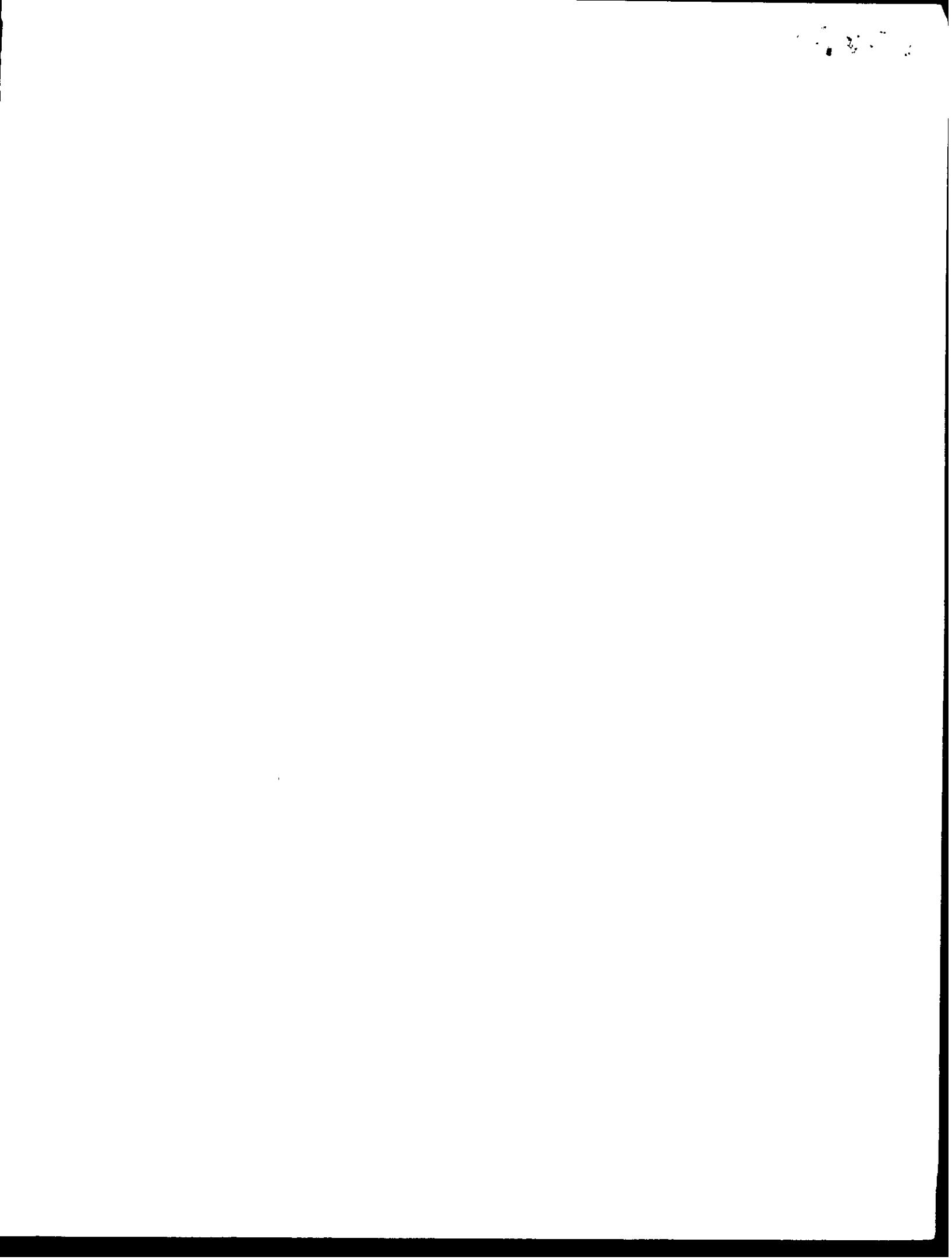
If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Medical Examining Board, Room 178, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before September 16, 1994. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Medical Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, together with any objections and arguments filed, the Medical Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 18<sup>th</sup> day of September, 1994.

  
James E. Polewski  
Administrative Law Judge



STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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In the Matter of Disciplinary Proceedings Against  
SHELDON A. CHICKS, M.D.

