FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER LS9405271MED
KENNETH S. NAVE, M.D., RESPONDENT.	:	

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

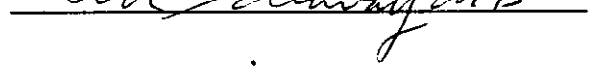
ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

Dated this 25th day of May 1995.



State of Wisconsin
Before the Medical Examining Board

In the Matter of Disciplinary Proceedings Against
KENNETH S. NAVE, M.D.

LS 9405271 MED

PROPOSED DECISION

The parties to this proceeding for purposes of s. 227.53, Stats., are

Kenneth S. Nave, M.D.
435 East 82nd Street
Chicago IL 60619

Wisconsin Medical Examining Board
Department of Regulation and Licensing
P.O. Box 8935
Madison WI 53708

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

A hearing was held in this matter on April 10, 1995. Dr. Nave did not appear, but telephoned the previous week to state that he was aware of the hearing and choosing not to appear in favor of in-patient treatment. Attorney Arthur Thexton appeared on behalf of the Division of Enforcement.

On the basis of the entire file and record in this matter, the Administrative Law Judge recommends that the Medical Examining Board adopt the following Findings of Fact, Conclusions of Law and Order as its Final Decision in this matter.

FINDINGS OF FACT

1. Respondent Kenneth S. Nave, M.D., was licensed as a physician and surgeon in the state of Wisconsin, pursuant to a license granted July 23, 1992.

2. On various dates between July 23, 1992, and May 26, 1994, Dr. Nave practiced medicine while under the influence of a controlled substance.

3. On March 9, 1994, Dr. Nave possessed cocaine without a prescription or other authorization.

4. On various dates between July 23, 1992, and March 9, 1994, Dr. Nave failed to keep patient appointments without explanation, without any notice to his patients or staff, and without arranging for other care or coverage for the patients.

5. On and after January 1, 1994, Dr. Nave practiced medicine while not covered by the Patients Compensation Fund.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this matter pursuant to s. 448.02(3), Stats.

2. By practicing medicine while under the influence of a controlled substance, Dr. Nave has violated ss. MED 10.02(2)(h)and (i), Wis. Admin. Code.

3. By possessing cocaine without a prescription or other authorization, Dr. Nave has violated s. 161.41(3m), Stats.

4. By failing to keep patient appointments without notice and without providing coverage or other care, Dr. Nave has violated s. MED 10.02(2)(h), Wis. Admin. Code.

5. By practicing medicine while not covered by the Patients Compensation Fund, Dr. Nave has violated s. 655.23(7), Stats., and s. MED 10.02(2)(h), Wis. Admin. Code.

ORDER

Now, therefore, it is ordered that the license previously issued to Kenneth S. Nave to practice medicine and surgery in the state of Wisconsin is indefinitely suspended, effective immediately.

It is further ordered that the suspension may stayed on such conditions as the Board may deem appropriate, on petition from Dr. Nave, together with such information as the Board may desire regarding his condition at the time of the petition for stay of the suspension.

It is further ordered that denial of a petition for stay of the suspension shall not constitute denial of an application for licensing in any way.

It is further ordered that the costs of this proceeding be imposed upon Dr. Nave, pursuant to s. 440.22, Stats.

OPINION

Dr. Nave, having been fully informed of the progress of this action, having been represented by counsel through the initial stages of the proceeding, and having actively participated in the later stages of the proceeding on his own, decided not to put on any defense in this matter.

Accordingly, pursuant to s. RL 2.14, Wis. Admin. Code, the Medical Examining Board may decide this matter on the basis of the allegations in the complaint.

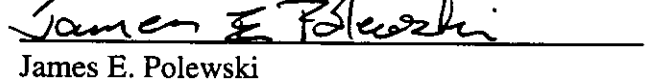
The testimony of several witnesses at the hearing made it very plain that Dr. Nave was suffering from the effects of drug abuse at the time he was practicing medicine in Milwaukee after July 23, 1992. There is no reasonable basis to believe that Dr. Nave's conduct was due in any degree to any cause other than abuse of cocaine, and it is a matter of record that he was not covered by the Patients Compensation Fund while he was practicing.

