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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	ORDER AMENDING FINAL DECISION AND ORDER
PAMELA M. NORTH, M.D., RESPONDENT.	:	92 MED 440

On May 27, 1993, The Medical Examining Board issued its Final Decision and Order in the above captioned matter. Finding of Fact 4 of the Board's Final Decision and Order indicated that the Respondent violated the Minnesota Board of Medical Practice Order dated July 11, 1992.

On September 23, 1993, the Respondent requested a correction to Finding of Fact 4 because it was stated inaccurately. The Respondent was not found to be in violation of the Minnesota Board of Medical Practice Order dated July 11, 1992. The Minnesota Board of Medical Practice did issue an amended order regarding the respondent on March 13, 1993, but did not find a violation of the July 11, 1992 order.

A copy of the Medical Examining Board Order dated May 27, 1993 is attached as Exhibit A.

IT IS HEREBY ORDERED that the Final Decision and Order of the Board in this matter dated May 27, 1993, is amended as follows:

1. Finding of Fact 4 of the May 27, 1993 Final Decision and Order is deleted.

2. Finding of Fact 5 is renumbered Finding of Fact 4 and is amended to read as follows: The Minnesota Board of Medical Practice entered an Amended Stipulation and Order on March 13, 1993, a copy of which is attached as Exhibit B.

This order shall be effective on the date of its signing.

By: James T. Gasewicz M.D. 3/24/94
A Member of the Board Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
PAMELA M. NORTH, M.D., RESPONDENT.	:	FINAL DECISION AND ORDER (92 MED 440)

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

Pamela M. North, M.D.
4487 Timberline Court
Vadnais Hgts., MN 55127

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

RECEIVED
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Dept. of Regulation & Licensing
Division of Enforcement

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition 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. That Pamela M. North, M.D. 4487 Timberline Court, Vadnais Hgts., Minnesota 55127, is a physician duly licensed and currently registered to practice medicine and surgery in the State of Wisconsin and that such license bears the number 020 0024232 and was issued on 10/23/81.

2. That Pamela M. North, M.D. is a physician licensed to practice medicine in the State of Minnesota and that such license bears number 29,912.

3. That on July 11, 1992 Pamela M. North, M.D. was disciplined in the State of Minnesota based on her history of chemical dependency. A copy of the Board order is attached as Exhibit A.

4. Pamela M. North, M.D. was found to be in violation of the Minnesota Board of Medical Practices' order dated July 11, 1992. Her violation was that she self-medicated.

Exhibit A

5. As a result the Minnesota Board entered an Amended Stipulation and Order on March 13, 1993, a copy of which is attached hereto as Exhibit B.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wisconsin Stats. sec. 448.02(3).

2. The Wisconsin Medical Examining Board is authorized to enter into the attached Stipulation pursuant to the Wis. Stats. sec. 227.44(5).

3. Pamela M. North, M.D., by having her license to practice medicine subjected to disciplinary action by the licensing authority of another state, as set forth in Exhibits A and B, has violated Wis. Stats. sec. 448.02(3) and Wis. Adm. Code sec. Med 10.02(2)(q).

4. The Medical Examining Board may, pursuant to Wis. Stats. sec. 448.02(3)(c), upon the foregoing findings and conclusions, warn or reprimand respondent, or limit, suspend or revoke any license or certificate granted by the Board to Pamela M. North, M.D.

5. The Wisconsin Medical Examining Board has authority to enter into this stipulation pursuant to Wisconsin Stats. sec. 227.44(5), and Wis. Adm. Code sec. RL 2.12.

Therefore, it is hereby ORDERED:

That the stipulation of the parties is approved and accepted.

IT IS FURTHER ORDERED that the Wisconsin Medical Examining Board hereby limits the license of Pamela M. North, M.D. to practice medicine and surgery in the State of Wisconsin until the Minnesota Board grants her a full and unrestricted license, upon the following terms:

a. Pamela M. North, M.D. shall comply with and successfully complete all terms and conditions of the Amended Stipulation and Order of the Minnesota Board of Medical Practice dated March 13, 1993.

b. Pamela M. North, M.D. shall within 10 days of the date of this Order and any written request by the Department of Regulation and Licensing or the Wisconsin Medical Examining Board provide the Wisconsin Medical Examining Board with current releases which comply with state and federal law authorizing release of all her medical, therapy, and treatment records and/or reports from all physicians, facilities, therapists, and biological fluid testing laboratories who have participated in the past or currently are participating in her evaluation, treatment and testing for chemical dependency. Dr. North shall also within 10 days of the date of this Order and any written request by the Department of Regulation and Licensing or the Wisconsin Medical Examining Board provide the Wisconsin Medical Examining Board with current releases which comply with state and federal law authorizing release of any and all records from the Minnesota Board of Medical Practice relating to her chemical dependency.

c. Pamela M. North, M.D. shall not engage in any practice of medicine or surgery in the State of Wisconsin unless she follows the requirements of paragraph (e), as set forth below.

d. Pamela M. North, M.D. shall obtain and provide for the submission to the Wisconsin Medical Examining Board quarterly reports directly from those persons who are supervising the continuing care and treatment of her chemical dependency. The requirement for quarterly reports under this paragraph may be satisfied by copies of the quarterly reports required pursuant to the Amended Stipulation and Order of the Minnesota Board of Medical Practice dated March 13, 1993.

e. If Pamela M. North, M.D. should decide she wishes to engage in the practice of medicine and surgery in the State of Wisconsin, during the time period that her license is limited in the State of Minnesota she must follow the following procedure:

1. Pamela M. North, M.D. shall notify in writing the Wisconsin Medical Examining Board that it is her intention to engage in the practice of medicine and surgery in the State of Wisconsin.

