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FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

LS9009272MEB

PHILIP F. MUSSARI, M.D.,

RESPONDENT

FINAL DECISION AND ORDER

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

Philip F. Mussari, M.D.
Padre Pio Dr.
P.O. Box 409
Necedah, WI 54646

Medical Examining Board
P.O. Box 8935
Madison, Wisconsin 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708-8935

A hearing was held on the above-captioned matter on December 6, 1990. John R. Zwieg, attorney at law, appeared on behalf of the Complainant, Department of Regulation and Licensing, Division of Enforcement. The Respondent, Philip F. Mussari, M.D., appeared in person and without legal counsel.

The Administrative Law Judge filed her Proposed Decision in the matter on June 17, 1991. Attorney Zwieg filed Complainant's Objections to Proposed Decision on June 28, 1991. By letter dated June 28, 1991, Dr. Mussari also filed objections. Oral arguments on the objections were heard on July 24, 1991, at which time Mr. Zwieg appeared but Dr. Mussari failed to do so. The board considered the matter on that date.

Based on the entire record herein, the Wisconsin Medical Examining Board makes the following Findings of Fact, Conclusions of Law and Order

FINDINGS OF FACT

1. Philip F. Mussari, M.D., Padre Pio Drive, P.O. Box 409, Necedah, WI 54646, is a physician duly licensed and currently registered to practice medicine and surgery in the State of Wisconsin pursuant to license #155010, which was granted on November 18, 1965.

2. At least from May, 1984 to December, 1986, respondent provided medical care and treatment to Patient 1.

3. Patient 1 told respondent that she had been diagnosed by physicians in the Chicago area as having a space-occupying lesion in the brain, which was causing her to have severe headaches.

4. Respondent did not obtain the patient's prior treatment records or consult with any physician who had diagnosed or treated the patient for any medical condition.

5. Respondent did not perform or order any diagnostic test to determine the cause of the patient's headaches.

6. Respondent failed to perform a physical examination and make an adequate diagnosis of the patient's medical condition.

7. From May, 1984 to December, 1986, respondent prescribed meperidine for Patient 1, for relief of pain. The injectable meperidine HCL prescribed by respondent for Patient 1, contained 100 mg./ml. concentration, and the meperidine prescribed in the tubex form contained 100 mg. of meperidine in each tubex. The prescriptions were filled as follows:

<u>Date</u>	<u>Number of Doses</u>	<u>Pharmacy</u>	<u>Days from Last Prescription</u>
05 08 84	50 ml.	Madison	--
05 09 84	10 tubex 50 mg.	Madison	1
05 18 84	10 tubex	Madison	9
05 30 84	10 tubex	Madison	12
05 30 84	40 ml.	Madison	same day
06 02 84	10 tubex	Madison	3
06 07 84	10 tubex	Madison	5

06 07 84	10 tubex	Madison	same day
06 18 84	20 tubex	Marshfield	11
06 18 84	40 ml.	Marshfield	same day
07 06 84	20 tubex	Marshfield	18
07 06 84	20 ml.	Marshfield	same day
07 10 84	20 tubex	Marshfield	4
07 10 84	40 ml.	Marshfield	same day
07 11 84	10 tubex	Madison	1
07 11 84	20 ml.	Madison	same day
07 19 84	10 tubex	Marshfield	8
07 19 84	40 ml.	Marshfield	same day
07 19 84	10 tubex	Madison	same day
07 19 84	20 ml.	Madison	same day
07 24 84	10 tubex	Madison	5
07 24 84	10 tubex	Madison	same day
07 24 84	20 ml.	Madison	same day
07 26 84	10 tubex	Marshfield	2
07 26 84	20 ml.	Marshfield	same day
07 30 84	40 ml.	Madison	4
07 30 84	10 tubex	Marshfield	same day
07 30 84	40 ml.	Marshfield	same day
08 06 84	10 tubex	Marshfield	7
08 06 84	40 ml.	Marshfield	same day
08 07 84	40 ml.	Madison	1
08 07 84	10 tubex	Madison	same day
08 11 84	40 ml.	Marshfield	4
08 14 84	10 tubex	Madison	3
08 14 84	40 ml.	Madison	same day
08 16 84	40 ml.	Marshfield	2
08 21 84	40 ml.	Madison	5
08 21 84	10 tubex	Madison	same day
08 23 84	40 ml.	Marshfield	2
08 28 84	40 ml.	Marshfield	5
08 29 84	40 ml.	Madison	1
08 29 84	10 tubex	Madison	same day
09 05 84	40 ml.	Madison	7
09 05 84	10 tubex	Madison	same day
09 07 84	40 ml.	Marshfield	2
09 10 84	40 ml.	Marshfield	3
09 12 84	40 ml.	Madison	2
09 12 84	10 tubex	Madison	same day
09 16 84	10 tubex	Madison	4
09 16 84	40 ml.	Madison	same day
09 17 84	40 ml.	Marshfield	1

