

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
FILEMON C. YAO, M.D.,	:	LS-930728-MED
RESPONDENT.	:	91 MED 227

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

Filemon C. Yao, M.D.  
1173 North Main Street  
Whitewater, WI 53190

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. Filemon C. Yao, M.D., Respondent herein (DOB: 11/12/33) is licensed and registered to practice medicine and surgery in the state of Wisconsin, pursuant to license #15962, which was first granted 5/25/67.
2. Respondent's latest address on file with the Department of Regulation and Licensing is 1173 North Main Street, Whitewater, WI 53190.
3. Respondent's area of specialty is general surgery, but Respondent has also maintained a general practice of medicine.

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4. On 3/23/81, Patient 1, who was then 32 years of age, first saw Respondent in his professional capacity for purposes of obtaining an employment physical. Patient 1 had not been to a physician during the immediately preceding 11 years. The results of the physical examination were unremarkable.

5. On 7/6/81, Patient 1 returned to Respondent. At that time, Patient 1 complained that she had noticed a lump on her throat approximately two months previously and the lump became painful approximately one week previously. On that occasion Respondent noted a right thyroid nodule lower pole. Respondent ordered a thyroid scan and panel. The panel results were T3=37.0, T4=7.9, FTI=2.9.

6. The thyroid scan, which was done 7/14/81, showed: Left thyroid gland is normal in size. A cold nodule is noted at the lower pole of the right thyroid gland, corresponding to the clinical and palpable mass. A "cold" nodule is more likely to be cancerous than a "hot" nodule.

7. Approximately 25 years earlier, when Patient 1 was 5 or 6 years old, Patient 1 received radiation treatment in the neck area for enlarged tonsils. Although that treatment was then believed to be medically appropriate at that time, by 1981 it had been discovered that such treatment lead to an increased risk of thyroid cancer.

8. That during the entire period of time that Respondent provided treatment to Patient 1, Respondent never asked Patient 1 if she had ever been exposed to any radiation treatment in the neck area, nor did Patient 1 volunteer that information to Respondent.

9. On 7/20/81 Patient 1 returned to Respondent, who palpated the nodule and noted that it was smaller, 1 x 3/4 inches. Respondent determined not to biopsy the nodule at that time. Respondent decided to observe with follow up in one month and then if the nodule was larger Respondent would proceed with surgery.

10. On 8/21/81 Patient 1 returned to Respondent for a recheck of the nodule. Respondent palpated the nodule and noted that it was "almost gone." Respondent decided to repeat the thyroid function test and thyroid scan in 3 months.

11. A thyroid scan of Patient 1 on 12/7/81 showed no essential change from the 7/14/81 scan, noted in Paragraph 6 above. The scan report stated that a clinically palpable mass was noted and that it arises from the lower pole of the right thyroid gland and most probably the nodule is cold.

12. On 12/11/81 Patient 1 returned to Respondent for a recheck of the nodule. Respondent found no palpable mass. Respondent noted "Advised, recheck in 6 months." No appointment was set.

13. The next time Patient 1 returned to Respondent for any purpose was 4/5/83. On that date Respondent noted "thyroid nodule of the right lower lobe no longer palpable." Respondent also ordered a repeat thyroid scan.

14. The thyroid scan performed on 4/7/83 showed: normal, the cold area previously described is no longer evidenced.

15. On 4/11/83 Patient 1 began seeing Respondent for monitoring of her elevated blood pressure. Patient 1 was seen for that purpose on 4/18, 4/22, 10/25, 11/1, and 12/2/83 and 8/7/84. Patient 1 had no complaints concerning the thyroid nodule and no physical examinations were performed.

16. On 3/15/85 Respondent performed a physical examination of Patient 1 and noted "PE okay."

17. Respondent's staff monitored Patient 1's blood pressure on 3/29/85 and 4/1/85. Respondent saw Patient 1 for various purposes on 8/26/85 and no mention is made of the thyroid nodule. Respondent saw patient 1 on 12/6/85 when she needed a refill of her Dyazide.

18. On 3/25/87 Patient 1 saw Respondent's associate, Dr. Hothan, for a physical examination. Dr. Hothan noted a prominence in the right thyroid, and further noted that by history Patient 1 had a lump in the center of her neck for which a thyroid scan had been done in the past. Dr. Hothan's assessment was that there was a right thyroid nodule.

