

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov



**Before the
State Of Wisconsin
Medical Examining Board**

In the Matter of the Disciplinary Proceedings
Against Jonathan G. Peterson, M.D., Respondent

FINAL DECISION AND ORDER

Order No. 0004486

Division of Legal Services and Compliance Case No. 14 MED 029

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 20th day of January, 201~~7~~⁶. *KS*

Member
Medical Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against Jonathan G. Peterson, M.D., Respondent

DHA Case No. SPS-14-0092
DLSC Case No. 14 MED 029

PROPOSED DECISION AND ORDER

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

Jonathan G. Peterson
207 Hiawatha Drive E
P.O. Box 266
Wabasha, MN 55981

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

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

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

PROCEDURAL HISTORY

This case has a long and complicated history, although the legal issue is ultimately straightforward. On November 20, 2014, a Complaint was filed by the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), alleging that Respondent Jonathan G. Peterson (Respondent) engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(3)(c), in that his medical license was subject to an adverse determination by the Minnesota Board of Medical Practice (Minnesota Board). The allegation was based on a January 11, 2014 Order by the Minnesota Board under which Respondent was subject to a reprimand, a \$1,000 fine and various conditions and restrictions on his Minnesota medical license (the 2014 MN Order).

Respondent, who was then represented by counsel, filed an Answer to the Division's Complaint. A telephone prehearing conference was held on December 22, 2014, at which the Division indicated it would move for summary judgment on grounds that the 2014 MN Order constituted unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(3)(c). On March 24, 2015, following summary judgment briefing by the parties, Respondent's counsel withdrew from representing Respondent. On April 10, 2015, the administrative law judge (ALJ) issued a Summary Judgment Order granting the Division's motion for summary judgment, but reserving the issues of discipline and costs for additional briefing. The Summary Judgment Order set a telephone conference for April 24, 2015 on the issues of discipline and costs.

On the morning set for the conference, Respondent contacted the ALJ requesting a postponement of the conference for medical reasons. The ALJ granted the request and rescheduled the conference to May 7, 2015. On May 5, 2015, Respondent contacted the Division, again requesting a postponement of the conference because he had retained new (unidentified) counsel, who would need time to review the matter. The Division forwarded Respondent's request to the ALJ, and, over the Division's objection, the ALJ again granted the request for a continuance, postponing the conference to May 18, 2015.

On May 10, 2015, the Minnesota Board issued an additional order against Respondent (the 2015 MN Order). The 2015 MN Order replaced the 2014 MN Order, indefinitely suspended Respondent's Minnesota medical license, prohibited him from any form of medical practice in Minnesota, and required Respondent to satisfy certain conditions carried over from the 2014 MN Order before he may petition the Minnesota Board for reinstatement.

On May 18, 2015, the telephone conference was convened at which Respondent's new counsel requested additional time to review the matter. An additional telephone conference was held on May 28, 2015, at which counsel appeared for Respondent. At the conference, the Division asked to proceed with briefing on discipline -- to reflect that found in the 2015 MN Order -- and costs, all based on the ALJ's April 10, 2015 Summary Judgment Order. Because the Minnesota Board had rescinded the 2014 MN Order upon which the ALJ's Summary Judgment Order was based, the ALJ denied the Division's request and instead granted the Division's request to file a motion for leave to file an Amended Complaint to reflect the 2015 MN Order. The Division stipulated that the ALJ's April 10, 2014 Summary Judgment Order could be rescinded contingent on the Division being granted leave to file an Amended Complaint.

On June 2, 2015, Respondent's counsel filed a Request for Consideration. On June 10, 2015, the Division filed a Motion For Leave to File An Amended Complaint and Amended Complaint alleging that the 2015 MN Order constitutes unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(3)(c). On June 11, 2015, the Division filed a response to Respondent's Motion for Reconsideration.

On June 15, 2015, the ALJ issued an order rescinding the April 10, 2015 Summary Judgment Order, granting the Division's motion for leave to amend its Complaint, and setting a briefing schedule for another summary judgment motion. The order also required Respondent to

file an Amended Answer, pursuant to the requirements set forth in Wis. Admin. Code §§ SPS 2.08 and 2.09. It further required Respondent to file a response to the Division's motion for summary judgment by September 3, 2015. Respondent failed to file an Answer to the Division's Amended Complaint. On July 13, 2015, counsel withdrew from representing Respondent.

