

# 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
BRUCE A. KRAUS, M.D.,	:	LS# 0701306 MED
	:	
RESPONDENT.	:	

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Division of Enforcement Case # 04 MED 077

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

Bruce A. Kraus, M.D.  
P.O. Box 310  
Columbus, WI 53925

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 disciplinary proceeding was commenced in this matter by the filing of a Notice of Hearing and Complaint with the Medical Examining Board on January 30, 2007. Prior to the hearing on the Complaint, the parties in this matter agreed to the terms and conditions of the attached Stipulation as the final disposition 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. Bruce A. Kraus, M.D., (DOB 06/15/48) is duly licensed as a physician in the State of Wisconsin (license # 20-21498). This license was first granted on April 21, 1978.
2. Respondent’s most recent address on file with the Wisconsin Medical Examining Board is P.O. Box 310, Columbus, Wisconsin, 53925.
3. Respondent specializes in internal medicine.
4. On or about January 2, 2003, Respondent began seeing patient R.S. for daily bilateral knee pain and intermittent back pain. R.S. was previously seen by other physicians but sought another opinion because his previous physician refused to prescribe opioid medications.
5. Although R.S. appeared to have some legitimate pain, R.S. also exhibited several red flag behaviors that alerted Respondent to the possibility that R.S. was seeking opioid medications for illegitimate purposes. For example:

- (a) R.S. had a history of cocaine use;
- (b) R.S. admitted that he sometimes used hydrocodone and oxycodone that he got from a friend, without a prescription; and
- (c) Respondent requested opioid medications and stated that other treatments did not work.

6. Respondent noted in the medical record that R.S. “seemed to be seeking opioid medications for chronic pain management.” He prescribed only Bextra, and requested records from R.S.’s previous physicians.

7. R.S. saw Respondent two more times that month. Respondent requested lab work, took x-rays and referred R.S. to a rheumatologist. He refused to prescribe any other medications until after the rheumatology consult, which was scheduled for March 7, 2003.

8. The lab work was normal and the x-rays looked good. It was not clear at that time why Respondent was having persistent and chronic knee pain.

9. Despite the absence of any objective evidence of pain, despite Respondent’s own concerns that R.S. was drug-seeking, and despite his prior refusal to provide medications until after the rheumatology consult, Respondent prescribed hydrocodone/APAP, 5/500 mg, 1 every 4 hours PRN, RX # 60 on February 1, 2003 (R.S.’s fourth visit with Respondent). This prescription does not appear in Respondent’s medical records for R.S., but does appear in pharmacy records.

10. At R.S.’ next visit on February 27, 2003, R.S. requested oxycodone, stating that the hydrocodone was not as effective. Respondent prescribed oxycodone/APAP, 5/325 mg, I bid, RX #60. This was Respondent’s first prescription of oxycodone for this patient. Respondent states that the fact that he did not prescribe oxycodone until the patient’s fifth visit showed restraint, and that a drug seeking patient would not come back four or five times prior to seeking this medication.

11. On March 26, 2003, R.S. reported that he had injured his back. Respondent refilled the oxycodone and added cyclobenzaprine, a muscle relaxant.

12. On April 4, 2003, R.S. was seen by Dr. J.P., a rheumatologist. Dr. J.P.’s report stated that “oxycodone or hydrocodone used up to 3-4 a day may help with pain and improve tolerance to activity.” Dr. J.P. did not discuss or address R.S.’s addiction potential. He was aware, from Respondent’s referral letter, that Respondent was concerned about R.S.’s addiction potential but had already started him on opioid medications despite his concerns.

13. On or about April 16, 2003, R.S.’s wife, K.S., wrote to Respondent expressing concerns that he had prescribed oxycodone to her husband. She stated that R.S. had prior additions to drugs and alcohol. She suggested that R.S.’s use of opioid medications be closely monitored and that an addictionologist be consulted. K.S. made an appointment to see Respondent to discuss her concerns on April 17, 2003 at 4:30 p.m. No note of any such visit appears in the medical records, and there is no evidence in the record that her concerns were addressed. Respondent states that the wife requested that her visit remain confidential; for this reason, Respondent did not refer to the letter in the medical records. Respondent states that he did monitor R.S.’s medication use more closely after he received the letter.

14. On April 24, 2003, R.S. requested additional or stronger medications. Respondent’s physician’s assistant refused, but refilled his prior prescription.

15. On May 22, 2003, R.S. requested more medications because he planned to take a car trip and anticipated more pain. Respondent agreed to temporarily increase the oxycodone to RX #90.

