

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

DANIEL R. HOLLIMAN, M.D.,

Case No. LS-9310081-MED

Respondent

FINAL DECISION AND ORDER

The parties in this proceeding for purposes of § 227.53, Stats., are:

Daniel R. Holliman, M.D.
P.O. Box 1088
Menomonee Falls, WI 53052-1088

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

State of Wisconsin
Medical Examining Board
1400 East Washington Ave.
Madison, WI 53703

A hearing was held in the above-captioned matter on April 18, 1994. Dr. Holliman appeared in person without legal representation. The Medical Examining Board was represented by Attorney Pamela Stach of the Department's Division of Enforcement. The hearing was recorded, and the transcript was delivered on May 25, 1994.

The administrative law judge filed his Proposed Decision in the matter on May 27, 1994. Ms. Stach filed her objections to the Proposed Decision on June 6, 1994. By letter dated June 1, 1994, Dr. Holliman attempted to surrender his license "in lieu of disciplinary action." On June 13, Attorney Stach filed her responsive letter, by which she petitioned the board to refuse to accept the surrender of the license. Ms. Stach appeared before the board on June 22 to argue her objections, and the board decided the matter on that date.

Based upon the entire record in this case, the Medical Examining Board makes the following

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Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The respondent, Daniel R. Holliman, M.D., is a physician licensed to practice medicine and surgery in the state of Wisconsin, under license number 33364, and he has held that license continuously since it was originally granted on July 1, 1992.

2. On July 6, 1992 Dr. Holliman's license was limited by the Medical Examining Board, with one condition being that Dr. Holliman abstain from any and all personal use of alcohol and controlled substances.

3. On January 5, 1993 David G. Benzer, D.O., notified the board that Dr. Holliman had a urine screen which was positive for alcohol on December 19, 1992 and one which was positive for Benzodiazepines on December 29, 1992.

4. On January 21, 1993 Dr. Holliman appeared before the board as required by the order granting his limited license. At that time, Dr. Holliman discussed with the board possible modifications to the terms of his limited license based upon the allegations of violation of the existing order.

5. Following the discussion on January 21st, no finding of violation was made, but based upon a stipulated agreement with Dr. Holliman, the board issued an order on February 20, 1993 granting a limited license to Dr. Holliman to practice medicine and surgery which contained the following terms:

a. He shall continue in the chemical dependency treatment program at the McBride Center for Impaired Professionals in Milwaukee, and shall not disassociate himself from the program until formally discharged by his supervising physician. He shall as a part of the program continue primary outpatient treatment at least three times per week, and shall meet with Dr. David G. Benzer or Dr. Benzer's designee at least once every two weeks.

b. As a part of his treatment program, he shall submit to a program of random witnessed monitoring of his blood or urine for the presence of alcohol and controlled substances on at least a twice-weekly basis.

c. He shall abstain from any and all personal use of alcohol or controlled substances, as defined by sec. 161.01(4), Stats., unless prescribed for him by his treating physician.

d. He shall attend A.A. or N.A. meetings or contact his sponsor daily.

6. On May 1, 1993 Dr. Holliman experienced an episode of alcohol use which required his admission to the Milwaukee Psychiatric Hospital for hospitalization and stabilization.

7. On May 15, 1993 Dr. Holliman was re-admitted to the McBride In-Patient Program after relapsing to the active use of alcohol in a residential treatment setting.

8. On May 25, 1993 Dr. Holliman again obtained alcohol for his personal use.

9. As of June 8, 1993 Dr. Holliman remained at the McBride In-Patient Unit for treatment of his dependency and depressive disorder.

10. On June 29th and July 1st, 1993 Dr. Holliman did not attend office visits with the Director of Addiction Medicine Services of the Milwaukee Psychiatric Hospital as required by his outpatient program.

11. As of July 1, 1993 Dr. Holliman had not been attending his outpatient group.

12. By failing to attend office visits with the Director of Addiction Medicine Services of the Milwaukee Psychiatric Hospital as required by his outpatient program, thereby disassociating himself from the chemical dependency program at the McBride Center for Impaired Professionals without being formally discharged by his supervising physician, Dr. Holliman violated a term of the board's 2-20-93 order.

13. By his personal use of alcohol on May 1st and May 25th, 1993, Dr. Holliman violated a term of the board's 2-20-93 order.

