

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
GUY R. POWELL, M.D., :
RESPONDENT. : **ORDER 0006499**

Division of Legal Services and Compliance Case No. 18 MED 594

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

Guy R. Powell, M.D.
16205 W. Heatherly Drive
New Berlin, WI 53151

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 Guy R. Powell, M.D. (DOB 10/27/1963), is licensed in the State of Wisconsin to practice medicine and surgery, having license number 44188-20, first issued on 2/20/2002, with registration current through 10/31/2019. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 16205 W. Heatherly Drive, New Berlin, Wisconsin, 53151.

2. Respondent Guy R. Powell, M.D. received prior discipline by the Board in DLSC Case 10 MED 187 wherein the Board found that he renewed prescription opioids but failed to chart any prescribing agreements, lab tests, or radiology reports to support the diagnoses or justify the prescriptions. Respondent was reprimanded and a limitation was placed on his license until he

completed a course in appropriate prescribing of controlled substances. Respondent's license was fully reinstated on 5/30/2012.

3. On 12/27/2018, the Department received a complaint filed by Respondent's employer, the Veteran's Administration (VA) at William S. Middleton Memorial Veterans Hospital in Madison, indicating that Respondent was charged with Possession of Cocaine, Possession of Drug Paraphernalia, and tested positive for cocaine. The Department opened the case for investigation.

4. On 5/25/2018, Respondent was arrested for possession of a controlled substance after exhibiting odd behavior in a parking lot and a pat down revealed Oxycontin and a baggie containing white powder and a plastic straw in his pocket. Respondent admitted the powder was cocaine and that he had abused hydrocodone in the past but had a prescription for the Oxycontin.

5. Respondent agreed to a blood test, the results of which showed an amount greater than 1,000 ng/mL of Benzoylcegonine and 210 ng/mL of Oxycodone. Cocaine was not detected in the sample; however, the white powder in the baggie was tested and found to be 5.7 grams of cocaine.

6. On 7/17/2018, Respondent was charged with two misdemeanors: Possession of a Controlled Substance – Cocaine, and Possession of Drug Paraphernalia. On 10/02/2018, the Possession of a Controlled Substance charge was amended to a non-criminal county ordinance violation for disorderly conduct to which Respondent pleaded no contest. The Possession of Drug Paraphernalia charge was dismissed but taken into account for sentencing purposes. Respondent was ordered to pay a fine of \$200 plus costs, which Respondent paid.

7. On Tuesday, 8/07/2018, the VA asked Respondent to submit to a urine drug test. Respondent tested positive for cocaine.

8. Pursuant to VA policy, Respondent was referred to the Employee Assistance Program (EAP) for assessment, counseling, and referral for treatment or rehabilitation. EAP allowed Respondent to continue with the treatment he sought after his arrest at Cornerstone Counseling Services. Respondent's psychologist recommended that Respondent continue outpatient counseling along with random drug testing.

9. By letter dated 9/21/2018, the VA informed Respondent that he was being discharged from federal employment effective 9/25/2018 because he violated the VA's Drug Free Workplace Program. The VA's Chief of Ambulatory Care described the aggravating factors he considered in proposing discharge:

Although you have no prior discipline, your use of cocaine, a powerful, highly addictive, and mind-altering drug, is very serious and I have lost confidence in your ability to perform your assigned duties as a physician. Further, it appears you were previously arrested for possession of cocaine in May 2018, leading me to believe this is a recurring issue, further deteriorating my confidence in your performance as a physician.

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 Guy R. Powell, M.D., violated Wis. Admin. Code § Med 10.03(2)(b) by departing from or failing to conform to the standard of minimally competent medical practice which creates an unacceptable risk of harm to a patient or the public whether or not the act or omission resulted in actual harm to any person.

3. By the conduct described in the Findings of Fact, Respondent Guy R. Powell, M.D., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(2)(e) by obtaining a controlled substance as defined in s. 961.01(4), Stats., other than in the course of legitimate medical practice, or as otherwise permitted by law.

4. As a result of the above conduct, Guy R. Powell, M.D., is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

IT IS ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, effective the date of this Order:

SUSPENSION

- A.1. The license of Guy R. Powell, M.D., to practice as a physician in the State of Wisconsin is **SUSPENDED** for an indefinite period.
- A.2. Respondent shall mail or physically deliver all indicia of Wisconsin licensure to practice as a physician to the Department Monitor within 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 600 hours of active practice for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D.6. 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 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. The suspension of Respondent's Wisconsin license may be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order, and that Respondent's Treater is of the opinion that

Respondent is able to safely practice medicine and surgery under the 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. This 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.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

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"). 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.4., 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 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. EMPLOYERS WHO ARE DEA REGISTRANTS ARE INFORMED THAT IF RESPONDENT HAS BEEN CONVICTED OF ANY FELONY RELATING TO CONTROLLED SUBSTANCES, THE EMPLOYER MUST RECEIVE

A WAIVER OF 21 CFR §1301.76 UNDER 21 CFR §1307.03 BEFORE EMPLOYING RESPONDENT.

