

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST  
WILLIAM J. FABER, D.O.,

AMENDED FINAL DECISION  
AND ORDER  
LS0211222MED

Respondent :

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

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

William J. Faber, D.O.  
6529 West Fond du Lac Avenue  
Milwaukee, WI 53218

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

This proceeding was initiated by a complaint prepared by the Division of Enforcement of the Department of Regulation and Licensing and filed with the Medical Examining Board on November 22, 2002. An answer was filed on December 9, 2002 on behalf of Dr. Faber by Attorney Raymond M. Roder. The disciplinary proceeding was conducted on April 30 and May 1, 2003. Dr. Faber appeared in person and represented by Mr. Roder. The Medical Examining Board was represented by Attorney James Polewski of the Department's Division of Enforcement.

The Administrative Law Judge, John N. Schweitzer (ALJ), filed his Proposed Decision on July 14, 2003, by which he concluded that there was insufficient evidence to support any of the charges against Dr. Faber. Mr. Polewski filed his Objections to the Proposed Decision on August 12, 2003; and Mr. Roder filed Respondent's Response to the objections on August 21, 2003. On August 25, 2003, Mr. Polewski filed his Motion to Strike a Portion of Dr. Faber's Response; and Mr. Roder filed his Response to the Division of Enforcement's Motion on August 27, 2003.

Mr. Polewski and Mr. Roder appeared before the board on September 24, 2003, for oral arguments on the objections, and the board considered the matter on that date. As a part of its deliberations, the board interviewed the ALJ, Mr. Schweitzer, as to his impressions of the witness' credibility, particularly his impressions regarding witness demeanor.

The board thereafter entered its Final Decision and Order on October 24, 2003. By the terms of the board's Order, Dr. Faber was found to have violated Med 10.02(2)(h), Wis. Admin. Code, in beginning antibiotic therapy for an infection and fever of unknown etiology without examining the patient before or shortly after prescribing antibiotics. The basis for the board's conclusion was stated to be the testimony of the state's expert witness, Dr. Mark Timmerman. The board ordered that Dr. Faber be reprimanded, and that he undergo an assessment of his practice under the direction of the University of Wisconsin Continuing Education Program, and participate in any educational program recommended as a result of that assessment.

On November 12, 2003, Dr. Faber, by Attorney Ray Roder, filed his Petition for Rehearing. The principal error of law cited by Mr. Roder in his petition was that the board misstated the testimony of Dr. Timmerman, and thereby relied on the expert knowledge of its members to make inferences from inconclusive testimony, citing *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 349 N.W.2d 68 (1984). Accompanying the Petition was Mr. Roder's letter, also dated November 12, 2003, by which Dr. Faber offers a compromise of this matter whereby he will undertake the educational assessment as described in the Final Decision and Order and will also undertake any educational program recommended thereby, on condition that the board withdraws the ordered reprimand and limitations.

On November 19, 2003, the Division of Enforcement, by Attorney James E. Polewski, filed its Statement on Respondent's Petition for Rehearing. The statement agrees with respondent's position that the Final Decision and Order issued in the matter "does not clearly meet the rule laid down in *Gilbert*."

