

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

KENNETH J. KELLNER, M.D.,  
RESPONDENT.

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**FINAL DECISION AND ORDER**

**0003599**

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Division of Legal Services and Compliance Case No. 14 MED 068

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

Kenneth J. Kellner, M.D.  
Aurora Health Center  
4061 Old Peshtigo Road  
Marinette, WI 54143

Wisconsin Medical Examining Board  
P.O. Box 8366  
Madison, WI 53708-8366

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

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 Kenneth John Kellner, M.D., (dob May 6, 1957), is licensed in the State of Wisconsin to practice medicine and surgery, having license number 30271-20, first issued on May 24, 1989, 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 Aurora Health Center, 4061 Old Peshtigo Road, Marinette, Wisconsin 54143. Respondent is certified by the American Board of Internal Medicine and has a subspecialty certificate in nephrology.

2. At all times relevant to this proceeding, Respondent was employed as a physician at the Aurora Health Center (Center), located in Marinette, Wisconsin.

3. On multiple occasions before and after October 1, 2013, Respondent has prescribed methadone, a schedule II controlled substance, for the purpose of treating addiction to at least 22 patients, without being registered as a narcotic treatment program.

4. Respondent continued this practice, even after being informed by local pharmacists that it was improper.

5. During the investigation of this matter, Respondent incorrectly stated to the Board's investigator on June 2, 2014: "I do not treat addiction" when, in fact, treatment for several patients was coded and billed using ICD-9 code 304.90, which is used for addiction treatment. On this occasion, Respondent was unequivocally informed by the Board's investigator that it was unlawful for him to prescribe methadone as a treatment for addiction.

6. Notwithstanding being so informed, Respondent continued to prescribe methadone to patients whom he had identified as addicts, purportedly for chronic pain. Respondent's position is that his prescribing was, in fact, for pain.

7. An examination of several patient charts reveal that in no case did Respondent chart an adequate substance abuse history, history of pain, identification or history of alternative treatments, consultation with previous prescribers, identification of functional objectives, or risk analysis. Urine drug screens were not performed, nor were other common and reasonable steps taken to avoid diversion, such as pill counts, interviewing collateral sources such as family members, collaborating with pharmacists, or using prescribing agreements.

8. On July 11, 2014, Respondent assured Board staff in writing: "I will immediately voluntarily stop prescribing methadone in my practice."

9. Notwithstanding that assurance, Respondent continued to prescribe methadone to Patient A on July 15, 21, and August 18, 2014; to Patient B on July 17 and August 12, 2014; and to Patient C on August 8, 2014.

#### 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).

*Note: All references to Wis. Admin. Code § Med 10.02(2) refer to the Code as it existed before October 1, 2013.*

2. By the conduct described in the Findings of Fact, Respondent Kenneth J. Kellner, M.D., engaged in unprofessional conduct pursuant to Wis. Admin. Code §§ Med 10.02(2)(h) and 10.03(3)(b) and (c) by prescribing controlled substances in a manner which unnecessarily increased the risk of diversion or abuse.

3. By the conduct described in the Findings of Fact, Respondent Kenneth J. Kellner, M.D., engaged in unprofessional conduct pursuant to Wis. Admin. Code §§ Med 10.02(2)(za) and 10.03(3)(e) by failing to maintain patient health care records meeting the standards of Wis. Admin. Code § Med 21.03.

4. By the conduct described in the Findings of Fact, Respondent Kenneth J. Kellner, M.D., violated 21 CFR § 1306.07 by prescribing methadone for the purpose of treating addiction, without being registered as a narcotic treatment program.

5. By the conduct described in the Findings of Fact, Respondent Kenneth J. Kellner, M.D., engaged in unprofessional conduct pursuant to Wis. Admin. Code § Med 10.02(2)(p) by prescribing controlled substances as defined in Wis. Stat. § 961.01(4), as prohibited by law.

6. By the conduct described in the Findings of Fact, Respondent Kenneth J. Kellner, M.D., engaged in unprofessional conduct pursuant to Wis. Admin. Code § Med 10.02(2)(z) by violating an administrative rule or regulation the circumstances of which substantially relate to the circumstances of the practice of medicine.

7. By the conduct described in the Findings of Fact, Respondent Kenneth J. Kellner, M.D., engaged in unprofessional conduct pursuant to Wis. Admin. Code § Med 10.03(3)(i) violating a federal law or regulation that is substantially related to the practice of medicine and surgery.

8. By the conduct described in the Findings of Fact, Respondent Kenneth J. Kellner, M.D., engaged in unprofessional conduct pursuant to Wis. Admin. Code § Med 10.03(1)(f), by engaging in an act of deceit, misrepresentation, or omission to a person acting on the Board's behalf.

9. As a result of the above conduct, Kenneth J. Kellner, M.D., is subject to discipline pursuant to Wis. Stat. § 448.02(3).

#### ORDER

1. The attached Stipulation is accepted.
2. Respondent Kenneth J. Kellner, M.D., is REPRIMANDED.
3. The medicine and surgery license issued to Kenneth J. Kellner, M.D., (license number 30271-20) is LIMITED as follows:
  - a. Respondent shall not prescribe, order, dispense, or administer methadone for any purpose. This limitation is permanent.
  - b. Within nine (9) months of the date of this Order, Respondent shall successfully complete 20 hours of Category I Continuing Medical education on the topic of professional ethics.

