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

In the Matter of Disciplinary Proceedings Against
Dale R. Tavis, M.D., Respondent

FINAL DECISION AND ORDER

Order No. 0004665

Division of Legal Services and Compliance Case No. 14 MED 487

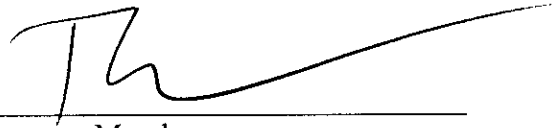
The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 April, 2016.



Member
Medical Examining Board



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

In the Matter of Disciplinary Proceedings Against
Dale R. Tavis, M.D., Respondent

DHA Case No. SPS-16-0001
DLSC Case No. 14 MED 487

PROPOSED DECISION AND ORDER

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

Dale R. Tavis, M.D.
2200 Hermitage Avenue
Silver Spring, M.D. 20902

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

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

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

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Dale R. Tavis, M.D. (Respondent), alleging that Respondent engaged in unprofessional conduct by failing to complete 30 continuing medical education hours during the 2012-2013 biennium and by failing to retain evidence of compliance with the continuing education requirements.

The Notice of Hearing and Complaint in this matter were served on Respondent by the Division on January 5, 2016, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondent failed to file an answer within 20 days as required by Wis. Admin. Code § SPS 2.09(4).

On January 25, 2015, the undersigned Administrative Law Judge (ALJ) issued a Notice of Telephone Prehearing Conference which set a telephone hearing conference for February 8, 2016. Respondent was required to provide to the ALJ a telephone number at which he could be reached for the prehearing conference no later than February 3, 2016. Respondent failed to provide a telephone number and failed to appear at the telephone prehearing conference.

By notice dated February 9, 2016, the ALJ rescheduled the telephone prehearing conference for February 22, 2016, but Respondent again failed to appear. The Division moved for default judgment based on Respondent's failure to appear and failure to file an Answer to the Complaint.

On February 22, 2016, the ALJ issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order no later than February 26, 2016. On February 26, 2016, the Division filed a Proposed Decision and Order.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-8 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Dale R. Tavis, M.D., is licensed in the State of Wisconsin to practice medicine and surgery, having license number 20448-20, first issued on October 1, 1976, and current through October 31, 2017.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2200 Hermitage Avenue, Silver Spring, Maryland 20902.

3. In 2014, the Department conducted an audit of physicians to determine their compliance with the continuing medical education requirements for the 2012-2013 biennium.

4. Respondent's name was randomly selected as a subject of the audit pursuant to Wis. Stat. § 448.13(1m).

5. Pursuant to Wis. Stat. § 448.13(1)(a)1, each physician shall submit proof of attendance at and completion of continuing education programs or courses of study approved for at least 30 hours of credit by the Wisconsin Medical Examining Board (Board) within the two calendar years preceding the calendar year for which the registration is effective.

6. Respondent submitted evidence that he completed 30 hours of continuing medical education.

7. All of the continuing education submitted was completed after the 2012-2013 biennium.

8. Respondent therefore failed to demonstrate compliance with continuing medical education requirements for the 2012-2013 biennium.

Facts Related to Default

9. The Complaint and Notice of Hearing in this matter were served on Respondent on January 5, 2016, by both certified and first class mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing instructed Respondent: "If you do not provide a proper Answer within 20 days, you will be found in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

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

11. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for February 8, 2016. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which he could be reached for the conference no later than February 3, 2016. The Notice instructed Respondent: "The Respondent's failure to appear at the scheduled conference or hearing may result in default judgment being entered against the Respondent."

12. Respondent failed to provide a telephone number at which he could be reached for the prehearing conference.

13. At the prehearing conference held on February 8, 2016, the Division provided a telephone number for Respondent. The ALJ left a message for the Respondent at the number provided but the Respondent failed to contact the ALJ.

14. By Notice dated February 9, 2016, the ALJ rescheduled the telephone prehearing conference for February 22, 2016 but Respondent again failed to appear for the conference. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). The ALJ granted the motion for default.

