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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	**FINAL DECISION AND ORDER**
MARC L. SMITH, D.O., RESPONDENT.	:	LS0612205MED

Division of Enforcement Cases 04 MED 400, 05 MED 120

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

Marc L. Smith, D.O.
5276 N. Lovers Lane Rd. # 211
Milwaukee, WI 53225

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 Marc Lloyd Smith (dob 5/23/58) 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 #27806, first granted on granted on 7/1/86.

2. Respondent was previously disciplined by the Board in file 93 Med 412, on 2/24/99, in which the Board found, among other things, that Respondent's prescribing of controlled substances was outside the standard of care. Respondent completed the "Intensive Course in Controlled Substance Management," and received 40 Category 1 CME hours, from the Case Western Reserve University School of Medicine, in September, 1998. The Order also provided as follows:

> IT IS FURTHER ORDERED, that effective immediately and continuing until (A) two years from the date of the certification by UW-CME of the successful completion of the educational program outlined above (this does not mean the post-intervention assessment), or the certification to the Board that respondent does not need any educational program, and (B) such time as respondent has successfully passed with a score of 75 or more the SPEX or its osteopathic counterpart (respondent may not attempt the exams more than twice without Board permission; this means one attempt on each exam or two attempts on eithe exam) or has passed a board specialty examination for certification or recertification for a board recognized by the American Board of Medical Specialties, the license to practice medicine and surgery of Marc Lloyd Smith, D.O., is LIMITED as provided in §448.(3)(e), Wis. Stats., and as follows:
>
> 1. Respondent shall practice only under the supervision of a designated Professional Mentor approved by the Board.
>
> 2. Respondent shall obtain a Professional Mentor acceptable to the Board. The Professional Mentor shall be the individual responsible for supervision of Respondent's practice of medicine and surgery during the time this Order is in effect. Supervision shall include weekly meetings, review of charts selected by the Professional Mentor (which shall include charts of any nursing home patients), and any other actions deemed appropriate by the Professional Mentor to determine that respondent is practicing in a professional and competent manner. The Professional Mentor may designate another qualified physician or other health care provider acceptable to the Board to exercise the duties and responsibilities of the Professional Mentor in an absence of more than three weeks. In the event that the Professional Mentor is unable or unwilling to continue to serve as Respondent's professional mentor, the Board may in its sole discretion select a successor Professional Mentor. The Professional Mentor shall have no duty or liability to any

patient or third party, and the Mentor's sole duty is to the Board.

3. Respondent shall arrange for his Professional Mentor to provide 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 work performance.

4. Respondent's Professional Mentor shall immediately report to the Department Monitor any conduct or condition of the Respondent which may constitute unprofessional conduct, a violation of this Order, or a danger to the public or patient.

5. It is the responsibility of Respondent to promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order, including any failures of the Professional Mentor to conform to the terms and conditions of this Order.

6. 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.

05 MED 120

3. Respondent completed the educational program provided by the UW CME program in compliance with the Board's Order of 2/24/99, on 9/20/00, but did not at any time pass SPEX or any of the alternative examinations. On 2/16/04, Respondent filed a petition to have the mentor requirement formally removed, and Respondent's license restored to unlimited status. The Board denied that petition on 3/26/04, finding:

> On March 17, 2004, pursuant to the Order currently in effect, the Medical Examining Board considered the petitioner's request for request for full reinstatement of his medical license. Based upon all information of record herein, the Board finds that the petitioner has not fulfilled the terms of the original order limiting his license and makes the following:
>
> ORDER
>
> NOW, THEREFORE, IT IS ORDERED that the request for full reinstatement of the license of MARC L. SMITH, D.O., to practice medicine and surgery in Wisconsin (lic.# 27806) is hereby DENIED until further action by the Board.
>
> IT IS FURTHER ORDERED THAT petitioner shall submit work reports from his professional mentor for a period of three months prior to the date of any further petition for reinstatement, and such reports shall be prepared using the approved Department reporting form. In addition to the monthly reports, the mentor shall indicate whether he supports the petitioner's request for termination or modification in the limitations upon the petitioner's license.

4. Respondent's approved mentor, Dr. S., subsequently filed a quarterly report on 4/2/04. There was no statement concerning any request for termination or modification of the limitations of the license included with this report.

