FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
SEVERINO G. GOMILLA, M.D., RESPONDENT.	:	LS9405272MED LS9512142MED

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

Dated this 22nd day of February 1996.

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST SEVERINO G. GOMILLA, M.D., RESPONDENT.	**PROPOSED DECISION** Cases LS-9405272-MED and LS-9512142-MED (93 MED 468 and 95 MED 403)

PARTIES

The parties in this matter under § 227.44, Stats., and § RL 2.037, Wis. Admin. Code, and for purposes of review under § 227.53, Stats., are:

Complainant:
Division of Enforcement
Department of Regulation and Licensing
Madison, WI 53708-8935

Respondent:
Severino G. Gomilla, M.D.
2541 North Lake Drive
Milwaukee, WI 53211

Disciplinary Authority:
Medical Examining Board
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint with the Medical Examining Board on May 27, 1994. A disciplinary proceeding (hearing) was scheduled for June 15, 1994. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on May 27, 1994 to Dr. Gomilla, who received it on June 4, 1994.

B. A prehearing conference by telephone was held on June 3, 1994. Attorney Arthur Thexton of the Department's Division of Enforcement appeared for the Medical Examining Board and Dr. Gomilla appeared by Attorney Robert Kay of Kay & Eckblad, S.C., One Point Place, Suite 201, Madison, WI 53719. The parties explained that the hearing date of June 15th had been chosen in the event that Dr. Gomilla was summarily suspended. The board did not summarily suspend Dr. Gomilla and

both attorneys requested that the hearing be adjourned. The hearing was rescheduled to August 22, 1995.

C. A prehearing conference was held on August 10th. Both attorneys explained that they were attempting to reach a settlement, and requested an adjournment of the hearing. The hearing was rescheduled to October 24, 1995.

D. No settlement was reached, and an Answer was filed by Mr. Kay on behalf of Dr. Gomilla on September 1, 1995. The answer contained a number of affirmative defenses, including an allegation that the board's previous order of 11/19/92 was based on a stipulation with Dr. Gomilla what was based on misrepresentations by Mr. Thexton.

E. A prehearing conference was held on September 12th. A schedule for discovery was established. A motion hearing and another prehearing conference were scheduled, and the hearing was rescheduled to November 2nd and 16th, 1995.

F. On September 16th, Mr. Thexton filed State's Motion re Other Act Evidence and State's Motion re Test Scores.

G. On September 23rd, Mr. Kay filed Respondent's Motion to Strike.

H. A prehearing conference was held on October 5th. Following a discussion, I separated the issue contained in respondent's affirmative defense from the other issues, and ordered that a hearing limited to that issue should be held on November 2nd.

I. The hearing limited to one of respondent's affirmative defenses was held on November 2, 1995. At the end of the hearing, I denied the affirmative defense.

J. A prehearing conference was held on November 7th. The attorneys and I discussed the possibility of having Dr. Gomilla assessed by Dr. Tom Meyer at the U. W. Extension Office, with follow-on training to address any deficiencies. The parties agreed to pursue that option rather than prepare for hearing on November 16th. The hearing was adjourned.

K. A prehearing conference was held on November 16th and a meeting with Dr. Meyer was held on December 20th. On January 18, 1995, Mr. Kay confirmed that Dr. Gomilla would participate in the program and that he had made an initial payment of $500.

L. In May 1995 I requested an update and was informed that the U.W. Extension Office was not proceeding until Dr. Gomilla paid a total of $4,000 for the assessment. The invoice for the balance was due on June 1st, following which I called and confirmed that no further payment had been made.

M. An attempt to schedule a prehearing conference on June 14th disclosed that Mr. Kay would be out of the country for an extended period. The prehearing conference was scheduled in early

August. Mr. Kay informed Mr. Thexton and me by letter that Dr. Gomilla was having difficulty raising the required fee, but that Mr. Kay would be encouraging him to do so.

N. A prehearing conference was held on August 9, 1995. Mr. Kay stated that Dr. Gomilla had informed him that he was unable to pay the additional fee for the assessment. Nevertheless, Mr. Kay was given another thirty days in which to try to convince Dr. Gomilla that this was his best option.

O. A prehearing conference was held on September 8th. Mr. Kay informed Mr. Thexton and me that Dr. Gomilla had determined that he could not pay the additional $3,500, so a hearing was scheduled for November 1, 1995.

P. On September 11, 1995, Mr. Thexton filed an Amended Complaint which added an allegation regarding the revocation of Dr. Gomilla's license to practice medicine in Indiana.