LS 9403011 MED

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PROPOSED DECISION

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The parties to this action for purposes of s. 227.53, Stats., are:

Sheldon A. Chicks, M.D.  
161 West Wisconsin Avenue  
Milwaukee WI 53203

Medical Examining Board  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison WI 53708

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

A Class 2 hearing was held in this matter on April 18, 1994. Respondent Sheldon A. Chicks, M.D., appeared in person and with counsel Joseph Fasi, II, of the firm Hinshaw & Culbertson, 100 East Wisconsin Avenue, Suite 2600, Milwaukee, Wisconsin 53202. Complainant Division of Enforcement appeared by Arthur Thexton.

The hearing was preceded by the issuance of a summary suspension of Dr. Chicks' license, pursuant to s. 448.02(4), Stats, and ch. RL 6, Wis. Admin. Code. The hearing was not a challenge to the summary suspension, but rather a disciplinary proceeding pursuant to s. 448.02, Stats., and ch. RL 2, Wis. Admin. Code.

Based on the entire record in this matter, the Administrative Law Judge recommends that the Medical Examining Board adopt the following Findings of Fact, Conclusions of Law and Order as its Final Decision in this matter.

### FINDINGS OF FACT

1. Sheldon A. Chicks, M.D., was licensed to practice medicine and surgery in the state of Wisconsin on July 30, 1964. He specializes in the practice of psychiatry, and practices in the city of Milwaukee.

2. On Monday, February 7, 1994, at approximately 10:30 a.m., Dr. Chicks testified under oath in a proceeding before the department of regulation and licensing that for the previous week, he had consumed 1/2 liter of vodka each day, including having a glass of vodka that morning. At approximately 10:30 a.m. on February 7, 1994, Dr. Chicks submitted to a breath alcohol test on a standard police portable breathalyzer, and tested 0.17% breath alcohol by weight. Respondent also testified that he had practiced medicine the previous week, but was unsure of which days he had practiced.

3. On certain days before February 7, 1994, Dr. Chicks practiced medicine while he was an untreated alcoholic who was consuming alcoholic beverages on a daily basis.

4. Between November 1, 1993, and February 7, 1994, Dr. Chicks practiced medicine while he was not registered to do so, having neglected to pay all assessments due to the Patients Compensation Fund.

