

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



### Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

#### Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>

- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DSPS website:** An individual who believes that information on the website is inaccurate may contact [DSPS@wisconsin.gov](mailto:DSPS@wisconsin.gov)

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

---

IN THE MATTER OF APPLICATION FOR :  
RENEWAL OF A MEDICAL LICENSE :

DAVID J. KUESTER, M.D., :  
APPLICANT. :

ORDER GRANTING  
LIMITED LICENSE

ORDER 0006795

---

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

David J. Kuester, M.D.  
Stoughton, WI 53589

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 Wisconsin 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. David J. Kuester, M.D., (Applicant) filed an application for renewal of his Wisconsin medical license (32780-20). Such license, first issued to Applicant on October 24, 1991. This license expired on October 31, 2019 and has not been renewed. Pursuant to Wis. Stat § 440.08(3), Applicant retains the right to renew upon payment of a fee until October 30, 2024.

2. Applicant's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is located in Green Bay, Wisconsin 53708. Upon information and belief, Respondent's current address is located in Stoughton, Wisconsin 53589.

3. Applicant has a history of cervical and thoracic disc herniation and was first prescribed Tramadol by his surgeon in 2004. He received additional treatment for this medical condition and was prescribed Tramadol by his treating providers through 2016.

4. In March of 2016, Applicant requested that an orthopedic surgical partner at the Clinic sign blank prescription forms for him.

5. Applicant's partner signed the blank prescription forms as requested.

6. Between 2016 and 2018, Applicant used the blank prescriptions forms to obtain Tramadol, at least eight prescriptions with multiple refills, for himself. Applicant additionally used the blank prescription forms to obtain Xanax, Acyclovir and Gabapentin for himself. Applicant also used the blank prescriptions to obtain non-opioid medications, including Acyclovir and antibiotics, for his wife.

7. During this time, Applicant stockpiled Tramadol obtained with the intention of using it himself.

8. On or about March 15, 2018, Applicant's partner received a telephone call from a pharmacist to confirm that the pharmacist should fill a prescription for Applicant for 240 tablets of Tramadol 50 mg. The partner instructed the pharmacist not to fill the prescription.

9. Applicant's partner reported this matter to his employer's administrators, who initiated an investigation.

10. On March 19, 2018, Applicant submitted to a fitness to practice examination at the request of his employer. At that time, Applicant turned in 1,592 Tramadol tablets that he had stockpiled.

11. On March 20, 2018, Applicant was suspended from practice at the Clinic pending further investigation by his employer.

12. On March 26, 2018, Applicant resigned from practice at the Clinic while under investigation.

13. Applicant self-reported his conduct to the Department on March 26, 2018.

14. Applicant has represented to the Department that he was addicted to Tramadol. Applicant claims he stopped using Tramadol completely when his partner and employer became aware of his conduct. Applicant has provided the Department with results of a drug screen taken on March 23, 2018, which was negative for controlled substances.

15. Applicant has provided the Department a letter from his Alcohol and Other Drug Abuse (AODA) treater dated December 6, 2018, which provided the following information, in part:

a. Applicant has undergone and completed a treatment plan;

- b. Applicant has mastered a program of conservative treatment including exercise, meditation and yoga;
  - c. Applicant regularly attends a 12-step program and works closely with a sponsor; and
  - d. Applicant's AODA treater believes that Applicant is fit to return to practice.
16. Respondent has provided the Department a letter from a second AODA treater dated December 3, 2019, which provided the following information, in part:
- a. Respondent has been in remission of his addiction since March 2018;
  - b. Respondent participated in treatment through Positive Sobriety Institute (PSI), where he attended a Partial Hospitalization Program (PHP) for two weeks and attended an Intensive Outpatient Program (IOP) for two weeks;
  - c. Respondent is under the regular care of a counselor for both individual and group therapy;
  - d. Respondent continues to participate in AA;
  - e. Respondent has started participating in a monitoring program via random urine drug testing, to which the treater has access; and
  - f. Respondent is fit for duty to practice medicine and surgery in Wisconsin.
17. Applicant has not practiced clinical medicine since his resignation on March 26, 2018, but is currently considering resuming a clinical practice.
18. In resolution of this matter, Applicant consents to the 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, Applicant David J. Kuester, M.D., 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 with the standard of minimal competence.
3. By the conduct described in the Findings of Fact, Applicant David J. Kuester, M.D., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(2)(e) by administering, dispensing, prescribing, supplying, or obtaining a controlled substance as defined

in s. 961.01 (4), Stats., other than in the course of legitimate professional practice, or as otherwise permitted by law.

