

# 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 THE DISCIPLINARY :  
PROCEEDINGS AGAINST :

KENNETH J. KURT, D.O., :  
RESPONDENT. :

ORDER 0000289

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ORDER OF SUMMARY SUSPENSION  
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[Division of Enforcement Case # 10MED186]

The Petition for Summary Suspension of July 13, 2010 was noticed to be presented at 8:20 a.m., or as soon thereafter as the matter could be heard, on July 21, 2010. At that time, attorney John R. Zwieg appeared for the Complainant, Department of Regulation and Licensing, Division of Enforcement. Respondent appeared in person and without counsel.

The Wisconsin Medical Examining Board, having considered the sworn July 13, 2010 Petition for Summary Suspension, and the July 15, 2010 Affidavit of Service of Notice of Presentation and Petition for Summary Suspension of Beth Cramton, and having heard the arguments of counsel, hereby makes the following:

FINDINGS OF FACT

1. Kenneth J. Kurt, D.O., Respondent, date of birth May 26, 1937, is licensed and currently registered by the Wisconsin Medical Examining Board to practice medicine and surgery in the state of Wisconsin pursuant to license number 14968, which was first granted July 1, 1964.
2. Respondent's last address reported to the Department of Regulation and Licensing is 740 College Avenue, Racine, Wisconsin 53403.
3. On July 14, 2010, copies of the July 13, 2010 Notice of Presentation and Petition for Summary Suspension were properly served on Respondent, as required by Wis. Adm. Code § RL 6.05, by mailing them by regular and certified mail to Respondent's last address reported to the Department. On that date, those documents were also mailed electronically to [drkenkurt@yahoo.com](mailto:drkenkurt@yahoo.com) the e-mail address for Respondent's present place of practice. The Petition for Summary Suspension is attached hereto and incorporated herein as Exhibit A.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02(3) and has authority to summarily suspend Respondent's license to practice medicine and surgery in the State of Wisconsin, pursuant to Wis. Stat. §§ 227.53(3) and 448.02(4) and Wis. Adm. Code Chapter RL 6.

2. There is probable cause to believe that Respondent violated Wis. Stat. § 448.02(3) and Wis. Adm. Code § Med 10.02(2)(b), by having violated the terms of the Board's January 20, 2010 Final Decision and Order.

3. It is imperatively required and necessary to suspend Respondent's license to practice medicine and surgery immediately to protect the public health, safety and welfare.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the license of Kenneth J. Kurt, D.O., to practice medicine and surgery in the state of Wisconsin be and is summarily suspended until the effective date of a final decision and order in the disciplinary proceeding against the Respondent or until the summary suspension is discontinued by the Board following a hearing to show cause, effective immediately.

IT IS FURTHER ORDERED that a Notice of Hearing commencing a disciplinary proceeding shall be issued no more than 10 days following the issuance of this Order of Summary Suspension.

IT IS FURTHER ORDERED that Respondent is hereby notified of his right, pursuant to Wis. Adm. Code § RL 6.09, to request a hearing to show cause why this summary suspension order should not be continued and is further notified that any request for a hearing to show cause should be filed with the Wisconsin Medical Examining Board, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

IT IS FURTHER ORDERED that in the event that Respondent requests a hearing to show cause why the summary suspension should not be continued, that hearing shall be scheduled to be heard on a date within 20 days of receipt by the Board of Respondent's request for hearing, unless Respondent requests or agrees to a later time for the hearing.

Wisconsin Medical Examining Board

By: Skailaf  
A Member of the Board

7/21/10  
Date

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 :  
 :  
KENNETH KURT, D.O., :  
RESPONDENT. :

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PETITION FOR SUMMARY SUSPENSION  
[Wis. Stat. § 448.02(4) and Wis. Admin. Code ch. RL 6]

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Division of Enforcement Case No. 10MED186

1. I am an attorney employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement, and in the course of my job duties have been assigned to the investigation and prosecution of case 10MED186 against Respondent for the Wisconsin Medical Examining Board.

2. My business address is 1400 East Washington Avenue, Madison, Wisconsin 53703, and my business mailing address is P.O. Box 8935, Madison, Wisconsin 53708.

3. Kenneth J. Kurt, D.O., Respondent, date of birth May 26, 1937, is licensed and currently registered by the Wisconsin Medical Examining Board to practice medicine and surgery in the state of Wisconsin pursuant to license number 14968, which was first granted July 1, 1964.

4. Respondent's last address reported to the Department of Regulation and Licensing is 740 College Avenue, Racine, Wisconsin 53403.

