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Before The
State Of Wisconsin
MEDICAL EXAMINING BOARD

In the Matter of the Disciplinary Proceedings
Against **WILLIAM I. BRAUNSTEIN, M.D.**,
Respondent

FINAL DECISION AND ORDER

Order **ORDER 0001002**

Division of Enforcement Case No. 10 MED 294

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 20 day of July, 2011.

~~Member~~
Medical Examining Board



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Disciplinary Proceedings Against
WILLIAM I. BRAUNSTEIN, M.D., Respondent

NOTICE OF PROPOSED
DECISION AND ORDER
DHA Case No. DRL-11-0024

Division of Enforcement Case No. 10 MED 294

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

William I. Braunstein, M.D.
2531 Joppa Avenue South
Saint Louis Park, MN 55416

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

Department of Regulation and Licensing, Division of Enforcement, by

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

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Regulation and Licensing, Division of Enforcement (the "Division") filed a formal Complaint against the Respondent, William I. Braunstein. The Division filed said Complaint with the Division of Hearings and Appeals on March 7, 2011. On that same date, the Division sent a copy of the Complaint and a Notice of Hearing, via both regular and certified mail, to Respondent Braunstein at his most recent address on file with the Department of Regulation and Licensing; 2531 Joppa Ave. S., Saint Louis Park, MN, 55416. The Notice of Hearing stated that Respondent Braunstein was required to file a written Answer to the Complaint within 20 days, failing which "[he would] be found to be in default and a default judgment [could] be entered against [him] on the basis of the Complaint and other evidence and the Wisconsin Medical Examining Board [could] take disciplinary action against [him] and

impose the costs of the investigation, prosecution and decision of this matter upon [him] without further notice or hearing.”

To date, no Answer has been filed. Indeed, on or about April 4, 2011, the copy of the Complaint and Notice of Hearing sent to Respondent via certified mail was returned to the Division as “unclaimed.”

On March 31, 2011, the undersigned Administrative Law Judge (ALJ) of the Division of Hearings and Appeals issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent Braunstein and Attorney Nowack of the Division of Enforcement for April 27, 2011. This Notice instructed Respondent Braunstein to contact the undersigned ALJ to provide the telephone number for which he could be reached for the April 27, 2011, telephone conference, and was sent to the address on file for Respondent Braunstein, as provided above.

Not surprisingly, Respondent Braunstein did not contact the undersigned ALJ with a telephone number that he could be reached at for the April 27, 2011, telephone conference, and the telephone conference that was conducted on that date was without the respondent’s participation.

At the April 27, 2011, conference, Attorney Nowack made a motion for default pursuant to Wis. Admin. Code § RL 2.14. The undersigned ALJ summarily accepted Attorney Nowack’s default motion and issued a Notice of Default instructing Respondent Braunstein that he was in default and that findings would be made and an Order entered on the basis of the Complaint and other evidence. The Notice of Default further ordered Attorney Nowack to provide the undersigned ALJ with the Division’s written recommendations for discipline and the assessment of costs in this matter by May 6, 2011. It was mailed to Respondent Braunstein at the last address on record for him, 2531 Joppa Ave. S., Saint Louis Park, MN, 55416. Attorney Nowack provided the undersigned ALJ with the Division’s written recommendations as to discipline and costs on or about May 6, 2011.

Respondent Braunstein has failed to respond to either the Notice of Default issued against him, or the written recommendations provided by Attorney Nowack on May 6, 2011.

FINDINGS OF FACT

On the evidence presented, the undersigned ALJ makes the following findings of fact:

1. On July 16, 1979, the Wisconsin Medical Examining Board granted William I. Braunstein, Respondent, date of birth August 31, 1948, a license to practice medicine pursuant to license number 22589-20. Respondent’s license to practice medicine and surgery in Wisconsin is current through October 31, 2011.

2. Respondent’s address of record with the Department of Regulation and Licensing is 2531 Joppa Ave. S., Saint Louis Park, MN 55416.

3. On November 14, 2009, the Minnesota Board of Medical Practice issued an Order in which it suspended but stayed Respondent's license to practice medicine and surgery in the state of Minnesota. The Minnesota Order remains current and in full effect as of the date of the signing of the Division's Motion for Discipline and Costs.¹

4. According to the Minnesota Order, in 2006, Respondent had self-reported to the Minnesota Board that he had a mental health impairment that compromised his ability to practice medicine and surgery. On December 7, 2006, Respondent entered a monitoring program that required treatment, work-site monitoring, and notice to the program of any changes in employment settings. On December 14, 2007, Respondent was discharged from the monitoring program for non-compliance. The Minnesota Board opened an investigation and for a time Respondent did not respond to the Board's requests for information and did not appear at scheduled appearances.

