

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

HENRY A. SETTLAGE, M.D.,
RESPONDENT.

FINAL DECISION
AND ORDER
LS9409302MED

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

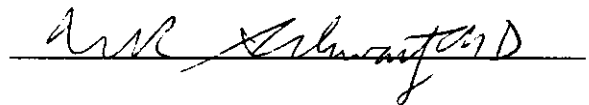
NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 23rd day of March 1995.



**STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

**PROPOSED DECISION
Case No. LS-9409302-MED**

**HENRY A. SETTLAGE, M.D.,
RESPONDENT.**

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Henry A. Settlage, M.D.
HCR#1, Box 9
Athelstane, WI 54104

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

This proceeding was commenced by the filing of a Notice of Hearing on September 30, 1994. A hearing was held in this matter on November 29, 1994. Attorney Roger R. Hall appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The Respondent, Henry A. Settlage, did not appear at the hearing. A transcript of the hearing proceedings was filed with the Department on or about December 20, 1994.

Based upon the record herein, the Administrative Law Judge recommends that the Medical Examining Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Henry A. Settlage, (d.o.b. 04/15/13) is duly licensed in the State of Wisconsin as a physician, license #8564. This license was first granted on June 27, 1940.

2. Respondent's latest address on file with the Department of Regulation and Licensing is HCR #1, Box 9, Athelstane, Wisconsin 54104.

3. On April 18, 1993, Respondent was admitted to Bay Area Medical Center, Marinette, Wisconsin, after being found unconscious on the ground outside his home. He was seen in consultation by Dr. David McCall and Dr. Gerald W. Favret. He was treated for alcohol and drug intoxication and discharged on April 29, 1993, with a final diagnosis of history of alcohol abuse and Benzodiazepine abuse; probable dementia, possible alcoholic extended withdrawal; wandering pace maker with supra ventricular tachycardia; left ventricular hypertrophy; acute bronchitis; glaucoma; anemia, macrocytic; liver function abnormalities, and symptomatic benign prostatic hypertrophy.

4. Respondent was discharged on April 29, 1993, from Bay Area Medical Center to Luther Home pursuant to protective placement by the Marinette County Circuit Court and was discharged on May 15, 1993.

5. Respondent is currently practicing medicine part-time from his residence and also is the Medical Director at the New Care Convalescent Center, Crivitz, Wisconsin.

6. Respondent prescribed the following controlled substances for his own care and treatment:

- a) On January 9, 1991, respondent prescribed Lorazepam (Ativan), a Schedule IV controlled substance as defined in ss. 161.01 (4), and 161.20 (2) (er), Stats.
- b) On September 3, 1991, and on February 16, 1993, respondent prescribed Triazolam (Halcion), a Schedule IV controlled substance as defined in ss. 161.04 (4) and 161.20 (2) (nm), Stats.
- c) On March 13, 1993, respondent prescribed Flurazepam (Dalmane), a Schedule IV controlled substance as defined in ss. 161.01 (4) and 161.20 (2) (em), Stats.
- d) On March 22, 1993, respondent prescribed Meperidine Hydrochloride (Demerol HCL), a Schedule II controlled substance as defined in ss. 161.01 (4) and 161.16 (3) (k), Stats.
- e) At various times, respondent prescribed benzodiazepines, a Schedule IV controlled substance as defined in ss. 161.01 (4) and 161.20 (2) (cr), Stats.

7. Respondent provided medical care and treatment for his patient, C.V., from approximately January 15, 1993 through June 29, 1994.

8. Respondent's treatment of C.V. involved repeated prescribing of Oxycodone on 1/15/93, 6/13/93, 8/29/93, 11/13/93, 02/05/94 and 05/21/94.

9. Oxycodone (Percodan), a Schedule II controlled substance, as defined in ss. 161.01 (4) and 161.16 (2) (a) (11), Stats., has a high potential for abuse and severe dependency potential.

10. Respondent prescribed Oxycodone to patient C.V. other than in the course of legitimate professional practice in that:

- a. Respondent prescribed Oxycodone in excessive amounts and for excessive periods of time without having performed adequate medical examinations of C.V. and without having identified any legitimate medical condition which would justify his prescriptive practices.
- b. Respondent continued to prescribe Oxycodone to C.V. to provide symptomatic relief without having developed an adequate plan of medical management for the patient's underlying medical problems and without having conducted adequate on-going evaluations of the patient's progress.

11. Respondent's conduct subjected patient, C.V. to unacceptable risks of drug abuse and drug dependence.

12. Respondent provided medical care and treatment for his patient, S.M. from approximately June 19, 1993, through December 22, 1993.

13. Respondent's treatment of S.M. involved the prescribing of Diethylpropion Hydrochloride on 06/19/93 and dispensing on 06/19/93, 08/25/93, 11/01/93, and 12/22/93.

