

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE LICENSE OF	:	
	:	FINAL DECISION AND ORDER
RICHARD HOWARD GUBITZ, D.O.	:	FOR REMEDIAL EDUCATION
	:	LS0608161MED

[Division of Enforcement Case No. 04 MED 091]

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

Richard Howard Gubitzi, D.O.
225 Memorial Drive, Suite 1600
Berlin, WI 54923

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

Wisconsin Medical Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
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 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. Richard Howard Gubitzi, D.O., (“Licensee”), date of birth October 5, 1949, 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 22796, which was first granted January 18, 1980. His address of record with the Medical Examining Board is 225 Memorial Drive, Suite 1600, Berlin, WI 54923.

2. Licensee’s practice specialty is general practice.

3. Licensee was the primary care physician for Patient J.R., (DOB 12/02/24), who had a history of chronic hypertension and coronary artery disease. On January 4, 2001, Licensee saw Patient J.R. for follow-up evaluation of diabetes mellitus and hypercholesterolemia.

4. On that date, Patient J.R. was taking, among other medications, 600 mg of gemfibrozil (Lopid). Gemfibrozil is a lipid regulating agent which decreases serum triglycerides and very low density lipoprotein cholesterol, while increasing high density lipoprotein cholesterol. Licensee had prescribed the gemfibrozil via a telephone contact with Patient J.R. on December 28, 2000.

5. Licensee observed that Patient J.R.’s cholesterol and triglyceride levels had risen substantially since his prior appointment on August 31, 1999. Licensee therefore prescribed Baycol (cerivastatin), .8 mg daily, in addition to the gemfibrozil Patient J.R. was already taking. Licensee instructed Patient J.R. to return in one month, following a lipid profile.

6. Baycol, like gemfibrozil, is a lipid regulating agent, aimed at lowering very low density lipoprotein cholesterol levels. The recommended dose of Baycol was .4 mg, or half that prescribed by Licensee.

7. At the time Licensee prescribed Baycol in conjunction with gemfibrozil, the manufacturer of Baycol warned that myopathy—muscle aches and weakness—associated with increases in plasma creatinine kinase (CPK) was a potential adverse effect of the drug.

8. On January 4, 2001, a minimally competent physician would have recognized that, in rare cases, use of Baycol is associated with rhabdomyolysis, sometimes with acute renal failure secondary to myoglobinuria. Rhabdomyolysis is a condition wherein muscle cells break down and their contents are released into the bloodstream. Ultimately, the process is associated with excretion of myoglobin, which is toxic to the kidneys. Symptoms of rhabdomyolysis include, inter alia, muscle pain, weakness, tenderness, malaise and fever.

9. At the time Licensee prescribed Baycol in conjunction with gemfibrozil, it was known that, among Baycol patients who experienced rhabdomyolysis and associated secondary renal failure, in most cases, the patients were also taking gemfibrozil. Accordingly, on January 4, 2001, a minimally competent physician would have recognized that Baycol should not have been prescribed for a patient who was also taking gemfibrozil because the combination of the drugs created an unreasonable risk of harm to the patient.

10. On January 11, 2001, Licensee phoned in a refill prescription for Patient J.R.'s gemfibrozil.

11. On January 12, 2001, Patient J.R. reported, via telephone, that he was experiencing muscular pain in his chest wall. Also via telephone, Licensee authorized a prescription for 10 mg of Flexeril, as needed for chest wall muscle pain.

12. On January 31, 2001, Patient J.R. presented to the emergency room at Bellin Memorial Hospital with progressive and debilitating muscular weakness. Emergency room staff admitted Patient J.R. after consultation with Licensee. Licensee documented Patient J.R.'s elevated liver function tests, with a CPK of 34,300 and urinary myoglobin over 15, but noted "no evidence of liver pathology." Patient J.R. was given normal saline intravenously.

