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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
KENNETH A. STORMO, M.D. RESPONDENT.	:	FINAL DECISION AND ORDER (91 MED 063)

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

Kenneth A. Stormo, M.D.
933 West Highland Ave.
Milwaukee, WI 53233

Wisconsin Medical Examining Board
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708

The Wisconsin Medical Examining Board received a Stipulation submitted by the parties to the above-captioned matter. The Stipulation, a copy of which attached hereto, was executed by Kenneth A. Stormo, M.D.; Wm. Pharis Horton, attorney for Kenneth A. Stormo, M.D.; and Gilbert C. Lubcke, attorney for the Department of Regulation and Licensing, Division of Enforcement. Based upon the Stipulation of the parties, the Wisconsin Medical Examining Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Kenneth A. Stormo, M.D., 933 West Highland Avenue, Milwaukee, Wisconsin 53233, is a physician duly licensed and currently registered to practice medicine and surgery in the state of Wisconsin, license #17458, said license having been granted on January 13, 1971.

2. Dr. Stormo currently specializes in the practice of forensic pathology although during the period of the incidents involved in this action he practiced surgical pathology.

Patient M.L.

3. Patient M.L., age 83, was suspected of having temporal arteritis. Her treating physician admitted her to St. Agnes Hospital on October 17, 1989, for a left temporal artery biopsy. The procedure was successfully accomplished and the specimen was submitted to Dr. Stormo for evaluation.

4. Dr. Stormo performed both a gross and a microscopic examination of the specimen. Dr. Stormo made a diagnosis and submitted a pathology report to the treating physician in which he concluded: "Temporal artery biopsy: Subintimal fibrosis, chronic perivascular inflammation, adventitia; most consistent with vascular changes related to aging." He also concluded that on microscopic examination no definite giant cells could be seen.

5. In fact, giant cells were present on the pathology slide. In addition, the specimen showed that the artery was nearly obliterated by the inflammatory reaction. The correct diagnosis from the gross and microscopic examination of the pathology slide was temporal arteritis.

6. Dr. Stormo's conduct in failing to make a correct diagnosis of temporal arteritis from the pathology slide presented to him fell below the standards of minimal competence accepted in the profession.

7. Dr. Stormo's conduct created the unacceptable risk that the patient's treating physician would not be able to promptly diagnose and appropriately treat the temporal arteritis resulting in exacerbation of the patient's condition.

Patient E.H.

8. Patient E.H. was born on May 20, 1938. A mammogram taken on June 30, 1989, disclosed a cluster of microcalcifications in the patient's left breast. The patient's treating physicians could not identity any palpable breast lesions and found no evidence of axillary lymphadenopathy. The treating physicians recommended an excisional biopsy of the patient's left breast with needle localization. The procedure was successfully performed on July 14, 1989, at St. Agnes Hospital and the breast tissue was submitted to Dr. Stormo for evaluation.

9. Dr. Stormo performed both a gross and a microscopic examination of the breast tissue. He examined seven slides, made a diagnosis and submitted a pathology report to the treating physicians in which he concluded:

> "Left breast biopsy: Fibrocystic disease with sclerosing adenosis and calcification."

10. In fact, several of the slides demonstrated, in addition to fibrocystic disease, lobular neoplasm and probable lobular carcinoma in situ.

11. Dr. Stormo's conduct in failing to at least identify and report the lobular neoplasm fell below the minimal standards of competence established in the profession.

12. Dr. Stormo's conduct created the unacceptable risk that the patient's treating physicians would not be adequately advised of the patient's condition and, therefore, could not advise the patient of the alternative treatment approaches available to her and of the necessity for frequent followup examinations to determine if the patient developed an invasive carcinoma.

Patient C.N.

13. Patient C.N., age 77, presented to his treating physician with a complaint of blood in his stool. A barium enema disclosed a large sigmoid colon polyp and a CT scan disclosed a pelvic mass. On June 29, 1990, the patient's treating physician performed a colonoscopy and removed three polyps from the descending and the sigmoid colon. The polyps were submitted to Dr. Stormo for evaluation.

14. Dr. Stormo performed both a gross and a microscopic examination of the polyps. He made a diagnosis and submitted a pathology report to the treating physicians in which he concluded:

"1. Small polyp with sigmoid colon: Adenomatous polyp.
2. Polyp, sigmoid colon, large polyp: Adenomatous polyp with inflammation."

15. In fact, the pathology slide from the large polyp showed severe dysplasia with probable adenocarcinoma in situ and possible early invasion of the submucosa.

16. Dr. Stormo's conduct in failing to at least identify and report the severe dysplasia fell below the minimal standards of competence established in the profession.

17. Dr. Stormo's conduct created the unacceptable risk that the patient's treating physicians would not be adequately advised of the patient's condition and, therefore, could not advise the patient of the alternative treatment approaches available to him and of the necessity for frequent follow up colonoscopy to identify any progression from severe dysplasia to invasive adenocarcinoma.

18. Upon re-examination of the specimens after commencement of the Medical Examining Board investigation, Dr. Stormo agreed that the conditions described should have been noted in his pathology reports as the correct findings, as additional findings or as possible findings.

19. Some months after, and unrelated to the incidents set forth in paragraphs 3 through 17 above, Dr. Stormo participated in and satisfactorily completed a six-month fellowship in forensic pathology at the Office of the Coroner in Denver, Colorado, and voluntarily shifted his practice from surgical pathology to forensic pathology.

