

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST :

FINAL DECISION AND ORDER

JAMES L. FLOWERS, M.D.
RESPONDENT.

89 MED 211/277/539
91 MED 122/123/133
93 MED 179

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

James L. Flowers, M.D.
10917 North San Marino Drive
Mequon, WI 53092

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

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent James L. Flowers, M.D. (dob 1/9/47), is and was at all times relevant to the facts set forth herein a physician and surgeon licensed and registered in the State of Wisconsin pursuant to license #21678, originally granted on 7/14/78. Respondent is an internist who also practices addictionology.
2. The Respondent has, between 1988 and 1993, engaged in repeated prescriptions of Schedule II narcotic and other controlled substances for a number of patients, without adequate documentation of the need for such prescriptions.
3. The Respondent has, between 1988 and 1993, engaged in repeated prescriptions of Schedule II narcotic and other controlled substances for a number of pain patients without documenting that alternatives had been attempted.
4. The Respondent has, between 1988 and 1993, engaged in repeated prescriptions of Schedule II narcotic and other controlled substances for a number of patients without adequate documentation of followup or controls to prevent diversion or abuse.

5. Respondent has, between 1988 and 1993, postdated and signed prescriptions for schedule II controlled substances and placed them in patient charts for staff to distribute to patients on the date written on the prescription, without the patient having been seen by a physician on that date.

6. Respondent has, between 1988 and 1993, permitted postdated prescriptions for Schedule II controlled substances to be given to patients before the date on the prescription.

7. The board recognizes that certain patients of respondent present difficult management problems and have been unable to find relief elsewhere, and that respondent deserves some credit for his willingness to attempt to work with those patients.

8. However, the board finds that even difficult patients must have charts with adequate documentation and should not be treated with narcotic analgesic therapy unless it is documented that there are no reasonable alternatives and that there is a protocol which protects the public from diversion, which is followed by the physician and staff.

9. The Respondent has, between 1988 and 1991, permitted an unlicensed physician, Jason Smith, D.O., whose license was surrendered to the Board as the result of a disciplinary proceeding, to diagnose and treat patients and to prescribe and dispense prescription substances without a license.

CONCLUSIONS OF LAW

10. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to § 450.10(1), Wis. Stats.

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

12. The conduct described in paragraphs 2-9, above, violated one or more of the following: § MED 10.02(1)(h), (p), (r) and (t), Wis. Adm. Code, and 21 CFR § 1306.05(a). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

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

IT IS FURTHER ORDERED, that the license and registration of respondent to practice medicine and surgery in Wisconsin are SUSPENDED for thirty days effective October 19, 1995, and continuing until respondent has taken and passed the 45 hour controlled substance prescribing course offered by Dr. William Vilensky and the Kennedy Memorial Hospital--University Medical Center. Respondent shall authorize and request the course sponsors to send complete reports of his attendance and progress directly to the Board. When thirty days have passed, and when the Board has received evidence of satisfactory completion of the course, respondent's license shall be reinstated and restored by staff, without further action by the board, and as set forth below.

IT IS FURTHER ORDERED, that the license and registration of respondent to practice medicine and surgery in Wisconsin are LIMITED as provided by §448.02(2)(e), Wis. Stats., and as follows:

a. Respondent shall forthwith surrender his DEA registration and privileges as to Schedule I and II controlled substances on the form provided by that agency for such purpose, and shall not possess, prescribe, dispense or attempt to possess, prescribe or dispense, personally or through another, any such controlled substance or a DEA credential permitting such prescribing. Additionally, respondent shall not possess, prescribe, dispense or attempt to possess, prescribe or dispense, personally or through another, any benzodiazepine. Respondent may possess solely for his own use such a controlled substance which has been prescribed for him by his treating physician for a valid medical purposes, and may refer patients who may need such substances. After two years of active practice under this limitation, respondent may petition the Board for permission to prescribe and dispense benzodiazepines, and for permission to apply for and hold a DEA permit to prescribe Schedule II controlled substances and to prescribe and dispense such substances. The granting or denial of such a petition in whole or in part shall be wholly subject to the discretion of the Board, and denial in whole or in part of such a petition shall not be deemed a denial of licensure and shall not entitle respondent to a hearing under ch. RL 2, Wis. Adm. Code, or ch. 227, Wis. Stats.

