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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST EUSTACE F. DOUGLAS, M.D., RESPONDENT.	: : : : :	FINAL DECISION AND ORDER 86 MED 347

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

Eustace F. Douglas, M.D.
7705 Pershing Boulevard
Kenosha, WI 53142

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. Respondent Eustace F. Douglas (dob 10/5/32) is and was at all times relevant to the facts set forth herein a physician and surgeon licensed in the State of Wisconsin pursuant to license #20506.

2. The Respondent did, on May 1, 1992, examine patient Russell Streuer, an investigator for Blue Cross/Blue Shield, who used the pseudonym John Stevens. The patient stated that he had been experiencing symptoms of wrist discomfort including occasional numbness or tingling in the middle and fouurth fingers of his right hand, and that he attributed this to his work at a computer keyboard. Respondent gave the patient a physical exam and took a history, which lasted approximately 30 minutes. Respondent told the patient that the patient had "superficial carpal tunnel syndrome" and recommended an evoked response test. Respondent did not order an EMG.

3. On May 7, 1992, patient Streuer was administered a SomatoSensory Evoked Response Test by a delegee of respondent, which lasted approximately 30 minutes. On May 8, 1992, respondent met with patient Streuer for approximately 10 minutes and told the patient that the patient had a medial nerve impingement in his right wrist, and carpal tunnel syndrome.

4. Respondent billed Blue Cross/Blue Shield of Wisconsin for his examinations and tests of patient Streuer. His bill for May 1, 1992, was for a new visit, and was coded 99205 (Physicians' Current Procedural Terminology 1992). This code represents to the insurance company that they physician has taken a comprehensive history, conducted a comprehensive examination, and made a medical decision or decisions of high complexity. Such visits by the patient are expected to last approximately 60 minutes.

5. The chart for patient Streuer does not reflect a complete history, comprehensive examination, or complex medical decisions, and the visit by the patient lasted only 30 minutes, for the May 1, 1992 visit. This patient's chart as a whole contains inadequate information for a diagnosis of carpal tunnel syndrome. The testing ordered by respondent was inappropriate for the diagnosis of carpal tunnel syndrome, and its results do not suggest that the patient had carpal tunnel syndrome as the results were in fact within normal limits.

6. On April 24, 1992, respondent met with patient Sue Schaut, an investigator for the division of enforcement. The patient told respondent that her right thumb and wrist were occasionally getting numb, interfering with her ability to knit, to work at a computer terminal, and to cut hair (Ms. Schaut is also a licensed cosmetologist). Respondent examined the patient and took a family and personal medical history. Respondent then stated to the patient that she had carpal tunnel syndrome and prescribed exercises, instructing her to return in 3 weeks. The visit lasted approximately 45 minutes.

7. On May 15, 1992, respondent met again with patient Schaut, and she told him that she was not improved. Respondent stated, among other things, that a conduction test should be conducted to determine the severity of the problem. The test was scheduled for June 11. Respondent did not order an EMG.

8. On June 11, 1992, respondent's delegee administered a SomatoSensory Evoked Response Test upon patient Schaut. On June 12, 1992, respondent met with patient Schaut and told her that she definitely had nerve interference in both wrists, and nerve blockage on both the radial and ulnar sides of the wrist. He prescribed x-rays for additional diagnosis, continued exercises, anti-inflammatory medication, and physical therapy.

9. Respondent billed Blue Cross/Blue Shield of Wisconsin for his examinations and tests of patient Schaut. His bill for April 24, 1992, was for a new visit, and was coded 99205 (Physicians' Current Procedural Terminology 1992). This code represents to the insurance company that they physician has taken a comprehensive history, conducted a comprehensive examination, and made a medical decision or decisions of high complexity. Such visits by the patient are expected to last approximately 60 minutes.

10. The chart for patient Schaut does not reflect a complete history, comprehensive examination, or complex medical decisions, and the visit by the patient lasted only 45 minutes, for the April 24, 1992 visit. This patient's chart as a whole contains inadequate information for a diagnosis of carpal tunnel syndrome. The testing ordered by respondent was inappropriate for the diagnosis of carpal tunnel syndrome, and its results do not suggest that the patient had carpal tunnel syndrome as the results were in fact within normal limits.