### CONCLUSIONS OF LAW

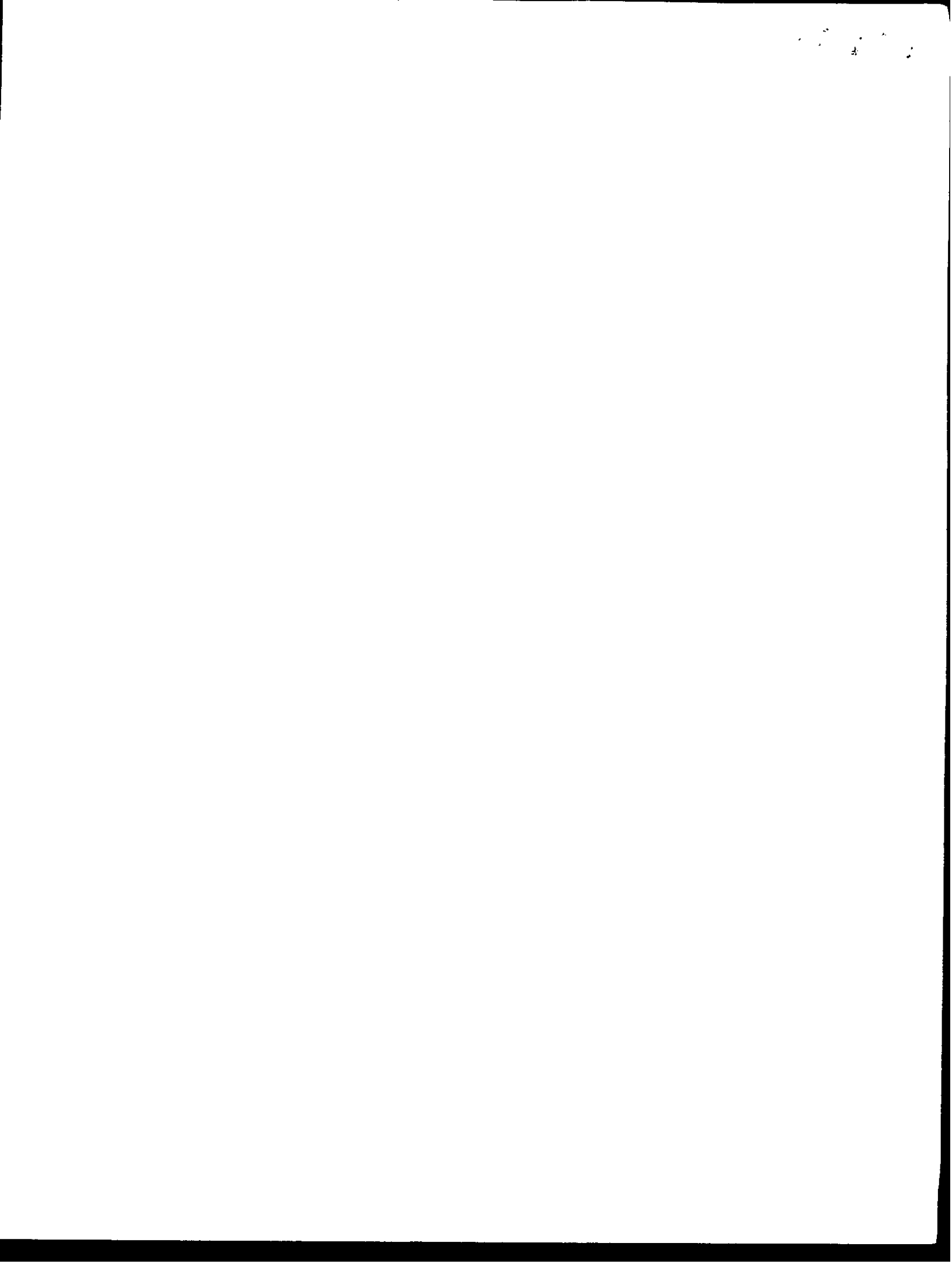
1. The Medical Examining Board has jurisdiction in this matter pursuant to §448.02, Stats.

2. By practicing medicine while being an untreated alcoholic consuming alcoholic beverages on a daily basis, Dr. Chicks has violated §MED 10.02(2)(j), Wis. Admin. Code, practicing while unable to do so with reasonable skill and safety to his patients.

3. By practicing medicine without current registration because of failure to pay the assessments of the Patients Compensation Fund, Dr. Chicks was practicing without adequate malpractice insurance, posing a danger to the welfare of his patients, in violation of §MED 10.02(2)(h), Wis. Admin. Code.

### ORDER

NOW THEREFORE IT IS ORDERED that the license to practice medicine and surgery previously granted to Sheldon A. Chicks be and hereby is **SUSPENDED** for a period of not less than 5 years. The Board in its discretion may restore respondent's license to full, unlimited status upon petition by respondent, on a showing that respondent has complied with all terms and conditions of this Order, and a demonstration sufficient to the Board that respondent may practice medicine without limitation with reasonable skill and safety to his patients and the public.



1. STAY OF SUSPENSION. The suspension is STAYED for a period of three months, conditioned upon compliance with the conditions and limitations outlined in paragraph 2., below.

a. Respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the respondent for rehabilitation and practice during the prior three (3) month period.

b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

c. Upon a showing by respondent of successful compliance for a period of five years with the terms of paragraph 2., below, the Board may grant a petition by the Respondent for return of full licensure.

d. The applications for extension under 1.a. and all required reports under 2.a-c. shall be due on each and every October 1st, January 1st, April 1st and July 1st for the period that this Order remains in effect.

