

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before the  
State of Wisconsin  
Medical Examining Board

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In the Matter of Disciplinary Proceedings Against  
Matthew R. Bauer, D.O., Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 0006278**

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**Division of Legal Services and Compliance Case No. 17 MED 331**

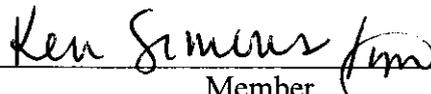
The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 17 day of July, 2019.

  
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Member  
Medical Examining Board





Before The  
State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

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In the Matter of Disciplinary Proceedings Against  
Matthew R. Bauer, D.O., Respondent

DHA Case No. SPS-19-0015  
DLSC Case No. 17 MED 331

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**PROPOSED DECISION AND ORDER**

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

Matthew R. Bauer, D.O.  
8517 Kenyon Avenue  
Wauwatosa, WI 53226

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 Elizabeth K. Bronson  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

PROCEDURAL HISTORY

The proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Matthew R. Bauer, D.O. (Respondent). The Complaint alleged that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 448.02(3) because Respondent engaged in unprofessional conduct under Wis. Admin. Code § Med 10.03(3)(a), (c), and (g).

The Division served Respondent on February 22, 2019, by sending a copy of the Notice of Hearing and Complaint to 8517 Kenyon Avenue, Wauwatosa, Wisconsin, 53226 via certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09(4).

Following expiration of the 20-day time period to file an Answer, the administrative law judge (ALJ), scheduled a telephone prehearing conference for April 3, 2019. The notice for the prehearing conference instructed Respondent to provide a telephone number at which he could be reached for the conference by April 1, 2019. Respondent failed to provide a telephone number and failed to appear at the prehearing conference. Based upon Respondent's failure to file an Answer to the Complaint and failure to appear at 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).

On April 3, 2019, the ALJ issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order by May 3, 2019. The Division timely filed its submission.

### FINDINGS OF FACT

#### Facts Related to the Alleged Violations

Findings of Facts 1-17 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Matthew R. Bauer, D.O., is licensed in the State of Wisconsin to practice medicine and surgery, having license number 53821-21, first issued on December 11, 2009, with registration expired on October 31, 2017. Respondent retains the right to renew his registration until October 31, 2022.

2. Respondent's most recent address on file with the Department is 8517 Kenyon Avenue, Wauwatosa, Wisconsin 53226.

3. Respondent was licensed as an osteopathic physician in the State of Oregon, having license number DO154162, first issued on March 21, 2011. Respondent surrendered his license on July 13, 2017.

4. On December 22, 2015, the Oregon Medical Board (Oregon Board) opened an investigation after receiving a complaint regarding concerns of Respondent's practice of medicine.

5. On May 13, 2016, the Oregon Board opened a second case regarding Respondent's failure to provide follow-up care to a patient.

6. During the course of the Oregon Board investigations, concerns were raised regarding Respondent's ability to safely and competently practice medicine.

7. On November 17, 2016, Respondent entered into an Interim Stipulated Order with the Oregon Board, voluntarily withdrawing from the practice of medicine and placing his license in inactive status pending the completion of the Oregon Board's investigation.

8. On or about May 4, 2017, Respondent told investigators for the Oregon Board that he was done practicing medicine and that he was moving to Peru.

9. On July 13, 2017, the Oregon Board issued a Stipulated Order (Final Order), whereby Respondent agreed to permanently surrender his Oregon medical license with the understanding that the Stipulated Order constituted reportable disciplinary action.

10. Respondent did not notify the Department of the Interim Stipulated Order or the Final Order issued by the Oregon Board.

11. On November 14, 2017, the Department opened Division of Legal Services and Compliance case no. 17 MED 331 after being notified by the Federation of State Medical Boards of the adverse action taken by the Oregon Board against Respondent's credential.

