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

In the Matter of Disciplinary Proceedings Against
Barry S. Barudin, M.D., Respondent

FINAL DECISION AND ORDER

Order No. 0004877

Division of Legal Services and Compliance Case No. 15 MED 420

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 17th day of August, 2016.

Member
Medical Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Barry S. Barudin, M.D., Respondent

DHA Case No. SPS-16-0042
DLSC Case No. 15 MED 420

PROPOSED DECISION AND ORDER

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

Barry S. Barudin, M.D.
402 S. Baldwin Street
Greenville, MI 48838

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

The Notice of Hearing and the Complaint in this matter were served on Respondent Barry S. Barudin, M.D. (Respondent), by the Department of Safety and Professional Services (Department) Division of Legal Services and Compliance (Division) on May 5, 2016, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. An Answer to a Complaint must be filed within 20 days from the date of service of the Complaint. Wis. Admin. Code § SPS 2.09(4). No Answer has been filed.

Following expiration of the 20-day time period to file an Answer, the undersigned administrative law judge (ALJ) scheduled a prehearing conference for June 6, 2016. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached for the conference no later than June 1, 2016. Respondent failed to provide a telephone number and could not be reached for the prehearing conference.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the prehearing conference, the ALJ found the Respondent to be in default.

On June 6, 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 June 17, 2016. The Division timely filed its required submission.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-14 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Barry S. Barudin, M.D., is licensed in the State of Wisconsin to practice medicine and surgery, having license number 37258-20, first issued on November 17, 1995, with registration expired as of November 1, 2015.

2. Respondent currently retains the right to automatically renew registration of his license to practice medicine and surgery.

3. Respondent's most recent address on file with the Department is 402 South Baldwin Street, Greenville, Michigan 48838.

4. On January 8, 2015, the State of Michigan Department of Licensing and Regulatory Affairs, Bureau of Health Care Services, Board of Medicine Disciplinary Subcommittee (Michigan Board) issued an Administrative Complaint alleging Respondent failed to create and retain a medical record of his treatment of a coworker. The Complaint further alleged Respondent signed blank prescription forms for use by his staff in his absence.

5. On August 31, 2015, the Michigan Board issued a Consent Order and Stipulation placing Respondent on probation for a minimum period of one day, not to exceed six months, and imposing the following terms and conditions:

- a. comply with all applicable provisions of the Public Health Code and rules under the Public Health Code;
- b. successfully complete and submit proof of completing a minimum of five hours of continuing education in the areas of documentation and safe prescribing; and
- c. pay a fine in the amount of \$1,000.00.

(Michigan Discipline)

6. Respondent did not report the Michigan Discipline to the Department.

7. On November 3, 2015, the Department was notified of the Michigan Discipline by the Federation of State Medical Boards.

8. On November 20, 2015, Department staff sent a letter to Respondent at his address of record, requesting a response by December 4, 2015.

9. Respondent did not respond to the Department's November 20, 2015 letter and there was no indication his address of record was invalid.

10. The Department opened this matter for investigation on February 16, 2016.

11. On February 17, 2016, the Division's attorney sent an email to Respondent at his email address of record, notifying him of the investigation in this matter and requesting a response by February 26, 2016.

12. Respondent did not respond to the February 17, 2016 email and there was no indication his email address of record was invalid.

13. On March 14, 2016, the Division's attorney sent another email to Respondent at his email address of record, attaching the February 17, 2016 email and again requesting a response.

14. Respondent did not respond to the March 14, 2016 email and there was no indication his email address of record was invalid.

Facts Related to Default

15. The Notice of Hearing and Complaint were served on Respondent on May 5, 2016, by certified and regular 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 to be in default, and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Medical Examining 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."

16. Respondent was served at his address of record with the Department, as reflected above. Wisconsin Stat. § 440.11 requires Respondent to provide the Department with current contact information.

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

18. Following expiration of the 20-day time period in which to file an Answer, the ALJ scheduled a prehearing conference for June 6, 2016. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached for the conference no later than June 1, 2016. The Notice further informed Respondent: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

19. Respondent failed to provide a telephone number at which he could be reached for the prehearing conference. At the June 6, 2016 prehearing conference, the Division provided a telephone number for Respondent, which was the telephone number on file with the Division. When the ALJ called the telephone number provided, the message indicated that the voice mailbox was full and could not accept messages.

20. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). Based on Respondent's failure to file an Answer to the Complaint and his failure to appear at the June 6, 2016 prehearing conference, the ALJ granted the motion for default.

