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
DAVID I. STEIN, M.D., RESPONDENT.	:	ORDER 000867 1

Division of Legal Services and Compliance Case Nos. 16 MED 167, 17 MED 275, 18 MED 316, 19 MED 053, 22 MED 268, 23 MED 044, and 23 MED 047

Division of Hearing and Appeals Case Nos. SPS-19-0035, SPS-20-0004, SPS-21-0065, and SPS-22-0015

The parties to these actions for the purpose of Wis. Stat. § 227.53 are:

David I. Stein, M.D.
Mequon, WI 53097

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

PROCEDURAL HISTORY

On June 7, 2019, the Division of Legal Services and Compliance (Division) filed a Notice of Hearing and Complaint in DLSC Case No. 16 MED 167 with the Department of Administration, Division of Hearing and Appeals (DHA) alleging that Respondent committed unprofessional conduct pursuant to Wis. Admin. Code §§ Med 10.03(2)(b) and (c). On December 6, 2019, the Division filed an Amended Complaint alleging that Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code §§ Med 10.03(2)(b), (c), (h), (p), (za) and 10.03(3)(e). On December 10, 2019, Respondent filed an Answer to the Amended Complaint denying he committed unprofessional conduct and requesting that the Amended Complaint be dismissed.

On September 21, 2020, the Division filed a Notice of Hearing and Complaint in DLSC Case No. 17 MED 275 with the DHA alleging that Respondent committed unprofessional conduct pursuant to Wis. Admin. Code §§ Med 10.03(1)(d), 10.03(2)(c), and 10.03(3)(i). Upon agreement

between the parties, Respondent did not file an Answer to the Complaint. On February 9, 2021, the Administrative Law Judge issued an Order Staying Proceedings relating to DLSC Case Nos. 16 MED 167 and 17 MED 275.

On August 20, 2021, the Division filed a Notice of Hearing and Complaint in DLSC Case No. 19 MED 053 with the DHA alleging that Respondent committed unprofessional conduct pursuant to Wis. Admin. Code § Med 10.03(2)(c). On September 8, 2021, Respondent filed an Answer to the Complaint denying he committed unprofessional conduct and asserting the Doctrine of Laches as an affirmative defense. On September 10, 2021, the ALJ approved that this matter be held in abeyance along with the two previous matters.

On March 3, 2022, relating to DLSC Case No. 19 MED 53, the Division filed a Notice of Hearing and Complaint with the DHA alleging that Respondent committed unprofessional conduct pursuant to Wis. Admin. Code §§ Med 10.03(2)(c) and 10.03(3)(e). On March 10, 2022, the ALJ ordered that this matter be held in abeyance along with the three previous matters.

The parties in these matters agree to enter into a stipulated resolution in lieu of participating in an evidentiary hearing, agree to the terms and conditions of the attached Stipulation, and agree that the Board may issue this Final Decision and Order. The Board has reviewed this Stipulation and considers it acceptable. Accordingly, the Board adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. David I. Stein, M.D. (Respondent), (Year of Birth 1960) is licensed in the state of Wisconsin to practice medicine and surgery, having license number 32152-20, first issued on May 22, 1991, with registration current though October 31, 2021.

2. In October 2021, Respondent applied for renewal of his license and registration to practice medicine and surgery in the state of Wisconsin. That application remains pending and Respondent's credential remains active pursuant to Wis. Stat. § 227.51(2).

3. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Mequon, Wisconsin 53097.

4. At all times relevant to these proceedings, Respondent owned and operated a pain management clinic located in Milwaukee, Wisconsin (Clinic). Respondent's wife is also an owner of the Clinic and works as an office manager in the Clinic.

16 MED 167

5. On September 13, 2016, the Division received a complaint from the Wisconsin Department of Health Services (DHS) advising that the DHS received multiple complaints involving Respondent's practice and in response, the DHS conducted an audit of Respondent's practice related to the complaints. The DHS complaint also included notification that on August 14, 2015, Respondent settled a dispute with the United States Department of Health and Human

Services, Office of Inspector General, involving allegations of Medicare fraud, for $374,864.78. The Board's Screening Panel opened DLSC Case No. 16 MED 167 for further investigation.

6. On July 18, 2016, the DHS sent the Clinic a letter advising that, as a result of the audit, the DHS has determined that overpayments may have been made to the Clinic by the Wisconsin Medicaid and BadgerCare Plus Programs. The DHS's preliminary findings were that the potential overpayments were attributed to lack of documentation, lack of physician orders, incomplete documentation, and incomplete medical orders. The DHS provided the Clinic with its preliminary findings and advised the Clinic that should it agree with the findings, it should submit a check for $71,219.54. During the fall of 2018, the Clinic submitted a check to the DHS for the amount in full.