15. On February 22, 2016, the ALJ issued a Notice of Default and Order which required the Division to file and serve no later than February 26, 2016, a recommended proposed decision and order.

16. The Division timely filed its recommended proposed decision and order on February 26, 2016.

17. Respondent did not file a response to the Notice of Default or to the Division's recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the February 22, 2016 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conferences held on February 8, 2016 and February 22, 2016. As a result, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violations

If the Board finds that that a person is guilty of unprofessional conduct or negligence in treatment, the Board may warn or reprimand that person, and/or limit, suspend or revoke any license granted by the Board to that person. Wis. Stat. § 448.02(3)(c).

Unprofessional conduct is defined by Wis. Admin. Code § Med 10.03(1)(a) to include “[v]iolating or attempting to violate ch. 448, Stats., or any provision, condition, or term of a valid rule or order of the board.”

Wisconsin Stat. § 448.13(1)(a) provides that each physician shall, in each second year at the time of application for a certificate of registration, submit proof that the physician completed at least 30 credits of continuing education hours within the two calendar years preceding the calendar year for which the registration is effective.

As shown by the facts above, Respondent violated Wis. Stat. § 448.13(1)(a) by failing to provide evidence that he had completed 30 continuing medical education hours approved by the Board during the 2012-2013 biennium. In violating Wis. Stat. § 448.13(1)(a), Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(1)(a) and is therefore subject to discipline pursuant to Wis. Stat. § 448.02(3).¹

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 to provide proof of compliance with continuing education requirements, as set forth in the Order section below.

¹ The Division also asserts that Respondent violated Wis. Admin. Code § 13.05(2), which states that “[e]vidence of compliance shall be retained by each physician through the biennium for which 30 hours of credit are required for registration.” The facts alleged in the Complaint, which are accepted as true in these default proceedings, do not support, or even address, this allegation. I therefore cannot conclude that Respondent violated Wis. Admin. Code § 13.05(2).

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 he can show that he is in compliance with the continuing medical education requirements that apply to all physicians. It will serve to rehabilitate Respondent by requiring him to comply with the rules and by helping him understand that such compliance is not optional and that failure to comply is serious. Finally, it deters other licensees from engaging in similar conduct.

Costs

The Board has authority to assess costs pursuant to Wis. Stat. § 440.22(2). 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*, LS 0802183 CHI (Aug. 14, 2008).

In this case, the Division has proven unprofessional conduct. The discipline recommended and imposed involves an indefinite suspension, one of the highest levels of discipline. In addition, Respondent has failed to participate in any way in these proceedings. Moreover, given the fact that the Department is a “program revenue” agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining Respondent upon Respondent and not fellow members of the medical profession who have not engaged in such conduct.

Based on the facts of this case and the factors delineated in *Buenzli-Fritz*, 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 Respondent Dale R. Tavis, M.D., to practice medicine and surgery in the State of Wisconsin (license no. 20448-20) is INDEFINITELY SUSPENDED and LIMITED as follows:

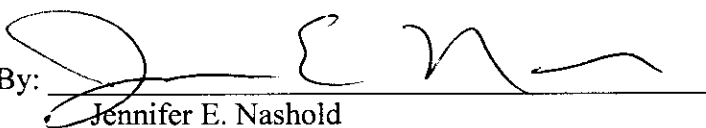
- a. Respondent shall provide proof satisfactory to the Board or its delegate that he is in compliance with the continuing education requirements for the 2014-2015 biennium.
- b. Respondent shall provide proof satisfactory to the Board or its delegate that he has completed 30 hours of acceptable continuing medical education which shall be applied to the 2012-2013 biennium. These hours may not be applied to any other biennium.

- c. This order shall remain in effect until Respondent has complied with a and b above.

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.

Dated at Madison, Wisconsin on February 29, 2016.

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

By: 
Jennifer E. Nashold
Administrative Law Judge