

**TRUE AND EXACT
COPY OF ORIGINAL**

BEFORE THE MINNESOTA
BOARD OF MEDICAL PRACTICE

In the Matter of
the Medical License of
Floyd O. Anderson, M.D.
Year of Birth: 1948
License Number: 21549

**FINDINGS OF
FACT, CONCLUSIONS,
AND FINAL ORDER**

The above-entitled matter came on for hearing on September 10, 2024, before Administrative Law Judge (“ALJ”) Megan McKenzie at the request of the Minnesota Board of Medical Practice (“Board”) Complaint Review Committee (“Committee”). The matter was initiated pursuant to the Notice and Order for Prehearing Conference and Hearing (“Notice of Hearing”) issued by the Committee on April 16, 2024. Carlos Figari and Daniel Schueppert, Assistant Attorneys General, represented the Committee. Floyd O. Anderson, M.D. (“Respondent”), appeared on his own behalf.

On December 9, 2024, the ALJ issued a Findings of Fact, Conclusions of Law, and Recommendation upon Default (“ALJ’s Report”), recommending that the Board take disciplinary action against Respondent’s license commensurate with the established violations. (A true and accurate copy of the ALJ’s Report is attached and incorporated as Exhibit A.)

The Board convened to consider the matter at a regularly scheduled meeting of the Board on January 11, 2025, both in person and virtually. The Board’s business address is 335 Randolph Avenue, Suite 140, St. Paul, Minnesota 55102. The following Board members were present: Pamela Gigi Chawla, M.D., M.H.A., Chaitanya Anand, M.B.B.S., Karen Thullner, M.F.A., Bruce Anderson, Cheryl L. Bailey, M.D., Sarah Carter, M.D., Tenbit Emiru, M.D., Ph.D., M.B.A., Peter Henry, M.D., Kristina M. Krohn, M.D., John M. (Jake) Manahan, J.D., Julie A. Pazdernik, M.D., Allen Rasmussen, M.A., Bruce Sutor, M.D., Averil M. Turner, and Jane Willett, D.O. Carlos

Figari, Assistant Attorney General, appeared on behalf of the Board's Complaint Review Committee. Respondent appeared on his own behalf. Hans A. Anderson, Assistant Attorney General, was present as legal advisor to the Board.

The following Board members did not participate in deliberations: Cheryl L. Bailey, M.D.; Peter J. Henry, M.D.; and Karen Thullner, M.F.A. Board staff who assisted the Committee did not participate in the deliberations.

FINDINGS OF FACT

The Board has reviewed the record of this proceeding and accepts the December 9, 2024, ALJ's Report and adopts and incorporates herein the Findings of Fact contained in the ALJ's Report, including:¹

1. Respondent was licensed by the Board to practice medicine and surgery in the State of Minnesota on August 16, 1974. Respondent is board-certified in psychiatry.

2. Respondent provides pharmacological services to nursing home patients in a relationship with a psychology clinic ("Clinic"). The Clinic handles billing, human resources, and administrative tasks for Respondent for his nursing home patients. New patient and follow up visits for the nursing home patients are coordinated by a social worker and other staff at the nursing homes. Respondent interacts with nursing home staff when he visits the nursing homes to see patients, including nurses and occupational therapists. Respondent generally provides medication recommendations and writes prescriptions for the nursing home patients. If a nursing home patient

¹ To conform to the standard format the Board uses for findings of fact and for ease of reading, the Board has made a number of non-substantive edits to the Findings of Fact to the extent they are specifically reproduced in this order. The ALJ's factual findings and citations to the record contained in the ALJ's Report, attached as Exhibit A, are Findings of Fact in this order.

or their family has any concern about Respondent, they may make a report to the nursing home staff or to the Clinic.

3. Respondent also sees a limited number of private pay patients.

4. On September 8, 2012, the Board issued a Stipulation and Order suspending Respondent's license to practice medicine and surgery in the State of Minnesota ("2012 Order") based on Respondent's history of chemical dependency and relapses to chemical use. The suspension was stayed contingent upon Respondent's compliance with the conditions and restrictions requiring Respondent to participate and comply with monitoring by the Health Professionals Services Program ("HPSP"). The 2012 Order provided that Respondent could petition the Board for reinstatement of an unconditional license after a minimum of two years of documented, uninterrupted recovery from the date of the Order.

