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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST HARVEY A. TURNER, M.D., RESPONDENT.	: : : : :	FINAL DECISION AND ORDER

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

Harvey A. Turner, M.D.
7920 East Coronado Road
Scottsdale, AZ 85257

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 Wisconsin Medical Examining Board received a Stipulation submitted by the parties to the above-captioned matter. The Stipulation, a copy of which is attached hereto, was executed by Harvey A. Turner, M.D., Respondent, and Judith Mills-Ohm, Attorney for Complainant, Department of Regulation and Licensing, Division of Enforcement. The Board has reviewed the Stipulation, considers it acceptable and adopts it.

Accordingly, the Board makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Harvey A. Turner, M.D., Respondent herein, date of birth June 9, 1932, is a physician licensed and currently registered to practice medicine and surgery in the State of Wisconsin, pursuant to license #25732, which was granted on October 28, 1983.

2. Respondent currently practices medicine and surgery in the state of Arizona. Since June 1988, Respondent has practiced exclusively as an assistant surgeon.

3. On or about March 19, 1989, the Arizona Board of Medical Examiners entered an Order censuring Respondent and imposing an administrative penalty of $1,000.00 against Respondent. The Arizona Board found Respondent guilty of unprofessional conduct for "procuring or attempting to procure a license to practice or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or agency" and for "knowingly making a false or misleading statement on a form required by the board or in a written correspondence, including attachments, with the board".

4. By Order dated May 8, 1989, the Arizona Board of Medical Examiners limited Respondent's license by ordering that Respondent "shall engage only in the practice of medicine in the capacity of an assistant surgeon". The Order further provided that Respondent was allowed to petition the Arizona Board for modification of that limitation at the conclusion of one year.

5. On or about June 28, 1990, the Arizona Board of Medical Examiners granted Respondent's petition to remove the limitation on his license.

6. Respondent, by having Orders entered against him by the Arizona Board of Medical Examiners, as set forth in paragraphs 3 and 4, has been subject to disciplinary action by the licensing authority of another state.

7. Respondent has agreed that the Wisconsin Medical Examining Board may reprimand him and may limit his license, as set forth in the Order.

CONCLUSIONS OF LAW

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

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

3. Respondent's conduct, as set forth in paragraph 6 of the Findings of Fact, constitutes having a license granted by another state to practice medicine and surgery or treat the sick, limited, restricted, suspended or revoked or having been subject to other disciplinary action by the licensing authority thereof, and thereby is unprofessional conduct within the meaning of sec. 448.02(3), Wis. Stats., and sec. MED 10.02(2)(q), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Dr. Harvey A. Turner is hereby reprimanded.

IT IS FURTHER ORDERED, effective the date of this Order that Dr. Harvey A. Turner's license to practice medicine and surgery in the State of Wisconsin is hereby limited to the extent that his practice of medicine and surgery shall be limited exclusively to the duties and responsibilities of an assistant surgeon.

IT IS FURTHER ORDERED, that if at any time Dr. Turner applies for the removal or modification of the limitation on his license to practice medicine and surgery in the State of Wisconsin, Dr. Turner shall provide evidence satisfactory to the Board that he is capable of practicing medicine and surgery, in a capacity other than as an assistant surgeon, without presenting any danger to the public. Such evidence may include, but not be limited to, information concerning the scope of Dr. Turner's practice in other states, additional education or training in the practice of medicine and surgery, and satisfying all of the requirements for reregistration which pertain to the practice of medicine and surgery at the time Dr. Turner applies for removal or modification of the limitation on his license.

IT IS FURTHER ORDERED, that pursuant to the authority of sec. 448.02(4), Wis. Stats., should the Wisconsin Medical Examining Board determine that there is probable cause to believe that Harvey A. Turner, M.D., has violated the terms of the Final Decision and Order of the Medical Examining Board or the Stipulation upon which it is based, the Medical Examining Board may order that the license of Harvey A. Turner, M.D., to practice medicine and surgery in the State of Wisconsin be summarily suspended pending investigation of the alleged violation.

Dated at Madison, Wisconsin this 20 day of June, 1991.

Michael P. Mehr M.D

Michael P. Mehr, M.D., Secretary
Wisconsin Medical Examining Board

JMO:kcb
ATY-1580

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST HARVEY A. TURNER, M.D., RESPONDENT.	: : : : :	STIPULATION

It is hereby stipulated between Harvey A. Turner, M.D., Respondent herein, and Judith Mills-Ohm, Attorney for the Complainant, Wisconsin Department of Regulation and Licensing, Division of Enforcement, as follows:

1. Harvey A. Turner, M.D., date of birth June 9, 1932, is a physician licensed and currently registered to practice medicine and surgery in the State of Wisconsin, pursuant to license #25732, which was granted on October 28, 1983.

2. Dr. Turner currently practices as an assistant surgeon in Phoenix, Arizona. Dr. Turner currently has no intention to return to Wisconsin to practice medicine and surgery.