12. On July 31, 2018, the Division sent to Respondent's most recent address on file with the Department an offer of proposed stipulated resolution, whereby Respondent would surrender his right to renew his Wisconsin credential. The Division did not receive a response.

13. On September 12, 2018, an Investigator from the Division conducted a Lexis Nexis search to identify Respondent's whereabouts. The search yielded the following addresses:

- a. 3801 Cedaroak Drive, West Linn, Oregon 97068
- b. 1721 Makaleha Place Unit A, Kapaa, Hawaii 96746
- c. 8517 Kenyon Avenue, Wauwatosa, Wisconsin 53226.

14. On September 12, 2018, the Division sent the offer of proposed stipulated resolution via certified mail to all three addresses listed above.

15. The offer sent to Oregon was returned unclaimed, and the offer sent to Hawaii was returned due to an insufficient address.

16. On September 15, 2018, the offer sent via certified mail to the Wisconsin address was delivered. The Division did not receive a response.

17. On November 20, 2018, the Division made a final attempt to contact Respondent via the email on file with the Department. The Department did not receive a response.

#### Facts Related to Default

18. The Notice of Hearing and Complaint in this matter were served on Respondent on February 22, 2019, by both 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 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."

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

20. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for April 3, 2019. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which she could be reached for the conference. The Notice instructed Respondent: “The Respondent’s failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent.”

21. Respondent failed to provide a telephone number. At the prehearing conference on April 3, 2019, the ALJ attempted to contact Respondent using telephone numbers provided by the Division, but the numbers were not in service. The ALJ therefore granted the Division’s motion for default based on failure to file an Answer and failure to appear, pursuant to Wis. Admin. Code § SPS 2.14 and § HA 1.07(3).

22. On April 3, 2019, the ALJ issued a Notice of Default and Order, which required the Division to file and serve, no later than May 3, 2019, a recommended proposed decision and order.

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

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

## DISCUSSION AND CONCLUSIONS OF LAW

### Default

As stated in the April 3, 2019, 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 conference. *See* Wis. Admin. Code § SPS 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. *Id.*

### Violations

Following an investigation and disciplinary hearing, if the Wisconsin Medical Examining Board (Board) determines that a physician is guilty of unprofessional conduct, it may “warn or reprimand that person, or limit, suspend or revoke any license or certificate granted by the board to that person.” Wis. Stat. § 448.02(3)(c).

The Division alleges that Respondent is subject to discipline for engaging in unprofessional conduct as defined in Wis. Admin. Code § Med § 10.03(3)(a), (c), and (g), which 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. There is a rebuttable presumption that a credential holder who takes longer than 30 days to respond to a request of the board has not acted in a timely manner.

Whether Respondent violated Wis. Admin. Code § Med 10.03(3)(a) and (c) is dependent upon whether the actions taken by the Oregon Board constitute an adverse action or determination. Respondent stipulated to two separate orders. On November 17, 2016, the Oregon Board issued an Interim Stipulated Order where Respondent voluntarily withdrew from the practice of medicine pending the Oregon Board's investigation into two complaints filed against his license. On July 13, 2017, following the investigation, the Oregon Board issued a Stipulated Order that constituted a permanent surrender of Respondent's Oregon medical license. These orders affected Respondent's ability to practice medicine in Oregon. Moreover, pursuant to the July 2017 Order, Respondent agreed to permanently surrender his Oregon medical license with the understanding that the Stipulated Order constituted reportable disciplinary action. For these reasons, and because Respondent has made no argument to the contrary, the Oregon orders constitute adverse action against Respondent's medical license in another jurisdiction, which Respondent failed to report. Therefore, Respondent violated Wis. Admin. Code § Med 10.03(3)(a) and (c).

However, the Division has failed to show unprofessional conduct under Wis. Admin. Code § Med 10.03(3)(g), because the facts in the Complaint, although deemed admitted here, do not show that there was a "request by the [B]oard," as required under that provision. Instead, the facts only show that the Division sent several settlement offers to Respondent and that he did not respond. These facts are insufficient to establish unprofessional conduct under Wis. Admin. Code § Med 10.03(3)(g).