5. On September 12, 2015, the Board issued an order granting Respondent an unconditional license, following his successful completion of his participation agreement with HPSP.

6. Respondent returned to using alcohol and cannabis after discharge from the HPSP program in 2015.

7. In the early morning hours of December 16, 2022, Respondent was arrested for DWI following a traffic accident. Respondent had been drinking and gambling at a casino late into the night of December 15, 2022, and crashed his vehicle into the guard rail while driving home. Respondent had a blood alcohol concentration ("BAC") of 0.11.

8. On December 19, 2022, Respondent underwent a comprehensive chemical dependency evaluation. The evaluation diagnosed Respondent with Alcohol Use Disorder and Cannabis Use Disorder. The report noted Respondent's temporary loss of memory, preoccupation,

loss of control, periodic abstinence, and increased tolerance related to substance use as diagnostic impressions.

9. On January 7, 2023, Respondent entered a 24-Hour Relapse Outpatient Chemical Dependency Treatment Program (“Outpatient Treatment”).

10. On January 25, 2023, Respondent was discharged from Outpatient Treatment with recommendations he continue to abstain from all mood-altering chemicals not prescribed by a physician for medical purposes and attend sobriety support group meetings as needed. Outpatient Treatment diagnosed Respondent with Alcohol Use Disorder and Cannabis Use Disorder.

11. Respondent has not followed the recommendations of the Outpatient Treatment providers.

12. Respondent pleaded guilty to Fourth Degree DWI on January 19, 2023. Respondent’s sentencing order requires him to follow recommendations for treatment and submit to a minimum of two years of unsupervised probation until at least January 25, 2025.

13. On May 31, 2023, the Board referred Respondent to HPSP. Respondent contacted HPSP in June 2023.

14. On June 26, 2023, Respondent was unsatisfactorily discharged from HPSP. After submitting to an HPSP intake interview, Respondent declined to proceed with HPSP’s recommendations for participation in the program.

15. On June 29, 2023, the Board received a letter from Respondent stating that he contacted HPSP and that they conducted an exhaustive review of his life and circumstances. Respondent indicated that HPSP recommended three years of monitoring, mandatory psychotherapy, and other requirements. Respondent stated he would “not voluntarily agree to that plan.”

16. On October 27, 2023, Respondent met with the Committee pursuant to a Notice of Conference to discuss concerns related to Respondent's practice of medicine without participation in and monitoring by HPSP. During the conference and in his written submissions to the Committee, Respondent represented that he would not participate in HPSP again because he believed it would be too burdensome for him and his practice. After the conference, the Committee again referred Respondent to HPSP. Respondent did not contact HPSP by the requested deadline.

17. Respondent was evaluated on January 17, 2024, by an alcohol and drug counselor temporary permit holder ("evaluator").

18. At the time of his January 17, 2024 evaluation, Respondent reported not using alcohol in the last 30 days, however, at the evidentiary hearing, Respondent testified that he currently uses alcohol and has not maintained sobriety. Additionally, the limited amount of alcohol use Respondent reported to the evaluator was not consistent with other evidence in the record.

19. The evaluator did not diagnose Respondent with alcohol use disorder or cannabis use disorder, however the Administrative Law Judge does not find this assessment reliable.

20. Respondent suffers from chemical dependency, specifically alcohol and cannabis dependence. Respondent is addicted or habituated to alcohol.

21. Respondent continues to use alcohol and cannabis.

22. Respondent currently is not in any substance abuse treatment or individual therapy.

CONCLUSIONS

The Board has reviewed the record of this proceeding and accepts the December 9, 2024 ALJ's Report and adopts and incorporates the conclusions of law therein. Accordingly, the Board makes the following Conclusions:²

1. The Board and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. §§ 147.091, 14.50 (2024).

2. The Committee gave proper and timely notice of the hearing in this matter and has fulfilled all relevant procedural requirements of law and rule.