09 24 84	10 tubex	Madison	4
09 24 84	40 ml.	Marshfield	same day
09 24 84	40 ml.	Madison	same day
09 26 84	30 tab. 100 mg.	Marshfield	2
09 28 84	40 ml.	Madison	2
10 01 84	40 ml.	Madison	3
10 01 84	10 tubex	Madison	same day
10 02 84	40 ml.	Marshfield	1
10 05 84	40 ml.	Marshfield	3
10 09 84	40 ml.	Madison	4
10 09 84	10 tubex	Madison	same day
10 16 84	40 ml.	Madison	7
10 16 84	10 tubex	Madison	same day
10 16 84	40 ml.	Marshfield	same day
10 22 84	10 tubex	Madison	6
10 22 84	40 ml	Madison	same day
10 23 84	40 ml.	Marshfield	1
10 29 84	40 ml.	Madison	6
10 29 84	10 tubex	Madison	same day
10 29 84	40 ml.	Marshfield	same day
11 05 84	40 ml.	Madison	6
11 05 84	10 tubex	Madison	same day
11 06 84	40 ml.	Marshfield	1
11 12 84	10 tubex	Madison	6
11 12 84	40 ml.	Madison	same day
11 14 84	40 ml.	Marshfield	2
11 20 84	10 tubex	Madison	6
11 20 84	40 ml.	Madison	same day
11 27 84	40 ml.	Madison	7
11 27 84	10 tubex	Madison	same day
11 28 84	40 ml.	Marshfield	1
12 03 84	40 ml.	Marshfield	5
12 04 84	10 tubex	Marshfield	1
12 04 84	40 ml.	Madison	same day
12 10 84	10 tubex	Madison	6
12 10 84	20 ml.	Madison	same day
12 10 84	40 ml.	Madison	same day
12 11 84	40 ml.	Marshfield	1
12 17 84	20 ml.	Madison	6
12 17 84	10 tubex	Madison	same day
12 18 84	40 ml.	Marshfield	1
12 24 84	10 tubex	Madison	6
12 24 84	40 ml.	Marshfield	same day

12 31 84	40 ml.	Madison	same day
12 31 84	40 ml.	Marshfield	same day
01 02 85	10 tubex	Madison	2
01 02 85	40 ml.	Madison	same day
01 03 85	40 tubex	Marshfield	1
01 05 85	10 tubex	Madison	2
01 05 85	40 ml.	Madison	same day
01 08 85	40 ml.	Marshfield	3
01 09 85	40 ml.	Madison	1
01 09 85	10 tubex	Madison	same day
01 12 85	40 ml.	Marshfield	3
01 14 85	10 tubex	Madison	2
01 14 85	40 ml.	Madison	same day
01 16 85	20 tubex	Marshfield	2
01 21 85	50 tubex	Marshfield	5
01 21 85	60 tubex	Madison	same day
01 22 85	30 tubex	Madison	1
01 25 85	50 tubex	Marshfield	3
01 28 85	60 tubex	Madison	3
01 29 85	40 tubex	Marshfield	1
02 02 85	50 tubex	Marshfield	4
02 05 85	90 tubex	Madison	3
02 08 85	70 tubex	Marshfield	3
02 12 85	70 tubex	Madison	4
02 19 85	70 tubex	Marshfield	7
02 21 85	70 tubex	Madison	2
02 27 85	70 tubex	Marshfield	6
03 04 85	70 tubex	Madison	5
03 07 85	70 tubex	Marshfield	3
03 13 85	70 tubex	Madison	6
03 18 85	70 tubex	Marshfield	5
03 25 85	70 tubex	Madison	7
03 28 85	70 tubex	Marshfield	3
04 03 85	70 tubex	Madison	6
04 08 85	70 tubex	Marshfield	5
04 09 85	70 tubex	Madison	1
04 16 85	70 tubex	Marshfield	7
04 18 85	70 tubex	Madison	2
04 23 85	70 tubex	Marshfield	5
04 29 85	70 tubex	Madison	6
05 02 85	70 tubex	Marshfield	3
05 07 85	70 tubex	Madison	5
05 09 85	70 tubex	Marshfield	2
05 12 85	70 tubex	Madison	4