7. The Division obtained the DHS audit file involving Respondent and his practice, which audit file included medical records for 47 patients treated by Respondent between 2014 and 2017. The Division also obtained the same patient files from Respondent. Review of five of those files found that Respondent prescribed opioids in a manner inconsistent with the standard of minimal competence.

17 MED 275

8. On March 31, 2017, the Division received a complaint from Patient A.H. (female born in 1990) alleging Respondent's billing practices were unethical. Patient A.H was under BadgerCare Plus and alleged that Respondent was charging her out-of-pocket for urine drug screens that she stated did not happen nor that she requested. The Board's Screening Panel opened DLSC Case No. 17 MED 275 for further investigation.

9. The Division's investigation into this matter uncovered the following:

a. Respondent treated Patient A.H., a BadgerCare Plus recipient, between 2015 and 2017, for opioid addiction.

b. Respondent charged Patient A.H. a $70 cash copay for each visit, advising Patient A.H. that the $70 was in part to cover the cost of psychological assessments, and urine drug screens.

c. On March 12, 2015, June 2, 2015, June 30, 2015, July 27, 2015, August 24, 2015, and September 21, 2015, Patient A.H. signed an "Advanced Beneficiary Notice" acknowledging that she has been informed that oral fluid testing is not covered by Medicare, Medicaid or their insurance company and that there would be a charge for this service.

d. On November 16, 2015, February 8, 2016, May 31, 2016, September 26, 2016, January 16, 2017, May 8, 2017, and August 28, 2017, Patient A.H. signed a document regarding psychometric testing acknowledging that psychometric testing is required for patients currently on or being considered for narcotic medical management for chronic pain; non-brief psychometric testing is not covered by Medicare, Medicaid, or insurance companies; psychometric testing

will be performed three times per year; and, that the cost of psychometric testing is $280.00 per test, or in installments of $70.00 every four weeks.

e. Respondent refused to see Patient A.H. and refused to prescribe Patient A.H. Suboxone unless she first paid the $70 cash copay.

f. Patient A.H. did not undergo a urine drug screen at each visit and the results of the multiple-choice psychological assessment were never made known to or otherwise discussed with her.

g. Respondent conducted minimal or no evaluations of Patient A.H. and automatically refilled her prescription provided she paid the $70 cash copay.

h. Respondent required Patient A.H. to sign an attestation that she was not working with law enforcement and required her to surrender her cell phone for the duration of each visit.

i. Respondent required Patient A.H. to fill her prescriptions at small local pharmacies and asked her to refrain from filling them at Walgreens and other large chain pharmacies.

j. By letter dated August 31, 2017, the DHS informed Respondent that his direct charging of Patient A.H. was in violation of Wis. Admin. Code §§ DHS 104.01(12)(b) and 106.04(3a).

k. Respondent informed Patient A.H. that his practice would no longer accept insurance of any kind and that Patient A.H. would be a self-pay going forward.

18 MED 316

10. In August 2018, the Wisconsin Controlled Substances Board referred Respondent to the Board based on Respondent's Prescription Drug Monitoring Program (PDMP) data which identified him as the highest opioid prescriber by volume in the state of Wisconsin among his peers between December 1, 2017, and May 31, 2018. DLSC Case No. 18 MED 316 was opened for further investigation.

11. The Division's investigation into this matter uncovered the following:

a. The PDMP data specifically reflected that between December 1, 2017, and May 31, 2018, Respondent prescribed, *inter alia*:

i. An average of 1,233 opioid medication prescriptions per month.

ii. A total of 7,912 opioid medication prescriptions.

iii. An average of 101,137 opioid doses per month.

iv. Opioid medication prescriptions to 1,137 different patients.

b. The top five controlled substances Respondent prescribed during the time period reviewed were:

   i. Oxycodone HCI – 6,139 orders dispensed, accounting for 72.92% of all dispensing for Respondent's patients.

   ii. Morphine – 908 orders dispensed, accounting for 10.79% of all dispensing for Respondent's patients.

   iii. Pregabalin – 457 orders dispensed, accounting for 5.43% of all dispensing for Respondent's patients.

   iv. Buprenorphine – 328 orders dispensed, accounting for 3.9% of all dispensing for Respondent's patients.

   v. Hydrocodone – 328 orders dispensed, accounting for 3.9% of all dispensing for Respondent's patients.

c. Respondent's prescribing of opioids between December 1, 2017, and May 31, 2018, placed him in the 100th percentile of opioid prescribers statewide.

d. As of June 1, 2018, Respondent's PDMP report for the preceding 100 days showed 51 alerts for patients with concurrent opioid and benzodiazepine prescriptions and 824 alerts for patients with high MMEs per day.