On August 5, 2015, the Division filed a second motion for summary judgment, arguing that summary judgment was appropriate because the 2015 MN Order constitutes unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(3)(c). The Division mailed and emailed its motion to Respondent. Respondent did not file a response by the September 3, 2015 deadline and did not request additional time to file a response, even after the Division noted Respondent's failure to respond in a September 10, 2015 email to Respondent and the ALJ.

On September 11, 2015, the ALJ issued a Summary Judgment Order granting the Division's motion for summary judgment, finding that the 2015 MN Order constitutes unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(3)(c). However, the ALJ denied summary judgment with respect to discipline and costs, and ordered the parties to attend a telephone status conference on September 23, 2015.

The September 11, 2015 Summary Judgment Order was sent to Respondent at his address on file with the Division and the ALJ. On September 22, 2015, the ALJ's legal assistant sent Respondent an email, informing him that the Summary Judgment Order sent to him was returned by the U.S. Postal Service on September 10, 2015. The email attached the Summary Judgment Order and noted that pursuant to the Summary Judgment Order, a telephone conference was set for the following day, on September 23, 2015, at 11:30 a.m. The email address used for Respondent was one which had been used on several prior occasions by Respondent to communicate with the ALJ and the Division.

The Division appeared for the September 23, 2015 telephone conference, but Respondent did not. The ALJ left voicemails for Respondent at two separate telephone numbers but Respondent did not return the ALJ's telephone call as advised. On September 23, 2015, the ALJ issued an order requiring the Division to submit a recommended proposed decision and order on discipline and costs no later than October 7, 2015, which was later postponed to October 9, 2015.

Approximately two weeks after the September 23, 2015 status conference, on October 7, 2015, Respondent emailed the ALJ's assistant, forwarding correspondence between himself and his administrative assistant and providing details with respect to problems he claimed to have with his P.O. Box. He stated that he did not see the September 22, 2015 email sent to him from the ALJ's assistant until September 23, 2015, when the ALJ called him for the status conference. He stated, "I did not answer the call as I was getting my broken -1538 fixed and the -1545 had not been downloaded since about 9-21-15." ("1538" and "1545" are the last four digits of the telephone numbers called by the ALJ for the status conference.)

On October 8, 2015, the Division filed its recommended proposed decision and order. On October 9, 2015, Respondent again emailed the ALJ's legal assistant, providing further details with respect to his alleged problems with the post office and requesting the opportunity to respond to the Division's submissions. The ALJ responded that same day, giving Respondent

three weeks, until October 30, 2015, to file a response to the Division's submissions on the issues of discipline and costs. The ALJ specifically advised Respondent that the summary judgment order had already determined that a violation had occurred, that that issue would not be revisited, and that the only issues remaining were those pertaining to discipline and costs. Respondent filed a response on October 30, 2015, which, among other things, again challenged the Minnesota Board's findings and the ALJ's conclusion that Respondent violated professional standards.

FINDINGS OF FACT

The following facts are taken from the September 11, 2015 Summary Judgment Order.

1. Respondent Jonathan G. Peterson, M.D. (DOB January 31, 1950), is licensed in the State of Wisconsin to practice medicine and surgery, having license number 38630-20, first issued on March 21, 1997, with registration current through October 31, 2015.

2. Respondent is a board certified psychiatrist engaged in private practice in Minnesota. Respondent is licensed to practice medicine and surgery in Minnesota, having Minnesota license number 33,320, first issued on January 20, 1990.

3. On January 11, 2014, Respondent and the Minnesota Board entered into a Stipulation and Order (2014 MN Order).

4. On May 14, 2015, the Minnesota Board issued Findings of Fact, Conclusions, and Final Order against Respondent (2015 MN Order).

5. The 2015 MN Order rescinded the 2014 MN Order.

6. Among other things, the 2015 MN Order establishes the following:

a. Respondent violated the 2014 MN Order by failing to comply with the educational requirements it imposed; and

b. Respondent claimed an ongoing inability to comply with the educational requirements imposed by the 2014 MN Order.

7. The 2015 MN Order indefinitely suspended Respondent's Minnesota medical license and prohibits Respondent from engaging in any form of medical practice in Minnesota while his license is suspended.

DISCUSSION AND CONCLUSIONS OF LAW

Violation of Wis. Stat. § 448.02(3) and Wis. Admin. Code § Med 10.03(3)(c)

If the Wisconsin Medical Examining Board (Board) determines that a licensee has engaged in unprofessional conduct, it may warn or reprimand the licensee, or limit, suspend or revoke any license granted by the Board. Wis. Stat. § 448.02(3)(c). Unprofessional conduct

includes “[h]aving any credential pertaining to the practice of medicine and surgery or any act constituting the practice of medicine and surgery become subject to adverse determination by any agency of this or another state, or by any federal agency or authority.” Wis. Admin. Code § Med 10.03(3)(c).

