

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



## Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

### Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DRL website:** An individual who believes that information on the website is inaccurate may contact the webmaster at [web@drl.state.wi.gov](mailto:web@drl.state.wi.gov)

---

IN THE MATTER OF :  
DISCIPLINARY PROCEEDINGS AGAINST : **FINAL DECISION AND ORDER**  
 :  
PORFIRIO ORTA-ROSARIO, M.D., :  
RESPONDENT. : LS-0607311MED

---

03 MED 381/417

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

Porfirio Orta-Rosario, MD  
856 Greenwood Ct  
Oshkosh, WI 54901

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

### PROCEDURAL HISTORY

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 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. Respondent Porfirio Orta-Rosario (dob 11-20-1957) 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 #43567, first granted on 7-19-2001. Respondent is a family practitioner, and is not certified by any board recognized by the American Board of Medical Specialties. He is, or has been, licensed in Puerto Rico, Montana, New York, and Michigan.

2. In April, 2002, Respondent was unemployed, and had been unemployed for some months. He answered an advertisement for a physician which had been posted on-line by one Shawn Patterson, d/b/a Eastern Valley Medical Group (EVMG), which owned a website. Patterson represented to Respondent that EVMG provided legitimate medical consultation: to persons without health insurance who had previously been diagnosed as having persistent pain, through a three-stage process. First, the person logged on to the website through an internet connection, and filled out a questionnaire with both demographic and medical history information. Second, the person transmitted medical records to EVMG, together with a copy of his driver's license. Thirdly, EVMG staff reviewed the medical records to determine whether the person met the medical criteria for service through EVMG; staff also determined whether the name and address on the driver's license matched the name and address on the credit card used for payment. If so, EVMG then e-mailed a form to Respondent giving the person's name, basic information, and a summary of the medical chart received, normally two or three sentences. EVMG then set up a telephone appointment, and the person seeking treatment telephoned Respondent for an interview at the appointed time; these interviews lasted 5-30 minutes (average length: 15-20 minutes). Respondent then determined whether the person would receive a prescription order for a medication, normally a hydrocodone product (all of which are Schedule III controlled substances), and often with another medication such as a benzodiazepine (all of which are Schedule IV controlled substances) or a muscle relaxant such as carisoprodol. Respondent then typed his own note as a "reply" to the form which had been e-mailed to Respondent by EVMG, and e-mailed the note to EVMG. EVMG staff then prepared a prescription order based on

the authorization reflected in Respondent's note, and transmitted it electronically to a pharmacy with which EVMG had a business arrangement. Respondent was to be paid \$40 for each patient consultation which resulted in a prescription being issued, but no payment was made if no prescription was issued.

3. Respondent has informed the Board that his protocol was that he would not prescribe any controlled substance on the basis of these consultations unless the patient had been diagnosed with a condition justifying pain medication, that the person had been prescribed them by another physician and had seen that physician within the previous year, and also not unless the chart reflected that the patient had tried NSAID therapy first; Respondent also counseled patients not to exceed 2 grams of acetaminophen per day.

4. Notwithstanding its agreement to do so, EVMG did not compensate Respondent in full or on time. Respondent continued to look for work as a clinical practitioner, but was unable to find a position. Respondent then learned of a similar business, Preferred Physicians Medical Group, Inc. (PPMG), owned and operated by one Jeremy Pearson.

5. In February, 2003, Respondent entered into an arrangement with PPMG which provided that PPMG would engage in a two-step process: first, the person logged on to the PPMG website through an internet connection, and filled out a questionnaire with both demographic and medical history information. Second, the person transmitted medical records to PPMG. PPMG then transmitted those records to Respondent, together with the questionnaire. PPMG then set up telephone appointments, during which Respondent spoke to the patient on the telephone for 5-30 minutes. Respondent then determined whether a prescription was to be issued, and if so, Respondent then prepared the prescription order and transmitted it electronically to the pharmacy designated by PPMG. Respondent was paid \$40 for each patient who was issued a prescription, and nothing for a patient for whom no prescription was issued. Respondent represents to the Board that his protocol for these persons was the same: he would not prescribe unless the chart reflected that the patient had been diagnosed with a condition justifying pain medication, that the person had been prescribed them by another physician and had seen that physician within the previous year, and also not unless the chart reflected that the patient had tried NSAID therapy first; Respondent also counseled patients not to exceed 2 grams of acetaminophen per day.

6. PPMG had few customers, and although it paid Respondent, the amounts were insufficient to provide adequate income for Respondent's support and the support of his family.

7. In January, 2003, Respondent entered into an arrangement with one Kathy Giacobbi, d/b/a Your Online Doctor (YOD), which provided that he would perform telephone consultations with patients seeking prescription medications. At that time, a California podiatrist and a California Physician Assistant were already retained by YOD to review records and interview patients in a manner similar to what is described above. Respondent's activities were limited to those patients who did not wish to speak with these persons; in those cases he had the medical records sent by the patient and the questionnaire as filled out by the patients on the website. In March, 2003, Respondent became the primary physician for YOD (succeeding another physician who had previously served in that capacity).