PRIOR DISCIPLINES

5. On January 24, 1990, the Board issued a Final Decision and Order in a Disciplinary Proceeding against Respondent, which suspended Respondent's license for one year beginning March 1, 1990 for violating Wis. Admin. Code § Med 10.02(2)(h) by having inappropriate sexual contact with a patient which exposed the patient to an unreasonable risk of harm.

6. On January 24, 2007, the Board issued a Final Decision and Order in a Disciplinary Proceeding against Respondent, which Reprimanded Respondent and limited his license for violating Wis. Admin. Code § Med 10.02(2)(h) & (zc) by prescribing opioids to a patient which exposed the patient to an unreasonable risk of harm and by not making required records. Respondent was required to complete an intensive course in medical record keeping and his license was limited, as follows:

“Respondent shall not order, prescribe, or administer any opioid or opiate, including any product containing tramadol, for more than 30 days in any 12 month



period, for any patient. Notwithstanding this limitation, Respondent may prescribe FDA approved buprenorphine products to patients for the purpose of office based opioid treatment (OBOT), within the labeling of Subutex® and Suboxone.”

7. On April 1, 2008, the Board issued an Order denying Respondent’s petition that the prescribing limitation be ended.

8. On January 20, 2010, the Board issued a Final Decision and Order in a Disciplinary Proceeding against Respondent, which imposed limitations and conditions on Respondent’s license and suspended his license for 90 days beginning April 1, 2010 for violating Wis. Admin. Code § Med 10.02(2)(b) by violating the prescribing limitation of the Board’s January 24, 2007 Order and violating Wis. Admin. Code §§ Med 10.02(2)(h) & (z) by the manner in which he prescribed other medications to two patients. This Order imposed additional limitations on Respondent’s prescribing. It also included a limitation that, effective the date of the Order, Respondent’s practice be under the review of a professional mentor acceptable to the Board. That limitation is as follows:

“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, effective on the date of this Order, as follows:

9. Respondent shall obtain a Professional Mentor acceptable to the Board.
  - A. The Professional Mentor shall be the individual responsible for reviewing Respondent's practice of medicine and surgery to patients during the time this Order is in effect. A Professional Mentor shall have no prior or current business or personal relationship with Respondent (other than as a supervisor at the facility at which Respondent provides buprenorphine therapy), or other relationship that could reasonably be expected to compromise the ability of the Professional Mentor to render fair and unbiased reports to the Department (including but not limited to any bartering relationship, mutual referral of patients outside of the approved facility, 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.
  - B. Review shall include meetings no less than once during each week, 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 with respect to the care and treatment of patients. 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.
  - C. The Professional Mentor shall have no duty or liability to any patient or third party as a result of this Order, and the Mentor's sole duty under this Order is to the Board.

- D. 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 practice of medicine and surgery.
- E. Respondent's Professional Mentor shall immediately report to the Department Monitor 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.
- F. 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.
- G. Respondent may petition the Board for removal or modification of the limitation requiring a Professional Mentor following receipt by the Board of four quarterly reports from the Professional Mentor. The determination of whether or not to remove or modify the requirement for a Professional Mentor is entirely within the discretion of the Board, and a decision by the Board not to remove or otherwise modify the requirement for a Professional Mentor shall not constitute a denial of licensure, and shall not entitle Respondent to a hearing on the Board's refusal to grant any such petition."

RESPONDENT'S VIOLATION OF JANUARY 20, 2010 BOARD ORDER

9. Although the Board's Order of January 20, 2010 required that Respondent's practice be under the review of a professional mentor acceptable to the Board, Respondent practiced from January 21, 2010 through March 31, 2010, without a professional mentor acceptable to the Board. Respondent did not make any request of the Board or the Department Monitor that any physician be approved as Respondent's professional mentor.

10. From April 1, 2010 through June 29, 2010, Respondent's license was suspended for 90 days under the terms of the January 20, 2010 Order.

a. On May 5, 2010, Respondent called the Department's general number and left a message for the Department Monitor asking if the suspension would end after 90 days. The Department Monitor returned Respondent's call and told him that the suspension would end automatically after 90 days. The Department Monitor asked Respondent if he had a professional mentor and Respondent said that he did and the mentor's name was Dr. Glenn Caine. Based on Respondent's reply, the Department Monitor mistakenly assumed that Respondent had previously sent information to the Board about Dr. Caine which was sufficient for the Board to accept Dr. Caine as Respondent's mentor.

b. On June 23, 2010, Respondent called the Department Monitor seeking confirmation that the suspension would end at the end of the month. The Department Monitor returned Respondent's call and left a message that the suspension would end at the end of June.

