

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

MAURO JOSEPH AGNELNERI, JR., M.D., :
RESPONDENT :

FINAL DECISION AND ORDER

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

Mauro Joseph Agnelneri, Jr.
80 Sheboygan Street
Fond du Lac, WI 54935

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. Mauro Joseph Agnelneri, Jr. (D.O.B. 06/15/50) is duly licensed in the state of Wisconsin to practice medicine and surgery (license # 22947). This license was first granted on July 11, 1980.

2. Dr. Agnelneri's latest address on file with the Department of Regulation and Licensing is 80 Sheboygan Street, Fond du Lac, WI 54935.

3. At all times relevant to this action, Dr. Agnelneri was practicing medicine in the state of Wisconsin as a specialist in urology. Dr. Agnelneri was practicing in association with Fond du Lac Clinic, 80 Sheboygan Street, Fond du Lac, Wisconsin.

4. On or about October 18, 1984, Dr. Agnelneri first saw SA, a 29 year old female as a patient for urological problems.

5. On or about August 9, 1985, Dr. Agnelneri performed a cystoscopy and

bladder dilation on SA for the treatment of suspected interstitial cystitis. During this procedure, Dr. Agnelneri instilled between 500 and 600 cc's of 0.4% Clorpactin solution into the bladder of SA for a holding time of approximately ten (10) minutes.

6. Dr. Agnelneri's provision of care on during the procedure referred to in paragraph 5, above fell below the minimum standards of competence in the field of urology, in that:

- a. Dr. Agnelneri failed to perform a biopsy in confirmation of his diagnosis prior to performance of the procedure; and
- b. Dr. Agnelneri failed to document and record the pressure under which the instillation was performed.

7. On or about January 16, 1986, Dr. Agnelneri performed a cystoscopy and bladder dilation on SA for the treatment of suspected interstitial cystitis. During this procedure, Dr. Agnelneri first performed a cystoscopy. Dr. Agnelneri then performed a biopsy from the mid trigone area of SA's bladder. Dr. Agnelneri then hydrodistended SA's bladder with a solution of approximately one thousand (1,000) cc's of 2.5% silver nitrate solution for a holding time of approximately seven (7) to ten (10) minutes.

8. Dr. Agnelneri's provision of care on during the procedure referred to in paragraph 7, above fell below the minimum standards of competence in the field of urology, in the following respects:

- a. A biopsy from the mid trigone area is not appropriate for the assessment of possible interstitial cystitis;
- b. Dr. Agnelneri proceeded with further treatment of SA without waiting for the biopsy to be evaluated.
- c. Dr. Agnelneri failed to document and record the pressure under which the instillation was performed.
- d. The performance of a biopsy immediately prior to hydrodistention of the created an unacceptable risk to the patient of perforation of the bladder under the pressure of hydrodistention;
- e. Dr. Agnelneri's utilization of 2.5% solution of silver nitrate presented an unacceptable risk of injury to SA. Dr. Agnelneri proceeded with the utilization of this concentration of silver nitrate, even after the hospital pharmacy notified him that support for utilization of the 5% AgNO_3 concentration that Dr. Agnelneri had originally requested for this procedure could not be located in professional literature.
- f. Dr. Agnelneri's hydrodistention of SA's bladder with silver nitrate created an unacceptable risk of injury to the patient; and
- g. Dr. Agnelneri's installation of silver nitrate solution into SA's

bladder for a period of seven to ten minutes created an unacceptable risk of injury to the patient.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter, pursuant to § 448.02(3), Wis. Stats.
2. The Wisconsin Medical Examining Board is authorized to enter into the attached stipulation, pursuant to §§ 227.44(5) and 448.02(5), Wis. Stats.
3. By the conduct described above, Mauro Joseph Agnelneri, Jr. is subject to disciplinary action against his license to practice medicine and surgery in the state of Wisconsin, pursuant to Wis. Stats. §448.02(3), and Wis. Adm. Code §MED 10.02(2)(h).

