

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

	:	
IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
MILES J. JONES, M.D.,	:	LS0110041MED
RESPONDENT	:	
	:	

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

State of Wisconsin  
Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Ave.  
Madison, WI 53708-8935

Miles J. Jones, M.D.  
1704 S E 11th Ave.  
Lee's Summit, MO 64081

State of Wisconsin  
Medical Examining Board  
1400 East Washington Ave.  
Madison, WI 53703

This matter was initiated by the filing of a complaint (DOE case # 00 MED 148) with the Medical Examining Board (“the board”) on October 4, 2001. The complaint contained three counts of alleged unprofessional conduct. A Notice of Hearing was prepared by Arthur Thexton, an attorney in the Division of Enforcement (“Division”) of the Department of Regulation and Licensing and sent by certified mail to Dr. Jones on the same date. The Notice and Complaint were received and signed for by “Cathy Wall (registered agent)” on October 9, 2001. No answer was filed by Dr. Jones within 20 days as required by the Notice of Hearing.

The prehearing conference was held on November 9, 2001 and Dr. Jones was available by phone along with Mr. Thexton. Dr. Jones was informed that he was technically in default for having failed to file an answer, but upon his assertion that he had been away from his office -- and in fact outside of the lower 48 states -- for the previous few months, he was granted an additional 30 days in which to file an answer.

On November 14, 2001, Mr. Thexton filed an Amended Complaint. The amended complaint contained the original three counts plus five more. On December 9, 2001, Dr. Jones sent an e-mail message containing a Motion to Dismiss based on an alleged lack of jurisdiction because no Wisconsin resident had complained about him, and on December 10, 2001 he filed an answer, designated "Respondent's Response".

The parties submitted arguments as scheduled and the ALJ issued an oral opinion in a telephone conference on February 22, 2002, that he would be recommending dismissal of the complaint. Following that telephone conference, Mr. Thexton requested permission to file a second Amended Complaint. Leave to file an Amended Complaint was granted on February 24, 2002.

Mr. Thexton filed a Second Amended Complaint on April 9, 2002. The complaint contained the previous eight counts plus three more. On April 24, 2002, the ALJ sent a letter to Dr. Jones with a copy to Mr. Thexton reminding him that he needed to file an answer within twenty days; but that since the obligation had not been stated explicitly when the Second Amended Complaint was filed, the deadline for filing would be twenty days from the date of the letter, i.e. by May 14, 2002. On May 3, 2002, Dr. Jones sent a letter saying that he had not yet received the complaint. Mr. Thexton responded to this letter with copies of the complaint by fax and by e-mail on May 7, 2002. Also on May 7, 2002 the ALJ sent Dr. Jones a letter stating "I hereby extend the deadline for filing an Answer to May 27, 2002" and that any request for an extension beyond that date would have to be supported by "good cause", i.e. good reason(s) for not being able to file the Answer on time."

Dr. Jones did not file an Answer to the Second Amended Complaint by May 27, 2002. On May 31, 2002, the ALJ informed Mr. Thexton by letter (copied to Dr. Jones) that the ALJ would entertain a motion for default. On the same day, Mr. Thexton filed a Motion for Default. A hearing on the motion was scheduled for June 19, 2002, and a Notice of Motion Hearing was sent to the parties on June 4, 2002.

The hearing was held as scheduled on June 19, 2002 and recorded. Mr. Thexton was unavailable, and DOE was represented by Attorney James Harris. Dr. Jones stated that he mis-read the letter and calendared the due date for the Answer as June 27, 2002. With some discussion and explanation on the record of the hearing, including a recitation of Dr. Jones's other procedural oversights that had been forgiven, the Motion for Default was granted.

The ALJ thereafter filed his Proposed decision on November 4, 2002, and Mr. Thexton filed his Objections to Proposed Decision on November 11, 2002.

Based upon the entire record in this case the Medical Examining Board makes the following Findings of Fact, Conclusions of Law and Order.

#### FINDINGS OF FACT

1. The respondent is Miles James Alfred Jones, Jr., M.D. At all times relevant to the facts of this proceeding, Dr. Jones was licensed as a physician and surgeon in the State of Wisconsin. Dr. Jones's license number is 22012. Dr. Jones is a board-certified forensic pathologist. Dr. Jones's address of record with the department is Physicians Laboratory Service, 2511 Hwy 441N, Clayton, GA 30525.

2. Dr. Jones is or has been licensed to practice medicine in other states, including Alabama, Indiana, Kansas, Minnesota, Missouri, Nevada, North Carolina, North Dakota, South Carolina, Tennessee, and West Virginia. Dr. Jones's home address is 1704 S E 11th Ave., Lee's Summit, MO 64081.