05 22 85	70 tubex	Marshfield	6
05 24 85	70 tubex	Madison	2
05 29 85	70 tubex	Marshfield	5
05 29 85	70 tubex	Madison	same day
06 05 85	70 tubex	Marshfield	6
06 13 85	70 tubex	Marshfield	8
06 15 85	70 tubex	Madison	2
06 17 85	70 tubex	Marshfield	2
06 25 85	70 tubex	Madison	8
06 27 85	70 tubex	Marshfield	2
07 05 85	70 tubex	Marshfield	8
07 10 85	70 tubex	Madison	5
07 16 85	70 tubex	Marshfield	6
07 18 85	70 tubex	Madison	2
07 25 85	70 tubex	Marshfield	7
07 31 85	70 tubex	Madison	6
08 07 85	70 tubex	Marshfield	7
08 13 85	70 tubex	Madison	6
08 19 85	70 tubex	Marshfield	6
08 19 85	70 tubex	Madison	same day
08 27 85	70 tubex	Marshfield	12
09 04 85	70 tubex	Madison	8
09 11 85	70 tubex	Marshfield	7
09 18 85	70 tubex	Madison	7
09 23 85	70 tubex	Marshfield	5
09 23 85	70 tubex	Madison	same day
10 03 85	70 tubex	Marshfield	10
10 10 85	70 tubex	Madison	7
10 14 85	70 tubex	Marshfield	4
10 23 85	70 tubex	Marshfield	9
10 23 85	70 tubex	Madison	same day
10 29 85	70 tubex	Marshfield	6
10 30 85	70 tubex	Madison	1
11 04 85	70 tubex	Madison	5
11 07 85	70 tubex	Marshfield	3
11 12 85	70 tubex	Marshfield	5
11 12 85	70 tubex	Madison	same day
11 20 85	70 tubex	Madison	8
11 22 85	70 tubex	Marshfield	2
11 26 85	70 tubex	Marshfield	4
11 26 85	70 tubex	Madison	same day
12 02 85	70 tubex	Marshfield	6
12 04 85	70 tubex	Madison	2
12 10 85	70 tubex	Marshfield	6

12 18 85	70 tubex	Marshfield	8
12 18 85	70 tubex	Madison	same day
12 24 85	70 tubex	Marshfield	6
12 30 85	70 tubex	Marshfield	6
01 02 86	70 tubex	Madison	3
01 07 86	70 tubex	Marshfield	5
01 07 86	70 tubex	Madison	same day
01 14 86	70 tubex	Marshfield	7
01 21 86	70 tubex	Marshfield	7
01 21 86	70 tubex	Madison	same day
01 28 86	70 tubex	Marshfield	7
01 28 86	70 tubex	Madison	same day
02 04 86	70 tubex	Marshfield	7
02 04 86	70 tubex	Madison	same day
02 11 86	70 tubex	Madison	7
02 12 86	70 tubex	Marshfield	1
02 18 86	70 tubex	Marshfield	6
02 19 86	70 tubex	Madison	1
02 25 86	70 tubex	Marshfield	6
02 25 86	70 tubex	Madison	same day
03 04 86	70 tubex	Marshfield	7
03 04 86	70 tubex	Madison	same day
03 11 86	70 tubex	Marshfield	7
03 11 86	70 tubex	Madison	same day
03 18 86	70 tubex	Marshfield	7
03 18 86	70 tubex	Madison	same day
03 25 86	70 tubex	Marshfield	7
04 01 86	70 tubex	Marshfield	7
04 01 86	70 tubex	Madison	same day
04 08 86	70 tubex	Marshfield	7
04 08 86	70 tubex	Madison	same day
04 16 86	70 tubex	Marshfield	8
04 16 86	70 tubex	Madison	same day
04 22 86	70 tubex	Marshfield	6
04 23 86	70 tubex	Madison	1
04/30 86	70 tubex	Marshfield	7
04 30 86	70 tubex	Madison	same day
05 06 86	70 tubex	Madison	6
05 07 86	70 tubex	Marshfield	1
05 12 86	70 tubex	Madison	5
05 13 86	70 tubex	Marshfield	1
05 20 86	70 tubex	Marshfield	7
05 20 86	70 tubex	Madison	same day
05 27 86	70 tubex	Madison	7

