

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER
WITH VARIANCE

MICHAEL N. MANGOLD, M.D.
RESPONDENT.

DHA Case No. SPS-13-0027
DLSC Case No. 12 MED 235

0002829

BACKGROUND

On September 24, 2013, Administrative Law Judge Jennifer Nashold, State of Wisconsin, Division of Hearings and Appeals, issued a Proposed Decision and Order (PDO) in the above referenced matter. The PDO was mailed to all parties. No objections to the PDO were filed. On November 20, 2013, the Medical Examining Board (Board) met to consider the merits of the PDO. The Board voted to approve the PDO with variance. The PDO is attached hereto and incorporated in its entirety into this Final Decision and Order with Variance (Order).

VARIANCE

Pursuant to Wis. Stat. §§ 440.035(1) and 448.02, the Board is the regulatory authority and final decision maker governing disciplinary matters of those credentialed by the Board. The matter at hand is characterized as a class 2 proceeding pursuant to Wis. Stat. § 227.01(3). The Board may make modifications to a PDO, a class 2 proceeding, pursuant to Wis. Stat. § 227.46(2).

In the present case, the Board adopts the PDO in its entirety except for the sections titled, "**Appropriate Discipline**" and "**ORDER**" found on pages seven through ten of the PDO. Those sections are eliminated and the following is substituted in their place.

APPROPRIATE DISCIPLINE

The three purposes of disciplining a credential holder are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *See State v. Aldrich*, 71 Wis. 2d 206, 209, 237

N.W.2d 689 (1976). The Division of Legal Services and Compliance (Division) recommended that Respondent be suspended for a period of thirty (30) days from the date of Order and that Respondent not engage in the practice of medicine and surgery in any capacity while he is suspended. The Board disagrees with the Division's recommendation and instead, finds that revocation of the Respondent's license to practice medicine and surgery is appropriate under the circumstances.

The Respondent's license to practice medicine and surgery was limited in 2007 and disciplined in 2010, 2011 and on two occasions in 2013 (preceding the Order at issue). The Respondent is currently serving two, indefinite suspensions pursuant to discipline he received against his medical license in early 2013. It is the opinion of this Board that to date, discipline meted out by this Board has not served to rehabilitate the Respondent nor protect the public. Respondent's failure to participate during these proceedings provides further evidence of his lack of rehabilitation and clear disregard for the Board's authority. Simply put, the Board is not convinced that another suspension would serve to protect the public or rehabilitate the Respondent. Moreover, his blatant disregard for the Board's authority, if not tempered, may invite others to engage in similar conduct. License revocation is the ultimate means, within the Board's power, of protecting the public. *See Wis. Stat. § 448.02(3)*. An essential purpose of a credentialing statute is to protect the public. *See Strigenz v. Department of Regulation and Licensing*, 103 Wis. 2d 281, 286-287, 307 N.W.2d 664 (1981). As such, the next logical step, in order to promote the three purposes of discipline, is revocation of the Respondent's license to practice medicine and surgery.

ORDER

Accordingly, IT IS HEREBY ORDERED:

1. The Wisconsin license to practice medicine and surgery as issued to Respondent Michael N. Mangold, M.D. (license number 32859-20) is hereby revoked.


2. Respondent shall not engage in the practice of medicine and surgery in any capacity, in Wisconsin, as of the date of this Order.
3. 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**

4. The Respondent shall return, to the Department Monitor, any and all indicia of licensure as issued to him by the Board and/or State of Wisconsin.
5. The terms of this Order are effective the date the Final Decision and Order with Variance is signed by the Board.

Dated at Madison, Wisconsin this 9th day of December, 2013.

WISCONSIN MEDICAL EXAMINING BOARD

By: Kenneth Simons MD
A Member of the Board 



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

In the Matter of the Disciplinary Proceedings
Against **MICHAEL N. MANGOLD, M.D.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-13-0027

Division of Legal Services and Compliance Case No. 12 MED 235

0002829

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

Michael N. Mangold, M.D.
Mangold Center for Family Health
120 North Main Street, Suite 120
West Bend, WI 53095

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 Kim M. Kluck
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, Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Michael N. Mangold, M.D., 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)(za). The Division of Legal Services and Compliance served Respondent on May 23,

2013 by sending a copy of the Notice of Hearing and Complaint to his last known address. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09, and failed to appear at the prehearing telephonic conference held before the Division of Hearings and Appeals on August 8, 2013.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c), respectively. In light of Respondent's failure to file an Answer to the Complaint and failure to make himself available for the prehearing conference, the undersigned administrative law judge (ALJ) found Respondent to be in default. On August 9, 2013, the ALJ issued a Notice of Default against Respondent. Consistent with the Notice of Default issued by the ALJ, the Division filed a recommended proposed decision on August 15, 2013.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-12 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Michael N. Mangold, M.D., is licensed in the State of Wisconsin to practice medicine and surgery, having license number 32859-20, first issued on December 19, 1991, with registration current through October 31, 2013.