11. On June 30, 2010, the Department Monitor reviewed Respondent's monitoring file and noted that there had never been a request that the Board find Dr. Caine acceptable to be Respondent's professional mentor. The only information about Dr. Caine in the file was the mention of his name during the May telephone conversation with the Department Monitor. The Department Monitor called Respondent and told him that she needed a copy of Dr. Caine's resume.

12. On July 6, 2010, Respondent emailed to the Department's general email address Dr. Caine's name, address and telephone and fax numbers and nothing else. The email was forwarded to the Department Monitor who replied by email to Respondent on July 7, 2010:

Dr. Kurt,

Thank you for your email.

Unfortunately, the information I received is insufficient. In order to have the Board's approval of Dr. Caine as your mentor, I need Dr. Caine's CV or resume. You can fax the information to me at 608-266-2264 or you can email it to me if that is more convenient to you.

Also, your suspension was lifted on July 1<sup>st</sup>, 2010. Have you begun your practice since then? You may notify me via email of the status of your practice.

Should you have further questions, please feel free to let me know. Thank you!

13. On July 12, 2010, Respondent sent an email to the Department Monitor that said he had returned to practice part time following the suspension. Dr. Caine's CV was an attachment to the email. This was the first information sent by Respondent regarding Dr. Caine's professional background and qualifications. The CV says that Dr. Caine has been Board eligible with the American College of Osteopathic Family Practitioners since July 1995, but does not say he is board certified in any specialty. The January 21, 2010 Order of the Board, in subparagraph 9.A, requires that a mentor shall be board certified by an ABMS-recognized board in a specialty relevant to Respondent's field of practice. Dr. Caine could not be approved as Respondent's mentor. Within 2 hours of receiving the CV, the Department Monitor sent an email to Respondent telling him that Dr. Caine was not qualified to be Respondent's mentor because he was not board certified.

14. From July 1, 2010 to the date of this Petition, Respondent again practiced without a professional mentor acceptable to the Board. The afternoon of July 12, 2010, the Division emailed Respondent that he must stop practicing until he has a professional mentor acceptable to the Board.

15. By practicing since January 21, 2010, without a professional mentor acceptable to the Board, Respondent has been in violation of the Board's Order of January 21, 2010, which is unprofessional conduct and a violation of Wis. Admin. Code § Med 10.02(2)(b).

#### BASIS FOR SUMMARY SUSPENSION

16. The Final Decision and Order of January 20, 2010, at page 7, provides the Board with authority to summarily suspend Respondent's license if Respondent violates the Final Decision and Order. It states:

IT IS FURTHER ORDERED, that notwithstanding the limitations of 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 investigation of the violation is concluded by Board action. 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, following notice and an opportunity to be heard. (Emphasis added.)

CONCLUSION

WHEREFORE, your petitioner requests that the Wisconsin Medical Examining Board:

1. Find that notice has been given to Respondent under § RL 6.05. Wis. Admin. Code.
2. Find that the Board's Final Decision and Order of January 20, 2010 provides the Board with authority to summarily suspend Respondent's license for violating that Final Decision and Order.
3. Find probable cause to believe:
  - a. That Respondent, has violated the Board's January 20, 2010 Final Decision and Order and has violated Wis. Stat. § 448.02(3) and Wis. Admin. Code § MED 10.02(2)(b).
  - b. That it is necessary to suspend Respondent's license to practice medicine and surgery in the State of Wisconsin immediately to protect the public's health, safety or welfare.
4. Issue an order summarily suspending the license to practice medicine and surgery in the State of Wisconsin of Kenneth J. Kurt, D.O. until the effective date of a final decision and order in the disciplinary proceeding against Respondent or until the summary suspension is discontinued by the Board following a hearing to show cause.

\_\_\_\_\_  
John R. Zwieg

STATE OF WISCONSIN    )  
  ) ss  
COUNTY OF DANE        )

John R. Zwieg, being first duly sworn on oath, deposes and says that he is an attorney for the State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement, and that he has read the foregoing petition and knows the contents thereof and that the same is true to



his own knowledge, except as to those matters therein stated on information and belief, and as to such matters, he believes them to be true.

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John R. Zwieg

Subscribed and sworn to before me  
this \_\_\_ day of July, 2010.

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Notary Public  
My Commission is Permanent.

John R. Zwieg  
Prosecuting Attorney  
State Bar Number 1014133  
Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708  
Tele. (608) 266-9932  
Fax (608) 266-2264