3. The Committee has the burden of proof in this proceeding and must establish the facts at issue by a preponderance of the evidence.

4. "Preponderance of the evidence" means that the ultimate facts must be established by a greater weight of the evidence. "It must be of a greater or more convincing effect and . . . lead you to believe that it is more likely that the claim . . . is true than . . . not true." The Board may discipline licensees who engage in conduct prohibited by Minn. Stat. § 147.091 (2024). Among the listed prohibitions, a physician may not engage in "any unethical or improper conduct." Minn. Stat. § 147.091, subd. 1(g), contains a non-exclusive list enumerating certain types of unethical or improper conduct that are specifically prohibited, such as conduct likely to harm the public.

5. Driving while intoxicated is conduct likely to harm the public.

6. The Committee demonstrated that Respondent engaged in unethical or improper conduct.

² The Board's Conclusions of Law have been non-substantively altered to conform with the Board's format for orders, style, and readability.

7. Under Minn. Stat. § 147.091, the Board also may discipline licensees who are addicted or habituated to a drug or intoxicant or who are unable to practice medicine with reasonable skill and safety to patients by reason of illness.

8. The Committee demonstrated that Respondent is addicted or habituated to a drug or intoxicant, specifically alcohol.

9. The Committee did not demonstrate that Respondent is unable to practice medicine with reasonable skill and safety to patients by reason of illness.

10. When the Board finds that a licensed physician has violated a provision or provisions of Minn. Stat. §§ 147.01-.22 (2024), it may impose discipline, by revoking, suspending or imposing conditions upon a license, assessing a civil penalty of not more than \$10,000 per violation, or censuring or reprimanding the licensee.

11. Disciplinary action against Respondent's license is appropriate and an order by the Board taking disciplinary action against the Respondent's license is in the public interest.

ORDER

Based on the foregoing Findings of Fact and Conclusions, the Board issues the following Order:

1. IT IS HEREBY ORDERED that Respondent's licensee is **SUSPENDED** but the suspension is **STAYED** contingent upon Respondent's compliance with the following terms and conditions:

a. Respondent shall participate in the Health Professionals Services Program ("HPSP") and fully comply with all terms and conditions of his HPSP Participation Agreement for a period of three years from the date of this Order.

b. Respondent shall contact HPSP within 10 days of the date of this Order to begin the HPSP enrollment process.

c. Respondent shall provide the Board with a list of all of Respondent's residences and work sites within 10 days of the date of this Order. Within seven days of any change, Respondent shall provide the Board with the new address and telephone information. The information shall be sent to Executive Director, Minnesota Board of Medical Practice, 335 Randolph Avenue, Suite 140, St. Paul, Minnesota 55102.

d. Respondent may petition for reinstatement of an unconditional license no sooner than three years from the date this Order. Upon petitioning, he shall submit evidence satisfactory to the Board of a minimum of three years of documented, uninterrupted recovery commencing no sooner than the date of this Order. Upon hearing Respondent's petition, the Complaint Review Committee may recommend that the Board continue, modify, remove, or impose conditions and restrictions as deemed necessary.

2. If the Board receives a complaint regarding Respondent and has probable cause to believe that Respondent has failed to comply with one or more of the requirements for staying the suspension of Respondent's license as set forth in paragraph 1 above, the Complaint Review Committee may cause the Board to issue an order to remove the stay of suspension, which shall suspend Respondent's license. The order to remove the stay of suspension shall specify the reasons for the removal including the substance of the terms of this Order alleged to have been violated. The removal of the stay of suspension order shall take effect upon the third calendar day after the order is served upon Respondent by first class mail to the most recent address Respondent has provided to the Board.

3. The suspension of Respondent's license pursuant to an order removing the stay of suspension shall remain in effect until, upon written request by Respondent to the Board and, after a hearing or by agreement, the suspension is terminated by the Board in a written order. Respondent shall be provided timely notice of the time, date, and place of the hearing. In connection with such a hearing, Respondent may choose to be represented by an attorney, present evidence as appropriate, and submit argument to advance his position.

