

## 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 **LEONARD J. GREEN III, M.D.**,  
Respondent

FINAL DECISION AND ORDER

Order No. 0002500

**Division of Legal Services and Compliance Case No. 12 MED 339**

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<sup>th</sup> day of June, 2013.

Kenneth Summs, MD

Member  
Medical Examining Board



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

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In the Matter of the Disciplinary Proceedings  
Against **LEONARD J. GREEN, III, M.D.**,  
Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. SPS-13-0016  
**0002508**

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**Division of Legal Services and Compliance Case No. 12 MED 339**

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

Leonard J. Green, III, M.D.  
9369 Kungsholm Drive Apt B  
Indianapolis, IN 46250- 1131

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

Department of Safety and Professional Services, Division of Legal Services and  
Compliance, by

Attorney Arthur Thexton  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P. O. Box 8935  
Madison, WI 53708-8935

**PROCEDURAL HISTORY**

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Leonard J. Green, III (Respondent) on March 25, 2013, alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 448.02(3) and Wis. Admin. Code § Med 10.02(2)(h), (i), (q) and (zd). The file contains a signed receipt of certified mail, indicating that Respondent received the Complaint. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09, failed to contact the Administrative Law Judge (ALJ) to provide a telephone number at which he could be reached for the telephone prehearing conference scheduled for April 25, 2013, and failed to appear at the prehearing conference held by the ALJ on April 25, 2013. At the prehearing conference, the Division orally moved that Respondent be found in default, pursuant to Wis. Admin. Code § SPS

2.14. The ALJ granted the motion and issued a Notice of Default on April 26, 2013. On May 3, 2013, the Division filed its recommended proposed decision and supporting documentation.

## **FINDINGS OF FACT**

### **Facts Related to the Alleged Violation**

Findings of Fact 1-6 are taken from the Division's Complaint's filed in this matter.

1. Respondent Leonard Judson Green, III, M.D. (DOB September 22, 1949) is licensed in the State of Wisconsin as a physician and surgeon, having license number 52463-20, first issued on December 12, 2008 and current through October 31, 2013. Respondent is certified by the American Board of Family Medicine and by the American Board of Obstetrics & Gynecology.

2. Respondent's most recent address on file with the Department is 945 Sandy Hollow Ln., Portland, IN 47371 (Portland, Indiana address). The United States Postal Service reports that he has changed his address to 9369 Kungsholm Drive Apt. B, Indianapolis, IN 46250-1131 (Indianapolis, Indiana address).

3. Respondent has been diagnosed with substance dependence, and was required by an Order of the Indiana Medical Licensing Board (Indiana Board) dated June 9, 2004, to remain free of alcohol and all unprescribed controlled substances, to submit to periodic testing and to engage in therapeutic and treatment activities.

4. On July 15, 2012, Respondent was discovered by police to be intoxicated from the use of alcohol. Such use represents a relapse to substance dependence and was a violation of the Indiana Board's June 9, 2004 Order.

5. On July 3, 2012, and while engaged in the practice of medicine, during an exam for routine medical care, Respondent engaged in the inappropriate sexual touching of patient A by first propositioning patient A for "an affair" and then, after her refusal to engage in an affair, removing her breast from her clothing and placing it in his mouth. Patient A responded by pushing Respondent away from her and telling him "No."

6. On December 20, 2012, Respondent's Indiana medical license was revoked by consent for the above conduct.

7. The December 6, 2012 Proposed Settlement Agreement, accepted by the Indiana Board and attached to its December 20, 2012 Order, states in the Stipulated Findings of Fact at paragraph 12 that "Respondent agrees that due to his substance abuse and addiction he is unfit to practice medicine."

### **Facts Related to Default**

8. A formal Notice of Hearing and Complaint were filed in this matter on March 25, 2013. The file contains a signed receipt of certified mail, indicating that Respondent received the Notice of Hearing and Complaint at his Portland, Indiana address.

9. The Notice of Hearing stated that Respondent was required to file an Answer to the Complaint within 20 days and informed Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

10. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09.

11. Following expiration of the 20-day time period in which to file an Answer, the ALJ scheduled a telephone prehearing conference for April 25, 2013. The April 15, 2013 Notice of Telephone Prehearing Conference was sent to Respondent at his Portland, Indiana address on April 15, 2013. The Notice instructed Respondent to provide the ALJ with a telephone number at which he could be reached for the conference no later than April 22, 2013. The Notice further informed Respondent: **"A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent."** There is no indication in the record that the April 15, 2013 Notice was not delivered to Respondent.

12. Respondent failed to contact the ALJ to provide a telephone number at which he could be reached for the telephone conference on April 25, 2013, and failed to appear at the conference held by the ALJ on April 25, 2013.

13. At the prehearing conference, the Division orally moved that Respondent be found in default, pursuant to Wis. Admin. Code § SPS 2.14. That motion was orally granted.

14. The ALJ issued a Notice of Default on April 26, 2013, sent to Respondent at the Portland, Indiana address. The Division of Hearings and Appeals subsequently received notification from the United States Postal Service that Respondent's address had changed from the Portland, Indiana address to the Indianapolis, Indiana address. The Division of Hearings and Appeals notified the Division's attorney of the change of address.

