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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : LS0412151MED
MARK M. BENSON, M.D., :
RESPONDENT. :

FINAL DECISION AND ORDER

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Mark M. Benson, M.D.
2300 N. Mayfair Road, Suite 425
Wauwatosa, WI 53226

Wisconsin 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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Medical Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Mark M. Benson, M.D., Respondent, date of birth December 26, 1952, is licensed and currently registered by the Wisconsin Medical Examining Board to practice medicine and surgery in the state of Wisconsin, pursuant to license number 22601, which was first granted July 19, 1979.
2. Respondent's last address reported to the Department of Regulation and Licensing is 2300 N. Mayfair Road, Suite 425, Wauwatosa, WI 53226.
3. Respondent's practice specialty is orthopedic surgery.
4. On July 24, 1996, the Medical Examining Board issued a Final Decision and Order which suspended Respondent's license to practice medicine and surgery in Wisconsin 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 included that Respondent 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.
5. Since that time, the following has occurred regarding Respondent's licensure:
 - a. By letter dated August 29, 1996, Respondent 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 on September 25, 1996, and denied the request by its Order dated October 1, 1996.

b. By letter dated November 7, 1996, Respondent 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 on November 20, 1996, and again denied the request by its Order dated January 4, 1997.

c. By letter dated June 17, 1997, Respondent requested a further three-month stay of suspension. A subsequent letter from Dr. Engel, Respondent's supervising health care provider, supported a change in the number of required urine screens from two per week to one per week, and Respondent 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.

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

e. By letter dated June 11, 1998, Respondent 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.

f. By his letter dated September 16, 1998, Respondent 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 on October 21, 1998, and denied the request by its Order dated October 28, 1998.

g. On January 20, 1999, the Board considered Respondent's request for a further stay of the suspension. The Board at that time also considered evidence that during the previous three-month period, Respondent had tested positive for barbiturates. Based upon probable cause to believe that Respondent had 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.

h. On February 24, 1999, Respondent appeared before the Board to petition for renewal of the stay of suspension of his license. The Board granted the stay.

i. On May 19, 1999, the Board considered Respondent'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 indicated that he had no problem with relinquishing care of Respondent, but that he had previously recommended to Respondent 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 stated that Respondent 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 Respondent as a patient conditioned upon Respondent's carrying through with Dr. Engel's recommendation. The Board approved Barry Spiegel, M.D., Mercy Hospital, Janesville, as Respondent's supervising health care provider, conditioned upon Respondent's full compliance with the treatment plan established by Dr. Spiegel.

j. Respondent again appeared before the Board on July 22, 1999. In the interim since his last appearance, Respondent 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.

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

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

m. On May 11, 2000, Respondent 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 Respondent'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.

n. On October 18, 2000, Respondent 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.

o. On January 17, 2001, the Board granted Respondent's request for a further three month stay of the suspension.

p. On April 18, 2001, the Board considered Respondent'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 had office hours. The Board granted the stay, and cautioned Respondent to ensure that he complied with the therapy requirement.

q. On July 18, 2001, Respondent 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 did not carry the notification "limited." The Board considered those requests, and considered as well information that Respondent's urine screens were 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.

r. On September 20, 2001, the Board considered Respondent'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 Respondent had an appointment to see Dr. Longo on September 17; though there was no information that Respondent 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.

s. On October 17, 2001, the Board granted Respondent's request for a further stay of the suspension.

t. On January 23, 2002, the Board granted Respondent'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.

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

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

w. By letter dated November 1, 2002, Respondent 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, Respondent 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 Respondent could renew his petition at such time as Dr. Lance P. Longo, Respondent's therapist, confirmed in writing to the Board that in his opinion Respondent was able to safely and competently return to practice, and that he recommended that Respondent's license be reinstated.

x. On January 22, 2003, the Board considered Respondent's request that the stay of suspension be reinstated. [At the time, Respondent's license remained surrendered and there was no suspension of license to stay.] The Board also considered evidence that Respondent was stopped for driving while intoxicated on December 27, 2002. Moreover, Dr. Longo did not support the petition. Accordingly, the Board denied reinstatement.

y. On February 19, 2003, the Board considered renewal of Respondent's request for reinstatement of the stay. [At the time, Respondent's license remained surrendered and there was no suspension of license to stay.] Respondent's therapist, Dr. Longo, in a letter dated January 30, 2003, indicated that in his opinion, Respondent 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 Respondent returned to practice. Accordingly, the Board denied reinstatement.

z. On August 20, 2003, Respondent appeared before the Board in support of the renewal of his request for reinstatement. On August 29, 2003, the Medical Examining Board issued a Final Decision and Order which granted Respondent a limited license to practice medicine and surgery in the state of Wisconsin, for a period of three months with the opportunity for Respondent to apply for consecutive three month extensions of the limited license.

aa. Since August 29, 2003, Respondent's limited license has been extended for consecutive periods through the December 2004 meeting of the Board.

6. In October 2004, Respondent took blank prescription pads from the medical office where he shared space with another physician and forged the physician's signature to prescription orders made out to Respondent for 120 units of 50 m.g. Ultram, a brand of tramadol hydrochloride, which is a centrally acting analgesic and a prescription medication.

7. On October 16 and 25, 2004, Respondent successfully filled two of the forged prescriptions at two different pharmacies. On November 10, 2004, Respondent attempted to fill a third forged prescription at a third pharmacy. That pharmacist refused to fill the prescription after calling the purported prescribing physician to verify the validity of the prescription and learned that the physician had not authorized or signed such a prescription.

8. By forging the prescriptions, Respondent violated Wis. Stat. § 450.11(7)(a), which states:

"No person may obtain or attempt to obtain a prescription drug, or procure or attempt to procure the administration of a prescription drug, by fraud, deceit or willful misrepresentation or by forgery or alteration of a prescription order; or by willful concealment of a material fact; or by use of a false name or address."

9. Wis. Stat. § 450.11(7)(a) is a law the circumstances of which substantially relate to the circumstances of the practice of medicine.

10. Respondent has tendered the voluntary surrender of his license to practice medicine and surgery in the state of Wisconsin.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02(3) and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stats. §§ 227.44(5) and 448.02(5).

2. Respondent, by violating a law the circumstances of which substantially relate to the circumstances of the practice of medicine, has committed unprofessional conduct as defined by Wis. Adm. Code § MED 10.02(2)(z), and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The SURRENDER by Mark M. Benson, M.D., of his license to practice medicine and surgery in the state of Wisconsin is hereby ACCEPTED, effective immediately.
2. Respondent shall, within 60 days of the date of this Order, pay the costs of this proceeding in the amount of \$350.00 to the Department of Regulation and Licensing, pursuant to Wis. Stat. § 440.22(2)
3. Payment shall be mailed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817

Dated at Madison, Wisconsin this 15th day of December, 2004.

Lief W. Erickson Jr., M.D.
Secretary
Medical Examining Board