2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is Mangold Center for Family Health, 120 North Main Street, Suite 120, West Bend, Wisconsin 53095.

PRIOR DISCIPLINE

3. On January 24, 2007, the Wisconsin Medical Examining Board (Board) concluded

case number 03 MED 029) that Respondent had violated Wis. Stat. § 448.02(3) and Wis. Admin. Code § Med 10.02(2)(h). In 2002, Respondent failed to properly evaluate an emergency room patient. Respondent's misconduct resulted in a 3-day delay of treatment of a large right hemothorax, and a fractured rib, in a patient who was also diagnosed with anemia, severe scoliosis, and neurofibromatosis. The Board ordered Respondent to complete 15 hours of continuing education in the evaluation and treatment of cardiothoracic injuries. Respondent completed the education as ordered.

4. On June 16, 2010, the Board concluded (case number 07 MED 112) that in 2006 and 2007, Respondent had repeatedly failed to keep and maintain patient health care records, in violation of Wis. Admin. Code §§ Med 10.02(2)(a) and (za), as well as Wis. Admin. Code § HFS 124.14(3)(c). The Board issued a reprimand and ordered Respondent to satisfactorily complete the Intensive Course in Medical Record Keeping offered by Case Western Reserve University School of Medicine. The Board further ordered Respondent to pay costs of the investigation, in the amount of \$650.00, within 90 days of June 16, 2010. Between June 3, 2010, and June 4, 2010, Respondent completed the education as ordered. Respondent failed to pay costs as ordered.

5. On January 19, 2011, the Board again reprimanded Respondent's license to practice medicine and surgery for continued delinquent and incomplete patient health care records (case number 10 MED 320). The Board required Respondent to retain a professional mentor to review patient health care records on an intensive basis (5 randomly selected files per week for the first six months). The Board also ordered Respondent to pay costs in the amount of \$900.00.

6. On January 24, 2013, the Board issued an order suspending Respondent's license to practice medicine and surgery, effective January 29, 2013, for failing to comply with the

professional mentoring requirements stated in the January 19, 2011 Order.

7. On May 15, 2013, the Board adopted the Proposed Decision and Order (case number 12 MED 103), filed by the undersigned ALJ, suspending the license of Respondent for an indefinite period, with no stay of the suspension for a period of at least sixty (60) days from the date of the Final Decision and Order. That case involved Respondent's practice of medicine without a valid license following the Department's denial of his license renewal application due to Respondent's delinquent taxes.

Respondent was also ordered to pay costs in the matter.

CURRENT ALLEGATIONS

8. On June 5, 2012, Patient A began working in Respondent's clinic as an extern as part of her training to become a medical assistant.

9. On June 14, 2012, Patient A experienced some mild urinary frequency while working at the clinic. Respondent noticed her frequent trips to the restroom and informed Patient A that she was not allowed to leave work until she had a urinalysis done. The results of the urinalysis were normal. Given the results of the urinalysis, Respondent then performed a vaginal exam on Patient A. Respondent did not document the findings of his medical evaluation of Patient A.

10. On July 13, 2012, an investigator for the Division sent a letter to Respondent's clinic requesting certified copies of any and all medical records for Patient A.

11. On July 23, 2012, Respondent replied to the investigator's request with the following: "We don't have a "[Patient A]" listed in our system. If she can provide a copy of a bill from us, that would help. Otherwise, we can't help you."

12. Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § Med 10.02(2)(za) by failing to maintain healthcare records which are consistent with the requirements

of Wis. Admin. Code ch. Med 21.

Facts Related to Default

13. The Complaint and Notice of Hearing in this matter was served on Respondent on June 24, 2013, 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, 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 and the Wisconsin Medical Examining 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.”