- C.21. Respondent may work as a physician or other health care provider in a setting in which Respondent has access to controlled substances. If Treater subsequently recommends restrictions on such access, the Board or its designee may impose such restrictions.
- C.22. Respondent shall practice only in a work setting pre-approved by the Board or its designee.
- C.23. Respondent shall practice only under the oversight of a Professional Mentor approved by the Board.
- C.24. Respondent is responsible for obtaining a Professional Mentor acceptable to the Board. A Professional Mentor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Department (including but not limited to any bartering relationship, mutual referral of patients, etc.). A Professional Mentor shall be actively practicing in Respondent's field of practice, hold a valid Wisconsin license, shall be board certified by an ABMS-recognized board in a specialty relevant to Respondent's field of practice, and shall have read this Final Decision & Order and agree to be Respondent's Professional Mentor.
- C.25. Oversight by the Professional Mentor shall include weekly meetings, review of charts selected by the Professional Mentor, and any other actions deemed appropriate by the Professional Mentor to determine that Respondent is practicing in a professional and competent manner.
- C.26. Respondent shall arrange for his Professional Mentor to provide formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance. Respondent's Professional Mentor shall immediately report to the Department Monitor and the Respondent's Supervising Health Care Provider any conduct or condition of the Respondent which may constitute unprofessional conduct, a violation of this Order, or a danger to the public or patient. If a report indicates poor performance, the Board may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.
- C.27. The Professional Mentor may designate another qualified physician or other health care provider to exercise the duties and responsibilities of the Professional Mentor in an absence of up to three weeks. If the absence will exceed three weeks, the Professional Mentor must obtain approval of the Board or its designee before delegating the mentoring duties under this Order.
- C.28. In the event that the Professional Mentor is unable or unwilling to continue to serve as Respondent's professional mentor, the Board may in its sole discretion select a successor Professional Mentor.
- C.29. The Professional Mentor shall have no duty or liability to any patient or third party, and the Mentor's sole duty is to the Board.
- C.30. 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. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Wisconsin Department of Safety and Professional Services
Division of Legal Services and Compliance
1400 East Washington Ave.
P.O. Box 7190
Madison, WI 53707-7190
Fax: (608) 266-2264
Telephone: (608) 267-3817
DSPSMonitoring@wisconsin.gov

You may also submit this information online via DSPS' Monitoring Case Management System, here: <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.
- D.6. Respondent may petition the Board for termination of this Order any time after five years from the date of the initial stay of the suspension. However, no petition for termination

shall be considered without a showing of continuous, successful compliance with the terms of the Order, for at least five years.

Costs of Compliance

D.7. 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

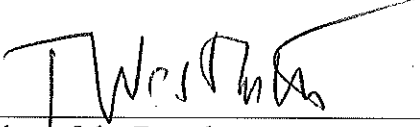
D.8. Respondent shall pay costs of \$1,266.00 to the Department of Safety and Professional Services, within 10 (ten) days of this Order. Payment shall be directed to the attention of the Department Monitor at the address in paragraph D.1., above. In the event Respondent fails to timely submit any payment of costs, the Respondent's license (#44188-20) 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.9. 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.

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

GUY R. POWELL, M.D.
RESPONDENT.

:
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:
:

STIPULATION

ORDER 0006499

Division of Legal Services and Compliance Case No. 18 MED 594

Respondent Guy R. Powell, 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 Thomas G. Halloran.

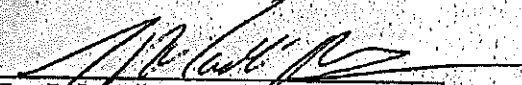
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Medical Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

be bound by the contents of this Stipulation, and these matters 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.

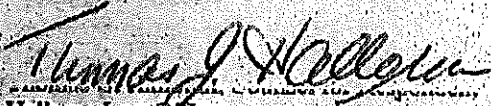
of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or Respondent's attorney, for purposes of speaking in support of this agreement and answering questions 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 accept this stipulation and issue the attached Final Decision and Order.


Guy R. Powell, M.D., Respondent
New Berlin, WI 53151
License no. 44188-20

Date 9/23/2019


Halloran Law Offices
10689 Commodore Circle, #702
P.O. Box 170
Sister Bay, WI 54234

Date 9/26/2019


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

Date 10/4/2019

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 these matters 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.

Guy R. Powell, M.D., Respondent
16205 W. Heatherly Drive
New Berlin, WI 53151
License no. 44188-20

Date

Thomas G. Halloran, Counsel for Respondent
Halloran Law Offices
10689 Commodore Circle, #702
P.O. Box 170
Sister Bay, WI 54234

Date

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

Date