14. By failing either to attend A.A. or N.A. meetings or to contact his sponsor on a daily basis as of July 1, 1993, Dr. Holliman violated a term of the board's 2-20-93 order.

15. At the time of the hearing, Dr. Holliman was providing ambulatory care *locum tenens* for Group Health Cooperative of Madison, Wisconsin.

CONCLUSIONS OF LAW

1. The Medical Examining Board is the legal authority responsible for controlling credentials for physicians, under ch. 448, Stats. The Medical Examining Board has jurisdiction over Dr. Holliman's license.

2. The Medical Examining Board has personal jurisdiction over Dr. Holliman under sec. 801.04 (2), Stats., based on his receiving notice of the proceeding, and his holding a credential issued by the board.

3. The Medical Examining Board has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 448.02(3), Stats. and ch. MED 10, Wis. Admin. Code.

4. The violations in paragraphs 12, 13, and 14 of the findings of fact constitute unprofessional conduct under sec. MED 10.02(2)(b), Wis. Admin. Code, and discipline for Dr. Holliman is appropriate, under sec. 448.02(3)(c), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license to practice medicine and surgery issued to the respondent, Daniel R. Holliman, M.D., is suspended for 90 days, commencing on the date hereof.

IT IS FURTHER ORDERED that when and if Daniel R. Holliman, M.D., resumes the practice of medicine and surgery in the state of Wisconsin, his license will be limited as follows:

(1) Dr. Holliman shall practice only under the supervision of a physician licensed in Wisconsin who is approved for the purpose by the Medical Examining Board and who agrees to supervise Dr. Holliman and to submit quarterly reports to the board on the quality of Dr. Holliman's medical care;

(2) Dr. Holliman shall limit his practice to ambulatory care until order of the Medical Examining Board modifying this provision;

(3) Dr. Holliman shall participate in a treatment program through the McBride Center for Impaired Professionals in Milwaukee or an equivalent program approved by the Medical Examining Board, and shall not disassociate himself from the program until formally discharged by his supervising physician;

(4) As part of his treatment program, Dr. Holliman shall submit to a program of random witnessed monitoring of his blood or urine for the presence of alcohol or controlled substances on at least a twice-weekly basis;

(5) Dr. Holliman shall abstain from any and all personal use of alcohol or controlled substances, as defined by sec. 161.01(4), Stats., unless prescribed for him by his treating physician.

(6) Dr. Holliman shall attend A.A. or N.A. meetings or contact his sponsor daily.

(7) Dr. Holliman shall be responsible for submission to the Medical Examining Board of formal written quarterly reports prepared by his treatment supervisor setting forth his progress in the treatment program, including the results of the random drug screens;

(8) Dr. Holliman shall provide and keep on file with his supervising physician and all treatment facilities and personnel current releases which comply with all applicable state and federal laws authorizing release of all of his medical and treatment records and reports to the Medical Examining Board, and which permit his treating physician and therapists to disclose and discuss the progress of his treatment and rehabilitation with the Medical Examining Board and its agents. Copies of said releases shall be filed simultaneously with the Medical Examining Board;

(9) The limitations on Dr. Holliman's license shall remain in place for five years unless modified or terminated by the board. Applicant shall appear before the board after three months for an oral interview, and shall appear before the board thereafter at such times as the board deems appropriate.

(10) Violation of the any term or condition of this order shall constitute grounds for revocation of Dr. Holliman's license.

IT IS FURTHER ORDERED that the petition of Daniel R. Holliman, M.D., contained in his letter of June 1, 1994, requesting that the Medical Examining Board accept the voluntary surrender of his license to practice medicine and surgery in lieu of imposing discipline in this matter be, and hereby is, denied.

IT IS FURTHER ORDERED that Daniel R. Holliman, M.D., pay the costs of this proceeding, as authorized by sec. 440.22(2), Stats. and sec. RL 2.18, Wis. Admin. Code within 90 days of the effective date of this order.

EXPLANATION OF VARIANCE

The board has accepted the ALJ's Findings of Fact and Conclusions of Law in their entirety, and has made only two substantive changes to the proposed Order. Subparagraph (1) of the proposed order states: "[F]or a period of one year [Dr. Holliman] shall practice only under the supervision of a physician licensed in Wisconsin who is approved for the purpose by the Medical Examining Board and who agrees to supervise Dr. Holliman and to submit quarterly reports to the board on the quality of Dr. Holliman's medical care." The board has modified this provision to eliminate any established time for termination of the limitation. This does not of course mean that Dr. Holliman is foreclosed from petitioning the board at some future time for termination of the requirement, but rather means only that the board will have discretion at that time to determine whether such termination is appropriate.


