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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

ORDER DENYING REINSTATEMENT

On July 24, 1996, the Medical Examining Board issued its Final Decision and Order in the above-captioned matter. By the terms of the board's order, respondent's license to practice medicine and surgery in Wisconsin was suspended for a period of not less than five years, with provision for consecutive three-month stays of the suspension conditioned upon compliance with certain conditions and limitations on the license. These include that Dr. Benson continue successful participation in an acceptable drug and alcohol treatment program, and that as a part of the program, he submit to random, monitored screening of his blood or urine for alcohol and drugs on a twice-weekly basis.

By letter dated August 29, 1996, Dr. Benson, by Attorney Paul R. Erickson, requested that the stay of suspension be renewed for three months, and petitioned as well for a reduction in the number of required urine screens from two to one per week. The board considered the matter at its meeting of September 25, 1996, and denied the request by its Order dated October 1, 1996.

By letter dated November 7, 1996, Dr. Benson petitioned for a further three-month stay, and again requested a reduction in the number of required urine screens. The board considered the matter at its meeting of November 20, 1996, and again denied the request by its Order dated January 4, 1997.

By letter dated June 17, 1997, Dr. Benson requested a further three-month stay of suspension. A subsequent letter from Dr. Engel supported a change in the number of required urine screens from two per week to one per week, and Dr. Benson appeared before the board on July 24, 1997, in support of the requests. The board considered the matter on that date and, by its Order dated July 31, 1997, reduced the number of required screens to one per week.

At its meeting of January 22, 1998, the board considered Dr. Benson's request for a further three month stay of the suspension, and granted the stay by its Order dated February 28, 1998.

By letter dated June 11, 1998, Dr. Benson requested that all limitations on his license be terminated, and he appeared before the board on July 23, 1998, in support of his request. The board considered the matter on that date, and denied the request by its Order dated August 3, 1998.

By his letter dated September 16, 1998, Dr. Benson requested a further stay of the suspension of his license, and requested as well that the requirement that he submit to urine screens be terminated. The board considered the request at its meeting of October 21, 1998, and denied the request by its Order dated October 28, 1998.

On January 20, 1999, the board considered Dr. Benson's request for a further stay of the suspension. The board at that time also considered evidence that during the previous three-month period, Dr. Benson had tested positive for barbiturates. Based upon probable cause to believe that Dr. Benson has violated the terms and conditions placed on his license, the board lifted the stay of the suspension of his license by its order dated January 27, 1999.

On February 24, 1999, Dr. Benson appeared before the board to petition for renewal of the stay of suspension of his license. The board granted the stay.

On May 19, 1999, the board considered Dr. Benson's request that the board approve a change in treatment providers from Dr. Charles Engel to Dr. Barry Spiegel. Also considered was a letter from Dr. Engel, by which Dr. Engel indicates that he has no problem with relinquishing care of Dr. Benson, but that he had previously recommended to Dr. Benson that he seek a re-evaluation of his addiction recovery status, as well as a careful psychological work-up at the Mayo Clinic Rochester, Minnesota. Dr. Engel further states that Dr. Benson had initially agreed to follow through with this recommendation, then changed his mind and decided to seek a different physician. Also considered was information conveyed to the board by its agent indicating that Dr. Spiegel had agreed to accept Dr. Benson as a patient conditioned upon Dr. Benson's carrying through with Dr. Engel's recommendation. The board approved Barry Spiegel, M.D., Mercy Hospital, Janesville, as Dr. Benson's Supervising Health Care Provider, conditioned upon Dr. Benson's full compliance with the treatment plan established by Dr. Spiegel.

Dr. Benson again appeared before the board on July 22, 1999. In the interim since his last appearance, Dr. Benson had undergone assessments performed at Rush University Behavioral Health Center, Downers Grove, Illinois, and Meriter Hospital, Madison, Wisconsin. Accordingly, the board stayed the suspension of his license for an additional three months.

At its meeting of September 23, 1999, the board received information that Dr. Herbert C. White, D.O., had agreed to serve as Dr. Benson's supervising health care provider. The board approved that change by its Order dated October 2, 1999.

On October 20, 1999, and again on January 19, 2000 the board approved Dr. Benson's requests for further three month stays of the suspension of his license.