4. Nothing herein shall limit the right of the Committee or Board to initiate a proceeding under the Administrative Procedure Act, including but not limited to the temporary suspension of Respondent's license pursuant to Minnesota Statutes sections 214.077 and 147.091, subdivision 4, based on a violation of this Order, Minnesota Statutes section 147.091, subdivision 1(f), or any other action justified by Minnesota law.

5. IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's petition, take any of the following actions:

- a. Issue an unconditional license to Respondent;
- b. Grant Respondent a license subject to conditions or restrictions;
- c. Upon Respondent's request, grant the cancellation of Respondent's credentials under disciplinary order pursuant to Minnesota Statutes section 147.0381; or
- d. Continue the suspension of Respondent's license.

Dated: 1/15/2025

MINNESOTA BOARD OF
MEDICAL PRACTICE

A handwritten signature in black ink, appearing to read "Brock" with a stylized flourish at the end.

Presiding Board Member

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA BOARD OF MEDICAL PRACTICE

In the Matter of the Medical License of
Floyd O. Anderson, M.D.
Year of Birth: 1948
License Number: 21549

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-entitled matter came before Administrative Law Judge Megan J. McKenzie for an evidentiary hearing on September 10, 2024. The record closed at the conclusion of the hearing.

Daniel S. Schueppert, Assistant Attorney General, appeared on behalf of the Minnesota Board of Medical Practice (Board) Complaint Review Committee (Committee). Floyd O. Anderson (Respondent) appeared on his own behalf without legal counsel.

The Committee's Exhibits 1-17, 19-21 and Respondent's Exhibit 101 were admitted into the record.

STATEMENT OF THE ISSUES

1. Did Respondent engage in unethical or improper conduct, including but not limited to conduct likely to harm the public, in violation of Minn. Stat. § 147.091, subd. 1(g) (2024)?
2. Is Respondent unable to practice medicine with reasonable skill and safety to patients by reason of illness, in violation of Minn. Stat. § 147.091, subd. 1(l) (2024)?
3. Is Respondent addicted or habituated to a drug or intoxicant, in violation of Minn. Stat. § 147.091, subd. 1(r) (2024)?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Respondent engaged in conduct likely to harm the public and is addicted or habituated to a drug or intoxicant and recommends that the Board impose discipline against Respondent's license.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent was licensed by the Board to practice medicine and surgery in the State of Minnesota in 1974. Respondent is board-certified in psychiatry.¹

2. Respondent provides pharmacological services to nursing home patients in a relationship with the Associated Clinic of Psychology. The Associated Clinic of Psychology handles billing, human resources, and administrative tasks for Respondent for his nursing home patients. New patient and follow up visits for the nursing home patients are coordinated by a social worker and other staff at the nursing homes. Respondent interacts with nursing home staff when he visits the nursing homes to see patients, including nurses and occupational therapists. Respondent generally provides medication recommendations and writes prescriptions for the nursing home patients. If a nursing home patient or their family has any concern about Respondent, they may make a report to the nursing home staff or to the Associated Clinic of Psychology.²

3. Respondent also sees a limited number of private pay patients.³

4. In January 2004, Respondent was convicted of careless driving and possession of marijuana in a motor vehicle, following an arrest for Driving While Intoxicated (DWI) in May 2003.⁴ Respondent contacted the Health Professionals Services Program (HPSP), but subsequently declined to participate in HPSP.⁵

5. Respondent was arrested for DWI on January 28, 2011, and had a blood alcohol concentration (BAC) of 0.15.⁶

6. In February 2011, Respondent self-reported to HPSP regarding his January 28, 2011, DWI arrest. A chemical dependency assessment diagnosed Respondent with alcohol dependence with physiological dependence and cannabis abuse. Respondent enrolled in inpatient chemical dependency treatment and signed a participation agreement with HPSP which included a monitoring plan.⁷

7. Respondent found HPSP burdensome but effective at keeping him sober.⁸

8. On March 2, 2012, the Board was notified that Respondent had admitted to consuming alcohol in violation of the HPSP monitoring plan. Due to his relapse to

¹ Exhibits (Ex.) 1, 20.