2. CONDITIONS OF STAY AND LIMITATIONS. The initial stay of suspension and any subsequent stay shall be conditioned upon the following terms and limitations:

a. Non-Prescription Use of Drugs and Alcohol Prohibited. Respondent shall remain free of alcohol, prescription drugs and controlled substances not prescribed by a practitioner for legitimate medical purposes. Respondent shall have his physician report in writing to the supervising physician or therapist under paragraph 2.b.(1) all medications prescribed to the respondent within 3 days of such prescribing.

b. Rehabilitation, Monitoring and Treatment Program. Respondent shall continue to participate in a rehabilitation, monitoring and treatment program acceptable to the Board for the treatment of chemical abuse and dependency. Such program shall consist of the following elements and requirements:

(1) AODA Rehabilitation. Respondent shall continue to participate in an AODA rehabilitation program under the care and supervision of a qualified physician or therapist (hereinafter, "supervising physician or therapist"), at an accredited drug and alcohol abuse/dependency treatment facility. Respondent shall obtain from the Medical Examining Board prior approval of the drug and alcohol abuse/dependency treatment facility and the supervising physician or

therapist. The McBride Center of Milwaukee Psychiatric Hospital, where respondent has been evaluated, is an approved facility. The supervising physician or therapist shall be responsible for the Respondent's total rehabilitation program. Respondent shall immediately provide a copy of this order to his supervising physician or therapist. Respondent shall participate in and comply with all recommendations for treatment, subject to the requirements of this order. If the supervising physician deems it appropriate, respondent shall consume Antabuse or other medication, as the supervising physician prescribes.

(2) Individual/Group Therapy. The rehabilitation program shall include and respondent shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the license under sec. 227.01(3) or 227.42, Wis. Stats., or Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

(3) AA Meetings. Respondent shall attend Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

(4) Screening. Respondent's rehabilitation program shall include and Respondent shall participate in a program of random, witnessed collection of breath, urine and/or blood specimens for monitoring for the presence of alcohol in his breath, blood and/or urine on a frequency of not less than:

(a) Four times per month for the first year following the date of this order.

(b) Two times per month for the second through fifth year following the date of this order.

All urine screens shall include testing and reporting of the specific gravity of the urine specimen, and shall be conducted by a NIDA-certified facility.





The random screening program shall include weekends and holidays for collection of specimens, and random timing of such screening throughout the hours of the day and evening. Failure of the screening program to be conducted on a random basis shall be deemed a violation of this Order and may result in denial of extension of Stay of Suspension, disapproval of the monitoring facility or program, or other action as deemed appropriate by the Board.

