

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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State Of Wisconsin
Before The Medical Examining Board

FILE COPY

In The Matter Of Disciplinary Proceedings Against

Holly J. Duck, M.D.,
Respondent.

FINAL DECISION AND ORDER
Case #95 MED 360

LS9804221MED

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

Holly J. Duck, M.D.
2704 Marshall Court
Madison, Wisconsin 53705

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, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Holly J. Duck, M.D., was born April 4, 1958. Dr. Duck's latest address on file with the Department of Regulation and Licensing is 2704 Marshall Court, Madison, Wisconsin 53705.
2. Dr. Duck is licensed to practice in the state of Wisconsin as a physician and surgeon pursuant to license #30943. This license was first granted on February 22, 1990. Dr. Duck practices orthopedic surgery.
3. Dr. Duck performed a Syme's ablation to the right great toe of a 77-year-old women in August 1992. Prior to starting the procedure, Dr. Duck held the patient's right great toe and said she was going to fix it. The patient replied, "Yes." The patient did nothing at that time to indicate that the procedure should be performed on another toe. The patient's right great toe had an involuted, severely in-curved ingrown nail with significant curling that was abnormal.

4 Notwithstanding the patient's remark prior to surgery, she had given consent only for a Syme's ablation on her right fourth toe. Dr. Duck had confused this patient with another who was scheduled that same week for a procedure on the great toe.

5. After Dr. Duck began the procedure, a nurse told her that the Syme's ablation should be on the right fourth toe rather than the right great toe. Dr. Duck believed that the procedure had progressed to a point at which reconstruction of the patient's great toe probably would not be successful. Further, the patient's right great toe was involuted. Dr. Duck therefore completed the procedure on the patient's great toe.

6. Dr. Duck completed the Syme's ablation on the patient's right fourth toe, as well as a trigger finger release. She completed these procedures without incident or complications. The patient voluntarily continued all post-operative care with Dr. Duck.

7. Dr. Duck has never been disciplined by the Board, nor has she been the subject of any other complaint or investigation. She has accepted responsibility for her actions in this matter, and she has cooperated fully with the Division of Enforcement throughout its investigation.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction in this matter pursuant to § 448.02 (3) (c), Stats.
2. The Medical Examining Board has authority to enter into this stipulated resolution pursuant to § 227.44 (5), Stats.

ORDER

NOW, THEREFORE, it is hereby ordered that the Stipulation of the parties is approved.

It is further ordered that:

1. Dr. Duck shall, within nine (9) months of the date of this order, submit documentation acceptable to the Board showing successful completion of 15 hours of continuing education in risk management. Dr. Duck shall obtain pre-approval of one or more courses from the Board or its designated agent before she takes the course(s) in fulfillment of this requirement.
2. The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including pre-approval of continuing education and receipt of all reports. The Department Monitor may be reached as follows:

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Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P. O. Box 8935
Madison, WI 53708-8935
FAX (608) 266-2264
TEL. (608) 267-7139

3. The pending investigation. 95 MED 360. shall be, and hereby is, closed without further proceedings.

4. Pursuant to § 448.02 (4), Stats., if the Wisconsin Medical Examining Board determines that there is probable cause to believe that Dr. Duck has violated the terms of this Final Decision and Order, the Board may order that the license of Dr. Duck to practice medicine and surgery in the State of Wisconsin be summarily suspended pending investigation of the alleged violation.

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."

This Order shall become effective on the date of its signing.

Wisconsin Medical Examining Board

By: Wanda Roever
Wanda Roever, Secretary

April 22, 1998
Date

cbm

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1/29/98

The Stipulation, Findings of Fact and Order in the above-referenced case DO NOT constitute an adverse action by the Medical Examining Board which is reportable to the National Practitioner Data Bank, nor do they constitute "disciplinary proceedings" under Wis. Stats. §§ 440.03(1) or 448.02(3)(b), or Wis. Admin Code § RI 2.03(5).

**State Of Wisconsin
Before The Medical Examining Board**

In The Matter Of Disciplinary Proceedings Against

Holly J Duck, M.D.
Respondent.

STIPULATION
Case #95 MED 360

It is hereby stipulated between Holly J. Duck, M.D., personally and by her attorney, Diane M. Pica, and Claudia Berry Miran, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation, 95 MED 360, by the Division of Enforcement into Dr. Duck's conduct as a physician. The stipulation and the proposed Final Decision and Order shall be presented directly to the Medical Examining Board for its consideration and adoption.
2. Dr. Duck consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
3. Dr. Duck is aware of her right to seek legal representation and has had an opportunity to obtain legal advice prior to signing this stipulation.
4. Dr. Duck understands that by signing this stipulation she voluntarily and knowingly waives her rights, including:
 - The right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence;
 - The right to confront and cross-examine the witnesses against her;
 - The right to call witnesses on her behalf and to compel their attendance by subpoena;
 - The right to testify herself;
 - 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;
 - All other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
5. Dr. Duck voluntarily and knowingly waives all rights enumerated in paragraph 4 above.
6. Dr. Duck agrees to the adoption of the attached Final Order and Decision by the Medical Examining Board. The parties to the stipulation voluntarily and knowingly consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent

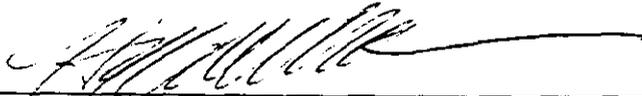
of the parties. Dr. Duck waives all rights to any appeal of the Board's order, if adopted in the attached form.

7. The parties waive all costs of this proceeding.

8. 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.

9. The parties to the Stipulation agree that the attorney for the Division of Enforcement and the member of the Medical Examining Board assigned as an advisor in this investigation may appear before the Board for the purpose of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberation on the Stipulation.

10. The Division of Enforcement joins Dr. Duck in recommending that the Medical Examining Board adopt this stipulation and issue the attached Final Decision and Order.



Holly J. Duck, M. D.

3/31/98

Date



Diane M. Pica
Attorney for the Respondent

4/3/98

Date



Claudia Berry Miran
Attorney
Division of Enforcement

4/7/98

Date

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Dept. of Regulation & Licensing
Division of Enforcement

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

In the Matter of Disciplinary Proceedings Against

Holly J. Duck, M.D.,

AFFIDAVIT OF MAILING

Respondent.

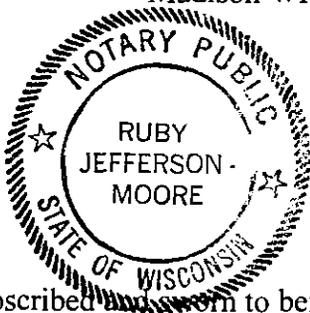
STATE OF WISCONSIN)
)
COUNTY OF DANE)

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 April 24, 1998, I served the Final Decision and Order dated April 22, 1998, LS9804221MED, upon the Respondent Holly J. Duck'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 221 159 451.

Diane M. Pica, Attorney
2 E. Mifflin Street, Suite 800
P.O. Box 2038
Madison WI 53701-2038



Kate Rotenberg

Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 24th day of April, 1998.

Ruby Jefferson-Moore

Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: DIANE M PICA 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 4/24/98 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