5. On 4/30/04, Attorney Joseph W. Weigel, on behalf of Respondent, wrote to the Department Monitor, announcing that a Dr. K., with whom Respondent practiced at a location in Racine, would be the Respondent's mentor. At no time was approval of Dr. K. requested or given. Dr. K. did file a report on 5/10/04, but not thereafter. On 11/11/04, the Department Monitor contacted Attorney Weigel; Mr. Weigel stated that he had told Respondent that there was no further obligation to file reports. No explanation was given for why this incorrect advice was provided to Respondent, nor an information on what the attorney had done to correct his error.

6. On 4/8/05, the Department Monitor received a letter from Dr. K. stating:

> Dr. Marc Smith has, for the past two years, been working as an independent contractor. He currently has an office sharing arrangement with me. I have personally reviewed his charting and monitored his charts on the electronic medical records system that we share. He has done a good job with his patients, especially in pain management. Our professional time together is at 2405 Northwestern Avenue in Racine. Our hours are: Mondays, 8-12 AM and 1-5 PM, Wednesdays, 8-12 AM, Fridays, 8-12 AM and 1-5 PM.
>
> I have not reviewed any charts at any other locations in which he is working.
>
> I was unaware, as a mentor, that I was required to monitor Dr. Smith at all locations in which he works.
>
> I was not aware that he was covering and working at a pain clinic at night.

7. In fact, Respondent was practicing medicine at no fewer than four other locations during 2004-05, without notice being provided to the Board of his employment status at any of these locations.

04 MED 400

8. On 7/1/04, Respondent conducted a new patient evaluation for R.F., a male born in 1972, at Advanced Health & Wellness Center, 3113 S. 13th St., Milwaukee, a clinic owned and operated by a chiropractor. The patient presented with lov back pain and pain "all over." The patient reported being unable to work as a result of his pain; he is described as being in "construction." Vital signs consisted only of blood pressure, reported as 140/90, with no discussion of the implications of this. The patient's height and weight are not recorded. The patient reported that he was taking only ibuprofen. There is no documentation concerning past providers or treatment modalities, other than some surgeries for acute injuries. Respondent's diagnosis is: "Multiple injuries, really almost a fibromyalgia-type syndrome as a result of injuries." He prescribed Celebrex® 200mg daily, #15, and Vicodin ES®, q4h, PRN, #50, and referred the patient to a physical therapist.

9. On 7/8/04, Respondent saw the patient again, and noted that the patient continues to have pain and that the Vicodi was not sufficient to relieve the pain. He notes that the patient has difficulty driving (without specifying the difficulty), sitting, and turning his head. A decreased range of motion in the cervical and lumbar areas is noted, but not quantified, nor is there a statement concerning the base point from which the ROM is decreased (e.g., from the previous visit, or from a normal, uninjured person). He notes that the patient is awaiting the start of the physical therapy regimen. Respondent prescribed 10mg Percocet®, QID, #60, and ordered an MRI of the cervical and lumbar areas; the patient is to return in two weeks. There is nc mention of the Celebrex in the chart note.

10. On 7/13/04, the patient returned and reported receiving some benefit from therapy, and that the Percocet provided good relief, but only about two hours. Respondent then prescribed OxyContin® 10mg, TID, #30, "to take along the Percocets." There is no mention of the Celebrex® at this visit, or at any subsequent visit.

11. On 7/20/04, the patient returned at reported that physical therapy is painful, but that he has been more "mobile." He continues to ache "all over" and felt that the pain medication was inadequate. He reports having an MRI, but there is no copy of the report in the chart. Respondent discusses in the progress note: "Review of MRI's show several small, herniated discs and some degenerative changes in the cervical area. One small herniated disc in the lumbar area and a torn ligament in the wrist, scapholunate ligament. There is decreased painful range of motion of the wrist particularly." Respondent prescribed a continuation of physical therapy, an increase in the OxyContin® to 20mg TID, #90, with Percocet 10mg® q4h, PRN, #100. The patient was referred to an orthopod for his wrist injury. The patient's blood pressure was noted to be "elevated" but no figure is recorded.