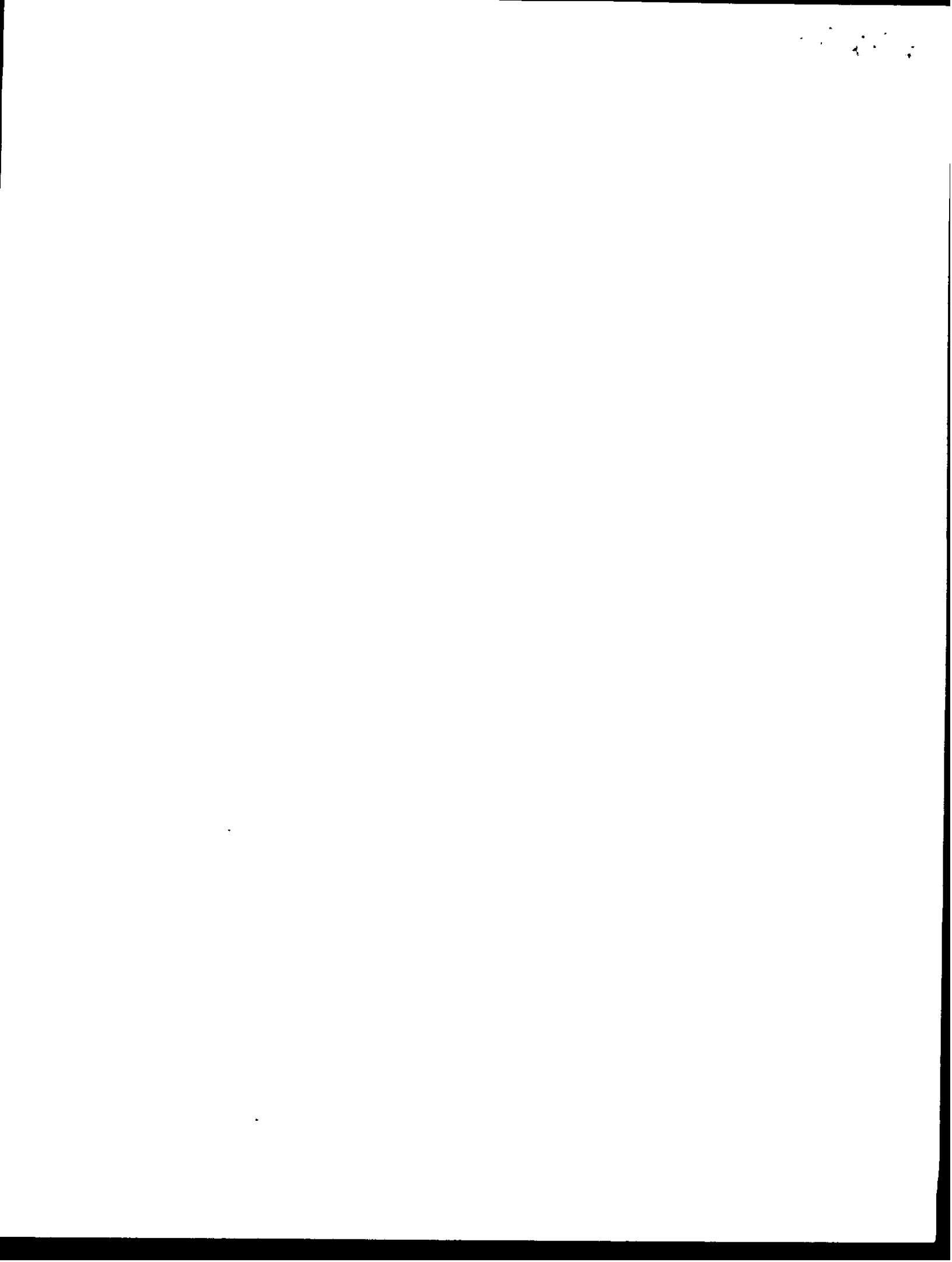
Respondent shall appear and provide a specimen not later than 5 hours following a request for a body fluid specimen, but in no event later than the same calendar date that the request is made. If a breath sample is requested, respondent shall immediately provide the sample.

If the physician or therapist supervising the respondent's plan of care, respondent's employer, the Medical Examining Board or the Department of Regulation and Licensing, Division of Enforcement deems that additional breath, blood or urine screens are warranted, including for controlled substances or other drugs, respondent shall submit to such additional screens as requested or recommended. The supervising physician or therapist shall exceed the above stated minimum frequency for obtaining drug and alcohol screens to prevent ability of respondent to predict that no further screens will be required for a given period because the minimum frequency for that period has been met. Respondent shall also submit to such alcohol tests as an agent of the Board or department shall, from time to time, request, including by taking a standard police breath alcohol test (including by portable breathalyzer or by Intoxilyzer).

Respondent is responsible for obtaining a monitoring facility and reporting system acceptable to the Board. Respondent shall immediately provide a copy of this Order to the monitoring facility conducting the collection of specimen and/or chemical analyses upon specimens for the random witnessed drug and alcohol screening program.

To be an acceptable program, the monitoring facility and supervising physician and therapist shall agree to provide random and witnessed gatherings of specimens for analysis for all controlled substances and alcohol under NIDA collection guidelines. Any specimen that yields a positive result for any controlled substance or alcohol shall be immediately subjected to a gas chromatography-mass spectrometry (hereinafter, "GC-MS") test to confirm the initial positive screen results. The monitoring facility and supervising physician and therapist shall agree to immediately file a written report directly with the Medical Examining Board and the respondent's supervising physician upon any of the following occurrences: if the respondent fails to appear for collection of a specimen as requested; or if a drug or alcohol screen and confirmatory GC-MS test prove positive; or if the specific gravity of a urine

100



specimen is below 1.008; or if respondent fails or refuses to give a specimen for analysis upon a request authorized under the terms of this Order. Respondent shall arrange for quarterly reports from the monitoring facility directly to the Board and to Respondent's supervising physician or therapist providing the dates and results of specimen analyses performed. Such reports shall be due on dates specified in paragraph 1.d. above.