2. Pamela M. North, M.D. shall be required to appear before the Wisconsin Medical Examining Board upon such notification given to the Wisconsin Medical Examining Board of her intention to engage in the practice of medicine and surgery in the State of Wisconsin.

3. If the Wisconsin Medical Examining Board approves Pamela M. North's request then the Board shall grant her a limited license in the State of Wisconsin under the same terms and conditions of the Minnesota Order in effect at that time.

4. Pamela M. North, M.D. shall obtain and provide for the submission to the Wisconsin Medical Examining Board quarterly reports directly from those persons who are required by the Minnesota order to submit such reports. This requirement may be satisfied by copies of the quarterly reports required pursuant to the Order of the Minnesota Board dated March 13, 1993.

f. A full and unrestricted license may be granted in Wisconsin when the Wisconsin Medical Examining Board has received verification that a full and unrestricted license has been granted in Minnesota. This verification must come from the Minnesota Board of Medical Practice and state that Pamela M. North has successfully completed all terms and conditions required by the Minnesota Board of Medical Practice.

g. The respondent may petition the Wisconsin Medical Examining Board for modification of the terms of her limited license and the Wisconsin Medical Examining Board shall consider the respondent's petition at the time it meets with the respondent to review the progress of her rehabilitation. Denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stats. sec. 227.01(2)(a) and the respondent shall not have a right to any further hearings or proceedings on any denial in whole or in part of her petition for modification of her limited license.

IT IS FURTHER ORDERED that Pamela M. North, M.D., shall advise in writing the Wisconsin Medical Examining Board of any change in her professional business office and/or home address and/or telephone numbers, within 15 days of any such change.

Dated at Madison, Wisconsin this 27 day of May, 1993.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

By: [signature]

I, Pamela M. North, M.D., pursuant to the attached Stipulation, hereby consent to entry of the foregoing Final Decision and Order by the Wisconsin Medical Examining Board.

Dated this 20th day of May, 1993.

[signature]
Pamela M. North, M.D., Respondent

ATY2-4019

BEFORE THE MINNESOTA

BOARD OF MEDICAL PRACTICE

In the Matter of the
Medical License of
Pamela M. North, MD
Date of Birth: 5/16/54
License Number: 29,912

STIPULATION
AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between Pamela M. North, MD (hereinafter "Respondent"), and the Minnesota Board of Medical Practice (hereinafter "Board") as follows:

1. During all times herein, Respondent has been and now is subject to the jurisdiction of the Board from which he holds a license to practice medicine and surgery in the State of Minnesota;

FACTS

2. For the purpose of this stipulation, the Board may consider the following facts as true:

a. Respondent was a psychiatric resident at the University of Minnesota between 1986 and 1989. She was then employed as a psychiatrist at Hamm Memorial Psychiatric Clinic (hereinafter "Hamm Clinic") between approximately July 7, 1989, and April 9, 1992. Between October 1987, and March 1992, Respondent ordered the following controlled substances from at least three pharmaceutical manufacturers. These drugs were not for professional use:

Date	Drug	Quantity
10/00/87	Darvocet 100 mg	30
12/00/87	Darvocet 100 mg	30

Exhibit A

02/00/88	Darvocet 100 mg	60
03/00/88	Darvocet 100 mg	60
05/00/88	Darvocet 100 mg	90
06/00/88	Darvocet 100 mg	180
07/00/88	Darvocet 100 mg	60
09/00/88	Darvocet 100 mg	30
12/00/88	Darvocet 100 mg	120
12/09/88	Wygesic	200
01/00/89	Darvocet 100 mg	90
04/00/89	Darvocet 100 mg	120
04/21/89	Wygesic	200
05/00/89	Darvocet 100 mg	30
06/00/89	Darvocet 100 mg	600
06/23/89	Wygesic	200
07/00/89	Darvocet 100 mg	150
08/00/89	Darvocet 100 mg	180
08/09/89	Wygesic	200
08/17/89	Wygesic	200
09/00/89	Darvocet 100 mg	90
09/01/89	Wygesic	200
09/20/89	Wygesic	200
12/06/89	Wygesic	200
01/00/90	Darvocet 100 mg	270
02/00/90	Darvocet 100 mg	270
02/23/90	Wygesic	200
03/00/90	Darvocet 100 mg	240
03/06/90	Wygesic	200
03/06/90	Wygesic	200
05/00/90	Darvocet 100 mg	300
05/24/90	Wygesic	200
05/24/90	Wygesic	200
06/00/90	Darvocet 100 mg	420
07/00/90	Darvocet 100 mg	360
07/19/90	Wygesic	200
08/00/90	Darvocet 100 mg	600
08/16/90	Wygesic	200
09/00/90	Darvocet 100 mg	300
10/00/90	Darvocet 100 mg	300
10/12/90	Wygesic	200
10/12/90	Wygesic	200
11/00/90	Darvocet 100 mg	780
11/27/90	Wygesic	200
11/27/90	Wygesic	200
12/00/90	Darvocet 100 mg	390
01/00/91	Darvocet 100 mg	750
01/11/91	Wygesic	200
01/11/91	Wygesic	200
02/00/91	Darvocet 100 mg	450
03/00/91	Darvocet 100 mg	450
03/12/91	Wygesic	200
03/12/91	Wygesic	200
04/00/91	Darvocet 100 mg	660
04/05/91	Wygesic	200
04/05/91	Wygesic	200

