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STATE OF WISCONSIN

BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

CHRISTOPHER J. RASMUSSEN, M.D.,
RESPONDENT.

FINAL DECISION AND ORDER

98 MED 320

LS9905131MED

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

Christopher J. Rasmussen, M.D.
335 S. Hartwell Ave.
Waukesha, WI 53186

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 Christopher James Rasmussen (dob 10/19/57) 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 #32812, first granted on 11/20/91. Respondent is an anesthesiologist.

COUNT I

2. Respondent did, on or about November 7, 1997, sign the following statement in connection with the renewal of his registration to practice medicine and surgery in Wisconsin, and by his signature represent that the statement was true:

I have completed 30 hours of AMA or AOA Category I continuing education beginning January 1, 1996 and ending December 31, 1997, and I have or will have evidence of this which I will furnish to the Medical Examining Board upon request.

3. On or about December 16, 1998, an investigator acting on behalf of the Board requested, in writing, evidence of respondent's continuing medical education during this period. Respondent received this request on or about 12/18/98.

4. Respondent has admitted to the Board's investigator that in fact he did not accumulate any CME credits during the period 1/1/96 through 12/31/97, and therefore has no evidence of obtaining such CME, and therefore that the statement set forth in par. 2, above, was false.

5. Respondent did accumulate more than 60 hours of CME in the 1998-99 biennium.

COUNT II

6. Before 12/31/96, respondent was in active practice as an anesthesiologist. During the year 1996, respondent ordered the following dosage units of the following controlled substances from wholesalers, and had them delivered to his residence:

acetaminophen with codeine #4 15,200

Tylenol® with codeine #4 4,500

Fioricet with codeine #3 200

paregoric 3 (pints)

diazepam 10mg 2,100

alprazolam 2mg 600

triazolam 100

diphenoxylate 5,200

meprobamate 600

chloral hydrate 200

7. On or about 11/24/98, respondent admitted to DEA diversion investigators that he had ordered these substances and consumed them himself, sometimes as many as 80 oral dosage units per day. Respondent admitted that he had been ordering and self-prescribing starting in 1994. Respondent admitted that he had been in active practice throughout this period, and that he had become dependent upon controlled substances at that time. In fact, respondent had consumed these controlled substances without the prescription of another authorized prescriber, and been dependent upon them while in active practice.

8. Respondent further admitted that he did not have any inventory or dispensing records for any of the controlled substances which he had ordered, and had never kept any such records. In fact, he did not have any inventory or dispensing records, and never kept any such records.

9. Respondent continued to order from drug wholesalers and to self-prescribe through at least 2/17/98, although he ceased the active practice of anesthesiology at the end of 1996 and did not publicly engage in the practice of medicine after that time.

CONCLUSIONS OF LAW

A. 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.

B. By failing to obtain 30 hours of CME during this period, and providing proof thereof to the Board, respondent violated §448.13(1), Wis. Stats., and § Med 13.06, Wis. Adm. Code. By making a false statement to the Board in connection with the renewal of respondent's registration, respondent violated § Med 10.02(2)(c), Wis. Adm. Code. Such conduct constitutes unprofessional conduct, under § Med 10.02(2)(intro) and (a), Wis. Adm. Code.

C. The conduct described in paragraphs 6-9, above, violated §§961.38(5) and 961.43(3g), Wis. Stats., §§ Med 10.02(2)(h), (i), (p), and (z), and Med 17.05(1) and (2), Wis. Adm. Code, and 21 CFR part 1304. Respondent's use of his medical credentials issued by the Board to obtain and self-prescribe and administer controlled substances in 1997 and 1998, constitutes the practice of medicine, notwithstanding the fact that he was not treating others as patients. 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 effective on the date of this Order, the license to practice medicine and surgery of Christopher J. Rasmussen, M.D., is SUSPENDED for a period of not less than three months, and continuing until respondent has obtained 8 hours of Category I CME in medical ethics, which CME shall have been pre-approved by the Board or its designee, plus an additional thirty hours of Category I CME, none of which may be or have been applied to respondent's CME requirement in any subsequent biennial licensing period, or have been obtained before the date of this Order.

