

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

JOHN EDWARD KELLY, M.D.,
RESPONDENT.

:
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:
:
:

FINAL DECISION AND ORDER

0004001

Division of Legal Services and Compliance Case No. 15 MED 116

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

John Edward Kelly
820 E. Summit Ave.
Oconomowoc, WI 53066

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 John Edward Kelly, M.D. (dob July 31, 1949), is licensed in the state of Wisconsin to practice medicine and surgery, having license number 24545-20, first issued on July 1, 1982, 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 820 E. Summit Ave., Oconomowoc, WI 53066.

2. In December 2013, Respondent applied for admittance into the Department's Professional Assistance Procedure (PAP), pursuant to which he signed an Agreement for Participation (Participation Agreement) dated December 9, 2013. He was admitted to the PAP effective December 12, 2013.

3. On or about April 8, 2015, Respondent was removed from the PAP due to violations of the Participation Agreement, and the matter was referred to the Division of Legal Services and Compliance, pursuant to which this action was commenced.

4. As part of the Participation Agreement, Respondent signed a "Statement of Facts," a copy of which is attached and incorporated as Exhibit A. By signing the Statement of Facts, Respondent acknowledged that the facts therein are true and that they form a sufficient basis for subsequent disciplinary action.

5. Respondent wishes to fully cooperate, and consents to the entry of the following Conclusions of Law and Order.

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 John Edward Kelly, M.D., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(2)(a) by practicing or attempting to practice under any license when unable or unwilling to do so with reasonable skill and safety.

3. By the conduct described in the Findings of Fact, Respondent John Edward Kelly, M.D., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(2)(b) by departing from or failing to conform to the standard of minimally competent medical practice which creates an unacceptable risk of harm to a patient or the public.

4. As a result of the above conduct, John Edward Kelly, M.D., is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

IT IS ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, effective the date of this Order:

SUSPENSION

A.1. The license of John Edward Kelly M.D. (license no. 24545-20), to practice as a physician in the state of Wisconsin is SUSPENDED for an indefinite period.

A.2 Respondent shall mail or physically deliver all indicia of Wisconsin licensure to practice as a physician to the Department Monitor within 14 days of the effective date of this order. Limited credentials can be printed from the Department of Safety and Professional Services website at <http://dsps.wi.gov/>.

- A.3. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active practice for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D.6. for return of full Wisconsin licensure. The Board may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time. At the Board's discretion, the 5-year period may be started anew for every substantial or repeated violation of any provision of Sections C or D of this Order.

STAY OF SUSPENSION

- B.1. The suspension shall not be stayed any time prior to June 19, 2015; but any time after June 19, 2015, the suspension may be stayed upon Respondent providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for at least 30 days, and that Respondent's Treater (as defined in C.1. below) is of the opinion that Respondent is able to safely practice medicine and surgery under the restrictions of this Order.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. A substantial violation includes, but is not limited to, a positive drug or alcohol screen. A repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board or its designee may, in conjunction with any removal of the stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
- (a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

The license of John Edward Kelly M.D. (license no. 24545-20), to practice medicine and surgery in the state of Wisconsin is LIMITED/RESTRICTED as set forth in Wis. Stat. § 448.02(3)(e), and as follows:

Treatment Required

- C.1. Respondent shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee ("Treater"). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collection sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Safety and Professional Services, Division of Legal Services and Compliance to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation with Treater and treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported quarterly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
- C.10. Respondent shall abstain from all use of over-the-counter medications or other substances (including but not limited to natural substances such as poppy seeds) which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation. It is Respondent's responsibility to educate himself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- C.11. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within 24 hours of ingestion or administration of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.
- C.12. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that they may take from time to time. Over-the-counter medications and drugs that mask the consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation, shall not be taken unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11.