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

15. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for August 8, 2013. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide a telephone number at which he could be reached for the conference to the ALJ no later than August 5, 2013. The Notice sent to Respondent was returned to the Division of Hearings and Appeals by the U.S. Postal Service on July 31, 2013, with notations indicating that Respondent had moved and left no forwarding address. Upon receipt of the returned Notice, the Notice was emailed to Respondent on July 31, 2013. The email requested an updated mailing address and a telephone number at which Respondent could be reached for the prehearing conference. No response was received from Respondent.

16. Respondent failed to provide a telephone number and could not be reached for the August 8, 2013 prehearing conference.

17. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

18. On August 9, 2013, the ALJ issued a Notice of Default and Ordered the Division to file a recommended proposed decision no later than August 22, 2013. The Notice of Default sent to Respondent was returned to the Division of Hearings and Appeals by the U.S. Postal Service on August 19, 2013, again indicating that Respondent had moved and left no forwarding address.

19. The Division timely filed and served its recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Default and Violation of Wis. Stat. § 448.02 and Wis. Admin. Code § 10.02(za)

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 therefore, 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. An Answer to a Complaint must be filed within 20 days of service of the Complaint. *See* Wis. Admin. Code § SPS 2.09(4). Service of the Complaint may be made by mailing a copy of the Complaint to the respondent at his last known address. *See* Wis. Stat. § 440.11(2); Wis. Admin. Code § SPS 2.08(1).

Wisconsin Admin. Code § HA 1.07(3)(b) and (c) further 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 video conference line . . . (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

Respondent was duly served with the Notice of Hearing and Complaint pursuant to Wis. Admin. Code § SPS 2.08 and failed to file an Answer, appear at the prehearing conference, or provide a telephone number at which he could be reached for the conference. Respondent has therefore defaulted in this proceeding pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3). Accordingly, pursuant to these provisions, Respondent has admitted to the facts as alleged in the Complaint. These facts establish that Respondent violated Wis. Stat. § 448.02(3)(c) and Wis. Admin. Code § Med 10.02(za).

Following an investigation and disciplinary hearing, if the Board determines that a physician 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). 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.

Wisconsin Admin. Code § Med 10.02(za) defines unprofessional conduct to include “[f]ailure by a physician . . . to maintain patient health care records consistent with the requirements of ch. Med 21.” In the instant case, it is undisputed that Respondent failed to keep health care records for Patient A consistent with the requirements of Ch. Med 21. He is therefore in violation of Wis. Stat. § 448.02(3)(c) and Wis. Admin. Code § Med 10.02(za). As a result, he is subject to discipline pursuant to Wis. Stat. § 448.02(3)(c).

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. *See State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976). The Division recommends that Respondent be suspended for a period of thirty (30) days from the date of this Order and that Respondent not engage in the practice of medicine and surgery in any capacity while he is suspended.

Under the facts of this case, the Division's recommendation is warranted as it would serve the three purposes of discipline outlined in *Aldrich*. The public needs protection from Respondent's continuing failure to comply with the standards of his profession. In addition to other disciplinary proceedings against Respondent, this is at least the third occasion in which he has failed to comply with the very important and fundamental obligation to maintain health care records for patients. Although Respondent's prior conduct and the disciplinary actions taken against him suggest that it is unlikely that he is interested in rehabilitation, a 30-day suspension in this matter might yet convince Respondent that he needs to take the obligations of his profession seriously if he wishes to resume practice. A suspension will also serve to deter others from such conduct.

Costs

The Board has the authority to assess costs pursuant to Wis. Stat. § 440.22. 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).

The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings. Based on the factors set forth above, the Division's request is appropriate. In fact, all of these factors militate in favor of full imposition of costs. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven to the Division, nor is there any suggestion that any factual findings were investigated and litigated unnecessarily. Respondent's conduct is serious, he has multiple prior disciplinary actions against him and he has failed to cooperate in any way in these proceedings. Finally, given the fact that the Department is a "program revenue" agency, whose operating costs are funded by the revenue received by licensees, fairness dictates imposing the costs of disciplining Respondent upon him and not on fellow members of the medical profession who have not engaged in such conduct.

ORDER

Accordingly, IT IS HEREBY ORDERED:

1. The license of Respondent Michael N. Mangold, M.D., is hereby SUSPENDED for a period of thirty (30) days from the date of the Final Decision and Order in this matter.
2. Respondent shall not engage in the practice of medicine and surgery in any capacity while he is suspended.
3. 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**

4. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on September 24, 2013.

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

By: _____


Jennifer Nashold
Administrative Law Judge