

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
JOHN E. McVEY, M.D.,	:	LS0911185MED
RESPONDENT.	:	

[Division of Enforcement Case # 09 MED 202]

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

John E. McVey, M.D.
1711 Nagawicka Road
Hartland, WI 53029

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

Wisconsin Medical 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 Medical Examining Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. John E. McVey, M.D., date of birth July 26, 1956, is licensed and currently registered to practice medicine and surgery in the State of Wisconsin pursuant to license number 29738, which was first granted on August 25, 1988.
2. Respondent's most recent address on file with the Department of Regulation and Licensing is 1711 Nagawicka Road, Hartland, WI 53029. He is a Board certified thoracic surgeon.
3. Respondent was first diagnosed with alcohol dependence in 2000 and received treatment at Talbott Recovery Campus in Atlanta, Georgia. Respondent relapsed in 2002 and was again treated at Talbott Recovery Campus. Respondent required further treatment from September 16, 2003 through February 27, 2004 at Western Michigan Addiction Consultants (WeMAC), in Grand Rapids, Michigan. Upon discharge from WeMAC, he was deemed able to safely and competently practice medicine. Respondent did not practice medicine from the time of his relapse in 2002 until early 2005.
4. Respondent had allowed his Wisconsin license to lapse, but renewed it effective December 30, 2004. Respondent was then a participant in the Department of Regulation and Licensing's Impaired Professionals Procedure (IPP) from December 16, 2004 until his successful completion on July 25, 2008.
5. On April 21, 2009, Respondent was scheduled to perform surgical procedures at Meriter Hospital in Madison. He presented at the hospital intoxicated by alcohol and agreed that he was unable to perform his scheduled duties. Those

duties were performed by other physicians and no patient was injured as a result of Respondent's intoxication.

6. Respondent was immediately suspended from the hospital's medical staff and on May 19, voluntarily resigned his privileges. Respondent has not practiced medicine and surgery since April 21, 2009.

7. Following his use of alcohol over the Labor Day weekend, Respondent entered Century House, a halfway house in Waukesha, Wisconsin, where he presently resides.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter, pursuant to Wis. Stat. §448.02(3), and authority to enter into this stipulated resolution, pursuant to Wis. Stat. §§ 227.44(5) and 448.02(5).

2. Respondent has committed unprofessional conduct as defined by Wis. Adm. Code § Med 10.02(2)(i) and is subject to discipline pursuant to Wis. Stat. § 448.02(3)

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

IT IS ORDERED that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, effective the date of this Order:

SUSPENSION

A.1. Respondent's license to practice medicine and surgery in the State of Wisconsin is SUSPENDED for an indefinite period.

A.2. Respondent shall mail or physically deliver all indicia of licensure to the Department Monitor within 14 days of the effective date of this Order.

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 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 licensure. At the Board's discretion, the 5-year period may be started anew for every substantial or repeated violation of any provision of Sections C or D of this Order.

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

STAY OF SUSPENSION

- B.1. The suspension shall be stayed upon Respondent providing proof, which is determined by the Board or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order and that Respondent's Treater is of the opinion that Respondent is able to safely practice medicine and surgery under the restrictions of this Order.
- 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 any 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 Wis. Stat. § 440.11; 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.

CONDITIONS AND LIMITATIONS

The license to practice medicine and surgery of Respondent is LIMITED as set forth in Wis. Stat. § 448.02(3)(e), and as follows:

Treatment Required

- C.1. Respondent shall enter into, and shall continue, in a drug and alcohol treatment with a 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, but not less than once weekly for the first year of the stayed suspension. 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

collections 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 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, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

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 Wis. Stat. § 961.01(4), and all mood-altering or psychoactive substances, 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. Within 24 hours of ingestion or administration, Respondent shall report to Treater and the Department Monitor all medications and drugs, over-the-counter or prescription, taken by Respondent, shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs, and shall provide the Department Monitor with a copy of the prescription. 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 – including any positive test for any controlled substance or alcohol - is a substantial violation of this Order. The requirements shall include:
- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a 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 testing of specimens at a frequency of **not less than 48 times per year, for the first year of this Order**. After the first year, the frequency may be reduced only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.
- C.15. The Department Monitor, Board or Board designee shall determine the tests to be performed upon the specimens. If any 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 specimens, (b) submit specimens of blood, hair, breath, urine, fingernail, saliva, and any additional tissue or product of the body, the collection of which does not require piercing the skin, (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.

PRACTICE LIMITATIONS

Controlled substance orders; DEA registration

C.19. There is no restriction on Respondent's prescribing, dispensing, administering or ordering of controlled substances.

Professional Mentor

C.20. Respondent shall practice only under the supervision of a designated Professional Mentor approved by the Board or in a work setting pre-approved by the Board or its designated agent.

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 that 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.

Supervision shall include weekly meetings, 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.

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.

Reporting Required

C.21. 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.

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.

C.23. 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.

C.23. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel where Respondent is engaged in the practice of medicine or surgery as defined at Wis. Stat. § 448.01(9).

C.24. It is Respondent's responsibility to arrange for written reports from his employer or practice partner(s) to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active practice worked during that quarter.

C.25. [Omitted]

C.26. [Omitted]

C.27. Respondent shall arrange for agreement by his employer or practice partner(s) to immediately report to the Board and to the Treater any conduct or condition of Respondent that may constitute a violation of this Order or a danger to the public.

C.28. 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
Wisconsin Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
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 of Limitations or Termination of Order

- D.4. Respondent may petition the Board for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than one year from the date of this Order, no such petition shall be made any earlier than three months from the date the Board has acted on the last such petition, and no such petition for termination shall occur other than in compliance with paragraph A.3. Any such petition for modification 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 \$350.00 to the Department of Regulation and Licensing, within ninety (180) days of this Order. In the event Respondent fails to timely submit any payment of costs, the Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has paid them in full, together with any accrued interest.

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 pursuant to Wis. Stat. § 448.02(3).

Effective Date

- D.8. This Order is effective on the date of its signing.

Wisconsin Medical Examining Board

By: Gene Musser MD
 A Member of the Board

11/18/09
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
JOHN E. McVEY, M.D.,	:	LS _____ MED
RESPONDENT.	:	

[Division of Enforcement Case # 09 MED 202]

It is hereby stipulated by John E. McVey, M.D., Respondent; and John R. Zwieg, attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent’s licensure by the Division of Enforcement. Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
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 had the opportunity to obtain advice of legal counsel prior to signing this Stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the 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 the 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 Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of 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 case 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.

John E. McVey, M.D.
1711 Nagawicka Road
Hartland, WI 53029

Date

John R. Zwieg, Attorney
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date