The question left is what discipline is appropriate. Clearly, public protection requires that Dr. Nave not be permitted to practice medicine until such time as he demonstrates that he may do so with safety to his patients and the public. Just as clear is the conclusion that he will not be able to practice safely until he has attained a substantial degree of rehabilitation from his drug abuse. However, because there is no direct evidence of Dr. Nave's condition now, or his prognosis in the rehabilitation program he is currently pursuing, according to his statements and statements of a person who represented himself as Dr. Nave's supervising physician in the rehabilitation program, it is not possible to draft a set of limitations with any confidence that it is either appropriate to his condition or sufficient to public protection.

This proposed order reserves to the Medical Examining Board the prerogative to examine the circumstances fully, with Dr. Nave's assistance and participation, at such time as Dr. Nave petitions for a stay of the indefinite suspension, and to tailor an order to fit the circumstances at the time.

I impose the costs of the proceeding on Dr. Nave because it is an essential part of rehabilitation, in my opinion, for the person violating the standards to bear the consequences of the enforcement of the standards.

Dated this 27th day of April, 1995.



James E. Polewski
Administrative Law Judge

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.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN MEDICAL EXAMINING BOARD,
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

MAY 30, 1995

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

State of Wisconsin
Before the Medical Examining Board

In the Matter of Disciplinary Proceedings Against
KENNETH S. NAVE, M.D.

LS 9405271 MED

AFFIDAVIT OF COSTS, BOARD LEGAL SERVICES

State of Wisconsin,
County of Dane, ss:

James E. Polewski, being first duly sworn on oath, deposes and says:

1. He is an attorney licensed to practice law in the state of Wisconsin, and employed by the Division of Legal Services, Department of Regulation and Licensing.

2. In the course of that employment, he was assigned to preside as Administrative Law Judge in the above captioned matter, and in the course of that assignment he expended the following time and committed the department to the following expense:

Date	Activity	Time
6/7/94	Prehearing conference, prepare memo	30 m.
7/15/94	Prehearing conference, prepare memo	30 m.
9/16/94	Prehearing conference, prepare memo	30 m.
10/7/94	Prepare prehearing notice	10 m.
10/19/94	Prehearing	10 m.
10/21/94	Prepare prehearing memo	5 m.
11/7/94	Prehearing conference, prepare memo	10 m.
12/19/94	Prehearing conference, prepare memo	30 m.
1/9/95	Prehearing conference, prepare memo	10 m.
1/23/95	Telephone call, respondent - scheduling	10 m.
1/30/95	Letter, parties, scheduling	15 m.
2/6/95	Telephone call, respondent, twice, scheduling	10 m.
2/7/95	Telephone call, respondent, process	15 m.
3/7/95	Scheduling order	15 m.
4/3/95	Telephone call, respondent, scheduling, process	15 m.
4/10/95	Hearing	2 hr. 30 m.
4/26/95	Draft decision	1 hr.
	TOTAL TIME, ALJ:	4 HOURS, 35 MINUTES

Total expense, ALJ: 4 hours, 35 minutes at $32.89/hour: $150.75

Reporter expense, Magne Script, Madison:	$211.20
TOTAL COSTS, BOARD LEGAL SERVICES:	$361.95

James E. Polewski

Sworn to and Subscribed before me this 22d day of May, 1995.

Notary Public

My commission ~~is permanent~~. expires 11/15/98

STATE OF WISCONSIN
PATSY M. STRASBURG
NOTARY PUBLIC

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	**AFFIDAVIT OF COSTS**
KENNETH S. NAVE, M.D., RESPONDENT.	:	93 MED 538

STATE OF WISCONSIN)
COUNTY OF DANE)

I, Arthur Thexton, being on affirmation, say:

1. That I am an attorney licensed in the state of Wisconsin and am employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;

2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter; and

3. That set out on the attached record are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

Arthur Thexton, Prosecuting Attorney

Subscribed to and affirmed before me this 12th day of June, 1995.