IT IS FURTHER ORDERED that effective on the date of this Order, the license to practice medicine and surgery of respondent is SUSPENDED for a period of not less than five (5) years. The suspension may be STAYED initially for a period of three months, conditioned upon compliance with the conditions and limitations outlined below.

- a. Respondent may apply for an initial stay, and then for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the respondent for rehabilitation and practice during the prior three (3) month period. "Three months" means until the third regular Board meeting after the meeting at which any stay of suspension is granted.
- b. The Board may without hearing deny an application for a stay or for an extension of the stay, or commence other appropriate action, upon receipt of information that respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in ch. RL 1, Wis. Adm. Code upon timely receipt of a request for hearing.
- c. Upon a showing by respondent of successful compliance for a period of five years of active practice with the terms of this order and upon a showing that respondent has made satisfactory restitution for any losses caused by the conduct described above and compliance with all other terms of this Order, the Board may grant a petition by the Respondent for return of full licensure. (See ¶25, below.)
- d. The applications for stays of suspension, and all required reports under this Order, shall be due on the 1st business day of the previous month for which the stay is to be effective, and each three months thereafter, for the period that this Order remains in effect.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of respondent is LIMITED as set forth in §448.02(3)(e), Wis. Stats., and as follows:

1. Respondent shall not engage in the practice of medicine and surgery in any capacity unless in full compliance with the rehabilitation and treatment programs specified and approved under this Order. Respondent shall forthwith surrender all indicia of registration to the Department by mail or in person, and the Department shall then issue limited registration credentials to respondent. Respondent shall also surrender all indicia of registration to any agent of the Department who requests them.

REHABILITATION, MONITORING AND TREATMENT

Treatment Required

2. Respondent shall enroll and continue successful participation in all components of a drug and alcohol treatment program at a treatment facility acceptable to the Board as respondent's Supervising Health Care Provider shall determine to be appropriate for respondent's rehabilitation. Respondent shall commence involvement in the drug and alcohol rehabilitation program within 5 days of the date of the Final Decision and Order of the Board. Professional Recovery Network and its affiliated programs are acceptable treatment facilities.

Therapy. The rehabilitation program shall include and respondent shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the license under §§227.01(3) or 227.42, Wis. Stats., or ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

AA/NA Meetings. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

Supervising Health Care Provider

3. Respondent shall obtain a Supervising Health Care provider acceptable to the Board for the full term of this limited license. A physician affiliated with Professional Recovery Network is acceptable to the Board as Supervising Health Care Provider, and respondent may propose another physician if respondent wishes. The Supervising Health Care Provider shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order. The Supervising Health Care Provider may designate another qualified health care provider acceptable to the Board to exercise the duties and responsibilities of the Supervising Health Care Provider in his or her absence. In the event that a supervising Health Care Provider is unable or unwilling to serve as Supervising Health Care Provider, the Board shall in its sole discretion select a successor Supervising Health Care Provider.

Sobriety

4. Respondent shall abstain from all personal use of controlled substances as defined in §961.01(4), Stats. except when necessitated by a legitimate medical condition and then only with the prior approval of the Supervising Health Care Provider.

5. Respondent shall abstain from all personal use of alcohol.

6. Respondent shall in addition refrain from the consumption of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, or which may create false positive screening results, or which may interfere with respondent's treatment and rehabilitation. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by respondent to the Supervising Health Care Provider within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Within 24 hours of a request by the Supervising Health Care Provider or the Board or its designee, Respondent shall provide releases which comply with state and federal laws authorizing release of all health care records by the person who prescribed, dispensed, administered or ordered this medication for respondent. These releases shall also authorize the Supervising Health Care Provider, the Board or its designee to discuss the Respondent's health care with the person who prescribed, dispensed, administered or ordered this medication. The terms of this paragraph shall not be deemed to modify or negate Respondent's obligations as set forth in this Order.