05/00/91	Darvocet 100 mg	750
06/00/91	Darvocet 100 mg	600
06/13/91	Wygesic	200
06/13/91	Wygesic	200
07/00/91	Darvocet 100 mg	780
08/00/91	Darvocet 100 mg	60
08/08/91	Wygesic	200
08/08/91	Wygesic	200
08/08/91	Wygesic	200
08/08/91	Wygesic	200
09/00/91	Darvocet 100 mg	60
10/00/91	Darvocet 100 mg	120
10/04/91	Wygesic	200
10/04/91	Wygesic	200
11/00/91	Darvocet 100 mg	120
11/20/91	Wygesic	200
11/20/91	Wygesic	200
12/00/91	Darvocet 100 mg	120
01/00/92	Darvocet 100 mg	120
01/10/92	Wygesic	200
02/00/92	Darvocet 100 mg	120
03/00/92	Darvocet 100 mg	120

b. Respondent's clinic received several calls from area pharmacies about prescriptions written on Hamm Clinic prescription pads by Respondent for controlled substances. The patients named in the prescriptions were not Hamm Clinic patients, and the addresses and telephone numbers written on the prescriptions were false. Respondent was confronted by her employer about the prescriptions. Respondent stated that one of the patients was her sister-in-law and the other patient was her mother-in-law. In January 1992, Respondent's employer intercepted a UPS shipment of 200 propoxyphene tablets, 6 boxes of Halcion 0.25 mg. tablets, 4 boxes of 1.0 mg. Xanax tablets and 6 boxes of 2.0 mg. Xanax tablets addressed to Respondent and mailed to the Hamm Clinic. Respondent's employer confronted her regarding the shipment. Respondent stated that the Halcion and Xanax were for clinic patients, but the propoxyphene "was for her family";

c. Staff at Respondent's clinic observed numerous instances of behavior by Respondent suggesting she was impaired. She was observed listing to one side while walking at the clinic and her jaw was shaking and tremulous. During telephone

calls in which Respondent called in sick, she slurred her words, and seemed confused, indecisive and vague and unable to remember patient information after it was repeatedly told to her. Respondent told her clinic employer that her slurred words and confusion were the result of migraine headaches for which she was receiving treatment from a neurologist. The neurologist denied any relationship between Respondent's migraines or their treatment and the symptoms of slurred speech and confusion. In January 1992, Respondent resigned from Hamm Clinic effective April 9, 1992;

d. Respondent received prescriptions for controlled substances from four treating physicians, including a neurologist, a psychiatrist, a gynecologist, and an internist. She also received one prescription for Ativan dated 10/23/91 from a physician who was a "friend." On 10/29/90, Respondent altered a prescription from her treating internist for Percocet from 40 to 48. When confronted by the physician, Respondent stated that she didn't know why this happened and that she was not having any other prescriptions filled for Percocet, was using them as prescribed, and only got them from this physician;

e. Respondent signed and telephoned multiple prescriptions for controlled substances for a fictitious patient, using the name of a family member, as follows:

Drug	Date	Amount
Percocet	7/26/91	48
Lorazepam	5/17/91	90
Darvocet-N 100	11/25/91	90
Darvocet-N 100	1/8/92(phone)	90

Respondent gave her own former home address as the patient's address on two prescriptions. She used a different false address on the other two;

f. December 6, 1991, Respondent presented a prescription at a pharmacy in Shoreview for another fictitious patient for Darvocet-N-100, #90, refills x 2. When

asked for identification, Respondent showed picture identification in her own name and stated she was picking up the prescription for an elderly neighbor. The address and telephone number on that prescription were later found to be false;

g. On April 15, 1992, a woman identifying herself as the second fictitious patient called the pharmacy in Shoreview. The caller requested a refill of Darvocet because she had lost her medications. Later, Respondent presented at the pharmacy to pick up a refill of Darvocet for that patient." Respondent presented picture ID in her own name and stated she would deliver the prescription to the patient. The pharmacist refused the prescription because the address and telephone number had previously been found to be false;

h. On April 16, 1992, Respondent called the pharmacy in Shoreview and asked the pharmacist to delete from the computer all information on the second "patient." Respondent stated that the name used was a fictitious name. She later stated that the patient did exist and was her sister-in -law, who was passing through town her way to work in the Canadian oilfields. Still later in the conversation, Respondent stated that the patient was her elderly neighbor;

i. On March 31, 1992, Respondent denied to her psychiatrist "any misuse of medications, now or in the past";

j. On April 20, 1992, Respondent was admitted to the Inpatient Unit of the Adult Chemical Dependency Program at St. Mary's Hospital for evaluation;

k. During the evaluation, Respondent stated that after she had her first baby ten years ago, she began having headaches and started using Motrin at that time. She could not tolerate Codeine. After her second pregnancy seven years ago, Respondent's headaches became worse and she was first prescribed Percocet, Darvocet, Inderal, Elavil and Nortriptyline. She continued with these drugs for about four years, when she was then prescribed Percocet, Prozac, Xanax, Darvocet, Ativan and Vicodin. Respondent continued using one or more of these drugs consistently for

three years, up until her admission. In February 1992, Respondent started using Ativan, Klonopin, Synthroid and Prozac. In March 1992, Respondent started using Buspar and Trazodone. Respondent reported that she is under the care of an internist, a neurologist, a gynecologist and a psychiatrist;

