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BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

FINAL DECISION

AND ORDER

LS0201021MED

DALE M. BUEGEL, M.D.,

RESPONDENT.

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

Dale M. Buegel, M.D.

6980 North Port Washington Road

Suite 202

Glendale, WI 53217

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 and Complaint on January 2, 2002, and Dr. Buegel's Answer was filed on January 16, 2002. The hearing in the matter was held on March 27, 2002. Attorney Arthur Thexton appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. At least from January 17, 2002, to March 6, 2002, Attorney Michael J. Wirth, Peterson, Johnson & Murray, S.C., represented Dr. Buegel. Thereafter, Dr. Buegel appeared pro se. The transcript was filed on April 17, 2002.

Administrative Law Judge Ruby Jefferson-Moore filed her *Proposed Decision* on May 31, 2002. Dr. Buegel filed *Respondent's Objections to the Proposed Decision* on June 7, 2002. Mr. Thexton filed *State's Objections to the*

Proposed Decision on June 10, 2002, along with *State's Motion to Supplement Record*. Mr. Thexton filed *State's Response to Respondent's Objections* on June 13, 2002, and Dr. Buegel filed *Respondent's Reply to State's Objections* in an undated document.

[\[1\]](#)

The board considered the matter on July 24, 2002, at which time the parties presented oral arguments on their objections. The board thereafter accepted the Findings of Fact and Conclusions of Law proposed by the administrative law judge, and also accepted in principal the recommended Order. The board did, however, make several minor changes to the wording of the Order in an effort to clarify its terms and facilitate compliance. Through a scrivener's error, the minutes of the board's action reported that the board accepted the Proposed Decision, including the Order, in its entirety. Consequently, the Final Decision and Order was filed without any modification to the Proposed Decision.

Set forth below is the Final Decision and Order as adopted by the board. The board's erroneous Final Decision and Order in this matter dated July 24, 2002, is void, and is replaced *nunc pro tunc* by this Final Decision and Order.

FINDINGS OF FACT

1. Dale M. Buegel (d.o.b. 12/16/50), 6980 North Port Washington Road, Suite 202, Glendale, WI 53217, was at all time material to the Complaint filed in this matter a physician and surgeon licensed by the State of Wisconsin, license #21620, which was first granted on July 14, 1978.

2. Dr. Buegel is a physician with Board certification in adult psychiatry.

3. On September 7, 2000, the Medical Examining Board issued a Final Decision and Order in which it concluded that Dr. Buegel's conduct in failing to properly assess a patient's medical condition and document the results accordingly, constituted a violation of s. MED 10.02 (2) (h), Code and s. 448.02 (3) (b), Stats. In its Final Decision and Order, the Board limited Dr. Buegel license to practice medicine and surgery for an indefinite period of time as follows:

1. Respondent shall, no later than one year from the date of this Order, take
and successfully complete:

(a) The 45-hour course in Proper Prescribing of Controlled Dangerous
Substances sponsored by Forensic and Educational Consultants of Margate,
New Jersey, or an equivalent course approved in advance by the Board or
its designee.

(b) An educational program established through the University of Wisconsin

Continuing Medical Education program (which may conduct any program through the Medical College of Wisconsin or another CME provider) in record keeping, or another similar program approved in advance by the Board or its designee.

(c) Respondent shall arrange for the course sponsors approved above to certify to the Board the results of the course work upon completion and to release all records of his performance and attendance.

(d) Respondent shall be responsible for all costs associated with taking the course work required under this Order and shall pay the cost of any examination required for successful completion of the course work.

2. Respondent shall maintain patient health care records in his practice of medicine in accordance with the requirements set forth in s. Med 21.03, Wis. Adm. Code. Respondent shall arrange for the review of his patient records by a physician satisfactory to the board for a period of six months. At the end of six months, respondent shall be responsible for submission to the board of a report by the reviewing physician setting forth the reviewing physician's opinion whether the records meet the minimum requirements of s. Med 21.03, Code.

3. Upon a showing by respondent of complete, successful and continuous compliance for a period of two (2) years with the conditions and limitations set forth in this Order, the Board may grant a petition by respondent for return to full licensure.

4. In its September 7, 2000 Final Decision and Order, the Board also ordered Dr. Buegel to pay one-half of the costs of the proceeding.