06 03 86	70 tubex	Marshfield	6
06 03 86	70 tubex	Madison	same day
06 09 86	70 tubex	Marshfield	6
06 09 86	70 tubex	Madison	same day
06 16 86	70 tubex	Marshfield	7
06 17 86	70 tubex	Madison	1
06 23 86	70 tubex	Marshfield	6
06 23 86	70 tubex	Madison	same day
06 30 86	70 tubex	Marshfield	7
06 30 86	70 tubex	Madison	same day
07 07 86	70 tubex	Marshfield	7
07 07 86	70 tubex	Madison	same day
07 14 86	70 tubex	Marshfield	7
07 15 86	70 tubex	Madison	1
07 21 86	70 tubex	Marshfield	6
07 21 86	70 tubex	Madison	same day
07 28 86	70 tubex	Marshfield	7
07 30 86	70 tubex	Madison	2
08 04 86	70 tubex	Marshfield	5
08 04 86	70 tubex	Madison	same day
08 11 86	70 tubex	Marshfield	7
08 12 86	70 tubex	Madison	1
08 18 86	68 tab. 100 mg.	Marshfield	6
08 18 86	70 tubex	Marshfield	same day
08 19 86	70 tubex	Madison	1
08 25 86	70 tubex	Marshfield	6
08 25 86	70 tubex	Madison	same day
08 30 86	70 tubex	Marshfield	5
09 02 86	70 tubex	Madison	3
09 03 86	40 tubex	Marshfield	1
09 08 86	70 tubex	Marshfield	5
09 09 86	70 tubex	Madison	1
09 10 86	40 tubex	Madison	1
09 11 86	40 tubex	Marshfield	1
09 15 86	70 tubex	Marshfield	4
09 15 86	70 tubex	Madison	same day
09 22 86	70 tubex	Marshfield	7
09 22 86	70 tubex	Madison	same day
09 30 86	70 tubex	Marshfield	8
09 30 86	70 tubex	Madison	same day
10 06 86	70 tubex	Marshfield	6
10 06 86	40 tubex	Madison	same day
10 13 86	70 tubex	Marshfield	7
10 14 86	70 tubex	Madison	1

10 17 86	70 tubex	Marshfield	3
10 20 86	70 tubex	Marshfield	3
10 20 86	70 tubex	Madison	same day
10 23 86	40 tubex	Madison	3
10 27 86	70 tubex	Madison	4
10 28 86	70 tubex	Marshfield	1
11 01 86	70 tubex	Marshfield	4
11 01 86	40 tubex	Marshfield	same day
11 03 86	70 tubex	Madison	2
11 03 86	40 tubex	Madison	same day
11 10 86	70 tubex	Marshfield	7
11 10 86	40 tubex	Marshfield	same day
11 10 86	70 tubex	Madison	same day
11 17 86	70 tubex	Marshfield	7
11 17 86	70 tubex	Madison	same day
11 17 86	40 tubex	Madison	same day
11 25 86	70 tubex	Marshfield	8
11 25 86	70 tubex	Madison	same day
12 01 86	40 tubex	Marshfield	6
12 01 86	70 tubex	Marshfield	same day
12 02 86	70 tubex	Madison	1
12 08 86	70 tubex	Marshfield	6
12 08 86	70 tubex	Madison	same day
12 08 86	40 tubex	Madison	same day
12 15 86	110 tubex	Marshfield	7
12 15 86	70 tubex	Madison	same day
12 19 86	40 tubex	Marshfield	4
12 19 86	70 tubex	Marshfield	same day
12 24 86	70 tubex	Marshfield	5

8. Meperidine is a Schedule II controlled substance as defined by sec. 161.16 (3) (k) Wis. Stats.

9. Although Patient 1 resided in Necedah at all times relevant to this proceeding, she filled the prescriptions which were provided to her by Respondent at a pharmacy in Marshfield and at a pharmacy in Madison because Respondent suggested that it would cause less suspicion.

10. Respondent did not attempt any alternative treatment for the patient's headaches other than prescribing meperidine to the patient.