14. Diethylpropion hydrochloride, a Schedule IV controlled substance as defined in secs. 161.01 (4) and 161.20 (2M) (a), Stats., has abuse and dependency potential.

15. Respondent prescribed Diethylpropion hydrochloride to patient S.M. other than in the course of legitimate professional practice in that:

- a. Respondent prescribed Diethylpropion hydrochloride in excessive amounts and for an excessive period of time without having performed adequate medical examinations of S.M. and without having identified any legitimate medical conditions which would justify his prescriptive practices.
- b. Respondent's continued prescribing of Diethylpropion hydrochloride to S.M. to provide symptomatic relief without having developed an adequate plan of medical management for the patient's underlying medical problems and without having conducted adequate on-going evaluations of the patient's progress.

16. Respondent's conduct subjected his patient S.M. to unacceptable risks of drug abuse and drug dependence.

17. Respondent provided medical care and treatment for patient M.T. from approximately September 16, 1993, through May 14, 1994.

18. Respondent's treatment of M.T. involved repeated prescribing of Hydrocodone on 2/7/94, 4/4/94, 4/25/94, and 4/30/94.

19. Hydrocodone, a Schedule II controlled substance as defined in ss. 161.01 (4) and 161.16 (a) (7), Stats., has a high potential for abuse and severe dependency potential.

20. Respondent prescribed Hydrocodone other than in the course of legitimate practice in that:

- a. Respondent prescribed Hydrocodone in excessive amounts and for excessive periods of time without having performed an adequate medical examination of M.T. and without having identified any legitimate medical conditions which would justify his prescriptive practices.
- b. Respondent's continued prescribing of Hydrocodone to M.T. to provide symptomatic relief without having developed an adequate plan of medical management for the patient's underlying medical problems and without having conducted adequate on-going evaluations of the patient's progress.

21. Respondent's conduct subjected patient M.T. to unacceptable risks of drug abuse and drug dependence.

22. Respondent failed to file an Answer to the Complaint filed in this matter, and failed to appear at the hearing held in this matter.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this matter pursuant to s. 448.02 Wis. Stats., and s. MED 10.02 (2) Wis. Adm. Code.

2. Respondent's conduct in administering, dispensing, prescribing and obtaining controlled substances as defined in s. 161.01 (4), Stats., for his own use constitutes self-prescribing in violation of s.161.38 (5), Stats., and thereby constitutes unprofessional conduct within the meaning of s. 448.02 (3), Stats., and s. MED 10.02 (2) (p), Wis. Adm. Code.

3. Respondent's conduct in prescribing controlled substances as defined in s. 161.01 (4), Stats., to patient C.V. other than in the course of legitimate professional practice constitutes unprofessional conduct within the meaning of s. 448.02 (3), Stats., and s. MED 10.02 (2) (p), Code.

4. Respondent's conduct in prescribing controlled substances as defined in s. 161.01 (4), Stats., to patient S.M. other than in the course of legitimate professional practice constitutes unprofessional conduct within the meaning of s. 448.02 (3), Stats., and s. MED 10.02 (2) (p), Code.

5. Respondent's conduct in prescribing controlled substances as defined in s. 161.01 (4), Stats., to patient M.T. other than in the course of legitimate professional practice constitutes unprofessional conduct within the meaning of s. 448.02 (3), Stats., and s. MED 10.02 (2) (p), Code.

6. Respondent, by failing to file an Answer to the Complaint filed in this matter, and by failing to appear at the hearing held in this matter is in default, pursuant to s. RL 2.14 Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Henry A. Settlage, M. D., to practice medicine and surgery in the State of Wisconsin be, and hereby is, revoked.

IT IS FURTHER ORDERED that pursuant to s. 440.22 Wis. Stats., the cost of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed on behalf of the Medical Examining Board.

OPINION

A hearing was held in this matter on November 29, 1994. Attorney Roger Hall appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Dr. Settlage elected not to participate in these proceedings (he failed to appear at the hearing and did not file an Answer to the Complaint).

The evidence presented in this matter establishes that Dr. Settlage engaged in unprofessional conduct. At least on five separate occasions between January 1991, and March 1993, he prescribed the following controlled substances for his own care and treatment: Lorazepam (Ativan); Triazolam (Halcion); Flurazepam (Dalmane) and Meperidine Hydrochloride (Demerol HCL). At various times, he also prescribed benzodiazepines.

In addition, on numerous occasions between January 15, 1993 and May 21, 1994, he prescribed the following controlled substances to three patients other than in the course of legitimate professional practice: Oxycodone (Percodan - Schedule II), Diethylpropion Hydrochloride (Schedule IV) and Hydrocodone (Schedule II). These substances were prescribed in excessive amounts and for excessive periods of time without Dr. Settlage having performed an adequate medication examination of the patients and without having identified any legitimate medical condition which would justify the prescriptions.