The board has also reworded subparagraph (9) of the proposed Order to clearly establish that the limitations on the license will not automatically terminate after one year, and that Dr. Holliman may expect to be required to appear periodically to satisfy the board that his continued practice does not constitute a danger to the health, welfare or safety of patient or public.

The board has also added a provision to the Order by which Dr. Holliman's proffered surrender of his license is refused. Such refusal is authorized under sec. 448.02(5), Stats., and is deemed appropriate in a situation where, as here, the disciplinary process has been completed except for the board's final decision and order.

Finally, while the board does not in adopting the Proposed Decision of an administrative law judge also adopt the ALJ's Opinion, it should be made very clear that the board's intent in imposing costs in this matter is merely to recover the costs of the proceeding, as authorized by sec. 440.22(2), Stats., and is not intended to be, and should not be construed as having been, imposed in response to some perceived failure by Dr. Holliman to cooperate in the disciplinary process.

Dated this 4 day of July, 1994.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

by 
Clark O. Olsen, M.D.
Secretary

WRA:HOLLIM.DOC

NOTICE OF APPEAL INFORMATION

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

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN MEDICAL EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

JULY 8, 1994.

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 as possible 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.

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS
AGAINST
DANIEL R. HOLLIMAN, M.D.,
RESPONDENT.

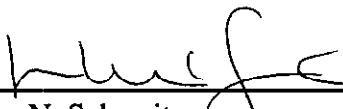
AFFIDAVIT OF COSTS OF
OFFICE OF BOARD LEGAL SERVICES
Case No. LS-9310081-MED

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

1. I am an attorney licensed to practice law in the State of Wisconsin, and am employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.
2. In the course of my employment, I was assigned as the administrative law judge in the above-captioned matter.
3. The expenses for the Office of Board Legal Services are set out below:

a. Administrative Law Judge Expense @ \$23.99/hour.	
3/1/94 Prehearing and order	1/2 hr.
3/15/94 Prehearing	1/4 hr.
4/18/94 Conduct hearing	1 1/2 hrs.
5/17, 5/18, 5/25, 5/26, 5/27/94 Prepare proposed decision	6 hours
	= <u>\$197.92</u>
b. Reporter Expense	
Attendance, 4/18/94, and 47 pages of transcript	= <u>\$155.10</u>

Total allocable costs for Office of Board Legal Services = \$353.02



John N. Schweitzer
Administrative Law Judge

Sworn to and signed before me this 2d day of August, 1994.

Thomas E. Pleasch, Notary Public, State of Wisconsin.

My commission is permanent.

JUN 13 1994

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	AFFIDAVIT OF COSTS
DANIEL HOLLIMAN, M.D.,	:	LS9310081MED
RESPONDENT.	:	

STATE OF WISCONSIN)
) ss.
 COUNTY OF DANE)

Pamela M. Stach, being duly sworn, deposes and states as follows:

1. That affiant is an attorney licensed in the state of Wisconsin and is 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>
3-16-93	Review of file	2hr. 30 min.
7-19-93	Draft memorandum re practice status	20 min.
7-19-93	Review file	2hr. 10 min.
7-19-93	Draft Complaint	1hr. 30 min.
7-19-93	Draft memorandum re filing of complaint	40 min.
8-27-93	Draft memorandum re practice status	20 min.
8-27-93	Discussion with Board Advisor - Hughes	30 min.
8-27-93	Draft memorandum re case status	35 min.

9-30-93	Obtain hearing date/Draft Notice of Hearing	20 min.
10-26-93	Receipt and review of Holliman ltr(10-18-93)	30 min.
10-27-93	Discussions with investigator	20 min.
01-14-94	Draft letter to Holliman re settlement	45 min.
01-20-94	Discussion with Holliman re settlement	20 min.
02-15-94	Receipt and review of Holliman ltr(2-5-94)	10 min.
02-23-94	Discussion with Board Advisor-Hughes	20 min.
03-01-94	Prehearing Conference	15 min.
03-08-94	receipt and review of Holliman ltr.(3-4-94)	30 min.
03-08-94	receipt and review of Engel ltr.(3-4-94)	30 min.
04-07-94	receipt and review of Holliman ltr.(4-4-94)	15 min.
04-15-94	preparation for hearing	3hr. - min.
04-17-94	preparation for hearing	4hr. 45 min.
04-18-94	attend hearing	2hr. 20 min.
05-25-94	receipt and review of transcript	1hr. 35 min.
05-27-94	receipt and review of proposed decision	1hr. 25 min.
06-06-94	Draft Complainant's Objections to Proposed Decision	1hr. 40 min.
06-08-94	receipt and review of Holliman ltr.(6-1-94)	15 min.
06-13-94	Draft letter to Medical Examining Board re surrender	25 min.

