

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
DONALD M. JACOBSON, M.D., :
RESPONDENT. :
 : 0003343

Division of Legal Services and Compliance Case No. 13 MED 275

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

Donald M. Jacobson, M.D.
3701 Durand Avenue #325
Racine, Wisconsin 53405

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

Wisconsin Medical Examining Board
Department of Safety and Professional Services
P.O. Box 8366
Madison, WI 53708-8366

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Medical Examining Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent, Donald M. Jacobson, M.D., (dob June 23, 1955) is licensed in the State of Wisconsin to practice medicine and surgery, having license number 33729-20, first issued on September 24, 1992, with registration current through October 31, 2015. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 3701 Durand Avenue #325, Racine, Wisconsin 53405.

2. Respondent is board certified in psychiatry and sleep medicine and is engaged in solo private practice treating patients for various psychiatric conditions and sleep disorders.

3. As part of his care and treatment of patients with psychiatric conditions and sleep disorders, Respondent is licensed to prescribe controlled substances, including opioid medications, stimulants, and buprenorphine for both pain and addiction.

4. Respondent prescribed chronic opioid treatment for certain psychiatric patients who also complained of physical pain. Respondent did so at times without performing a full physical exam, without ordering testing to verify the cause of the reported pain, without consulting the patient's past and/or current providers, either by contacting those providers or by requesting past treatment records, and/or without referring patients to an appropriate physical medicine specialist for diagnosis and treatment.

5. Respondent at times prescribed chronic opioid treatment to certain psychiatric and sleep disordered patients without appropriate precautions and consequences for abuse and/or diversion, including to certain patients who presented one or more of the following concerns: failed drug screens, requests for early refills, claims of lost medications, and/or for patients warranting increased monitoring and consequences for non-compliance, up to and including discharge.

6. Respondent prescribed to certain patients controlled substances in high quantities and dosages, in potentially dangerous combinations, and to patients presenting with one or more concerns for abuse and/or diversion.

a. Patient A presented to Respondent with a long history of pre-existing mental illness. In the course of treating Patient A, Respondent prescribed the following monthly prescriptions: Adderall 240mg/day; Hydromorphone 64mg/day; Alprazolam 10mg/day; Clonazepam 16mg/day; and Diazepam 40mg/day. Patient A had a long history of preexisting mental illnesses when he presented to Respondent for treatment, including diagnoses of neuroleptic malignant syndrome, ADHD, Prozac-induced mania, bipolar disorder, and homicidal and suicidal ideation.

b. Respondent's records indicate that Patient A is known to have instances of self medicating, has trouble managing his medications appropriately, and has a history of "extreme polysubstance abuse" prior to initiating treatment with Respondent.

c. Respondent prescribed the above-described monthly drug regiment to Patient A, including the hydromorphone, for the stated purpose of treating Patient A's psychosis, ADHD, and extreme anxiety, which presents with extremely violent, occasionally homicidal thoughts. Respondent's records reflect that this particular "off label" use of hydromorphone has not been studied and is unsupported by current medical literature and practice. Respondent's records also reflect that Patient A had previously demonstrated an intolerance to antipsychotic medication with risk of significant medical complications, and that his psychosis was generally controlled.

d. Between January 10, 2013, and April 24, 2014, Respondent wrote the following monthly prescriptions for Patient B: Oxycodone 750mg/day; Adderal 150mg/day; and Clonazepam 4 mg/day. Patient B has diagnoses of bipolar disorder, ADHD, PTSD, and sleep disorders.

e. Over a 469 day period covering 2013 and 2014, Respondent prescribed a total of 374,370 mg of opioid medications to Patient B for the stated purpose of treating Patient B's sleep disorders.

7. Respondent prescribed certain opioid medications for "off-label" applications that are unsupported by the current medical literature, specifically hydromorphone to treat Patient A's psychosis, and oxycodone to Patient B for sleep disorders.

8. Respondent occasionally prescribed non-opioid controlled substances to employees and family members.

9. Respondent prescribed controlled substances on several occasions by way of pre-signed prescriptions kept in an office safe, which were distributed to patients by Respondent's office staff at times when Respondent was not in the office, but was contacted by phone to authorize distribution of the pre-signed prescriptions.

10. In lieu of an answering service, Respondent provided his personal telephone number and home address to certain patients for emergency purposes, and allowed them to call in prescription requests and/or come to his home for prescriptions on several occasions.

11. Respondent did not consistently maintain patient records which complied with Wis. Admin. Code § MED 21.03(2).

12. Respondent chooses to resolve 13 MED 275 by way of this order and the attached stipulation.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 448.02(3), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § MED 10.02(2)(h) and § MED 10.03(2)(b) for violations occurring on or after October 1, 2013, by prescribing controlled substances in a way which creates an unacceptable risk of harm to patients or the public.

3. By the conduct described in the Findings of Fact which occurred on or after October 1, 2013, Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § MED 10.03(2)(c) by prescribing, ordering, dispensing, administering, supplying, selling, or giving prescription medication in a manner that is inconsistent with the standard of minimal competence.

4. By the conduct described in the Findings of Fact, Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § MED 10.02(2)(za) and § MED 10.03(3)(e) for violations occurring on or after October 1, 2013, by failing to maintain healthcare records which are consistent with the requirements of Wis. Admin. Code § MED 21.03.

5. Respondent acknowledges that these conclusions of law subject him to discipline pursuant to Wis. Stat. § 448.02(3), and he therefore chooses to resolve 13 MED 275 by way of this order and the attached stipulation.