16. On May 30, 2003, R.S. saw Dr. J.M., whom Respondent understood to be a physician who concentrated his practice on pain management. Dr. J.M. prescribed 20 mg of OxyContin, bid. His cover letter to Respondent indicates that he did so because R.S. told him that he was leaving town at 6:00 a.m. the next day. The cover letter also states that Dr. J.M. asked R.S. to touch base when he returns to town. In his report, Dr. J.M. states: “*In the short run*, ice and pain killers are about all we have.” (emphasis added). Dr. J.M.’s report also states: “Follow up: [Dr. J.M.]. The Plan section of his report stated: “I need to get the records and see what has been done so far before we make further recommendations.” Dr. J.M.

was the first physician to prescribe OxyContin to R.S. during Respondent's case of the patient.

17. It does not appear from the medical record that Dr. J.M. was aware of R.S.'s history of cocaine use. Respondent did not send records, did not write a letter explaining his concerns about addiction potential, and did not forward a copy of the patient's wife's letter. Dr. J.M.'s report makes no mention of any evaluation of addiction potential. Respondent states that he did not provide this information to Dr. J.M. because he wanted an independent assessment of the patient.

18. R.S. never returned to see Dr. J.M.

19. Respondent saw R.S. again on June 18, 2003. He continued the previous prescriptions for oxycodone and cyclobenzaprine, and added OxyContin 20 mg q 12 h RX # 60, stating that he was following Dr. J.M.'s recommendation. Respondent believed that this was low dosage of OxyContin.

20. Respondent continued the same prescriptions on July 9, 2003.

21. On July 10, 2003, Respondent's wife wrote another letter to Respondent. She described the "nightmare" and "emotional pain" that her family was experiencing due to her husband's narcotic addiction. She described him as verbally mean, angry and negative. She stated that their marriage was suffering and her health had worsened from the stress. She also questioned why, if her husband is in so much pain, can he regularly ride a dirt bike. She stated that her husband hid his medication. She begged Respondent to consider treating her husband as a whole person, including emotionally and psychologically, instead of just treating the pain. Respondent states that he addressed the wife's concerns with the patient, but did not discuss the letter with the patient based upon the wife's request for confidentiality. There is no mention of this letter in Respondent's notes and no indication that he responded or that he discussed the letter with R.S. in the patient's file.

22. Respondent saw R.S. again on August 6, 2003. Respondent noted that R.S. was seeing an orthopedic surgeon for consideration of a total knee replacement. Respondent encouraged R.S. to see the rheumatologist again first because he was too young for a total knee replacement. Respondent continued the same medications.

23. On September 3, 2003, Respondent saw R.S. again. Respondent noted that R.S. was scheduled for a rheumatology consult in October. Respondent continued the same medications.

24. On September 29, 2003, Respondent noted that R.S. recently saw an orthopedic surgeon for consideration of knee replacement but Respondent had not yet received any communication from the orthopedic surgeon. Respondent continued the same medications.

25. On October 27, 2003, R.S. reported that he had had a right knee arthroscopy with some repair of torn meniscus. R.S. felt he needed less medication and stated he did not need the OxyContin refilled. Respondent held the OxyContin but continued the other medications. Respondent states that he believed that the fact that the patient wanted less medication was a positive sign, and that a patient who did not desire additional OxyContin is not indicative of a drug seeking patient.

26. On November 24, 2003, R.S. reported that while his arthroscopy had significant benefits, he now had increasing pain in the lateral and medial aspect of the right knee and wanted to resume the previously prescribed combination of oxycodone, OxyContin and cyclobenzaprine. No examination was conducted; Respondent states that this was because the patient was seen recently by Dr. W's office. Respondent prescribed oxycodone/APAP 5/325 mg 1 q 12 h RX # 60, OxyContin 20 mg q 12 h RX # 60, and cyclobenzaprine 10 mg 1 q 8 h prn RX # 100.

27. On December 22, 2003, R.S. asked Respondent to increase his OxyContin, but Respondent refused. Respondent continued the same medications as he had on the previous visit. No examination was conducted; Respondent states that this was because the patient had been seen recently by Dr. W's office.

28. On January 19, 2004, R.S. complained of increasing pain in his knees and in his hips and wanted to see the orthopedic surgeon again. R.S. stated "if you would like to increase either one of my medications, it wouldn't bother me a bit." Respondent offered the orthopedic consult and continued the same medications as on the previous visit. Respondent states that by not increasing the medication, he showed restraint.