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Mauro Joseph Agnelneri, Jr. to practice medicine and surgery in the state of Wisconsin shall be LIMITED, in accordance with the following terms, conditions and requirements.

1. Dr. Agnelneri shall participate in and successfully complete an educational program established through the University of Wisconsin School of Medicine, Continuing Medical Education Program (hereinafter "University") by no later than six (6) months from the date of this order. This deadline may be extended by the Board or its agents upon request of Dr. Agnelneri, but in any event shall not be extended beyond one year from the effective date of this Order. The educational program shall be designed to address the educational needs of Dr. Agnelneri, as indicated by the results of a structured assessment program conducted by the University. The assessment shall concentrate on the problem areas identified in the Findings of Fact in this action. Further information regarding the assessment is contained in Exhibit 1, attached to this order. Dr. Agnelneri shall complete this educational program in addition to his required continuing medical education credits under § 448.13, Wis. Stats.

2. Failure to successfully complete the program shall constitute a violation of this order. The Board may impose additional discipline, including revocation or suspension of licensure, or the imposition of additional requirements or restrictions upon Dr. Agnelneri's practice, if Dr. Agnelneri fails to successfully complete the educational program outlined in paragraph 1, above.

3. Dr. Agnelneri shall permit the individuals conducting the educational program set forth in ¶1, above, to submit information regarding Dr. Agnelneri's participation in the program, including the results of any written or oral evaluations. The individuals conducting the program shall certify to the Board the results of their evaluation and specify whether Dr. Agnelneri has achieved the course objectives for the program.

4. Dr. Agnelneri shall permit a supervising physician selected by the University, in cooperation with the Board, to conduct a review of his office and hospital records on a periodic basis, starting on the effective date of this order.

a. The reviewing physician will serve under the direction and supervision of Dr. Thomas Meyer, Director of the University of Wisconsin Continuing Medical Education. Dr. Agnelneri shall agree to review and discuss these records with the supervising physician on a schedule acceptable to Dr. Meyer and the Board.

b. The reviewing physician will submit written reports to Dr. Meyer setting forth the results of each review. If the reviewing physician finds deficiencies in Dr. Agnelneri's practice, then the reviewing physician shall note the deficiencies in the report to Dr. Meyer, who shall immediately report these deficiencies to the Medical Examining Board. The Board may conduct further investigation of significant deficiencies, which may result in additional disciplinary action against Dr. Agnelneri.

c. If the reviewing physician is unable to continue the periodic review of Dr. Agnelneri's practice, then Dr. Meyer shall designate a new reviewing physician and promptly advise the Medical Examining Board of his or her identity. Dr. Meyer shall submit a final report to the Medical Examining Board at the conclusion of the period of review summarizing the reviewing physician's conclusions regarding Dr. Agnelneri's practice.

5. Dr. Agnelneri shall be responsible for payment of all costs of the educational program and expense of the reviewing physician, including charges for professional time required.

6. At the conclusion of the period of review referred to above, the Board shall order Dr. Agnelneri to appear before the Board to address the question of whether the Board should reinstate Dr. Agnelneri's unlimited license to practice medicine and surgery.

IT IS FURTHER ORDERED that partial costs of this proceeding in the amount of five hundred and fifty dollars (\$550.00) are assessed against Dr. Agnelneri, pursuant to §440.22(2), Stats. Dr. Agnelneri shall pay this amount to the Department of Regulation and Licensing within sixty (60) days of the effective date of this order.

IT IS FURTHER ORDERED pursuant to the authority of §448.02(4), Stats., that upon a determination of probable cause to believe that Dr. Agnelneri has violated any of the terms of this order, the Board may in its discretion order that the license of Mauro Joseph Agnelneri, Jr. be summarily suspended pending full investigation of the alleged violation.

This Order shall become effective upon the date of its signing.