l. Respondent initially denied having a problem with mood altering chemicals and did not state a mood altering substance of choice. Respondent ultimately admitted that she had used narcotics that had been ordered for her clinic. In 1991 alone, these orders accounted for 3,200 Wygesic tablets and 4,920 Darvocet tablets;

m. The evaluator found that Respondent acknowledged that she had a marked tolerance of and for increased amounts of controlled substances. However, she did not have an understanding of the disease concept and how it related to her chemical dependency. Respondent entered inpatient treatment at St. Mary's on April 24, 1992, at the end of her evaluation. She was discharged May 18, 1992;

n. The St. Mary's discharge summary listed final diagnoses of polysubstance dependency, history of depression, history of hypothyroidism, history of migraine and muscle tension, and headaches. Respondent was discharged to the Outpatient Plus Program on Prozac 40 mg q. a.m. The evaluator found that Respondent primarily used drugs for her migraines. Her history showed progression in her use, abuse and dependence upon chemicals. Her tolerance went up and she used more than 20 tablets per day. While she was under the care of four doctors for different, legitimate medical conditions, she did not provide full disclosure to these doctors about the pain medications she was taking. The evaluator noted that at the time of discharge, Respondent was able to be constructively critical of her behavior and drug usage. He noted she had always been a high achiever and overachiever. He also noted Respondent had developed bad habits in terms of sleeping, diet and exercise. Respondent's discharge plan included the following:

1) The patient is to return home.

2) She will not work as a medical doctor until okayed by the Board of Medical Practice.

3) She will go to Physicians Serving Physicians meeting one time per month.

4) She plans to work with PRA. She will go to one AA meeting per week. That will be a medical doctors meeting. She will go to one narcotics anonymous meeting per week. She will go to one aftercare meeting at Fairview Riverside, Phase II, a women's group for eight weeks. She will then go into the growth group.

5) PRA will supervise random urine samples. She will have a supervisor. She will obtain a female sponsor. She will document her attendance at all meetings.

6) She will contact her psychiatrist and inform her of her program and the two of them will decide on further psychiatric management.

7) She will contact her neurologist and update him.

8) She will contact her internist and let her know what her situation is.

9) She will continue in marital counseling.

10) She will not self-diagnose or self-medicate. Her psychiatrist will regulate her Prozac 20 mg. q. day and discontinue at appropriate time.

11) She will write up a contract with her husband.

12) She will obtain regular exercise and diet.

STATUTES

3. The Board views Respondent's practices as inappropriate in such a way as to require Board action under Minn. Stat. § 147.091, subd. 1(l) and (r) (1990) and Respondent agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify the disciplinary action;

REMEDY

4. Upon this stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Respondent does hereby consent that until further order of the Board, made after notice and hearing upon application by Respondent or upon the Board's own motion, the Board may make and enter an order conditioning and restricting Respondent's license to practice medicine and surgery in the State of Minnesota as follows:

a. Respondent shall abstain from alcohol and all mood-altering chemicals unless they are prescribed by a treating physician or dentist who has been informed of Respondent's drug use history;

b. Respondent shall not prescribe or self-administer any controlled substances for her own use. If a medical situation arises which requires the need for a controlled substance to be administered to Respondent, the controlled substance must be prescribed and/or administered by another physician or dentist who has first been informed of Respondent's chemical abuse/dependency history;

c. Respondent shall attend AA and NA self-help programs in support of abstinence. Quarterly reports shall be submitted to the Board from Respondent's designated sponsor(s) regarding attendance and participation. The minimum frequency of attendance shall be eight meetings per month;

d. Respondent shall participate in Fairview Riverside Phase II Aftercare Group and subsequent growth group for two years. Respondent shall arrange for monthly reports to the Board from her chemical dependency counselor regarding her attendance and progress;

e. Respondent shall join Physicians Serving Physicians or other Board-approved professional support network system, attend meetings monthly, and obtain an identified designated sponsor within that organization. Quarterly reports shall be submitted to the Board from Respondent's designated sponsor(s) regarding her

active participation in P.S.P. and/or another professional organization related to recovery;

f. Respondent shall practice only in a group setting approved in advance by the Board;

g. Respondent shall continue psychiatric management as recommended by her psychiatrist and other counseling as recommended by St. Mary's. Respondent's psychiatrist and other counselors shall provide quarterly reports to the Board;

h. Respondent shall arrange for a supervising physician. The supervising physician shall meet with Respondent on a regular basis to review her progress under the terms of this Stipulation and Order. This meeting will include an overall work performance evaluation. When the supervising physician does not directly observe Respondent in a work setting, Respondent shall make arrangements to have a direct supervisor/colleague provide such information to the supervising physician. The supervising physician will report to the Board the results of meetings with Respondent using Board-provided report forms. The minimum frequency of meetings and reports shall be bi-monthly;

i. Respondent shall be subject, without notice, to blood and urine tests at the request of the supervising physician, Board staff or another designee. The minimum frequency and type of routine testing will be twelve randomized tests per quarter, four of which will be blood tests. The blood and urine tests shall be:

1. Observed in their drawing;
2. Handled through legal chain of custody methods;
3. Paid for by Respondent.

The biological fluid testing shall take place at/through Hennepin County Medical Center, 701 Park Avenue South, Minneapolis, Minnesota 55415, unless otherwise directed by Board Staff or a Board designee. Testing shall screen for

opiates, cocaine, barbiturates, amphetamines, benzodiazepines, marijuana, and other drugs of abuse, including alcohol. If the blood and urine testing is to be processed through the mail, the drug screening test kit used must be obtained from the Hennepin County Medical Center unless otherwise directed. All blood and urine tests processed through Hennepin County Medical Center by mail must be directed to the attention of Calvin Bandt, M.D., at Hennepin County Medical Center. The Center will provide test results directly to the Board and the supervising physician.

