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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

JAMES L. FLOWERS, M.D.

Respondent

ORDER ON PETITIONS

The Medical Examining Board filed its Final Decision and Order in the above-captioned matter on July 27, 1995. By the terms of the board's Order, Dr. Flowers' license was suspended for 30 days, remedial education was ordered, and Dr. Flowers was required to surrender his DEA registration for Schedule I and II controlled substances for at least two years.

By letter to department Secretary Marlene A. Cummings dated July 31, 1995, Dr. Flowers indicated that one of his patients, LB, had been unable to find another physician to prescribe Schedule II analgesics to control his chronic pain. Dr. Flowers asked the board to exempt him from the requirement of the board's Final Decision and Order by which he is required to surrender his DEA registration as to Schedule I and II controlled substances in order to permit him to continue to prescribe Schedule II substances for that patient. The board considered the request at its meeting of August 23, and denied the request by its order dated September 1, 1995.

By letter dated February 12, 1996, Dr. Flowers again petitioned the board to permit him to prescribe Schedule II controlled substances for patient LB. Thereafter, on February 28, 1996, Dr. Flowers filed a petition relating to that portion of the board's July 27, 1995, Order which requires that "respondent shall not employ, be employed by, or be professionally associated in any way with, Jason Smith, D.O." The petition requests as follows:

- 1) to modify the order only to state as long as Dr. Smith is not licensed to practice,
- 2) that there is no restriction to my medically affiliating with him in any jurisdiction in which he is properly licensed.

Dr. Flowers appeared before the board at its meeting of March 20, 1996, and the board considered the matter on that date.

Based upon all information of record herein, the board orders as follows:

NOW, THEREFORE, IT IS ORDERED that the petition of James L. Flowers that he be permitted to continue to prescribe Schedule II controlled substances for patient LB, contrary to that portion of the

board's Final Decision and Order dated July 27, 1995, by which he is ordered to surrender his DEA registration and privileges as to Schedule I and II controlled substances, he, and hereby is, denied.

IT IS FURTHER ORDERED that the petition of James L. Flowers to permit him to associate with Jason Smith D.O., in any jurisdiction in which he is properly licensed is granted, and paragraph f. of the Order, as set forth in the board's Final Decision and Order dated July 27, 1995, is hereby modified to read as follows:

f. Respondent shall not in the State of Wisconsin employ, be employed by, or be professionally associated in any way with, Jason Smith, D.O., unless and until Dr. Smith is properly licensed and currently registered in this state. This prohibition includes any activity carried out in this state 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 in the State of Wisconsin unless and until Dr. Smith is properly licensed and currently registered in this state.

DISCUSSION

The board has granted Dr. Flowers' petition to permit him to practice with Dr. Smith in other states where he is licensed, and in Wisconsin at such time as Dr. Smith is currently registered to practice medicine and surgery in this state. The board again declines, however, to grant the petition to permit him to prescribe controlled substances for one particular patient. First, grant of the petition would put the board in the position of making a medical judgment as to the appropriate treatment modality to be utilized in treating patient LB. More important, it would put the board in the position of accepting the assertion that Dr. Flowers is the only physician in Milwaukee County willing and able to treat LB's chronic pain. That assertion is simply not credible. LB is not the only quadriplegic patient in Milwaukee County subject to chronic pain, and Dr. Flowers is not the only physician in that county capable of competently practicing pain management. Again, the board does not question Dr. Flowers' sincerity, but the concept of granting permission to apply for and hold a DEA registration which may be used only in the treatment of a single patient is one the board simply cannot accept.

Dated this 1st day of April, 1996.

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

by W.R. Schwartz, M.D.
W.R. Schwartz, M.D., Secretary