MEDICAL EXAMINING BOARD

By: Michael P. Mehr MD 10-24-91
Michael P. Mehr, M.D. Date
Secretary
Medical Examining Board

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	
MAURO JOSEPH AGNELNERI, JR., M.D.	:	STIPULATION
RESPONDENT	:	
	:	

It is hereby stipulated between Mauro Joseph Agnelneri, Jr., personally on his own behalf and Steven M. Gloe, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Dr. Agnelneri's licensure by the Division of Enforcement (88 MED 179). Dr. Agnelneri consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Dr. Agnelneri understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by clear, satisfactory and convincing 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 himself; 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 him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Dr. Agnelneri agrees to the adoption of the attached Final Decision and Order by the Medical Examining Board.
4. If the Board accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings.
5. In resolution of this matter, Dr. Agnelneri consents to (among other things) an assessment by the University of Wisconsin School of Medicine, Continuing Medical Education Program. If the assessment report concludes that continuing education is not recommended as a viable rehabilitative tool for Dr. Agnelneri, this stipulation and order shall be null and void, and this matter shall be returned to the Division of Enforcement for further proceedings.

bladder dilation on SA for the treatment of suspected interstitial cystitis. During this procedure, Dr. Agnelneri instilled between 500 and 600 cc's of 0.4% Clorpactin solution into the bladder of SA for a holding time of approximately ten (10) minutes.

6. Dr. Agnelneri's provision of care on during the procedure referred to in paragraph 5, above fell below the minimum standards of competence in the field of urology, in that:

- a. Dr. Agnelneri failed to perform a biopsy in confirmation of his diagnosis prior to performance of the procedure; and
- b. Dr. Agnelneri failed to document and record the pressure under which the instillation was performed.

7. On or about January 16, 1986, Dr. Agnelneri performed a cystoscopy and bladder dilation on SA for the treatment of suspected interstitial cystitis. During this procedure, Dr. Agnelneri first performed a cystoscopy. Dr. Agnelneri then performed a biopsy from the mid trigone area of SA's bladder. Dr. Agnelneri then hydrodistended SA's bladder with a solution of approximately one thousand (1,000) cc's of 2.5% silver nitrate solution for a holding time of approximately seven (7) to ten (10) minutes.

8. Dr. Agnelneri's provision of care on during the procedure referred to in paragraph 7, above fell below the minimum standards of competence in the field of urology, in the following respects:

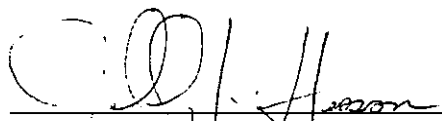
- a. A biopsy from the mid trigone area is not appropriate for the assessment of possible interstitial cystitis;
- b. Dr. Agnelneri proceeded with further treatment of SA without waiting for the biopsy to be evaluated.
- c. Dr. Agnelneri failed to document and record the pressure under which the instillation was performed.
- d. The performance of a biopsy immediately prior to hydrodistention of the bladder created an unacceptable risk to the patient of perforation of the bladder under the pressure of hydrodistention;
- e. Dr. Agnelneri's utilization of 2.5% solution of silver nitrate presented an unacceptable risk of injury to SA. Dr. Agnelneri proceeded with the utilization of this concentration of silver nitrate, even after the hospital pharmacy notified him that support for utilization of the 5% AgNO_3 concentration that Dr. Agnelneri had originally requested for this procedure could not be located in professional literature.
- f. Dr. Agnelneri's hydrodistention of SA's bladder with silver nitrate created an unacceptable risk of injury to the patient; and
- g. Dr. Agnelneri's installation of silver nitrate solution into SA's

6. The parties to this stipulation agree that the attorney for the Division of Enforcement may appear before the Medical Examining Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.


7. The Division of Enforcement joins Dr. Agnelneri in recommending the Medical Examining Board adopt this Stipulation and issue the attached Final Decision and Order.


Mauro Joseph Agnelneri, Jr., M.D.

10-18-91
Date


Jeffrey L Hesson, Attorney for
Mauro Joseph Agnelneri

10-16-91
Date


Steven M. Gloe, Attorney
Division of Enforcement

10-27-91
Date

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 October 29, 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 employee 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.