Blood and urine tests may be requested at any time. Ingestion of poppyseeds will not be accepted as a reason for a "positive" drug test result;

j. Respondent shall arrange for continuing care from a treating neurologist, who is aware of Respondent's health and chemical abuse history, for personal pain management. In formulating any treatment plan, the neurologist shall take into account Respondent's future practice plans and the need to manage her pain in any practice setting;

k. Respondent shall arrange for a primary treating physician, who may be one of her present physicians, to coordinate medical care provided to her by all physicians from whom she receives care. Respondent shall provide all necessary records releases to enable her physicians to communicate pursuant to this paragraph;

l. Respondent and a designated Board member or designee shall meet on a regular basis. It shall be Respondent's obligation to contact the designated individual to arrange each of the meetings. The purpose of such meetings shall be to review individual monitoring reports and Respondent's progress under the terms of this Stipulation and Order. The minimum frequency of meetings shall be quarterly;

m. Respondent shall provide any currently effective treatment or aftercare plan established at the time of last treatment and/or evaluation. This plan shall include but shall not necessarily be limited to:

1. The aftercare plan activities;

2. The provider of aftercare services:

Name

Address

Telephone number

3. A consent form signed by both Respondent and the provider authorizing quarterly reports on attendance and progress with each treatment/aftercare objective as well as any modification to the plan made by the provider.

The terms of each such plan are incorporated by reference herein to the extent not superseded by the provisions of this Order;

n. This Stipulation and Order will remain in effect for a minimum of four years. Respondent may petition for amendment of the restrictions contained herein after two years of documentable, uninterrupted recovery. Upon any such petition, the Board may continue, amend or remove any of the restrictions contained herein;

o. Upon Board approval of this Stipulation and Order, Respondent shall provide the Board with the addresses and telephone numbers of Respondent's residence and all work sites. Within seven (7) days of any change, Respondent shall provide the Board with new address and telephone number information;

5. Within ten days of the date of this order, Respondent shall provide the Board with a list of all hospitals at which Respondent currently has medical privileges. The information shall be sent to Richard L. Auld, Board of Medical Practice, Suite 106, 2700 University Avenue West, St. Paul, Minnesota 55114;

6. If Respondent shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, the license of Respondent to practice medicine and surgery in the State of Minnesota shall be suspended immediately upon written notice by the Board to Respondent, such a suspension to remain in full force and effect until Respondent petitions the Board to terminate the suspension after a hearing. Nothing

contained herein shall prevent the Board from revoking or suspending Respondent's license to practice medicine and surgery in the State of Minnesota after any such hearing;

7. In the event the Board in its discretion does not approve this settlement, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any disciplinary action by either party hereto except that Respondent agrees that should the Board reject this stipulation and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records relating hereto;

8. In the event Respondent should leave Minnesota to reside or practice outside the state, Respondent shall promptly notify the Board in writing of the new location as well as the dates of departure and return. Periods of residency or practice outside of Minnesota will not apply to the reduction of any period of Respondent's suspended, limited, or conditioned license in Minnesota unless Respondent demonstrates that practice in another state conforms completely with Respondent's Minnesota license to practice medicine;

9. Respondent has been advised by Board representatives that she may choose to be represented by legal counsel in this matter and has so chosen Jan D. Halverson;

10. Respondent waives any further hearings on this matter before the Board to which Respondent may be entitled by Minnesota or United States constitutions, statutes, or rules and agrees that the order to be entered pursuant to the stipulation shall be the final order herein;

11. Respondent hereby acknowledges that she has read and understands this stipulation and has voluntarily entered into the stipulation without threat or promise by the Board or any of its members, employees, or agents. This stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this stipulation.

Dated: 7/7, 1992

PAMELA M. NORTH, MD
Respondent

JAN D. HALVERSON
Attorney for Respondent

Felhaber, Larson, Fenlon
& Vogt, P.A.
900 Meritor Tower
St. Paul, Minnesota, 55101

for SARAH G. MULLIGAN
Attorney for Board

500 Capitol Office Building
525 Park Street
St. Paul, Minnesota 55103
Telephone: (612) 297-2040

Upon consideration of this stipulation and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the terms of this stipulation are adopted and implemented by the Board this 11th day of July, 1992.

MINNESOTA BOARD OF

MEDICAL PRACTICE

By: H Leonard Roche

BEFORE THE MINNESOTA

BOARD OF MEDICAL PRACTICE

In the Matter of the
Medical License of
Pamela M. North, M.D.
Date of Birth: 5/16/54
License Number: 29,912

AMENDED STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between Pamela M. North, M.D. (hereinafter "Respondent"), and the Minnesota Board of Medical Practice (hereinafter "Board") as follows:

1. During all times herein, Respondent has been and now is subject to the jurisdiction of the Board from which he holds a license to practice medicine and surgery in the State of Minnesota;

FACTS

2. For the purpose of this stipulation, the Board may consider the following facts as true:

a. Respondent has been subject to a Board order dated July 11, 1992, based on her history of chemical dependency. The Facts recited in paragraph 2 of that order are incorporated by reference herein;

b. In November 1992, Respondent began experiencing urological symptoms similar to those for which she had been treated repeatedly for fifteen years. Respondent did not seek medical care but instead medicated herself with samples of Pyridium Plus which she had in her home. Respondent was unaware that Pyridium Plus contains a small amount of barbiturate. Respondent's next body fluid screens were positive for barbiturate.