12. On the same day, the patient's twin brother, W.F., presented to Respondent for an initial evaluation. This patient reported a history of injuries to various extremities including a cut to his arm resulting in sepsis. The patient reported being on rifampin BID, oxycodone (no dose being recorded), and 20mg OxyContin TID. The patient reported being "released from all of the doctors except the infectious specialist" who is said to be monitoring his osteomyelitis; he has been told to go to a physical medicine specialist. There is a physical examination recorded, but no vital signs. The names of his previous providers are not recorded. The patient states that he would like to return to work as a manual laborer, but his shoulder bothers him, as he has osteomyelitis in his collarbone; Respondent notes that the shoulder is tender with decreased and painful, with significantly less strength than the right shoulder. Respondent advised the patient to continue the rifampin, and prescribed OxyIR® q4h, PRN, #50, and OxyContin® 20mg TID, #45. He referred the patient to physical therapy, and instructed him to return in two weeks.

13. Two days later, on 7/22/04, W.F. returned to clinic, stating that he had started physical therapy but that his pain was significantly worse and that he needed more medication to enable him to participate in therapy. Respondent examined the patient's shoulder and noted tenderness, painful decreased ROM with abduction "once again not up to 90 degrees" and pain with any shoulder motion. Respondent ordered an increase of OxyContin® to 40mg BID, #30, although this is incorrectly typed in the chart as 20mg. The patient is to return in two weeks.

14. One week later, on 7/29/04, W.F. returned to clinic, stating that he was "loosening up" in his neck, shoulder, and upper and lower back. However, the patient stated that he is going to run out of medication in a couple of days. Respondent

charted an examination of the patient's back and shoulder, and notes that "the patient states that this medication and therapy does allow him to get through his day." He then ordered refills of OxyContin® 40mg bid #60, and OxyIR® 5mg, #100, with a "fill-on" date of 8/2/04; "The patient will attempt to make these last one month."

15. Also on 7/29/04, W.F.'s wife, D.F., presented to Respondent for a new patient evaluation. The patient reported low back pain of two years duration, for which she is taking OxyContin® 20mg TID, and Percocet® 5mg. There is no documentation of past providers, the length of time the patient had been on this regimen, what other modalities had been tried, or vital signs (although he notes "Need to watch the patient's blood pressure as it was elevated today. Perhaps she was just nervous, and it will go down next time. We will have to see."). The patient reported having an MRI but did not know the area covered or the findings. She reported that "physical therapy made her worse." She states she does not want therapy, or injections [presumably, facet type]. Respondent prescribed OxyContin® 20mg TID, #45, and Percocet® 5mg, q4h, PRN, #50.

16. Five days later, on 8/3/04, W.F. returned to clinic, reporting that his insurance provider does not want to pay for hi prescribed medication. "He states that the only way that they will pay for it is if he sends them a prescription, and they will get i through their pharmacy at a reduced cost." Respondent then issued a prescription order for OxyContin® 40mg, bid. "Wrote on the script to send to insurance so that, I do not think he would, but so that he could not just take it to a local pharmacy. He did receive a script that was actually supposed to be filled yesterday. He does state that the insurance told him it would take three or four weeks to get the prescription this way. So we will do this to help him with his insurance hassle. We do have to watch that he does not get and take duplicate prescriptions."

17. During the ensuing months, Respondent continued to prescribe oxycodone products to these three patients in increasing dosages. His charts fail to record or contain, for any of these patients, any vital signs other than blood pressure, any description of the pain levels on any recognized pain scale, any UDS, any medication agreement which restricts the patient to one prescriber and one pharmacy, any AODA history or evaluation, any medication sheet, any consultant or physical therapy reports, or any radiology reports. There is no further discussion of the insurance issue for W.F. and D.F. (who are both on the same insurance policy).

18. On 10/16/02, Respondent was first consulted by patient D.R., a female born in 1980. The patient presented with cervical and thoracic spine pain, which she attributes to being in a car which was struck by a train some six months previous. The pain is aggravated by carrying trays of food and drink, at work, and is increasingly worse. The patient reported being a non-drinker of alcohol. The only vital sign recorded is blood pressure, 98/72. The patient was treated with electrical stimulation and osteopathic manipulation of 3-4 body regions, but the chart does not say where or provide any other specifics. There is no indication of where else the patient had been treated. Respondent prescribed Zanaflex® 2mg TID #60, and Lodine® 300mg, 2@ q6-8h PRN, #30.