ORDER

1. The attached Stipulation is accepted.
2. Respondent Donald M. Jacobson, M.D., is REPRIMANDED.
3. The license of Respondent, Donald M. Jacobson, M.D., to practice medicine and surgery in the State of Wisconsin is INDEFINITELY LIMITED, as follows:
 - a. Respondent shall not under any circumstances prescribe opioid medications.
 - b. Respondent shall not under any circumstances prescribe buprenorphine, and shall voluntarily surrender his Drug Enforcement Agency registration to prescribe buprenorphine.
 - c. Within thirty days of the date of this Order, Respondent shall retain a professional mentor who shall be pre-approved by the Board or its designee. Every month, the professional mentor shall randomly select 10 patient health care records from among patients seen by Respondent during the previous month and for whom Respondent prescribed controlled substances, and shall review the records to determine whether the medical records are accurate and complete, whether the prescriptions are properly prescribed, and to identify any potential causes of concern with Respondent's overall prescribing, and shall discuss the same with Respondent.
 - d. Respondent shall arrange for the professional mentor to submit formal written reports to the Department Monitor, Department of Safety and Professional Services, Division of Legal Services and Compliance, P.O. Box 7190, Madison, Wisconsin 53707-7190, on a quarterly basis, or as otherwise directed by the Department Monitor. Upon request by Respondent, the mentor shall contemporaneously provide copies of his or her reports to Respondent.
 - e. A professional mentor shall have no relationship that could reasonably be expected to compromise the ability of the professional mentor to render fair and unbiased reports to the Department. For purposes of this Order, a

professional mentor shall be a physician or other health care professional determined by the Board's designee to be appropriate. The professional mentor shall hold a valid Wisconsin credential in a relevant health care field, shall have read this Final Decision & Order, and shall agree to be Respondent's professional mentor.

- f. Respondent's professional mentor shall immediately report to the Department Monitor and to the Respondent any conduct or condition of the Respondent which may constitute unprofessional conduct—including any deficiency in prescribing or medical record keeping, any violation of this Order, or any other danger to the public or patient.
- g. It is the responsibility of Respondent to promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order, including any failures of the professional mentor to conform to the terms and conditions of this Order.
- h. Respondent may petition the Board for modification of the limitation requiring monitoring of his patient health care records following receipt by the Board of two (2) quarterly reports from his professional mentor. The determination of whether or not to modify the requirement is entirely within the discretion of the Board, and a decision by the Board not to remove or otherwise modify the requirement for a professional mentor shall not constitute a denial of licensure, and shall not entitle Respondent to a hearing on the Board's refusal to grant any such petition.

4. Within nine (9) months of the date of this Order, Respondent shall successfully complete 8 hours of education on the topic of medical record-keeping, and 10 hours of education on the topic of prescribing controlled substances, or substantially equivalent courses as approved by the Board's designee.

- a. Respondent shall be responsible for obtaining the courses required under this Order, for providing adequate course descriptions to the Department Monitor, and for obtaining pre-approval of the courses from the Wisconsin Medical Examining Board, or its designee, prior to commencement of the courses.
- b. The Board or its designee may reject any proposed course(s) and may accept proposed course(s) for less than the number of hours for which Respondent seeks approval.
- c. Within thirty (30) days of completion of each educational component, Respondent shall file an affidavit with the Department Monitor stating under oath that he has attended, in its entirety, the course(s) approved for satisfaction of this requirement along with supporting documentation of attendance from the sponsoring organizations.

- d. Respondent is responsible for all costs associated with compliance with this educational requirement.
- e. None of the education completed pursuant to this requirement may be used to satisfy any other continuing education requirements that have been or may be instituted by the Board or Department.

5. Proof of compliance with any part of this Order and payment of costs (payable to the Wisconsin Department of Safety and Professional Services) shall be sent to the Department Monitor at the address below:

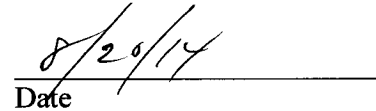
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

6. This Order is effective on the date of its signing.

WISCONSIN MEDICAL EXAMINING BOARD

By:


A Member of the Board


Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DONALD M. JACOBSON, M.D.,
RESPONDENT.

:
:
:
:
:

STIPULATION

0003343

Division of Legal Services and Compliance Case No. 13 MED 275

Respondent Donald M. Jacobson, M.D., and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has chosen to obtain legal counsel before signing this Stipulation.

4. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

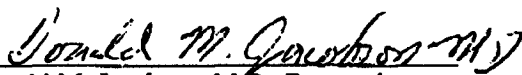
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is

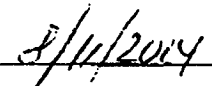
not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

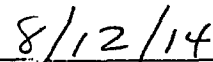
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

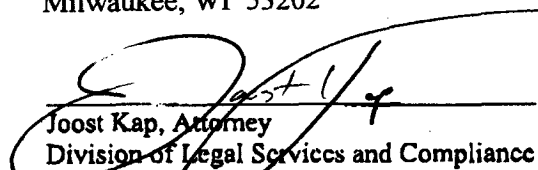
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

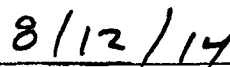

Donald M. Jacobson, M.D., Respondent
3701 Durand Avenue, #305
Racine, WI 53405
License no. 33729-20


Date 8/11/2014


John J. Reid, Attorney for Respondent
Cassiday Schade, LLP
111 E. Wisconsin Ave., Suite 2100
Milwaukee, WI 53202


Date 8/12/14


Joost Kap, Attorney
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Date 8/12/14