Q. A prehearing conference was held on October 2nd. Mr. Kay and Mr. Thexton discussed the wording of a possible stipulation which would relate to the lapse of Dr. Gomilla's license registration on November 1st. Mr. Kay requested the opportunity to appear before the Board on October 26th. The hearing was rescheduled to December 5, 1995. Mr. Kay later informed Mr. Thexton and me by letter that Dr. Gomilla would be out of the country on December 5th, and the hearing was rescheduled to December 19, 1995.

R. On November 16th, Mr. Thexton brought to my attention the State's Motion re Other Act Evidence, the State's Motion re Test Scores, and the Amended Complaint, all of which had been placed on hold while negotiations continued.

S. A motion hearing was held on December 5, 1995. I granted the State's two motions, and disallowed the amendment to the original complaint.

T. On December 11th, Mr. Kay informed Mr. Thexton and me that Dr. Gomilla would not contest the complaint.

U. On December 15, 1995 a second complaint was served on Dr. Gomilla. This complaint consisted of the additional count related to the revocation of Dr. Gomilla's Indiana license which had been disallowed on December 5th.

V. The disciplinary proceeding was held on December 19, 1995. Neither Dr. Gomilla nor Mr. Kay appeared. The Medical Examining Board was represented by Mr. Thexton. The hearing was recorded, and a transcript of the hearing was prepared and delivered on January 12, 1995. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. The respondent, Severino G. Gomilla, M.D., is licensed as a physician and surgeon in the state of Wisconsin, under license number 16163, which he has held continuously since it was originally granted.

2. As the result of an investigation by the Medical Examining Board into the death of a patient in 1986, Dr. Gomilla entered into a stipulation with the board. On November 19, 1992 Dr. Gomilla was ordered by the board to take and pass the SPEX examination within 9 months; a failure to do so would be deemed a violation of a board order [exhibit 4, pp. 11-12]. The SPEX exam was to be used as a measure of Dr. Gomilla's general level of medical knowledge.

3. On July 1, 1993, the board extended the deadline from August 19, 1993 to September 14, 1993. Dr. Gomilla took the SPEX examination on that date and received a score of 59 [exhibit 5].

4. A SPEX score of 75 or more would have been considered by the board to be a passing score.

5. On November 18, 1993, the board gave Dr. Gomilla an extension and permitted him to retake the examination at its next scheduled administration in March, 1994. Dr. Gomilla retook the exam at that time and received a score of 60 [exhibit 6].

6. By failing to abide by the order that he take and pass the SPEX exam, Dr. Gomilla violated a board order.

7. On December 13, 1994, Dr. Gomilla's license to practice medicine in the state of Indiana was summarily suspended [exhibit 4]. The summary suspension had four separate bases, one of which was the disciplinary action taken against Dr. Gomilla's license in Wisconsin.

8. Dr. Gomilla's anesthesiology skills were assessed as being marginal and far below average in 1986. His knowledge of pharmacology, physiology, fluid balance, and hemodynamics were assessed as being superficial. The report containing those assessments recommended that Dr. Gomilla obtain additional training [exhibit 8].

9. A Peer Review Panel at Naval Hospital Great Lakes in 1992 found that Dr. Gomilla's practice of anesthesia was below current standards of care. The panel recommended training to improve his skills [exhibit 7].

10. There is no evidence that Dr. Gomilla has completed additional medical training since 1986.

CONCLUSIONS OF LAW

I. The Medical Examining Board is the legal authority responsible for issuing and controlling credentials for physicians and surgeons, under ch. 448, Stats. The Medical Examining Board has personal jurisdiction over the respondent, Dr. Severino Gomilla, and subject-matter jurisdiction over a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 448.02(3), Stats., and ch. Med 10, Wis. Admin. Code.

II. The violation of an order of the Medical Examining Board constitutes unprofessional conduct under sec. MED 10.02(2)(b), Wis. Admin. Code, and discipline is appropriate, under sec. 448.02(3)(c), Stats.

III. The summary suspension of Dr. Gomilla's license to practice medicine in Indiana is an inappropriate basis for a finding of unprofessional conduct because it was based at least in part on the disciplinary action in Wisconsin.

ORDER

THEREFORE, IT IS ORDERED that license number #16163 to practice medicine and surgery issued to Dr. Severino G. Gomilla is hereby revoked.

IT IS FURTHER ORDERED that the respondent pay a sum not to exceed $1,000 toward the costs of this action.

IT IS FURTHER ORDERED that the complaint in case no. LS-9512142-MED be dismissed.

OPINION

Although this is strictly a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code, it is really a continuation of an earlier attempt to resolve questions about the respondent's competence to practice medicine. In 1992, following an incident in which a patient died while under his care, Dr. Gomilla reached an agreement with the board. The agreement allowed him to continue practicing as a medical doctor, but his license was limited and he was required to demonstrate his general level of medical knowledge by achieving a passing score on the SPEX exam. He took the exam twice and received a failing score both times. The 1992 order provided that such a failure would be considered a violation of a board order, and such a violation constitutes unprofessional conduct under the board's administrative rules.