TOTAL HOURS

28hr.15min.

Total attorney expense for
 28 hours 15 minutes at
 \$30.00 per hour
 (based upon average salary and benefits
 for Division of Enforcement attorneys) equals:

\$847.50

INVESTIGATOR EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
05-13-93	Interview of Holliman	4hr. 00 min.
07-13-93	Phone calls/memos of calls	15 min.
10-06-93	Phone calls/memos of calls	45 min.
10-27-93	Phone calls/memos of calls	20 min.

TOTAL HOURS

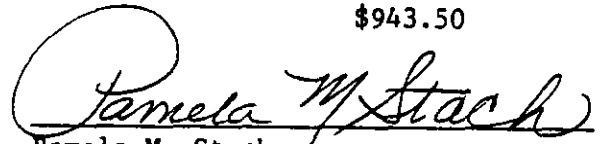
5hr. 20 min.

Total investigator expense for
5 hours 20 minutes at \$18.00 per hour
(based upon average salary and benefits
for Division of Enforcement investigators) equals:

\$96.00

TOTAL ASSESSABLE COSTS

\$943.50


Pamela M. Stach

Subscribed and sworn to
before me this 13th day of June, 1994.



Notary Public
My Commission is permanent.

ATY2-6003

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :

DANIEL R. HOLLIMAN, M.D., :
RESPONDENT. :

NOTICE OF FILING
PROPOSED DECISION
LS9310081MED

TO: Daniel R. Holliman, M.D.
P.O. Box 1088
Menomonee Falls, WI 53052-1088
Certified P 205 985 960

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

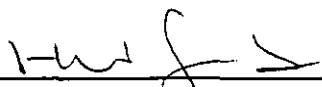
PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Medical Examining Board by the Administrative Law Judge, John N. Schweitzer. A copy of the Proposed Decision is attached hereto.

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 June 6, 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 27th day of May, 1994.



John N. Schweitzer
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST
DANIEL R. HOLLIMAN, M.D.,
RESPONDENT.

:
:
:
:
:
:

PROPOSED DECISION
Case No. LS-9310081-MED
(93 MED 078)

PARTIES

The parties in this matter under § 227.44, Stats. and § RL 2.037, Wis. Admin. Code, and for purposes of review under § 227.53, Stats. are:

Complainant:

Division of Enforcement
Department of Regulation and Licensing
Madison, WI 53708-8935

Respondent:

Daniel R. Holliman, M.D.
P.O. Box 1088
Menomonee Falls, WI 53052-1088

Disciplinary Authority

Medical Examining Board
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint with the Medical Examining Board on October 8, 1993. A disciplinary proceeding (hearing) was scheduled for November 9, 1993.

B. Dr. Holliman filed an answer on October 18, 1993 in which he admitted the facts of the complaint but offered additional information regarding his treatment.

C. A prehearing conference was held on November 3, 1993, at which time the parties requested an adjournment for the purpose of preparing a stipulation to be presented to the board. The hearing was rescheduled to December 15, 1993.

D. On December 7, 1993 attorney Stach informed me that she had received information from Dr. Holliman which might form the basis for a stipulation. The hearing was again rescheduled, to January 24, 1994.

E. On January 11, 1994 the stipulation was still in preparation, and the case was adjourned without being rescheduled.

F. On March 1, 1994 another prehearing conference was held, at which it was learned that no agreement could be reached. The case was rescheduled for hearing on April 18, 1994.