5. Dr. Buegel received a copy of the Board's September 7, 2000 Final Decision and Order no later than October 2, 2000.

6. Dr. Buegel has not completed any of the requirements contained in paragraphs 1 and 2 of the Board's Final Decision and Order dated September 7, 2000. He has not done any of the following:

(a) Taken or successfully completed the 45-hour course in Proper Prescribing of Controlled Dangerous Substances sponsored by Forensic and Educational

Consultants of Margate, New Jersey, or an equivalent course approved in advance by the Board or its designee.

(b) Taken or successfully completed an educational program established through the University of Wisconsin Continuing Medical Education program (which may conduct any program through the Medical College of Wisconsin or another CME provider) in record keeping, or another similar program approved in advance by the Board or its designee.

(c) Arranged for the course sponsors approved above to certify to the Board the results of the course work upon completion and to release all records of his performance and attendance.

(d) Maintained his patient health care records in his practice of medicine in accordance with the requirements set forth in s. Med. 21.03, Wis. Adm. Code.

(e) Arranged for the review of his patient records by a physician satisfactory to the board for a period of six months.

(f) Arranged for submission to the board of a report, by the physician approved to review his patient records, setting forth the reviewing physician's opinion whether respondent's records meet the minimum requirements of s. Med 21.03, Code.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this matter pursuant to s. 448.02 (3) Wis. Stats., and s. MED 10.02 (2) Wis. Adm. Code.

2. Respondent's conduct, as described in Findings of Fact 6 herein, constitutes a violation of s. MED 10.02 (2) (b), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license (#21620) of Dale M. Buegel to practice medicine and surgery in the state of Wisconsin shall be, and hereby is, **SUSPENDED** for an **INDEFINITE PERIOD** of time.

IT IS FURTHER ORDERED as follows:

(1) Petition for Stay. Dr. Buegel may petition the Board at any time for a stay of the suspension of his license. In conjunction with such petition, Dr. Buegel shall submit

documentation satisfactory to the Board establishing that:

(a) He has enrolled in the 45-hour course in Proper Prescribing of Controlled Dangerous Substances sponsored by Forensic and Educational Consultants of Margate, New Jersey, or an equivalent course approved in advance by the Board or its designee.

(b) He has enrolled in an educational program established through the University of Wisconsin Medical School Continuing Medical Education Office (UW-CME) in record keeping, or another similar program approved in advance by the Board or its designee. The program shall be completed within 12 months, unless an extension is granted by the board upon a request by Dr. Buegel or by UW-CME. The program shall consist of the following:

Under the tutelage of a mentor selected by the program, respondent shall review material selected by the mentor dealing with medical recordkeeping, and shall introduce the mentor's recommended improvements into his system over the period of the program in both his office and hospital records. All of respondent's records may be reviewed and discussed periodically with the mentor, as the mentor shall determine. The review may include not only the adequacy of documentation, but any other quality of care or related issue.

The mentor shall agree to report any matter which may constitute a danger to the health, safety or welfare of patient or public, any violation of law, and any unprofessional conduct, to the Board, whenever it comes to the mentor's attention.

Respondent's progress and the outcome of the program shall be reported directly to the department monitor, who may discuss respondent's progress with the mentor. The UW-CME shall certify to the Board the results of the program upon completion.

If respondent does not successfully complete the program or does not successfully achieve the objectives of the program, this matter shall be referred to the Board to determine any additional appropriate discipline for the conduct set out in the Findings of Fact. Respondent will have the opportunity to present argument to the Board on that issue. The Board will receive the results of respondent's performance in the program as evidence in determining appropriate discipline.

(c) He has arranged for the course sponsors approved above to certify to the Board the results of the course work upon completion and to release all records of his performance and attendance.

(d) He will maintain the patient health care records in his practice of medicine in accordance with the requirements set forth in s. Med 21.03, Wis. Adm. Code.

(e) He has made arrangements for the review of his patient records by a physician satisfactory to the

board for compliance with s. Med 21.03, for a period of 6 months, to begin when the UW-CME certifies the results of the program upon completion.

(2) Board Action. Upon its determination that Dr. Buegel can safely and competently return to the active practice of medicine, the Board may stay the suspension for a period of three (3) months, conditioned upon compliance with the conditions and limitations set forth in paragraph (3).