Given that the underlying charge of failing the SPEX exam is quite simple, the story of this disciplinary proceeding is found more in its procedural history than in the findings of fact. Dr. Gomilla initially argued that the stipulated order under which he was required to take and pass the exam had been obtained by misrepresentation. A hearing limited to that issue was held on November 2, 1995. The stipulation was upheld and from that point on, no real issue remained. The

parties attempted to salvage Dr. Gomilla's career by having him enroll in an evaluation and training program offered by the U.W. Extension Office, but Dr. Gomilla decided not to take advantage of the program, stating that he could not afford it. When the hearing was finally held on the charge of failing to pass the SPEX exam, Dr. Gomilla did not appear to contest the charge. Dr. Gomilla took the SPEX exam twice and failed both times to obtain a passing score. He therefore did not comply with the board's order, and under these circumstances, his failure must be labeled unprofessional conduct.

Some three months before the final scheduled hearing in this case, another charge arose, based on the fact that the Medical Licensing Board of Indiana apparently revoked Dr. Gomilla's medical license in that state, and the charge was ultimately joined with the original one at hearing. I say "apparently revoked" because the complaint states that the license was revoked on August 31, 1995, but the only evidence presented at hearing was that Dr. Gomilla's license had been summarily suspended on December 13, 1994. Mr. Thexton did not move to find Dr. Gomilla in default, and the letter in which Dr. Gomilla said he would not contest the charges against him was dated before he was served with the complaint in LS-9512142-MED; so I am reluctant to make any finding that his Indiana license has been revoked. The Order to Show Cause which was filed on November 22, 1994 by the Medical Licensing Board of Indiana was based on two allegations: (1) the disciplinary action in Wisconsin and (2) statements by Dr. Gomilla on his Indiana License Renewal form dated 6-16-93 and his Controlled Substances Registration dated 5-24-94 that he had not been disciplined in any other jurisdiction. When the Indiana summary suspension order was imposed on December 13, 1995 it was based on

- the disciplinary action taken against Dr. Gomilla's license in Wisconsin,
- his failure to disclose that fact on his Indiana License Renewal form dated 6-16-93 and his Controlled Substances Registration dated 5-24-94,
- his prescription of laxatives for two patients which were 2 1/2 to 3 1/2 times the recommended dosage, and
- the fact that Dr. Gomilla "was considered a below-average employee not eligible for rehire by the Indiana State Reformatory and that the Respondent refused to follow protocols at both that facility and at IYC".

A finding that the Indiana action constitutes unprofessional conduct under sec. Med 10.02(2)(q), Wis. Admin. Code, would be improper, because it is impossible to tell how much weight the Indiana authority gave to each of these bases, and it would be manifestly unfair to impose discipline in Wisconsin based on another state's imposition of discipline, if the latter state's discipline was itself based on an earlier Wisconsin action. For that reason, as well as for the fact that there is no evidence of the charge contained in the complaint (revocation in Indiana), the second complaint must be dismissed.

Discipline.

The purposes of professional discipline have been set forth in Wisconsin Supreme Court Rule SCR 21.03(5) and in various attorney discipline cases, including Disciplinary Proc. Against Kelsay, 155 Wis.2d 480, 455 N.W.2d 871 (1990). In that case the Wisconsin Supreme Court stated "discipline for lawyer misconduct is not intended as punishment for wrongdoing; it is for the protection of the public, the courts and the legal profession from further misconduct by the

offending attorney, to deter other attorneys from engaging in similar misconduct and to foster the attorney's rehabilitation." That reasoning has been extended by regulatory agencies to disciplinary proceedings for other professions.

Information received from Appleton Medical Center and St. Elizabeth Hospital in Appleton [exhibit 8] includes a report entitled "On-Site Consultation #39" covering a review of the quality of anesthesia services at St. Elizabeth Hospital. Although the report itself is undated, it covers a review conducted in January of 1986. With regard to Dr. Gomilla, the report states "*The anesthesiology skills of Dr. Gomilla are assessed as being at an only marginal level of competency and far below average. Dr. Gomilla states he never took his Boards and is presently no longer eligible without further training. Dr. Gomilla's knowledge of pharmacology, physiology, fluid balance, hemodynamics, etc. is believed superficial.*" The report also contains the following recommendation: "*Serious consideration should be given to granting some present anesthesiologists Class II privileges in anesthesia, with the requirement that Class III privileges shall be granted only after required additional training. ... Only upon proper documentation of required additional training (a minimum of six months fellowships and/or preceptorship to keep up with the present state of the art in anesthesia) should Class III privileges be granted to these physicians.*" A chronology of events provided along with the "On-Site Evaluation #39" states that

- on October 6, 1986 Dr. Gomilla voluntarily agreed to limit his patients to Class I or II,
- on February 6, 1989 he was informed that a reinstatement of full privileges would be conditioned on his enrolling in a refresher course and obtaining a recommendation that he was qualified to care for Class III and IV patients, and
- on February 15, 1989 Dr. Gomilla resigned from the medical staff of St. Elizabeth Hospital.

