

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**
:
BENJAMIN W. BEGLEY, M.D. : **LS0406161MED**
RESPONDENT. :
:

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

Benjamin W. Begley MD
3475 Omro Rd #400
Oshkosh, WI 54904

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 prosecutor and respondent in this matter agreed to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has now reviewed this Stipulation, and approves it.

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

FINDINGS OF FACT

1. Respondent Benjamin William Begley (dob 9/23/60) is and was at all times relevant to the facts set forth herein a physician and surgeon licensed in the State of Wisconsin pursuant to license #29405, first granted on 7/1/88. Respondent is an orthopedic surgeon and is certified by the American Board of Orthopaedic Surgery. Respondent was previously disciplined in file 98 Med 381 for lacerating a patient's popliteal artery, and then failing to detect the laceration, during a surgical procedure, and was reprimanded and required to take 16 hours of category I CME in diagnosing and treating vascular injuries, which he successfully completed.

2. Respondent did, in 1990, enter the department's Impaired Professionals Procedure as a result of substance abuse when he diverted morphine from a hospital where he was a resident in 1989. He successfully completed all recommended treatment and was discharged from IPP in 1994.

3. At an exact time unknown, but between sometime in 2001 and February, 2003, respondent relapsed to the unprescribed use of opioids. He self-administered sample C-III hydrocodone products without the prescription of another authorized prescriber, and then increased his usage to daily, and expanded it to C-II oxycodone products. He also self-administered, without prescription, C-IV diazepam, on one occasion.

4. In September, 2003, respondent solicited and received a quantity of leftover controlled substances from patient C.A., who had obtained them (in response to respondent's request) from a neighbor whose parents had recently died. Respondent represented to C.A. that these would be used at a free clinic for the purpose of providing medical care to indigent patients. In fact, such medications cannot lawfully be collected or re-dispensed to anyone, and respondent intended them for his own use, and he did self-administer some of these medication, without a prescription from another practitioner. Respondent did not make a record of the medications he received from C.A., or how he dispensed or disposed of them in any other manner.

5. On 10/2/03, respondent prescribed a C-II oxycodone product for post-surgical pain following knee surgery on patient T.E. The patient's husband filled the prescription at a local pharmacy, and brought the medication to the recovery area where respondent took it from him. Respondent then diverted some 15 tablets of the medication to his own use, without consent of the patient, and with intent to deprive her permanently of the possession of these tablets.

6. Following being confronted by staff regarding the medication missing from his patients' supplies, respondent did, between October 12 and November 9, 2003, complete a residential treatment program for substance abuse at Hazelden Foundation in Minnesota. He was admitted upon his statement that he had relapsed to the use of opioids approximately one year before admission, following some 11-13 years of recovery. Following a 28 day residential program, he was discharged with staff approval, and with a diagnosis of opioid dependence with physiological dependence, and alcohol and cannabis dependence in sustained full remission.

7. During the time that he was in Minnesota, T.E. was unable to obtain adequate follow-up consultations and care for her knee, because respondent was unavailable and had not adequately briefed anyone else on her condition.

8. On 2/24/04, respondent prescribed a C-II oxycodone product for post surgical pain for patient D.M. following outpatient shoulder surgery. The patient's wife filled the prescription at a local pharmacy and brought the medication to the recovery room, where respondent took it from her. Respondent then diverted seven tablets of the medication to his own use, without consent of the patient, and with intent to deprive him permanently of the possession of these tablets. Respondent later self-administered the medication without a prescription order from another authorized practitioner.

9. On 3/9/04, respondent prescribed a C-II oxycodone product for post surgical pain for patient J.K., following outpatient ankle surgery. The patient's husband had filled the prescription at a local pharmacy and brought to the recovery room, pursuant to respondent's request, where respondent took it from him. Respondent then diverted seven tablets of the medication to his own use, without consent of the patient, and with intent to deprive her permanently of the possession of these tablets. Respondent later self-administered the medication without a prescription order from another authorized practitioner.

10. On 3/11/04, respondent entered a residential program at Rogers Memorial Hospital, stating that he had relapsed to the unprescribed use of opioids. He was discharged with staff approval on 4/30/04, to outpatient weekly support group, weekly UDS, Naltrexone® and Lexapro® daily as prescribed, abstinence from unprescribed mood-altering substances, and quarterly addictionologist office visits. Respondent's discharge diagnoses were opioid dependence and major depression.

