

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :
: FINAL DECISION AND ORDER
JAMES A. WILKE, D.C., : LS0706282CHI
RESPONDENT. :

Division of Enforcement Case # 06 CHI 046

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

James A. Wilke, D.C.
730 E. Washington St.
Slinger, WI 53086

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

Chiropractic Examining Board
Department of Regulation & 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 Chiropractic Examining Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. James A. Wilke, D.C., (DOB 01/09/1962) is duly licensed as a chiropractor in the state of Wisconsin (license # 12-2158). This license was first granted on July 16, 1986.
2. Respondent's most recent address on file with the Wisconsin Chiropractic Examining Board is 730 E. Washington Street, Slinger, Wisconsin, 53086.
3. Patient D.N. had recently had neck surgery and was seeing Respondent relating to pain in her back and neck. Her physician had prescribed Hydrocodone for her pain.
4. On or about August 14, 2006, Respondent called patient D.N. at her home. He stated that he was in the area and would come over and treat her at her home. During this visit, he insisted on seeing her prescription medications. There were times during this visit when Respondent was out of D.N.'s presence.

5. On or about August 15, 2006, Respondent called D.N. again and stated that he was in the area and would come over to treat her. He again insisted on seeing her prescription medications. Respondent then asked D.N. if she had any other medication in her house. She retrieved her old medications at his request, including an older bottle of Hydrocodone, Roxicet and Tramadol. Respondent administered treatment and left. D.N. later examined her Hydrocodone bottle and noted that approximately 30 pills were missing. There were times during this visit when Respondent was out of D.N.'s presence.

6. On or about August 16, 2006, Respondent again called and insisted on coming to D.N.'s home to treat her, although he mentioned that it was his day off. He again asked her to get all of her medications and had her hold the containers in her hands while he pushed down on her arm. He then took the medications from her hand and placed them on a seat right next to his pocket. When Respondent left, 24 pills were missing from the Tramadol bottle.

7. On August 17, 2006, Respondent again called and insisted on coming over to treat D.N. During this treatment, D.N. was sitting in a chair facing away from Respondent, but she could see Respondent's reflection in a big screen television, which was turned off. In the middle of the treatment, she saw Respondent stop, pick up her medications, pour several into his hand and put them in his pocket. When he left, she noted that some Hydrocodone pills were missing.

8. Later in the day on August 17, 2006, Respondent called for a second time and insisted on coming over again to treat her. D.N. placed a video camera in her living room pointing at her medications. When Respondent came in, she went to the kitchen for a moment. While she was gone, the video camera recorded Respondent looking toward the kitchen, then retrieving medications, pouring them into his hand and placing them in his pocket.

9. When confronted by police with the video evidence, Respondent confessed to stealing his patient's narcotics. Criminal charges are pending.

10. In treating D.N., Respondent used a Toftness Radiation Detector, or a device substantially the same as a Toftness Radiation Detector. Respondent was aware that the use of Toftness Radiation Detectors, and devices substantially the same as the Toftness Radiation Detector or employing the same basic principles as the Toftness Radiation Detector, have been banned by federal courts.

CONCLUSIONS OF LAW

1. The Wisconsin Chiropractic Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. § 446.03, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. The conduct described in paragraphs 4-10 above constitutes a violation of Wisconsin Administrative Code § Chir 6.02(1), (5), (8), (25), and (26), and subjects respondent to discipline pursuant to Wis. Stat. § 446.03(5).

ORDER

IT IS ORDERED, effective July 1, 2007:

Respondent must abide by all terms and conditions of any court orders that may result due to any related criminal charges, including but not limited to court-ordered probation.

IT IS FURTHER ORDERED, effective July 1, 2007:

SUSPENSION

A.1. The license of James A. Wilke, D.C., to practice as a chiropractor in the State of Wisconsin is SUSPENDED for an indefinite period.

A.2. Respondent shall mail or physically deliver all indicia of Wisconsin chiropractic licensure to the Department Monitor by July 1, 2007.

A.3. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active chiropractic practice for every year the suspension is stayed,

the Board may grant a petition by the Respondent under paragraph D.4. for return of full Wisconsin licensure.

- A.4. The Board may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension shall not be stayed for one year. Any time after one year the suspension shall be stayed upon Respondent providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months.
- B.2. The Board, or its designee, may without hearing remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with the removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
- (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to § 440.11, Stats., or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. RL 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITION AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, in a drug and alcohol treatment program at a treatment facility (Treater) acceptable to the Board or its designee. Respondent shall participate in, cooperate with and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collection sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department

Monitor.

AA/NA Meetings.

C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater.

Sobriety

C.8. Respondent shall abstain from all personal use of alcohol.

C.9. Respondent shall abstain from all personal use of controlled substances as defined in § 961.01(4), Stats., except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee.

C.10. Respondent shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.

C.11. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by Respondent to Treater within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If Respondent has not provided a release as required by C.9 above, within 24 hours of a request by Treater or the Board or its designee, Respondent shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Respondent's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11, ("Approved Program"). A list of Approved Programs is available from the Department Monitor.

C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirement shall include:

- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
- (b.) Production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.

C.14. The Approved Program shall require the random testing of urine specimens at a frequency of not less than 50 times per year.

C.15. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Treater or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.

C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish any specimen in a directly witnessed manner.

C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.

C.18. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11. The Approved Program shall immediately report to Treater all specimens suspected to have been tampered with or which are positive or suspected positive for controlled substances or alcohol.

Practice Limitations

C.19 Respondent shall not work as a chiropractor or other health care provider in any home setting.

C.20. Respondent shall not work as a chiropractor or other health care provider in a setting in which Respondent has access

to controlled substances.

C.21. Respondent shall practice only in a work setting pre-approved by the Board or its designee.

C.22. 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.

MISCELLANEOUS

Department Monitor

D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817

Required Reporting by Respondent

D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Board

D.3. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification

D.4. Respondent may petition the Board for modification of the terms of this Order, however no such petition for modification shall occur earlier than one year from the date of the first stay of Respondent's suspension and no such petition for termination shall occur other than in compliance with paragraph A.3. Any such petition shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. §227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

D.5. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

D.6. Respondent shall pay costs of Five Hundred Forty-Five Dollars (\$545.00) to the Department of Regulation and Licensing, within ninety (90) days of this Order. In the event Respondent fails to timely submit any payment of costs, the Respondent's license (#12-2158) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

D.7. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action under Wis. Stat. § 446.03.

Dated at Madison, Wisconsin this 28th day of June, 2007.

Chiropractic Examining Board

By:

Steven J Silverman D.C.

A member of the Board

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :
 :
JAMES A. WILKE, D.C., : STIPULATION
RESPONDENT. : LS# _____

Division of Enforcement Case # 06 CHI 046

James A. Wilke, D.C., personally and by his attorney Dennis P. Coffey; 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 # 06 CHI 046). 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 Chiropractic 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 Chiropractic 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. Respondent is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order would constitute an agency finding within the meaning of Wis. Stats. §§ 48.685 and 50.065. Should Respondent wish to work in a Wisconsin DHFS-licensed facility, he will need to pass a Rehabilitation Review through DHFS prior to commencement of such employment.

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

James A. Wilke, D.C.
730 E. Washington Street
Slinger, WI 53086

Date

Dennis P. Coffey, attorney for
James A. Wilke, D.C.
1509 North Prospect Avenue
Milwaukee, WI 53202

Date

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

Date