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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

DALE M. BUEGEL, M.D.

ORDER DENYING PETITION

Respondent

The Medical Examining Board filed its Final Decision and Order in the above-captioned matter on September 7, 2000. By its decision, the board accepted the ALJ's Findings of Fact and Conclusions of Law in their entirety. Two modifications were made to the recommended Order, however. First, paragraph 2 of the Order set forth in the Proposed Decision, requires that respondent maintain his patient health care records consistent with the requirements of sec. Med 21.03, Code. The board modified this paragraph to require that for a period of six months, respondent arrange for review of his records by another physician satisfactory to the board to establish that he is in fact fulfilling this requirement. Second, the ALJ recommended that the full costs of the proceeding be assessed against the respondent. The Complaint in this matter consisted of three counts and 153 paragraphs, alleging numerous violations involving respondent's treatment of three patients. The ALJ found violations as to only one of the three counts, and the board therefore deemed it appropriate that only half the costs of the proceeding be assessed.

On October 18, 2000, the board considered complainant's petition for rehearing, which was characterized in the caption as "State's Motion to Reconsider." In his Motion, the attorney for the Division of Enforcement makes essentially the same arguments he made in his Objections to the Proposed Decision, where he suggested numerous changes in the proposed Findings of Fact, Conclusions of Law and Order. Because the board elected not to incorporate the suggested findings, conclusions and discipline in its Final Decision and Order, complainant suggests that the board failed to fully review the record in this matter. This suggestion apparently arises from the fact that the board did not explain why complainant's suggested findings were not made. Complainant is correct that the board did not explain its failure to accept the complainant's position, as set forth in his objections. The board also did not explain its failure to accept respondent's position, as set forth in his objections. This difference between complainant's position and respondent's is called advocacy, and resolution of these differences in position are why contested cases are heard by an impartial administrative law judge.

A petition for rehearing, regardless of how captioned, may not be granted except on the basis of some material error of law, some material error of fact, or the discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence. The petition in this case fails to cite to any such errors in the board's Final Decision and Order, or to any new evidence. Accordingly, the petition must be denied.

Dated this 25th day of October, 2000.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

Darold A. Treffert, M.D.

Secretary