

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 :
 :
JOHN D. WHELAN, M.D., : FINAL DECISION AND ORDER
RESPONDENT. : ORDER NO. 0007272
 :

Division of Legal Services and Compliance (DLSC) Case Nos. 19 MED 007 and 19 MED 346
Division of Hearings and Appeals Case No. SPS-21-0071

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

John D. Whelan, M.D.
Fond du Lac, WI 54935

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 March 17, 2021, the Medical Examining Board (Board) issued an Interim Order suspending Respondent’s license and registration to practice medicine and surgery in the state of Wisconsin until the Board issues a Final Decision and Order in DLSC Case Nos. 19 MED 007 and 19 MED 346. On September 17, 2021, the DLSC filed a Notice of Hearing and Complaint with the Department of Administration, Division of Hearings and Appeals (DHA), which alleged that Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code. §§ Med 10.03(1)(d), 10.03(2)(b), 10.03(2)(e), and 10.03(3)(i). On October 4, 2021, Administrative Law Judge Kristin Fredrick granted the parties joint request for a stay of the hearing proceedings pending completion of an underlying federal criminal matter.

The parties in these matters agree to enter into a stipulated resolution in lieu of participating in an evidentiary hearing and prior to the resolution of the underlying federal criminal matter. The parties in these matters agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the 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, Conclusion of Law, and Order.

FINDINGS OF FACT

1. Respondent John D. Whelan, M.D., (Birth Year 1946), is licensed in the state of Wisconsin to practice medicine and surgery, having license number 36165-20, first issued on November 18, 1994, with registration current through October 31, 2021.¹ Respondent's license and registration to practice medicine and surgery in the state of Wisconsin is currently suspended. His most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Fond du Lac, Wisconsin 54935.

2. On May 21, 2003, the Board reprimanded Respondent and limited his license to require him to complete education in the areas of patient boundaries and medical record keeping. Respondent had prescribed antidepressant medications for his significant other, did not consult with his significant other's psychiatrist during this time, and did not keep records of the health care services he provided to his significant other. (Order No. LS0305211MED).

3. Respondent successfully completed the ordered education, and his license was restored to unrestricted status on November 28, 2003.

4. On April 17, 2019, the Board reprimanded Respondent for discontinuing medications without consulting a patient's other treating providers, and for prescribing an injectable anti-psychotic medication without a clear diagnosis of psychosis and without any history of the patient failing to take oral medications. The patient also had a Power of Attorney, and Respondent's charting of his care of the patient reflected hostility and resistance to the Power of Attorney's involvement in the patient's care. (Order No. 0006138).

5. On January 18, 2019, the DLSC received a complaint that alleged Respondent wrote multiple prescriptions for controlled substances outside of the usual course of professional practice. On January 24, 2019, the Board opened DLSC Case No. 19 MED 007 to investigate the allegations.

6. On August 1, 2019, the DLSC received a complaint that alleged Respondent was inappropriately prescribing controlled substances and accepting cash in exchange for writing such prescriptions. On August 13, 2019, the Board opened DLSC Case No. 19 MED 346 to investigate the allegations.

7. On January 5, 2021, in the United States District Court, Eastern District of Wisconsin, Case No. 21-CR-005, Respondent was indicted and charged with one (1) count of Conspiracy to Distribute Controlled Substances in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846; one (1) count of Maintaining a Drug-Involved Premises in violation of 21 U.S.C. § 856(a)(1) and 18 U.S.C. § 2; eleven (11) counts of Distribution of Controlled Substances in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. § 2; and one (1) count of False Statement or Representation Made to a Department or Agency of the United States in

¹ Wisconsin Stat. § 440.08(3) provides Respondent with a 5-year right to apply for renewal of his license and registration.

violation of 18 U.S.C. § 1001. This matter remains ongoing and unresolved as of the date signatures were obtained on the corresponding stipulation.

8. As of the date of this Order, the Board has not made a determination as to whether Respondent violated any statutes or rules related to the practice of medicine and surgery.

9. Respondent's consent to the entry of this order does not constitute an admission of any charges or allegations referenced above, which charges or allegations Respondent denies.

CONCLUSION 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).

ORDER

1. The attached Stipulation is accepted.

2. The SURRENDER by Respondent of his license and registration to practice medicine and surgery in the state of Wisconsin (license no. 36165-20), as well as his right to renew such license and registration, is accepted.

3. Respondent maintains the right to petition the Board for reinstatement of his license and registration to practice medicine and surgery in the state of Wisconsin or apply for another credential in the state of Wisconsin under Wis. Stat. chs. 440 through 480. Should Respondent do so, he shall first pay the costs of this matter in the amount of \$5,174.00, 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 prior to the resolution of United States District Court, Eastern District of Wisconsin, Case No. 21-CR-005, as referenced in paragraph 7 in the Findings of Fact. In the event Respondent petitions the Board for reinstatement of his license and registration to practice medicine and surgery in the state of Wisconsin, the Board may enter an order denying such application without further notice or hearing. Whether to grant a license and registration and whether to impose any limitations or restrictions on any license and registration granted, including a fitness to practice examination, shall be in the sole discretion of the Board and such decision is not reviewable. Should a petition for reinstatement occur, the Board may consider the outcome of United States District Court, Eastern District of Wisconsin, Case No. 21-CR-005, as referenced in paragraph 7 in the Findings of Fact.

5. 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://dpsmonitoring.wi.gov>.

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

WISCONSIN MEDICAL EXAMINING BOARD

By: Stephan A. Wacker, MD
A Member of the Board

4/19/2023
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOHN D. WHELAN, M.D.,
RESPONDENT.

STIPULATION
ORDER NO. 0007272

Division of Legal Services and Compliance (DLSC) Case Nos. 19 MED 007 and 19 MED 346
Division of Hearings and Appeals Case No. SPS-21-0071

John D. Whelan, 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 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 Patricia Putney.
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 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. 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.

John D. Whelan, M.D.
John D. Whelan, M.D., Respondent
Fond du Lac, WI 54935
License No. 36165-20

March 23, 2023
Date

Patricia Putney
Patricia Putney, Attorney for Respondent
Bell Moore & Richter, S.C.
345 West Washington Ave.
Suite 302
Madison, WI 53703

3/27/23
Date

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

3/27/2023
Date