

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 :
THOMAS P. BARRAGRY, M.D. : FINAL DECISION AND ORDER
RESPONDENT. :

0006021

Division of Legal Services and Compliance Case No. 18 MED 178

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

Thomas P. Barragry, M.D.
5209 West River Trail
Mequon, WI 53092

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, Conclusion of Law and Order.

FINDINGS OF FACT

1. Respondent Thomas P. Barragry, M.D. (DOB October 11, 1955), is licensed in the state of Wisconsin to practice medicine and surgery, having license number 31872-20, first issued on February 21, 1991, with registration current through October 31, 2019. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 5209 West River Trail, Mequon, Wisconsin 53092.
2. Respondent is a cardiovascular and cardiothoracic surgeon.
3. On May 4, 2018, Respondent performed surgery after consuming alcohol. According to the report filed by Respondent's employer, no patient harm resulted and his employment was immediately suspended.

4. Respondent subsequently surrendered his clinical privileges and resigned his employment, which were reported to the National Practitioner DataBank. He has not practiced medicine since May 4, 2018.

5. On May 9, 2018, Respondent entered a residential AODA treatment program in Illinois. He was discharged from the program on June 20, 2018 to continue treatment closer to his home in Milwaukee. A letter from the treatment provider describes Respondent's participation and states, in part, "there are no restriction [sic] around return to work as long as he is in active monitoring before starting any direct patient care."

6. On June 21, 2018, Respondent began an Intensive Outpatient Program at Rogers Memorial Hospital.

7. Respondent is also treating with Michael Miller, M.D., FASAM, DLFAPA. Respondent first contacted Dr. Miller on May 7, 2018, and Dr. Miller recommended the inpatient treatment programs referenced above.

8. Dr. Miller has agreed to be Respondent's "Treater" for purposes of this order and issued a report dated July 17, 2018 which was provided to the Department. In his report, Dr. Miller recommends the testing and treatment conditions set out in the Order below.

9. While this matter was pending, the Department requested an update from Dr. Miller.

10. Dr. Miller provided the Department with a report dated November 23, 2018, which indicated that Respondent had a single relapse with alcohol on September 25, 2018. Respondent immediately reported the relapse to Dr. Miller and others involved in his treatment.

11. In his November 23, 2018 report, Dr. Miller states his opinion that Respondent "will be fit for duty to practice medicine when he has attained and demonstrated six months continuous abstinence while under monitoring."

12. Respondent agrees to entry of the following Conclusion of Law and Order.

CONCLUSION 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).

ORDER

1. The attached Stipulation is accepted.

SUSPENSION

A.1. The license of Thomas P. Barragry, M.D., to practice medicine and surgery in the state of Wisconsin (license no. 31872-20) is SUSPENDED for an indefinite period.

- A.2 Respondent shall mail or physically deliver all indicia of Wisconsin licensure to practice medicine and surgery to the Department Monitor within fourteen (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 six hundred (600) hours of active practice for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D.5. 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 five (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. Upon attaining three (3) months of successful compliance with the terms of this Order, the suspension may be stayed based upon Respondent having provided proof, which was determined by the Board or its designee to be sufficient, that Respondent is able to safely practice medicine and surgery under the ongoing 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 any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. The 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.

CONDITIONS AND LIMITATIONS

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"). Dr. Michael Miller is hereby accepted as Respondent's 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.5. 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 or herself 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 forty-nine (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.

Practice Limitations

- 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 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.

MISCELLANEOUS

Department Monitor

- D.1. All required submissions and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services Monitor) shall be made to:

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

Or they may be submitted online via the Department's Monitoring Case Management System at <https://app.wi.gov/DSPSMonitoring>

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.

Costs of Compliance

D.6. 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.7. Respondent shall pay costs of \$815.00 to the Department of Safety and Professional Services within forty-five (45) 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 (license no. 31872-20) 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

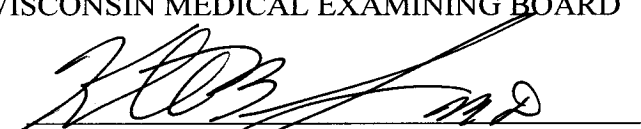
D.8. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 448.03.

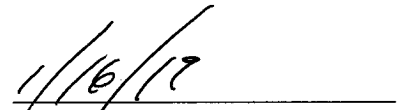
Effective Date

D.9. This Order is effective on the date of its signing.

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

THOMAS P. BARRAGRY, M.D.,
RESPONDENT.

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:
:
:
:

STIPULATION

0006021

Division of Legal Services and Compliance Case No. 18 MED 178

Respondent Thomas P. Barragry, 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 has been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by Attorney Arthur Thexton.

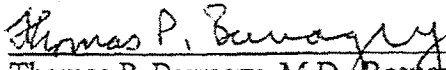
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Medical Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent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

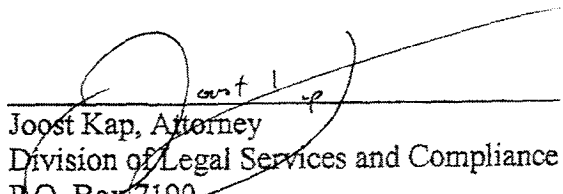
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Thomas P. Barragry, M.D. Respondent
5209 River Trail Ct.
Mequon, WI 53092
License no. 31872-20

12/20/18
Date


Arthur K. Thexton, Attorney for Respondent
Thexton Law Offices
3352 N. 105th St.
Wauwatosa, WI 53222-3330

Dec 20, 2018
Date


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

12/21/18
Date