FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
STUART N. BOISMENUE, M.D., RESPONDENT.	:	FINAL DECISION AND ORDER 90 MED 535

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

Stuart N. Boismenue, M.D.
1020 Cabel Avenue
Rhinelander, WI 54501

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. Stuart N. Boismenue, Respondent herein, (D.O.B. 12/09/46) is duly licensed and registered to practice medicine and surgery in the State of Wisconsin pursuant to license number 23395, which license was first granted on 10/17/80.

2. Respondent's latest address on file with the Department of Regulation and Licensing is 1020 Cabel Avenue, Rhinelander, WI 54501.

3. Respondent's specialty area of practice is pediatrics.

4. In June, 1990 Respondent married Susan Lehman, who is the mother of a girl, A. L. DOB: 10/25/86, and Ms. Lehman and her daughter began residing with Respondent. Because Respondent did not adopt A. L., he has no legal right to custody of her nor any legal obligation to support her.

5. Prior to Respondent's marriage to Ms. Lehman, Ms. Lehman and her daughter lived together as a family unit and had an extremely close relationship, which continued after the marriage.

6. Following the marriage and Respondent residing with Ms. Lehman and her daughter, A. L. did not readily accept Respondent as part of the family unit.

7. Prior to October 8, 1990 Respondent and Ms. Lehman encountered blended family problems.

8. On October 8, 1990 Ms. Lehman was bathing her daughter, and while she was rinsing soap from A. L.'s vaginal area, her daughter stated "I don't like being friendly with Nick". "Nick" was the name by which A. L. referred to Respondent. Ms. Lehman asked A. L. if Nick had touched her daughter and A.L. said that he done so. Ms. Lehman asked her daughter where he had touched her and A. L. pointed to her vaginal area. Ms. Lehman asked her daughter if Nick had wiped her off and A. L. stated "no". When Ms. Lehman asked her daughter whether it had hurt when Nick touched her, A. L. answered "yes". A. L. then asked her Mother if A. L. had done anything bad and although Ms. Lehman said she had not been bad A. L. asked her mother to forgive her. When Ms. Lehman expressed concern, A. L. said that Nick had not touched her there and also said that he would not do it again.

9. On October 8, 1990, Ms. Lehman telephoned a clinical social worker of her acquaintance and advised the social worker of her daughter's statements. The social worker scheduled an appointment with Ms. Lehman and her daughter for the following day. At the October 9, 1990 appointment the social worker drew a stick figure and told A. L. that if anyone had ever touched A. L. where she did not want them to touch her that she should mark that place on the stick figure. A. L. then marked the area where the stick figure's legs joined its body, and at the same time said "gina", the word she used for her vagina, and "bottom" the word she used for her rectum.

10. The social worker had three more interviews of A. L. during October, 1990, during which A. L. made further indications and statements regarding touching by Respondent. On November 2, 1990, the social worker reported the allegations to the Oneida County authorities.

11. On November 8, 1990, Detective Glenn Schaepe of the Oneida County Sheriff's Department interviewed Respondent regarding the allegations made by A. L.. Initially, Respondent denied ever touching A. L. in the vaginal area. However, upon further questioning by Detective Schaepe and reflection by Respondent, Respondent related the following:

a. On September 30, 1990, at a time when Respondent's wife was away from their home, A. L. urinated in her clothing and was itching her body.

b. A. L. suffered from eczema.

c. He undressed A. L. and patted her body dry.

d. He applied hydrocortisone cream to A. L.'s areas of eczema and also rubbed the cream on A. L.'s genital area, including rubbing some of the cream inside her external genitalia, using his fingers.

e. Although A. L.'s itching of her body included the crotch area, there was no eczema in that area and there was no medical necessity for the cream in the genital area.

f. The application of the creme inside the external genitalia would cause some stinging.

g. Respondent had no sexual intention in touching A. L. in that manner.

12. In November, 1990 Diane M. Nicks, an Assistant Attorney General for the State of Wisconsin was appointed as special prosecutor for Oneida County regarding the investigation and any criminal prosecution regarding A.L.'s allegations.