29. On February 16, 2004, R.S. saw a physician's assistant in Respondent's office. She noted that his *left* knee was the source of the majority of his pain. R.S. reported that he had an MRI that morning and would follow up with the orthopedic surgeon. R.S. requested 90 tablets of oxycodone/APAP, which he claimed that he received last time. The physician's assistant called the pharmacy and verified that he had received only 60 tabs of oxycodone/APAP last month. The note was otherwise identical to previous notes. No examination was conducted. The plan indicates that the physician's assistant refilled prescriptions for oxycodone/APAP 5/325 mg 1 q 12 h RX # 60, OxyContin 20 mg q 12 h RX # 60, and cyclobenzaprine 10 mg 1 q 8 h pm RX # 90. Respondent states that the physician's assistant acted appropriately in contacting the pharmacy about the medication.

30. On March 15, 2004, R.S. saw the same physician's assistant in Respondent's office. This time she noted that his *right* knee was the source of much of his pain. He reported that his MRI demonstrated a substantial meniscal tear. He was scheduled for surgery in six weeks. Respondent authorized increasing the oxycodone/APAP to 75 tabs. The other medications remained the same. No examination was conducted. Respondent states that he acted appropriately in continuing the pain medication until the surgery occurred and did not conduct a physical examination because of the surgeon's recent examination.

31. On April 12, 2004, R.S. was seen by the physician's assistant, who prescribed the same medications as before. No examination was undertaken. It was noted that R.S. was planning to have knee surgery at the beginning of May.

32. On May 17, 2004, R.S. saw a physician's assistant at Respondent's office. The physician's assistant noted that they had received information from a pharmacy that R.S. had been receiving pain medications from other physicians. R.S. claimed it was a mix-up with the pharmacy. The physician's assistant noted that she had contacted R.S.'s orthopedic surgeon and it was decided that Respondent's office would provide the pain medications only. R.S. reportedly agreed, verbally, to not accept medications from other physicians without Respondent's knowledge. According to Respondent, he already had a verbal agreement with R.S. that he would not be getting pain medications from other sources. The physician's assistant also informed the pharmacy that R.S. should only be getting pain meds from them. Then she refilled R.S.'s prescriptions, oxycodone/APAP 5/325 mg 1-2 q 12 h pm RX # 75, OxyContin 20 mg q 12 h RX # 60, and cyclobenzaprine 10 mg 1 q 8 h pm. There is no explanation as to why Respondent's oxycodone prescription changed from 1 q 12 h prn to 1-2 q 12 h pm. Respondent states that R.S. received one prescription from his surgeon following surgery. Respondent states that the physician's assistant acted appropriately in informing the pharmacy that the patient should only receive medications from Respondent's office and by discussing the agreement that the patient had with R.S.

33. On June 14, 2004, R.S. saw a physician's assistant at Respondent's office. R.S. reported seeing Dr. W. and considering steroid injections. He was planning to move to Arizona. No examination was completed. Prescriptions were refilled.

34. On July 12, 2004, Respondent saw R.S. The entire note is identical to the physician's assistant's note of June 14, 2004. No examination was completed. Prescriptions were refilled.

35. On August 9, 2004, Respondent saw R.S. The entire note is identical to the physician's assistant's note of June 14, 2004. No examination was completed. Prescriptions were refilled.

36. On September 3, 2004, Respondent saw R.S. The entire note is identical to the physician's assistant's note of June 14, 2004. No examination was completed. Prescriptions were refilled.

37. In or about September, 2004, R.S. and his family moved to Arizona. R.S. advises the Board that for several months after they moved, Respondent sent prescriptions for opioid medications to R.S. in Arizona without seeing him. These prescriptions are not noted in Respondent's medical records. Respondent denies mailing prescriptions to R.S. Respondent states that at the patient's request, his medical records were transferred to Arizona on or about November 8, 2004.

38. Respondent denies, but the Board finds the following: Although R.S. had pain, R.S. had admitted to a history of alcohol and cocaine abuse, had (according to his wife) a history of narcotics addiction, and exhibited drug-seeking behaviors. Despite being asked by R.S.'s wife to monitor R.S. closely, Respondent did not change his treatment of R.S. He did not refer R.S. to an addictionologist. Although he referred R.S. for a pain management consultation, he did not adequately inform the pain management specialist of his concerns about addiction potential and did not ensure that R.S. followed up with the pain management specialist. He did nothing to determine whether R.S. was taking his medication as prescribed. When

R.S.'s wife wrote a second letter, Respondent did not take reasonable steps in response. R.S. and his wife state Respondent wrote several undocumented prescriptions for opioid medications after the patient-physician relationship had terminated.

