

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD
IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

JAMES VOLK, M.D.,
RESPONDENT

FINAL DECISION & ORDER
(92 MED 375)

LS 9806246MED

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

James Volk M.D.
1915 Rose Creek Parkway E
Fargo, North Dakota 58104

State of Wisconsin
Medical Examining Board
P.O. Box 8935
Madison, Wisconsin 53708-8935

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

The parties in this matter, James Volk, M.D., Respondent, and Pamela M. Stach, Attorney for the Department of Regulation and Licensing, Division of Enforcement, agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Medical Examining Board. The Board has reviewed the Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached stipulation and makes the following:

FINDINGS OF FACT

1. James Volk, M.D., of 1915 Rose Creek Parkway E, Fargo, North Dakota 58104, was born on August 4, 1957 and is duly licensed to practice medicine and surgery in the State of Wisconsin under license number 28633, which was granted on July 1, 1987.
2. Dr. Volk's registration to practice medicine and surgery in the State of Wisconsin expired on November 1, 1995.
3. Dr. Volk specializes in the practice of internal medicine.

4. There is a formal investigation of Dr. Volk pending before the Wisconsin Medical Examining Board.

5. The investigation involves allegations regarding the failure to properly diagnose changes in a congenital nevus in May of 1990 which ultimately resulted in malignant melanoma.

6. Dr. Volk has not practiced medicine and surgery in the State of Wisconsin since 1995.

7. In March of 1997, Dr. Volk applied for and was granted a license to practice medicine in the State of North Dakota.

8. The application for licensure in North Dakota requires the applicant to list any malpractice actions in which he was named as a defendant.

9. Dr. Volk is currently engaged in the practice of internal medicine in Fargo, North Dakota and has had no disciplinary action taken against him in that State.

CONCLUSIONS OF LAW

1. The Medical Examining board has jurisdiction in this proceeding pursuant to Wis. Stats. secs. 448.02

2. The Medical Examining board has the authority to resolve this matter by stipulated agreement pursuant to Wis. Stats. sec. 227.44(5)

ORDER

NOW THEREFORE IT IS ORDERED that the Stipulation of the parties is hereby accepted.

IT IS FURTHER ORDERED that James Volk, M.D. shall not reregister to practice medicine and surgery in the State of Wisconsin at any time in the future.

IT IS FURTHER ORDERED that James Volk, M.D. will not practice or attempt to practice medicine and surgery in the State of Wisconsin when not currently registered.

IT IS FURTHER ORDERED that in the event James Volk, M.D. wishes to resume the practice of medicine and surgery in the State of Wisconsin at some future date, he shall appear before the Medical Examining Board to request the right to reregister and to satisfy the Board as to her competence to resume the practice of medicine and surgery. Evidence of such competence may include, but not be limited to, any testing, evaluation, assessment or retraining the Board deems appropriate.

IT IS FURTHER ORDERED that in the event that the Medical Examining board denies Dr. Volk's request to reregister, or allows reregistration for a limited license only, such denial or limitation shall not constitute a denial of a license within the meaning of Wis. Stats. sec. 227.01(3)(a)

IT IS FURTHER ORDERED that investigative file 92 MED 375 is hereby closed without further proceedings.

IT IS FURTHER ORDERED that pursuant to Wis. Stats. sec. 448.02(4), if the Wisconsin Medical Examining board determines that there is probable cause to believe that Dr. Volk has violated any of the terms of this Final Decision and Order, the Board may order that the license of Dr. Volk to practice medicine and surgery in the State of Wisconsin be summarily suspended pending investigation of the alleged violation.

Dated this 24 day of June, 1998

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

By:

Wanda Reeves
A Member of the Board

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

JAMES VOLK, M.D.,
RESPONDENT

STIPULATION
(92 MED 375)

It is hereby stipulated between James Volk, M.D. and Pamela M. Stach, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. James Volk, M.D., of 1915 Rose Creek Parkway E, Fargo, North Dakota 58104, was born on August 4, 1957 and is duly licensed to practice medicine and surgery in the State of Wisconsin under license number 28633, which was granted on July 1, 1987.
2. Dr. Volk's registration to practice medicine and surgery in the State of Wisconsin expired on November 1, 1997.
3. There is a pending investigation before the State of Wisconsin Medical Examining Board regarding Dr. Volk entitled 92 MED 375.
4. Dr. Volk is aware of and understands each of the Respondent's rights including the right to a hearing on the allegations against him which were raised by the investigation. At the time of any such hearing, the state has the burden of proving these allegations by preponderance of the evidence; the right to confront and cross-examine witnesses against him; the right to call witnesses in his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decisions 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 of the rights afforded the Respondent under the United States Constitution, the Wisconsin Constitution and the Wisconsin Administrative Code.
5. Dr. Volk freely, voluntarily and knowingly waives each and every one of the rights set forth in paragraph 4 above.
6. In the interests of resolving the pending matter, Dr. Volk voluntarily agrees to entry of the attached Final Decision and Order by the Medical Examining Board.
7. The Division of Enforcement recommends that the Wisconsin Medical Examining board adopt this Stipulation and issue the attached Final Decision and Order in resolution of this matter.
8. Violation of the terms and conditions specified in this Stipulation and Final Decision and Order shall constitute a basis for disciplinary action by the Medical Examining Board.

9. The parties to this Stipulation understand that the Department of Regulation and Licensing, Division of Enforcement will take no further action against Respondent's license based on allegations contained in the pending investigative file.

10. This agreement in no way prohibits the Medical Examining Board from any further action against Respondent based on acts not alleged in the pending investigative file which might be violative of Wisconsin Medical Examining Board statutes and rules.

11. All parties agree that the parties and the Case Advisor assigned to this case, may appear before the Board in open session to argue on behalf of acceptance of this Stipulation.

12. This Stipulation and Final Decision and Order, if adopted and entered by the Medical Examining Board, shall become effective on the date of signing.

13. All costs of these proceeding incurred by either party are hereby waived.

14. In the event any term or condition of this Stipulation and Final Decision and Order is not accepted or entered by the Medical Examining board, then no term of this Stipulation; and Final Decision and Order shall be binding in any manner on any party to this Stipulation.

Dated: 5/28/98

James Volk, M.D.
James Volk, M.D.
Respondent

Dated: June 1, 1998

Pamela M. Stach
Pamela M. Stach, Attorney
Department of Regulation and Licensing

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

In the Matter of the Disciplinary Proceedings Against

James Volk, M.D.,

AFFIDAVIT OF MAILING

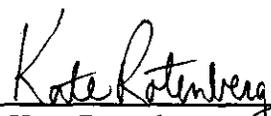
Respondent.

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 June 29, 1998, I served the Final Decision and Order dated June 24, 1998, LS9806246MED, upon the Respondent James Volk, M.D. by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent 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 Z 233 819 531.
3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

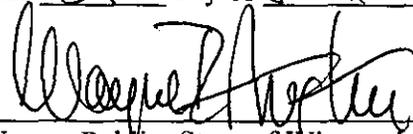
James Volk, M.D.
1915 Rose Creek Parkway E
Fargo ND 58104



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 29th day of June, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: JAMES VOLK MD

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 6/29/98. 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