11. In December, 1986, the pharmacists at the two pharmacies became aware that Patient 1 was filling prescriptions for meperidine at the other pharmacy when a check in payment of the drugs received from one pharmacy was inadvertently sent to the other pharmacy.

12. On December 24, 1986, after Respondent became aware that the Division of Enforcement would be requesting Patient 1's records from Respondent, Respondent requested that Patient 1 sign a Denial of Government Access to Health Care Records Form. Patient 1 signed the form, with the result that the Division was prevented from obtaining Patient 1's health records regarding Respondent's prescribing of meperidine to Patient 1.

13. On February 15, 1987, Respondent went to Patient 1's home and solicited Patient 1 to request her records back from Respondent so that he would no longer have those records. At Respondent's urging, Patient 1 executed a letter on that date which stated "I would like you to return all my records immediately including records of treatment from the time that you first examined me".

14. The records returned to Patient 1 consisted of one page listing 8 prescriptions for unidentified medications.

15. Respondent's conduct in prescribing meperidine to Patient 1 was not in the course of legitimate professional practice.

16. Respondent failed to maintain adequate medical records for Patient 1.

17. Respondent's conduct in prescribing meperidine to Patient 1, as set out above, is conduct which falls below the minimal standards of the profession for a physician and which exposed the patient to unacceptable risks to which a minimally competent physician would not expose a patient.

20. Respondent failed to maintain adequate records of his treatment of Patient 1, which is conduct below the minimal standards of the profession for a physician and which exposed the patient to unreasonable risks of harm, to which a minimally competent physician would not expose a patient.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this matter pursuant to s. 448.02(3) Wis. Stats., and s. MED 10.02(2) Wis. Adm. Code.

2. The respondent's prescribing of meperidine to Patient 1 was not within the course of legitimate professional practice and constituted unprofessional conduct within the meaning of s. 448.02(3) Wis. Stats., and sec. Med 10.02(2)(p) Wis. Adm. Code.

3. Respondent's conduct in prescribing meperidine to Patient 1 was below the minimum standards of care established by the medical profession, exposed the patient

to risks to which a minimally competent physician would not expose a patient, and constituted a danger to the health, welfare and safety of the patient, in violation of s. 448.02(3) Wis. Stats., and s. MED 10.02(2)(h), Wis. Adm. Code.

4. Respondent's conduct in failing to maintain adequate medical records for Patient 1 was below the minimum standards of care established by the medical profession, exposed the patient to risks to which a minimally competent physician would not expose a patient, and constituted a danger to the health, welfare and safety of the patient, in violation of s. 448.02(3), Wis. Stats., and s. MED 10.02(2)(h), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license to practice medicine and surgery in the State of Wisconsin of Philip F. Mussari, M.D. be, and hereby is, revoked.

EXPLANATION OF VARIANCE

The board has adopted the Administrative Law Judge's Conclusions of Law without modification. The board has also accepted the judge's Findings of Fact in their entirety, with the exception of amending Finding of Fact number 7, and of adding seven additional Findings of Fact. Finally, the board has not accepted the judge's recommendation as to discipline, and has instead ordered that Dr. Mussari's license be revoked. The basis for these variances from the Proposed Decision are as follows:

Finding of Fact #7. The judge's finding sets forth that respondent prescribed meperidine for Patient 1 from May, 1984, until December, 1986. The board has supplemented this finding to specify the frequency of the prescriptions and the amounts prescribed. The accuracy of the prescriptive records from which this information is derived is not challenged in this record, with respondent declining to answer questions as to the frequency and quantities prescribed based on his rights under the Fifth Amendment to the Constitution. The board considers this supplemental information necessary to factually demonstrate the nature of respondent's prescriptive practice and to support the board's conclusion that his prescriptive practice was neither within the course of legitimate medical practice nor consistent with minimum standards of care within the profession.

Finding of Fact #9. The board has added this finding to establish not only that respondent's prescribing practice was inappropriate, but that he was obviously aware that it was inappropriate. Pharmacist John Rice of Rice Rust Pharmacy, Marshfield, one of the two pharmacies where Patient 1 filled respondent's prescriptions, testified that

respondent had indicated to him in a telephone conversation that "because of the large volume, he [respondent] didn't want to alarm anybody so he was distributing it between two pharmacies." (Tr., p. 36). Division investigator Pamela Ellefson testified that in a conversation with Patient 1, the patient told Ellefson that she had filled prescriptions at two different pharmacies on respondent's advice, "so that suspicions would not come up concerning the amount of medication." (Tr., p. 57). Respondent declined to respond to this allegation, again based on his Fifth Amendment rights.