² Testimony (Test.) of Dr. Floyd Anderson.

³ *Id.*

⁴ Exs. 1, 8.

⁵ Ex. 1; Test. F. Anderson.

⁶ Ex. 1.

⁷ Ex. 1, 13.

⁸ Test. F. Anderson.

alcohol use, HPSP made an addendum to his monitoring plan requesting that Respondent refrain from practice until HPSP approved his return.⁹

9. On April 30, 2012, Respondent submitted a letter to HPSP, stating that he was “withdrawing my voluntary compliance with parts of my HPSP Monitoring Plan.” Respondent denied dependency to alcohol or drugs and denied a need for ongoing monitoring by HPSP. Respondent was discharged from the HPSP on May 2, 2012.¹⁰

10. On September 8, 2012, the Board issued a Stipulation and Order suspending Respondent’s license to practice medicine and surgery in the State of Minnesota (2012 Order) based on Respondent’s history of chemical dependency and relapses to chemical use. The suspension was stayed contingent upon Respondent’s compliance with the conditions and restrictions requiring Respondent to participate and comply with monitoring by HPSP. The 2012 Order provided that Respondent could petition the Board for reinstatement of an unconditional license after a minimum of two years of documented, uninterrupted recovery from the date of the Order.¹¹

11. On September 12, 2015, the Board issued an order granting Respondent an unconditional license, following his successful completion of his participation agreement with HPSP.¹²

12. Respondent returned to using alcohol and cannabis after discharge from the HPSP program in 2015.¹³

13. In the early morning hours of December 16, 2022, Respondent was arrested for DWI following a traffic accident. Respondent had been drinking and gambling at a casino late into the night of December 15, 2022, and crashed his vehicle into the guard rail while driving home. Respondent had a BAC of .11.¹⁴

14. On December 19, 2022, Respondent underwent a comprehensive chemical dependency evaluation. The evaluation diagnosed Respondent with Alcohol Use Disorder and Cannabis Use Disorder. The report noted Respondent’s temporary loss of memory, preoccupation, loss of control, periodic abstinence, and increased tolerance related to substance use as diagnostic impressions.¹⁵

15. On January 7, 2023, Respondent entered a 24-Hour Relapse Outpatient Chemical Dependency Treatment Program (Outpatient Treatment).¹⁶

16. On January 25, 2023, Respondent was discharged from Outpatient Treatment with recommendations he continue to abstain from all mood-altering

⁹ Ex. 1; Test. F. Anderson.

¹⁰ Ex. 1.

¹¹ Ex. 1.

¹² Ex. 2.

¹³ Test. F. Anderson.

¹⁴ Exs. 3-5, 10; Test. F. Anderson.

¹⁵ Exs. 4, 10.

¹⁶ Exs. 7, 10.

chemicals not prescribed by a physician for medical purposes and attend sobriety support group meetings as needed. Outpatient Treatment diagnosed Respondent with Alcohol Use Disorder and Cannabis Use Disorder.¹⁷

17. Respondent has not followed the recommendations of the Outpatient Treatment providers.¹⁸

18. Respondent pleaded guilty to Fourth Degree DWI on January 19, 2023.¹⁹ Respondent's sentencing order requires him to follow recommendations for treatment and submit to a minimum of two years of unsupervised probation until at least January 25, 2025.²⁰

19. On May 31, 2023, the Board referred Respondent to HPSP. Respondent contacted the HPSP in June 2023.²¹

20. 13. On June 26, 2023, Respondent was unsatisfactorily discharged from HPSP. After submitting to an HPSP intake interview, Respondent declined to proceed with HPSP's recommendations for participation in the program.²²

21. 14. On June 29, 2023, the Board received a letter from Respondent stating that he contacted HPSP and that they conducted an exhaustive review of his life and circumstances. Respondent indicated that HPSP recommended three years of monitoring, mandatory psychotherapy, and other requirements. Respondent stated he would "not voluntarily agree to that plan."²³