CONCLUSIONS OF LAW

A. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to §448.02(3), Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

B. The conduct described in ¶3, above, violated §961.38(5) [self-prescribing controlled substances], Wis. Stats. The conduct described in ¶4, above, violated §961.38(5) [self-prescribing controlled substances], Wis. Stats., and § Med 10.02(2)(r) [obtaining controlled substance outside legitimate practice], and (z) [violation of related law or rule], and § Med 17.05(1)(a) and (2)(a), Wis. Adm. Code. The conduct described in ¶¶5, 8, and 9, above, violated §961.38(5) [self-prescribing controlled substances], Wis. Stats., and § Med 10.02(2)(r) [obtaining controlled substance outside legitimate practice], and (z) [violation of related law or rule: §943.20(1)(a), Stats.], Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED that as and for discipline for the diversion of medication from patients described in ¶¶5, 8, and 9, above, the license to practice medicine and surgery of Benjamin W. Begley, MD, is SUSPENDED for six months, effective the date of this Order.

IT IS FURTHER ORDERED that effective on the date of this Order, the license to practice medicine and surgery of respondent is SUSPENDED for a period of not less than five (5) years. Following the period of suspension imposed in the previous paragraph of this Order, the suspension may be STAYED for a period of three months, conditioned upon compliance with the conditions and limitations outlined below.

a. Respondent may apply for an initial stay, and then for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the respondent 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.

b. The Board may without hearing deny an application for an initial stay or for an extension of the stay, or commence other appropriate action, upon receipt of information that respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the respondent 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.

c. Upon a showing by respondent of successful compliance for a period of five years of active practice with the terms of this order and upon a showing that respondent has made satisfactory restitution for any losses caused by the conduct described above and compliance with all other terms of this Order, the Board may grant a petition by respondent for return of full licensure. (See ¶25, below.)

d. The applications for stays of suspension, and all required reports under this Order, shall be due on the day determined by the Department Monitor in order to be timely included in the Board's agenda, and each three months thereafter, for the period that this Order remains in effect. Failure to submit an application by the due date may result in the Board declining to consider the application for stay, and the suspension becoming effective.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of respondent is LIMITED as set forth in §448.02(3)(e), Wis. Stats., and as follows:

1. Respondent 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. Respondent shall forthwith surrender all indicia of registration to the Department by mail or in person, and the Department shall then issue limited registration credentials to respondent. Respondent shall also surrender all indicia of registration to any agent of the Department who requests them.

REHABILITATION, MONITORING AND TREATMENT

Treatment Required

2. Respondent shall enroll and continue successful participation in all components of a drug and alcohol treatment program at a treatment facility acceptable to the Board as respondent's Supervising Health Care Provider shall determine to be appropriate for respondent's rehabilitation. Respondent shall commence involvement in the drug and alcohol rehabilitation program within 5 days of the date of the Final Decision and Order of the Board. Professional Recovery Network and its affiliated programs are acceptable treatment facilities.

Therapy. The rehabilitation program shall include and respondent shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. 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. Respondent 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 no less than one meeting per week. Attendance of respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist, and included by respondent in the quarterly requests for stay to the department.

Supervising Health Care Provider

3. Respondent shall obtain a Supervising Health Care Provider acceptable to the Board for the full term of this limited license. A physician affiliated with Professional Recovery Network is acceptable to the Board as Supervising Health Care Provider. Respondent shall forthwith furnish the Supervising Health Care Provider with a copy of this Order, showing the signature and date. The Supervising Health Care Provider shall be responsible for coordinating respondent's rehabilitation drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor. 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. Respondent shall abstain from all personal use of controlled substances as defined in §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. Respondent shall abstain from all personal use of alcohol.
6. Respondent 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 respondent's treatment and rehabilitation. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by respondent 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, respondent 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 respondent. These releases shall also authorize the Supervising Health Care Provider, the Board or its designee to discuss respondent'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 respondent'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 & Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
FAX (608) 266-2264
TEL. (608) 267-3817
department.monitor@drl.state.wi.us

Releases

8. Respondent 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 respondent'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. Within thirty (30) days from the date of the signing of this Order, respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the department pursuant to Wis. Adm. Code § RL 7.11, ("Approved Program").
10. The Department Monitor, Board or Board designee shall provide respondent with a list of Approved Programs, however, respondent is solely responsible for timely enrollment in any such Approved Program.
11. Unless otherwise ordered by the Board, the Approved Program shall require the testing of urine specimens at a frequency of not less than 104 times per year.
12. The Department Monitor, Board or Board designee shall determine the tests to be performed upon the urine specimens.
13. Respondent shall comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program, including but not limited to;
 - (a) contact with the Approved Program as directed on a daily basis, including weekends and holidays, and;
 - (b) production of a urine specimen at a collection site designated by the Approved Program within five(5) hours of notification of a test.
14. The Board in its discretion without a hearing and without further notice to respondent may modify this Order to require the submission of hair or breath specimens or that any urine or hair specimen be furnished in a directly witnessed manner.
15. All expenses of enrollment and participation in the Approved Program shall be borne by respondent. Respondent shall keep any account for such payments current in all respects.
16. For purposes of further Board action under this Order it is rebuttably presumed that all confirmed positive test results are valid. Respondent has the burden of proof to establish by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody which causes an invalid confirmed positive test result.