19. On 4/19/87 Dr. Hothan noted in Patient 1's chart "middle May 9:00 for thyroid scan/mammogram." However, no thyroid scan or mammogram was done at that time.

20. On 7/24/87 Patient 1 saw Respondent. At that time she complained that she had a lump in her throat since March of 1987 and that it had grown and was causing pain. Respondent noted a lump over the anterior aspect of the neck. He also noted that Patient 1 was supposed to have had a thyroid scan done but hadn't. He ordered an x-ray of the neck and advised her to have a thyroid scan.

21. A thyroid profile done 7/25/87 showed: Thyroxin 6.2, T-uptake - 30% and FIT - 1.85. On 7/28/87 a soft tissue neck x-ray was taken. The results were: Soft tissue view shows no distention of the hypopharynx. There is no increase in the retropharyngeal and retrotracheal soft tissue spaces.

22. The results of the thallium thyroid scan of 8/25/87 were within normal limits.

23. On 12/14/87 Patient 1 saw Dr. Hothan to have her thyroid checked. Dr. Hothan noted that there was still a prominence at the thyroid area; that there was no soft tissue tumor; and that it moved with swallowing. She referred Patient 1 to Dr. Rowe, an Otolaryngologist.

24. On 12/24/87 Patient 1 was seen by Dr. Rowe for the purpose of a mirror examination, primarily of the larynx and trachea. Dr. Rowe's examination revealed: Normal larynx and hypopharynx, vocal cords were bilaterally mobile, subglottis area trachea down to

about T2 were normal, and no signs of invasion of the larynx or trachea. Patient 1 did have a palpable external diffusely enlarged mass that was soft which was felt to be probably connected in continuity with the thyroid. From an ENT standpoint the mass did not meet the criteria of malignancy. Dr. Rowe did not have available to him test results or scans done of Patient 1 prior to the examination.

25. On 1/8/88 Patient 1 saw Dr. Hothan who discussed with Patient 1 possible enlargement of the thyroid or thyroid cartilage and determined that they would observe.

26. On 2/10/88 Dr. Hothan checked the anterior lump in Patient 1's throat and found it much more prominent. Dr. Hothan ordered a CT scan of the neck. Dr. Yao ordered Synthroid .025 daily times 14 days, then 1 tab twice daily and indicated Patient 1 should return in one month to check the size of the throat nodule.

27. The results of the 2/12/88 CT scan showed: Enlargement of the isthmus of the thyroid gland which measures approximately 4.5 cm in the AP diameter. There is compression of the trachea with deviation to the left. Part of the thyroid gland shows increased iodine uptake. However, the mass is of the same density as that of the muscle. I don't see any evidence of lymphadenopathy.

28. On 3/7/88 Patient 1 was seen by Dr. Hothan, who noted a large lump in the neck which was very sore from the left to the right side. A thyroidectomy was scheduled for 3/28/88 and Patient 1 was started on Lugol's solution starting 3/21/88.

29. On 3/25/88 Patient 1 saw Dr. Hothan for a presurgical physical. At that time Dr. Hothan noted that Patient 1 reported decreased pain and swelling in her neck.

30. On 3/28/88 Patient 1 underwent exploratory surgery done by Respondent and Dr. Hothan. The mass was found to cover a large area so only a biopsy was done. The biopsy frozen section diagnosis by the pathologist was that it favored medullary carcinoma.

31. The pathologist's review of the permanent slide of the biopsy tissue was poorly differentiated papillary thyroid carcinoma.

32. Patient 1 was referred for surgery at St. Mary's Hospital in Madison. That surgery found the tumor to be fixed to the trachea, esophagus, and other surrounding structures and deemed unresectable. Since that time, Patient 1 has died as a result of the thyroid cancer.

33. That at no time, prior to the surgery of 3/28/88 did Respondent perform a surgical or fine needle aspiration biopsy of the thyroid nodule.

34. On April 20, 1989, Respondent was disciplined by the Wisconsin Medical Examining Board for his failure to appropriately diagnose and treat a patient with vaginal carcinoma and his license was limited at that time.

