

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF :
 DISCIPLINARY PROCEEDINGS AGAINST : FINAL DECISION AND ORDER

MICHAEL MCENANY, M.D., :
 RESPONDENT : LS9809242MED

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

Michael McEnany, M.D.
6460 South Shore Drive
Altoona WI 54720-2310

State of 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, Michael McEnany, M.D., Respondent and Mary Michal, Counsel for Dr. McEnany, and James E. Polewski, Attorney for the Department of Regulation and Licensing, Division of Enforcement, agree to the terms and conditions of the attached stipulation as a 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 Medical Examining Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Michael McEnany, M.D., of Altoona, Wisconsin was born on January 1, 1939 and is licensed to practice medicine and surgery in the State of Wisconsin under license number 28633, which was granted on September 23, 1993. Dr. McEnany was also licensed as a physician and surgeon in the State of California under license number C40535 which was granted on July 2, 1982. Dr. McEnany did not renew his California registration in 1994.
2. There is an investigation against Dr. McEnany pending before the Wisconsin Medical Examining Board.
3. The respondent has retired from the practice of medicine and surgery in the State of Wisconsin.

4. The respondent agrees not to resume his practice of medicine and surgery in the State of Wisconsin nor to re-register with the Wisconsin Department of Regulation and Licensing at any time in the future.

5. Respondent ceased practice in California in 1993, and has surrendered his license to practice medicine and surgery in the state of California effective July 14, 1998.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction in this proceeding pursuant to Wis. Stats. Sec. 448.02(3).

2. The Medical Examining Board has the authority to resolve this proceeding without commencing a formal disciplinary hearing pursuant to Wis. Stats. Secs. 227.44(5).

ORDER

NOW, THEREFORE, IT IS ORDERED that the stipulation of the parties is accepted.

IT IS FURTHER ORDERED that the respondent's retirement and his agreement not to re-register to practice medicine and surgery in Wisconsin in the future is accepted in resolution of this matter and in lieu of any formal proceeding.

IT IS FURTHER ORDERED that the respondent shall surrender his license and certificate of registration to practice medicine and surgery in the State of Wisconsin to the Medical Examining Board immediately following the date of this order.

IT IS FURTHER ORDERED that the respondent shall not engage in the practice of medicine and surgery in the State of Wisconsin at any time following the effective date of this order.

IT IS FURTHER ORDERED that the investigative file 98 MED 123 is hereby closed without further proceedings.

Dated this 24 day of September 1998.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

By:

Wanda Koeber
A Member of the Board

State of Wisconsin
Before the Medical Examining Board

In the Matter of Disciplinary Proceedings Against

Michael McEnany, M.D.
Respondent

Stipulation

It is hereby stipulated between Michael McEnany, MD, personally and on his own behalf and Mary Michal, Dr. McEnany'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. McEnany'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, The Medical Examining Board consents to the entry of the attached Final Decision and Order.
3. Michael McEnany, M.D. 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 him 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. Michael McEnany, MD 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

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 member of the Medical Examining Board assigned as an advisor 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.

Michael McEnany
Michael McEnany, M.D.

20 August, 1998
Date

Mary Michal
Mary Michal
Attorney for Michael McEnany, M.D.

August 24, 1998
Date

James E. Polewski
James E. Polewski
Attorney
Division of Enforcement

13 August 1998
Date

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

In the Matter of Disciplinary Proceedings Against

Michael McEnany, M.D.,

AFFIDAVIT OF MAILING

Respondent.

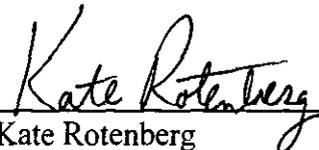
STATE OF WISCONSIN)
)
COUNTY OF DANE)

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 September 25, 1998, I served the Final Decision and Order dated September 24, 1998, LS9809242MED, upon the Respondent Michael McEnany'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 Z 233 819 826.

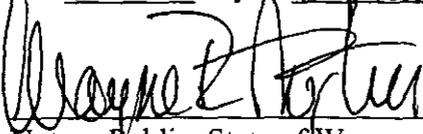
Mary Michal, Attorney
1000 N. Water Street, Suite 2100
Milwaukee WI 53202-3186



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 28th day of September, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: MARY MICHAL ATTY

You have been issued an Order. For purposes of service the date of mailing of this Order is 9/25/98. 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 Order 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 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 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 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 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



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING



Tommy G Thompson
Governor

Marlene A Cummings
Secretary

1400 E. WASHINGTON AVENUE
P O. BOX 8935
MADISON, WISCONSIN 53708-8935
E-Mail dorl@mail.state.wi.us
(608) 266-2112
FAX# (608) 267-0644

October 23, 1998

COPY

Wayne R Austin
Attorney at Law
Office of Board Legal Services
608 266-1815

Mary H. Michal
Attorney at Law
22 East Mifflin Street, Suite 600
P.O. Box 2020
Madison, WI 53701-2020

Re: Michal McEnany, M.D.

Dear Ms. Michal:

In your letter of October 14, 1998, you suggest language to be utilized in medical board's Regulatory Digest in describing the board's action in the McEnany matter. I no longer (thankfully) do the descriptions for the various digests issued by the boards for which I serve as counsel. I have spoken to the staff person who has assumed that responsibility, however, and she has indicated that she will endeavor to utilize the description you have provided.

I hope the forgoing adequately responds to your request

Sincerely,

Wayne R. Austin
Attorney, Office of Board Legal Services.

c: Pamela M. Haack

WRA:9810235.doc

REINHART | BOERNER | VAN DEUREN
NORRIS & RIESELBACH, S.C.

ATTORNEYS AT LAW

October 14, 1998

Attorney Wayne Austin
Division of Enforcement
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Dear Mr. Austin:

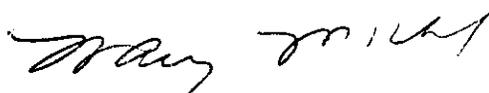
Re: Michael McEnany, M.D.,
LS 9809242MED

I respectfully request that the following language be considered for insertion in the abbreviated description regarding the above-referenced matter:

Respondent surrendered his license and agreed not to re-register due to retirement, during a pending investigation.

Please let me know if this language is acceptable. Thank you for your consideration.

Sincerely,



Mary H. Michal

MADISON\35638MHM.PAP

cc M. Terry McEnany, M.D.