(a) Dr. Buegel may apply for consecutive three (3) months extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed upon respondent's practice during the prior three (3) month period.

(b) Upon a showing by Dr. Buegel of complete, successful and continuous compliance for a period of one (1) year with the terms of paragraph (3), below, following the completion of the courses ordered by the Board in (1), above, and a personal appearance before the Board by respondent, the Board may grant a petition by respondent for return of full licensure if it determines that he has complied with all of the requirements set forth in paragraphs 1 and 2 of the Board Order contained in its Final Decision and Order dated September 7, 2000, and has fully complied with this Order.

(3) Conditions of Stay

(a) Dr. Buegel shall remain enrolled in the educational course work identified in paragraph (1) (a) and (b) above until successful completion of the course work. Upon completion of the course work, Dr. Buegel shall arrange for the course sponsors to certify to the Board the results of the course work and to release all records of his performance and attendance.

(b) Dr. Buegel shall submit satisfactory evidence to the Board that he has maintained the patient health care records in his practice of medicine in accordance with the requirements set forth in s. Med 21.03, Wis. Adm. Code.

(c) Dr. Buegel shall submit satisfactory evidence to the Board that the physician designated to review his patient records for 6 months for compliance with s. Med 21.03, Code, has in fact commenced reviewing his patient records, immediately following the certification of the UW-CME that the program has been completed. At the end of 6 months, Dr. Buegel shall be responsible for submission to the board of a report by the reviewing physician setting forth the reviewing physician's opinion whether the records meet the minimum requirements of s. Med 21.03, Code.

(d) Dr. Buegel shall be responsible for all costs associated with taking the course work required under this Order and shall pay the cost of any examination required for successful completion of the course work.

(4) Petition for Modification of Terms: Respondent may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats., ss. 227.01(3) and 227.42.

(5) Department Monitor: 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 & Licensing, Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

FAX (608) 266-2264

TEL. (608) 267-3817

(6) Costs: Pursuant to s. 440.22 Wis. Stats., the costs of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing, before his registration is next renewed.

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.

EXPLANATION OF VARIANCE

The board has accepted the Findings of Fact and Conclusions of Law proposed by the administrative law judge in their entirety. The board has modified the recommended Order, however, to clarify and simplify its terms without substantially altering its substance.

More specifically, the standard language which has been developed over the years for the prescribing course requires a respondent to take all pre and post tests, even if not required by the sponsor (this is because the Case Western Reserve course in Cleveland, which the Board routinely approves, makes the pre-test optional). This language has therefore been added.

The Board has ordered the recordkeeping course many times over the years. The standard language which has been developed over that time for the course has been substituted for the language suggested by the ALJ. This course will typically last approximately one year, and this time period includes a review of records by University of Wisconsin Medical School Continuing Medical Education Office (UW-CME) several months after the didactic portion of the course ends. Although the Board has routinely required the course to be finished within one year, it is very likely, based on the Board's experience, that this portion of the educational program will last longer than one year, from commencement to final review. The Order therefore provides for extensions if requested by Dr. Buegel or UW-CME, and if approved by the board.

The language requiring that Dr. Buegel's medical records be reviewed for a period of six months from the date of the Order is problematic, in relation to a record-keeping course which will last up to a full year. This provision makes more sense if the six month time period does not begin until the recordkeeping course has been finished, including the post-review. This modification has therefore been made.

The costs provision does not state when the costs are due. In view of the very substantial costs of compliance, the board establishes the deadline as that date upon which Dr. Buegel's license renewal application is due (November 1, 2003).

Finally, the board has added language providing for summary board action in the case of a violation of the board's Order by Dr. Buegel.

Dated this 8th day of August, 2002.

STATE OF WISCONSIN

MEDICAL EXAMINING BOARD

Virginia S. Heinemann

Board Secretary

[\[1\]](#) Respondent's *Reply to State's Objections* consists of a request that Mr. Thexton's objections to the Proposed Decision not be considered by the board because they were not mailed until June 10, 2002, the deadline for filing objections. Under § RL 2.08(1), Code, service on respondent is complete upon mailing, and Mr. Thexton's objections were therefore timely filed.