

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

| | | |
|----------------------------------|---|---------------------------------|
| IN THE MATTER OF | : | |
| DISCIPLINARY PROCEEDINGS AGAINST | : | FINAL DECISION AND ORDER |
| | : | |
| KARL M. HOFFMANN, M.D., | : | LS09031811MED |
| RESPONDENT. | : | |

Division of Enforcement Case #08 MED 40

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

Karl M. Hoffmann, M.D.
1900 N. Dewey Ave.
Reedsburg, WI 53959

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

- Respondent Karl Mathias Hoffmann, M.D. (dob 1/28/55) 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 # 24534, first granted on 7/1/82. Respondent is a family practitioner and is certified by the American Board of Family Medicine.
Patient C.B.
- On and between 6/4/93 and 2007, Respondent was the primary care practitioner for patient C.B., a woman born in 1949. The patient had a history of severe cardiac disease, including undergoing procedures to place stents in her coronary arteries, and open heart coronary bypass surgery. Notwithstanding these interventions, the patient continued to have severe angina. The patient’s husband was also a patient of Respondent, and he also had chronic pain, located in his lower back area. In 2001, the patient was also diagnosed with CHF and from that time on used supplemental oxygen. Respondent began prescribing morphine for the patient’s angina no later than 3/23/01, where his progress note includes a handwritten note: “morphine sulfate 10mg po q1H PRN #100.”
- On 4/30/01, the patient returned to care, and the progress note by Respondent includes: “she has actually quite severe angina on a regular basis and when she has angina she will take 3-4 of the 10mg quick release tablets.” And, “P: 2. For her angina we will start MS Contin 30mg BID #60 and then MS soluble tablets one po SL PRN #100.”
- Respondent’s chart for the patient includes a handwritten note dated 9/17/01: “Rx x 2 mos morphine.” The chart also includes a note of a telephone message dated 9/19/01 from Fox Pharmacy: “Re: Rx morphine sulfate, please call, has

questions on date of Rx.” “Voiding script for 10/17/01 because can’t post date scripts. Need to write Don’t Fill Until _____. States has enough for until November though.”

5. In fact, Respondent had written and signed two separate prescriptions for morphine sulfate, a Schedule II Controlled Substance, on 9/17/01. However, one of them did not bear the date that the prescription was written, but instead purported to be issued on 10/17/01, without any evidence of the true date of writing and signing.

6. The patient continued to report inadequate relief for her pain, and Respondent increased her medication over time, until in early 2008 the following was the patient’s monthly prescription order: morphine sulfate IR 30mg 1-2qH PRN #600, hydromorphone 8mg 1-2qH PRN #800 and oxycodone 5mg 1-2qH PRN #500.

7. Respondent’s chart contains inadequate support for this highly unusual regimen.

8. Respondent, on multiple occasions, issued prescription orders for Schedule II controlled substances which were dated as if they had been signed on a date other than the date of actual signature. On multiple occasions, he purported to issue prescription orders for Schedule IV controlled substances which were to be refilled 12 times, or for a year.

9. On multiple occasions, Respondent charted prescriptions for Schedule II Controlled Substances which were issued to the patient’s husband, in patient C.B.’s chart, and failed to note them in the husband’s chart, without seeing the husband and based solely upon patient C.B.’s report and request for such prescriptions.

Patient D.B.

10. On and between 9/28/98 and 2008, Respondent was the primary care practitioner for patient D.B., a man born in 1947. The patient had a number of medical problems, including chronic low back pain. The patient’s wife was also a patient of Respondent’s.

11. On 3/4/03, the patient was seen in clinic, and Respondent noted, among other things: “Second of all, his OxyContin is becoming prohibitively expensive and he would like to try a different option. He still has back pain and still needs chronic medication for that.” And: “Prescription is written for MS Contin 15mg BID #60, oxycodone 5mg 1-2q2-4H PRN #240.

12. The patient was not seen by Respondent again until 10/12/06. Notwithstanding this, the following notes then appear in the chart:

4/4/03 handwritten note in chart: “refill oxycodone 5mg 240.”