Exhibit B

STATUTES

3. The Board views Respondent's practices as inappropriate in such a way as to require Board action under Minn. Stat. § 147.091, subd. 1(r) (1992) and Respondent agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify the disciplinary action;

REMEDY

4. Upon this stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Respondent does hereby consent that until further order of the Board, made after notice and hearing upon application by Respondent or upon the Board's own motion, the Board may make and enter an order conditioning and restricting Respondent's license to practice medicine and surgery in the State of Minnesota as follows:

a. Respondent shall abstain from alcohol and all mood-altering chemicals unless they are prescribed by a treating physician or dentist who has been informed of Respondent's drug use history;

b. Respondent shall not prescribe or self-administer any controlled substances or legend drugs for her own use. If a medical situation arises which requires the need for a controlled substance or legend drug to be administered to Respondent, the medication must be prescribed and/or administered by another physician or dentist who has first been informed of Respondent's chemical abuse/dependency history;

c. Respondent shall not order, purchase, or dispense controlled substances or legend drugs. She shall not have access to any drug samples upon her return to practice;

d. Respondent shall attend AA or NA self-help programs in support of abstinence. Quarterly reports shall be submitted to the Board from Respondent's

designated sponsor(s) regarding attendance and participation. The minimum frequency of attendance shall be eight meetings per month;

e. Respondent shall participate in Fairview Riverside Phase II Aftercare Group and subsequent growth group until May 1994 or until successful completion. Respondent shall arrange for monthly reports to the Board from her chemical dependency counselor regarding her attendance and progress;

f. Respondent shall continue Physicians Serving Physicians or other Board-approved professional support network system, attend meetings monthly, and obtain an identified designated sponsor within that organization. Quarterly reports shall be submitted to the Board from Respondent's designated sponsor(s) regarding her active participation in P.S.P. and/or another professional organization related to recovery;

g. Respondent shall practice only in a group setting, with at least one other physician, approved in advance by the Complaint Review Committee. A physician who is a member of the practice shall provide quarterly written reports to the Board addressing Respondent's overall work performance as well as her progress under the terms of this Amended Stipulation and Order. If Respondent is unable to locate a practice setting which satisfies the terms of this subparagraph, she may petition the Board for amendment thereof, notwithstanding the terms of paragraph 4.m. The burden shall be on Respondent to show her inability to satisfy the terms of this subparagraph and to show that any alternative practice setting provides sufficient structure and monitoring;

h. Respondent shall continue psychiatric management, with a psychiatrist approved in advance by the Complaint Review Committee, as recommended by her psychiatrist, and other counseling as recommended by St. Mary's. Respondent's psychiatrist and other counselors shall provide quarterly reports to the Board and to her primary treating physician described in paragraph 4.j.;

i. Respondent shall be subject, without notice, to blood and urine tests at the request of Board staff or another designee. The minimum frequency and type of routine testing will be twelve randomized tests per quarter, four of which will be blood tests. The blood and urine tests shall be:

1. Observed in their drawing;
2. Handled through legal chain of custody methods;
3. Paid for by Respondent.

The biological fluid testing shall take place at/through Hennepin County Medical Center, 701 Park Avenue South, Minneapolis, Minnesota 55415, unless otherwise directed by Board staff or a Board designee. Testing shall screen for opiates, cocaine, barbiturates, amphetamines, benzodiazepines, marijuana, and other drugs of abuse, including alcohol. If the blood and urine testing is to be processed through the mail, the drug screening test kit used must be obtained from the Hennepin County Medical Center unless otherwise directed. All blood and urine tests processed through Hennepin County Medical Center by mail must be directed to the attention of Calvin Bandt, M.D., at Hennepin County Medical Center. The Center will provide test results directly to the Board. Blood and urine tests may be requested at any time. Ingestion of poppyseeds will not be accepted as a reason for a "positive" drug test result;

j. Respondent shall arrange for a primary treating physician, approved in advance by the Complaint Review Committee, who may be one of her present physicians, to coordinate medical care provided to her by all physicians from whom she receives care. The primary treating physician shall write all prescriptions issued to Respondent, including those issued pursuant to evaluation or treatment by other physicians. Respondent shall provide all necessary records releases to enable her physicians to communicate pursuant to this paragraph. Respondent shall arrange for all other physicians who treat her to provide written reports to her primary treating

physician after any treatment. The primary treating physician shall provide quarterly reports to the Board summarizing medical care provided to Respondent by any physician, as well as addressing Respondent's progress under the terms of this Amended Stipulation and Order;

k. Respondent and a designated Board member or designee shall meet on a regular basis. It shall be Respondent's obligation to contact the designated individual to arrange each of the meetings. The purpose of such meetings shall be to review individual monitoring reports and Respondent's progress under the terms of this Amended Stipulation and Order. The minimum frequency of meetings shall be quarterly;

l. Respondent shall provide any currently effective treatment or aftercare plan established at the time of last treatment and/or evaluation. This plan shall include but shall not necessarily be limited to:

1. The aftercare plan activities;
2. The provider of aftercare services:

   Name

   Address

   Telephone number
3. A consent form signed by both Respondent and the provider authorizing quarterly reports on attendance and progress with each treatment/aftercare objective as well as any modification to the plan made by the provider.

