

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 | : | |
| | : | FINAL DECISION AND ORDER |
| MARK C. BENDER, P.A., | : | |
| RESPONDENT. | : | |

0004757

Division of Legal Services and Compliance Case No. 14 MED 261

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

Mark C. Bender, P.A.
1314 Hillside Drive
Waukesha, WI 53186

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 Mark C. Bender, P.A. (DOB March 16, 1964), is licensed in the state of Wisconsin as a physician assistant, having license number 1135-23, first issued on October 8, 1999, with registration current through February 28, 2018. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 1314 Hillside Drive, Waukesha, Wisconsin 53186.

2. In 2013 and 2014, Respondent worked as a physician assistant in the emergency department of a large medical facility in southeastern Wisconsin.

3. On multiple occasions during that time period, Respondent prescribed controlled substances, opioids and amphetamines in particular, to at least two co-workers without establishing and maintaining health care records, without performing any examinations, without required physician supervision, and while accepting “kick-backs” of the controlled substances he was prescribing.

4. Respondent further prescribed non-controlled substances, such as antibiotics, to other co-workers and their families without examinations or establishing and maintain health care records.

5. When interviewed by a Department investigator, Respondent was forthcoming and remorseful about his misconduct, and acknowledged it warrants professional discipline. He therefore consents to 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 Mark C. Bender, P.A., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(2)(c) by prescribing, ordering, dispensing, administering, supplying, selling, giving, or obtaining any prescription medication in any manner that is inconsistent the standard of minimal competence.

3. By the conduct described in the Findings of Fact, Respondent Mark C. Bender, P.A., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(3)(e) by failing to establish and maintain timely health care records, including records of prescription orders, under s. Med 21.03, or as otherwise required by law.

4. As a result of the above conduct, Mark C. Bender, P.A., is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

1. The attached Stipulation is accepted.

2. Respondent Mark C. Bender, P.A., is REPRIMANDED.

3. The physician assistant license issued to Mark C. Bender, P.A., (no. 1135-23) is LIMITED as follows:

a. Within nine (9) months of the date of this Order, Respondent shall successfully complete six (6) credits each on the topics of responsible prescribing, medical record-keeping, and professional boundaries, for a total of eighteen (18) credits.

b. 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.

c. The Board or its designee may reject any course and may accept a course for less than the number of hours for which Respondent seeks approval.

d. 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 approved for satisfaction of this requirement along with supporting documentation of attendance from the sponsoring organizations.

e. Respondent is responsible for all costs associated with compliance with this educational requirement.

f. 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. Within thirty (30) days of the date of this Order, Respondent shall schedule an AODA evaluation by a professional preapproved by the Board or its designee (Evaluator) and will undergo the evaluation as soon as possible, but not more than thirty (30) days thereafter. Respondent shall, within five (5) days of scheduling the evaluation, notify the Department Monitor at the contact listed below of the facility and dates on which the evaluation will occur.

a. Respondent shall execute necessary documents authorizing the Department to obtain records of the evaluation, and to discuss Respondent and his case with the Evaluator.

b. Respondent shall provide the Department with authorizations allowing the Department and the Evaluator to communicate with all physicians and facilities at which Respondent has been treated or evaluated.

c. The parties may provide whatever documentation they believe may be helpful to the Evaluator. The parties shall contemporaneously copy the opposing party on all communication by or on their behalf with the Evaluator.

d. Respondent shall comply with all reasonable requests by the Evaluator for purposes of scheduling and completing the evaluation, including any additional testing deemed helpful. Any lack of reasonable and timely cooperation, as determined by the Evaluator, may constitute a violation of an order of the Board.

e. Respondent shall comply with all additional evaluations or treatment recommended by the Evaluator.

f. Respondent is responsible for timely payment of all costs associated with the evaluation, including additional evaluations or treatment recommended by the Evaluator.

g. Respondent shall execute all releases necessary to permit disclosure of the final evaluation report to the Board or its designee. Certified copies of the final evaluation report shall be admissible in any future proceeding before the Board.

5. Within ninety (90) days from the date of this Order, Mark C. Bender, P.A., shall pay COSTS of this matter in the amount of \$1,500.00.

6. Proof of successful course completion, AODA evaluation, 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, fails to timely complete the AODA evaluation as ordered, or fails to submit proof of successful completion of the ordered education as set forth above, Respondent's license (no. 1135-23) 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: T. Westlake MD
A Member of the Board

6/15/16
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MARK C. BENDER, P.A.,
RESPONDENT.

:
:
:
:
:

STIPULATION

0004757

Division of Legal Services and Compliance Case No. 14 MED 261

Respondent Mark C. Bender, P.A., 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 Attorney Christopher T. Kolb.

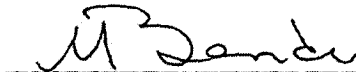
4. Respondent agrees to the adoption of the attached Final Decision and Order by
the Wisconsin Medical Examining Board (Board). The parties to the Stipulation consent to the
entry of the attached Final Decision and Order without further notice, pleading, appearance or
consent of the parties. Respondent 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 or Respondent's attorney, 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.



Mark C. Bender, P.A., Respondent
1314 Hillside Drive
Waukesha, WI 53186
License no. 1135-23

5/26/16


Date



Christopher T. Kolb, Attorney for Respondent
Halling & Cayo, S.C.
320 E. Buffalo Street, Suite 700
Milwaukee, WI 53202

5/26/16

Date



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

5/26/16

Date