8. Pursuant to the arrangement, on May 8, 2003, June 27, 2004, June 28, 2004, and July 8, 2004, Respondent signed several prescription forms in blank, and transmitted them to Giacobbi's location. Under the protocol, the person seeking medication logged on to the website [www.youronlinedoctor.com](http://www.youronlinedoctor.com), and filled out the required questionnaire. The person then transmitted medical records to YOD. The podiatrist or PA (and, as noted, sometimes Respondent) then reviewed the records and had telephone contact with the person, and then informed YOD at YOD's location what was to be prescribed. YOD personnel then filled out a prescription form which bore the copied signature of Respondent, and transmitted the form to a pharmacy which had previously arranged with YOD to receive them. The conditions for receiving a prescription were the same as those used by Respondent in the other two businesses: there would be no prescription unless the chart reflected that the patient had been diagnosed with a condition justifying pain medication, that the person had been prescribed them by another physician, and also not unless the chart reflected that the patient had tried NSAID therapy first. If these conditions were met, the patient would receive a prescription for the same medication which had been previously prescribed by the previous treating physician, and in the same dosage as previously prescribed. However, Respondent was not provided with any records which would allow for determining whether the podiatrist and PA were, in fact, following the protocol. Respondent was compensated for his services at the rate of 15% of the consultation fee for each patient who received a prescription, and nothing for any patient who did not, however there was a minimum compensation of \$800 per week.

9. Respondent assures and represents to the Board that he only entered into these relationships because he felt extreme economic pressure of being unemployed and having to support his family, and that he was assured by the business owners that this practice had been researched by lawyers and found to be lawful. He assures the Board that he has, since being interviewed by Department staff, and will in the future, refrain from prescribing any prescription medication or device without personally examining the patient. Respondent is diligently seeking a residency program and expects that completing a residency and becoming board certified or eligible will enable him to secure employment as a clinical physician, and avoid the unemployment which he believes is caused by his being not board certified or board eligible.

10. In October of 2003, Respondent renewed his registration to practice medicine without having completed the required Continuing Medical Education. Respondent represents to the Board that he was financially unable to pay for continuing medical education. Respondent obtained funds for CME from YOD and did, in July 2004, attend a two week *Intensive Review of Internal Medicine* at Harvard Medical School Department of Continuing Medical Education, and received 87.5 Category I credits for this activity; he then renewed his registration in 2005.

### 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 ¶2-8, above, violated Wis. Adm. Code § Med 10.02(2)(h). The Board specifically finds that the arrangements described above do not provide reasonable assurance that the purported patient in fact is the person who is receiving the medication, or that he or she continues to need the medication, or that the medication is not intended for diversion. While there are no absolute guarantees that any patient is being completely honest with a physician, or that medication will not be diverted, the processes described above are so lacking in accepted reasonable controls and quality assurance as to constitute a danger to the health, safety and welfare of both patient and public. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

C. By signing blank prescription forms, knowing that they would be used by others to prepare prescription orders for controlled substances, and then issued to the pharmacy without his reviewing and approving them, Respondent violated 21 CFR § 1306.05(a), and Wis. Adm. Code § Med 10.02(2)(p) and (z). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

D. By completing his renewal form in 2003, and indicating that he had, or would have by the end of the calendar year, completed 30 hours of continuing medical education, when in fact he did not have such continuing medical education, Respondent violated Wis. Adm. Code § Med 10.02(2)(c) and (m). 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 Porfirio Orta-Rosario, M.D., is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of Respondent is LIMITED as set forth in Wis. Stat. § 448.02(3)(e) and as follows: Respondent shall practice medicine only within the confines of a residency program approved by the Accreditation Council for Graduate Medical Education, until further order of the Board. Respondent shall provide the program with a copy of this Order, and shall permit and request the program to send a copy of all of his evaluations to the Department Monitor.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of Respondent is LIMITED as set forth in Wis. Stat. § 448.02(3)(e) and as follows: Respondent shall, before petitioning the Board for permission to practice medicine outside the confines of an accredited residency program, take and successfully complete one of the following programs:

1. *Medical Ethics and Professionalism*, Case Western Reserve University, Office of Continuing Medical Education
2. *Professional Renewal in Medicine through Ethics*, University of Medicine and Dentistry of New Jersey
3. *Professional/Problem Based Ethics (ProBE)*, The Ethics Group LLC, Summit, NJ

Respondent may propose an alternative to these programs, which shall require pre-approval of the Board or its designee; any such alternative shall be the substantial equivalent of one of them.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of Respondent is LIMITED as set forth in Wis. Stat. § 448.02(3)(e) and as follows: Respondent shall, before petitioning the Board for permission to practice medicine outside the confines of an accredited residency program, take and successfully complete one of the following programs:

1. *Intensive Course in Controlled Substance Management*, Case Western Reserve University, Office of Continuing Medical Education
2. *Prescribing Controlled Drugs*, Center for Professional Health, Vanderbilt University Medical Center
3. *Mini-Residency in Appropriate Prescribing*, University of Medicine and Dentistry of New Jersey (DVD-based course)

Respondent may propose an alternative to these programs, which shall require pre-approval of the Board or its designee; any such alternative shall be the substantial equivalent of one of them.

IT IS FURTHER ORDERED, that respondent shall pay the COSTS of investigating and prosecuting this matter of \$9,000, before his license is next renewed.

Dated this August 16, 2006.

WISCONSIN MEDICAL EXAMINING BOARD

by: Bhupinder Saini  
a member of the Board