39. R.S. now admits for the first time that he did not take his medication as prescribed and in fact was abusing his opioid medications during this time in his life.

40. Respondent's medical records are inadequate. Respondent wrote several prescriptions for opioid medications that are not recorded in the record. After the first visit, Respondent often copied notes from previous visits verbatim with little or no change. It is impossible to tell from Respondent's records what transpired at office visits. Respondent states that his method for documenting visits was to carry over information from a prior note that had not changed since that prior visit. Respondent states that his methodology was akin to utilizing a template-style electronic medical record in that the same block of information was utilized in each note.

41. Respondent disagrees with the Conclusions of Law stated below and the assumptions underlying these Conclusions but consents to this Stipulation and this Order by the Medical Examining Board for the purpose of resolving this matter and without any admission by Respondent of negligence or unprofessional conduct in connection with his care of R.S.

### CONCLUSIONS OF LAW

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

2. The Respondent's conduct constitutes negligence and a violation of Wisconsin Administrative Code §§ Med 10.02(2)(h), (p) and (za) and subjects respondent to discipline pursuant to Wis. Stat. § 448.02.

### ORDER

IT IS ORDERED:

1. Bruce A. Kraus, M.D., is REPRIMANDED.
2. The license to practice medicine and surgery of Bruce A. Kraus, M.D. is LIMITED as provided in Wis. Stat. § 448.02(3)(e), and in the following respects:
  - (a) Respondent shall not prescribe any controlled substance until after he has taken and passed the following: the 24 hour course entitled "Prescribing Controlled Drugs: a Continuing Medical Education course for physicians and other prescribing professionals" at Vanderbilt University Center of the Professional Health (Respondent shall take both the pre and post tests, even if the course makes such tests optional, and such scores shall be reported to the Board). This limitation on prescribing controlled substances is STAYED for four months from the date of this Order to permit Respondent to complete this course. The limitation shall then come into effect automatically and without further board action unless Respondent has provided proof to staff that he has satisfactorily completed the required course. Respondent shall cause the course sponsors to report his performance in the course directly to the Board, through the Department Monitor.
  - (b) Respondent shall, within six months of the date of this Order, complete six (6) hours of continuing education in the medical documentation. Each course attended in satisfaction of this Order must be approved by the Medical Examining Board or its designee. Respondent will be responsible for locating courses satisfactory to the Medical Examining Board and for obtaining the required approval of the courses from the Medical Examining Board or its designee. Respondent will, within 60 days of completion of this educational requirement, file an affidavit with the Medical Examining Board stating under oath that she 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 will 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 Medical Examining Board will be deemed filed upon receipt by the Department Monitor.

Respondent will be responsible for paying the full cost of attendance at these courses.

Respondent will 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.

(c) Upon completion of the above conditions, Respondent will return to full licensure.

3. Respondent shall, within ninety (90) days from the date of this Order, pay costs of this proceeding in the amount of Eleven Thousand Five Hundred Dollars (\$11,500.00). 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  
Telephone (608) 267-3817  
Fax (608) 266-2264

4. In the event Respondent fails to pay costs as ordered or fails to comply with the ordered continuing education, the Respondent's license (# 20-21498) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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

Medical Examining Board

By: Gene Musser, MD  
A Member of the Board

July 18, 2007

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
BRUCE A. KRAUS, M.D.,	:	LS# 0701306 MED
	:	
RESPONDENT.	:	

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Division of Enforcement Case # 04 MED 077

Bruce A. Kraus, M.D., personally and by his attorneys Nathan A. Fishbach and Richard J. Lewandowski; and Jeanette Lytle, attorney for the Department of Regulation and Licensing, Division of Enforcement, stipulate:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement (case # 04 MED 077). Respondent consents to the resolution of this investigation by stipulation.
2. Respondent 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 a 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. Respondent has obtained the advice of legal counsel prior to signing this stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Medical Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent 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 Medical Examining Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or his attorney, 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 Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
7. Respondent 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 Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



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Bruce A. Kraus, M.D.  
P.O. Box 310  
Columbus, WI 53925

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Date

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Nathan A. Fishbach  
Attorney for Bruce A. Kraus, M.D.  
Whyte Hirschboeck Dudek S.C.  
555 East Wells Street Suite 1900  
Milwaukee, WI 53202-3819

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Date

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Richard J. Lewandowski  
Attorney for Bruce A. Kraus, M.D.  
Whyte Hirschboeck Dudek S.C.  
1 E. Main St. Suite 300  
Madison, WI 53703-5119

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Date

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Jeanette Lytle, Attorney  
Division of Enforcement  
Wisconsin Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935

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Date