

FILE NO. CX-00-2004
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition for Disciplinary
Action against JAMES M. BURSETH,
an Attorney at Law of the
State of Minnesota.

**PETITION FOR AMENDMENT
OF PROBATION AND FOR FURTHER
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility, and pursuant to this Court's July 27, 2001, order in the matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on September 16, 1974. Respondent currently practices law in Minneapolis, Minnesota. The Director alleges:

INTRODUCTION

On June 29, 2001, respondent and the Director entered into a stipulation for discipline following a referee hearing on the Director's October 26, 2000, petition for revocation of probation and further discipline. The referee found that:

1. During the probation, respondent tested positive for THC four times - February 28, 2000, June 28, 2000, July 17, 2000, and August 7, 2000.

2. Respondent did not provide a reasonable explanation for the February 28, 2000, positive test result until May 9, 2000, despite earlier requests that he do so. The Director's Office then accepted respondent's explanation that the February 28, 2000, test result may have been caused by cannabis oil placed in his herbal tea.

3. Respondent denied using marijuana on June 28, 2000. Respondent did not provide a reasonable explanation for the positive test results.

4. Respondent first denied but later admitted that he used marijuana on July 17, 2000.
5. Respondent admitted using marijuana on August 7, 2000.
6. On 11 occasions, respondent provided dilute urine specimens to the testing lab at HCMC. Dilute specimens do not provide assurance that drugs are not present in respondent's system. Dilute specimens can produce false negative reports.

The Court independently reviewed the record and stipulation and issued a July 27, 2001, order publicly reprimanding respondent and placing him on public probation (Exhibit 1).

Among the conditions of respondent's public probation was that respondent abide by the terms of his January 14, 2000, private probation (Exhibit 2). One of the terms of that private probation was that he remain abstinent from alcohol and other mood altering chemicals except that respondent may use prescription drugs in accordance with the directions of a prescribing physician who is fully advised of respondent's chemical dependency before issuing the prescription.

FIRST COUNT

1. Respondent has failed to maintain abstinence from THC (marijuana) as required by the terms of his January 14, 2000, private probation and as required by the Court's July 27, 2001, court order.
2. On July 25, 2001, two days before the Court issued its order publicly reprimanding respondent for violating his private probation for failure to remain abstinent from mood altering chemicals, respondent tested positive for marijuana in a random urinalysis test at Hennepin County Medical Center. *See* Exhibit 3.
3. On August 28, 2001, the Director's Office met with respondent and his counsel, Richard Koch, regarding the positive test result.
4. On September 10, 2001, respondent again tested positive for marijuana in a random urinalysis test at Hennepin County Medical Center. *See* Exhibit 4.

5. Respondent's conduct violated the Court's July 27, 2001, order and Rule 8.4(d), Minnesota Rules of Professional Conduct.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: October 4, 2001.



EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 17267
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(651) 296-3952

and



BETTY M. SHAW
SENIOR ASSISTANT DIRECTOR
Attorney No. 130904

RECEIVED

JUL 27 2001

LAWYERS PROF. RESP. OFFICE

STATE OF MINNESOTA

IN SUPREME COURT OFFICE OF
APPELLATE COURTS

CX-00-2004

JUL 27 2001

In Re Petition for Disciplinary Action against
James M. Burseth, an Attorney at Law of the
State of Minnesota.

FILED

ORDER

The Director of the Office of Lawyers Professional Responsibility has filed a petition for revocation of probation and for further disciplinary action alleging that respondent James M. Burseth has committed professional misconduct warranting public discipline, namely, violating the terms of his private probation by failing to abstain from nonprescription, mood-altering drugs in violation of Minn. R. Prof. Conduct 8.4(d).

Respondent admits his conduct violated the Rules of Professional Conduct; waives his rights under Rule 14, Rules on Lawyers Professional Responsibility (RLPR); and has entered into a stipulation with the Director wherein they jointly recommend that the appropriate discipline is a public reprimand and public probation through the later of January 14, 2002, or until respondent has produced 6 consecutive months of valid (nondiluted) negative urinalysis test results. The stipulation also recommends as appropriate discipline that Respondent shall also comply with all other terms of his January 14, 2000, private probation.

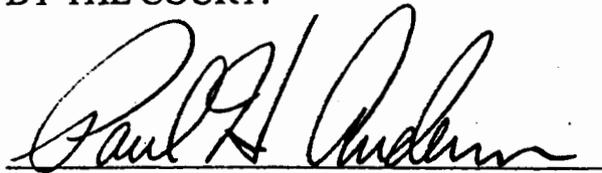
Exhibit 1

This court has independently reviewed the file and approves the jointly recommended disposition.