Department Monitor

7. The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions, and requesting additional monitoring and surveillance. The Department Monitor may be reached as follows:

Department Monitor

Department of Regulation Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

FAX (608) 266-2264

TEL. (608) 267-7139

Releases

8. Respondent shall provide and keep on file with the Supervising Health Care Provider, all treatment facilities and personnel, laboratories and collections sites current releases which comply with state and federal laws authorizing release of all urine, blood and hair specimen screen results and medical and treatment records and reports to, and permitting the Supervising Health Care Provider and all treating physicians and therapists to disclose and discuss the progress of respondent's treatment and rehabilitation with the Board or any member thereof, or with any employee of the Department of Regulation and Licensing acting under the authority of the Board. Copies of these releases shall be filed simultaneously with the Department Monitor.

Drug and Alcohol Screens

9. Respondent shall supply on at least a twice-weekly basis, random monitored urine, blood or hair specimens as the Supervising Health Care Provider shall direct. The Supervising Health Care Provider (or designee) shall request the specimens from Respondent and these requests shall be random with respect to the hour of the day and the day of the week. In addition, the Board or its designee may at any time request a random monitored urine, blood or hair specimen from Respondent by directing the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement to contact Respondent and request

Respondent provide a specimen. To prevent the respondent's ability to predict that no further screens will be required for a given period (because the minimum frequency for that period has been met), the program of monitoring shall require respondent to provide in each quarter at least two (2) random screenings in excess of the minimums specified in this Order.

10. Respondent shall keep the Supervising Health Care Provider informed of Respondent's location and shall be available for contact by the Supervising Health Care Provider at all times.

11. All requested urine, blood or hair specimens shall be provided by Respondent within five (5) hours of the request for the specimen. All urine specimen collections shall be a split sample accomplished by dividing urine from a single void into two specimen bottles. The total volume of the split sample shall be at least 45 ml. of urine. All split sample urine specimens, blood specimens and hair specimens shall be collected, monitored and chain of custody maintained in conformity with the collection, monitoring and chain of custody procedures set forth in 49 CFR Part 40. Urine specimen collections shall be by direct observation if:

- a. The Respondent must provide an additional specimen because Respondent's initial specimen was outside of the normal temperature range (32.5 - 37.7 C/90.5 - 99.8 F) and respondent refuses to have an oral body temperature measurement or respondent does provide an oral body temperature measurement and the reading varies by more than 1 C/1.8 F from the temperature of the urine specimen;
- b. Respondent's last provided specimen was determined by the laboratory to have a specific gravity of less than 1.003 and creatinine concentration below 0.2 g/l;
- c. The collection site person observes Respondent acting in such a manner to provide reason to believe that Respondent may have attempted or may attempt to substitute or adulterate the specimen. The collection site person, if he or she believes that the initial urine specimen may have been adulterated or a substitution made, shall direct Respondent to provide an additional observed urine specimen;
- d. The last provided specimen resulted in a positive or suspected positive test result for the presence of controlled substances; or
- e. The Board (or any member of the Board), the Department Monitor, or Respondent's Supervising Health Care Provider directs that the urine specimen collection be by direct observation.

If either of the above conditions (a) or (c) requires collection of an additional observed urine specimen, the collection of the subsequent specimen shall be accomplished within the required five (5) hours of the request for the initial specimen; the collection of the initial specimen shall not satisfy the requirement that the urine specimen be collected within five (5) hours of the request for the initial specimen.

12. The drug and alcohol treatment program in which Respondent is enrolled shall at all times utilize a United States Department of Health and Human Services certified laboratory for the analysis of all specimens collected from Respondent.