G. The hearing was held on April 18, 1994. Dr. Holliman appeared in person without legal representation. The Medical Examining Board was represented by Attorney Pamela Stach of the Department's Division of Enforcement. The hearing was recorded, and the transcript was delivered on May 25, 1994. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. The respondent, Daniel R. Holliman, M.D., is a physician licensed to practice medicine and surgery in the state of Wisconsin, under license number 33364, and he has held that license continuously since it was originally granted on July 1, 1992.
2. On July 6, 1992 Dr. Holliman's license was limited by the Medical Examining Board, with one condition being that Dr. Holliman abstain from any and all personal use of alcohol and controlled substances.
3. On January 5, 1993 David G. Benzer, D.O., notified the board that Dr. Holliman had a urine screen which was positive for alcohol on December 19, 1992 and one which was positive for Benzodiazepines on December 29, 1992.
4. On January 21, 1993 Dr. Holliman appeared before the board as required by the order granting his limited license. At that time, Dr. Holliman discussed with the board possible modifications to the terms of his limited license based upon the allegations of violation of the existing order.
5. Following the discussion on January 21st, no finding of violation was made, but based upon a stipulated agreement with Dr. Holliman, the board issued an order on February 20, 1993 granting a limited license to Dr. Holliman to practice medicine and surgery which contained the following terms:
 - a. He shall continue in the chemical dependency treatment program at the McBride Center for Impaired Professionals in Milwaukee, and shall not disassociate himself from the program until formally discharged by his supervising physician. He shall as a part of the program continue primary outpatient treatment at least three times per week, and shall meet with Dr. David G. Benzer or Dr. Benzer's designee at least once every two weeks.

b. As a part of his treatment program, he shall submit to a program of random witnessed monitoring of his blood or urine for the presence of alcohol and controlled substances on at least a twice-weekly basis.

c. He shall abstain from any and all personal use of alcohol or controlled substances, as defined by sec. 161.01(4), Stats., unless prescribed for him by his treating physician.

d. He shall attend A.A. or N.A. meetings or contact his sponsor daily.

6. On May 1, 1993 Dr. Holliman experienced an episode of alcohol use which required his admission to the Milwaukee Psychiatric Hospital for hospitalization and stabilization.

7. On May 15, 1993 Dr. Holliman was re-admitted to the McBride In-Patient Program after relapsing to the active use of alcohol in a residential treatment setting.

8. On May 25, 1993 Dr. Holliman again obtained alcohol for his personal use.

9. As of June 8, 1993 Dr. Holliman remained at the McBride In-Patient Unit for treatment of his dependency and depressive disorder.

10. On June 29th and July 1st, 1993 Dr. Holliman did not attend office visits with the Director of Addiction Medicine Services of the Milwaukee Psychiatric Hospital as required by his outpatient program.

11. As of July 1, 1993 Dr. Holliman had not been attending his outpatient group.

12. By failing to attend office visits with the Director of Addiction Medicine Services of the Milwaukee Psychiatric Hospital as required by his outpatient program, thereby disassociating himself from the chemical dependency program at the McBride Center for Impaired Professionals without being formally discharged by his supervising physician, Dr. Holliman violated a term of the board's 2-20-93 order.

13. By his personal use of alcohol on May 1st and May 25th, 1993, Dr. Holliman violated a term of the board's 2-20-93 order.

14. By failing either to attend A.A. or N.A. meetings or to contact his sponsor on a daily basis as of July 1, 1993, Dr. Holliman violated a term of the board's 2-20-93 order.

15. At the time of the hearing, Dr. Holliman was providing ambulatory care *locum tenens* for Group Health Cooperative of Madison, Wisconsin.

CONCLUSIONS OF LAW

- I. The Medical Examining Board is the legal authority responsible for controlling credentials for physicians, under ch. 448, Stats. The Medical Examining Board has jurisdiction over Dr. Holliman's license.
- II. *The Medical Examining Board has personal jurisdiction over Dr. Holliman under sec. 801.04 (2), Stats., based on his receiving notice of the proceeding, and his holding a credential issued by the board.*
- III. The Medical Examining Board has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 448.02(3), Stats. and ch. MED 10, Wis. Admin. Code.
- IV. The violations in paragraphs 12, 13, and 14 of the findings of fact constitute unprofessional conduct under sec. MED 10.02(2)(b), Wis. Admin. Code, and discipline for Dr. Holliman is appropriate, under sec. 448.02(3)(c), Stats.

ORDER

THEREFORE, IT IS ORDERED that the license to practice medicine and surgery issued to the respondent, Daniel R. Holliman, is suspended for 90 days, commencing on the date this order is signed on behalf of the Medical Examining Board.