#### Facts Associated with Count I.

3. On January 21, 2002, DOE Investigator Steven Rohland logged on from a location in Wisconsin to an internet site known as [www.net-dr.com](http://www.net-dr.com) and completed a questionnaire which constituted a request for a prescription drug. Mr. Rohland requested ten tablets of Viagra®, a prescription-only drug.

4. Mr. Rohland did not have a conversation with any physician or any person acting on behalf of any physician, or any authorized prescriber of prescription medications, nor did any such person conduct a physical examination of Mr. Rohland. Dr. Jones did not establish a legitimate physician-patient relationship with Mr. Rohland, and Dr. Jones did not inform Mr. Rohland about the availability of alternate viable medical modes of treatment and the benefits and risks of those treatments.

5. On January 28, 2002, Mr. Rohland received ten tablets of Viagra® by Federal Express. The tablets were in a standard prescription bottle bearing a standard pharmacy prescription label stating that the contents were Viagra® and that they were dispensed on the order of Dr. Miles Jones, DEA # \*\*\*\*\* by Giannato's Pharmacy of Newark, New Jersey (a licensed pharmacy in that state). The labeling did not contain adequate directions for use in compliance with §502(f) of the federal Food, Drug & Cosmetic Act [21 USC §352(e)].

#### Facts Associated with Count II.

6. On some 240 occasions between November 3, 1999 and February 15, 2002, Dr. Jones prescribed prescription-only drugs to residents of the State of Wisconsin on the basis of questionnaires only and without physical examination. Each of the prescriptions was dispensed by Giannato's Pharmacy of Newark, New Jersey in a manner similar to the prescription delivered to Mr. Rohland.

7. Dr. Jones did not establish a legitimate physician-patient relationship with the persons for whom he ordered prescriptions, nor did he inform the patients about the availability of alternate viable medical modes of treatment and the benefits and risks of those treatments.

8. Dr. Jones knew or should have known that the persons requesting the drugs were Wisconsin residents.

#### Facts Associated with Count III.

9. As reported in an article in the [Journal of Medical Internet Research](#) in March of 2001, Dr. Jones dispensed Viagra® (sildenafil) to some 2,100 patients from 46 states and several foreign countries between June of 1998 and March of 1999. Dr. Jones did not see or examine any of these patients, and did not inform them of alternative modes of treatment.

#### Facts Associated with Count IV.

10. In March of 1999, Dr. Jones, from his place of business in Missouri, provided a prescription for Viagra® (sildenafil) to a person in Kansas. Dr. Jones did not see or examine the patient, and did not inform her of alternative modes of treatment.

Facts Associated with Count V.

11. In August of 1999, Dr. Jones, from his place of business in Missouri, provided a prescription for Xenical® (orlistat) to a person in New Jersey. Dr. Jones did not see or examine the patient, and did not inform her of alternative modes of treatment.

Facts Associated with Count VI.

12. In August of 1999, Dr. Jones, from his place of business in Missouri, provided a prescription for Zyban® (bupropion hydrochloride) to a person in New Jersey. Dr. Jones did not see or examine the patient, and did not inform her of alternative modes of treatment.

Facts Associated with Count VII.

13. In December of 1999, Dr. Jones, from his place of business in Missouri, provided a prescription for Viagra® (sildenafil) to a person in an unknown location. Dr. Jones did not see or examine the patient, and did not inform him of alternative modes of treatment.

Facts Associated with Count VIII.

14. In February of 2000, Dr. Jones, from his place of business in Missouri, twice provided a prescription for Viagra® (sildenafil) to a person in an unknown location. Dr. Jones did not see or examine the patient, and did not inform him of alternative modes of treatment.

Facts Associated with Count IX.

15. In July of 2001, Dr. Jones, from his place of business in Missouri, provided a prescription for Xenical® (orlistat) to a person in Texas. Dr. Jones did not see or examine the patient, and did not inform him of alternative modes of treatment.

Facts Associated with Count X.

16. DOE Attorney Arthur Thexton wrote to Dr. Jones on May 23, 2001 at both his residence address and his business address on file with the board, and requested that Dr. Jones contact him. The letters were not returned by the U.S. Postal Service as undelivered. Between May 23, 2001 and July 17, 2001, Mr. Thexton sent e-mails to Dr. Jones and left a telephone message for him, but Dr. Jones did not reply.

17. On July 17, 2001, Mr. Thexton wrote to Dr. Jones at the same two addresses and enclosed investigative subpoenas stating on their face that Dr. Jones was required to appear for an interview in Mr. Thexton's office. The letters were not returned. Mr. Thexton also caused the local sheriff to make several attempts to serve Dr. Jones personally but no-one answered the door at Dr. Jones's residence.