Information received from the U.S. Department of the Navy [exhibit 7] includes the transcript of a Peer Review Panel hearing held on May 26th and 27th, 1992 at Naval Hospital Great Lakes which addressed allegations of substandard care by Dr. Gomilla. Another document, entitled "Final Decision Following Peer Review Panel of 26, 27 May 92" states "*The Peer Review Panel recommends the following limitations of privileges:*

a. No independent provision of anesthesia services.
b. No supervision of any providers of anesthesia.
c. Practice limited to the provision of anesthesia services to Class 1 and Class 2 patients only.
d. Successful completion of training is required to bring your practice of anesthesia up to current standards of care. To achieve this objective, training in an ASA approved training program is necessary before full reinstatement of privileges can be considered."

In this case, protection of the public is the overriding concern, and the evidence convincingly shows that Dr. Gomilla's level of medical competence over the past ten years has been low. On more than one occasion additional training has been recommended, but nothing in the record indicates that Dr. Gomilla has availed himself of this option. Dr. Gomilla's Wisconsin license lapsed on November 1, 1995 when he chose not to pay his reinstatement fee, but he has a right to reinstate his license upon payment of the required fee, and action against his license and his right to renew is still appropriate. The public would be adequately protected by an order that his license be suspended indefinitely until he affirmatively demonstrates his competence. Nevertheless, since he was given a similar option under the 11-19-92 order which he was unable or unwilling to satisfy,

and since he has apparently abandoned the option of working with the board to re-educate himself, an order of revocation is appropriate.

Costs.

The assessment of costs against a disciplined professional is authorized by § 440.22(2), Wis. Stats. and § RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. One approach is routinely to impose the costs of investigating and prosecuting unprofessional conduct on the disciplined individual rather than on the profession as a whole. I prefer to take a slightly more flexible approach and to consider the respondent's ability to pay as well as whether the respondent's actions during the disciplinary process have increased the department's costs. Despite the lengthy history of this case, I doubt that the delays since May 1994 have added more than a few hundred dollars to the department's costs, and Dr. Gomilla's stated reason for not pursuing the assessment and training option was its expense. I recommend that some of the costs be assessed, but not all, and I have suggested — somewhat arbitrarily — that he be ordered to pay up to $1,000. This will help reduce the cost of this disciplinary proceeding to the other members of the profession, yet avoid placing an unmanageable burden on Dr. Gomilla.

Dated and signed: January 23, 1996

John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

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:

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

February 23, 1996

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.)

FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST SEVERINO G. GOMILLA, M.D., RESPONDENT.	:	**NON-AFFIDAVIT OF COSTS OF OFFICE OF BOARD LEGAL SERVICES** Cases LS-9405272-MED and LS-9512142-MED

TO THE MEDICAL EXAMINING BOARD:

1. I am the administrative law judge who was assigned to the above-captioned matter.

2. On February 22, 1996 the Medical Examining Board issued its Final Decision and Order in this case, as a result of which the respondent, Dr. Gomilla, was ordered to pay a sum not to exceed $1,000 toward the costs of the action.

3. The prosecuting attorney, Mr. Thexton, has informed me that the affidavit of costs which he will be filing exceeds $1,000.

4. Therefore, I consider it sensible not to add further to my costs and the other costs of the Office of Board Legal Services by preparing an affidavit which will have no effect on the order. Nevertheless, if for any reason the board still wishes me to prepare an affidavit, I will of course be happy to comply.

John N. Schweitzer
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	**AFFIDAVIT OF COSTS**
SEVERINO G. GOMILLA, M.D.,	:	95 MED 403
RESPONDENT.	:	94 MED 468

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 the prosecutor time spent on this matter exceeds 70 hours, and at the Division of Enforcement rate of $41 per hour, exceeds the $1,000 maximum which respondent has been ordered to pay; in addition the Division has paid for two depositions totalling $249 50.

Arthur Thexton, Prosecuting Attorney

Subscribed to and affirmed before me this 26th day of February, 1996.

Notary Public
My Commission is permanent.

akt
165