19 MED 053

12. On April 1, 2019, the Division received a complaint alleging Respondent overprescribed opioids to Patient L.H. (female born in 1965). DLSC Case No. 19 MED 053 was opened for further investigation.

13. Between October 1, 2013, and September 2, 2015, Respondent saw Patient L.H approximately once per month and prescribed oxycodone to her.

14. During this time Patient L.H. underwent urine and oral drug screens with abnormal results documented in Respondent's treatment records.

15. Respondent's documentation does not reflect that he made any inquiry about Patient L.H.'s abnormal drug screens and/or that he implemented safeguards or consequences as a result.

16. Between October 30, 2015, and January 28, 2016, Patient L.H was treated elsewhere by another provider.

17. On March 2, 2016, Patient L.H. resumed care with Respondent and continued to see him monthly until April 2019, during which time he continued to prescribe oxycodone to Patient L.H.

18. During this time Patient L.H. underwent urine and oral drug screens with abnormal results documented in Respondent's treatment records.

19. Respondent's documentation does not reflect that he made any inquiry about Patient L.H.'s abnormal drug screens and/or that he implemented safeguards or consequences as a result.

20. On December 28, 2018, Patient L.H was found unresponsive and was taken by ambulance to a local hospital where she was treated for an opioid overdose.

21. A urine drug screen completed on Patient L.H. at the hospital was positive for cocaine metabolite, opiates, and oxycodone, and the treating provider entered an overdose alert into the PDMP database.

22. Following the overdose, Respondent continued to prescribe Patient L.H. the same amount and dosage of oxycodone.

23. On January 10, 2019, Patient L.H. saw Respondent who documented that he checked the PDMP and that L.H.'s overdose was noted in the file. However, Respondent's documentation does not reflect he made any further inquiry about the overdose or implemented safeguards or consequences related to Patient L.H.'s abuse of the oxycodone he prescribed to her.

24. On January 18, 2019, Patient L.H again saw Respondent, who documented that they discussed cervical facets, cervical muscle trigger points, physical therapy, and the risk of overdose. Respondent obtained an updated lumbar MRI scan and prescribed:

a. 90 oxycodone 15 mg IR tablets, 3 per day;

b. 30 oxycodone 10 mg ER tablets, 1 per day;

c. Zanaflex 4 mg tablets, 3 per days; and

d. Gabapentin 300 mg tablets, 4 per day.

25. On February 6, 2019, and March 4, 2019, Patient L.H. saw Respondent, who documented that he checked PDMP and that L.H.'s overdose was noted in the file. Respondent's documentation of the visits does not reflect that he made any further inquiry about the overdose or implemented safeguards or consequences related to Patient L.H.'s abuse of the oxycodone he prescribed to her.

26. On April 10, 2019, a Division investigator interviewed Respondent who stated that his practice is to check the PDMP at every appointment. However, when the Division investigator inquired about Patient L.H.'s December 2018 overdose, Respondent stated he was unaware of it until the Division investigator told him of the overdose.

22 MED 268

27. On June 23, 2022, DLSC Case No. 22 MED 268 was opened to investigate whether Respondent was using Advanced Practice Nurse Prescribers (APNP) as proxies to continue prescribing controlled substances to patients after he was no longer legally allowed to do so himself.

28. On November 30, 2020, the Federal Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration (ISO) to Respondent. The ISO immediately suspended Respondent's DEA COR stating, "that on numerous occasions [Respondent] issued prescriptions outside the usual course of professional practice and not for a legitimate medical purpose, which is inconsistent with the public interest." The ISO further stated that, "[Respondent's] continued [DEA] registration during the pendency of these proceedings would constitute an imminent danger to the public health and safety because of the substantial likelihood of an imminent threat of death, serious bodily harm, or abuse of controlled substances will occur in the absence of this suspension."

29. The DEA sought revocation of Respondent's DEA COR pursuant to 21 U.S.C. § 824(a)(4), as well as the denial of any pending applications for renewal or modification of such COR and the denial of any applications for additional CORs alleging that Respondent's continued registration was inconsistent with the public interest, as that term is defined in 21 U.S.C. § 823(f).

30. On April 27, 2021, Respondent submitted an application for a new DEA COR.

31. On September 15, 2021, Respondent and the DEA entered into a Memorandum of Agreement (MOA), where Respondent withdrew his application for a new DEA COR and agreed to never apply for another DEA COR for the remainder of his lifetime.

32. Following the effective date of the MOA, multiple APNPs who worked for Respondent and the Clinic advised the Division that Respondent's wife directed them how to perform their APNP duties.

33. Following the effective date of the MOA, Respondent acted as the collaborating physician for the APNPs that worked at the Clinic.

