

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDING AGAINST
DAVID E. PAPPENDICK, M.D.,
RESPONDENT.

Case No. 95 Med 364, 97 Med 265

LS 9709252 MED

FINAL DECISION AND ORDER

The parties to this proceeding for purposes of s. 227.53, Stats., are:

David E. Papendick, M.D.
801 4th Street
Algoma, WI 54201

Medical Examining Board
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

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

The parties in this matter agree to the term 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. David E. Papendick, M.D., ("Respondent") was born on January 6, 1932, and is licensed to practice medicine and surgery in the state of Wisconsin pursuant to license number 14465, first granted on September 19, 1962.
2. On August 17, 1997, Respondent took a telephone call from M. M., a 64 year old woman Respondent had been treating for Lyme Disease. M. M. informed Respondent that she believed

she was suffering from gout. Respondent's records for M. M. contain mention of elevated uric acid levels and a diagnosis of Lyme Disease.

3. Respondent diagnosed M. M. of Lyme Disease with gout and prescribed colchicine, one 0.6 mg. tablet every 10 to 15 minutes, to continue until the patient became nauseated or had relief from the pain of her condition. The patient consumed only 10.2 mg.

4. The medication was dispensed from Respondent's office to one of the patient's daughters. The patient took the colchicine as directed, upon information and belief, consuming 17 tablets.

5. Respondent's prescription for the administration of colchicine greatly exceeded the current accepted dosage frequency for colchicine consumption.

6. On Monday, August 18, 1997, the patient's daughter called Respondent to report that the patient was suffering from nausea and diarrhea, which are known side effects of colchicine. Respondent instructed the discontinuance of an antibiotic previously prescribed and requested a prompt office examination.

7. At 10:30 p.m. on Tuesday, August 19, 1997, the patient went to the emergency room at the Kewaunee Hospital where she was assessed as suffering from colchicine toxicity. The patient was transferred by ambulance to a hospital in Green Bay. On the way to Green Bay, the patient suffered cardiac arrest. The patient could not be resuscitated and was pronounced dead at the Green Bay hospital shortly after 2:30 a.m. Wednesday, August 20, 1997.

8. Respondent's failure to personally examine patient on August 17, 1997 fell below acceptable standards and may have exposed patient to additional risks. Respondent requested patient make a prompt office visit.

9. On September 18, 1997, the Medical Examining Board summarily suspended Respondent's license to practice medicine and surgery in the state of Wisconsin pending formal disciplinary proceedings arising out of Respondent's treatment of M. M.

10. Respondent billed Medicare for medical psychotherapy services for the patient I. M. between January, 1993, and January, 1995, claiming forty-four separate dates on twenty-nine separate claims.

11. Respondent did not provide medical psychotherapy services for patient I. M. during this period, nor did he claim the counselor who did provide the services to I. M. as an employee on the quarterly contribution/wage reports he filed with the Unemployment Insurance Division of the Department of Industry, Labor and Human Relations.

12. Respondent responded to an inquiry by the Medicare carrier, stating that Respondent employed the counselor for whose services Respondent submitted claims.

13. Respondent has repaid with interest the Medicare carrier the amount he received in payment of the claims the carrier determined were improper.

14. Respondent has notified his patients that he is retired from the practice of medicine and has tendered the surrender of his license and registration to practice medicine and surgery in Wisconsin.

Conclusion of Law

1. The Medical Examining Board has jurisdiction in this matter pursuant to s. 448.03, Stats.
2. Respondent's conduct in treating M. M. fell below the acceptable standards of the practice of medicine and constitutes a violation of s. Med.10.02(2)(h), Wis. Admin. Code.
3. Respondent's conduct in billing Medicare for services he did not provide personally or through a delegated medical act constitutes a violation of s. Med.10.02(2)(m), Wis. Admin. Code.

Order

Now, therefore, it is ORDERED that Respondent's surrender of his license and registration to practice medicine and surgery in the state of Wisconsin is accepted.

It is further ordered that Respondent shall not apply for reinstatement of his license and registration to practice medicine and surgery in the state of Wisconsin. Should Respondent attempt to apply for re-instatement on a license or registration to practice medicine and surgery, the denial of the application by Respondent shall not constitute a denial of a license application for purposes of ch. RL 1, Wis. Admin. Code and shall not give rise to a contested case within the meaning of secs. 227.01(3) and 227.42, Stats.

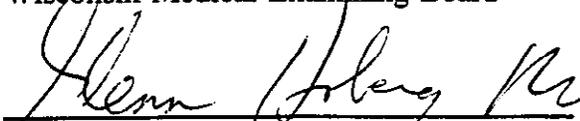
It is further ordered that the cases currently under investigation involving Respondent, 95 MED 163, 96 MED 019, 96 MED 124, and 96 MED 146 to be closed as to Respondent without costs or fees.

This order is effective on the date of its signing.

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 this 17th day of ^{December} ~~November~~, 1997

Wisconsin Medical Examining Board


A member of the Board

State of Wisconsin
Before the Medical Examining Board

In the Matter of Disciplinary Proceedings Against

David E. Papendick, M.D.
Respondent
Case No. LS 9709251 MED

Stipulation

It is hereby stipulated between David E. Papendick, M.D., personally and on his own behalf and Mark Stern, Dr. Papendick's counsel, and James E. Polewski, Attorney for the Division of Enforcement, Department of Regulation and Licensing, as follows:

1. This stipulation is entered in resolution of the pending matter concerning Dr. Papendick's license. The Stipulation and the proposed Final Decision and Order shall be presented directly to the Medical Examining Board for its consideration and adoption.
2. In resolution of these proceedings, Dr. Papendick consents to the entry of the attached Final Decision and Order.
3. Dr. Papendick is aware of and understands each of his rights, including:
 - the right to a hearing on the allegations against him, at which the state would have 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 own 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,
 - the right to be represented at every stage of the proceeding, including the making of any stipulation, by an attorney of his choosing, at his own expense,
 - all other rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.
4. Dr. Papendick is aware and understands that by signing this stipulation he voluntarily and knowingly waives the rights set forth in paragraph 3 above, and does voluntarily and knowingly waive those rights.
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

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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 attorney for the Division of Enforcement and the members of the Medical Examining Board assigned as advisors in this investigation may appear before the Board for the purpose of speaking in favor of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

David E Papendick MD
David E. Papendick, M.D.

11-20-97
Date

Mark Stern
Mark Stern
Stupar & Schuster, S.C.
Milwaukee, Wisconsin
Attorney for Dr. Papendick

1/21/98
Date (Re-signed)

James E Polewski
James E. Polewski
Attorney
Division of Enforcement

1/26/98
Date Re-signed

11/12/97

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STUPAR AND SCHUSTER

NOV. 20. 1997 5:08PM

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

In the Matter of the Disciplinary Proceedings Against

David E. Papendick, 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 January 26, 1998, I served the Final Decision and Order dated December 17, 1997, LS9709252MED, upon the Respondent David E. Papendick'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 221 157 716.

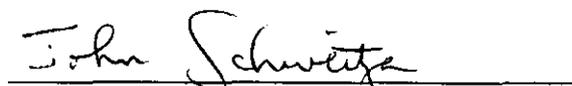
Mark Stern, Attorney
Stupar & Schuster, LLP
633 W. Wisconsin Avenue, Suite 1800
Milwaukee WI 53203-1955



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 26th day of January, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: MARK STERN ATTY

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 1/26/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

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

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935