15. Respondent did not file a response to the Notice of Default.

16. The Division filed its recommended proposed decision and order on May 3, 2013, with attached disciplinary orders from the Indiana Bar. These documents were sent to Respondent at his Indianapolis, Indiana address. Respondent did not file a response.

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **Default and Violation of the Wisconsin Statutes and Administrative Code**

Wisconsin Admin. Code § HA 1.07(3) provides, in relevant part:

#### **(3) FAILURE TO APPEAR.**

...  
**(b)** If a Respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate . . .

(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; . . . (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

Pursuant to Wis. Admin. Code § HA 1.07(3), Respondent is in default for failing to answer the telephone, failing to appear, and failing to be ready to proceed with the prehearing conference as scheduled.

Moreover, Wis. Admin. Code § SPS 2.09(4) states, "An answer to a complaint shall be filed within 20 days from the date of the service of the complaint." When a Respondent fails to file an Answer as required, the Respondent "is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence." Wisconsin Admin. Code § SPS 2.14. Thus, Respondent has also 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(4).

Accordingly, pursuant to Wis. Admin. Code §§ HA 1.07(3) and SPS 2.14, Respondent has admitted to the allegations of the Complaint and findings may be made on the basis of the Complaint and other undisputed evidence.

It is undisputed that the Respondent has been diagnosed with substance dependence and was required by a June 9, 2004 Order of the Indiana Board to remain free of alcohol and all unprescribed controlled substances, to submit to periodic testing and to engage in therapeutic and treatment activities. On July 15, 2012, Respondent was discovered by police to be intoxicated from the use of alcohol, which constitutes a violation of the Indiana Board's Order.

Further, on July 3, 2012, and while engaged in the practice of medicine, during an exam for routine medical care, Respondent engaged in the inappropriate sexual touching of patient A by first propositioning her for "an affair" and then, after her refusal, removing her breast from her clothing and placing it in his mouth. Patient A responded by pushing Respondent away from her and telling him "No." On December 20, 2012, the Indiana Board, with Respondent's consent, revoked Respondent's Indiana medical license for the above conduct.

In addition, as set forth in Finding of Fact No. 7, above, the stipulated orders of the Indiana Board make it clear that Respondent is currently not fit to practice medicine and surgery with skill and safety to his patients.

Wisconsin Stat. § 448.02(3) allows the Board to discipline a physician for, *inter alia*, "unprofessional conduct." Wisconsin Admin. Code § Med 10.02(2)(h), (i), (q) and (zd) define unprofessional conduct in part as follows:

(2) The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding or abetting the same:

. . .

(h) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

(i) Practicing or attempting to practice under any license when unable to do so with reasonable skill and safety to patients.

...

(q) Having a license . . . granted by another state . . . to practice medicine and surgery or treat the sick, which becomes limited, restricted, suspended, or revoked . . . .

...

(zd) Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient. . . .

Respondent's conduct, as described above, constitutes unprofessional conduct as defined by Wis. Admin. Code § Med 10.02(2) (h), (i), (q) and (zd). He is therefore subject to discipline pursuant to Wis. Stat. § 448.02(3).

### **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 requests that Respondent's license be revoked. Based on all of the facts of this case, the factors set forth in *Aldrich*, and Respondent's failure to participate in this proceeding, such discipline is warranted. Respondent's failure to participate in these proceedings demonstrates that he has not been rehabilitated and apparently has no interest in becoming so. Respondent is clearly not able to safely practice medicine as evidenced by his continued substance abuse and his outrageous and assaultive treatment of Patient A. The Division's recommendation protects the public by preventing Respondent from practicing in the immediate future and ensuring that he cannot harm patients in his care. Revocation is the only outcome which will adequately protect the public and deter similar misconduct, under all the facts and circumstances of this case. Additionally, revocation is consistent with the action taken by the state in which Respondent was practicing, and in which the conduct occurred.

### **Costs**

State law provides the Board with authority to assess costs pursuant to Wis. Stat. § 440.22. The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings.

The factors to be considered in assessing costs are: (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 prosecutor; (4) the respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department 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; and (7) any other relevant circumstances. *See In the*

*Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS0802183CHI (Aug. 14, 2008).

In the present case, Respondent should be assessed the full amount of costs. Respondent's conduct is of a serious nature. The factual allegations were deemed admitted and there is no indication that any factual allegations or litigation were unwarranted. Respondent has failed to participate in these proceedings in any way and has a history of discipline in another state. Finally, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings.

The amount of costs should be determined pursuant to Wis. Admin. Code § SPS 2.18.

**ORDER**

1. The license and privilege of Leonard J. Green, III, M.D. to practice medicine and surgery in the State of Wisconsin is hereby REVOKED.

2. 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 Legal Services and Compliance  
P.O. Box 8935  
Madison, WI 53708-8935**

3. The ordered terms of this decision are effective on the date the Board signs the Final Decision and Order in this matter.

IT IS FURTHER ORDERED that the above-captioned matter is closed as to Respondent Leonard J. Green, III.

Dated at Madison, Wisconsin on May 8, 2013.

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