22. On October 27, 2023, Respondent met with the Committee pursuant to a Notice of Conference to discuss concerns related to Respondent's practice of medicine without participation in and monitoring by HPSP. During the conference and in his written submissions to the Committee, Respondent represented that he would not participate in HPSP again because he believed it would be too burdensome for him and his practice. After the conference, the Committee again referred Respondent to HPSP. Respondent did not contact HPSP by the requested deadline.²⁴

23. Respondent is not participating in HPSP and does not wish to participate in HPSP.²⁵

24. Respondent was evaluated on January 17, 2024, by Elyse Madsen at Club Recovery LLC.²⁶ Madsen held a temporary alcohol and drug counselor permit and

¹⁷ *Id.*

¹⁸ Test. F. Anderson.

¹⁹ Ex. 5.

²⁰ Exs. 6, 9.

²¹ Exs. 10-12.

²² Exs. 10, 13-15.

²³ Ex. 14.

²⁴ Ex. 16-17.

²⁵ Ex. 10; Test. F. Anderson.

²⁶ Ex. 101.

was subject to supervision by a Minnesota Licensed Alcohol and Drug Counselor.²⁷ Madsen's supervising licensed counselor did not meet with Respondent.²⁸

25. At the time of his January 17, 2024 evaluation, Respondent reported not using alcohol in the last 30 days, however, Respondent testified that he currently uses alcohol and has not maintained sobriety. Additionally, the limited amount of alcohol use Respondent reported to Elyse Madsen was not consistent with other evidence in the record.²⁹

26. Madsen did not diagnose Respondent with alcohol use disorder or cannabis use disorder, however the Administrative Law Judge does not find this assessment reliable.

27. Respondent suffers from chemical dependency, specifically alcohol and cannabis dependence.³⁰ Respondent is addicted or habituated to alcohol.³¹

28. Respondent continues to use alcohol and cannabis.³²

29. Respondent currently is not in any substance abuse treatment or individual therapy.³³

30. There is no evidence Respondent has ever provided treatment to patients, or driven to treat patients, while under the influence of drugs or alcohol.

31. Any Conclusion of Law more properly considered a Finding of Fact is incorporated herein.

32. Any portion of the accompanying Memorandum more properly considered to be a Finding of Fact is incorporated herein.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Board and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. §§ 147.091, 14.50 (2024).

2. The Committee gave proper and timely notice of the hearing in this matter and has fulfilled all relevant procedural requirements of law and rule.

²⁷ Ex. 101; Test. F. Anderson; Minn. Stat. § 148F.025.

²⁸ Test. F. Anderson.

²⁹ Ex. 101; Exs. 4, 10, 13; Test. F. Anderson.

³⁰ Ex. 7.

³¹ Exs. 1, 4-9; Test. F. Anderson.

³² Ex. 20; Test. F. Anderson.

³³ Test. F. Anderson.

3. The Committee has the burden of proof in this proceeding and must establish the facts at issue by a preponderance of the evidence.

4. "Preponderance of the evidence" means that the ultimate facts must be established by a greater weight of the evidence. "It must be of a greater or more convincing effect and . . . lead you to believe that it is more likely that the claim . . . is true than . . . not true." The Board may discipline licensees who engage in conduct prohibited by Minn. Stat. § 147.091 (2024). Among the listed prohibitions, a physician may not engage in "any unethical or improper conduct." Minn. Stat. § 147.091, subd. 1(g), contains a non-exclusive list enumerating certain types of unethical or improper conduct that are specifically prohibited, such as conduct likely to harm the public.

5. Driving while intoxicated is conduct likely to harm the public.³⁴

6. The Committee demonstrated that Respondent engaged in unethical or improper conduct.

7. Under Minn. Stat. § 147.091, the Board also may discipline licensees who are addicted or habituated to a drug or intoxicant or who are unable to practice medicine with reasonable skill and safety to patients by reason of illness.

8. The Committee demonstrated that Respondent is addicted or habituated to a drug or intoxicant, specifically alcohol.

9. The Committee did not demonstrate that Respondent is unable to practice medicine with reasonable skill and safety to patients by reason of illness.