11. On May 1, 1992, respondent met with patient John Johnson, another investigator for the division. The patient stated that he was having problems with his left fingers going numb, and that when he used a computer his left wrist and hand ached after a period of use. Respondent examined the patient and took a family and personal medical history. Respondent then told patient Johnson that he had carpal tunnel syndrome, and gave him some exercises to do and ordered x-rays and a nerve conduction test. The visit lasted approximately 30 minutes.

12. On May 7, the patient had his wrists x-rayed in accordance with the prescription of respondent. On May 8, respondent met with the patient and personally conducted an EMG, and told the patient that he did have carpal tunnel syndrome. Respondent prescribed exercises and scheduled a followup appointment in 5 weeks time.

13. Respondent's records of the EMG and his chart indicate a diagnosis of median nerve denervation. In fact, the patient does not have this condition. Respondent billed for 11 tests, of which 6 were for motor nerves and 5 were for sensory nerves. In fact, respondent only conducted 4 tests, one each for sensory and motor on the the median and ulnar nerves. Each test was billed at $60, resulting in an overbilling of $420.

14. Respondent billed Blue Cross/Blue Shield of Wisconsin for his examinations and tests of patient Johnson. His bill for May 1, 1992, was for a new visit, and was coded 99205 (Physicians' Current Procedural Terminology 1992). This code represents to the insurance company that they physician has taken a comprehensive history, conducted a comprehensive examination, and made a medical decision or decisions of high complexity. Such visits by the patient are expected to last approximately 60 minutes.

15. The chart for patient Johnson does not reflect a complete history, comprehensive examination, or complex medical decisions, and the visit by the patient lasted only 30 minutes, for the May 1, 1992 visit.

16. Respondent does not admit any error, impropriety or unprofessional conduct in the treatment of the named patients. Respondent has decided to retire from the practice of medicine in view of his age and the cost of litigation only.

CONCLUSIONS OF LAW

16. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to §448.02(2), Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §§227.44(5) and 448.02(5), Wis. Stats.

17. For each of the above patients, respondent's failure to properly examine and diagnose their conditions violated § MED 10.02(2)(h), Wis. Adm. Code. Respondent's billing practices violated § MED 10.02(2)(m), Wis. Adm. Code. Respondent's charting practices violated § MED 10.02(2)(h), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

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

IT IS FURTHER ORDERED, that the board accepts the voluntary SURRENDER of the license to practice medicine and surgery of Eustace F. Douglas, M.D. effective August 31, 1993.

IT IS FURTHER ORDERED, that if respondent should ever reapply for a Wisconsin credential to practice any profession regulated by the board, the board may determine in its sole discretion the terms and conditions under which any credential may be issued to respondent, and may require him to personally appear before the board and to fulfill any other conditions before issuing any credential that the board deems appropriate.

Dated this 25 day of Aug, 1993.

WISCONSIN MEDICAL EXAMINING BOARD

by: _____
Clark O. Olsen, M.D., Secretary

ATY2-4067
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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST EUSTACE F. DOUGLAS, M.D., RESPONDENT.	: : : : :	STIPULATION 86 MED 347

It is hereby stipulated between the above Respondent and the Department of Regulation and Licensing, Division of Enforcement by its undersigned attorney as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without a hearing on the formal complaint which has been issued in this matter.

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; 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 respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has obtained legal advice before signing this Stipulation.

4. Respondent does not admit the Finding of Fact, but agrees to the adoption of the attached Final Decision and Order by the Board. The parties 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 or the proposed Final Decision and Order, 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 agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

7. The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and view of the case acquired during the investigation.

8. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. Respondent is informed that should the Board adopt this stipulation, the board's final decision and order is a public record and will be published in the Monthly Disciplinary Report issued by the department. A summary of the order will be published in the Wisconsin Regulatory Digest issued semiannually by the Board. A press release may be issued. This is standard department procedure and in no way specially directed at Respondent.

10. Respondent herewith surrenders unconditionally his license and registration to practice medicine and surgery in Wisconsin; his wall and wallet certificates are attached hereto.

F. Daniel, M.D. 7.16.93
Respondent Date

7.20.93
Eugene A. Gasiokiewicz, Attorney for Respondent Date

7/23/93
Arthur Thexton, Prosecuting Attorney Date
Division of Enforcement

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 c urt 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 August 30, 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.