As stated in the ALJ’s September 11, 2015 Summary Judgment Order, there is no dispute that the 2015 MN Order constitutes an “adverse determination” against Respondent’s license to practice medicine or surgery, as contemplated by Wis. Admin. Code § Med 10.03(3)(c). As a result, Respondent has engaged in unprofessional conduct under Wis. Stat. § 448.02(3) and Wis. Admin. Code § Med 10.03(3)(c).

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 recommends that Respondent’s license to practice medicine and surgery in the State of Wisconsin be indefinitely suspended and limited as set forth in the Order section below. Such limitations include complying with the terms and conditions placed on his Minnesota license by the Minnesota Board and notifying the Department of any violation of the 2015 MN Order.

Respondent’s main argument against imposition of any discipline or costs is that the Minnesota Board’s decision was wrong, and, by implication, so was the ALJ’s second (December 11, 2015) Summary Judgment Order finding that the 2015 MN Order constituted grounds for finding unprofessional conduct in Wisconsin. The issue of whether a violation occurred was already decided against Respondent in the ALJ’s second Summary Judgment Order. Therefore, as Respondent was previously advised, the issue of whether a violation occurred will not be revisited for purposes of determining discipline and costs.

Respondent’s argument that no discipline should be imposed is also predicated on numerous incorrect procedural and factual assertions. For example, he states that the Division’s Amended Complaint was never received by him or his attorney (Respondent’s October 30, 2015 Response, p. 2), when in fact it was sent to his counsel of record and was not returned to the Division of Hearings and Appeals as undeliverable. Respondent also states that the Division contacted the ALJ (and Respondent) by email on July 31, 2015 regarding what materials may be included in its Amended Complaint (*id.*, p. 2), when in fact the Division inquired about its summary judgment motion. Respondent further states that he did not receive any order containing a September 3, 2015 deadline to file a response to the motion for summary judgment. (*Id.*, p. 3) However, because Respondent was still represented by counsel at that time, the briefing schedule was sent to his two attorneys at two different firms. Moreover, when Respondent’s counsel withdrew from representation, there were several email exchanges with Respondent himself regarding the summary judgment motion. For example, on August 5, 2015, the Division not only mailed its summary judgment motion to Respondent but emailed it to him as well. In addition, on September 10, 2015, the Division sent an email to Respondent and the

ALJ noting that Respondent had not filed a response to the motion. Respondent did not indicate at that time that he was unaware of the due date nor did he request leave to file a late response.

Respondent also contends that the unprofessional conduct in this case is “solely being based on a rescinded order in MN” (*id.*, p. 3, 5-7), when in fact it is based on the Minnesota Board’s 2015 Order which is still in effect. Respondent also states with respect to the counts alleged in this case that “[n]one were proven, all were dropped.” (*Id.*, p. 50) This clearly contradicts the ALJ’s September 11, 2015 Summary Judgment Order which concluded that Respondent engaged in unprofessional conduct under Wis. Admin. Code § Med 10.03(3)(c) as alleged by the Division. Respondent also states that he has had no prior discipline. However, that assertion is untrue as Respondent was twice disciplined by the Minnesota Board prior to this Wisconsin case. Respondent also contends that he has never engaged in misconduct (*id.*, p. 5), contrary to the conclusion of the ALJ’s September 11, 2015 Summary Judgment Order and the Minnesota Board’s 2015 Order concluding that Respondent had violated the Minnesota Board’s prior order.

Under the factors set forth in *Aldrich* and the facts of this case, the discipline recommended by the Division is warranted. The discipline protects the public by ensuring that Respondent practices only if and when he can do so with sufficient safety, skill and competence. It will serve to rehabilitate Respondent by requiring him to comply with the Board’s orders and by helping him understand that such compliance is not optional and that failure to comply is serious.

Finally, this discipline deters other licensees from engaging in similar conduct, and serves to ensure consistent regulation of individuals licensed in more than one state, in particular, those licensed in adjoining states.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. With respect to imposition of costs, factors to consider include: (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 cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, Order No. LS 0802183 CHI (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 in *Buenzli-Fritz*, imposing full costs on Respondent is appropriate.