5. On July 1-2, 2009, Respondent voluntarily submitted to a comprehensive multidisciplinary assessment program. Based on the results of the assessment, the Minnesota Board entered its order of November 14, 2009, in which it suspended Respondent's license to practice there, and stayed the suspension contingent on: coursework in medical records management and conducting patient interviews; monthly meetings with a supervising physician; monitoring of mental health treatment; limitation that he work only in a supervised group setting; and a limitation that Respondent work no more than 32 hours per week.

6. Respondent presently has a mental condition, which, were Respondent not subject to and compliant with the conditions identified above, would create an unacceptable risk to the care and welfare of health care consumers.

7. The Minnesota Board of Medical Practice is a professional regulatory body, who like the Wisconsin Medical Examining Board, is charged with balancing its obligation to protect health care consumers, while assuring fundamental fairness to licensees.

8. The Minnesota Board of Medical Practice does not have jurisdiction to take action on Respondent's Wisconsin credentials. Even if Minnesota summarily suspended Respondent's privilege to practice medicine in that state or under that credential, because Respondent's Wisconsin credentials remain unencumbered, Respondent could potentially practice medicine in Wisconsin without oversight.

9. Respondent reported that he does not currently practice medicine and surgery in Wisconsin.

10. Respondent, though initially cooperative with the Wisconsin Medical Board's investigation, was given an opportunity to resolve this matter through negotiation. He has not

¹ The Minnesota Order has not been introduced into the record.

responded to the Division's offers, nor has he responded to [the Division's] inquiries since this action commenced, nor has he participated in these proceedings.

11. Respondent has not filed an Answer in compliance with Wis. Admin. Code § RL 2.09. The time allotted under Wis. Admin. Code § RL 2.09(4) for Respondent to file an Answer has expired.

12. On April 12, 2011, Respondent failed to participate in the telephone prehearing conference which had been properly notice. On that same date, the Division made a motion for default, pursuant to Wis. Admin. Code § HA 1.07(3)(c). The ALJ granted the Division's Motion for Default pursuant to Wis. Admin. Code § RL 2.09(4).

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stat. §§ 448.02(3).

2. Wis. Stat. § 440.03(1) provides that the department [of Regulation and Licensing] "may promulgate rules defining uniform procedures to be used by the department... and all examining boards and affiliated credentialing boards attached to the department or an examining board, for... conducting [disciplinary] hearings." These rules are codified in Wis. Admin. Code ch. RL.

3. Wisconsin Administrative Code § RL 2.08(1) provides in relevant part that "[t]he complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent" and that "[s]ervice by mail is complete upon mailing." Because the Complaint and Notice of Hearing, Notice of Telephone Prehearing Conference, and Notice of Default were mailed to Respondent Braunstein at his last known address, he was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.

4. As the licensee, it was Respondent Braunstein's responsibility to keep his address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1).

5. Respondent Braunstein has defaulted in this proceeding pursuant Wis. Admin. Code § RL 2.14 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § RL 2.09.

6. Allegations in a complaint are deemed admitted when not denied in an Answer. Wis. Admin. Code § RL 2.09. Respondent Braunstein has admitted to the allegations of the Complaint by default by not filing an Answer.

7. Pursuant to Wis. Stat. § 448.02(3)(c), the Medical Examining Board "...may, ...when it finds a person guilty of unprofessional conduct or negligence in treatment, do one or more of the

following: warn or reprimand that person, or limit, suspend or revoke any license, certificate or limited permit granted by the board to that person. The board may condition the removal of limitations on a license, certificate or limited permit or the restoration of a suspended or revoked license, certificate or limited permit upon obtaining minimum results specified by the board on one or more physical, mental or professional competency examinations if the board believes that obtaining the minimum results is related to correcting one or more of the bases upon which the limitation, suspension or revocation was imposed.”

8. Wis. Admin. Code § MED 10.02(2)(q) defines “unprofessional conduct” to include: “Having a license, certificate, permit, registration, or other practice credential granted by another state or by any agency of the federal government to practice medicine and surgery or treat the sick, which becomes limited, restricted, suspended, or revoked, or having been subject to other adverse action by the state licensing authority or by any agency of the federal government, including but not limited to the denial or limitation of an original credential, or the surrender of a credential, whether or not accompanied by findings of negligence or unprofessional conduct.”

9. Wis. Admin. Code § MED 10.02(2)(h) further defines “unprofessional conduct to include, “Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.” *See also, Gilbert v. State Medical Examining Board*, 119 Wis.2d 168, 188, 349 N.W.2d 68, 77 (“The purpose of licensing statutes is not to benefit those persons licensed to practice under the statutes, but rather to protect the public by the requirement of a license as a condition precedent to practicing in a given profession.”).

10. Respondent Braunstein’s conduct, as described in Findings of Fact ¶¶ 3-5, above, constitutes unprofessional conduct pursuant to Wis. Admin. Code § MED 10.02(q), and thus subjects him to discipline pursuant Wis. Stat. § 448.02(3)(c).

