

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
JOHN M. MCKICHAN, M.D.,	:	
RESPONDENT.	:	ORDER 0000723

[Division of Enforcement Case No. 10 MED 249]

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

John M. McKichan, M.D.
16717 W. Sissabayama Rd.
Stone Lake, WI 54876

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 and 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 this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. John M. McKichan, M.D., Respondent, date of birth July 19, 1944, 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 17740, which was first granted October 5, 1971.

2. Respondent's last address reported to the Department of Regulation and Licensing is 16717 W. Sissabayama Rd., Stone Lake, WI 54876.

3. At all times relevant, Respondent was employed as a physician in Sawyer County, Wisconsin.

4. RG is an adult male who first met Respondent in approximately 2006, when Respondent cared for him in the Hayward Hospital Emergency Room. RG was a convicted felon, with convictions on charges relating to illegal possession of controlled substances, and burglary, among others.

5. At times, RG was incarcerated in the Sawyer County Jail, while Respondent served as the jail physician. Respondent recalls that approximately three years ago, a jail lieutenant told him he could no longer provide sodas for RG and not for other inmates as it was favoritism. Respondent states that the last time he saw RG as a patient was in jail in June of 2008. RG states it was June of 2009.

6. On March 19, 2010, RG's parole agent told him he would be going to a halfway house upon his release from prison. RG asked that Respondent transport him to the halfway house. The agent prohibited the transport. Later the same day, and again on March 22, 2010, Respondent contacted the Department of Corrections (DOC) to object to their decision that he could not transport RG to the halfway house.

7. Eventually RG was transported to prison. Respondent maintained a personal relationship with RG. Between January and May 2010, Respondent gave RG approximately \$500 cash.

8. On May 18, 2010, the DOC probation/parole supervisor informed Respondent that he would not be permitted to have contact with RG upon RG's release from prison. Respondent agrees that this occurred, but states he never received anything in writing. Respondent says he consulted an attorney who told him not to worry about the contact until he received something in writing.

9. While RG was in prison, Respondent sought authorization to access his patient health care information and advocated that RG be prescribed psychotropic medications. The DOC social worker explained that was not likely to happen as there was no indication that RG needed them. On August 13, 2010, the prison social worker warned Respondent that, in her non-medical opinion, it was highly likely that RG was seeking the psychotropic medications for secondary gain, e.g., to avoid the halfway-house placement.

10. While on parole, RG was required to adhere to Rules of Community Supervision provided for and enforced by his parole agent. RG's Rules specified that RG was to have no contact with Respondent including face-to-face, telephone, fax, email, mail, drive by, or third party contact. The DOC staff informed Respondent that RG was not permitted to have any contact with Respondent.

11. On August 30, 2010, inmate RG was released from prison and transported to the halfway house in Sawyer County. Respondent dropped off a package at the halfway house for RG. The package included new clothes, bathroom accessories, games, stamps, cigarettes, chewing tobacco, money, a debit card, identification, and a phone card.

12. On August 31, 2010, Respondent sent RG, at the halfway house, a package that included Chlorpromazine, Enalapril, Clonazepam and Benzotropine, all of which are prescription medications. Respondent wrote the prescriptions, arranged for them to be filled, paid for them and delivered them. Respondent had not examined RG since June of 2008. Respondent had not reviewed RG's medical records prior to prescribing these medications.

13. During RG's last year in prison, RG was prescribed only one medication: Enalapril 10 mg.

14. Respondent knowingly, intentionally and with intent to deceive halfway house and DOC personnel, sent mail to RG via the United States Postal Service falsely identifying its sender. On September 20, 2010, Respondent identified himself through the return address on the envelope as "Department of Transportation, P.O. Box 7995, Madison, WI 53703-7995." On September 23, 2010, Respondent mailed a post-card to RG on which Respondent identified himself as "Malcolm." Respondent explained that the material he falsely identified as coming from the Department of Transportation consisted of a driver's manual he sent for RG's use.

15. In an undated letter from the Respondent to RG, Respondent wrote: "AAFP-American Academy of Family Practice states 'friendship between patient and physicians is ethical and fully approved.'" Respondent ended the letter saying, "The last 4 ½ years have been like a roller coaster ride, I have been with you for all the ups and downs. And I will continue to be there. It is ____ great having you as a friend. A new adventure starts next week. Have faith, things will work out."

16. On September 25, 2010, RG absconded from the halfway house, and his parole agent issued a warrant for his arrest.

17. On October 5, 2010, at the request of the Division, a special agent from the Wisconsin Department of Justice interviewed Respondent concerning alleged aiding and abetting a parole violation and prescription irregularities. During the interview, Respondent received a phone call from RG, but did not answer. During the interview, Respondent admitted:

- a. Respondent knew that RG's rules of parole supervision prohibited RG from having contact with Respondent;
- b. Respondent received several telephone calls from RG since RG first absconded from parole supervision;
- c. When he took calls from RG, Respondent knew RG had absconded from parole supervision, a law violation that could send RG back to prison;
- d. When RG called Respondent, he called on a cell phone Respondent had given him;

- e. While RG was in the halfway house, Respondent sometimes used his middle name "Malcolm" on mail to RG in an effort to avoid detection by authorities;
- f. Respondent did not keep medical records for the times he prescribed medication for RG since RG got out of prison.