19. On 10/21/02, the patient returned reporting stiff, sore, painful muscles "mostly thoracics" with the muscle relaxer helping at night but the NSAID "not doing anything." The patient was treated in the office with hot packs, electrical stimulation, and osteopathic manipulation of 3-4 body regions, but the chart does not reveal where or provide any details about these treatments. Respondent prescribed Vicodin ES®, q4-6h PRN, #30.

20. On 11/6/02, the patient returned reporting that her mid-thoracic back is feeling worse but her low back feels OK. No vital signs were recorded. The patient was treated with "Packs: hot or cold," electrical stimulation, and osteopathic manipulations of 3-4 body regions; no other details are recorded. Respondent referred the patient for physical therapy, and prescribed Vicodin ES®, q4-6h PRN, #100.

21. On 12/27/02, the patient returned reporting that her upper back was stiff and sore, and reporting that her boss "gave her a percocet and it worked very well for her pain." The chart reflects that the patient received hot packs and osteopathic manipulation of 3-4 body regions, without further detail or description. Respondent prescribed Percocet® 10/325 q4-6h PRN, #100. However, another chart record for this date states that only #30 were ordered, and that this was a 2 week supply.

22. On 1/15/03, the patient returned reporting that she "feels percocet is too strong however does need to take something." The chart reflects that the patient received osteopathic manipulation of 3-4 body regions, but no other description

or detail is recorded. Respondent prescribed Norco® q4-6h PRN, #60.

23. On 1/29/03, the patient returned reporting "body was sore all over this morning when she got up. Hasn't been this sore in a long time." Osteopathic manipulation of 3-4 body regions was given, no further description or detail is noted; the patient also received electrical stimulation and "Packs: hot or cold" but no further detail or description is noted. Respondent prescribed Norco® 10/325, q4-6h PRN, #100. There is no discussion in this or any previous note about the efficacy of any treatment, a pain scale level as experienced by the patient, or any AODA history.

24. On 2/12/03, the patient returned stating "low back has been okay lately, however, left hip has been sore for last few days." No vital signs were recorded. The patient received "Packs: hot or cold"; "stimulation: elect/unattended by MD"; and osteopathic manipulation of 3-4 body regions. No other description or detail of these therapies is noted. Respondent prescribed Norco®, q4-6h PRN, #100.

25. On 2/28/03, the patient returned to clinic. Staff noted: "Needs OMT, also has been having a lot of anxiety attacks lately, mostly in the car while driving." Respondent noted that the patient's back is improving, "anxiety attacks new 2-3x day makes her stop what she is doing call for help heart races rapid breathing sweating nausea crying some money problems but no worse than usual tearful in exam room c explanation." The patient's blood pressure was 110/60; no other vital signs were recorded. Respondent provided osteopathic manipulation to 3-4 body regions; the chart does not provide any other information about this treatment. Respondent prescribed Norco® 10/325, q4-6h, #100, and Paxil® 20mg qAM, #30.

26. On 3/12/03, the patient returned to clinic, and reported that she quit her job and her panic attacks stopped. She informed staff that her upper back and neck had been sore recently, and that she was experiencing headaches. No details were noted about the frequency and nature of the headaches. Respondent noted that she had diffuse tenderness and spasm of her neck, with tenderness and spasm "gets into upper thoracics." He noted that she was relaxed, in no distress, alert and aware. No vital signs were recorded. She received osteopathic manipulations to 3-4 body regions, together with electrical stimulation and hot packs; no further detail or description is noted. Respondent prescribed Norco 10/325 q4-6h PRN, #100.

27. On 3/28/03, the patient returned to clinic and reports to staff that her upper back and neck are sore, and that she needs OMT. Respondent then notes: "After discussion, patient declines OMT." No reason is noted. No vital signs are recorded. The chart reflects that the patient received hot packs and electrical stimulation; no details or description are noted. Respondent prescribed Norco® 10/325, q4-6h PRN, #100.

28. On 4/11/03, the patient returned to clinic and noted to staff that her upper back and neck were sore, and that she was experiencing headaches. No details were noted about the frequency and nature of the headaches. No vital signs were recorded. The patient received electrical stimulation, hot packs, and osteopathic manipulation of 3-4 body region; no other details or description of these treatments is noted. Respondent prescribed Norco® 10/325, q4-6h PRN, #100.