The monitoring facility shall further agree to keep a record of all specimens collected and subjected to analysis. The facility shall further agree to preserve any blood or urine specimens which yielded positive results for any controlled substance or alcohol, or specific gravity below 1.008, pending further written direction from the Board, not to exceed one year.

Respondent understands and agrees that the accuracy of the monitoring facility obtained is respondent's responsibility. For purposes of further board action under this order, it is rebuttably presumed that all confirmed positive reports are valid. Respondent has the burden of proof to establish by a preponderance of the evidence an error in testing or fault in the chain of custody regarding a positive monitoring report.

(5) Quarterly Reports. Respondent shall arrange for quarterly reports from his supervising physician or therapist directly to the Board evaluating and reporting:

- (a) A summary of Respondent's progress in his rehabilitation program to date, and all recommendations for continuing rehabilitation treatment,
- (b) Respondent's attendance in AA or other similar program meetings,
- (c) Respondent's participation in and results of his random witnessed screening program.

Such quarterly reports shall be due on the dates specified under paragraph 1.d. of this Order.

(6) Immediate Reports. Respondent shall arrange for agreement by his supervising physician or therapist, and his employer, partners, associates, office sharing professionals, and personal staff, to report immediately to the Board any conduct or condition of respondent that may constitute a danger to the public in his practice of medicine, and any occurrence that constitutes a failure on the part of respondent to comply with the requirements of this Order or treatment recommendations by the supervising physician or therapist, including any indications of consumption of alcohol or unauthorized use of any controlled substances, failure to appear for a screening, notice of any positive

breath, blood and/or urine screen for alcohol or controlled substances, and any urine specimen that is below a specific gravity of 1.008.

c. Practice of Medicine: Limitations and Conditions. Any practice of medicine by respondent during the term of this Order shall be subject to the following terms and conditions:

(1) Full Compliance with Order Required. Respondent shall not practice as a physician in any capacity unless he is in full compliance with the rehabilitation and treatment programs as specified and approved under this Order.

(2) Provision of Copy of Order to Employers. Respondent shall provide any employer, professional associate, or partner; any prospective employers, professional associates, or partners; any health care professional with whom he shares office space; and his personal office staff, with a copy of this Stipulation and Final Decision and Order immediately upon issuance of this Order, and upon any change in employment, or partnership status.

(3) Monitoring of Access to Drugs. Respondent shall not receive or maintain an office supply, including samples, of any controlled substance.

(4) Immediate Reports. Respondent shall arrange for agreement by his office staff and any health care professional with whom he shares offices to report to the board any conduct or condition of respondent that may constitute a violation of this Order or a danger to the public.

d. Consents for Release of Information. Respondent shall provide and keep on file with his supervising physician/therapist and all treatment facilities and personnel current releases which comply with state and federal laws, authorizing release of all his medical and drug and alcohol counseling, treatment and monitoring records to the Medical Examining Board and the Department of Regulation and Licensing, Division of Enforcement, and permitting his supervising physician/therapist and treating physicians and therapists to disclose and discuss the progress of his treatment and rehabilitation and all matters relating thereto with the Medical Examining Board or its duly authorized representatives or agents. Copies of these releases shall be filed simultaneously with the Medical Examining Board and the Division of Enforcement. Respondent shall also provide and keep on file with his current employer(s) current releases authorizing release of all employment records and reports regarding respondent to the Medical Examining Board and the Division of Enforcement, and authorizing his employer to discuss with the Board or its authorized agents and representatives Respondents employment history, progress and status and all matters relating thereto. Copies of these employment records releases shall be filed simultaneously with the Board and the Division of Enforcement.

e. Notification of Change of Address and Employment. The Respondent shall report to the Board any change of employment status, residence address or phone number within five (5) days of any such change.