13. During November, 1990 Ms. Nicks contacted Attorney John R. Zwieg of the Wisconsin Department of Regulation and Licensing, Division of Enforcement, to determine whether that agency was also interested in investigating these allegations. Investigative file 90 MED 535 was opened based on that inquiry.

14. On November 15, 1990 A. L. was evaluated and physically examined by Caroline Levitt, M.D. the director of the Midwest Children's Resource Center. Dr. Levitt, in her report, indicated "I am not at all able to document sexual abuse of A.L. nor am I able to describe that she has not been abused."

15. A. L. has continued in psychotherapy to the present. In that therapy, she has made further allegations of inappropriate touching by Respondent, but has also made other allegations of sexually inappropriate behavior by individuals other than the Respondent, which are known to be untrue, if taken literally.

16. On December 12, 1990, Investigator Pamela Ellefson of the Department of Regulation and Licensing, Division of Enforcement, interviewed the administrator of St. Mary's Hospital in Rhinelander to determine whether the hospital had ever received any complaints regarding Respondent's practice. The administrator stated that he was unaware of any complaints regarding Respondent. On that same date, Ms. Ellefson met with the administrator of the Rhinelander Medical Center, the clinic where Respondent practices. The clinic administrator indicated that the Respondent had been with that clinic for 12 years and that the administrator was unaware of any complaints from staff or patients concerning Respondent.

17. On January 4, 1991, it was determined by the Division of Enforcement that subsequent to becoming aware of the allegations against him that Respondent had requested the hospital and clinic to adopt as policies that whenever he saw a child for an examination or a touching procedure at the clinic that either a parent or qualified health care professional would be in the room, and that when he saw a child at the hospital for an examination or a touching procedure, a qualified health care professional would be in the room. That Respondent requested those policies, which remain in effect, to prevent false accusations from being made against him and to maintain the public's confidence in the clinic and hospital.

18. After the reporting of the incident to the Oneida County authorities in November of 1990, Ms. Lehman and her daughter moved out of the Respondent's residence and Ms. Lehman filed for divorce. That divorce is now final.

19. Since July 9, 1990 Respondent has seen Dr. Michael Galli, a psychologist with Northern Wisconsin Psychological Associates, for assistance in dealing with various life experience issues.

20. In October of 1991, Ms. Nicks, the special prosecutor for Oneida County, filed a criminal complaint with the Circuit Court for Oneida County which states:

> "Between September 30, 1990 and October 6, 1990, the defendant did feloniously and intentionally have sexual intercourse as defined by sec. 948.01(7)(a), Stats., to wit: vulvar penetration with a finger, with a child, namely A.L., DOB: 10/25/86, contrary to sec. 948.02, Stats., which has as a maximum penalty imprisonment not to exceed twenty years or a fine not to exceed $10,000 or both."

21. The criminal proceeding is currently set for trial the week of September 14, 1992, but the special prosecutor and Respondent, through his attorney, are presently exploring other options to resolve that matter.

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 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's license to practice medicine and surgery in the State of Wisconsin is hereby limited, as follows:

1. Respondent shall continue in psychotherapy with Dr. Michael Galli, a psychologist at Northern Wisconsin Psychological Associates. That in the event that Dr. Galli is unable or unwilling to continue to provide psychotherapy to Respondent, Respondent shall find another psychotherapist to provide those services, who shall first be found to be acceptable by the Board.

2. That Dr. Galli, and any subsequent appointed psychotherapist, shall file reports with the Wisconsin Medical Examining Board every three months, beginning three months from the date of this Order. The reports shall indicate Respondent's status and any progress in therapy.

3. In the event that Dr. Galli or any subsequent psychotherapist believes that there is no longer a need for Respondent to continue in psychotherapy, that psychotherapist shall submit a report to the Medical Examining Board setting out the basis for that conclusion and the Board shall consider whether to end this requirement regarding psychotherapy.