Finding of Fact #11. This finding is uncontroverted in the record, and establishes the manner in which respondent's prescriptive practice came to light.

Finding of Fact #12. Ms. Ellefson testified that she spoke to respondent regarding these events on December 22, 1986, at which time she notified respondent that she would probably be requesting the records of Patient 1. (Tr., p. 48). Ms. Ellefson further testified that Patient 1 had told her that respondent had thereafter requested Patient 1 to sign a Denial of Government Access to Health Care Records form. (Tr., p. 58). Patient 1 signed the form on December 24, 1986, thus depriving the department of the right to acquire copies of Patient 1's health care records without her informed consent. Respondent's testimony was that he didn't recall whether Ms. Ellefson had notified him that she would be requesting Patient 1's records. (Tr., p. 103). As to his conversation with Patient 1 regarding the denial of access form, respondent testified, ". . . knowing that the patient did not want to divulge her record and being aware of the -- this -- the existence of a Denial of Government Access to Health Care Records form, I told the patient what she could do if she wished not to have her record divulged." (Tr., p.103). This finding, along with Finding of Fact # 13, establish respondent's efforts to prevent the department from gaining access to Patient 1's health care records.

Finding of Fact #13. This finding, which is supported by Ms. Ellefson's testimony and which is not specifically denied by respondent (Tr., p. 104), further establishes respondent's repeated efforts to thwart the department's efforts to investigate his care of Patient 1. Ms. Ellefson testified as follows:

Q. (by Mr. Zwieg) What, if any, discussion did you have with [Patient 1] regarding the actual possession of her medical records of Dr. Mussari?

A. She stated that some weeks after she had signed the access -- or the Denial of Access form, Dr. Mussari came to her house and asked her to write a letter to him requesting her medical records, indicating that it would be better if she had the records than if he kept them.

Q. Did she say whether she in fact wrote that letter?

A. She stated that after some insistence on the part of Dr. Mussari, she sat down and wrote the letter on the spot, gave the letter to Dr. Mussari, at which point he left the house, went out to his car and came back with a manila folder containing her medical records. (Tr., p. 58).

Finding of Fact #14. Respondent's medical records for Patient 1 are found at Exhibit 4. That this is the extent of health care records maintained by respondent for this patient is confirmed by the testimony of Ms. Ellefson (Tr., pp. 58-60). The substance of Respondent's testimony is merely that he does not recall of what the affected health care record consisted (Tr., pp. 104-110). This finding clearly establishes the inadequacy of respondent's treatment records for Patient 1.

Findings of Fact #19 and 20. These factual findings are included in recognition that the Administrative Law Judge's Conclusions of Law numbered 3 and 4, which the board has adopted, are mixed findings of fact and of law.

Discipline. In recommending that discipline requiring extensive reeducation, the administrative law judge concludes that "This measure should provide adequate protection to the public, unless one concludes from the evidence that Dr. Mussari's conduct reflects problems of a more serious nature involving his abilities to make rational decisions and exercise good judgment." That is exactly the conclusion the board has reached. As also stated by the judge in her opinion,

Dr. Mussari failed to make an adequate diagnosis, either by performing or ordering diagnostic tests, obtaining prior treatment records, or by consulting with physicians who had diagnosed or treated the patient. Dr. Mussari testified that he made a clinical diagnosis based upon the patient's complaints and history. Although the violations found here involved the treatment of one patient, the violations are very serious. Dr. Mussari's prescribing of a Schedule II controlled substance to the patient without determining the patient's condition reveals that he lacks competency in a very fundamental aspect of medical practice. Dr. Mussari at no time doubted his decision to prescribe meperidine to the patient based his clinical diagnosis, and he certainly did not give any indication that he planned to alter his practice in the future.