Janen E Bleuter

Notary Public
My Commission is permanent.

akt
202

STATE OF WISCONSIN
Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
Madison, WI 53708-8935

Kenneth Sesley Nave, MD
435 East 82nd Street
Chicago, IL 60619

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		HOURS
02/11/94		
	INV Telephone conference with witnesses, memo on same.	.75
03/23/94		
	INV Telephone conference with witnesses, memos on same, review materials with prosecutor Lubcke.	2.00
03/25/94		
	INV Telephone conference with witnesses, memos on same.	.50
03/28/94		
	INV Letter to respondent re: 146.82 request for records, subpoena, memos re: same.	3.00
03/30/94		
	INV Traveled to Milwaukee, interview witnesses, contact hospitals.	6.00
03/31/94		
	INV Traveled to Milwaukee, contact and interview witnesses and police.	4.00
04/19/94		
	INV Telephone conference with witnesses, memos of same.	.50
04/20/94		
	INV Telephone conference with witnesses, records request.	.75
04/22/94		
	INV Traveled to Milwaukee, interview witnesses.	6.00
04/28/94		
	INV Traveled to Milwaukee, obtain records, interview witnesses.	3.00

Kenneth Sesley Nave, MD

93 MED 538

		HOURS
05/11/94		
	INV Traveled to Milwaukee, serve documents.	3.00
05/12/94		
	AKT Prepare Summary Suspension document packet for MEB.	1.00
05/26/94		
	AKT Appear before MEB, present Summary Suspension petition and Complaint, sign and issue Complaint and Notice of Hearing.	1.00
09/15/94		
	AKT Telephone conference with Atty Relphorde, pretrial conference with ALJ Polewski and Atty Relphorde.	.80
09/26/94		
	AKT Draft alternative stipulations.	2.00
10/03/94		
	AKT Peer review meeting re: stipulation drafts.	1.30
10/10/94		
	AKT Peer review meeting re: revise stipulation proposals.	.30
10/12/94		
	AKT Final revisions to stipulation proposals, letter to Atty Relphorde with alternative stipulations.	1.50
11/07/94		
	AKT Pretrial conference with ALJ Polewski and Atty Relphorde.	.40
11/29/94		
	AKT Telephone conference with respondent, new stipulation and release to respondent with letter.	.80
12/19/94		
	AKT Pretrial conference with respondent and ALJ Polewski.	.30
01/09/95		
	AKT Pretrial scheduled and attempted: respondent not available.	.30
	AKT Prepare subpoenae, Telephone conference with Cecelia Dobbs.	.60

			HOURS	
		ive message from ALJ, receive message from respondent. Update proposed stipulation. Attempt to telephone respondent. Telephone conference with respondent.	.70	
02/07/95	AKT	Telephone conference with respondent, revise letter to respondent.	.40	
02/08/95	AKT	Telephone conferences with respondent. Trial preparation. Notify witnesses of status.	2.50	
02/22/95	AKT	Present proposed stipulation to MEB. Letter to respondent re: rejection of stipulation.	.60	
03/09/95	AKT	Review MEB Remand Order and ALJ scheduling order. Do Subpoenae for witnesses.	.50	
03/14/95	AKT	Letter to Board Advisor	.40	
	INV	Serve subpoenae.	3.00	
03/16/95	AKT	Telephone conference with Board Advisor. Letter to respondent.	.60	
04/06/95	AKT	Review file, hearing preparation.	2.00	
04/10/95	AKT	Conduct trial.	3.00	
04/27/95	AKT	Receive and review recommended Final Decision and Order, send to witnesses, file.	.50	
06/12/95	AKT	Review file, draft Statement and Affidavit of Costs.	2.00	
		FOR CURRENT SERVICES RENDERED	56.00	161
04/10/95		Witness fee and mileage for Dorothy Piel subpoena.		3
04/10/95		Witness fee and mileage for Laura Savignac subpoena.		3

Kenneth Sesley Nave, MD

93 MED 538

TOTAL COSTS	74.
BALANCE DUE	$1,687.

The above records are kept in the ordinary course of business by the Division and are assessable under