23 MED 044

34. On January 25, 2023, the Division received a complaint from Patient M.S. (female born in 1982) alleging that in 2017, Respondent refused to prescribe her medication unless she wrote a letter of reference for Respondent to a government official who was investigating Respondent. Patient M.S. noted that she was pregnant in 2017 and Respondent readily prescribed her controlled substances while pregnant until she refused to provide the letter of reference. The Board's Screening Panel opened DLSC Case No. 23 MED 044 for further investigation. The Division has not fully investigated this complaint.

23 MED 047

35. On January 29, 2023, the Division received a complaint from Patient C.C. (female born in 1979) alleging Respondent dismissed her from the Clinic because her drug screen came back positive for cocaine when she does not do street drugs. Patient C.C. alleged that she was taking phentermine, which is known to provide a false positive following a drug screen. The Board's Screening Panel opened DLSC Case No. 23 MED 047 for further investigation. The Division has not fully investigated this complaint.

36. Respondent disagrees with the veracity of the Findings of Fact and affirmatively denies violating any provision of Wis. Stat. ch. 448 and Wis. Admin. Code ch. Med 10.

37. Respondent's consent to the entry of this Order does not constitute an admission of any charges, Findings of Fact, or allegations referenced above. Respondent's consent to the entry of this Order shall not be construed as an admission of liability by Respondent as to the Findings of Fact, or Conclusions of Law, or both as set forth in this Order. In the interests of achieving a final resolution to these matters and avoiding the costs of litigating these matters, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to act in these matters 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 above, Respondent committed unprofessional conduct pursuant to 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 above, Respondent committed unprofessional conduct pursuant to 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.

4. By the conduct described above, Respondent committed unprofessional conduct pursuant to Wis. Admin. Code § Med 10.03(3)(c) by 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.

5. By the conduct described above, Respondent committed unprofessional conduct pursuant to Wis. Admin. Code § Med 10.03(3)(e) by failing to establish and maintain timely patient health care records, including records of prescription orders, under Wis. Admin Code § Med 21.03 or as otherwise required by law.

6. As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

1. The attached Stipulation is accepted.

2. The SURRENDER by Respondent David I. Stein, M.D., of his license and registration (no. 32152-20) to practice medicine and surgery in the state of Wisconsin, and the right to renew such license and registration, is accepted, and shall become effective October 31, 2023, so that Respondent has time to discharge his current patients in accordance with Wis. Admin. Code § Med 10.03(2)(o).

3. In the event Respondent petitions the Board for reinstatement of his license and registration to practice medicine and surgery in the state of Wisconsin or applies for another credential in the state of Wisconsin under Wis. Stat. chs. 440 through 480, Respondent shall pay the costs of this matter in the amount of $50,000.00 before any petition or application for a credential will be considered by the applicable board or Department.

4. Respondent shall not petition the Board for reinstatement for at least three (3) years from the date of this Order. If Respondent petitions for reinstatement after three (3) years, whether to grant a license and registration and whether to impose any limitations or restrictions on any license and registration granted shall be in the sole discretion of the Board and such decision is not reviewable.

5. Should Respondent petition for reinstatement following three (3) years from the date of this Order, the Board when reviewing the petition, shall consider the circumstance of the cases at hand and what discipline may have been an appropriate resolution to the cases at hand absent a surrender of Respondent's license to practice medicine and surgery.

6. Any requests, petitions, payments of costs (made payable to Department of Safety and Professional Services), and other information required by this Order shall be submitted 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) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Respondent may also submit this information online at: https://dspsmonitoring.wi.gov.

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

WISCONSIN MEDICAL EXAMINING BOARD

By: Stephen A. Walrath, MD
A Member of the Medical Examining Board

8/8/2023
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
DAVID I. STEIN, M.D., RESPONDENT.	:	ORDER 0008671

Division of Legal Services and Compliance Case Nos. 16 MED 167, 17 MED 275, 18 MED 316, 19 MED 053, 22 MED 268, 23 MED 044, and 23 MED 047

Division of Hearing and Appeals Case Nos. SPS-19-0035, SPS-20-0004, SPS-21-0065, and SPS-22-0015

David I. Stein, M.D. (Respondent), 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 pending investigations by the Division of Legal Services and Compliance. Respondent consents to the resolution of these investigations 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 Christopher P. Banaszak.

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, 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. Respondent is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order will be reported as required by the National Practitioner Databank (NPDB) Guidebook and as otherwise required by any licensure compact or any other state or federal law.

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

David I. Stein, M.D., Respondent
Mequon, WI 53097
License No. 32152-20

7-31-23
Date

Christopher P. Banaszak, Attorney for Respondent
Reinhart Boerner Van Deuren S.C.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

7-31-23
Date

Gretchen Mrozinski

August 1, 2023

Gretchen Mrozinski, Prosecuting Attorney
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

Date