IT IS HEREBY ORDERED that respondent James M. Burseth is publicly reprimanded and placed on public probation until the later of January 14, 2002, or until respondent has produced 6 consecutive months of valid (non-diluted) negative urinalysis test results. Respondent shall comply with all other terms of his January 14, 2000, private probation while on public probation and shall pay \$900 in costs and disbursements under Rule 24, RLPR.

Dated: July 26, 2001

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Paul H. Anderson", written over a horizontal line.

Paul H. Anderson
Associate Justice

RECEIVED

JAN 12 2000

LAWYERS PROF. RESP. OFFICE

STATE OF MINNESOTA

LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

In Re Probation of
JAMES M. BURSETH,
an Attorney at Law of the
State of Minnesota.

STIPULATION FOR
PROBATION PURSUANT
TO RULE 8(d)(3), RLPR

This stipulation is entered into by Edward J. Cleary, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and James M. Burseth, the above-named attorney, hereinafter respondent.

WHEREAS, the parties desire to present this stipulation to the Lawyers Professional Responsibility Board (LPRB) Chair, hereinafter Chair, for consideration pursuant to Rule 8(d)(3), Rules on Lawyers Professional Responsibility (RLPR),

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS
FOLLOWS:

1. Respondent was admitted to practice law in Minnesota on September 16, 1974. Respondent has paid through January 1, 2000, the registration fee required by the Minnesota Supreme Court, hereinafter the Court. Respondent is currently employed as an Assistant Hennepin County Public Defender in Minneapolis, Minnesota.

2. The Director alleges and respondent unconditionally admits for purposes of these and any future disciplinary proceedings the following allegations of unprofessional conduct:

a. On January 24, 1997, respondent was arrested in St. Louis Park for domestic assault and damage to property. Alcohol was involved in the incident. Respondent was criminally charged and later placed on probation.

Respondent was also required to enter a chemical dependency treatment program as a term of his probation.

b. On May 25, 1998, respondent was cited for DWI and speeding in Mille Lacs County, Minnesota. His blood alcohol content was .14. Respondent was convicted of that offense. As a result of the conviction, respondent's driver's license was revoked.

c. On August 31, 1998, respondent was cited for driving after his license had been revoked. The prosecution of that matter was suspended until December 7, 1999, upon the condition that respondent not commit a driving license violation and that respondent paid certain costs.

d. On November 22, 1998, respondent was issued a citation in St. Louis Park for violation of a restricted drivers license to which he plead guilty.

e. On January 24, 1999, respondent was charged with a gross misdemeanor DWI in Orono, Minnesota. Respondent's blood alcohol level was .19. Respondent pled guilty, his driver's license was canceled as inimical to public safety, and his license plates were impounded. Respondent served 45 days at the workhouse and is on a two year probation for the offense. His probation is schedule to end on April 5, 2001. In addition, respondent was required to undergo outpatient chemical dependency treatment.

f. Respondent also has two prior drinking and driving offenses, which occurred on April 18, 1996, and January 19, 1997. Those offenses were reduced to Careless Driving.

g. Respondent has undergone several courses of chemical dependency treatment including treatments in 1980 at Twin Town and in 1995 at Health Partners. He also underwent a relapse program at Fairview

Southdale from February 1998 through December 1998. Respondent had two incidents of drinking and driving during that time.

3. Respondent's repeated criminal misdemeanor violations violated Rule 8.4(b), Minnesota Rules of Professional Conduct.

4. Respondent has been advised by the undersigned counsel concerning this stipulation and these proceedings generally.

5. Upon approval by the Chair, pursuant to Rule 8(d)(3), RLPR, respondent shall be on unsupervised private probation for two years, under the following conditions:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

b. Respondent shall abide by the Minnesota Rules of Professional Conduct.

c. Respondent shall maintain total abstinence from alcohol and other mood-altering chemicals, except that respondent may use prescription drugs in accordance with the directions of a prescribing physician who is fully advised of respondent's chemical dependency before issuing the prescription.

d. Respondent shall, at his own expense, no more than four times per month, submit to random urinalysis for drug screening at a facility approved by the Director and shall direct the drug screening facility to provide the results of all urinalysis testing to the Director's Office. If, after

three months, all such tests have been negative, then the frequency of the random tests may be reduced. Respondent shall cooperate with the phone-in program established by the Director for the random tests.

e. Respondent shall attend weekly meetings of Alcoholics Anonymous or another out-patient alcohol treatment program acceptable to the Director. Respondent shall, by the tenth day of each month, without a specific reminder or request, submit to the Director an attendance verification on a form provided by the Director, which provides the name, address and telephone number of the person personally verifying the attendance.