There is not a single aspect of respondent's care of this patient that comports with minimum standards of the profession. When Patient 1 came to him reporting an inoperable brain tumor and complaining of severe resulting headaches, respondent failed to conduct an examination, failed to attempt to obtain her prior treatment

records, failed to attempt to contact her prior treating physicians, failed to perform a single diagnostic test, failed to attempt any alternative treatment, failed to refer her to any other health care provider, and failed to maintain health care records documenting care provided. His treatment of Patient 1, if it can be called that, consisted exclusively of prescribing huge quantities of a Schedule II controlled substance, commencing on the first day he saw her and continuing for two and one-half years. Respondent's testimony makes clear that to this day, he considers the care he provided in this case to have been appropriate and that he would do nothing different if confronted with the same situation today. Respondent's failure to recognize the incredible incompetence evinced by his actions in this case is little less than astounding, and the board considers that anything less than full revocation of the license in these circumstances would be inconsistent with protection of the public health, care and safety. Should respondent undertake and successfully complete reformative action on his own initiative, he is of course entitled to seek reinstatement of his license. Until he is able to demonstrate such reformation, however, he must be prohibited from the further practice of medicine in this state.

Dated this 2 day of August, 1991.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

by Michael P. Mehr, M.D.
Michael P. Mehr, M.D.
Secretary

WRA:BDLS2:625

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 August 8, 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.

BEFORE THE STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

PHILIP F. MUSSARI, M.D.,
RESPONDENT.

NOTICE OF FILING
PROPOSED DECISION
LS9009272MED

TO: Philip F. Mussari, M.D.
Padre Pio Drive
P.O. Box 409
Necedah, WI 54646
Certified P 568 984 643

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

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Medical Examining Board by the Administrative Law Judge, Ruby Jefferson-Moore. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Medical Examining Board, Room 176, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before June 28, 1991. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Medical Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision together, with any objections and arguments filed, the Medical Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 17th day of June, 1991.

Ruby Jefferson-Moore
Ruby Jefferson-Moore
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

PHILIP F. MUSSARI, M.D.,
RESPONDENT.

PROPOSED DECISION
LS9009272MED

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

Philip F. Mussari, M.D.
Padre Pio Drive
P.O. Box 409
Necedah, Wisconsin 54646

Medical Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, Wisconsin 53708

A hearing was held in the above-captioned matter on December 6, 1990. John R. Zwieg, Attorney at Law, appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The respondent, Philip F. Mussari, M.D., appear in person and without legal counsel.

Based upon the record herein, the Administrative Law Judge recommends that the Medical Examining Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Philip F. Mussari, M.D., Padre Pio Drive, P.O. Box 409, Necedah, WI 54646, is a physician duly licensed and currently registered to practice medicine and surgery in the State of Wisconsin pursuant to license #155010, which was granted on November 18, 1965.

2. At least from May, 1984 to December, 1986, respondent provided medical care and treatment to Patient 1.

3. Patient 1 told respondent that she had been diagnosed by physicians in the Chicago area as having a space occupying lesion in the brain, which was causing her to have severe headaches.

4. Respondent failed to make an adequate diagnosis of the patient's medical condition.

5. Respondent did not perform or order any diagnostic test to determine the cause of the patient's headaches.

6. Respondent did not obtain the patient's prior treatment records or consult with any physician who had diagnosed or treated the patient for any medical condition.

7. At least from May, 1984 to December, 1986, respondent prescribed meperidine for Patient 1, for relief of pain. The injectable meperidine HCL prescribed by respondent for Patient 1, contained 100 mg./ml. concentration, and the meperidine prescribed in the tubex form contained 100 mg. of meperidine in each tubex.

8. Meperidine is a Schedule II controlled substance as defined by sec. 161.16 (3) (k) Wis. Stats.

9. Respondent did not attempt any alternative treatment for the patient's headaches other than prescribing meperidine to the patient.

10. Respondent's conduct in prescribing meperidine to Patient 1 was not in the course of legitimate professional practice.

11. Respondent failed to maintain adequate medical records for Patient 1.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this matter pursuant to s. 448.02(3) Wis. Stats., and s. MED 10.02 (2) Wis. Adm. Code.

2. The respondent's prescribing of meperidine to Patient 1, was not within the course of legitimate professional practice and constituted unprofessional conduct within the meaning of s. 448.02 (3) Wis. Stats., and sec. Med 10.02 (2)(p) Wis. Adm. Code.

3. Respondent's conduct in prescribing meperidine to Patient 1, was below the minimum standards of care established by the medical profession, exposed the patient to risks to which a minimally competent physician would not expose a patient, and constituted a danger to the health, welfare and safety of the patient, in violation of s. 448.02 (3) Wis. Stats., and s. MED 10.02 (2) (h) Wis. Adm. Code.

