

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
JAMES M. SHORTT, M.D.,	:	LS0510062MED
RESPONDENT.	:	

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Division of Enforcement Case No. 04MED328

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 15th day of February, 2006.

Bhupinder Saini  
Member of the Board  
Medical Examining Board

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :

JAMES M. SHORTT, M.D., :  
RESPONDENT. :

FINAL DECISION AND ORDER  
LS 0510062-MED

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Division of Enforcement Case # O4 MED 328

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

James M. Shortt, M.D.  
105 Sugar Hill Court  
Simpsonville, S.C. 29681

Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

Medical Examining Board  
Department of Regulation & Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

### **PROCEDURAL HISTORY**

A hearing in the above-captioned matter was held on January 17, 2006 before Administrative Law Judge Dennis C. Schuh. The Division of Enforcement appeared by Attorney Jeanette Lytle. The respondent, James M. Shortt, M.D., did not appear and did not file an answer to the complaint. Based upon the entire record of this case, the undersigned administrative law judge recommends that the Medical Examining Board adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

### **FINDINGS OF FACT**

1. James M. Shortt, M.D., (DOB 10/08/1946) is duly licensed as a physician in the State of Wisconsin (license # 30500). This license was first granted on July 1, 1989.

2. Respondent's most recent address on file with the Wisconsin Medical Examining Board is 105 Sugar Hill Court, Simpsonville, South Carolina.

3. On or about April 13, 2005, the State Board of Medical Examiners of South Carolina issued an Order of Temporary Suspension, summarily suspending Respondent's right to practice medicine in that State until further notice, based on allegations that:

- (a) From at least January 4, 2004 and continuing thereafter, Respondent prescribed testosterone to certain patients in doses and frequencies that were extremely unlikely to have been prescribed with any legitimate medical justification and were not consistent with any acknowledged medical indication for the drug;
- (b) From at least January 4, 2004 and continuing thereafter, Respondent prescribed tamoxifen (anti-estrogen used for breast cancer prevention in high-risk women) and clomiphene (follicle stimulating hormone used on ovulatory failure) to certain male patients;
- (c) From time to time during 2004, Respondent issued prescriptions, including a Schedule IV controlled substance, to a patient for whom he has not produced examination or prescription records;
- (d) From time to time during 2004, Respondent issued prescriptions, including thyroid prescriptions, to a patient for whom he has not produced records for 2004;
- (e) Until stopped by a Cease and Desist Order, Respondent regularly infused patients with intravenous hydrogen peroxide;
- (f) On at least one occasion, Respondent prescribed testosterone for a terminally ill prostate cancer patient;
- (g) Respondent assisted a patient in obtaining Laetrile, a substance that is illegal in the United States;
- (h) Respondent diagnosed and treated patients for Lyme disease based only on results of tests by an unaccredited out of state laboratory with a 100% positive rate for Lyme disease;
- (i) Respondent did not report the alleged Lyme disease cases as required by South Carolina law.

4. The Division of Enforcement made the following attempts to obtain the Respondent's response to the allegations against him:

- a. The Complaint and Notice of Hearing were mailed to the Respondent at his last address on file with the Department of Regulation and Licensing (105 Sugar Hill Court, Simpsonville, SC 29681), by certified mail and regular mail, on October 6, 2005. Someone accepted the certified mail and signed a receipt therefore in the name of Esther Shortt.
- b. On or about October 14, 2005, a copy of the Notice of Hearing and Complaint were mailed to Attorney Allen Burnside, who represented the Respondent in another matter.
- c. On or about October 17, 2005 mail service was attempted at an address in California believed to be the address of the Respondent's son.
- d. On or about December 19, 2005, the Notice of Motion and Motion for Default Judgment was mailed to the respondent at the last address on file with the Department of Regulation and Licensing, the address of Attorney Burnside, and the address in California believed to be the address of the Respondent's son.

5. The Respondent never responded to the allegations in the complaint.

### **CONCLUSIONS OF LAW**

1. The Wisconsin Medical Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. §448.02 (3).

2. The conduct described in Findings of Fact 3, above, constitutes a violation of Wisconsin Administrative Code § 10.02(2) (h), (p), (x), (q), (x) and (za), constituting misconduct or unprofessional conduct, and the Respondent is subject to discipline pursuant to Wis. Stat. § 448.02 (3).

### **ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of James M. Shortt, M.D., to practice medicine and surgery in the State of Wisconsin (License # 30500) is hereby **REVOKED**.

IT IS FURTHER ORDERED that costs of this proceeding shall be assessed against the Respondent.

IT IS FURTHER ORDERED that this Order is effective on the date of its signing.

### **OPINION**

The Notice of Hearing and Complaint in this matter were served upon the respondent on October 11, 2005. The respondent did not respond. The Notice of Motion and Motion for Default Judgment was served on the Respondent on or about December 19, 2005. The Respondent did not respond.

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent. In this case, the respondent did not file an answer to the above-captioned complaint that disputed the allegation of license restriction and other misconduct acts in South Carolina, nor did he appear at the scheduled hearing. The attorney for the complainant moved for an order granting default at the hearing.

The complainant has established a prima facie case that the Respondent James M. Shortt, M.D. has violated Wisconsin's code of conduct. The complainant's motion for default is granted and the relief requested is granted.

Revocation of the respondent's license has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969). The state's purpose in licensing professionals is to protect its citizens.

The state's purpose in licensing professionals is to protect its citizens. *Strigenz*, 103 Wis.2d at 286, 307 N.W.2d at 667. License revocation is the ultimate means of protecting the public short of fining or imprisonment. *Strigenz v. Department of Regulation and Licensing*, 103 Wis.2d 281, 287, 307 N.W.2d 664 (1981)

The respondent had his South Carolina license limited due to allegations that he administered, dispensed or prescribed controlled substances otherwise than in the course of legitimate professional practice; that he dispensed, administered or prescribed an anabolic steroid for purposes of enhancing athletic performance or other non-medical purposes; that he failed to maintain patient health care records; and that he had a sister state license suspended.

Each of these rules serves a valid purpose in protection of the public. In the present circumstance, it appears that

Respondent's actions violated several public protection requirements.

There is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on the respondent or deter other licensees from engaging in similar conduct. The conduct alleged demonstrates an indifference to the health, safety and welfare of patients and the public.

Further, to not revoke respondent's license would also wrongly signal others to engage in similar conduct without consequence, thus not constituting proper deterrence. Revocation will therefore act to safeguard the public and deter such conduct by other practitioners.

### Costs

Section 440.22 (2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Medical Examining Board, and that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs.

The ALJ's recommendation that the full costs of the proceeding be assessed is based on two factors. First, the Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following an evidentiary or default hearing, that licensee should bear the costs of the proceeding.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated this 27th day of January, 2006

Respectfully Submitted

Dennis C. Schuh  
Administrative Law Judge