4. Respondent shall keep on file with his psychotherapists, current releases, complying with State and Federal laws, authorizing release of counselling, treatment and monitoring records, to the Wisconsin Medical Examining Board and the Wisconsin Department of Regulation and Licensing, Division of Enforcement.

5. Whenever Respondent is examining or treating a child, another health care provider shall be in the room with Respondent and that child.

6. A physician employed at the Rhinelander Medical Center, who shall be approved by the Board, shall serve as Respondent's supervising physician for purposes of this Order. The supervising physician shall insure that the requirements of paragraph 5 are being carried out at both the clinic and the hospital. The supervising physician shall meet with Respondent on a weekly basis to discuss Respondent's practice and address any problems or concerns in Respondent's practice.

7. The supervising physician, shall file reports with the Wisconsin Medical Examining Board every three months, beginning three months from the date of this Order. The reports shall indicate the manner in which the requirements of paragraph 5 are being carried out, and any problems or concerns which have arisen regarding Respondent's practice.

8. The requirements set out in paragraphs 5, 6 and 7 shall continue for at least one year from the date of this Order. Subsequent to the expiration of one year, this limitation shall be modified or terminated if Respondent appears before the Wisconsin Medical Examining Board and requests that this limitation on his license be modified or terminated, and if the Board grants that request. Respondent shall provide the Board with any basis for such request. That in any event these limitation shall be in effect for no longer than three years.

9. If Respondent requests that any limitation on his license, which is imposed by this Order, be modified or terminated it shall be in the sole discretion of the Board whether to modify or terminate the limitation. In the event that the Board declines to make a modification or termination requested by Respondent, it shall not be considered a denial of license, under 227.01.(3)(a) which entitles Respondent to a hearing on the decision.

10. In the event Respondent, his psychotherapist or his supervising physician becomes aware of any complaint made against Respondent regarding alleged misconduct in the practice of medicine or surgery, that person shall immediately report the existence and details of that complaint to the Wisconsin Medical Examining Board.

11. Respondent shall be permitted to continue practice upon condition that: he will refrain from engaging in unprofessional conduct; he will appear before the Board, its officers or its agents at such times as may be designated by the Board from time to time; he will fully disclose to the Board, or its officers or agents the nature of his practice and conduct; he will fully comply with the limits placed on his practice and conduct by the Board; and, he will cooperate with the Board. [Sec. 448.02(3)(e), Wis. Stats.]

12. Respondent shall appear before the Board six months from the date of this Order to discuss with the Board the nature of his practice and conduct and progress in his therapy with his psychotherapist.

13. Violation of any term or condition of this Order may constitute grounds for revocation of Respondent's license to practice medicine and surgery in the state of Wisconsin. Should the Board determine that there is probable cause to believe that Respondent has violated the terms of this Order, the Board may order that Respondent's license be summarily suspended, pending hearing and determination of the alleged violation.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin this 19th day of August, 1992.

B. Ann Neviaser

B. Ann Neviaser, Secretary
Wisconsin Medical Examining Board

ATY2-2121

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
STUART N. BOISMENUE, M.D., RESPONDENT.	:	90 MED 535

It is hereby stipulated and agreed, by and between, Stuart N. Boismenue, M.D., Respondent; D. J. Weis of Johnson, Weis, Paulson & Priebe, 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 90 MED 535) by the Department of Regulation and Licensing, Division of Enforcement, which was opened based on an allegation that Respondent inappropriately touched the genitalia of his three and one half year old stepdaughter in the Fall of 1990. Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by clear, satisfactory and convincing 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 does not admit the allegations against him, but 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 18th day of August, 1992.

Stuart N. Boismenue, M.D.
Respondent

Dated this 15th day of August, 1992.

D. J. Weis
Johnson, Weis, Paulson & Priebe, S.C.
Attorneys for Respondent

Dated this 13th day of August, 1992.

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

ATY2-1698

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing r Judicial Review, the times allowed for each, and th 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 decisi n. (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 th 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 State of Wisconsin Medical Examining Board.

The date of mailing of this decision is August 20,1992.