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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	LS 09052010 MED
JONATHAN W. THOMAS, M.D.,	:	
RESPONDENT.	:	

[Division of Enforcement Case No. 09 MED 040 & 09 MED 119]

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

Jonathan W. Thomas
1543 Park Place, Suite #800
Green Bay, WI 54304

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

On May 20, 2009, the Board issued an Order summarily suspending Respondent's license. This disciplinary proceeding was commenced by the filing and service of a Complaint and Notice of Hearing on May 27, 2009. On August 14, 2009, based upon receiving evidence of Respondent having received inpatient and outpatient treatment for alcohol dependence and Respondent's participation in a program of random drug and alcohol testing, the Administrative Law Judge issued an Order terminating the summary suspension of Respondent's license. In lieu of a hearing, the parties 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 this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Jonathan W. Thomas, M.D. (DOB July 3, 1963) is duly licensed and currently registered to practice medicine and surgery in the State of Wisconsin under license number 33210, which was first granted on May 21, 1992.

2. Respondent's practice specialty is psychiatry. His most recent address on file with the Board is 1543 Park Place, Suite #800, Green Bay, WI 54304.

Respondent's Conduct in 2005.

3. Respondent was practicing at Riverside Psychiatric Group in Green Bay, when he began treating Ms. A for depression and anxiety in 2000. Respondent provided psychiatric treatment and medications to Ms. A until at least early 2005.

4. Through mutual friends, Respondent and his spouse became social acquaintances of Ms. A and her spouse. During the summer of 2005, while both couples were at Respondent's house, Respondent and Ms. A were alone outside at night and while Respondent was under the influence of alcohol he placed his hands on her skin under her shirt and slid his hands around the waist of her jeans in what she described as a sexual manner. Respondent's behavior made Ms. A uncomfortable and she pushed Respondent's hands away.

Respondent's Conduct in 2007.

5. Ms. B was a good friend of Respondent's wife and had known Respondent for a number of years. The evening of August 4, 2007, Ms. B was at a local Brat Fest when Respondent, who was under the influence of alcohol, approached Ms. B. and without her consent cupped her breasts with his hands over her clothing and grabbed her face and began kissing her. Ms. B pushed him away and left the area.

6. During Labor Day weekend 2007, a physician friend of Respondent attempted to convince Respondent to enter in-patient alcohol treatment at Hazelden in Minnesota. Respondent agreed to out-patient treatment in Wisconsin and began seeing a counselor at Cedar Creek Counseling in Hales Corners. However, Respondent continued to drink alcohol while he was in this treatment and he discontinued treatment after a couple of sessions.

7. In November 2007, with the assistance of the psychiatrists with whom Respondent then practiced, Respondent's wife organized a professional alcohol intervention to convince Respondent to enter treatment. Respondent declined to enter treatment. Following the failed intervention, Respondent's wife filed for divorce and Respondent's practice colleagues began the process of excluding him from practicing at Riverside Psychiatric Group.

Respondent's Conduct with Ms. C in 2009.

8. Respondent provided treatment to Ms. C for depression and anxiety at Riverside Psychiatric Group during 37 appointments from January 9, 2004 to March 7, 2005. That treatment was very helpful to Ms. C and it left her with a good impression of Respondent. From 2006 through 2008, Ms. C received treatment from another psychiatrist at Riverside.

9. During 2008, Respondent left Riverside and opened his own psychiatric practice, New Behavioral Medicine. Late in 2008, Ms. C encountered Respondent who told her of his new practice and said he would be happy to provide her professional services if she needed them. Because Ms. C's psychiatrist at Riverside was leaving the practice Ms. C called New Behavioral Medicine and made an appointment to see Respondent.

10. On January 6, 2009, the date of the appointment, Ms. C completed the usual new patient forms provided by the receptionist and signed a release to enable Respondent to obtain

her treatment records from Riverside. The receptionist told Ms. C the charge for the initial consultation was \$449 and Ms. C wrote a check to New Behavioral Medicine for that amount.

11. Ms. C then met with Respondent for one and one half hours. They discussed her history and current status and her depression and anxiety. Respondent wrote prescriptions for Zoloft® and Clonazepam, which Ms. C had filled. They agreed her next appointment would be January 13, 2009 and they would decide at that time if she would also see a psychotherapist.

12. On January 8, 2009, Respondent called Ms. C and asked how she was doing. She described her symptoms and Respondent changed her medication. He called a prescription for diazepam to her pharmacy and told her to stop taking the Zoloft® and Clonazepam. Ms. C filled the new prescription and followed Respondent's orders.