The terms of each such plan are incorporated by reference herein to the extent not superseded by the provisions of this Amended Stipulation and Order;

m. This Amended Stipulation and Order will remain in effect at least until July 1996. Respondent may petition for amendment of the restrictions contained herein after two years of further documentable, uninterrupted recovery from the date

of service of this order. Upon any such petition, the Board may continue, amend or remove any of the restrictions contained herein;

n. Upon Board approval of this Amended Stipulation and Order, Respondent shall provide the Board with the addresses and telephone numbers of Respondent's residence and all work sites. Within seven (7) days of any change, Respondent shall provide the Board with new address and telephone number information.

5. Within ten days of the date of this order, Respondent shall provide the Board with a list of all hospitals at which Respondent currently has medical privileges. The information shall be sent to the Board of Medical Practice, Suite 106, 2700 University Avenue West, St. Paul, Minnesota 55114;

6. If Respondent shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, the license of Respondent to practice medicine and surgery in the State of Minnesota shall be suspended immediately upon written notice by the Board to Respondent, such a suspension to remain in full force and effect until Respondent petitions the Board to terminate the suspension after a hearing. Nothing contained herein shall prevent the Board from revoking or suspending Respondent's license to practice medicine and surgery in the State of Minnesota after any such hearing;

7. In the event the Board in its discretion does not approve this settlement, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any disciplinary action by either party hereto except that Respondent agrees that should the Board reject this stipulation and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records relating hereto;

8. In the event Respondent should leave Minnesota to reside or practice outside the state, Respondent shall promptly notify the Board in writing of the new location as well as the dates of departure and return. Periods of residency or practice outside of Minnesota

will not apply to the reduction of any period of Respondent's suspended, limited, or conditioned license in Minnesota unless Respondent demonstrates that practice in another state conforms completely with Respondent's Minnesota license to practice medicine;

9. Respondent has been advised by Board representatives that she may choose to be represented by legal counsel in this matter and has so chosen Jan D. Halverson;

10. Respondent waives any further hearings on this matter before the Board to which Respondent may be entitled by Minnesota or United States constitutions, statutes, or rules and agrees that the order to be entered pursuant to the stipulation shall be the final order herein;

11. Respondent hereby acknowledges that he has read and understands this stipulation and has voluntarily entered into the stipulation without threat or promise by the Board or any of its members, employees, or agents. This stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this stipulation.

Dated: 2/12, 1993.

Pamela M North MD
PAMELA M. NORTH, M.D.
Respondent

Jan D. Halverson
JAN D. HALVERSON
Attorney for Respondent

FELHABER, LARSON, FENLON
& VOGT, P.A.
1935 Piper Jaffray Tower
222 South 9th Street
Minneapolis, Minnesota 55402
Telephone: (612) 339-6321

SARAH G. MULLIGAN
Attorney for Board

500 Capitol Office Building
525 Park Street
St. Paul, Minnesota 55103
Telephone: (612) 297-2040

CONTINUED

Upon consideration of this stipulation and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the terms of this stipulation are adopted and implemented by the Board this 13 day of March, 1993.

MINNESOTA BOARD OF

MEDICAL PRACTICE

By: H Gerard Roche

A4 -> A4

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
	:	(92 MED 440)
PAMELA M. NORTH, M.D., RESPONDENT.	:	

It is hereby stipulated between Pamela M. North, M.D., Respondent, personally, and by her attorney, Jan D. Halverson, and Deborah S. Wright and Michael J. Berndt, attorneys for the Department of Regulation and Licensing, Division of Enforcement and the Wisconsin Medical Examining Board, as follows:

1. Pamela M. North, M.D., Respondent herein, of 4487 Timberline Court, Vadnais Hgts., Minnesota 55127, is a physician duly licensed and currently registered to practice medicine and surgery in the State of Wisconsin and that such license bears # 020 0024232.

2. The respondent understands that by the signing of this Stipulation she voluntarily and knowingly waives her rights, including the right to a hearing on the allegations against her at which the state has the burden of proving the allegations by a preponderance of evidence; the right to confront and cross-examine witnesses against her; the right to call witnesses on her own behalf; 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; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

3. Pamela M. North, M.D., is aware of her right to seek legal representation and has obtained legal advice prior to signing this stipulation.

4. Pamela M. North, M.D., agrees to the adoption of the attached Final Decision and Order by the Wisconsin Medical Examining Board. The parties to the stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form attached.

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 attorneys for the Division of Enforcement and the member of the Wisconsin Medical Examining Board assigned as an advisor in this investigation may appear before the Wisconsin Medical Examining 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 deliberations on the stipulation.

7. The Division of Enforcement joins Pamela M. North in recommending the Wisconsin Medical Examining Board adopt this Stipulation and issue the attached Final Decision and Order.