29. On 4/25/03, the patient returned to clinic and noted to staff that her upper back is feeling slightly better, but she needs OMT and medication refill. The patient received electrical stimulation, hot pack, and osteopathic manipulation of 3-4 body regions; no other detail or description of these treatments is recorded. The chart contains inconsistent records of the prescriptions: in one are, the chart shows that Respondent prescribed Norco® 10/325, q4-6h PRN, #100. In another, the chart shows that Respondent prescribed Norco®, 2@ q4-6h PRN, #100. No explanation appears in the chart for this doubling of the dosage. There is no discussion in this or any previous note about efficacy of any of the treatment modalities, the frequency of medication use, alternatives to opioids, functional goals, or pain levels on a recognized scale, as experienced by the patient. There is no description of the pain itself, what makes it better or worse, or how the patient copes with it in her daily life

30. The patient did not return to clinic again until 9/19/03. At that time, she reports being pregnant with an expected delivery date of 12/29/03, that her back and neck are sore, and that her OB has approved both hydrocodone and manipulation. There is no notation about what she has done for her pain during the previous six months, what was effective, what the alternatives to opioids might be at this time, what her functioning is, or what her pain levels are and have been. The chart reflects that Respondent performed osteopathic manipulation of 3-4 body regions, without any further detail or description. Respondent prescribed Norco® q4-6h, PRN #60. Respondent prescribed the same medication following similar office visits on 10/3/03, 10/20/03, 11/3/03, and 11/17/03.

31. On 12/22/03, the patient returned to clinic and reported delivering her baby without problems, and that she was no breastfeeding. Respondent performed osteopathic manipulation to 3-4 body regions, without noting any further detail or description, and prescribed Norco® 10/325 q4-6h PRN, #100. Respondent to continue treating the patient in this manner, and with this prescription, on 1/5/04 (there is another discrepancy in the chart; one portion says #60 while the other says #100), 1/19/04, 2/2/04, 2/16/04, 3/1/04, 3/15/04, 3/29/04, 4/12/04 (Flexeril® 10mg TID #90 is added at this visit), 4/26/04 (no Flexeril), 5/7/04 (patient reported her script stolen), 5/17/04, 6/2/04, 6/16/04 ("went to ER last week with terrible migraine. Accused of trying to get drugs. Left without any treatment." Also prescribed Flexeril 10mg TID PRN muscle spasm #90).

32. On 6/30/04, the patient returned to clinic and reported worsened pain in the neck and upper back area. Respondent notes: Not sure why an increase of pain has occurred but on exam noted ROM has decreased and patient appears to be in much more pain." Respondent provided osteopathic manipulation of 3-4 body regions, no other detail or description is noted, and prescribed Percocet® 10/325 q4-6h PRN, #100. In one part of the chart, this is noted to be a 2 week supply. On 7/14/04, the patient returned to clinic and requested to return to Norco®; respondent provided osteopathic manipulations to 3-4 body regions and prescribed Norco® 10/325 q4-6h PRN, #100. Similar office visits and prescriptions occurred on 7/28/04 (but a part of the chart notes the prescription to have been for Percocet®), 8/11/04 (again, one part of the chart notes Percocet® while another notes Norco®), and 8/25/04 (Zoloft® is added in response to a complaint of depression, Percocet® is noted as being prescribed).

33. On 9/8/04, the chart notes that Respondent received a call from "mother-in-law" stating that the patient has been abusing medications and stealing them from others, that she has been receiving them from other physicians and had been treated for drug abuse at a hospital. Respondent noted that the reporter could not name the hospital, and that he consulted the pharmacist who reported prescriptions only from Respondent and his clinic partner. Respondent notes that he confronted the patient, and she reported that she had separated from her husband and was living with her own parents. Respondent notes his observation that the patient was oriented and that the children, who were present, looked happy, well groomed, and interacting lovingly with each other and the patient. Respondent then provided osteopathic manipulations to 3-4 body regions (without noting any details or description), and prescribed Percocet 10/650 q4-6h, #100, a 2 week supply.