Having found that Dr. Settlage engage in unprofessional conduct, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Medical Examining Board is authorized under s. 448.02, Stats., to warn or reprimand a person, or limit, suspend or revoke any license, certificate or limited permit granted by the board to a person if it find that the person has engaged in unprofessional conduct.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

The Administrative Law Judge recommends that Dr. Settlage's license be revoked. This measure is designed to assure protection of the public. He has shown by his conduct that he is not capable of practicing medicine in a manner which safeguards the interests of the public.

Dr. David McCall testified at the hearing at the request of the Division of Enforcement. He provided testimony relating to the psychiatric evaluation which he performed for Dr. Settlage in conjunction with Dr. Settlage's admission to the Bay Area Medical Center in April, 1993. In addition, he testified in reference to Dr. Settlage's conduct in prescribing controlled substances to the three patients referred to in the Complaint.

In reference to patient C.V., who received prescriptions for Percodan, Dr. McCall testified that "only severe medical condition such as someone with terminal cancer or some of the severe neurological conditions could possibly justify that". Further, anyone receiving that type of medication would have to be followed closely and reevaluated to avoid the risk of addiction and to avoid respiratory depression and impaired thinking (Tr. p.11-12).

In reference to patient S.M., who received prescriptions for Diethylpropion hydrochloride, Dr. McCall testified that he does not believe that there is a legitimate medical condition for prescribing the substance. He stated that sometimes practitioners use it to help people lose weight, but that most of the medical community frowns upon its use for that purpose. He stated that at this time he knows of no medical purpose for using Diethylpropion. (Tr. p.13).

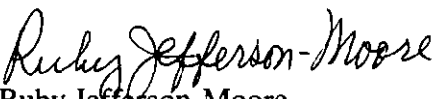
In reference to patient M.T., who received prescriptions for Hydrocodone, Dr. McCall testified that the only medical conditions that would warrant its use would be severe pain such as in the case of terminal cancer and some neurological conditions that require chronic pain management. This substance would require frequent return visits back to the doctor for assessment. In addition, it would pose a high risk to the patient in terms of addiction and impaired thinking and "can even cause respiratory depression and death.." (Tr. p.13-14).

Dr. Settlage has shown by his conduct that he is incapable of practicing medicine in a manner which safeguards the interest of the public. In addition to prescribing controlled substances for his own medical care and treatment, he prescribed controlled substances for at least three patients without having performed adequate medical examinations of the patients and without having identified any legitimate medical condition which would justify the prescriptions. He also failed to develop adequate plans of medical management for the patients' underlying medical problems, and failed to conduct on-going evaluations of the patients' progress.

Based upon the record herein, the Administrative Law Judge recommends that the Medical Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 30th day of January 1995.

Respectfully submitted,


Ruby Jefferson-Moore
Administrative Law Judge

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:

MARCH 23, 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.)

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

AFFIDAVIT OF COSTS
LS9409302MED

HENRY A. SETTLAGE, M.D.
RESPONDENT.

STATE OF WISCONSIN
COUNTY OF DANE

Ruby Jefferson-Moore, being first duly sworn on oath deposes and states:

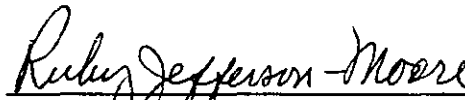
1. That affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.
2. That in the course of affiant's employment she was appointed administrative law judge in the above-captioned matter. That to the best of affiant's knowledge and belief, the costs for services provided by affiant are as follows:

<u>ACTIVITY</u>	<u>DATE</u>	<u>TIME</u>
Hearing and Preparation	11/29/94	1 hr.
Review record/law/draft decision	01/27/95	3 hrs.

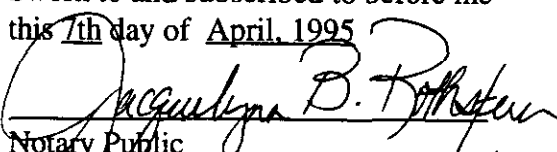
Total costs for Administrative Law Judge \$108.60.

3. That upon information and belief, the total cost for court reporting services provided by Magne-Script is as follows: \$137.70.

Total costs for Office of Board Legal Services: \$246.30.


Ruby Jefferson-Moore
Administrative Law Judge

Sworn to and subscribed to before me
this 7th day of April, 1995


Notary Public

My Commission. Permanent

To: Pamela A. Haack
From: Roger R. Hall
Subject: Settlege costs

LEGAL SERVICES
Security: General
Date Received: 04/04/95

The Division of Enforcement will not seek the assessment of any costs against Dr. Settlege.

Roger Hall

----- Original Memo -----

To: Roger R. Hall
Subject: Settlege costs

From: Pamela A. Haack
Date Sent: 03/30/95

Ruby and Roger: Please provide me with your affidavits of costs in the Settlege matter. Thanks.

Pamela