13. Licensee authorized Patient J.R.'s discharge on February 1, 2001, with the instruction to "drink a lot of extra fluid" and to return in one week. Upon discharge, Licensee diagnosed: "Rhabdomyolysis. Essential hypertension. Side effect from Baycol. Hypertriglyceridemia. Renal insufficiency. Previous stroke. Coronary artery disease. Hypercholesterolemia controlled." Licensee discontinued the Baycol, but maintained the gemfibrozil.

14. On February 3, 2001, Patient J.R. experienced profound weakness and was transported by ambulance to Bellin Memorial Hospital. He was ultimately transferred to Theda Clark Intensive Care Unit, where he was diagnosed with severe life-threatening hyperkalemia, acute renal failure, rhabdomyolysis, severe hypercalcemia, and myxedema with mental status changes. He underwent several weeks of dialysis.

15. On January 31, 2001, a minimally competent physician would have recognized Patient J.R.'s symptoms of rhabdomyolysis. A minimally competent physician would have further recognized that immediate and aggressive inpatient treatment of Patient J.R.'s condition was necessary to avoid undue risk of harm to the patient.

16. On August 8, 2001, the manufacturer of Baycol voluntarily withdrew the drug from the market due to its association with severe rhabdomyolysis, particularly with concomitant gemfibrozil use.

CONCLUSIONS OF LAW

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

2. The Wisconsin Medical Examining Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Licensee shall, within 6 months of the date of this Final Decision and Order, take and complete 10 hours of Category 1 continuing education concerning the use of statins, and specifically, how to avoid prescribing contraindicated medications. Each course attended in satisfaction of this Order must be preapproved by the Medical Examining Board or its designee. Licensee shall be responsible for locating courses satisfactory to the Board and for obtaining the required approval of the courses from the Board or its designee. Licensee shall, within 60 days of completion of this educational requirement, file an affidavit with the Board stating under oath that he has attended in its entirety each of the courses approved for satisfaction of this requirement along with supporting documentation of attendance from the sponsoring organizations. This affidavit and the supporting documentation of attendance shall be filed with:

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

All certifications, affidavits or other documents required to be filed with the Board will be deemed filed upon receipt by the Department Monitor.

2. Licensee shall be responsible for paying the full cost of attendance at these courses. Licensee shall not apply any of the continuing education credits earned in satisfaction of this Order toward satisfaction of his Wis. Stat. § 448.13 biennial training requirements.

IT IS FURTHER ORDERED:

3. Licensee shall, within 60 days from the date of this Order, pay costs of this proceeding in the amount of \$2,873.18. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

4. In the event Licensee fails to timely pay costs as ordered or fails to comply with the ordered continuing education, Licensee's license (#22796) SHALL BE SUSPENDED, without further notice or hearing, until Licensee has complied with the terms of this Order. The Board or its designee shall remove the suspension, if provided with sufficient information that Licensee is in compliance with the Order and that it is inappropriate for the suspension to remain in effect. The Board in its discretion may impose additional conditions and limitations for a violation of any of the terms of this Order.

5. Licensee is responsible for compliance with all of the terms and conditions of this Final Decision and Order.

6. This Order is effective on the date of its signing.

Wisconsin Medical Examining Board

By: Bhupinder Saini MD
A Member of the Board

8/16/06
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE LICENSE OF	:	
	:	
RICHARD HOWARD GUBITZ, D.O.	:	STIPULATION
	:	LS _____ MED

[Division of Enforcement Case No. 04 MED 091]

It is hereby stipulated and agreed, by and between Richard Howard Gubitzi, D.O., Licensee; and Sandra L. Nowack attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Licensee by the Division of Enforcement (file 04 MED 091). Licensee consents to the resolution of this matter by stipulation and without a hearing.
2. Licensee understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.
3. Licensee has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.
4. Licensee agrees to the adoption of the attached Final Decision and Order by the Board. The parties to this Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Licensee waives all rights to any appeal of the Board's Order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or close session, without the presence of the Licensee or his attorney, if any, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board’s deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Licensee is informed that should the Board adopt this Stipulation, the Board’s Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins Licensee in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Richard Howard Gubitz, D.O.
Licensee
225 Memorial Drive, Suite 1600
Berlin, WI 54923

Date

Sandra L. Nowack
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date