Required Reporting by Supervising Health Care Provider, and laboratories

17. 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 relapse, any violation of the terms and conditions of this Order, and any failure of respondent to provide a urine, blood or hair specimen within five (5) hours from the time it was requested; or of any inability of respondent to make the daily call. The laboratory shall immediately report all urine specimens suspected to have been tampered with and all urine, blood 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.

18. The laboratory shall within 48 hours of completion of each drug or alcohol analysis provide the report from all specimens requested of respondent 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.
19. 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 respondent'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)267-3817, e-mail department.monitor@drl.state.wi.us] any violation or suspected violation of the Board's Final Decision and Order.

Required reporting by Respondent

20. Respondent is responsible for compliance with all of the terms and conditions of this Final Decision and Order. It is the responsibility of respondent to promptly notify the Department Monitor, of any relapse or suspected violations of any of the terms and conditions of this Order, including any failures of the Supervising Health Care Provider, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order.

Facility approval

21. If the Board determines that the Supervising Health Care Provider, treatment facility, Approved Program, 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 respondent continue treatment and rehabilitation under the direction of another Supervising Health Care Provider, treatment facility, Approved Program, or collection site which will conform to the terms and conditions of this Final Decision and Order.

PETITIONS FOR MODIFICATION OF TERMS

22. Respondent shall appear before the Board at least annually to review the progress of treatment and rehabilitation. Respondent may petition the Board for modification of the terms of this limited license and the Board shall consider respondent's petition at the time it meets with respondent to review the progress of rehabilitation. Any such petition shall be accompanied by a written recommendation from respondent'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 §227.01(3)(a), Stats. and respondent shall not have a right to any further hearings or proceedings or 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, upon satisfactory restitution of any losses caused by respondent's conduct which led to this Order, and upon recommendation of the Supervising Health Care Provider and Professional Mentor, respondent 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 §227.01(3)(a), Stats. and respondent 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

23. Respondent 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

Controlled substances

24. Respondent shall not possess, handle, dispense, or administer any controlled substance which is not prescribed for him for a legitimate medical condition by an authorized practitioner in full compliance with this Order. Respondent shall not handle, obtain, maintain, or possess any samples or office stock of any controlled substance in his office, nor shall any employee, partner, or associate of respondent maintain any such samples or stock in a place where respondent has access to such samples or stock. Respondent shall not prescribe any controlled substance for any member of his household or any member of his immediate family, including parents or siblings or their spouses or children. All prescription orders for controlled substances shall be noted in full in the patient's chart, including the exact drug product, dosage instructions, and quantity prescribed.

Change in Address or Work Status

25. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.
26. Respondent shall furnish a copy of this Order to all present employers immediately upon issuance of this Order, to any hospital at which he has privileges or at which he applies for privileges, and to any prospective employer when respondent applies for employment as a health care provider. EMPLOYERS WHO ARE DEA REGISTRANTS ARE INFORMED THAT IF RESPONDENT HAS BEEN CONVICTED OF ANY FELONY RELATING TO CONTROLLED SUBSTANCES, THE EMPLOYER MUST RECEIVE A WAIVER OF 21 CFR §1301.76 UNDER 21 CFR §1307.03 BEFORE EMPLOYING RESPONDENT.

IT IS FURTHER ORDERED, that respondent shall pay the costs of investigating and prosecuting this matter in the amount of \$950, within 30 days of this order.

IT IS FURTHER ORDERED, that pursuant to §227.51(3) and §448.02(4), Wis. Stats., if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license and registration of respondent be summarily suspended pending investigation of the alleged violation. Upon request of the Department Monitor or a prosecuting attorney, the Board's Monitoring Liaison or Board Chair may terminate a stay of suspension until the next meeting of the Board, after giving respondent notice of an alleged violation and the opportunity to be heard.

Dated this June 16th, 2004.

WISCONSIN MEDICAL EXAMINING BOARD

Alfred Franger
A Member of the Board