

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The
State Of Wisconsin
MEDICAL EXAMINING BOARD

In the Matter of the Disciplinary Proceedings
Against ANTHONY G. PETERS, P.A.,
Respondent

FINAL DECISION AND ORDER

Order No. ~~ORDER 0002063~~

Division of Enforcement Case No. 10 MED 299

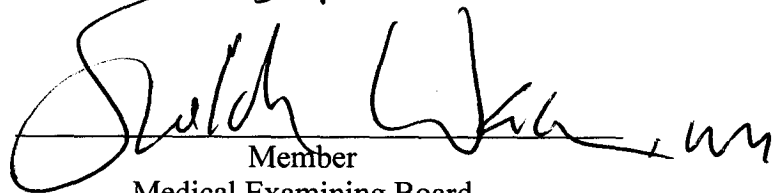
The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 19 day of September, 2012.


Member
Medical Examining Board



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

In the Matter of the Disciplinary Proceedings
Against **ANTHONY G. PETERS, P.A.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-12-0024
ORDER 0002063

Division of Enforcement Case No. 10 MED 299

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

Anthony G. Peters
W9420 Nosser Road
Holcombe, WI 54745

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

Department of Safety and Professional Services, Division of Enforcement, by

Attorney Susan D. Gu
Department of Safety and Professional Services
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services, Division of Enforcement (the Division), filed a formal Notice of Hearing and Complaint against Respondent Anthony G. Peters (Respondent), alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Admin. Code § Med 10.02(2)(q). Respondent failed to file an Answer to the Complaint, failed to provide a telephone number at which he could be reached for the telephonic prehearing conference held before the Division of Hearings and Appeals (DHA) on April 25, 2012 and failed to appear at the prehearing conference. As a result, the Division moved for default and the Administrative Law Judge (ALJ) ordered briefing on the motion in a Briefing Order dated May 7, 2012. The Division filed its

motion for default, brief in support thereof and argument and recommendation for discipline and costs on May 2, 2012. Respondent failed to file a response.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-4 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent was born on August 25, 1966 and is licensed to practice as a physician assistant in the State of Wisconsin (license #1952-23). This license was first granted on January 5, 2006. Respondent's license expired on October 31, 2007 and has not been renewed. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew upon payment of a fee until October 31, 2012.

2. Respondent's most recent address on file with the Wisconsin Medical Examining Board (Wisconsin Board) is W9420 Nosser Rd., Holcombe, Wisconsin.

3. In 2008, while practicing in the State of South Dakota, Respondent suffered a relapse of depression and engaged in the use of alcohol. Respondent voluntarily entered and completed an outpatient drug and alcohol treatment program, and received treatment for depression from a licensed South Dakota physician. Respondent self-reported this incident to the Investigative Review panel in South Dakota.

4. On October 19, 2009, the South Dakota Board of Medical and Osteopathic Examiners (South Dakota Board) ordered that conditions be placed on Respondent's physician assistant license, which included the following:

- a. Respondent shall continue a minimum of one appointment per year with his MD or DO psychiatrist for treatment. The psychiatrist shall provide the board an annual report regarding his treatment, progress and status;
- b. Respondent shall obtain a mental health provider, which could be a M.D., D.O., psychologist, physician assistant or certified nurse practitioner, for a minimum of monthly appointments. The mental health provider shall provide the board annual reports regarding his treatment, progress and status;
- c. Respondent shall obtain a licensed counselor and they shall meet at least every three weeks until such time as he and this provider submit a written request to modify the meeting schedule, and the request is approved by the board. The counselor shall provide the board an annual report regarding his treatment, progress and status;

- d. Respondent shall not self-prescribe, dispense or administer any medications, dietary supplements, or medication samples for his personal use or for use by anyone who is not a legitimate, documented patient. Respondent shall only use medications or dietary supplements that are prescribed, dispensed, administered or recommended to him by his primary healthcare provider and/or mental health provider for legitimate purposes;
- e. Respondent shall sign releases upon request authorizing the board to obtain his medical or mental health records from any treating professional or facility;
- f. Upon request by the board, Respondent shall submit to further evaluation by any agency approved by the Board for cause shown;
- g. Respondent understands that in the event the board is reasonably satisfied that he has breached any of the terms/conditions of this agreement, his license shall be immediately suspended and a hearing will be convened so he can show cause why his license should not be revoked; and
- h. If Respondent believes that any conditions/restrictions placed upon his license are ambiguous or need clarification, he shall mail a written request thereof to the executive director as soon as practicable.

Facts Related to Default

5. The Notice of Hearing and Complaint in this matter were served on Respondent on March¹ 21, 2012, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing stated that Respondent was required to file an 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 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.”

6. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

7. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for April 25, 2012. Notice of this prehearing conference was sent to Respondent at the Holcombe, WI address, with instructions that Respondent provide the

¹ The Affidavit of Service contains an obvious error. Rather than “March” 21, 2012, the Affidavit states that it was served “May” 21, 2012. However, the Affidavit was subscribed and sworn before a Notary Public on March 22, 2012 and likewise filed with the Division of Hearings and Appeals on that same date. Therefore, the month could not have been May as mistakenly alleged in the Affidavit, but is March.

telephone number at which he could be reached for the conference to the ALJ no later than April 20, 2012. The Notice was returned to DHA as undeliverable.

8. Respondent failed to provide a telephone number and could not be reached for the April 25, 2012 prehearing conference.

9. Based on Respondent's failure to file an Answer to the Complaint and failure to provide a telephone number and make himself available for the prehearing in this matter, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

10. The ALJ ordered briefing on the motion in a Briefing Order dated May 7, 2012. The Briefing Order was sent to Respondent at the Holcombe, WI address and was returned to DHA as undeliverable.

11. The Division filed its motion for default, brief in support thereof and argument and recommendation for discipline and costs on May 2, 2012. Respondent failed to file a response brief as ordered by the May 7, 2012 Briefing Order.

CONCLUSIONS OF LAW

1. The Wisconsin Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02.

2. Wisconsin Stat. § 440.03(1) provides that the Department of Safety and Professional Services "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. SPS.

3. Respondent was duly served with the Notice of Hearing and Complaint pursuant to Wis. Admin. Code § SPS 2.08 and was also served with the Notice of Telephone Prehearing Conference and Briefing Order.

4. When a Respondent fails to file an Answer as required by Wis. Admin. Code § SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the Respondent is in default and findings may be made and an Order entered on the basis of the Complaint and other evidence. Wis. Admin. Code § SPS 2.14.

5. Wisconsin Admin. Code § HA 1.07(3)(b) and (c) further provide: "(b) If a respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate . . ." and "(c) For a telephone or video hearing or prehearing the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or videoconference line."

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

7. Respondent has also defaulted in this proceeding by failing to provide a telephone number at which he could be reached and by failing to appear at the scheduled prehearing conference after due notice, pursuant to Wis. Admin. Code § HA 1.07(3) and Wis. Admin. Code § SPS 2.14.

8. Pursuant to Wis. Admin. Code §§ SPS 2.09(3) and 2.14, and Wis. Admin. Code § HA 1.07(3)(b) and (c), Respondent has admitted to the allegations of the Complaint by not filing an Answer and by failing to appear at the telephone prehearing conference.

9. Following an investigation and disciplinary hearing, if the Wisconsin Board determines that a physician assistant is guilty of unprofessional conduct, it may “warn or reprimand that person, or limit, suspend or revoke any license, certificate or limited permit granted by the board to that person. . . .” Wis. Stat. § 448.02(3)(c).

10. The phrase “unprofessional conduct” as used in Wis. Stat. § 448.02(3)(c) includes “[t]hose acts or attempted acts of commission or omission defined as unprofessional conduct by the board under the authority delegated to the board by s. 15.08(5)(b).” Wis. Stat. § 448.015(4)(am)1.

11. Wisconsin 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.

12. Respondent, by having an adverse action taken against his license by the South Dakota Board, committed unprofessional conduct as defined by Wis. Admin. Code § Med 10.02(2)(q).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against him and failing to appear at the April 25, 2012 prehearing conference or provide a telephone number at which he could be reached, Respondent has admitted that all allegations contained within the Complaint are true.

Wis. Admin. Code § SPS 2.09(3) and 2.14, and Wis. Admin. Code § HA 1.07(3)(b) and (c). As such, it is undisputed that the following events alleged in the complaint occurred. In 2008, while practicing in the State of South Dakota, Respondent suffered a relapse of depression and engaged in the use of alcohol. Respondent self-reported this incident to the Investigative Review panel in South Dakota. On October 19, 2009, the South Dakota Board ordered the conditions set forth in Finding of Fact No. 4 to be placed on Respondent's physician assistant license. By having an adverse action taken against his license by the South Dakota Board, Respondent engaged in "unprofessional conduct" under Wis. Stat. §§ 448.02(3)(c) and 448.015(4)(am)1., and Wis. Admin. Code § Med 10.02(2)(q).