13. The drug and alcohol treatment program in which Respondent is enrolled shall utilize only those urine, blood and hair specimen collection sites for collection of Respondent's urine, blood or hair specimens as comply with the United States Department of Transportation collection and chain of custody procedures set forth in 49 CFR Part 40.

14. The Supervising Health Care Provider, treatment facility, laboratory and collection site shall maintain a complete and fully documented chain of custody for each urine, blood or hair specimen collected from Respondent.

15. Every urine specimen collected from Respondent shall be analyzed at the time of collection for tampering by measurement of the temperature of the specimen and the oral temperature of Respondent. Every urine specimen collected from Respondent shall be further analyzed at the laboratory for tampering by measuring the creatinine concentration and the specific gravity of the specimen. The laboratory may at its discretion or at the direction of a Supervising Health Care Provider or the Board or any member thereof conduct additional tests to evaluate the urine specimen for tampering including, but not limited to, pH, color and odor.

16. Every urine, blood or hair specimen collected from Respondent shall be analyzed for alcohol, amphetamine, cocaine, opiates, phencyclidine, marijuana, methadone, propoxyphene, methaqualone, barbiturates, benzodiazepines, synthetic opiates (oxycodone, hydromorphone, fentanyl, hydrocodone, and meperidine), *, or the metabolites thereof. The Board or its designated agent may at any time direct that screens for additional substances and their metabolites be conducted by scientific methods and instruments appropriate to detect the presence of these substances. The laboratory shall conduct confirmatory tests of positive or suspected positive test results by appropriate scientific methods and instruments including, but

not limited to, gas chromatography and mass spectrometry.

17. All urine, blood or hair specimens remaining after testing shall be maintained in a manner necessary to preserve the integrity of the specimens for at least seven (7) days; and all positive or suspected positive urine, blood or hair specimens remaining after testing shall be so maintained for a period of at least one (1) year. The Supervising Health Care Provider or the Board or any member thereof may direct that the urine, blood or hair specimens be maintained for a longer period of time.

18. For the purpose of further actions affecting Respondent's license under this Order, it shall be presumed that all confirmed positive reports are valid. Respondent shall have the burden of proof to establish that the positive report was erroneous and that the respondent's specimen sample did not contain alcohol or controlled substances or their metabolites.

19. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Supervising Health Care Provider shall determine to be appropriate to clarify or confirm the positive or suspected positive urine, blood or hair specimen test results.

Required Reporting by Supervising Health Care Provider, and laboratories

20. The Supervising Health Care Provider shall report immediately to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement by FAX or telephonic communication: any failure of Respondent to provide a urine, blood or hair specimen within five (5) hours from the time it was requested; or of any inability to locate Respondent to request a specimen. The laboratory shall immediately report all urine specimens suspected to have been tampered with and all urine, blood or hair specimens which are positive or suspected positive for controlled substances or alcohol to the Department Monitor, and to the Supervising Health Care Provider.

21. The laboratory shall within 48 hours of completion of each drug or alcohol analysis mail the report from all specimens requested of Respondent under this Order to the Department Monitor (regardless of whether the laboratory analysis of the specimen was positive or negative for controlled substances, their metabolites or alcohol). Each report shall state the date and time the specimen was requested; the date and time the specimen was collected; the results of the tests performed to detect tampering; and the results of the laboratory analysis for the presence of controlled substances and alcohol.

22. The Supervising Health Care Provider shall submit formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program and summarize the results of the urine, blood or hair specimen analyses. The Supervising Health Care Provider shall report immediately to the Department Monitor [Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935, FAX (608)266-2264, telephone no. (608)267-7139] any violation or suspected violation of the Board's Final Decision and Order.

Required reporting by Respondent

23. Respondent is responsible for compliance with all of the terms and conditions of this Final Decision and Order. It is the responsibility of Respondent to promptly notify the Department Monitor, of any suspected violations of any of the terms and conditions of this Order, including any failures of the Supervising Health Care Provider, treatment facility, laboratory or collection sites to conform to the terms and conditions of this Order.