3. TERMS FOR MODIFICATION OF ORDER. Following successful compliance with and fulfillment of the provisions of paragraph 2. of this Order for a period of two years, the Respondent may petition the Board, in conjunction with an application for extension of the stay of suspension, for modification of the conditions or limitations for stay of suspension. Any such petition shall be accompanied by a written recommendation of respondent's supervising physician or therapist expressly supporting the specific modifications sought. A denial of such a petition for modification shall not be deemed a denial of license under §§227.01(3), or 227.42, Wis. Stats., or Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

4. RESPONDENT RESPONSIBLE FOR COSTS AND EXPENSES OF COMPLIANCE. Respondent shall be responsible for all costs and expenses of complying with this Order and for arranging any alternative means for covering such costs and expenses.

5. BOARD/DEPARTMENT INSPECTIONS. The Board or the Department in its discretion may conduct unannounced inspections and/or audits, and make copies of drug records and inventory where respondent is employed (including self-employed) as a physician.

6. VIOLATIONS OF ORDER. Violation of any of the terms of this Order or of any law substantially relating to the practice of medicine may result in a summary suspension of the Respondent's license; the denial of an extension of the stay of suspension or the termination of the stay; the imposition of additional conditions and limitations; or the imposition of other additional discipline, including revocation of license.

7. OTHER CONDITIONS. Respondent is subject to §448.02(3)(e), Wis. Stats., and shall have in force all insurance, and remain current in all payments, required under ch. 655, Wis. Stats.

IT IS FURTHER ORDERED that Respondent shall pay the assessable costs of this disciplinary action to the Department of Regulation and Licensing, by November 1, 1995, pursuant to §440.22, Wis. Stats.

### OPINION

It is uncontested that Dr. Chicks is an alcoholic, that he was not in treatment for alcoholism in January or February of this year, that he was consuming alcohol on a daily basis, and that he was seeing patients and practicing medicine despite his own condition and the lack of adequate malpractice insurance or current registration. Public health, safety and welfare clearly

require that some external control be exercised over Dr. Chicks to decrease the chances that his condition will adversely affect his patients.

Despite Dr. Chicks' alcoholism, there was no evidence presented which would indicate that his practice created any actual harm for any patient, although the risk of harm to patients was not insignificant. Because there is no clear reason to conclude that Dr. Chicks' condition resulted in less than minimally competent practice in any instance with any patient, it does not seem reasonable to require, as the State suggested, that Dr. Chicks be prohibited from treating any patient who will not allow the Department of Regulation and Licensing, the Medical Examining Board, or any of their agents to examine Dr. Chicks' records of that patient's treatment. Given that there is no evidence that any patient was harmed by Dr. Chicks, there is little justification for Dr. Chicks' practice of medicine to be conditioned on his patients giving blanket releases to the Division of Enforcement to review their psychiatric records in his possession.

The Order requires that Dr. Chicks surrender substantially all privacy in his own medical condition. The purpose of the surrender of this privacy is to demonstrate that he is not using or abusing chemical substances, inasmuch as his alcoholism appears to be the root of the problem. Having surrendered this privacy as the primary condition of continued practice, the additional condition that he limit his practice only to patients who consent to have their psychiatric records reviewed to see if maybe there might be a problem with his treatment of them is either an unwarranted intrusion into the privacy of his patients or an experiment in government operated health care quality assurance. In either case, the justification for the release depends on Dr. Chicks' condition as a recovering alcoholic being incompatible with the practice of medicine. The proposition that recovering alcoholics may not safely practice medicine has been rejected by this Board in the past, and there does not appear to be reason to suppose the proposition is any more true in Dr. Chicks' case, with the limitations imposed by the Order, than in other similar cases.

The Division of Enforcement recommended that the Order require Dr. Chicks to provide witnessed urine, blood or breath samples eight times each month during the first year following the issuance of the Order. Respondent pointed out that this requirement is double the frequency the Division's expert believes to be warranted. Given that Dr. Sorkin testified that four samples each month was an appropriate frequency, and that greater frequency would not provide an additional benefit, there does not appear to be reason to require Dr. Chicks to bear the additional expense. In any event, the remainder of the Order provides significant incentive for Dr. Chicks to maintain sobriety, and substantial consequences if he does not. The goal of the process is public protection and rehabilitation of Dr. Chicks. Imposing twice weekly screens as a condition when the Division's expert indicates that it is unnecessary and not apt to be productive tends to look punitive.

Dated this 1st day of September, 1994.



James E. Polewski  
Administrative Law Judge

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