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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST : **FINAL DECISION AND ORDER**
 :
THOMAS A. O'CONNOR, M.D., : LS-0702141-MED
RESPONDENT. :

Division of Enforcement Cases 04 MED 101, 04 MED 329, 05 MED 218,
07 MED 116, 07 MED 121

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

Thomas Anthony O'Connor, M.D.
4775 S. Packard Ave.
Cudahy, WI 53110

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

A disciplinary proceeding was commenced in this matter by the filing of a Notice of Hearing and Complaint with the Board on February 14, 2007; an Answer has also been filed. 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. Respondent is Thomas Anthony O'Connor, M.D., dob 3/23/40, who is licensed as a physician and surgeon in Wisconsin pursuant to license #16038, first granted on 7/12/67. Respondent is a family practitioner, and is certified by The American Board of Family Medicine.
2. On August 27, 2004, Respondent was found by the Departmental Appeals Board of the Department of Health and Human Services to have fraudulently billed the Medicare and Medicaid programs by submitting claims for nuclear medicine air flow and blood flow procedures which he did not provide, and which were not medically necessary. Respondent was found to have provided routine spirometry tests instead of the more expensive nuclear medicine tests, and even these spirometry tests were not medically necessary for the overwhelming majority of persons who received them. Respondent was ordered to pay a civil penalty of \$126,000, and was excluded from all federal health programs for seven years.
3. On 12/9/03, patient K.S., a man born in 1978, came to Respondent's medical office to consult him; this was the initial visit for this patient.
4. The patient alleged that at the time of the visit, the office was in a grossly unsanitary and unclean condition. Dead insects were apparent on the windowsills, and papers littered the floor; the medical equipment was covered with dust; there were open wastebaskets with cotton swabs apparently with bloody residue; and uncovered cups of what appeared to be urine

samples were apparent. The examination table was covered with newspapers; the patient was asked to sit on the table and Respondent had to remove the newspapers for the patient.

5. On February 15, 2007, a duly authorized investigator of the Department, acting on behalf of the Board, presented her business card at the medical office of Respondent, and requested access to inspect the premises, on behalf of the Board. Her purpose was to observe sanitation and sanitary practices as part of the investigation into the complaint described in par. 4, above, and to assure compliance with Wis. Adm. Code ch. Med 17 and 21 CFR § 1301.75, 1304.03, 1303.11, and 1303.21. Respondent refused to permit the investigator to enter the premises, and thereby prevented her from carrying out her lawful duties as an investigator.

6. Respondent has allegedly prescribed opioid medications for several patients whose charts do not adequately document the need for the medications as prescribed.

CONCLUSIONS OF LAW

A. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 448.02(3), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

B. The conduct described in par. 2, above, violated Wis. Adm. Code § Med 10.02(2)(m) and (q). The refusal to permit a Department investigator to inspect the premises and medication-related records, as described in par. 5, above, violated Wis. Adm. Code Med § 10.02(2)(zc). Respondent, by the conduct set out above, is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Thomas Anthony O'Connor, M.D., is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of Respondent is LIMITED as provided in Wis. Stat. § 448.02(3)(e), and as follows:

- 1) Respondent shall, no later than 10/1/08, take and satisfactorily complete at least 16 hours of Category I continuing medical education in Universal Precautions and sanitation in the medical office. Any such course shall be pre-approved by the Board or its designee.
- 2) Respondent shall, no later than 12/31/08, take and satisfactorily complete at least 16 hours of Category I continuing medical education in making and keeping patient health care records. Any such course shall be pre-approved by the Board or its designee. The *Intensive Course in Medical Record Keeping with Individual Preceptorships*, at Case Western Reserve University School of Medicine, is pre-approved, and respondent may propose other courses which are substantially equivalent.
- 3) 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. This limitation is permanent. Notwithstanding this limitation, Respondent may prescribe these medications without limit within a practice as an employee of a government agency such as the Department of Corrections, and to any patient enrolled in an established hospice program.
- 4) Respondent shall report to the Board any change of residence, address or telephone number within five (5) days of the date of a change. 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.). This limitation is permanent.

- 5) Respondent shall not practice in any setting in which he is responsible for overseeing billing; his activities with respect to billing shall consist exclusively of accurately noting the appropriate coding information and providing this information to the person(s) responsible for billing, and accurately and fully answering questions of billing staff and those responsible for paying for services (both patients and third-party payers). This limitation is permanent.
- 6) Before engaging in the practice of medicine at any location, Respondent shall furnish the owner of the practice with a complete copy of this Order. This limitation is permanent.

IT IS FURTHER ORDERED, that respondent shall pay partial COSTS of investigating and prosecuting this matter of \$4,000, by September 5, 2009. If not paid in full, Respondent's license shall be SUSPENDED without further order of the Board, until they are paid in full, together with any accrued interest.

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. In the event Respondent fails to timely provide satisfactory evidence of completion of the ordered continuing education, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied in full with the terms of this Order.

Dated this April 23, 2008.

WISCONSIN MEDICAL EXAMINING BOARD

by: Gene Musser MD
a member of the Board