

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

NEVILLE W. DUNCAN, M.D., :
RESPONDENT. :

FINAL DECISION AND ORDER
98 MED 265

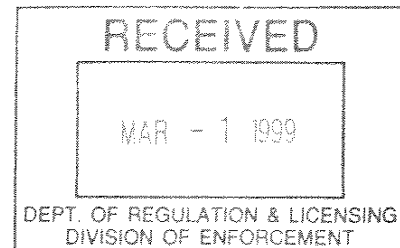
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The parties to this action for the purposes of § 227.53, Wis. Stats., are:

Neville W. Duncan, MD
4070 S. Adell Ave.
New Berlin, WI 53151

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 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. Respondent is Neville W. Duncan, M.D., dob 11/20/1941, who is licensed as a physician and surgeon in Wisconsin pursuant to license #37370, first granted on 1/12/1996. Respondent is an obstetrician and gynecologist.
2. On September 21, 1998, a Milwaukee police officer observed the respondent in a public altercation with his wife, from whom he was separated.
3. Respondent was placed under arrest. The respondent was searched and a glass vial and a small plastic bag were seized. The substances in both containers tested positive for the presence of cocaine base.
4. Respondent was conveyed to St. Mary's Hospital, Milwaukee, WI for a drug screening. Respondent had blood drawn, and a urine sample taken. A urine analysis was positive for cocaine..
5. Respondent had, in fact, earlier smoked cocaine with his wife.
6. On January 14, 1999, respondent was convicted in Milwaukee County Circuit Court upon his plea of no contest to misdemeanor possession of a controlled substance - cocaine growing out of the incident set forth above, contrary to §961.41(3g)(c), Wis. Stats., and to disorderly conduct, contrary to §63.01, Milwaukee County Ordinances.

7. Respondent was comprehensively evaluated at PRN and was diagnosed with cocaine abuse. Respondent stated that had only used cocaine four or five times over a three week period in September, 1998. Respondent represents to the Board that he did not use cocaine before September, 1998 and has not used cocaine since September 21, 1998, nor has he used other illicit controlled substances in the past ten years.

8. Respondent has been comprehensively evaluated by a competent practitioner approved by the Board, and has been found not to be impaired or chemically dependent, although respondent has in the past used cocaine recreationally. In the opinion of the examiner, there are no psychological reasons why respondent could not practice with skill and safety to the patient and public at this time.

CONCLUSIONS OF LAW

A. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to §448.02(3), Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

B. Possession or use of cocaine outside of legitimate practice constitutes unprofessional conduct pursuant to § Med 10.02(2)(p), Wis. Adm. Code. Being convicted of violating a law regulating the possession of controlled substances constitutes unprofessional conduct pursuant to § Med 10.02(2)(r) Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Neville W. Duncan, M.D., is REPRIMANDED for his unprofessional conduct in possessing and using a controlled substance, and being convicted therefore.

IT IS FURTHER ORDERED, that respondent shall, upon request of any agent of the Board or department, including a law enforcement officer acting at the request of an agent of the Board or department, forthwith provide a sample of his breath, urine, blood or hair for testing, and shall cooperate fully with such sampling process.

IT IS FURTHER ORDERED, that respondent shall pay the costs of investigating and prosecuting this matter in the amount of \$550, before his registration is next renewed.

IT IS FURTHER ORDERED, that pursuant to §448.02(4), Wis. Stats., if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license and registration of respondent be summarily suspended pending investigation of the alleged violation.

Dated this February 24, 1999.

WISCONSIN MEDICAL EXAMINING BOARD

by: 
a member of the Board

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STIPULATION
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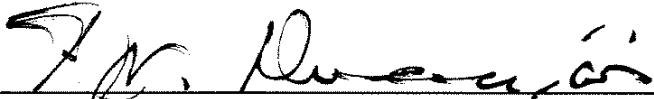
It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, as follows:


1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without a hearing on the formal complaint which has been issued in this matter.
2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; 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 has legal representation and obtained legal advice before signing this Stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties 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, or if it is shown that respondent was untruthful concerning his past use of cocaine or other illicit controlled substances, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, 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 agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.
7. The Case Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and view of the case acquired during the investigation.


8. This stipulation is subject to approval by the Division of Enforcement's attorney-supervisor. If approved by the supervisor, the Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. 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 the monthly Report of Decisions issued by the department. A summary of the order will be published in the Wisconsin Regulatory Digest issued semiannually by the Board. Other reporting as required by law will occur. This is standard department procedure and in no way specially directed at Respondent.

10. Respondent is informed that the Board is required to file an Adverse Action Report with the National Practitioner Data Bank within 30 days following the date of its Final Decision Order. This is standard department procedure and in no way specially directed at Respondent.

 2/22/99
Respondent Date

 2/22/99
Attorney for Respondent Date
Craig W. Albee

 2/16/99
Prosecuting Attorney Date
Division of Enforcement