

FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

JOHN R. MARSHALL, M.D. :
RESPONDENT. :

95 MED 019

LS9711202MED

FINAL DECISION AND ORDER

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

John R. Marshall, M.D.
600 Highland Avenue
Madison, WI 53792

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Medical Examining 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

1. John R. Marshall, M.D., Respondent, date of birth February 12, 1939, is licensed by the Wisconsin Medical Examining Board as a physician in the state of Wisconsin pursuant to license number 15446, which was first granted February 16, 1966.

2. Respondent's last address reported to the Department of Regulation and Licensing is 600 Highland Avenue, Madison, WI 53792.

3. At all times relevant, Respondent practiced as a physician with the University of Wisconsin Hospital and Clinics Psychiatry Department.

4. Respondent provided professional services to Ms. A from February 17, 1985 through January 13, 1987. During that period, Respondent prescribed Xanax, an anxiolytic, to Ms. A.

5. On December 17, 1985, during the course of treating Ms. A, Respondent made the following entry in Ms. A's medical record at the UW Hospital and Clinics Psychiatry Department:

"Xanax x5 mg #100 x 3. Feels up + down these days. Anxiety is better Was 4-5-6 mg / day. Now 6 mg / day Discussed fathers call about meds. - Close to panic attack occ, esp \bar{c} bro's death [I can't see evidence of abuse now]"

6. In April, 1988, Ms. A obtained a copy of her medical records of her treatment by Respondent from the UW Hospital and Clinics Psychiatry Department. At that time, the entry dated December 17, 1985 in the original record, and in the copy Ms. A received, was as set out in paragraph 5 above.

7. By March, 1992, Ms. A had filed a civil action against Respondent, alleging that Respondent improperly prescribed Xanax to her for an excessive period of time, at too high a dose, and with knowledge of the fact that Ms. A was drinking alcoholic beverages during the time she was taking Xanax. The action contended that Ms. A became addicted to the Xanax.

8. After Respondent became aware that Ms. A was making a claim against Respondent, but before March 30, 1992, Respondent added a phrase at the end of the original of the December 17, 1985 medical record entry. Respondent knew that a key issue in the matter was whether Respondent knew that Ms. A was consuming alcohol while Respondent prescribed Xanax. The phrase Respondent added at the end of the entry was: "Denies drinking".

9. The phrase Respondent added to the December 17, 1985 entry, several years after the original entry was made, was not dated as a late entry, and was written in such a manner that it appeared to be part of the original notation.

10. On March 30, 1992, while being deposed by Ms. A's attorney in the civil action, Respondent read aloud his December 17, 1985, entry from Ms. A's original medical record, including the phrase "Denies drinking". At that point Ms. A's attorney showed Respondent the copy of the medical record Ms. A had obtained years earlier that did not include the phrase, and asked Respondent to explain how and when the phrase was added. Respondent said he did not know when he added it, but that he must have done so.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction over this matter pursuant to §448.02 (3), Stats.

2. The Wisconsin Medical Examining Board has authority to enter into this stipulated resolution of this matter pursuant to § 227.44(5), Stats.

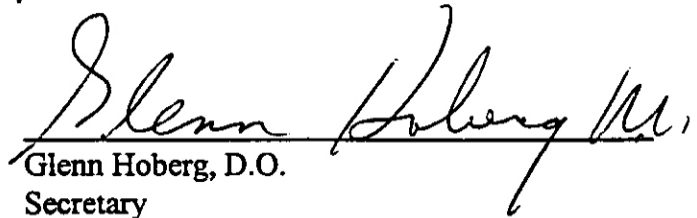
3. The Respondent's conduct, as described above, constitutes unprofessional conduct as defined by § 448.02(3), Stats., and Wis. Adm. Code § MED 10.02 (2).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent, John R. Marshall, M.D., is hereby REPRIMANDED for the conduct set out above.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin this 26 day of June, 1997.


Glenn Hoberg, D.O.
Secretary
Medical Examining Board

t:\sez\legal\marshord.doc

STATE OF WISCONSIN
BEFORE THE WISCONSIN MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOHN R. MARSHALL, M.D.
RESPONDENT.

95 MED 019

STIPULATION

It is hereby stipulated and agreed, by and between John R. Marshall, M.D., Respondent; Bradway A. Liddle, Jr., of Boardman, Suhr, Curry & Field, attorneys for Respondent; and John R. Zwieg, as attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of pending investigation of Respondent by the Department of Regulation and Licensing, Division of Enforcement on behalf of the Medical Examining Board (file 95 MED 019).

2. Respondent understands that by the signing of this stipulation Respondent voluntarily and knowingly waives Respondent's rights, including: 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; 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, and the Wisconsin Administrative Code.

3. Respondent is aware of his right to seek legal representation prior to signing this stipulation, and has done so.

4. Respondent admits the allegations in this matter, and agrees to the adoption of the attached Final Decision and Order by the 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 be returned to the Division of Enforcement for further proceedings. In the event that this 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 Respondent, Respondent's attorney, an attorney for the Division of Enforcement, and the member of the Board who has been appointed as the investigative advisor may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

Dated this 29 day of Oct, 1997. John R. Marshall, M.D.
John R. Marshall, M.D.
Respondent

Dated this 24th day of Oct, 1997. Bradway A. Liddle, Jr.
Bradway A. Liddle, Jr.
Boardman, Suhr, Curry & Field
Attorneys for Respondent

Dated this 22nd day of October, 1997. John R. Zwiag
John R. Zwiag
Attorney for Complainant
Department of Regulation & Licensing
Division of Enforcement

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE MEDICAL EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

John R. Marshall, M.D.,

AFFIDAVIT OF MAILING

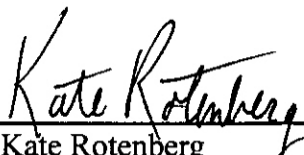
Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On November 24, 1997, I served the Final Decision and Order dated November 20, 1997, LS9711202MED, upon the Respondent John R. Marshall's attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 157 496.

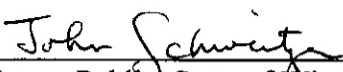
Bradway A. Liddle, Jr., Attorney
One S. Pinckney Street, Suite 410
P.O. Box 927
Madison WI 53701-0927



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 24th day of November, 1997.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review. The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

November 24, 1997

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)