21. On June 6, 2016, the ALJ issued a Notice of Default and Order, ordering the Division to submit a recommended proposed decision and order by June 17, 2016.

22. The Division timely filed its recommended proposed decision and order.

23. Respondent did not file a response to either the Division's submission or to the ALJ's Notice of Default and Order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the June 6, 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 telephone conference held on June 6, 2016. *See* Wis. Admin. Code §§ SPS § 2.09(4) and 2.14; Wis. Admin. Code § HA 1.07(3). Accordingly, 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).

Violations of Wisconsin Statutes and Administrative Code

If the Wisconsin Medical Examining Board (Board) determines a credential holder is guilty of negligence in treatment or unprofessional conduct, the Board may warn or reprimand that person, or limit, suspend, or revoke any license, certificate, or limited permit granted by the Board to that person. Wis. Stat. § 448.02(3).

Pursuant to Wis. Admin. Code § Med 10.03(3), "Unprofessional Conduct" includes:

- (a) Failing, within 30 days, to report to the board any final adverse action taken against the licensee's authority to practice medicine and surgery by another licensing jurisdiction concerned with the practice of medicine and surgery.

...

(c) Having 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.

...

(g) After a request by the board, failing to cooperate in a timely manner with the board's investigation of a complaint filed against a license holder. . . .

The undisputed facts are: Respondent's credential to practice medicine and surgery in the State of Michigan was placed on probation and subjected to certain terms and limitations by the Michigan Board; Respondent failed to report the discipline imposed on his Michigan credential to the Department, and Respondent failed to cooperate with the Department's investigation of this matter. Respondent's conduct constitutes unprofessional conduct as defined by Wis. Admin. Code §§ Med 10.03(3)(a), (c) and (g), and subjects him to discipline pursuant to Wis. Stat. § 448.02(3).

Appropriate Discipline

The three purposes of discipline are: (1) to protect the public from other instances of misconduct; (2) to promote the rehabilitation of the licensee; 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 asserts that the appropriate discipline in this case is to revoke Respondent's right to automatically renew registration of his license to practice medicine and surgery. This discipline is warranted.

Respondent's failure to comply with the laws of the State of Michigan resulted in adverse action against his Michigan credential to practice medicine and surgery. That misconduct is compounded by Respondent's subsequent failure to comply with Wisconsin rules and regulations. These failures raise concerns about Respondent's ability or willingness to otherwise practice in a safe and competent manner, thereby creating potential risk to public safety and protection.

Other licensees must be put on notice that engaging in unprofessional conduct—in this state or elsewhere—and failing to cooperate with the Board's investigation of such conduct, will not be tolerated. The Board cannot perform its duly authorized functions relative to patient and public safety if licensees can ignore or disregard the Board with impunity.

For all the above reasons, revocation of Respondent's right to automatically renew registration of his license is the appropriate disciplinary remedy. It is also worth noting Respondent has made no effort to renew his registration since its October 31, 2015 expiration. This evidences his own lack of interest in and willingness to forego the right to practice medicine in Wisconsin.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings. Factors which have been considered by boards in assessing costs 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 respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and (7) any other relevant circumstances. See *In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz, D.C.*, LS0802183CHI (Aug. 14, 2008).

It is within the Board's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered. In exercising such discretion, the Department must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d. 237, 751 N.W.2d 385.

There are no mitigating or other factors to support anything other than the full imposition of costs against Respondent. The Division has proven all alleged violations. Respondent failed to participate in this proceeding and thus has not presented evidence to suggest any alternate considerations related to the imposition of costs. The factual allegations were deemed admitted and proven. Respondent's misconduct is serious and goes to public safety and protection, and the proposed discipline is proportionate to those concerns. The Department is a "program revenue" agency whose operating costs are funded by the revenue received from applicants and licensees. Respondent's actions (or inaction) and choices were his, and his alone. As such, other members of the profession should not be forced to bear the costs of Respondent's unprofessional conduct. Fairness dictates imposing costs on Respondent and not fellow members of the profession who have not engaged in unprofessional conduct.

Accordingly, full costs are assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS HEREBY ORDERED:

1. The right to automatically renew the registration of the license to practice medicine and surgery in the State of Wisconsin issued to Barry S. Barudin, M.D. (license number 37258-20), is REVOKED.

2. Respondent shall mail or physically deliver all indicia of Wisconsin licensure to practice medicine and surgery to the Department Monitor within 14 days of the effective date of this order.

3. Should Respondent ever apply for a credential with the Department in the future, he shall, as prerequisite to such application, pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § 2.18.

4. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on June 23, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____



Jennifer E. Nashold
Administrative Law Judge