Nevertheless, because Respondent engaged in unprofessional conduct under the other two subsections, Wis. Admin. Code § Med 10.03(3)(a) and (c), he is subject to discipline pursuant to Wis. Stat. § 448.02(3)(c).

#### Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends revocation of Respondent's license to practice medicine and surgery, as well as his right to renew his expired registration. Currently, Respondent's registration is not active, but pursuant to Wis. Stat. § 440.08(3), he retains the right to renew until

October 31, 2022. Revocation of his license and right to renew is supported by the serious nature of the adverse action taken against Respondent in another jurisdiction. The Oregon Board investigated two separate complaints and sought an Interim Order after its investigation uncovered concerns of Respondent's ability to competently practice medicine. Ultimately, the final action taken by the Oregon Board resulted in Respondent's permanent surrender of his medical license.

The recommended discipline is appropriate and consistent with the purposes articulated in *Aldrich*. Respondent has been non-responsive to the Division. Thus, it is not possible to assess whether rehabilitation is an option. The only way to assure the public is protected is to revoke Respondent's license and right to renew his expired registration in the State of Wisconsin. Furthermore, the recommended discipline serves to deter other from engaging in incompetent practice and failing to report adverse actions.

Finally, the recommended discipline is consistent with prior Board decisions. *See In the Matter of Disciplinary Proceedings Against Prasad V. Yalavarthi, M.D.*, LS090225MED (Aug. 19, 2009) (Board revoked license of physician who failed to participate in Wisconsin disciplinary proceedings and who had entered into a stipulation with the North Dakota board which revoked his medical license based on his inability to competently practice); *In the Matter of Disciplinary Proceedings Against William I. Braunstein, M.D.*, 000100 (July 20, 2011) (Board revoked license of physician who failed to participate in Wisconsin disciplinary proceedings and who had license suspended and stayed in Minnesota, allowing him to practice in Minnesota subject to conditions); *In the Matter of Disciplinary Proceedings Against Larry F. Carlyon, M.D.*, 0005594 (Jan. 17, 2018) (Board revoked license of physician who failed to participate in Wisconsin disciplinary proceedings and who had surrendered license in Michigan, following finding of incompetence and other violations by Michigan board).<sup>1</sup>

Based on the foregoing, it is appropriate to revoke Respondent's license to practice medicine and surgery and his right to renew his expired registration.

### Costs

The Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. *See Wis. Stat. § 440.22(2)*. In exercising such discretion, the Board 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. In previous orders, Boards have considered the following factors when determining if all or part of the costs should be assessed against a Respondent: (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

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<sup>1</sup> These three decisions are attached to the Division's recommended proposed decision and order and available on the Department's website.

licensees. See *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, LS 0802183 CHI (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.

The Division has proven two of the three counts alleged. The factual allegations were deemed admitted, as Respondent failed to provide an Answer or any argument regarding the allegations brought against him. Moreover, the case at hand is serious in nature. Respondent surrendered his medical license in the State of Oregon following an investigation into unprofessional conduct that raised concerns of competency. Furthermore, Respondent has been uncooperative in this proceeding, and the discipline sought and imposed in this case is the most severe available. Finally, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay full costs of the investigation and these proceedings if he applies for a credential with the Department in the future.

#### ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that Respondent Matthew R. Bauer's license to practice medicine and surgery (no. 53821-21), and any right to renew his registration to practice medicine and surgery are hereby REVOKED, effective the date the final decision is signed by the Board.

IT IS FURTHER ORDERED that should Respondent ever apply for a credential with the Department in the future, Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18, prior to the Department's consideration of any such application.

Dated at Madison, Wisconsin on June 13, 2019.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_

Jennifer E. Nashold

Administrative Law Judge