### CONCLUSIONS OF LAW

1. That the Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to sec. 448.02(3), Stats.
2. The Wisconsin Medical Examining Board has authority to enter into this stipulated resolution pursuant to sec. 227.44(5), Stats.
3. Respondent's conduct in diagnosing and treating Patient 1, as set out above, subjects Respondent to discipline pursuant to sec. 448.02(3), Stats., and Wis. Adm. Code sec. MED 10.02(2)(h).

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license to practice medicine and surgery in the State of Wisconsin of Filemon C. Yao, M.D. is hereby limited, effective March 1, 1994, as follows:

1. That Dr. Yao shall not engage in the general practice of medicine.
2. That Dr. Yao shall limit his practice to that of general surgery.
3. That Dr. Yao shall only see patients upon referral from another licensed physician, and shall, within 15 days of seeing a patient, provide the referring physician a written report of Dr. Yao's findings and plan of treatment.

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 23rd day of February, 1994.

  
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Clark O. Olsen, M.D., Secretary  
Wisconsin Medical Examining Board

JRZ:kcb  
ATY-DLG69

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
	:	
FILEMON C. YAO, M.D.,	:	LS-9307281-MED
RESPONDENT.	:	91 MED 227

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It is hereby stipulated and agreed, by and between, Filemon C. Yao, M.D., Respondent; Steven J. Caulum of Bell, Metzner, Gierhart & Moore, S.C., as attorneys for Respondent; and, John R. Zwieg, as attorney for the Wisconsin Department of Regulation and Licensing, Division of Enforcement, as follows:

1. On July 28, 1993, a disciplinary complaint was filed in this matter, alleging that Respondent failed to diagnose thyroid cancer in a patient.

2. The parties agree that this stipulated resolution may be presented directly to the Wisconsin Medical Examining Board and need not be presented to the Administrative Law Judge appointed in this matter.

3. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving the allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

4. Respondent is aware of his right to seek legal representation and has done so prior to signing this Stipulation.

5. For personal reasons, Respondent has determined to limit his practice of medicine and surgery to general surgery, pursuant to the terms of the attached Order.

6. Respondent neither admits nor denies the allegations against him, but for personal reasons agrees to the adoption of the attached Final Decision and Order by the Medical Examining 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.

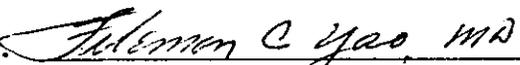
7. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further

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.

8. The parties to this Stipulation agree that the Respondent, his counsel, and the attorney for the Division of Enforcement 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.

9. The parties to this Stipulation agree that the member of the Board appointed as the investigative advisor in this matter 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.

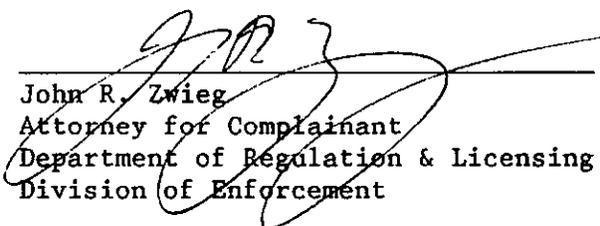
Dated this 14 day of February, 1994.

  
Filemon C. Yao, M.D.  
Respondent

Dated this 16 day of February, 1994.

  
Steven J. Caulum  
Bell, Metzner, Gierhart & Moore, S.C.  
Attorneys for Respondent

Dated this 8th day of February, 1994.

  
John R. Zwieg  
Attorney for Complainant  
Department of Regulation & Licensing  
Division of Enforcement

ATY2-4884

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## NOTICE OF APPEAL INFORMATION

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**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:**

THE STATE OF WISCONSIN MEDICAL EXAMINING BOARD

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1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708.

**The Date of Mailing this Decision is:**

FEBRUARY 28, 1994.

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### 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.)

## SECTIONS 227.49 AND 227.53, OF THE WISCONSIN STATUTES

**227.49 Petitions for rehearing in contested cases.** (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

**227.53 Parties and proceedings for review.** (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board or the savings bank review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 5.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

5. The savings bank review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings bank review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board and the savings bank review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.