Drug and Alcohol Screens

- C.13. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department ("Approved Program").
- C.14. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.15. The Approved Program shall require the testing of specimens at a frequency of not less than 49 times per year, for the first year of this Order. After the first year, Respondent may petition the Board on an annual basis for a modification of the frequency of tests. The board may adjust the frequency of testing on its own initiative at any time.
- C.16. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.17. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- C.18. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
- C.19. The Approved Program shall submit information and reports to the Department Monitor as directed.
- C.20. Respondent shall furnish a copy of this Order to all present employers immediately upon issuance of this Order, to any hospital at which he has privileges or at which he applies for privileges, and to any prospective employer when Respondent applies for employment as a health care provider.

- C.21. Respondent may work as a physician or other health care provider in a setting in which Respondent has access to controlled substances. If Treater subsequently recommends restrictions on such access, the Board or its designee may impose such restrictions.
- C.22. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

Professional Mentor

- C.23. Upon the lifting of stay of suspension, Respondent shall practice only under the supervision of a designated Professional Mentor approved by the Board or in a work setting pre-approved by the Board or its designee.
- C.24. The Professional Mentor shall be the individual responsible for reviewing Respondent's practice of medicine and surgery during the time this Order is in effect. A Professional Mentor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Department (including but not limited to any bartering relationship, mutual referral of patients, etc.). The Professional Mentor shall be actively practicing in Respondent's field of practice, hold a valid Wisconsin license, and shall have read this Decision & Order and agree to be Respondent's Professional Mentor.
- C. 25. Supervision shall include bi-weekly meetings, review of charts selected by the Professional Mentor, and any other actions deemed appropriate by the Professional Mentor to determine that Respondent is practicing in a professional and competent manner. The Professional Mentor may designate another qualified physician or other health care provider acceptable to the Board to exercise the duties and responsibilities of the Professional Mentor in an absence of more than three weeks. In the event that the Professional Mentor is unable or unwilling to continue to serve as Respondent's professional mentor, the Board may in its sole discretion select a successor Professional Mentor.
- C.26. The Professional Mentor shall have no duty or liability to any patient or third party, and the Mentor's sole duty is to the Board.
- C.27 Respondent shall arrange for his Professional Mentor to provide formal written reports to the Department Monitor in the Department of Safety and Professional Services, Division of Legal Services and Compliance P.O. Box 7190, Madison, Wisconsin 53707-7190 on a monthly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance.
- C.28. Respondent's Professional Mentor shall immediately report to the Department Monitor any conduct or condition of the Respondent which may constitute unprofessional conduct, a violation of this Order, or a danger to the public or patient.

- C.29 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.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Wisconsin Department of Safety and Professional Services
Division of Legal Services and Compliance
1400 East Washington Ave.
P.O. Box 7190
Madison, WI 53707-7190
Fax: (608) 266-2264
Telephone: (608) 267-3817
DSPSMonitoring@wisconsin.gov

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.
- D.3. Every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Board

- D.4. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Board on an annual basis for modification of the terms of this Order, however no such petition for modification shall occur earlier than one year

from the date of the initial stay of the suspension. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

- D.6. Respondent may petition the Board for termination of this Order any time after five years from the date of the initial stay of the suspension. However, no petition for termination shall be considered without a showing of continuous, successful compliance with the terms of the Order, for at least five years.

Costs of Compliance

- D.7. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, mentoring and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

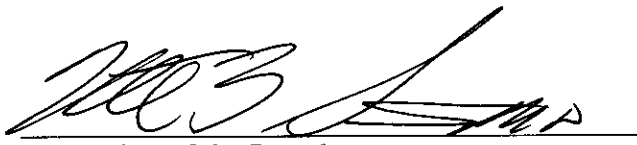
- D.8. Respondent shall pay costs of \$503.25 to the Department of Safety and Professional Services, within ninety (90) days of this Order. Payment shall be directed to the attention of the Department Monitor at the address in paragraph D.1., above. In the event Respondent fails to timely submit any payment of costs, the Respondent's license (#24545-20) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

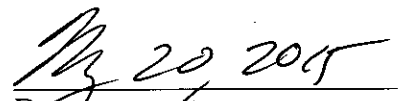
Additional Discipline

- D.9. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 448.02.

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

JOHN E. KELLY, M.D.,
RESPONDENT.