On May 11, 2000, Dr. Benson appeared at the emergency department of Oconomowoc Memorial Hospital in an intoxicated state, admitting to having consumed unprescribed controlled substances. Consequently, the board entered its Order of Summary Suspension on May 17, 2000. On July 19, 2000, the board issued a new Final Decision and Order based upon a new Stipulation, by which Dr. Benson's license was again suspended for a period of five years, and by which he was permitted to apply for a stay of suspension upon submission of a satisfactory evaluation establishing his ability to safely return to practice.

On October 18, 2000, Dr. Benson appeared before the board in support of his request for a stay of the suspension of his license. The board granted the stay by its Order dated October 25, 2000.

On January 17, 2001, the board granted Dr. Benson's request for a further three month stay of the suspension.

On April 18, 2001, the board considered Dr. Benson's request for a further three month stay of the suspension, along with his admission that he had missed therapy sessions as a result of difficulties with attending therapy on the only afternoon that his therapist has office hours. The board granted the stay, and cautioned Dr. Benson to ensure that he complies with the therapy requirement.

On July 18, 2001, Dr. Benson appeared before the board in support of his requests for a further three month stay of suspension, and that he be issued a license certificate that does not carry the notification "limited." The board considered those requests, and considered as well information that Dr. Benson's urine screens are not being tested for all substances specified in the board's Order. The board granted a one month stay of the suspension to monitor his compliance with the board's Order during that period.

On September 20, 2001, the board considered Dr. Benson's further request for a three month stay of the suspension of his license, along with his request that his supervising health care provider be changed from Dr. Herbert White to Dr. Lance Longo. The board also considered information that Dr. Benson had an appointment to see Dr. Longo on September 17; though there was no information that Dr. Benson had appeared for that appointment or as to the results thereof. Accordingly, the board granted a one month stay and requested a written report prepared by Dr. Longo documenting the results of their meeting. The board also requested a copy of Dr. Longo's *curriculum vitae*.

On October 17, 2001, the board granted Dr. Benson's request for a further stay of the suspension.

On January 23, 2002, the board granted Dr. Benson's request for a further stay of the suspension of his license, but denied his requests for a number of other modifications in the terms and conditions of his license.

On April 24, 2002, the board considered Dr. Benson's request for a further three month stay of the suspension, and granted the request on that date.

On May 22, 2002, the board considered Dr. Benson's letter of May 17, 2002. In his letter, Dr. Benson requested that the board accept the voluntary surrender of his license. The board accepted the surrender by its Order dated June 6, 2002.

By letter dated November 1, 2002, Dr. Benson petitioned the board to reinstate his license, and he appeared before the board on November 20, 2002, in support of his petition. At the time of his appearance, Dr. Benson modified his petition to request that his license be reinstated to permit him only to process paperwork until his rehabilitative status could be confirmed. The board denied reinstatement and ordered that Dr. Benson could renew his petition at such time as Dr. Lance P. Longo, Dr. Benson's therapist, confirms in writing to the board that in his opinion Dr. Benson is able to safely and competently return to practice, and that he recommends that Dr. Benson's license be reinstated.

On January 22, 2003, the board considered Dr. Benson's request that the stay of suspension be reinstated. The board also considered evidence that Dr. Benson was stopped for driving while intoxicated on December 27, 2002. Moreover, Dr. Longo did not support the petition. Accordingly, the board denied reinstatement.

On February 19, 2003, the board considered renewal of Dr. Benson's request for reinstatement of the stay. Dr. Benson's therapist, Dr. Longo, in a letter dated January 30, 2003, indicates that in his opinion, Dr. Benson could safely return to practice with additional safeguards in place, including one additional impaired professionals meeting per week, and daily witnessed administration of Antabuse. The board agrees that these added safeguards are appropriate, but also believes they should be in place for some significant period of time before Dr. Benson returns to practice. Accordingly, it is ordered as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that Dr. Benson's petition for reinstatement of his limited license be, and hereby is, denied.

Dated this 26th day of February, 2003.

STATE OF WISCONSIN

MEDICAL EXAMINING BOARD

Alfred L. Franger, M.D.

Secretary