b. Respondent shall, at his own expense, participate in and successfully complete within eight months of the date of his reinstatement, an educational program established through the University of Wisconsin Continuing Medical Education program (which may conduct any program through the Medical College of Wisconsin) in recordkeeping, and approved by the Board or its designee. Under the tutelage of a mentor selected by the program, respondent shall review a text selected by the mentor dealing with medical recordkeeping, and shall introduce the mentor's recommended improvements into his system over a period of six months in both his office and hospital records. All of respondent's records may be reviewed and discussed monthly with the mentor, who may discuss not only the adequacy of documentation, but any other quality of care issue. The mentor shall agree to report any matter which may constitute a danger to the health, safety or welfare of patient or public to the Board, whenever it comes to the mentor's attention. Respondent's progress and the outcome of the program shall be reported directly to the department monitor, who may discuss respondent's progress with the mentor. The UW-CME shall certify to the Board the results of the program upon completion. If respondent does not successfully complete the program or does not successfully achieve the objectives of the program, this matter shall be referred to the Board to determine any additional appropriate discipline for the conduct set out in the Findings of Fact. Respondent will have the opportunity to present argument to the Board on that issue. The Board will receive the results of respondent's performance in the program as evidence in determining appropriate discipline.

c. Respondent shall ensure that all patients have charts which contain: a complete history and documentation of an appropriate physical examination, records of all hospitalizations including admission and discharge summaries, all test results, all prescriptions or medications ordered, all consultation reports, a record of patient's statements concerning other physicians and medications, adequate information on every patient visit to enable a successor physician to adequately and immediately treat the patient in the absence of the primary physician.

d. Respondent shall prescribe no substance, controlled or legend, for any person who is not a bona fide patient. Every patient shall have a chart, and respondent shall note in every patient's chart the exact prescriptions given including name and strength of medication, dosage, instructions for taking, exact date prescribed or dispensed, and how many refills are permitted.

e. For the five years following reinstatement, respondent shall permit on-site auditing of all patient charts by a person selected by the Board, without prior notice, no more than five times per year.

f. Respondent shall not employ, be employed by, or be professionally associated in any way with, Jason Smith, D.O. This prohibition includes any activity not purely and exclusively social, political, religious, and/or non-health-care related, including countersigning prescriptions, referring patients for massage therapy or other care or treatment, consulting on cases, providing educational services, employment, partnership in any form or capacity in any healthcare-related business and the like. Further, respondent shall not treat or be treated by Jason Smith or have any provider-patient relationship with him.

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

IT IS FURTHER ORDERED, that Respondent shall pay the partial COSTS of this investigation and proceeding in the amount of the actual disbursements of the Division of Enforcement, namely \$8,646.44, before his registration may be renewed on 11/1/95.

Dated this 27 day of July, 1995.

WISCONSIN MEDICAL EXAMINING BOARD



by: Clark O. Olsen, M.D., chair

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST :

JAMES L. FLOWERS, M.D.
RESPONDENT. :

STIPULATION

89 MED 211/277/539
91 MED 123
93 MED 179

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

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without a hearing on the formal complaint which has been issued in this matter.

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

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

4. Respondent disputes the claims of wrongdoing and a qualified expert was prepared to testify on his behalf. Due to the time, uncertainties, and expenses of litigation, he agrees to the adoption of the attached Final Decision and Order by the Board. The parties consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.


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

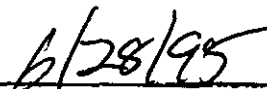
Stipulation
Page 2

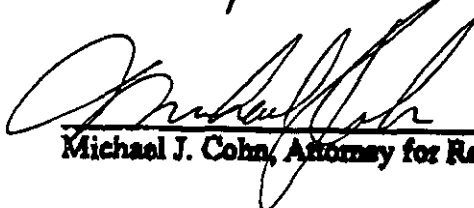
7. The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and view of the case acquired during the investigation.

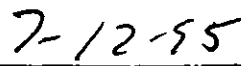
8. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

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



James L. Flowers, M.D., Respondent


Date


Michael J. Cohn, Attorney for Respondent


Date


Arthur Thexton, Prosecuting Attorney
Division of Enforcement


Date

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:

AUGUST 1, 1995.

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.)