5/28/03 handwritten note in chart: “refill oxycodone 5mg 1-2q4H PRN disp 240. i/KMH”

7/1/03 handwritten note in chart: “Rx oxycodone 5mg 1-2q4H PRN #240. i/KMH”

7/23/03 handwritten note in chart: “rx oxycodone 5mg 1-2q4H PRN #240. i/KMH”

8/20/03 handwritten note in chart: “rx oxycodone 5mg 1-2 q4H PRN #240. i/KMH”

9/6/03 handwritten note in chart: “oxycodone 5mg 1-2q4H PRN 240. i/KMH”

10/6/03 handwritten note in chart: “oxycodone 5mg, 1-2q4H PRN 240. i/KMH”

10/13/03 handwritten note in chart: “oxycodone 5mg 1-2q4H PRN 240. i/KMH”

11/12/03 handwritten note in chart: “oxycodone 5mg 1-2q4H PRN 240. i/KMH”

12/16/03 handwritten note in chart: “oxycodone 5mg 1-2q1-2H PRN 300. i/KMH”

1/18/03 handwritten note in chart: “& 2/9/04”

3/8/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 300. i/KMH"

4/8/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 300. i/KMH"

4/19/04 handwritten note in chart: "oxycodone 5mg 1-2q4H PRN 300. i/KMH"

5/7/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 300. i/KMH"

6/7/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 300. i/KMH"

7/6/04 handwritten note in chart: "oxycodone 5mg 1-2q2H PRN 300. i/KMH"

8/3/04 handwritten note in chart: "oxycodone 5mg 1-2q2H PRN 400. i/KMH"

8/17/04 handwritten note in chart: "oxycodone 5mg 1-2q2H PRN 400. i/KMH"

9/17/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 400. i/KMH"

10/1/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 400. i/KMH"

10/15/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 400. i/KMH"

10/29/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 400. i/KMH"

11/12/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 400. i/KMH"

11/26/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 400. i/KMH"

12/10/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 400. i/KMH"

12/24/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 400. i/KMH"

12/31/04 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 400. i/K"

1/14/05 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 400. i/KMH"

1/28/05 handwritten note in chart: "oxycodone 5mg 1-2q1-2H PRN 400. i/KMH" After this entry appear the following two handwritten notes: 1/11/05 piroxicam 20mg qD #30 12 rf, i/KMH. 1/11/05 Soma 350mg qid PRN #120 12 rf i/KMH."

3/8/05 handwritten note in chart: "Rx oxycodone 5mg 1-2q1-2H PRN #40 3/11/05, 3/25/05, 4/8/05."

4/13/05 Progress note by Respondent: "See dictation for [wife] from 4/13/05, for dictation on this patient." Progress note in the wife's chart by Respondent: "Her husband also got prescriptions for oxycodone 5mg 1-2q1-2H PRN #500 dated 4/15, 4/29 and 5/13."

7/20/05 Progress note by Respondent: "S--Rx written for oxycodone 500mg 1-2q1-2H PRN #500 and that is dated 8/5 and 8/19/05."

1/27/06 Progress note by Respondent: "S—D[...] had prescriptions written for oxycodone 5mg 1-2qH PRN dispense 500."

3/22/06 Progress note in the patient's wife's chart by Respondent includes: "Similar prescription for her husband D[...], incidentally for oxycodone 600 mg[sic] also for 4/7 and 4/21/06."

4/7/06 fax from Respondent to pharmacy: "Re: D[...]and C[...]B[...]. Change frequency of oxycodone 5mg to 1-2q2H PRN."

4/13/06 phone msg from pharmacy: "Will be back on 4/17. Oxycodone supply 5mg very hard to get. Time release form is available or 15mg immediate release." 4/17: "Dr. KMH wrote out Rx for OxyContin 20mg BID #125. Spoke with Jack at pharmacy and pt has enough meds x wk so OK to mail Rx, Rx mailed."

4/17/06 handwritten note: "Dr Rx oxycontin 20mg BID #125, Rx mailed to Fox Pharmacy."