Pamela M. North, M.D. — Date: 5/20/93
Respondent

Jan D. Halverson — Date: 5/20/93
Attorney for Respondent

Deborah S. Wright, Attorney — Date: May 14, 1993
Division of Enforcement

Michael J. Berndt, Attorney — Date: 5/14/93
Supervisor, Division of Enforcement

ATY2-4009

CONSENT FOR RELEASE OF INFORMATION

I, Pamela M. North, hereby authorize the Minnesota Board of Medical Practice to provide the Wisconsin Medical Examining Board or any member thereof, the Wisconsin Department of Regulation and Licensing or any attorney, or agent thereof, 1400 East Washington Avenue, Madison, Wisconsin, with the records of all treatments, progress notes, medical records, compliance information and drug and alcohol treatment records concerning Pamela M. North. I further authorize you to discuss with these persons any matter relating to these records and to allow these persons to examine and copy any records or information relating to me. A reproduced copy of this consent form shall be as valid as the original.

This disclosure is being made for the purpose of monitoring my limited license, and any subsequent proceedings before the Wisconsin Board. Unless revoked earlier, this consent is effective until July 1996. I understand that I may revoke this consent at any time and that information obtained as a result of this consent may be used after the above expiration date or revocation.

5/20/93
Date

Pamela M North MD
Signature

5/16/54
Respondent's Date of Birth

(dsw)
(ID 4069)

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review, the times allowed for each, and the identification of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Medical Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should b filed in circuit court and served upon the State of Wisconsin Medical Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Medical Examining Board.

The date of mailing of this decision is June 3, 1993.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN MEDICAL EXAMINING BOARD.

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

MARCH 28, 1994

1. 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 sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

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

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision 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.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

SECTIONS 227.49 AND 227.53, OF THE WISCONSIN STATUTES

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) *Rehearing will be granted only on the basis of:*

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board or the savings bank review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 5.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall *serve and file a petition for review within 30 days after service of the order finally disposing of the* application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which *petitioner contends that the decision should be reversed or modified. The petition may be amended,* by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

5. The savings bank review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings bank review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board and the savings bank review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, *vacation or modification of the order or decision under review. Such notice, other than by the named* respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

NICHOLAS L. OWEN, M.D., LS 9107302 MED

Respondent

ORDER DENYING RESPONDENT'S PETITION FOR COSTS

To: Michael P. Malone
Attorney at Law
100 East Wisconsin Avenue
Suite 2600
Milwaukee, WI 53202

FILE COPY

Arthur Thexton
Attorney at Law
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

The Final Decision and Order in the above-captioned matter was filed by the Medical Examining Board on December 27, 1993. By the terms of the board's Order, the board accepted the conclusion of the administrative law judge that Dr. Owen's care and treatment of Thomas Ahern did not constitute a danger to the health, welfare or safety of patient or public. The board did not accept the recommended conclusion that Dr. Owen's records of his treatment of the patient did not constitute a violation of sec. Med 10.02(2)(h), Code, and instead concluded that it did. Based on that finding of violation, the board ordered that one-third of the costs of the proceeding be assessed against Dr. Owen.

Through inadvertence, Dr. Owen's Petition for Costs, filed with the department by Attorney Malone on or about October 21, 1993, was not provided to the board until after the board's December 27, 1993, Final Decision and Order had been issued. Accordingly, the Petition was considered by the board at its meeting of January 20, 1994.

Based upon respondent's Motion, and upon other information of record herein, the board orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that the Motion of Respondent Nicholas L. Owen, M.D., for Costs in this matter be, and hereby is, denied.

DISCUSSION

Respondent's Motion was premised on the proposition that Dr. Owen was the prevailing party in the matter. Inasmuch as the board ultimately found a violation relating to Dr. Owen's record-keeping, it may not be said that he prevailed as to all the issues. It is true, however, that the board agreed with the administrative law judge that the principal allegations of the Complaint should be dismissed, and the Petition must be considered in light of that fact.

Sec. 227.485(3), Stats., states as follows:

> (3) In any contested case in which an individual, a small nonprofit corporation or a small business is the prevailing party and submits a motion for costs under this section, the hearing examiner shall award the prevailing party the costs incurred in connection with the contested case, unless the hearing examiner finds that the state agency which is the losing party was substantially justified in taking its position or that special circumstances exist that would make the award unjust.

Sec. 227.485(4), Stats., provides that where there is more than one issue contested, partial awards of costs shall be provided based on a determination of the relative importance of each issue. Respondent, in having prevailed as to the allegations pertaining to his treatment of the patient, may be considered for the purposes of sec. 227.485(3), Stats., to be the prevailing party as to that issue. The board concludes, however, that the division was substantially justified in having brought those allegations.

That conclusion is based on the fact that there was considerable expert testimony in the hearing record as to Dr. Owen's treatment of Mr. Ahern which would tend to support the position of the division. The board's decision as to that issue therefore reflects its determination that the evidence in the record was insufficient to satisfy the division's burden of proof rather than that there was no justification for going forward with those allegations on which the division did not ultimately prevail.

The board's finding of substantial justification is consistent with the opinion of the administrative law judge in that regard. "Substantial justification" is defined at sec. 227.485(2)(f), Stats. as "having a reasonable basis in law and fact." In his opinion, the law judge comments (at page 7):

> The state's case, though vague as to the point in time at which Dr. Owen allegedly slipped below the standard of minimally competent practice, is not unreasonable. It is, however, without that degree of factual and analytical support which would permit a finding that it is more likely than not that a minimally competent physician would have done something different than Dr. Owen did.

The board agrees with the law judge's assessment that the state's case was not unreasonable and, accordingly, concludes that the division was substantially justified in its position relative to the prosecution and hearing of this matter. Respondent's Motion must therefore be denied.

Dated this 29 day of January, 1994.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

by Clark Olsen

Clark O. Olsen, M.D.
Secretary

WRA:BDLS2:4155