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent be reprimanded for the unprofessional conduct, pursuant to Wis. Stat. § 448.02(3). The Complainant further requests that Respondent's license be limited as follows:

1. Respondent shall maintain full and complete compliance with all terms, limitations, and conditions imposed against his physician assistant license by the South Dakota Board.
2. Respondent shall provide the Wisconsin Board with a copy of any document issued by The South Dakota Board of Medical and Osteopathic Examiners which alters the conditions of Respondent's continued practice as a physician assistant in the State of South Dakota, including any document advising reinstatement of full licensure.
3. In the event Respondent decides to return to Wisconsin and renew his license to practice as a physician assistant, he shall notify the Wisconsin Board of his intentions and practice address at least ninety (90) days prior to his return.
4. If Respondent ever applies to the Wisconsin Board for any credential:
 - a. Respondent shall provide proof sufficient to the Wisconsin Board that he does not suffer from any alcohol or drug related condition or other psychological condition which impairs his ability to function as a physician assistant.
 - b. Respondent shall provide proof sufficient to the Wisconsin Board that he is in compliance with the terms and conditions of the October 19, 2009 Order of the South Dakota Board.
 - c. Whether to grant a license and whether to impose any limitations or restrictions on any license granted shall be in the discretion of the Wisconsin Board.

Under the facts of this case, it is appropriate to impose the reprimand and conditions recommended by the Division set forth above.²

Respondent's alcohol problem, if left untreated, poses a danger to the public he serves (his patients). The fact that he did not participate at all in these proceedings strengthens concerns that Respondent has not been rehabilitated. In Respondent's favor, however, the facts show that he self-reported his depression and alcohol use to the Investigative Review panel in South Dakota, which demonstrates some ability and desire to address his problems. This disciplinary order promotes the rehabilitation of Respondent in that it provides an avenue for him to continue practicing in a safe and responsible manner. It protects the public in that it ensures that he only practices under conditions in which patients cannot be harmed. Finally, it deters other licensees from engaging in similar unprofessional conduct, as it is a discipline reportable to the public.

Costs

The Division requests that Respondent 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 stated:

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 respondent's cooperation with the disciplinary process;
5. Prior discipline, if any;
6. The fact that the Department of [Safety and Professional Services] 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.

² The only modification made to the Division's disciplinary recommendation is the addition of language in paragraph 4 of the Division's recommended limitations to clarify that the Wisconsin Board also has discretion regarding whether to renew Respondent's license, not just on whether to grant it. This addition is made because the Complaint indicates that although Respondent's license is currently expired, he retains the right to renew it upon payment of a fee until October 31, 2012.

The respondent, by nature of her 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, her 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 [Safety and Professional Services] 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 of the same reasons delineated in the *Buenzli-Fritz* decision, Respondent should be assessed the full amount of recoverable costs. The alleged conduct is of a serious nature, he did not participate in these proceedings, there is no argument that certain factual findings were investigated and litigated unnecessarily, and, given the program revenue nature of the Department of Safety and Professional Services, fairness dictates imposing the costs of these disciplinary proceedings on Respondent, and not on fellow members of the medical profession who have not engaged in such conduct.

If the Wisconsin Board assesses costs against Respondent, the amounts of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS ORDERED that the license of the Respondent Anthony G. Peters is hereby REPRIMANDED pursuant to Wis. Stat. § 448.02(3), and that the following limitations be imposed on his license:

1. Respondent shall maintain full and complete compliance with all terms, limitations, and conditions imposed against his physician assistant license by the South Dakota Board.
2. Respondent shall provide the Wisconsin Board with a copy of any document issued by the South Dakota Board which alters the conditions of Respondent’s continued practice as a physician assistant in the State of South Dakota, including any document advising reinstatement of full licensure.
3. In the event Respondent decides to return to Wisconsin and renew his license to practice as a physician assistant, he shall notify the Wisconsin Board of his intentions and practice address at least ninety (90) days prior to his return.
4. If Respondent ever applies to the Wisconsin Board for any credential or any renewal thereof:

- a. Respondent shall provide proof sufficient to the Wisconsin Board that he does not suffer from any alcohol or drug related condition or other psychological condition which impairs his ability to function as a physician assistant.
- b. Respondent shall provide proof sufficient to the Wisconsin Board that he is in compliance with the terms and conditions of the October 19, 2009 Order of the South Dakota Board of Medical and Osteopathic Examiners.
- c. Whether to grant or renew Respondent's license and whether to impose any limitations or restrictions on any license granted or renewed shall be in the discretion of the Wisconsin Board.

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

Department Monitor
Department of Safety and Professional Services
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 Anthony G. Peters.

Dated at Madison, Wisconsin on August 15, 2012.

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: _____

Jennifer E. Nashold
Administrative Law Judge