With respect to the first factor, I note that in both its original and Amended Complaint, the Division alleged one count of violating Wis. Admin. Code § Med 10.03(3)(c). Respondent contested this allegation, but the Division has twice been granted summary judgment on the count it pled against Respondent. Although the ALJ’s first Summary Judgment Order was rescinded, this was due to the fact that the Minnesota Board rescinded its 2014 Order upon which

the ALJ's first Summary Judgment Order was based. The Minnesota Board only rescinded its 2014 MN Order because Respondent did not comply with it. Therefore, the Minnesota Board issued a second order, the 2015 MN Order, which rescinded the 2014 MN Order and imposed a harsher penalty on Respondent. Thus, it is appropriate to consider not only those costs associated with the Division's Amended Complaint and the ALJ's second Summary Judgment Order, but also those associated with the Division's initial Complaint and the ALJ's first Summary Judgment Order.

Also important to a determination of costs is the fact that the conduct alleged in this case is serious – an adverse determination issued by the Minnesota Board, which indefinitely suspended Respondent's license for failing to comply with the Minnesota Board's prior disciplinary order. The Minnesota Board's significant discipline reflects the seriousness of Respondent's misconduct. The misconduct and recommended discipline in this case are likewise serious, with the recommended discipline being indefinite suspension of Respondent's license, the same discipline imposed by the Minnesota Board.

With respect to the cooperation of Respondent, the Division notes Respondent's refusal to admit the initial and subsequent violation, when, according to the Division, the violation was straightforward. With respect to the Division's original Complaint, Respondent, through counsel, disputed that the 2014 MN Order was an adverse determination because it was the result of a stipulation. Although that position was rejected in the ALJ's original Summary Judgment Order, in making such an argument, Respondent cannot be said to have failed to cooperate, particularly where the Division bears the burden of proof. However, when the Minnesota Board issued its subsequent order indefinitely suspending Respondent's license, which was not the result of a stipulated agreement, Respondent (still represented by counsel) continued to dispute the violation alleged, while at the same time failing to make any argument whatsoever to support such a position. Respondent failed to file either an Amended Answer to the Amended Complaint or a response to the Division's motion for summary judgment. When Respondent was no longer represented by counsel, his participation in these proceedings diminished further, with Respondent failing to appear at the telephone conference to discuss whether the remaining issues of discipline and costs should be argued in person or through briefs. Respondent claims to have had problems with both the post office and with his telephone, and claims not to have received the September 22, 2015 email reminding him of the conference until after the ALJ attempted to call him for the conference on September 23, 2015. Even assuming the truth of Respondent's representations, Respondent did nothing to try to remedy the situation until approximately two weeks later. Respondent was then given another opportunity to respond; however, when he submitted his response three weeks later, it contained numerous misstatements, set forth above. With respect to cooperation, the Division also aptly notes Respondent's numerous requests for postponement of these proceedings. In light of the foregoing, Respondent's participation in these proceedings has been sketchy at best.

Regarding prior disciplinary proceedings against Respondent, I note that he has been disciplined twice by the Minnesota Board, first in 2014, and then again in 2015 when he failed to follow the Minnesota Board's prior order. Finally, given the fact that the Department is a "program revenue" agency, whose operating costs are funded by the revenue received for

licensees, fairness dictates imposing the costs of disciplining Respondent upon Respondent and not fellow members of the medical profession who have not engaged in such conduct.

As a result, Respondent should be assessed all recoverable costs in this matter, as determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS ORDERED that the license of Jonathan G. Peterson, M.D., to practice medicine and surgery in the State of Wisconsin and the right to renew such license are INDEFINITELY SUSPENDED and LIMITED as follows:

- a. Respondent shall provide a copy of this order and the 2015 MN Order to the medical director at every facility in Wisconsin which employs him under any circumstances.
- b. Respondent shall comply fully with the terms and conditions placed on his Minnesota license and shall notify the Department of any alleged violation of the 2015 MN Order.
- c. Any conclusion by the Minnesota Board that Respondent has violated the 2015 MN Order is conclusive evidence of a violation for purposes of the Wisconsin Medical Examining Board.
- d. Respondent shall notify the Department of any changes in the status of his Minnesota license within a week of the change.
- e. The Board will recognize Respondent's completion of the course requirements set forth in the 2015 MN Order as satisfying the educational requirements the Board would have otherwise ordered.
- f. This order shall remain in effect as long as the 2015 MN Order is in effect. Respondent shall notify the Department that the 2015 MN Order has expired by providing the Department with written confirmation thereof from the Minnesota Board.

IT IS FURTHER ORDERED that 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 7190
Madison, WI 53707-7190

IT IS FURTHER ORDERED that the terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on November 16, 2015.

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