The board considered the petition and the division's statement at its meeting of December 17, 2003. After deliberation, the board granted the respondent's Petition for Rehearing, and accepted respondent's offer to compromise the matter. Accordingly, and 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. William J. Faber, D.O., is licensed to practice medicine and surgery in Wisconsin, under license number 20986, first granted on July 15, 1977.
2. Nancy Meyer first visited Dr. Faber's clinic on May 24, 1999. Ms. Meyer's presenting complaints included migraine headaches, for which she sought prolotherapy treatment.
3. Prior to contacting Dr. Faber, Ms. Meyer had sought medical treatment for migraine headaches over a period of approximately six years, from her primary care physician, Dr. Phillip Bain, and from approximately 20 other health care practitioners. At various times, Dr. Bain prescribed Valium, Xanax, alprazolam, Oxycontin, and Wellbutrin for Ms. Meyer, and the other treatments she tried included cranial sacral therapy, massage, homeopathic medicine, aromatherapy, crystals, osteopathy, and spiritual psychology. [tr. pp. 13-19]
4. Dr. Faber obtained Ms. Meyer's informed consent to a course of prolotherapy treatments that could involve twelve to thirty sessions, or even more.
5. Between May 24, 1999 and July 28, 1999, Dr. Faber treated Ms. Meyer with a series of prolotherapy injections to various points in her neck and back to address defects and instabilities in her back, and to address other complaints, especially her migraine headaches. At some point during the course of treatment, Ms. Meyer informed Dr. Faber that she also suffered uterine ligament pain, and Dr. Faber provided trigger point injections to Ms. Meyer in the area of her pubic symphysis.
6. Dr. Faber routinely used a single syringe and needle for multiple injections at multiple sites during a single office visit.
7. There is insufficient evidence to establish that using a single syringe and needle for multiple injections at multiple sites during a single office visit is below the medical standard of care.
8. Dr. Faber routinely swabs the sites of injections with alcohol.
9. It was not proven by a preponderance of the evidence that Dr. Faber failed to clean the site of an injection.
10. It was not proven by a preponderance of the evidence (a) that performing an injection through a site which has not been cleansed exposes the patient to the unacceptable risk of introducing infectious agents into the body and causing disease, (b) that the medical standard of care is always to swab the site of an injection, or (c) that it is less than minimally competent practice of medicine to perform an injection through a site which has not been cleansed.
11. Dr. Faber provided no more than 12 prolotherapy treatments to any part of Ms. Meyer's body. [tr., p. 376]
12. Although he obtained Ms. Meyer's consent to a course of 12 to 30 prolotherapy treatments, or even more, it was not proven that Dr. Faber planned a series of more than 12 prolotherapy treatments without reassessing the patient's response to treatment and the need for further treatment.
13. It was not proven by a preponderance of the evidence (a) that by proposing a plan of 12 to 30 prolotherapy treatments, Dr. Faber "intended the continuance of therapy after the point that it would be clear to a minimally competent practitioner that the therapy was ineffective for the patient's condition", (b) that contemplating a course of prolotherapy treatment that exceeds 12 treatments to any portion of a patient's body exposes the patient to unreasonable risks of iatrogenic disease, unnecessary pain, ineffective treatment, and pointless expense, (c) that the medical standard of care is never to provide more than 12 prolotherapy treatments, or (d) that providing more than 12 prolotherapy treatments constitutes less than minimally competent practice of prolotherapy.
14. On Wednesday, July 28, 1999, Dr. Faber provided a series of injections to Ms. Meyer, including trigger point injections to her pubic symphysis.
15. On Friday, July 30, 1999, a day when Dr. Faber was not in the office, Ms. Meyer or her husband telephoned Dr. Faber's office at 9 A.M. to report pain in her pubic area. The call was taken by Dr. Faber's medical assistant, Catherine Rogers. Ms. Meyer called again at 3:30 P.M. Ms. Rogers advised Ms. Meyer that she could go to the emergency room if she wished. Ms. Rogers passed the message on to Dr. Faber at 4 P.M. [ex. 1, pp. 29-30; tr. pp. 29-33]
16. Dr. Faber called Ms. Meyer at 5 P.M. on Friday, July 30, 1999. Ms. Meyer reported pain and a fever of 102°, and Dr. Faber recommended that she use aspirin and apply ice to the painful area. Without examining her, he empirically prescribed the antibiotic Keflex® for her. [ex. 1, p. 30; tr. p. 33]
17. On Saturday, July 31, 1999, Ms. Meyer or her husband telephoned Dr. Faber to report continued and increased pain in her pubic area. Dr. Faber advised Ms. Meyer to continue to apply ice to the area of the pain and swelling, and to continue with the antibiotic he had prescribed.

18. On Sunday, August 1, 1999, Ms. Meyer telephoned Dr. Faber to report continued pain and swelling in her pubic area, and continued fever. Without examining her, Dr. Faber prescribed a second antibiotic, Vibramycin®, for her.

19. There is insufficient evidence to establish whether Dr. Faber, in his telephone conversations with Ms. Meyer on July 30, July 31, and August 1, 1999, did or did not tell Ms. Meyer that she could go to the emergency room for treatment.

20. There is insufficient evidence in this record to establish whether it was below the minimum standard of medical care to have failed to ensure that Ms. Meyers underwent a medical examination prior to or shortly after prescribing antibiotics.

21. In order to resolve any issues relating to the standard of care provided by Dr. Faber which may be raised by the record in this matter, Dr. Faber has begun the process of having his practice evaluated by the American College of Osteopathic Pain Management and Sclerotherapy. He is to receive multiple evaluations and agrees to submit to continuing education should the evaluations reveal it to be advised.

### CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this matter under sec. 448.02, Stats., and ch. Med 10, Wis. Admin. Code.

### ORDER

NOW, THEREFORE, IT IS ORDERED that William J. Faber, D.O., shall submit to the Medical Examining Board within six months following the date hereof the results of the evaluation performed by the American College of Osteopathic Pain Management and Sclerotherapy, and any recommendations for continuing education arising from that evaluation.

IT IS FURTHER ORDERED that should the results of the evaluation performed by the American College of Osteopathic Pain Management and Sclerotherapy result in recommendations for continuing education, Dr. Faber shall complete such requirements within two years following the date hereof.

Dated this 23<sup>rd</sup> day of December, 2003.

STATE OF WISCONSIN  
MEDICAL EXAMINING BOARD

Alfred L. Franger, M.D.  
Secretary