20. Dr. Stormo successfully passed his specialty board examinations in forensic pathology and became board certified in forensic pathology on June 1, 1992.

21. Dr. Stormo is presently employed as a forensic pathologist with the Office of the Medical Examiner for Milwaukee County and has been so employed since he completed the fellowship in forensic pathology in Denver, Colorado.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction in this disciplinary proceeding pursuant to Wis. Stats. sec. 448.02.

2. The Wisconsin Medical Examining Board has the authority to resolve this disciplinary proceeding by stipulation without an evidentiary hearing pursuant to Wis. Stats. sec. 227.44(5).

3. Dr. Stormo's examinations of the surgical specimens in the cases of patients M.L., E.H. and C.N. constituted unprofessional conduct within the meaning of Wis. Stats. sec. 448.02(3) and Wis. Adm. Code sec. MED 10.02(2)(h).

4. The Wisconsin Medical Examining Board has the authority pursuant to Wis. Stats. sec. 440.22 to assess the costs of this proceeding against Dr. Stormo.

ORDER

NOW, THEREFORE, IT IS ORDERED that the Stipulation of the parties is approved.

IT IS FURTHER ORDERED that Dr. Stormo's license to practice medicine and surgery in the state of Wisconsin, license # 17458, shall be, and hereby is, limited as follows, effective on the date of this Final Decision and Order:

1. Dr. Stormo will limit his practice to forensic pathology and will not engage in the practice of surgical pathology or any other subspecialty within the practice of medicine not included within the practice of forensic pathology.

2. Dr. Stormo will not make application to the Medical Examining Board at any time in the future to expand his practice beyond the practice of forensic pathology unless he has taken and satisfactorily completed a residency program in surgical pathology, or whatever other subspecialty he may desire to practice in, of at least one (1) year duration approved by the Medical Examining Board.

3. Dr. Stormo will participate in a quarterly review of his records and practice for a period of one (1) year commencing on the date of this Final Decision and Order. Dr. Stormo will make all of his records available to the reviewing physician and will permit the reviewing physician to select the records which will be reviewed. The reviewing physician will file quarterly reports with the Medical Examining Board setting forth the results of his reviews of

Dr. Stormo's records and practice. Jeffrey M. Jentzen, M.D., a forensic pathologist, will serve as the reviewing physician. If at any time the reviewing physician is unable or unwilling to serve, the Medical Examining Board will appoint a successor reviewing physician.

4. Dr. Stormo will promptly pay all costs of the review process described in paragraph 3 above.

IT IS FURTHER ORDERED that Dr. Stormo will pay costs of this disciplinary proceeding in the amount of $225 to the Department of Regulation and Licensing within 30 days of the date of this Final Decision and Order.

IT IS FURTHER ORDERED that pursuant to the authority of Wis. Stats. sec. 448.02(4), if the Medical Examining Board determines that there is probable cause to believe that Dr. Stormo has violated the terms of this Final Decision and Order of the Medical Examining Board, the Board may order that the license of Dr. Stormo to practice medicine and surgery in the state of Wisconsin be summarily suspended pending investigation of the alleged violation.

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

Dated at Madison, Wisconsin, this 23 day of Sept, 1993.

WISCONSIN MEDICAL EXAMINING BOARD

Clark O. Olsen, M.D., Secretary

GL:ske
ATY-2562

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST KENNETH A. STORMO, M.D., RESPONDENT.	: : : : :	STIPULATION

It is hereby stipulated between Kenneth A. Stormo, M.D., personally; and by his attorney, Wm. Pharis Horton; and Gilbert Lubcke, attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. Kenneth A. Stormo, M.D., of 933 West Highland Ave., Milwaukee, Wisconsin 53233, is a physician duly licensed and currently registered to practice medicine and surgery in the state of Wisconsin, license # 17458, said license having been granted on January 13, 1971.

2. Dr. Stormo currently specializes in the practice of forensic pathology although during the period of the incidents involved in this action he practiced surgical pathology.

3. An investigation of Dr. Stormo is pending before the Medical Examining Board, investigative file 91 MED 63.

4. The parties to this Stipulation agree that the Medical Examining Board may render the Final Decision and Order attached hereto, the terms of which have been agreed upon by the parties.

5. Dr. Stormo understands that by signing this Stipulation, he freely, voluntarily and knowingly waives his rights, including the right to a hearing on the allegations against him, the right to confront and cross examine witnesses against him, the right to call witnesses on his behalf and to compel their attendance by subpoena, the right to testify on his 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 and order, the right to petition for rehearing, the right to judicial review, and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

6. The parties to this Stipulation and the board advisor, James L. Esswein, M.D., may appear before the Medical Examining Board in support of this Stipulation. Any appearance by either party pursuant to this paragraph shall be preceded by proper and timely notice to all parties to this proceeding.

7. If any term of this Stipulation or the incorporated Final Decision And Order is not accepted by the Medical Examining Board, then no term of this Stipulation or the Final Decision And Order will be binding in any manner on any party, and the matter will be returned to the Division of Enforcement for further proceedings.

Dated: 8-4-93

Kenneth A. Stormo, M.D.

Dated: Aug 9, 1993

Wm. Pharis Horton
Attorney for Kenneth A. Stormo, M.D.

Dated: July 16, 1993

Gilbert C. Lubeke
Attorney for the Department of Regulation & Licensing, Division of Enforcement

GL:ske
Doeatty-2561

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 State of Wisconsin Medical Examining Board.

The date of mailing of this decision is September 28, 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.