34. On 12/10/04, the patient returned to clinic and reported continuing back pain, aggravated by a recent slip-and-fall. There is no notation about the 3 month absence from clinic. Respondent provided osteopathic manipulation of 3-4 body regions, without noting any details or description, and prescribed Norco® 10/325 q4-6h PRN, #100. There is an 8/23/05 entry in the chart which notes that on 1/17/05, a prescription was called in for Norco® 10/325 q4-6h PRN, #15.

35. On 1/28/05, the patient returned to clinic and reported needing an increase in pain medication, in that Norco® had not been helping enough over the past few weeks. No explanation is noted for the six week absence from clinic, or for why the patient's pain may have increased. Respondent provided osteopathic manipulation to 1-2 body regions, without noting details or description, and prescribed Percocet® 10/650 q4-6h PRN #100. There is no discussion of the prescription which had been called in on 1/17/05.

36. On 2/2/05, the chart notes that Respondent authorized a prescription for Norco® 10/325 q4-65h PRN #50. "Norco [Percocet] is too strong and making her sick." There is an 8/23/05 entry in the chart which notes that on 2/8/05, a prescription was called in for Norco® 10/325 q4-6h PRN #15.

37. On 2/11/05, the patient returned to clinic. The patient's vitals are noted to be BP 142/83, pulse 98, weight 120. The patient stated that although the Percocet is too strong, the Norco is not relieving her pain. Respondent notes that he informed the patient that she should stick with one medication. There is no discussion of the prescription which had been called in on 2/8/05. Respondent provided osteopathic manipulation to 304 body region, without noting further detail or description, and prescribed Percocet® 10/650 q4-6h PRN #100. There is an 8/23/05 entry in the chart which notes that on 2/21/05, a prescription was called in for Vicoden ES® q4-6h PRN, #30.

38. Similar office procedures and prescriptions are documented for 2/25/05, including "medication use agreement" specifying that all prescriptions will be filled at one pharmacy (which is named) and that the patient will receive pain medication only from this clinic. There is no discussion of the prescription which had been called in on 2/21/05.

39. The patient next returned to clinic on 4/25/05. There is no explanation for this gap in treatment, nor for what the patient did for pain relief during this time. The patient reported having a car accident on 3/23/05, and having some increased pain since then. Respondent provided OMT therapy (not otherwise described), and prescribed Percocet® 10/650 q4-6h PRN, #100.

40. The patient returned to clinic on 5/20/05, and received osteopathic manipulation to 3-4 body regions (no other detail or description is noted). She also received Alocon® for dermatitis on her lower extremities, and a prescription for an Advair Diskus® inhaler without any indication being noted. Respondent also prescribed Percocet® 10/650 q4-6h PRN #100

41. The patient returned to clinic on 6/3/05, and reported extreme upper back pain. She received osteopathic manipulation (not otherwise described), instruction in relaxation techniques and meditation, and a prescription for Percocet® 10/650 q4-6h PRN, #100.

42. The patient returned to clinic on 6/15/05, and complained of anxiety. There is no notation of the nature or extent of this complaint. She received OMT (not otherwise described), "relaxation techniques. Meditation" and prescriptions for Percocet® 10/325 q4-6h PRN #100, and Valium® 1mg bid, #60, and an antibiotic for a possible infection. The patient received 80 hydrocodone 10/325 from another prescriber on 6/19/05; there is no evidence that Respondent had any knowledge of this specific incident. The patient returned to clinic on 6/24/05 and was provided OMT only; no prescription is noted as being issued.

43. The patient returned to clinic on 7/11/05, and Respondent notes that he "discussed situation will try to get away from short acting pills go to long acting see if it is successful"; he provided OMT therapy (not otherwise described or specified) and a prescription for methadone 10mg 2@ bid, #120. There is no notation that the patient was counseled to call quickly if any adverse effects were noted.

44. Pharmacy dispensing records show the following: on 8/8/05, the patient received hydrocodone 10/325 #100 on the prescription order of Respondent. On 8/22/05, the patient received hydrocodone 10/325 #80 on the prescription order of Respondent. On 8/26/05, the patient received 120 methadone 10mg, on the prescription order of Respondent. On 9/26/05, the patient received both methadone 10mg #120, and oxycodone 10/650 #100, on the prescription order of Respondent. On 10/26/05, the patient received methadone 10mg #60 and oxycodone 10/650 #100, on the prescription order of Respondent. On 11/9/05, the patient received 80 oxycodone 10/650 and 60 methadone 10mg, on the prescription order of Respondent. On 11/25/05, the patient received 100 oxycodone 10/650, on the prescription order of Respondent.