Facility approval

24. If the Board determines that the Supervising Health Care Provider, treatment facility, laboratory or collection sites have failed to satisfy the terms and conditions of this Final Decision and Order, the Board may, at its sole discretion, direct that Respondent continue treatment and rehabilitation under the direction of another Supervising Health Care Provider, treatment facility, laboratory or collection site which will conform to the terms and conditions of this Final Decision and Order.

PETITIONS FOR MODIFICATION OF TERMS

25. Respondent shall appear before the Board at least annually to review the progress of treatment and rehabilitation. Respondent may petition the Board for modification of the terms of this limited license and the Board shall consider Respondent's petition at the time it meets with Respondent to review the progress of rehabilitation. Any such petition shall be accompanied by a written recommendation from respondent's Supervising Health Care Provider expressly supporting the specific modifications sought. Denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of §227.01(3)(a), Stats. and Respondent shall not have a right to any further hearings or proceedings on any denial in whole

or in part of the petition for modification of the limited license.

After five years of continuous active professional practice under this Order and without relapse, upon satisfactory restitution of any losses caused by respondent's conduct which led to this Order, and upon recommendation of the Supervising Health Care Provider and Professional Mentor, respondent may petition the Board for a termination of all limitations on the license, and restoration of an unlimited license. Such restoration shall be in the sole discretion of the Board, and denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of §227.01(3)(a), Stats. and Respondent shall not have a right to any further hearings or proceedings on any denial in whole or in part of the petition for termination of the limitations and restoration of unlimited licensure.

EXPENSES OF TREATMENT AND MONITORING

26. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order.

PRACTICE LIMITATIONS

Controlled substance orders; DEA registration

27. Respondent shall not prescribe, dispense, administer or order any controlled substances. Respondent shall not hold, apply for, or make reapplication for DEA registration until the Board permits respondent to do so, or the Board modifies the terms of this limited license to permit the prescribing, dispensing, administering or ordering of controlled substances.

Professional Mentor

28. Respondent shall practice only under the supervision of a designated Professional Mentor approved by the Board or in a work setting pre-approved by the Board or its designated agent.

29. Respondent shall obtain a Professional Mentor acceptable to the Board before resuming the practice of medicine and surgery. The Professional Mentor shall be the individual responsible for supervision of Respondent's practice of medicine and surgery during the time this Order is in effect. Supervision shall include weekly meetings, review of charts selected by the Professional Mentor, and any other actions deemed appropriate by the Professional Mentor to determine that respondent is practicing in a professional and competent manner. The Professional Mentor may designate another qualified physician or other health care provider acceptable to the Board to exercise the duties and responsibilities of the Professional Mentor in an absence of more than three weeks. In the event that the Professional Mentor is unable or unwilling to continue to serve as Respondent's professional mentor, the Board may in its sole discretion select a successor Professional Mentor. The Professional Mentor shall have no duty or liability to any patient or third party, and the Mentor's sole duty is to the Board.

Reporting Required

30. Respondent shall arrange for his Professional Mentor to provide formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance.

31. Respondent's Professional Mentor shall immediately report to the Department Monitor and the Respondent's Supervising Health Care Provider any conduct or condition of the Respondent which may constitute unprofessional conduct, a violation of this Order, or a danger to the public or patient.

32. It is the responsibility of Respondent to promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order, including any failures of the Professional Mentor to conform to the terms and conditions of this Order.

Change in Address or Work Status

33. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

34. Respondent shall furnish a copy of this Order to all present employers immediately upon issuance of this Order, and to any prospective employer when respondent applies for employment as a health care provider.

IT IS FURTHER ORDERED, that respondent shall pay the costs of investigating and prosecuting this matter in the amount of \$100, within 30 days of this order.

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.

Dated this August 25, 1999.

WISCONSIN MEDICAL EXAMINING BOARD

s/

by: Ronald Grossman, M.D.

a member of the Board