

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.,
RESPONDENT.

:
:
:
:
:

INTERIM ORDER

ORDER 0007272

Division of Legal Services and Compliance Case Nos. 19 MED 007 and 19 MED 346

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as an Interim Order in this matter, subject to the approval of the 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. 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. Respondent's 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. LS030521MED).

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. 6138).

5. On January 18, 2019, the Division of Legal Services and Compliance (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, 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 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 violation of 18 U.S.C. § 1001.

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 voluntarily agrees not to practice medicine and surgery in the state of Wisconsin pending the final resolution of DLSC Case Nos. 19 MED 007 and 19 MED 346, and United States District Court, Eastern District of Wisconsin, Case No. 21-CR-005.

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

CONCLUSIONS OF LAW

1. The Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 448.02(3), and has authority to enter into this stipulation for an Interim Order pursuant to Wis. Stat. § 227.44(5).

ORDER

1. The attached Stipulation is accepted.

2. The license and registration of Respondent to practice medicine and surgery in the state of Wisconsin (license number 36165-20) is SUSPENDED as of the date of this Order.

3. The suspension shall continue until the Board issues a Final Decision and Order in DLSC Case Nos. 19 MED 007 and 19 MED 346.

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

WISCONSIN MEDICAL EXAMINING BOARD

By: Shelton A. Wasserman, MD
A Member of the Board

17 March 2021
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

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

STIPULATION
FOR INTERIM ORDER
ORDER 0007272

Division of Legal Services and Compliance Case Nos. 19 MED 007 and 19 MED 346

Respondent John D. Whelan, M.D., 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.
2. 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 Michael Penkwitz.
3. Respondent neither admits nor denies the allegations in this matter, but agrees to the adoption of the attached Interim Order by the Medical Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Interim 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.
4. 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 Legal Services and Compliance 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 the attached Interim Order.
5. 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 a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or Respondent's attorney, if any, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Interim Order.
6. Respondent is informed that should the Board adopt this Stipulation, the Board's Interim Order is a public record and will be published in accordance with standard Department procedure.

7. The Division of Legal Services and Compliance joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Interim Order.

John D. Whelan^{MD}

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

Date

Feb 23 2021

Michael Penkwitz

Michael Penkwitz, Attorney for Respondent
440 West Grand Ave.
Port Washington, WI 53074

Date

2-25-2021

Gretchen Mrozinski

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

2/26/2021

Date