13. On January 9, 2009, Ms. C received a call from Respondent around 3:30 p.m. He said it was important that he speak with her and he was on his way over to her house. When Respondent arrived, Ms. C let him in. She could smell alcohol on his breath and he said the final hearing on his divorce had occurred that day and he had been drinking alcohol in celebration. Respondent told her he was sorry she had made the appointment to see him because he had intended to call her for a personal relationship when the divorce was final because he had been attracted to her. He said that her becoming a patient again made a personal relationship problematic. Respondent placed his arm around her shoulders, pulled Ms. C towards him and kissed her mouth. Ms. C reports she was shocked and pushed his face away and told him she was uncomfortable with his actions and that he needed to go home and let the alcohol wear off.

14. About a week later, Respondent called Ms. C and said he would like to discuss what had happened January 9, 2009. Ms. C agreed to meet him at her home around 7 p.m. that night. When Respondent arrived, he told her that he needed to fire her as a patient and would reimburse her the money she had paid. He held out a check, which she did not accept. They began talking and Respondent asked her to show him her bedroom and tried to unbutton her blouse before he left.

15. Several days later, Respondent stopped by Ms. C's home around 7 p.m. and they talked. He kissed her and told her he wanted to have sex. Ms. C persuaded Respondent to watch a DVD with her.

16. After that night, Respondent left several telephone messages for Ms. C suggesting that they get together for drinks or a movie. Ms. C did not respond to the messages and did not let Respondent in her home. Finally, on February 4, 2009, she sent Respondent a text message that he should leave her alone and he made no further attempts to contact her.

Respondent's Contention to Division of Enforcement that Ms. C was Not a Patient in 2009

17. On May 4, 2009, Division of Enforcement (DOE) investigator Dan Williams went to New Behavioral Medicine unannounced. Mr. Williams handed Respondent an investigative subpoena which compelled Respondent to provide him with all billing and treatment records of any kind regarding Ms. C. Mr. Williams also handed Respondent a consent to release

information form signed by Ms. C which authorized Respondent to provide her treatment records to Mr. Williams.

18. Respondent told Mr. Williams that Ms. C had not been his patient for many years. Respondent admitted that Ms. C had come to his office on January 6, 2009, but said the purpose of the meeting was not for care or treatment and that no health care records were created on her. At a later date, Respondent admitted that his contentions to Mr. Williams that Ms. C was not his patient in January 2009 and that he had not created any health care records for her were not true.

Summary Suspension from May 20, 2009 to August 14, 2009 and AODA Treatment.

19. On May 20, 2009, DOE presented a Petition for Summary Suspension to the Board based on the above allegations and the Board issued an Order summarily suspending Respondent's license.

20. On June 2, 2009, Respondent was diagnosed with alcohol dependence and depression and entered a residential alcohol and other drug treatment program at the Herrington Recovery center at Roger's Memorial Hospital in Oconomowoc. Respondent complied with his treatment plan and was discharged on July 24, 2009, when the Treatment Team was satisfied with his progress in primary treatment. On July 28, 2009, Respondent enrolled in follow up care at Libertas Treatment Center in Green Bay. Libertas' care included 14 days of intensive outpatient group treatment followed by 16 weeks of a session each week of aftercare and random alcohol and drug testing. Respondent has remained in outpatient treatment to the present.

21. On August 14, 2009, based upon Respondent having received inpatient and outpatient treatment for alcohol dependence and Respondent's participation in a program of random drug and alcohol testing, the Administrative Law Judge issued an Order terminating the summary suspension of Respondent's license. Respondent has practiced since the termination of the summary suspension.

22. Neither the Board nor DOE have ever received a complaint about Respondent's practice or conduct other than the complaints which resulted in this action.

Behavioral Medicine Institute of Atlanta's 2010 Assessment of Respondent.

22. From April 21, 2010 through April 23, 2010, at the request of DOE, Respondent underwent an assessment performed by the Behavioral Medicine Institute of Atlanta (BMI), which specializes in the assessment and treatment of professional sexual misconduct and disruptive behaviors.

- a. BMI's diagnostic impressions were:
 - 1) Alcohol Dependency in Early Remission.
 - 2) Bipolar II Disorder (major depression episodes with at least one hypomanic episode).
 - 3) Deferred Axis II.
- b. Among BMI's recommendations were:

- 1) Continued supervision regarding his alcohol dependence because alcohol abuse appears related to his professional sexual misconduct and unless he stays sober he will be a significant risk to engage in professional sexual misconduct.
- 2). A course of treatment for his professional sexual misconduct

CONCLUSIONS OF LAW

1. 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 and Order, pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by engaging in the above conduct has practiced while unable to do so with reasonable skill and safety to patients, and, has committed unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(i), and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

3. Respondent, by attempting to engage in sexual conduct with his patients, has committed unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(zd), and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

4. Respondent, by falsely stating to DOE investigator Williams that he had neither provided health care services to Ms. C during 2009 nor created any health care records during 2009, has failed to cooperate with the investigation of the complaint against Respondent and has committed unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(zc), and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

SUSPENSION

- A.1. The license of Jonathan W. Thomas, M.D., to practice as a physician and surgeon 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 38 months 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 38 month 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. This suspension is hereby stayed immediately based on Respondent having been in continuous treatment for his alcohol dependence since June 2, 2009, and Respondent's license having been summarily suspended from May, 2009 to August 2009.
- 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.

