

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>

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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

MARK M. BENSON, M.D., :
RESPONDENT. :

FINAL DECISION AND ORDER
LS 0111141MED

01 MED 121

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

Mark M. Benson, M.D.
14700 w. National Avenue
New Berlin, WI 53151

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. Mark M. Benson (D.O.B. 12/26/52) is duly licensed and registered in the state of Wisconsin to practice medicine and surgery (license # 22601). This license was first granted on July 19, 1979. Dr. Benson engages in orthopedic medicine.
2. Respondent's latest address on file with the Department of Regulation and Licensing is 14700 W. National Avenue, New Berlin, WI 53151.
3. Respondent is the subject of prior impaired practitioner orders entered in case 93 MED 519 on July 24, 1996, and in case. 99 MED 212 on July 19, 2000. Among other things the Orders require Respondent to abstain from all use of controlled substances except when necessitated by a legitimate medical condition, and then only with the prior approval of the Supervising Health Care Provider.

4. On October 4, 2001, Respondent was convicted in Waukesha County Circuit Court Case 01 CM 0877 of a violation of Wis. Stats. sec. 450.11(7)(A) of attempting to obtain a prescription drug (Ambien®) by fraud. Respondent admits that he took a prescription blank from another physician and issued a false prescription order for Ambien® on August 8, 2000. Respondent also admits that on another occasion he telephoned a prescription order to a pharmacy using another physician's name.

CONCLUSIONS OF LAW

5. The Wisconsin Medical Examining Board has jurisdiction in this case pursuant to sec. 448.02(3) Wis. Stats.

6. The Wisconsin Medical Examining Board has the authority to resolve this case by Stipulation without an evidentiary hearing pursuant to sec. 227.44(5) Wis. Stats.

7. The conduct described in paragraph 4, above, was in violation of sec. 448.02(3) Wis. Stats. and Wis. Adm. Code sec. MED 10.02(2)(a), (b), (h), (m) and (p).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that :

1. The Stipulation of the parties is approved.
2. Mark M. Benson, M.D. (license 22601) is REPRIMANDED.
3. The license of Respondent to practice as a physician and surgeon in the state of Wisconsin is LIMITED as follows:
 - a. Respondent shall certify to the Board the successful completion of an educational intervention program of twenty hours entitled *Professional Renewal in Medicine Through Ethics*, offered by the University of Medicine and Dentistry of New Jersey, within six months of the date of this order. Respondent will be responsible for obtaining the required course pre-approval from the Medical Examining Board or its designee. Respondent shall be responsible for all costs of the completion of the required training. Within 60 days of completion of the required training Respondent shall submit an affidavit to the Wisconsin Medical Examining Board affirming that he has completed the educational requirement of this Order. The affidavit shall be supported by a certificate of attendance and completion issued by the course sponsor. The affidavit and supporting documentation will be filed with the Department Monitor, Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, WI 53708-8935.

b. Upon completion of the training required by this Order, Respondent will appear before the Medical Examining Board, if so requested by the Board, to assure compliance with the terms of this Final Decision and Order.

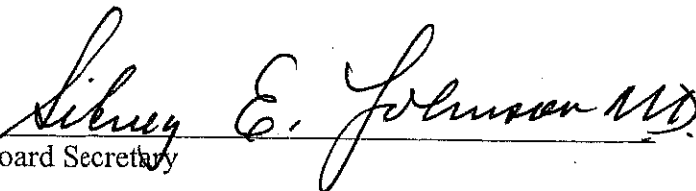
4. Respondent shall, within 60 days of the date of this Order pay the costs of investigation and prosecution of this action in the sum of \$ 400.00.

5. Pursuant to sec. 448.02(4) Wis. Stats., if the Wisconsin Medical Examining Board determines that there is probable cause to believe that Respondent has violated the terms of this Final Decision and Order, the Board may order that the license of Respondent to practice medicine and surgery in the state of Wisconsin be summarily suspended pending investigation of the alleged violation.

6. The rights of a party aggrieved by this Final Decision and Order to petition the Wisconsin Medical Examining Board for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin this 14 day of NOV., 2001.

WISCONSIN MEDICAL EXAMINING BOARD


Board Secretary

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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :

MARK M. BENSON, M.D.; :
RESPONDENT. :

STIPULATION :
01 MED 121 :

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 the issuance of a formal complaint.

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 been provided the opportunity to seek legal advice before signing this Stipulation.

4. 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.

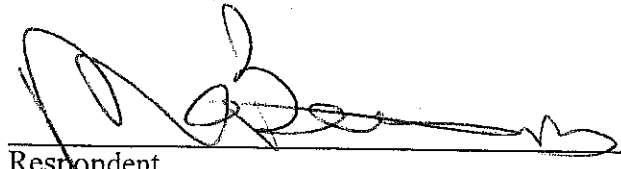
6. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and 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*

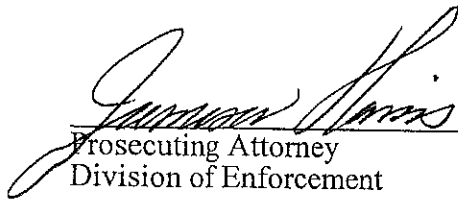
issued by the department. A summary of the order will be published in the *Wisconsin Regulatory Digest* issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent.

 11/6/01

Respondent Date

~~Attorney for Respondent~~

~~Date~~

 NOVEMBER 13, 2001

Prosecuting Attorney Date
Division of Enforcement

NOTICE OF RIGHTS OF APPEAL

TO: Mark Benson

You have been issued an Order. For purposes of service the date of mailing of this Order is Nov. 16, 2001. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Order is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

Medical Examining Board

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935