4/20/06 phone msg from pharmacy: "Written Rx you sent Oxycontin 20mg 1 BID you said to give 125 but they can only give 60 at a time." 4/21/06: "new Rx sent to Jack [pharmacist]"

4/25/06 Progress note by Respondent: "D[...] B[...] was not seen, but prescriptions are written for oxycodone 5mg 102q1-2H PRN dispense 600, dated 5/5 and 5/19/06; and Dilaudid 8mg 1-2qH PRN, dispensed 120. That actually for him should be 1 month's worth."

5/19/06 Progress note in the patient's wife's chart by Respondent: "Also, for her husband we wrote prescription for oxycodone 5mg 1-2qH #600 and Dilaudid 8mg 1-2q4H PRN #120 and D[...] B[...] prescriptions are also dated 6/2 and 6/16/06."

6/28/06 Progress note in the patient's wife's chart by Respondent: "Also for her husband D[...] B[...] I gave oxycodone 5mg 1-2qH PRN #600, the same three days, and Dilaudid 8mg 1-2q4H PRN #200, same three dates."

7/28/06 progress note in the patient's wife's chart by Respondent: "Also Rx is written for her husband D[...] B[...] for oxycodone 5mg 1-2qH PRN #600 and Dilaudid 8mb 1-2q4H #200."

8/30/06 Progress note in the patient's wife's chart by Respondent: "Also for her husband, D[...] B[...], was given prescriptions for oxycodone 5mg 1-2qH PRN #600 and Dilaudid 8mg 1-2q4H PRN 200 dated both 9/8/06 and 9/22/06."

9/29/06: Progress note in the patient's wife's chart by Respondent: "Also for her husband D[...] B[...], prescriptions were written for oxycodone 5mg 1-2qH PRN #600 and Dilaudid 8mb 1-2q4H PRN #200 and both of those were dated 10/6/06, 10/20/06 and 11/3/06."

13. On 10/12/06, the patient personally came to Respondent's office and was examined; his prescriptions were continued but there is no discussion of the lengthy time between visits, or the changes in medications and dosage.

Patient J.H.

14. On 1/2/07, Respondent prescribed phentermine, a Schedule IV controlled substance, to J.H., a female patient born in 1975 who was a practical nurse in the clinic where Respondent was a physician, and whose weight was 174, without recording the patient's BMI (which was 28.1, based on her height of 5'6"), or charting any recommendation for diet or exercise, or referring the patient for such recommendations. No electrocardiogram was performed. He notes: "She will have to return monthly for a weight check and otherwise she will continue her same regimen."

15. Over the next three months, the patient was noted as having been prescribed other medications, but there is no note in the chart of the patient's weight. On 3/28/07, the chart contains a statement that the prescription was renewed, but there is no recorded weight (although the patient is noted to state that "the weight gain has leveled off, and she is starting to decrease weight on the Adipex [phentermine], so she would like to continue that."

16. On 4/17/07, the patient is seen in followup for chronic back pain, and her use of phentermine is noted, but there is no recorded weight. On 5/24/07, the patient's weight is noted to be 166, and her prescription is renewed. The chart notes that it is renewed again on 6/11/07, without a recorded weight.

17. On 6/29/07, her weight is noted to be 167, a loss of 7 pounds in almost 7 months.

18. On 7/18/07, her phentermine is renewed, without any record of her weight, although the patient was seen in clinic and examined for other problems. On 9/28/07, her prescription was renewed, although there is no weight recorded in the chart since 6/29/07.

19. On 11/28/07, the patient is seen in followup but no weight is recorded. Respondent notes: "She has gained weight and isn't finding the phentermine helpful." His Plan includes: "Add Meridia 10mg daily and after a week she will drop the phentermine. Prescription for 30 of the Meridia at a time is written." On 1/7/08, the sibutramine [Meridia] prescription is renewed, although there is no record of the patient's weight on that day or any time between 11/28/07 and 1/7/08.

Sibutramine is a Schedule IV controlled substance.