IT IS FURTHER ORDERED that when and if Dr. Holliman resumes the practice of *medicine and surgery in the state of Wisconsin, his license will be limited as follows:*

- (1) for a period of one year he shall practice only under the supervision of a physician licensed in Wisconsin who is approved for the purpose by the Medical Examining Board and who agrees to supervise Dr. Holliman and to submit quarterly reports to the board on the quality of Dr. Holliman's medical care;
- (2) Dr. Holliman shall limit his practice to ambulatory care until order of the Medical Examining Board modifying this provision;
- (3) Dr. Holliman shall participate in a treatment program through the McBride Center for Impaired Professionals in Milwaukee or an equivalent program approved by the Medical Examining Board, and shall not disassociate himself from the program until formally discharged by his supervising physician;
- (4) As part of his treatment program, Dr. Holliman shall submit to a program of random witnessed monitoring of his blood or urine for the presence of alcohol or controlled substances on at least a twice-weekly basis;
- (5) Dr. Holliman shall abstain from any and all personal use of alcohol or controlled substances, as defined by sec. 161.01(4), Stats., unless prescribed for him by his treating physician.

(6) Dr. Holliman shall attend A.A. or N.A. meetings or contact his sponsor daily.

(7) Dr. Holliman shall be responsible for submission to the Medical Examining Board of formal written quarterly reports prepared by his treatment supervisor setting forth his progress in the treatment program, including the results of the random drug screens;

(8) Dr. Holliman shall provide and keep on file with his supervising physician and all treatment facilities and personnel current releases which comply with all applicable state and federal laws authorizing release of all of his medical and treatment records and reports to the Medical Examining Board, and which permit his treating physician and therapists to disclose and discuss the progress of his treatment and rehabilitation with the Medical Examining Board and its agents. Copies of said releases shall be filed simultaneously with the Medical Examining Board;

(9) The term of the license shall be for one year from the effective date of this order. Applicant shall appear before the Medical Examining Board after three months for an oral interview.

(10) Violation of the any term or condition of this order shall constitute grounds for revocation of Dr. Holliman's license.

IT IS FURTHER ORDERED that Daniel R. Holliman pay the costs of this proceeding, as authorized by sec. 440.22(2), Stats. and sec. RL 2.18, Wis. Admin. Code within 90 days of the effective date of this order.

OPINION

Dr. Holliman did not dispute the facts of this case, nor the legal conclusion that he had violated the board's order, nor even the appropriateness of some discipline. He only contested the timing of discipline, and by taking the case to hearing, he accomplished his avowed goal. There is no need to discuss the facts as reported above beyond concluding that they form the basis for the imposition of professional discipline.


The purposes of professional discipline have been set forth in the Wisconsin Supreme Court Rules and in various attorney discipline cases, and although they have been phrased in many different ways, they can be stated as the single goal of protecting the public, both as individuals and as members of society. To accomplish that goal, the discipline must affect future behavior by the disciplined individual and by other members of the profession. Although Dr. Holliman currently appears to be in control of his problems with substance abuse, discipline must reinforce his knowledge that a lapse in self-control can lead to unpleasant consequences, both personal and professional. The discipline must also inform or remind other professionals of the same fact. Given the fact that Dr. Holliman has appeared before the board twice before, and had his license limited on

both occasions, and that this complaint reflects repeated violations of more than one part of the board's order of February 20, 1994, no less than a significant suspension would be appropriate, and I accept Ms. Stach's recommendation of 90 days. A retroactive suspension, one which gives him credit for a period during which he was not practicing, would unduly minimize the seriousness of his actions. I have considered the letter from Dr. Holliman's primary addictionology physician [ex. 2], and given Dr. Holliman's past record, I also agree with and incorporate Ms. Stach's other requests into the order.

Costs.

The assessment of costs against a disciplined professional is authorized by § 440.22(2), Wis. Stats. and § RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. One approach is routinely to impose the costs of investigating and prosecuting unprofessional conduct on the disciplined individual rather than on the profession as a whole. Another approach is to use costs as an incentive to encourage respondents to cooperate with the process, and thus to impose costs only if the respondent is uncooperative or dilatory. I prefer the latter approach. In this case, Dr. Holliman presented no issues of contested fact, nor did he dispute the legal conclusions which lead to the imposition of discipline. He did, however, delay the imposition of that discipline by asserting his right to a hearing. This resulted in certain additional costs for the Division of Enforcement, for the Office of Board Legal Services, and for the Medical Examining Board, and for that reason I include an order for costs.

Dated and signed: May 27, 1994



John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

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