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STIPULATION

0004001

Division of Legal Services and Compliance Case No. 15 MED 116

Respondent John E. Kelly, 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 is
represented by Attorney Daniel P. Fay of Oakton Avenue Law Offices, S.C.

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

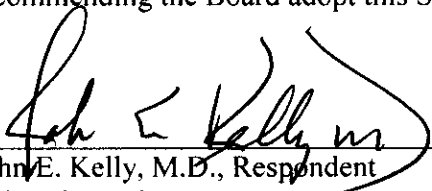
Stipulation
In the matter of disciplinary proceedings against
John E. Kelly, M.D., Case No. 15 MED 116

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.

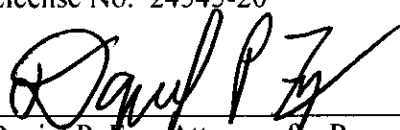
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



John E. Kelly, M.D., Respondent
820 E. Summit Ave.
Oconomowoc, WI 53066
License No. 24545-20

4-29-15

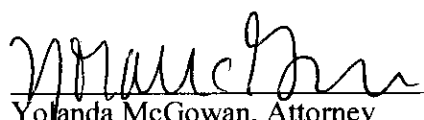
Date



Daniel P. Fay, Attorney for Respondent
Oakton Avenue Law Offices, S.C.
200 Oakton Avenue
Pewaukee, WI 53072

5-1-15

Date



Yolanda McGowan, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

5/5/15

Date

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

PROFESSIONAL ASSISTANCE PROCEDURE

STATEMENT OF FACTS

1. John E. Kelly, M.D. (DOB July 31, 1949) is licensed to practice medicine and surgery in the state of Wisconsin, pursuant to credential no. 24545-20.

2. Dr. Kelly's most recent address on file with the Wisconsin Medical Examining Board is 820 E. Summit Ave., Oconomowoc, WI 53066.

3. On July 8, 2013, Dr. Kelly pleaded guilty in Waukesha County Wisconsin to OWI (2nd). He was sentenced to 90 days of jail time with Huber for work, school and treatment. Dr. Kelly was also required to have ignition interlock installed on his vehicles for a period of 18 months beginning on August 22, 2013. He did not report this conviction to the Department as required by Wis. Admin. Code SPS 4.09(2).

4. On October 17, 2013 the Department received an informal complaint from a colleague who was notified by a patient of Dr. Kelly's that he had alcohol on his breath when she presented for an appointment. The patient explained that Dr. Kelly was intoxicated and confused during her office visit.

5. Dr. Kelly is the medical director at Oconomowoc Development Treatment Center (ODTC). In the course of the investigation a nurse at ODTC reported that Dr. Kelly began coming to work smelling of alcohol, and would see patients while impaired, beginning in approximately Spring of 2013. Dr. Kelly also has works as a solo practitioner at his office at 820 E. Summit Avenue in Oconomowoc, WI. Office staff reports that Dr. Kelly's appointments had to be cancelled on October 10, 2013 and October 17, 2013 because he was inebriated and in no condition to see patients.

6. Dr. Kelly's first admission for alcohol detoxification was in June of 2012 at Rogers Memorial Hospital. On October 18, 2013 Dr. Kelly was again admitted to Rogers Memorial Hospital for alcohol detoxification following an intervention at his office. On October 21, 2013 Dr. Kelly was admitted to Herrington Recovery Center for intensive inpatient treatment. Dr. Kelly has been diagnosed with alcohol dependence with physiologic dependence.

7. By signing this document, Dr. Kelly admits that the facts set forth above are true. Dr. Kelly affirms his understanding that in the event he is terminated from the Wisconsin Professional Assistance Procedure for any reason, this Statement of Facts may be used as evidence in a disciplinary action against his license. Dr. Kelly further agrees that the facts contained in this Statement shall be deemed as sufficient basis for subsequent disciplinary action under the requirements of Wis. Stat. § 448.02 and allowed by the Americans with Disabilities Act of 1990.



John E. Kelly, M.D.
PAP Participant

12/9/13

Date