4. As a result of the above conduct, David J. Kuester, M.D., is subject to limitations on his license pursuant to Wis. Stat. § 448.02(3).

#### ORDER

1. The attached Stipulation is accepted.
2. Limitations upon Applicant's license are necessary to ensure that he is fit and competent to practice medicine.
3. Applicant's application for a medical license is granted subject to the following limitations.
4. The applicant's ability to practice medicine in the state of Wisconsin, and his privilege to practice in Wisconsin is LIMITED as follows:
  - a. For a period of at least two (2) years from the date of this Order:
    - i. Applicant shall enroll and participate in a drug and alcohol monitoring program which is approved by the Department (Approved Program). Enrollment shall occur within thirty (30) calendar days from the date of this Order.
    - ii. At the time Applicant enrolls in the Approved Program, Applicant 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:
      1. Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
      2. 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.
      3. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (49) times per year, for at least the first year of this Order. Thereafter, the Board may adjust the frequency of testing on its own initiative at any time.

- iii. **The Board approves of the Applicant continuing to be involved in personal counseling with rehabilitation psychological therapy with Vicki Mulkerin, MS, supplemented by peer support meetings with Dry Docs, and doing random urine tests through FSSolutions in satisfaction of paragraphs 4.a.i and 4.a.ii of this Order.**
- iv. Applicant shall abstain from all personal use of alcohol.
- v. Applicant 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. Applicant shall disclose Applicant's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Applicant 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 Applicant's treatment with, and provide copies of treatment records to, the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
- vi. Applicant shall report to the Department Monitor all prescription medications and drugs taken by Applicant. 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, Applicant shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.
- vii. Applicant shall provide the Department Monitor with a list of over-the-counter medications and drugs that she 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 Applicant's treatment and rehabilitation, shall not be taken unless ordered by a physician, in which case the drug must be reported as described in the paragraph 4(a)v.
- viii. All positive test results are presumed valid and may result in automatic suspension of licensure by the Board or the Board's designee. Applicant must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.

- ix. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Applicant 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.

**5. In lieu of requiring a fitness for practice evaluation, the Board accepts the results of the fitness for practice evaluation performed for Applicant by Dr. Michael Miller.**

- 6. For a period of at least two (2) years from the date of this Order:
  - a. Applicant shall provide his employer with a copy of this Order before engaging in any employment. Applicant shall provide the Department Monitor with written acknowledgment from each employer that a copy of this Order has been received. Such acknowledgment shall be provided to the Department Monitor within fourteen (14) days of beginning new employment and/or within fourteen (14) days of the date of this Order for employment current as of the date of this Order.
  - b. It is Applicant's responsibility to arrange for quarterly written reports to be submitted to the Department Monitor from his supervisor at each setting in which Applicant practiced in the previous quarter. These reports shall be submitted as directed by the Department Monitor, and shall assess Applicant's work performance, and shall include the number of hours of active practice worked during that quarter. If a report indicates poor performance, the Board may institute additional limitations on Applicant's license, or may suspend Applicant's license(s), in its discretion.
  - c. Applicant shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of change.

7. Applicant shall not prescribe, dispense, administer or order any controlled substances. Applicant shall surrender any Drug Enforcement Administration (DEA) registration to prescribe, dispense, administer and order controlled substances to the DEA. Applicant has completed the attached DEA surrender form, which shall be held by the Department Monitor for submission to DEA upon the effective date of this Final Decision and Order. Applicant shall not make reapplication for DEA registration until the Board permits Applicant to do so, or the Board modifies the terms of this limited license to permit the prescribing, dispensing, administering or ordering of controlled substances.

8. Applicant 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 Applicant applies for employment as a health care provider. EMPLOYERS WHO ARE DEA REGISTRANTS ARE INFORMED THAT IF APPLICANT 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 APPLICANT.

9. Applicant shall not work as a physician or other health care provider in a setting in which Applicant has access to controlled substances.