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 ¶5-7, above, violated Wis. Adm. Code § Med 10.02(2)(b). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

C. The conduct described in ¶8-44, above, violated Wis. Adm. Code § Med 10.02(2)(h). 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 Marc L. Smith, D.O., 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 provided

in Wis. Stat. § 448.02(3)(e), and as follows: Respondent shall not order, prescribe, or administer any opioid or opiate, including any product containing tramadol, for any patient for more than 30 days in any 12 month period.

IT IS FURTHER ORDERED, that all previous orders of the Board concerning Respondent remain in full force and effect unless expressly modified by this Order. In particular, the following portion of the 2/24/99 Order remains in full force and effect:

> IT IS FURTHER ORDERED, that effective immediately and continuing until […] such time as respondent has successfully passed with a score of 75 or more the SPEX or its osteopathic counterpart (respondent may not attempt the exams more than twice without Board permission; this means one attempt on each exam or two attempts on either exam) or has passed a board specialty examination for certification or recertification for a board recognized by the American Board of Medical Specialties, the license to practice medicine and surgery of Marc Lloyd Smith, D.O., is LIMITED as provided in §448.(3)(e), Wis. Stats., and as follows:
>
> 1. Respondent shall practice only under the supervision of a designated Professional Mentor approved by the Board.
>
> 2. Respondent shall obtain a Professional Mentor acceptable to the Board. The Professional Mentor shall be the individual responsible for supervision of Respondent's practice of medicine and surgery during the time this Order is in effect. Supervision shall include weekly meetings, review of charts selected by the Professional Mentor (which shall include charts of any nursing home patients), and any other actions deemed appropriate by the Professional Mentor to determine that respondent is practicing in a professional and competent manner. The Professional Mentor may designate another qualified physician or other health care provider acceptable to the Board to exercise the duties and responsibilities of the Professional Mentor in an absence of more than three weeks. In the event that the Professional Mentor is unable or unwilling to continue to serve as Respondent's professional mentor, the Board may in its sole discretion select a successor Professional Mentor. The Professional Mentor shall have no duty or liability to any patient or third party, and the Mentor's sole duty is to the Board.
>
> 3. Respondent shall arrange for his Professional Mentor to provide 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 work performance.
>
> 4. Respondent's Professional Mentor shall immediately report to the Department Monitor any conduct or condition of the Respondent which may constitute unprofessional conduct, a violation of this Order, or a danger to the public or patient.
>
> 5. It is the responsibility of Respondent to promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order, including any failures of the Professional Mentor to conform to the terms and conditions of this Order.
>
> 6. 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.

IT IS FURTHER ORDERED, that the Professional Mentor required by the Board's previous orders shall be certified by an appropriate specialty board approved by the American Board of Medical Specialties or the American Osteopathic Association, and shall be furnished with a copy of this Order, and the Board's Order of 2/24/99. The Professional Mentor shall have access to, and shall include in each report a statement concerning, all practice locations and all patient health care records of Respondent.

IT IS FURTHER ORDERED, that the following language of the Board's Order of 2/24/99:

> 6. 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.

is interpreted to mean that Respondent shall notify the Board of all his practice locations, and the schedule of his practice at each, forthwith; he shall notify the Board of any changes in location or schedule within 5 days of such change, together with information on whether he is an employee, independent contractor, partner, principal, or has some other status at that location. He shall include in the notice, the full name of the employer or principal at the practice site, and a brief description of the nature

of the association, including the general terms of the compensation arrangement; this does not mean the dollar amounts, but the method by which the compensation is computed or determined (salary or per-diem, specified percentage of collections, capitation, etc.).

IT IS FURTHER ORDERED, that respondent shall pay the COSTS of investigating and prosecuting this matter of $2,800 within 120 days of this Order.

IT IS FURTHER ORDERED, that pursuant to Wis. Stats. § 227.51(3) and § 448.02(4), violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order, following notice and an opportunity to be heard. In the event Respondent fails to timely submit any payment of the Costs as set forth above, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has paid them in full.

Dated this December 20, 2006.

WISCONSIN MEDICAL EXAMINING BOARD

by: Gene Musser MD
a member of the Board