6. If at any time during the period of probation, after giving respondent an opportunity to be heard by the Director, the Director concludes that respondent has violated the conditions of the probation, failed to cooperate with the random testing or engaged in further misconduct, the Director may file a petition for disciplinary action against respondent in the Minnesota Supreme Court without the necessity of submitting the matter to a Panel or Panel Chair. Respondent waives the right to such consideration by the Panel or Panel Chair.

7. The complainant(s), if any, and the district ethics committee, if any, that has considered this matter, will be notified and provided with a copy of this stipulation pursuant to Rule 8(d)(3), RLPR.

If respondent complies with all the conditions of the probation as set forth above, the probation will be terminated. Pursuant to Rule 8(d)(3), RLPR, the Director will maintain a permanent disciplinary record of this stipulation and probation file.

IN WITNESS WHEREOF, the parties executed this stipulation on the dates indicated below.

Dated: December 20, 1999

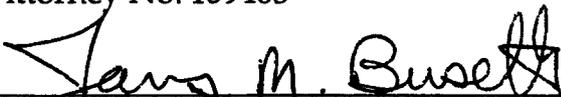

EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 17267
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(651) 296-3952

and

Dated: December 22 1999


KENNETH L. JORGENSEN
FIRST ASSISTANT DIRECTOR
Attorney No. 159463

Dated: 1-5-2000 1999

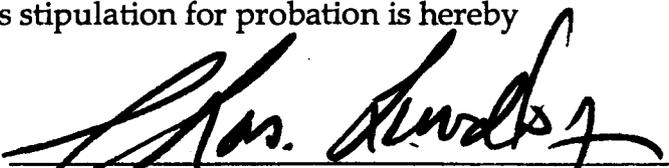

JAMES M. BURSETH
RESPONDENT
Attorney No. 1350X

Dated: 1-7-2000, 1999


Richard F. Koch
ATTORNEY FOR RESPONDENT
Attorney No. 5723X
Lake Calhoun Professional Building
3109 Hennepin Avenue South
Minneapolis, MN 55408

Pursuant to Rule 8(d)(3), RLPR, this stipulation for probation is hereby approved.

Dated: 1-14-00


CHARLES E. LUNDBERG
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

<p>Hennepin County Medical Center HCMC Level 1 Trauma Center</p> <p>Hennepin County Medical Center Department of Laboratory Medicine and Pathology 701 Park Avenue Minneapolis, MN 55415 612-347-3001</p>	Client ID#:		
	Patient Name:	BURSETH, JAMES	
	Client:	Drug Monitoring	
	Client Location:	Burseth, James	
	HCMC MRN:	7004670	Age: 52 Years
	DOB:	02/19/1949	Page: 1 of 1
	Sex:	Male	
	Attending Provider:	UNASSIGNED, DOCTOR	
	Admitting Provider:	UNASSIGNED, DOCTOR	
	Order Provider:	UNASSIGNED, DOCTOR	

Drugs of Abuse

Collection Date: 07/25/2001
 Collection Time: 18:55:00

Procedure:	Units:	Ref. Range:
Ethanol urine	NEG	<=10
THC (Cannabinoids) urine	POS @	<=50
THC Confirm	See Below	

07/25/2001 18:55:00 THC Confirm
 Urine THC confirmed positive by GC/MS.
 The Confirmation Threshold Concentration for
 Urine THC-COOH is 0.015 mg/L.

Analysis performed at MedTox Laboratories.

Exhibit 3

Acct Number: 002113914580
 Lab Chart:
 Print Date/Time: 8/3/01 8:14 AM
 Page 1 of 1

Patient Name: **BURSETH, JAMES**

Received Time Aug. 3. 7:20AM



Hennepin County Medical Center
 Department of Laboratory
 Medicine and Pathology
 701 Park Avenue
 Minneapolis, MN 55415
 612-347-3001

ID#: _____
 Patient Name: **BURSETH, JAMES**
 Client: **Drug Monitoring**
 Client Location: **Burseth, James**
 HCMC MRN: 7004670
 DOB: 02/19/1949 Age: 52 Years
 Sex: Male Page: 1 of 1
 Attending Provider: UNASSIGNED, DOCTOR
 Admitting Provider: UNASSIGNED, DOCTOR
 Order Provider: _____

Drugs of Abuse

Collection Date: 09/10/2001
 Collection Time: 19:05:00

RECEIVED

<u>Procedure:</u>	<u>Units:</u>	<u>Ref. Range:</u>
Ethanol urine	NEG	<=10
THC (Cannabinoids) urine	POS ●1	<=50

SEP 17 2001

LAWYERS ROOM 2001 OFFICE

09/10/2001 19:05:00 THC (Cannabinoids) urine:

Exhibit 4

Acct Number: 002114813435
 Lab Chart: Interim-Any
 Print Date/Time: 9/13/01 6:36 AM
 Page 1 of 1

Patient Name: **BURSETH, JAMES**