18. By sending RG packages, money and letters, Respondent knowingly and intentionally aided, abetted and encouraged RG to violate conditions of his rules of parole supervision.

19. Wis. Stat. § 946.46 provides that no person may intentionally aid or encourage a parolee to violate a term or condition of parole. Violation of this provision is a class A misdemeanor offense.

20. Under the facts and circumstances of this case, § 946.46, is a law, the violation of which is substantially related to the practice of medicine.

21. Wisconsin Admin. Code §§ MED 17.05(1)(a) and (b) provide that practitioners shall maintain complete and accurate records of each prescription drug dispensed and all prescription drugs dispensed shall be recorded in the patient record.

22. Wisconsin Admin. Code § MED 21.03 requires physicians to create and maintain medical records for a period of five years. Patient health care records are required to contain all pertinent patient history, objective findings, assessment/diagnosis and plan of treatment.

23. Respondent, by having prohibited contact with RG, demonstrated a lack of awareness of appropriate professional boundaries. The DOC, not Respondent, was best suited to address RG's rehabilitative needs.

24. Respondent concedes that his conduct violated rules of the Medical Examining Board. He expresses remorse and recognizes that he should not have prescribed medications without seeing RG, and that he should not have prescribed medications without creating and maintaining a medical record. Respondent concedes that he misrepresented himself in corresponding with RG at the halfway house because he knew staff would intercept mail sent from Respondent to RG. Respondent maintains that his relationship with RG is physician-patient, and as a friend, but not sexual or romantic. Respondent believes RG needed one person in his life who would express positive regard for RG. Respondent was frustrated with the DOC's handling of the situation but says he now realizes, despite the best intentions, he did not go about things properly and says he should have handled things differently.

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 of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by failing to record and maintain records of prescriptions dispensed to RG, has violated Wis. Admin. Code §§ MED 17.05(1)(a) and (b), which is misconduct as defined by Wis. Admin. Code § MED 10.02(2)(z).

3. Respondent, by having contact with RG under the circumstances above has violated a law, the circumstances of which are substantially related to the practice of medicine, which is misconduct as defined by Wis. Admin. Code § MED 10.02(2)(z).

ORDER

IT IS HEREBY ORDERED that the attached Stipulation is accepted.

IT IS FURTHER ORDERED that:

SUSPENSION

1. The license of John M. McKichan, M.D., Respondent, to practice medicine and surgery in the State of Wisconsin is hereby SUSPENDED for a period of thirty (30) days, effective two weeks after the date of this Order. At the end of the thirty days, the period of suspension shall end without further order of the Board.
2. During the period of SUSPENSION, Respondent shall not engage in the practice of medicine and surgery in any capacity, whether paid or unpaid, in this jurisdiction or in any other.

EDUCATION

3. Within six months of the date of this order, Respondent shall take and complete the following intensive continuing education courses or their equivalent:
 - (a) The "Intensive Course in Controlled Substance Management," a continuing medical education program offered by Case Western Reserve University School of Medicine in Cleveland, Ohio.
 - (b) The "Intensive Course in Medical Record Keeping," a continuing education medical education program offered by Case Western Reserve University School of Medicine in Cleveland, Ohio.
 - (c) The "Intensive Course in Medical Ethics, Boundaries and Professionalism," a continuing medical education program offered by Case Western Reserve University School of Medicine in Cleveland, Ohio.
4. Respondent shall obtain preapproval from the Board or its designee for any course(s) he intends to take in compliance with this order. Board may reject any

course(s), and may accept a course(s) for less than the number of hours for which Respondent seeks approval. Respondent is responsible for all costs associated with the compliance with this order. No part of the continuing education required by this order may be applied to the continuing education required for renewal of the Respondent's credential or to any other continuing education requirement imposed on Respondent by the Board. The courses identified in paragraph 3 are pre-approved.

5. Respondent shall submit satisfactory evidence of completion of the continuing education within thirty (30) days of completing the continuing education. Certificates of completion of the continuing education shall be sent to the Department Monitor at the address below.

PRACTICE LIMITATIONS

6. Respondent shall have no contact, direct or indirect, with RG without the advance written consent of RG's parole agent and the Board's designee.
7. Respondent shall not treat or prescribe medications for patients who are on probation or parole.
8. Respondent shall furnish a copy of this Order to all present employers immediately upon issuance of this Order, to any hospital at which he has privileges or at which he applies for privileges, and to any prospective employer when Respondent applies for employment as a health care provider.

MISCELLANEOUS

Department Monitor

9. 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

10. 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 violations of any of the terms and conditions of this Order by Respondent. Additionally, Respondent shall provide the Department Monitor with a current address and home telephone number.

11. 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.

Costs of Compliance

12. 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

13. Respondent shall pay costs of \$1,100.00 to the Department of Regulation and Licensing within one hundred eighty (180) days of this Order.

Additional Discipline

14. 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. In the event Respondent fails to timely submit payment of the costs or fails to comply with the ordered continuing education as set forth above, the Respondent's license (No. 17740) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs or completion of the continuing education.

Wisconsin Medical Examining Board

By: Shailer MD MGA
A Member of the Board

3/16/11
Date