FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST THOMAS J. GALLAGHER, M.D., RESPONDENT.	:	FINAL DECISION AND ORDER 89 MED 575

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

Thomas J. Gallagher, M.D.
W180 N7950 Town Hall Road
Menomonee Falls, WI 53051

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

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Thomas J. Gallagher, M.D., Respondent herein, (D.O.B. 12/7/51) is duly licensed and registered to practice medicine and surgery in the State of Wisconsin pursuant to license number 22363, which license was first granted on 7/13/79.

2. Respondent's latest address on file with the Department of Regulation and Licensing is W180 N7950 Town Hall Road, Menomonee Falls, WI 53051.

3. Respondent's specialty area of practice is internal medicine.

4. In March of 1988, Patient A (DOB 5/2/59) saw Dr. David Lenz, a physician who works at the same clinic as Respondent, because of discomfort of his right chest and complaints of right leg pain.

5. Dr. Lenz ordered outpatient diagnostic tests done at Waukesha Memorial Hospital. On March 29, 1988, a lung scan - perfusion and a lung ventilation, aerosol, and blood gas analysis were performed at Waukesha Memorial Hospital. On March 30, 1988, a peripheral venogram, right was performed at Waukesha Memorial Hospital.

6. Patient A then saw Dr. Gallagher for follow-up on March 29, 1988, following the performance of the lung gas and lung scan tests at Waukesha Memorial Hospital. Dr. Gallagher telephoned the hospital that day to obtain the results of the tests. He was advised that the preliminary reading of the lung scan was that there was a low probability of pulmonary emboli and he noted in the patient's record that the test results were negative. His impression of the report was based upon the information provided to him orally over the telephone.

7. At the time Patient A consulted with Dr. Gallagher on March 29, 1988, he advised Dr. Gallagher that he had awoken at 2:00 a.m. that morning with sharp pain in the right chest which was worse when he would breath or move. Dr. Gallagher did not diagnose pulmonary emboli as the cause of the patient's symptoms.

8. The blood gas results were:

CO2 - 25.6; PH - 7.440; PCO2 - 36.3; PO2 - 84.1; BASE - 0.9; BICARB - 24.5; FIO2 - R.A.

9. The written report of the results of the lung ventilation aerosol and lung scan (perfusion) was:

> Ventilation lung scans were obtained after the inhalation of 0.5 MCI of aerosolized TC99M DTPA with subsequent perfusion lung scans obtained after the intervenous injection of 5.37 MCI of TC99M MAA.
>
> There are two moderate sized subsegmental areas of diminished perfusion involving the lingular segment of the left upper lobe and possibly lateral segment of the right middle lobe without adequate ventilation identified to this areas. No other ventilation/perfusion mismatches are seen and the remainder of the appearance of the scans is unremarkable.
>
> Impression: Moderate evidence of bilateral pulmonary emboli as described above without other abnormalities seen.

10. The result of the venogram was "Impression: No evidence of deep venous thrombosis."

11. On August 31, 1988, Patient A returned to the clinic where Dr. Gallagher practiced and saw Dr. Mark Roznik, another physician at the clinic. On that date Patient A complained of fever, left calf pain and left chest pain under the axilla area. He reported that his sister had hepatitis at that time and that he had a history of a blood clot in the left hip

2½ years ago, not due to any injury. He reported a fever of 101°, that his left leg throbbed with walking and that the pain started in the left rib after seeing a chiropractor.

12. Dr. Roznik's examination revealed that lungs were clear; there was left rib pain with palpation; that the left leg revealed: pulses intact, no swelling, no calf pain, and the pain was worse around the ankle. Dr. Roznik diagnosed muscle strains in the left leg and left rib and prescribed discalcid, 750 mg., 2 twice a day, an anti-inflammatory used for musculoskeletal strain.

13. At 5:40 p.m. the afternoon of August 31, 1988, Patient A called the clinic and reported to a nurse that his left side pain was so severe he was unable to breath. The nurse checked with Dr. Roznik who instructed that he should come right in if the pain was that severe.