11. Based on the undisputed findings of fact (*supra*), there is sufficient evidence to establish that Respondent currently presents an unacceptable risk to Wisconsin health care consumers and to any health care consumers Respondent may serve under the auspices of his Wisconsin license to practice medicine and surgery.

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against him, Respondent Braunstein has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that (1) Respondent Braunstein presently suffers from a mental health impairment, and (2) that as a result of such impairment, his license to practice medicine and surgery in the state of Minnesota has been suspended and limited, (subject to a stay of his suspension). Absent any argument from Respondent, such conduct clearly constitutes unprofessional conduct

pursuant to Wis. Admin. Code §§ MED 10.02(q) and 10.02(h). Respondent Braunstein is thus subject to discipline pursuant to Wis. Stat. § 448.02(3)(c).

The only question that remains is what kind of discipline is appropriate for Respondent's violations.

Appropriate Discipline

As discipline for his above conduct, the Division requests that Respondent Braunstein's license to practice medicine in the state of Wisconsin be revoked. (Division's May 6, 2011, Motion for Discipline and Costs, p. 3):

"Revocation of Respondent's license to practice medicine and surgery is necessitated by Respondent's admission, and another Board's determination, that Respondent cannot safely practice medicine and surgery without monitoring." (Emphasis added).

(*Id.*).

The Division maintains that Respondent Braunstein's "inability or unwillingness" to present any evidence that the conditions on his ability to practice medicine and surgery in Minnesota are not also necessary in Wisconsin[,] when coupled with his "inability or unwillingness" to participate in these proceedings, presents ample evidence that board cannot be assured that Respondent can competently practice in Wisconsin. (*Id.*). (Emphasis added).

Though the Division's argument inexplicably does not consider discipline in the form of a limited license, consistent with the discipline ordered by the Minnesota Board of Medical Practice in its stayed suspension of Respondent Braunstein's medical license, the undersigned ALJ agrees that in light of Respondent's failure to participate in these proceedings after initial involvement, revocation of Respondent Braunstein's license to practice medicine is appropriate.

Indeed, one of the three purposes of discipline is to protect the public from other instances of misconduct. *See State v. Aldrich*, 71 Wis. 2d 206 (1976).² Respondent Braunstein's admitted mental health impairment – one which "compromises his ability to practice," – flags a serious medical and/or psychological condition that very much puts Respondent's patients in danger. His inability to participate in these proceedings after initial communications with the Division demonstrates that he is not at this time able to comply with any terms or conditions imposed on his license by the Wisconsin Medical Examining Board. The relief requested by the Division is thus not only appropriate, but necessary to protect the public from future instances of misconduct by the respondent.

In the event that Respondent Braunstein becomes able to deal with his mental impairment, he can reapply for licensure pursuant to Wis. Stat. § 448.02(6).

² The other two purposes of discipline are (1) to promote the rehabilitation of the licensee, and (2) to deter other licensees from engaging in similar conduct. *See Id.*

Costs

The Division requests that Respondent Braunstein be ordered to pay the full costs of its investigation and of these proceedings.

In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the Chiropractic Examining Board found that:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties;
- 4) The respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;
- 7) Any other relevant circumstances.

The respondent, by nature of him being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, his conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of Regulation and Licensing is a "program revenue," agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractic profession who have not engaged in such conduct."

For many same reasons as cited in the *Buenzli-Fritz* decision, Respondent Braunstein should be assessed the full amount of recoverable costs. His alleged conduct is of a serious nature, he did not meaningfully participate in the proceedings against him, there is no argument that certain factual

findings were investigated and litigated unnecessarily, and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent Braunstein on Respondent Braunstein, and not fellow members of the medical profession who have not engaged in such conduct. If the Board assesses costs against the respondent, the amount of these costs will be determined pursuant Wis. Admin. Code § RL 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of the Respondent William I. Braunstein, M.D. to practice medicine in the State of Wisconsin be and is hereby **REVOKED**.

Pursuant to Wis. Stat. 448.02(6), "The board may restore any license, certificate or limited permit which has been voluntarily surrendered or revoked under any of the provisions of this subchapter, on such terms and conditions as it may deem appropriate."

IT IS FURTHER ORDERED that Respondent Braunstein shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and Licensing and sent to:

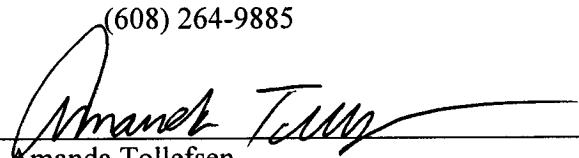
**Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent William I. Braunstein.

Dated at Madison, Wisconsin on June 2, 2011.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____


Amanda Tollefsen
Administrative Law Judge