RESTRICTIONS AND LIMITATIONS FOR STAY

Drug and Alcohol Treatment

- C.1. Respondent shall continue, in a drug and alcohol treatment program 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. 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 urine, blood and hair 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. 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 continue in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Admin. 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 urine 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 urine 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 urine, blood or hair 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 urine specimens, (b) submit blood, hair or breath specimens, (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. Admin. Code § RL 7.11.

Sexual Misconduct Treatment

- C.19. Within 30 days of the date of this Order, Respondent shall provide proof to the Department Monitor that he has begun or continued treatment with a psychotherapist approved by the Board or its designee to address the issues that contributed to his sexual misconduct and that the psychotherapist has been provided with a copy of this Final Decision and Order and the report of BMI. The frequency of sessions shall be at least monthly. The therapy shall: 1) Identify and disrupt distorted beliefs and attitudes that support the misconduct; 2) Raise awareness of the impact of the misconduct on patients and others; 3) Address personality characteristics and other contributors to the

misconduct; and (4) Provide relapse prevention focusing on the particular emotional state or stressors that have preceded lapses in the past.

- C.20. The psychotherapist shall provide quarterly reports to the Department Monitor, which state how many sessions have been held that quarter, which of the issues were addressed and whether Respondent has been cooperative with treatment.
- C.21. Psychotherapy shall end when the psychotherapist provides written confirmation that the goals identified in C.20. have been met and the Board or its designee approves termination of therapy.

Professional Boundaries Education

- C.22. Prior to September 30, 2011, Respondent shall successfully complete a program in professional boundaries which has been approved by the Board or its designee and provide proof sufficient to the Board, or its designee, of satisfactory completion. Respondent is prohibited from applying any of these hours of education toward satisfaction of the continuing education required during the November 1, 2009 through October 31, 2011 registration biennium. The following courses are approved:
 - a. Intensive Course in Medical Ethics, Boundaries and Professionalism (including the reflective essay and post-reflective essay), a 24.25 credit program being offered by Case Western Reserve University School of Medicine September 1 and 2, 2011.
 - b. Professional Boundaries Course, a 34 credit program being offered by Physicians Assessment and Clinical Education (PACE) at the University of California – San Diego on May 25-27 and September 21-23, 2011.
 - c. Maintaining Proper Boundaries a 22.25 credit program being offered by the Vanderbilt University School of Medicine on March 30-April 1, June 15-17, and August 24-26, 2011.

Professional Mentor

- C.23. Within 30 days of the date of this Order, Respondent shall provide proof to the Department Monitor that another physician who is board certified in psychiatry and who has been approved by the Board or its designee, has agreed to be his professional mentor to discuss professional practice and boundary issues and that the physician has been provided with a copies of this Final Decision and Order and the report of BMI. Respondent and the mentor shall meet for at least a one hour meeting each month and additional meetings as the mentor believes is appropriate
- C.24. The mentor shall provide quarterly reports to the Department Monitor, which state the dates and length of their meetings, the nature of professional practice issues discussed and whether Respondent has been an active and receptive participant in the discussions. The mentor shall immediately report to the Department Monitor conduct of Respondent which may constitute unprofessional conduct, a violation of this Order, or a danger to the public or a patient.
- C.25. If Respondent desires a different physician board certified in psychiatry to serve as his Professional Mentor, Respondent may request the Board or its designee to approve that physician upon providing proof that the physician has agreed to be his professional

mentor to discuss professional practice and boundary issues and that the physician has been provided with a copies of this Final Decision and Order and the report of BMI.

Department Monitor

- D.1. Any payments, requests, petitions, reports and other information required by this Order shall be provided to:

Department Monitor
Wisconsin Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
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 Respondent shall notify the Department Monitor of 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, Approved Program, Psychotherapist or Professional Mentor by the Board

- D.3. If the Board or its designee determines the Treater, Approved Program, Psychotherapist or Professional Mentor 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 or Psychotherapist or obtain a different Professional Mentor.

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 relating to alcohol treatment or monitoring 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 \$3,850.00 to the Department of Regulation and Licensing, within 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).

MEDICAL EXAMINING BOARD

By: Skuler MD MGA 3/16/11
A Member of the Board Date

T:/MAAB/Zwieg/Med/Thomas, Jonathan MD 09MED40 & 119 fd&o 02-09-11
THOMAS/ZWIEG/LH/2-9-11