20. On 2/6/08, the patient returned to clinic with a complaint of swelling in her lower legs. No record of her weight is in the chart, nor is there any discussion in the progress note of the patient's weight or the effectiveness of the medication, but Respondent notes in his Plan: "Also, Meridia 15mg daily dispense 30 with 12 refills."

21. At no time during this period, 1/7/07 through 2/6/08, do any of Respondent's progress notes discuss or mention the issue of the patient's diet and/or exercise in relation to weight loss, although the patient was seen in clinic several times.

Patient T.M.

22. On and between 1996 and 2008, Respondent was the primary care physician for patient T.M., a man born in 1953. The patient is 5'6" tall, and during this time weighed between 275 (1996) and 330 pounds (2005-06). The patient smoked between 1 and 2 packs of cigarettes per day, and had high blood pressure, high cholesterol, type-II diabetes, and ongoing problems with back pain and lower extremity joints. The patient underwent three surgical procedures to deal with a herniated disk with pinched nerve at L4-5, a fusion in the same area, and fusion repair, all before 1999. During the period 1996-2008, Respondent saw the patient several times each year, and treated him for a variety of conditions and injuries.

23. On 5/30/00, the patient consulted with Dr. Zdeblick, a surgeon, who sent a copy of his consultation report to Respondent where it was placed in the patient's chart. The substance of the consultation is that the patient is not a candidate for further back surgery until he stops smoking, loses weight, and starts exercising.

24. During the course of treatment of the patient, Respondent does not chart any evidence that he urged the patient to lose weight with any consistency, or that Respondent informed the patient of the likely benefits of weight loss. Although the patient's BMI frequently exceeded 50, Respondent's chart consistently states that the patient was "moderately overweight."

25. On 11/2/02, the patient returned to care and brought with him a 2 page typed list of problems and questions, including: "4 [my wife] asked me to discuss gastric bypass surgery—pros and cons—with you." Respondent charted this as "His wife has some concern about considering a gastric bypass surgery." There is no mention of this issue again in the chart until 2/15/06, and no indication that Respondent did discuss this alternative course of treatment with the patient, or develop an alternative plan to lose weight, despite his increasing symptoms of pain in his back, legs, and leg joints, his diabetes, hypertension, hyperlipidemia, and his increasing loss of mobility.

26. On 10/15/03, Respondent's progress notes record that the patient stated he was having problems with memory loss, and that he was concerned that this was caused by his use of opioid pain medications. Respondent noted in his chart that his diagnosis included: "Short term memory loss actually likely due to narcotics which he is receiving for chronic back pain." Respondent ordered a laboratory test for the patient's vitamin B-12 level (which was found to be within normal limits). At no time is the memory issue mentioned again in the patient's chart, nor was there any change in the patient's opioid pain medication dosage other than to increase it when the patient complained of increasing pain.

27. On 2/16/06, Respondent's progress notes indicate "He also wonders about the possibility of bariatric surgery and that is a very real option but I would certainly give Byetta a try first." Respondent did prescribe this medication, and the patient lost some weight, but then discontinued the medication in August, 2006, for financial reasons and did not continue to lose weight; his weight remained at about 300 pounds. At no time was this issue revisited, nor was there any other discussion of alternative therapies for weight loss.

28. On 10/31/07, Respondent charted the following: "Prescriptions are written for MS Contin 60mg 1 TID dispense #90 and dated 10/31/07, 11/30/07, 12/30/07, 1/30/08, 2/29/08."

29. A minimally competent physician would have encouraged the patient when he asked about bariatric surgery, and would have aggressively counseled this morbidly obese patient to lose weight, including by referring the patient to a dietician or to other medical specialists including a physician who performs bariatric surgery, by repeatedly counseling him about the benefits of weight loss to the treatment of his diabetes, high cholesterol, hypertension, and chronic pain, and by developing plans to assist the patient in losing weight, and would have charted those discussions.

