

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 :

MICHAEL KUSHNARYOV, M.D., :
RESPONDENT. :

FINAL DECISION AND ORDER

96 MED 339

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

Michael Kushnaryov, M.D.
4025 N. 92nd Street
Wauwatosa, WI 53222

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 is Michael Kushnaryov (dob 7/26/55), 4025 N. 92nd St., Wauwatosa, WI 53222. Respondent is and was at all times relevant to the facts set forth herein a physician and surgeon licensed in the State of Wisconsin pursuant to license #25516, first granted on 7/21/83. Respondent is an internist.

2. Respondent was first issued a limited license because his initial application for licensure revealed his dependence upon opiates. Respondent cooperated with treatment at that time.

3. In file # 84-Med-264, respondent admitted that he had relapsed in July, 1984 and again in December, 1984. He surrendered his license in April, 1985 and was issued a limited temporary educational permit on November 13, 1985, effective January 1, 1986.

4. In December, 1986, a formal complaint was issued, file # 86-Med-341, alleging that he had relapsed. As a result of this action, respondent admitted that he had relapsed; this relapse was occasioned by medication he received as a consequence of medical treatment he required due to a legitimate medical condition. Respondent agreed to be disciplined by the board with further limitations on his temporary educational permit, in May, 1987, and he continued in treatment.

5. In December, 1988, he relapsed again and was summarily suspended under the authority of the limited license order then in effect. He resumed treatment and was issued a limited three

month license in July, 1989. He was then issued a series of six month limited licenses, and in November, 1992, he was issued an unlimited license, which has been renewed and continued in force to the present.

6. Respondent did, on 9/4/96, see patients for the purpose of diagnosis and treatment while impaired by reason of mental health condition, in that he was depressed or had another condition which rendered him unable to practice with skill and safety to patient and public. His physician supervisor reports that respondent did, on 9/4/96, admit to the supervisor that respondent self-prescribed and self-administered Demerol®, a Schedule II controlled substance, and/or other medications, without a prescription from a practitioner and without any valid medical purpose. Respondent denies that he ingested Demerol® or any other self-prescribed controlled substance on this day, and a privately performed test of respondent's urine some nine hours after respondent left the clinic showed no opiates, amphetamines, barbiturates, benzodiazepines, cocaine/metabolites, propoxyphene, methadone, methaqualone, or phencyclidine, and denies that he stated to his physician supervisor that he had self-prescribed Demerol®. The Board credits the physician-supervisor's account.

7. Respondent did, on the following dates, issue what purported to be prescriptions for patients A.G. and S.G., wife and husband, for the following prescription drugs:

8/19/96	methylphenidate (Ritalin®) 20mg CR, #45
	hydrocodone (Vicodin®, Lortab®) 7.5mg, #60
8/23/96	Duragesic® patches, a brand of fentanyl transdermal skin patches, #5
8/29/96	amitriptyline 10mg, #30
	methylphenidate 10mg, #30
	methylphenidate 20mg CR, #30
	Duragesic patches, #5
9/10/96	Duragesic patches #3
	meperidine (Demerol®) 50mg, #20
	propoxyphene 100mg, #60

Fentanyl, methylphenidate, and meperidine are Schedule II controlled substances, hydrocodone is a Schedule III controlled substance, and propoxyphene is a Schedule IV controlled substance. In fact, these prescriptions were for respondent himself, and he then obtained the substances from a pharmacy by presenting them to the pharmacist and misrepresenting to the pharmacist that they were for A.G. and/or S.G. and would be delivered to them by respondent during a house call.

CONCLUSIONS OF LAW

8. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to §448.02(3), Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

9. The conduct described in paragraph 6, above, violated §§161.38(5), and 161.41(2r)(a), Wis. Stats. The conduct described in paragraph 7, above, violated §961.38(5) and 943.38(2), Wis. Stats., and § Med 10.02(2)(p) and (z), Wis. Adm. Code. 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 SURRENDER of the license and registration to practice medicine and surgery of Michael Kushnaryov, M.D., is ACCEPTED, effective immediately. Respondent shall immediately surrender all of his credentials issued by the Board to the Department or any agent of the Department.

IT IS FURTHER ORDERED, that respondent shall not practice medicine or surgery, or attempt to practice medicine or surgery, in Wisconsin, without being licensed and registered. Respondent may not apply to have his license and registration reinstated without completing a substantial course of treatment for his addiction, and completing at least two years of demonstrable total sobriety. If respondent ever applies to have his license reinstated, the Board shall have sole and complete discretion to determine whether these conditions have been met, and whether there are any conditions or limitations which may be needed to protect the patient or public. The issuance of a license which is subject to conditions or limitations shall not be deemed a denial of license, and shall not entitle respondent to a hearing.

Dated this February 26, 1997.

WISCONSIN MEDICAL EXAMINING BOARD

by: 
a member of the Board

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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MICHAEL KUSHNARYOV, M.D.,
RESPONDENT.

STIPULATION

96 MED 339

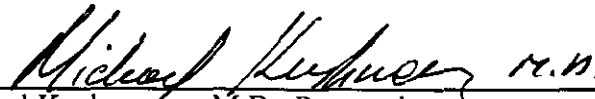
It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, as follows:

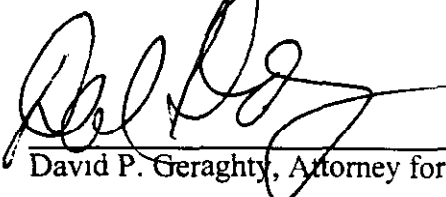
1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without a hearing on the formal complaint which has been filed in this matter.
2. Respondent 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 does not admit the allegations of the complaint, but desires to settle this matter to avoid the costs and uncertainties of litigation. For the purposes of this proceeding only, respondent 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.
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. This stipulation is subject to approval by the Division of Enforcement's attorney-supervisor. If approved by the supervisor, 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 *Report of Decisions* issued by the department. A summary of the order will be published in the *Wisconsin Regulatory Digest* issued semiannually by the Board. A press release regarding each surrender, revocation, and suspension is issued by the department. This action will be reported to the National Practitioner Data Bank and to the Federation of State Medical Boards. This is standard department procedure and in no way specially directed at Respondent.

10. Respondent unconditionally surrenders his license and registration to practice medicine and surgery in the State of Wisconsin. Respondent agrees that if he ever applies to have his license reinstated, such reinstatement is entirely within the discretion of the Board, and that the issuance of a limited or short-term license is not a denial of licensure within the meaning of ch. RL 1, and shall not entitle respondent to a hearing.

 *m.k.* 2-5-97
Michael Kushnaryov, M.D., Respondent Date

 2-5-97
David P. Geraghty, Attorney for Dr. Kushnaryov Date

 2/10/97
Arthur Thexton, Prosecuting Attorney
Division of Enforcement Date

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE MEDICAL EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

Michael Kushnaryov, M.D.,

AFFIDAVIT OF MAILING

Respondent.


STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On March 3, 1997, I served the Final Decision and Order dated February 26, 1997, LS9609301MED, upon the Respondent Michael Kushnaryov's attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 201 374 035.

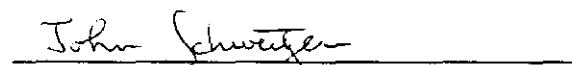
David P. Geraghty, Attorney
3127 W. Wisconsin Avenue
Milwaukee WI 53208



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 3rd day of March, 1997.


Notary Public, State of Wisconsin
My commission is permanent.

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:

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 3, 1997

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.)