14. Patient A came to the clinic and saw Dr. Gallagher. Patient A reported to the nurse: that he saw Dr. Roznik that afternoon for left leg and rib pain; that the left leg improved and the left rib became worse with pain radiating to the shoulder, arm and neck; that his left arm was numb; and, that he had difficulty breathing. This was noted in the chart by the nurse prior to Dr. Gallagher seeing the patient that date.

15. Patient A reported to Dr. Gallagher: that he had seen a chiropractor because he thought he had a pinched nerve; that the pain in his left side at that time was so bad that he couldn't breath; that all the symptoms began the day before; that he had a chiropractic treatment the previous day and had been seeing a chiropractor for the treatment for four to five weeks.

16. Dr. Gallagher's physical examination showed: an alert, cooperative, well nourished, well developed white male in no acute distress; that there was tenderness of the left chest wall; lungs clear, breath sounds good bilaterally; and, left hand numb also. Dr. Gallagher's assessment was: bizarre numbness of left hand and left leg; pleuritic chest pain with definite chest wall tenderness. His plan was to continue the discalcid 750 mg. 2 twice a day and vicodin one or two every six hours as needed for pain.

17. Prior to August 31, 1988, Patient A's father and uncle both suffered from clotting problems. Patient A did not volunteer that information to the physicians and no one asked Patient A of any family history of clotting problems.

18. Dr. Gallagher read Dr. Roznik's notes of August 31, 1988, when Dr. Gallagher saw Patient A later that date. The written reports of the blood gas results, lung ventilation aerosol and lung scan (perfusion), and venogram, which were taken on March 29, 1988 were in the patient's chart which Dr. Gallagher reviewed on August 31, 1988. Dr. Gallagher noted the blood gas results and venogram, but did not see the lung scan results.

19. On September 1, 1988, Patient A suffered a massive pulmonary embolus and died from that condition.

20. That the Wisconsin Medical Examining Board and the Wisconsin Department of Regulation and Licensing have never received any other complaints regarding Dr. Gallagher's practice as a physician.

CONCLUSIONS OF LAW

1. That the Wisconsin Medical Examining Board has authority to enter into this stipulated resolution pursuant to sec. 227.44(5), Wis. Stats.

2. That the Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to sec. 448.02(3), Wis. Stats.

3. That Respondent's conduct, as set out in the Findings of Fact above, is unprofessional conduct as defined by Wis. Stats. sec. 448.02(3), and Wis. Adm. Code sec. MED 10.02(2)(h).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent be, and hereby is, REPRIMANDED.

Dated at Madison, Wisconsin this 25th day of March, 1993.

Clark O. Olsen, M.D., Secretary
Wisconsin Medical Examining Board

JRZ:kcb
ATY-2439

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST THOMAS J. GALLAGHER, M.D., RESPONDENT.	: : : : :	STIPULATION 89 MED 575

It is hereby stipulated and agreed, by and between, Thomas J. Gallagher, M.D., Respondent; Mary K. Wolverton of Peterson, Johnson & Murray, S.C., attorneys for Respondent; and, John R. Zwieg, attorney for the Wisconsin Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation (file 89 MED 575) by the Department of Regulation and Licensing, Division of Enforcement. Investigative file 89 MED 575 was opened based upon a Claims Paid Report from the Office of the Commissioner of Insurance indicating that a medical malpractice insurance carrier had made a payment in settlement of a claim against Respondent.

2. The Respondent understands that by signing the Stipulation he voluntarily and knowingly waives his rights including the right to have a formal complaint issued against him; at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his 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; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

3. Respondent is aware of his right to seek legal representation and has exercised that right prior to signing this stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the 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 as 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 Respondent, his attorney, and the attorney for the Division of Enforcement may appear before the Board for the purposes 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 parties to this stipulation agree that the member of the Board appointed as the investigative advisor in this matter may appear before the Board in open or closed session for the purposes 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.

Dated this 12th day of March, 1993.

Thomas J. Gallagher, M.D.
Respondent

Dated this 12th day of March, 1993.

Mary K. Wolverton
Peterson, Johnson & Murray, S.C.
Attorneys for Respondent

Dated this 4th day of March, 1993.

John R. Zwieg
Attorney for Complainant
Department of Regulation & Licensing
Division of Enforcement

ATY-2438

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 be 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 Sttate of Wisconsin Medical Examining Board.

The date of mailing of this decision is March 26, 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.