#### Facts Associated with Count XI.

18. On December 11, 2001, Dr. Jones signed a document filed in this proceeding in which he stated "Respondent has been working/living outside the continental United States for the last seven (7) months and has not deliberately [sic] avoided service." On March 12, 2002, Dr. Jones filed another signed document in which he reported the dates of his absence from the lower 48 states in 2001 as February 21 to May 7, August 10 to November 15, and December 15 to December 27.

19. Dr. Jones's casual and inaccurate reporting of dates related to important events in this proceeding constitutes the making of a false statement to the board.

#### CONCLUSIONS OF LAW

1. The Medical Examining Board is the legal authority responsible for issuing and controlling credentials for the practice of medicine and surgery in Wisconsin, under ch. 448, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 448.02 (3), Stats., and ch. Med 10, Wis. Admin. Code.

2. The Medical Examining Board has personal jurisdiction over Dr. Jones, based on his holding a credential issued by the board and upon service of the Complaint in this proceeding.

3. By supplying a prescription order for Viagra® for a person located in Wisconsin and causing a pharmacy to deliver Viagra® to him, without establishing a legitimate physician-patient relationship and without informing him about the availability of alternate viable medical modes of treatment and the benefits and risks of those treatments, as set forth in Findings of Fact numbered 3 through 5, Dr. Jones has violated sec. Med 10.02 (2) (g), (h), (u) and (z), Wis. Admin. Code.

4. By supplying prescription orders for Viagra® for persons located in Wisconsin and causing a pharmacy to deliver Viagra® to them, without establishing legitimate physician-patient relationships and without informing them about the availability of alternate viable medical modes of treatment and the benefits and risks of those treatments, as set forth in Findings of Fact numbered 6 through 8, Dr. Jones has violated sec. Med 10.02 (2) (g), (h), (u) and (z), Wis. Admin. Code.

5. In prescribing prescription drugs to persons with whom he did not have a valid physician-patient relationship, and without informing them of the availability of alternate viable medical modes of treatment and the benefits and risks of those treatments, as set forth in Findings of Fact numbers 9 through 15, respondent has violated sec. Med 10.02(2)(g), (h), (u), and (z), Wis. Adm. Code.

6. In failing to respond to repeated inquiries and subpoenas by the board, as set forth in Findings of Fact numbered 16 and 17, Dr. Jones has violated §§ Med 10.02 (2) (k), and Med 10.02 (2) (intro.), Code

7. By failing, in concert with Giannotto's Pharmacy, to include labeling which contained adequate directions for use, in compliance with §502(f) of the federal Food, Drug

& Cosmetic Act [21 USC §352(e)], as set forth in Findings of Fact numbered 5 and 6, Dr. Jones has violated § Med 10.02(2)(g), (h), (u), and (z), Wis. Adm. Code.

8. In making a false statement to the board, as set forth in Findings of Fact numbered 18 and 19, Dr. Jones has violated § Med 10.02 (2) (intro.), Code.

### **ORDER**

THEREFORE, IT IS ORDERED that the license of Miles P. Jones to practice medicine and surgery in Wisconsin is hereby revoked.

IT IS FURTHER ORDERED that pursuant to § 440.22, Stats., the full costs of this proceeding shall be assessed against Respondent

### **EXPLANATION OF VARIANCE**

The Medical Examining Board has accepted the ALJ's recommended Findings of Fact with the exception of Finding of Fact #19. The ALJ's recommended Finding reads as follows:

Dr. Jones's casual and inaccurate reporting of dates related to important events in this proceeding constitutes the making of a false statement to the board. Despite the inconsistencies with regard to the dates during which he was absent from his home in Missouri, the evidence does not prove that he was deliberately avoiding service.

The State proposed that this should read:

Dr. Jones's inaccurate reporting of dates related to important events in this proceeding constitutes the making of a false statement to the board. Given the inconsistencies with regard to the dates during which he was absent from his home in Missouri, and his failure to respond to mailed, e-mailed, and telephoned messages, together with the apparent refusal to respond to a deputy sheriff at the door of his residence, the evidence is sufficient to prove that he was deliberately avoiding service.

The decision whether respondent's actions in this case in terms of his response to filings and inquiries constitute a deliberate intent to avoid service or merely a failure to take the matter seriously requires speculation. The fact that he made false statements to the board is by far the more important consideration, however, and the finding in that regard is retained.

But while the board has left the ALJ's Findings of Fact largely untouched, numerous modifications have been made to his Conclusions of Law. These include the following.

The ALJ's recommendation at Conclusion of Law V reads as follows:

