

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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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 GRANTING 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, Dr. Benson'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 agreed that these added safeguards were appropriate, but also believed they should be in place for some significant period of time before Dr. Benson returned to practice. Accordingly, the board denied reinstatement.

On August 20, 2003, Dr. Benson appeared before the board in support of the renewal of his request for reinstatement. Based upon all information of record herein, it is ordered as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that Dr. Benson's petition for reinstatement of his limited license is granted, and Dr. Benson is granted a limited license to practice medicine and surgery.

IT IS FURTHER ORDERED that the term of the license is for three months. Dr. Benson may apply for consecutive three (3) month extensions of the license, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the Dr. Benson for rehabilitation and practice during the prior three (3) month period. "Three months" means until the third regular Board meeting after the meeting at which any stay of suspension is granted. The Board may without hearing deny an application for an extension, or commence other appropriate action, upon receipt of information that Dr. Benson has violated any of the terms or conditions of this Order. If the Board denies the petition by the Dr. Benson for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in ch. RL 1, Wis. Adm. Code upon timely receipt of a request for hearing. Upon a showing by Dr. Benson of successful compliance for a period of five years of active practice with the terms of this order, the Board may grant a petition by the Dr. Benson for return to full licensure.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of Dr. Benson is limited as follows:

1. Dr. Benson shall not engage in the practice of medicine and surgery in any capacity unless in full compliance with the rehabilitation and treatment programs specified and approved under this Order.
2. Dr. Benson shall continue successful participation in all components of a drug and alcohol treatment program at a treatment facility acceptable to the Board as Dr. Benson's Supervising Health Care Provider, Lance P. Longo, M.D., shall determine to be appropriate for Dr. Benson's rehabilitation.

Therapy. The rehabilitation program shall include and Dr. Benson shall participate in individual and/or group therapy sessions upon a schedule as recommended by the supervising physician, but not less than twice monthly. Such therapy shall be conducted by the supervising physician or another qualified physician or therapist as designated by the supervising physician. After the first year of licensure, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician. A denial of such petition for modification shall not be deemed a denial of the license under §§ 227.01(3) or 227.42, Wis. Stats., or ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

AA/NA Meetings. Dr. Benson shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than two meetings per week. Attendance of Dr. Benson at such meetings shall be verified and reported monthly to the supervising physician or therapist.

Supervising Health Care Provider

3. The Supervising Health Care Provider shall be responsible for coordinating Dr. Benson's rehabilitation, drug monitoring and treatment program as required under the terms of this Order. The Supervising Health Care Provider may designate another qualified health care provider acceptable to the Board to exercise the duties and responsibilities of the Supervising Health Care Provider in his or her absence. In the event that a supervising Health Care Provider is unable or unwilling to serve as Supervising Health Care Provider, the Board shall in its sole

discretion select a successor Supervising Health Care Provider.

Sobriety

4. Dr. Benson shall abstain from all personal use of controlled substances as defined in Sec. 961.01(4), Stats., except when necessitated by a legitimate medical condition and then only with the prior approval of the Supervising Health Care Provider.
5. Dr. Benson shall abstain from all personal use of alcohol.
6. Dr. Benson shall in addition refrain from the consumption of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, or which may create false positive screening results, or which may interfere with Dr. Benson's treatment and rehabilitation. Dr. Benson shall report all medications and drugs, over-the-counter or prescription, taken by Dr. Benson to the Supervising Health Care Provider within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Within 24 hours of a request by the Supervising Health Care Provider or the Board or its designee, Dr. Benson shall provide releases which comply with state and federal laws authorizing release of all health care records by the person who prescribed, dispensed, administered or ordered this medication for Dr. Benson. These releases shall also authorize the Supervising Health Care Provider, the Board or its designee to discuss the Dr. Benson's health care with the person who prescribed, dispensed, administered or ordered this medication. The terms of this paragraph shall not be deemed to modify or negate Dr. Benson's obligations as set forth in this Order.

Department Monitor

7. 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 Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
FAX (608) 266-2264
TEL. (608) 267-7139

Releases

8. Dr. Benson shall provide and keep on file with the Supervising Health Care Provider, all treatment facilities and personnel, laboratories and collections sites current releases which comply with state and federal laws authorizing release of all urine, blood and hair specimen screen results and medical and treatment records and reports to, and permitting the Supervising Health Care Provider and all treating physicians and therapists to disclose and discuss the progress of Dr. Benson's treatment and rehabilitation with the Board or any member thereof, or with any employee of the Department of Regulation and Licensing acting under the authority of the Board. Copies of these releases shall be filed simultaneously with the Department Monitor.

Drug and Alcohol Screens

9. Dr. Benson shall supply on at least a weekly basis, random monitored urine, blood, breath, or hair specimens as the Supervising Health Care Provider shall direct. The Supervising Health Care Provider (or designee) shall request the specimens from Dr. Benson and these requests shall be random with respect to the hour of the day and the day of the week. In addition, the Board or its designee may at any time request a random monitored urine, blood, breath, or hair specimen from Dr. Benson by directing the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement to contact Dr. Benson and request Dr. Benson provide a specimen. To prevent the Dr. Benson's ability to predict that no further screens will be required for a given period (because the minimum frequency for that period has been met), the program of monitoring shall require Dr. Benson to provide in each quarter at least three random screenings in excess of the minimums specified in this Order.

10. Dr. Benson shall keep the Supervising Health Care Provider informed of Dr. Benson's location and shall be available for contact by the Supervising Health Care Provider at all times.

11. All requested urine, blood or hair specimens shall be provided by Dr. Benson within five (5) hours of the request for the specimen. All breath samples shall be given immediately upon request. All urine specimen collections shall be a split sample accomplished by dividing urine from a single void into two specimen bottles. The total volume of the split sample shall be at least 45 ml. of urine. All split sample urine specimens, blood specimens and hair specimens shall be collected, monitored and chain of custody maintained in conformity with the collection, monitoring and chain of custody procedures set forth in 49 CFR Part 40. Urine specimen collections shall be by direct observation if:

a. The Dr. Benson must provide an additional specimen because Dr. Benson's initial specimen was outside of the normal temperature range (32.5 - 37.7C/90.5 - 99.8F) and Dr. Benson refuses to have an oral body temperature measurement or Dr. Benson does provide an oral body temperature measurement and the reading varies by more than 1C/1.8F from the temperature of the urine specimen;

b. Dr. Benson's last provided specimen was determined by the laboratory to have a specific gravity of less than 1.003 and creatinine concentration below 0.2 g/l;

c. The collection site person observes Dr. Benson acting in such a manner to provide reason to believe that Dr. Benson may have attempted or may attempt to substitute or adulterate the specimen. The collection site person, if he or she believes that the initial urine specimen may have been adulterated or a substitution made, shall direct Dr. Benson to provide an additional observed urine specimen;

d. The last provided specimen resulted in a positive or suspected positive test result for the presence of controlled substances; or

e. The Board (or any member of the Board), the Department Monitor, or Dr. Benson's Supervising Health Care Provider directs that the urine specimen collection be by direct observation.

If either of the above conditions (a) or (c) requires collection of an additional observed urine specimen, the collection of the subsequent specimen shall be accomplished within the required five (5) hours of the request for the initial specimen; the collection of the initial specimen shall not satisfy the requirement that the urine specimen be collected within five (5) hours of the request for the initial specimen.

12. The drug and alcohol treatment program in which Dr. Benson is enrolled shall at all times utilize a United States Department of Health and Human Services certified laboratory for the analysis of all body fluid specimens

collected from Dr. Benson.

13. The drug and alcohol treatment program in which Dr. Benson is enrolled shall utilize only those urine, blood and hair specimen collection sites for collection of Dr. Benson's urine, blood or hair specimens as comply with the United States Department of Transportation collection and chain of custody procedures set forth in 49 CFR Part 40.

Every breath sample shall be analyzed in a manner similar to the analysis of samples obtained for the purposes of determining the breath alcohol content of persons suspected of operating a motor vehicle while influenced by an intoxicant, including by portable breath testing devices. Any device approved by the US or Wisconsin Department of Transportation is acceptable. It is the intention of the Board to be able to use local law enforcement agencies to administer such tests, and Dr. Benson shall cooperate with such efforts.

14. The Supervising Health Care Provider, treatment facility, laboratory and collection site shall maintain a complete and fully documented chain of custody for each urine, blood or hair specimen collected from Dr. Benson.

15. Every urine specimen collected from Dr. Benson shall be analyzed at the time of collection for tampering by measurement of the temperature of the specimen and the oral temperature of Dr. Benson. Every urine specimen collected from Dr. Benson shall be further analyzed at the laboratory for tampering by measuring the creatinine concentration and the specific gravity of the specimen. The laboratory may at its discretion or at the direction of a Supervising Health Care Provider or the Board or any member thereof conduct additional tests to evaluate the urine specimen for tampering including, but not limited to, pH, color and odor.

16. Every urine, blood or hair specimen collected from Dr. Benson shall be analyzed for alcohol, amphetamine, cocaine, opiates, phencyclidine, marijuana, methadone, propoxyphene, methaqualone, barbiturates, benzodiazepines, or the metabolites thereof. The Board or its designated agent may at any time direct that screens for additional substances and their metabolites be conducted by scientific methods and instruments appropriate to detect the presence of these substances. The laboratory shall conduct confirmatory tests of positive or suspected positive test results by appropriate scientific methods and instruments including, but not limited to, gas chromatography and mass spectrometry.

17. All urine, blood or hair specimens remaining after testing shall be maintained in a manner necessary to preserve the integrity of the specimens for at least seven (7) days; and all positive or suspected positive urine, blood or hair specimens remaining after testing shall be so maintained for a period of at least one (1) year. The Supervising Health Care Provider or the Board or any member thereof may direct that the urine, blood or hair specimens be maintained for a longer period of time.

18. For the purpose of further actions affecting Dr. Benson's license under this Order, it shall be presumed that all confirmed positive reports are valid. Dr. Benson shall have the burden of proof to establish that the positive report was erroneous and that the Dr. Benson's specimen sample did not contain alcohol or controlled substances or their metabolites.

19. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Dr. Benson shall promptly submit to additional tests or examinations as the Supervising Health Care Provider shall determine to be appropriate to clarify or confirm the positive or suspected positive urine, blood or hair specimen test results.

Required Reporting by Supervising Health Care Provider, and laboratories

20. The Supervising Health Care Provider shall report immediately to the Department Monitor in the Department

of Regulation and Licensing, Division of Enforcement by FAX or telephonic communication: any failure of Dr. Benson to provide a urine, blood, breath, or hair specimen within five (5) hours from the time it was requested; or of any inability to locate Dr. Benson to request a specimen. The laboratory shall immediately report all urine specimens suspected to have been tampered with and all urine, blood, breath, or hair specimens which are positive or suspected positive for controlled substances or alcohol to the Department Monitor, and to the Supervising Health Care Provider.

21. The laboratory shall within 48 hours of completion of each drug or alcohol analysis mail the report from all specimens requested of Dr. Benson under this Order to the Department Monitor (regardless of whether the laboratory analysis of the specimen was positive or negative for controlled substances, their metabolites or alcohol). Each report shall state the date and time the specimen was requested; the date and time the specimen was collected; the results of the tests performed to detect tampering; and the results of the laboratory analysis for the presence of controlled substances and alcohol.

22. The Supervising Health Care Provider shall submit formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall assess Dr. Benson's progress in the drug and alcohol treatment program and summarize the results of the urine, blood or hair specimen analyses. The Supervising Health Care Provider shall report immediately to the Department Monitor [Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935, FAX (608)266-2264, telephone no. (608)267-7139] any violation or suspected violation of the Board's Final Decision and Order.

Required reporting by Dr. Benson

23. Dr. Benson is responsible for compliance with all of the terms and conditions of this Final Decision and Order. It is the responsibility of Dr. Benson to promptly notify the Department Monitor, of any suspected violations of any of the terms and conditions of this Order, including any failures of the Supervising Health Care Provider, treatment facility, laboratory or collection sites to conform to the terms and conditions of this Order.

Facility approval

24. If the Board determines that the Supervising Health Care Provider, treatment facility, laboratory or collection sites have failed to satisfy the terms and conditions of this Final Decision and Order, the Board may, at its sole discretion, direct that Dr. Benson continue treatment and rehabilitation under the direction of another Supervising Health Care Provider, treatment facility, laboratory or collection site which will conform to the terms and conditions of this Final Decision and Order.

PETITIONS FOR MODIFICATION OF TERMS

25. Dr. Benson shall appear before the Board at least annually to review the progress of treatment and rehabilitation. Dr. Benson may petition the Board for modification of the terms of this limited license and the Board shall consider Dr. Benson's petition at the time it meets with Dr. Benson to review the progress of rehabilitation. Any such petition shall be accompanied by a written recommendation from Dr. Benson's Supervising Health Care Provider expressly supporting the specific modifications sought. Denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of Sec. 227.01(3)(a), Stats. and Dr. Benson shall not have a right to any further hearings or proceedings on any denial in whole or in part of the petition for modification of the limited license.

After five years of continuous active professional practice under this Order and without relapse, and upon recommendation of the Supervising Health Care Provider and Professional Mentor, Dr. Benson may petition the Board for a termination of all limitations on the license, and restoration of an unlimited license. Such restoration shall be in the sole discretion of the Board, and denial of the petition in whole or in part shall not be considered a

denial of a license within the meaning of Sec. 227.01(3)(a), Stats. and Dr. Benson shall not have a right to any further hearings or proceedings on any denial in whole or in part of the petition for termination of the limitations and restoration of unlimited licensure.

EXPENSES OF TREATMENT AND MONITORING

26. Dr. Benson shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order.

PRACTICE LIMITATIONS

Change in Address or Work Status

27. Dr. Benson shall report to the Board his present, and any change of, employment status, residence, address or telephone number within five (5) days of this order and the date of any change.

28. Dr. Benson shall furnish a copy of this Order to all present employers immediately upon issuance of this Order, and to any prospective employer when Dr. Benson applies for employment as a health care provider.

Dated this 29th day of August, 2003.

STATE OF WISCONSIN

MEDICAL EXAMINING BOARD

Alfred L. Franger, M.D.

Secretary