

# 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**  
DAVID B. GATTUSO, M.D., :  
RESPONDENT. :  
Order # 0000211

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Division of Enforcement Case # 06 Med 380

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

David B. Gattuso, MD  
1309 Moline St.  
Stoughton, WI 53589

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 Final Decision and Order were issued in this matter on May 19, 2010. Subsequently, Respondent petitioned the Board for a modification in that Order. The Board reviewed the Petition on July 21, 2010, and modified the Order as requested, by Order dated July 23, 2010. Subsequently, Respondent petitioned the Board for an additional modification, which the Board has reviewed on August 18, 2010, and finds acceptable.

Accordingly, the Board in this matter VACATES the Order of July 23, 2010, and makes the following:

**FINDINGS OF FACT**

1. Respondent is David Brian Gattuso, M.D., (dob 7/12/1957), who is licensed to practice medicine and surgery in Wisconsin pursuant to license # 27454-20, which was first granted on 4/25/1986. Respondent's address of record is 1309 Moline St., Stoughton, WI 53589. Respondent is listed in the Board's records as an internist. Respondent is not certified by any board recognized by the American Board of Medical Specialties.

2. On 10/14/09, as part of an investigation, the Department mailed to Respondent, at his address of record, a request for four patient health care records, pursuant to Wis. Stat. § 146.82(2)(a)5.; he was requested to provide the records by 10/23/09.

3. The Division of Enforcement did not receive the records until 1/27/10. Following the issuance of the Complaint in this matter on 11/23/09, Respondent sent the records to the Administrative Law Judge assigned on 12/12/09, but did not inform the Division that he had done so.

4. Respondent formerly practiced in an office in Edgerton, Wisconsin. In October, 2006, Respondent closed his office and ceased the private practice of medicine from that location. Respondent did not notify his patients of the office closing either by mail or publication. Following this, his patients sought care from other physicians. When these physicians requested copies of the patient health care records from Respondent in the weeks and months following the closure of his office, he failed to provide them in dozens of cases.

5. Respondent represents to the Board that he delegated the authority and responsibility for responding to records requests to a family member who was a paid employee of the practice, and that he believed that the requests were being honored in a timely matter. Respondent agrees that he did not exercise oversight over the process of receiving, processing, and transmitting the requested records.

6. Respondent's care and treatment of several patients at his former office in Edgerton, Wisconsin, was negligent, in that his prescribing of medications to them was not justified by the patient's condition, as charted. Respondent also failed to note the quantities and dosage instructions for controlled substances prescribed, on multiple occasions, and in multiple cases prescribed controlled substances for patients without charting an office visit or telephone consultation. Respondent represents to the Board that he was well familiar with the patients, and that his prescribing was always for a legitimate medical purpose.

7. While employed full time as a physician by the Veterans Administration, Dr. Gattuso's charting and prescribing were regularly reviewed. Respondent represents to the Board that he has received satisfactory evaluations for both his charting and the quality of care provided, including his prescribing of controlled substances.

#### 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 ¶¶2-3, above, violated Wis. Stat. §§ 146.82(2)(a)5. and 146.83(4)(b), and Wis. Adm. Code § Med 10.02(2)(z) and (zc). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

C. The conduct described in ¶¶4-5, above, violated Wis. Stat. §§ 146.819, 46.82(2)(a)2., and 146.83(4)(b), and Wis. Adm. Code § Med 10.02(2)(h) and (z). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

D. The conduct described in ¶6, above, violated Wis. Stat. § 448.02(3)(c) and Wis. Adm. Code § Med 10.02(2)(h) and (p). 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 David B. Gattuso, M.D., is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that Respondent shall practice medicine only in a setting which has the express approval of the Board. This shall not constitute a limitation on Respondent's license, but any violation of this paragraph is unprofessional conduct pursuant to Wis. Adm. Code § Med. 10.02(2)(b).

IT IS FURTHER ORDERED, that respondent shall pay the COSTS of investigating and prosecuting this matter of \$3,000, no later than 9/5/11. If not paid in full, Respondent's license shall be forthwith 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.

Dated this August 18, 2010.

WISCONSIN MEDICAL EXAMINING BOARD

by:

Skailaf MD MBA  
a member of the Board