- c. Respondent shall be responsible for obtaining the course(s) required under this Order, for providing adequate course(s) descriptions to the Department Monitor, and for obtaining pre-approval of the course(s) from the Wisconsin Medical Examining Board, or its designee, prior to commencement of the course(s).
- d. The following courses are preapproved:
  - Professional Renewal in Medicine through Ethics (PRiME), Center for Continuing Education and Outreach Education at Rutgers Biomedical and Health Sciences and BioEthics Consulting, LLC.
  - Professional/Problem Based Ethics (ProBE), Competency Assessment Educational Intervention, Denver, Colorado.
- e. Respondent may propose alternative courses, which shall be the substantial equivalent of the courses that are preapproved, above.
- f. Respondent shall, within 9 months of the date of this order, show that he has successfully completed 17 hours of category I continuing medical education in the area of patient health care record keeping.
- g. Respondent shall be responsible for locating those courses, 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. The following courses are preapproved:
  - Medical Record Keeping with Individual Preceptorships, Case Western Reserve University, Continuing Medical Education Program, Cleveland, Ohio (including the preceptorship option, which includes a post-course three and six month self-critique of medical records followed by an expert preceptor review and feedback).
  - Medical Record Keeping Course, University of California at San Diego, Physician Assessment and Clinical Education Program.
- h. Respondent may propose alternative courses, which shall be the substantial equivalent of the courses that are preapproved, above.
- i. The Board or its designee may reject any course(s) and may accept a course(s) for less than the number of hours for which Respondent seeks approval.
- j. 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.

- k. Respondent is responsible for all costs associated with compliance with this educational requirement.
  - l. 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.
4. The medicine and surgery license issued to Kenneth J. Kellner, M.D., (license number 30271-20) is LIMITED as follows: Respondent may not prescribe any opioid or opiate, for longer than 30 days in any twelve-month period, to any patient.
- a. Respondent may petition the Board for modification or elimination of this limitation, upon demonstration that he will conform his prescribing of opioids and opiates to minimum standards. Such demonstration shall include demonstration of successful completion of 25 hours of Category I continuing medical education in the area of appropriate prescribing of controlled substances.
  - b. The following courses are preapproved:
    - Intensive Course in Controlled Substance Prescribing, Case Western Reserve University School of Medicine.
    - Physician Prescribing Course, University of California, San Diego School of Medicine.
    - Prescribing Controlled Drugs: Critical Issues & Common Pitfalls of Misprescribing, University of Florida College of Medicine, Department of Psychiatry.
    - Prescribing Controlled Drugs, Vanderbilt University School of Medicine and the Center for Professional Health.
  - c. Respondent may propose alternative courses, which shall be the substantial equivalent of the courses that are preapproved, above.
  - d. This limitation may be modified upon Respondent satisfying the Board's designee that he successfully completed the required education, and upon Respondent's appearing before the Board and satisfying the Board that he will prescribe controlled substances in a manner which is not a danger to the health, safety, or welfare of patient or public.
  - e. The Board may, in its sole discretion, limit Respondent's prescribing of controlled substances in any manner necessary to protect the health, safety, and welfare of patient and public. The failure to grant any petition in whole or in part for modification or elimination of this limitation shall not be deemed a denial of license, and Respondent shall not be entitled to a hearing.

5. Within 120 days from the date of this Order, Kenneth J. Kellner, M.D., shall pay COSTS of this matter in the amount of \$1700.00.

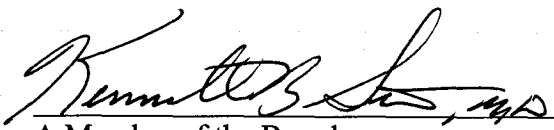
6. Requests for approval of courses, proof of successful course completion, and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

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

7. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit payment of costs as ordered or fails to submit proof of successful completion of the ordered education as set forth above, Respondent's license (no. 30271-20) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs and completion of the education.

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

WISCONSIN MEDICAL EXAMINING BOARD

by:   
A Member of the Board

December 17, 2014  
Date

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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

KENNETH J. KELLNER, M.D.,  
RESPONDENT.

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STIPULATION

0003599

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Division of Legal Services and Compliance Case No. 14 MED 068

Respondent Kenneth J. Kellner, 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 been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by Otjen, Gendelman, Zitzer, Johnson & Weir SC.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Medical Examining Board (Board). 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.

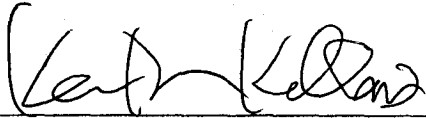


5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by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



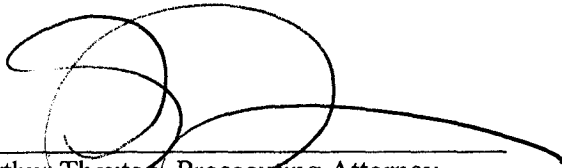
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Kenneth J. Kellner, M.D., Respondent  
Aurora Health Center  
4061 Old Peshtigo Road  
Marinette, WI 54143  
License no. 30271-20

10/24/14  
\_\_\_\_\_  
Date



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Lori Gendelman, Attorney for Respondent  
Otjen, Gendelman, Zitzer, Johnson & Weir SC  
20935 Swenson Dr Ste 310  
Waukesha WI 53186-2057

10/24/14  
\_\_\_\_\_  
Date



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Arthur Thexton, Prosecuting Attorney  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

11/13/14  
\_\_\_\_\_  
Date