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 above violated Wis. Adm. Code §§ Med 10.02(2)(h), (p), (u), (z), and (zb), Med 18.03 and 18.05, Med 21.03(2) and (3), and Phar 8.06(3). 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 Karl M. Hoffmann, 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. No later than 12/31/09, Respondent shall successfully complete not less than 38 hours of Category I continuing medical education in appropriate prescribing of controlled substances, which has been pre-approved by the Board. Respondent shall complete any pre-test and post-test offered, and authorize release of all records to the Board or its designee, including authorization for the Board or its designee(s) to discuss his attendance, participation, and performance with course staff and instructors. The *Intensive Course in Controlled Substance Management* offered by Case Western Reserve University--Continuing Medical Education is approved, and Respondent may propose a substantially equivalent course.
2. Effective the date of this Order, until Respondent has completed the continuing education ordered above, Respondent shall not prescribe any opioid or opiate which is a controlled substance to any patient for more than 30 days in any 12 month period. This provision is STAYED until 5/22/09, and Respondent shall provide the names and the progress notes for all such patients seen by him and prescribed opioids or opiates to the Department Monitor, until 5/22/09.
3. No later than 12/31/09, Respondent shall successfully complete not less than 8 hours of Category I continuing medical education in the treatment of obesity, which has been pre-approved by the Board. Respondent shall complete any pre-test and post-test offered, and authorize release of all records to the Board or its designee, including authorization for the Board or its designee(s) to discuss his attendance, participation, and performance with course staff and instructors.
4. No later than 12/31/09, Respondent shall successfully complete not less than 17 hours of Category I continuing medical education in the area of physician ethics, which has been pre-approved by the Board. Respondent shall complete any pre-test and post-test offered, and authorize release of all records to the Board or its designee, including authorization for the Board or its designee(s) to discuss his attendance, participation, and performance with course staff and instructors. The following courses are pre-approved, and Respondent may propose others:
 - Intensive Course in Medical Ethics, Boundaries, and Professionalism*, Case Western Reserve University, Office of Continuing Medical Education.
 - Professional Renewal in Medicine through Ethics*, University of Medicine and Dentistry of New Jersey.
 - Professional/Problem Based Ethics (ProBE)*, The Ethics Group LLC, Summit, NJ.
5. No later than 4/30/09, Respondent shall successfully complete the jurisprudence examination required of candidates for licensure as physicians in the State of Wisconsin. Respondent may not attempt the examination more than twice without the express permission of the Board.

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 practice only under the supervision of a designated Professional Mentor approved by the Board and in a work setting pre-approved by the Board or its designated agent.

1. Respondent shall obtain a Professional Mentor acceptable to the Board. The Professional Mentor shall be the individual responsible for reviewing Respondent's practice of medicine and surgery during the time this Order is in

effect. A Professional Mentor shall have no prior or current business or personal relationship with Respondent, or other relationship the could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Department (including but not limited to any bartering relationship, mutual referral of patients, etc.). A Professional Mentor shall be actively practicing in Respondent's field of practice, hold a valid Wisconsin license, shall be board certified by an ABMS-recognized board in a specialty relevant to Respondent's field of practice, and shall have read this Final Decision & Order and agree to be Respondent's Professional Mentor.

2. Supervision shall include bi-weekly meetings (through May 30, and monthly thereafter), review of charts selected by the Professional Mentor, 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.
3. 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.
4. 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.
5. Respondent's Professional Mentor shall immediately report to the Department Monitor and the Respondent's Supervising Health Care Provider 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.

IT IS FURTHER ORDERED, that respondent shall pay the COSTS of investigating and prosecuting this matter of \$4,100 before September 5, 2009.

IT IS FURTHER ORDERED, that notwithstanding the language in 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, which shall continue until the Board rescinds it or a Final Decision and Order is issued. 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 submit full payment of the Costs as ordered, or fails to successfully complete any of the required continuing education by the date required, or fails to successfully complete the jurisprudence examination by the date stated above, the Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order in full, including paying any accrued interest on any unpaid Costs.

Dated this March 18, 2009.

WISCONSIN MEDICAL EXAMINING BOARD

by: Gene Musser, MD
a member of the Board