10. When the Board finds that a licensed physician has violated a provision or provisions of Minn. Stat. §§ 147.01-.22 (2024), it may impose discipline, by revoking, suspending or imposing conditions upon a license, assessing a civil penalty of not more than \$10,000 per violation, or censuring or reprimanding the licensee.³⁵

11. Disciplinary action against Respondent's license is appropriate.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge concludes that Respondent engaged in conduct likely to harm the public and is addicted or habituated to a drug or intoxicant. The Committee did not prove that Respondent is unable to practice medicine with reasonable skill and safety to patients by reason of illness. The Administrative Law

³⁴ See Ex. 20.

³⁵ Minn. Stat. § 147.141 (2024).

Judge respectfully recommends that the Board should impose disciplinary action commensurate with the established violations.

Dated: December 9, 2024



MEGAN J. MCKENZIE
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Board of Medical Practice (Board) will make the final decision after a review of the record. The Board may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61 (2024), the Board shall not make a final decision until this Report has been made available to the parties to the proceeding for at least ten calendar days. The parties may file exceptions to this Report and the Board must consider the exceptions in making a final decision. Parties should contact the Executive Director of the Minnesota Board of Medical Practice, Suite 140, 335 Randolph Avenue, St. Paul, MN 55102, telephone (612) 548-2150, to ascertain the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date the record closes. If the Board fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2024). In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1 (2024), the Board is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

MEMORANDUM

The Committee alleges that Respondent (1) engaged in unethical or improper conduct, (2) is unable to practice medicine with reasonable skill and safety to patients by reason of illness, and (3) has become addicted or habituated to a drug or intoxicant in violation of Minnesota Statutes section 147.091, subd. 1.

Respondent has a long history of problematic alcohol use leading to DWI arrests and interaction with the Board. Despite this history and his recent conviction for DWI, Respondent is refusing to accept treatment recommendations from HPSP. At the hearing, Respondent failed to take accountability for his December 16, 2022 accident and DWI arrest, instead blaming the crash on his electric vehicle and the weather. Respondent appeared more regretful that police were involved with the incident than that he drove while intoxicated. Respondent is unwilling to abstain from alcohol and also refuses to participate in the treatment and monitoring recommended by HPSP. When asked how the Board could be satisfied that Respondent will not have further problems regarding his alcohol use, Respondent offered the completely inadequate response of "ask my wife." Respondent's wife did not appear or testify at the hearing. Respondent simply does not accept that he has any alcohol use problems despite his repeated relapses and DWIs.

There is no dispute Respondent drove while intoxicated on December 16, 2022. Driving while intoxicated is hazardous and likely to harm members of the public, and no one disagrees with this. The Committee has therefore established that Respondent engaged in conduct likely to harm the public, in violation of Minn. Stat. § 147.091, subd. 1(g).

Respondent has been diagnosed with alcohol use disorder. Respondent's repeated DWI arrests and refusal to abstain from alcohol despite its adverse impacts on his life are manifestations of his addiction. The Committee has established that Respondent violated Minn. Stat. § 147.091, subd. 1(r), by becoming addicted or habituated to a drug or intoxicant.

The Committee, however, did not establish that Respondent's alcohol use disorder has impacted his treatment of patients or practice of medicine. While Respondent appears to lack insight regarding his alcohol abuse, there is no evidence in the record that Respondent has driven to work while under the influence of drugs or alcohol, treated patients while under the influence of drugs or alcohol, or been on call while under the influence of drugs or alcohol. The record established that Respondent regularly interacts with nursing home staff during his visits to the nursing homes and that patients or their families could submit a complaint to nursing home staff or the Associated Clinic of Psychology about Respondent's care. On this record, the Administrative Law Judge cannot conclude that Respondent is unable to practice medicine with reasonable skill and safety to patients by reason of illness in violation of Minn Stat. § 147.091, subd. 1(l).

The Committee has met its burden of proving that Respondent is addicted or habituated to a drug or intoxicant and engaged in unethical or improper conduct. The Administrative Law Judge therefore respectfully recommends that the Board impose discipline against Respondent's license.

M.J.M