3. A Disciplinary Complaint against Dr. Turner is pending before the Wisconsin Medical Examining Board. Dr. Turner admits all of the allegations of the Complaint, a copy of which is attached hereto, marked as Exhibit 1, and incorporated herein.

4. Dr. Turner is aware of and understands each of his rights, including the right to a hearing on the allegations against him, at which time the State has the burden of proving the 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 on his own behalf; the right to file objections to any proposed decisions and to present briefs or oral arguments to the officials who are to render the Final Decision; the right to petition for a rehearing; the right to appeal a Final Decision to the Wisconsin court system; and all of the rights afforded him under the United States Constitution, the Wisconsin Constitution, and the Wisconsin Statutes and Administrative Code.

5. Dr. Turner freely, voluntarily and knowingly waives each and every one of the rights set forth in paragraph 4 above.

6. For the purposes of this Stipulation, Dr. Turner agrees that the Wisconsin Medical Examining Board may make and enter the attached Final Decision and Order without prior notice to any party.

7. The parties to this Stipulation and the Board Advisor for this case may appear before the Wisconsin Medical Examining Board to argue in favor of acceptance of this Stipulation and the issuance of the attached Final Decision and Order.

8. If any term or condition of this Stipulation and proposed Final Decision and Order is not approved by the Wisconsin Medical Examining Board, then no term of this Stipulation and attached Final Decision and Order shall be binding in any manner on any party.

9. The parties agree that this Stipulation will be submitted directly to the Medical Examining Board and need not be submitted to James Polewski, the Administrative Law Judge appointed in this matter.

Dated this 4 day of June, 1991.

Harvey A. Turner, M.D.
Respondent

Dated this 22nd day of May, 1991.

Judith Mills-Ohm
Attorney for Complainant
Department of Regulation and Licensing
Division of Enforcement

JMO:kcb
ATY-1579

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	COMPLAINT
HARVEY A. TURNER, M.D., RESPONDENT.	:	

Stuart Engerman, Investigator Supervisor for the State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, Madison, WI 53702, upon information and belief, complains and alleges as follows:

1. Harvey A. Turner, M.D., Respondent herein, 7920 East Coronado Road, Scottsdale, Arizona, D.O.B. June 9, 1932, is a physician licensed and currently registered to practice medicine and surgery in the State of Wisconsin, pursuant to license #25732, which was granted on October 28, 1983.

2. Respondent was licensed and registered to practice medicine and surgery in the State of Wisconsin at all times pertinent to this Complaint.

3. On or about January 26, 1989, the Board of Medical Examiners of the State of Arizona conducted an Informal Interview of Respondent. On or about March 19, 1989, the Arizona Board entered an Order censuring Respondent and imposing an administrative penalty of $1,000 against Respondent. The Arizona Board found Respondent guilty of unprofessional conduct for "procuring or attempting to procure a license to practice or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or agency" and for "knowingly making a false or misleading statement on a form required by the board or in a written correspondence, including attachments, with the board".

4. At the Informal Interview of Respondent on January 26, 1989, the Arizona Board and Respondent indicated a willingness to enter into an agreement to restrict or limit the practice of Respondent. Therefore, by Order dated May 8, 1989, the Arizona Board limited Respondent's license by ordering that Respondent "shall engage only in the practice of medicine in the capacity of an assistant surgeon". The Order further provided that Respondent was allowed to petition the Arizona Board for modification of that limitation at the conclusion of one year.

5. On or about June 28, 1990, Respondent petitioned the Arizona Board of Medical Examiners to remove the limitation on his license. The Arizona Board granted Respondent's petition and terminated the Stipulation and Order, effective June 28, 1990.

6. Respondent's conduct, as set forth in this Complaint, constitutes having a license granted by another state to practice medicine and surgery limited or restricted, or having been subject to other disciplinary action by the licensing authority thereof, and therefore is unprofessional conduct within the meaning of sec. 448.02(3), Wis. Stats., and sec. MED 10.02(2)(q), Wis. Adm. Code.

WHEREFORE, the Complainant demands that the Board hear evidence relevant to matters recited herein, determine and impose the discipline warranted; and

Exhibit 1

the Complainant further demands that the Board assess the costs of the proceeding against the Respondent, payable to the Department of Regulation and Licensing pursuant to sec. 440.22, Wis. Stats.

Dated this 27th day of February, 1991.

Stuart Engerman, Investigator Supervisor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

STATE OF WISCONSIN)
)
COUNTY OF DANE)

Stuart Engerman, being first duly sworn on oath deposes and says that he is an investigator for the State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement, and that he has read the foregoing Complaint and knows the contents thereof and that the same is true to his own knowledge, except as to those matters therein stated on information and belief and as to such matters, he believes them to be true.

Stuart Engerman
State of Wisconsin
Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Subscribed and sworn to before me
this 27th day of February, 1991.

Notary Public
My Commission is permanent

Judith Mills Ohm
Attorney for Complainant
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

JMO:bmg
ATY-1427

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 June 21, 1991.

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.