10. Applicant shall practice only in a work setting pre-approved by the Board or its designee.

11. Applicant shall practice only under the oversight of a Professional Mentor approved by the Board.

12. Applicant 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 Applicant, 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 Applicant's field of practice, hold a valid Wisconsin license, shall be board certified by an ABMS-recognized board in a specialty relevant to Applicant's field of practice, and shall have read this Final Decision and Order and agree to be Applicant's Professional Mentor.

13. Oversight by the Professional Mentor shall include weekly meetings and any actions deemed appropriate by the Professional Mentor to determine that Applicant is practicing in a professional and competent manner.

14. Applicant 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 Applicant's work performance. Applicant's Professional Mentor shall immediately report to the Department Monitor and the Applicant's Supervising Health Care Provider any conduct or condition of the Applicant 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.

15. 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.

16. In the event that the Professional Mentor is unable or unwilling to continue to serve as Applicant's professional mentor, the Board may in its sole discretion select a successor Professional Mentor.

17. 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.

18. Applicant 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.



19. Applicant may petition the Board on an annual basis for modification of the terms of this Order, however no such petition shall occur until Applicant has demonstrated one (1) year of compliance. After two (2) consecutive years of successful compliance, including the timely submission of work reports, the Applicant may petition the Board for return of full licensure. The Board may grant or deny any petition, in its discretion, or may modify this Order as it sees fit.

20. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered 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

Applicant may also submit this information online via DSPS' Monitoring Case management System, here:

<https://app.wi.gov/DSPSMonitoring>

21. In the event Applicant violates any term of this Order, Applicant's license, or Applicant's right to renew his license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing. The Board or its designee may terminate the suspension if provided with sufficient information that Applicant is in compliance with the Order and that it is appropriate for the suspension to be terminated. Whether to terminate the suspension shall be wholly in the discretion of the Board or its designee. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

22. This Order is effective on the date of its signing.

WISCONSIN MEDICAL EXAMINING BOARD

By: Timothy Westlake MD  
A Member of the Board

5/14/2020

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

---

IN THE MATTER OF APPLICATION FOR :  
RENEWAL OF A MEDICAL LICENSE :

DAVID J. KUESTER, M.D. :  
APPLICANT. :

STIPULATION

ORDER 0006795


---

It is stipulated between the Applicant and the Wisconsin Medical Examining Board (Board) as follows:

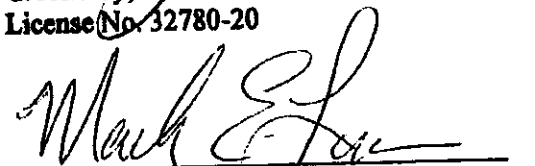
1. The Applicant has filed an application to renew a medical license.
2. Information received by the Board reflects a basis for denial of the renewal of licensure.
3. Based upon the information of record, the Board agrees to issue, and the Applicant agrees to accept, an Order granting a renewal of license as a medical doctor, subject to the terms and conditions set forth in the attached Order adopting the Stipulation.
4. Applicant understands that by signing this Stipulation, Applicant voluntarily and knowingly waives the following rights:
  - the right to request a hearing related to the denial of the application;
  - the right to confront and cross-examine the witnesses against Applicant;
  - the right to call witnesses on Applicant's behalf and to compel their attendance by subpoena;
  - the right to testify on Applicant'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 the Applicant under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.
5. Applicant is aware of Applicant's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.
6. Applicant agrees to the adoption of the attached Order Granting Limited License by the Board. The parties to the Stipulation consent to the entry of the attached Order Granting Limited License without further notice, appearance, or consent of the parties.

7. Applicant waives all rights to any appeal of the Board's Order, as adopted in the form as attached.


8. Applicant is informed that the Order Granting Limited License is a public record and will be published in accordance with standard procedure.

  
\_\_\_\_\_  
David J. Kuester  
Green Bay, WI 54303-2728  
License No. 32780-20

5/12/2020  
Date

  
\_\_\_\_\_  
Mark E. Larson  
Attorney for Respondent  
Gutglass, Erickson, Larson & Schneider, S.C.  
735 N. Water Street, Suite 1400  
Milwaukee, WI 53202-4267

5/12/20  
Date

  
\_\_\_\_\_  
A Member of the Medical Examining Board  
Department of Safety and Professional Services  
P.O. Box 7190  
Madison, WI 53707-7190

5/14/2020  
Date