4. Respondent's conduct in failing to maintain adequate medical records for Patient 1 was below the minimum standards of care established by the medical profession, exposed the patient to risks to which a minimally competent physician would not expose a patient, and constituted a danger to the health, welfare and safety of the patient, in violation of s. 448.02 (3) Wis. Stats., and s. MED 10.02 (2)(h) Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Philip F. Mussari, M.D., to practice medicine and surgery in the State of Wisconsin, be and hereby is, suspended for an indefinite period.

IT IS FURTHER ORDERED that the suspension of respondent's license shall be stayed until November 1, 1991.

IT IS FURTHER ORDERED that at any time during the period of suspension, respondent may apply for a temporary educational permit. Such application shall be granted upon a showing by respondent that he has been accepted into an approved internal medicine residency program.

IT IS FURTHER ORDERED that following completion of one year of the approved internal medicine residency program, respondent may petition for termination of the suspension, and such petition shall be granted upon compliance with the following additional requirements:

(a) Respondent shall sit for and successfully complete the Special Purpose Examination of the Federation of State Medical Boards (SPEX Examination).

(b) Respondent shall sit for and successfully complete an oral examination administered by the full board.

(c) Respondent's license shall be restored with whatever conditions and limitations on respondent's practice that the board deems appropriate.

This order is effective upon signing by the Medical Examining Board, or its designee.

OPINION

I. UNPROFESSIONAL CONDUCT

The Complaint filed in this matter alleges that the respondent engaged in unprofessional conduct as follows:

1) Respondent's prescribing of meperidine to Patient 1, constituted the prescribing of controlled substances as defined in s. 161.01 (4), Stats., otherwise than in the course of legitimate professional practice, in violation of Wis. Adm. Code sec. MED 10.02 (2) (p) and sec. 448.02 (3), Wis. Stats.

2) Respondent's prescribing of meperidine to Patient 1 constituted conduct which falls below the minimal standards of the profession for physicians, exposes the patient to unacceptable risks to which a minimally competent physician would not expose a patient, and which tends to constitute a danger to the health, welfare or safety of patient or public, in violation of Wis. Adm. Code sec. MED 10.02 (2)(h) and sec. 448.02 (3) Wis. Stats.

3) Respondent's failure to maintain adequate records of his treatment of Patient 1, constituted conduct which falls below the minimal standards of the profession for a physician, exposes the patient to unreasonable risks of harm to which a minimally competent physician would not expose a patient, and which tends to constitute a danger to the health, welfare or safety of patient or public, in violation of Wis. Adm. Code sec. MED 10.02 (2)(h) and sec. 448.02 (3) Wis. Stats.

The respondent denies having violated any of these provisions.

II. ANALYSIS

Dr. Factor testified that in his opinion, Dr. Mussari's prescribing of meperidine for Patient 1 was below minimal standards because Dr. Mussari failed to make an adequate differential diagnosis and diagnosis either by obtaining other records, contacting other treaters or performing an evaluation. Dr. Factor stated that if a physician is not qualified to perform an evaluation, the physician should refer the patient to another physician who is qualified in that specialty to perform the evaluation. (Tran. p.188-190).

Dr. Factor further stated that a minimally competent physician would attempt to diagnose whether a person is suffering from a space occupying lesion of the brain or a brainstem tumor, by performing a basic neurologic examination to determine if any focal neurologic signs were present or by obtaining a CT scan which might have visualized a space occupying lesion. In reference to differential diagnosis, Dr. Factor stated that in a case where a patient is seeking an injectable form of meperidine, a minimally competent physician would have evaluated the patient for malingering and for conscious drug-seeking behavior. (Tran. p.194-196).

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In reference to treatment, Dr. Factor testified that meperidine is not the best medication even if the diagnosis were severe headaches due to neoplastic causes. Dr. Factor stated that severe cancer pain can and often should be treated by narcotics, but it should be treated by narcotics that are long acting and, if possible, administrable orally; that meperidine is one of the shorter acting narcotics, and consequently patients go into withdrawal very frequently and require repeated doses by injection, and that the risks of injections include severe abdominal abscesses, injecting medication into a blood vessel rather than under the skin or in a muscle, and injecting air into a blood vessel. (Tran. p.190-192; 197-200).

Dr. Factor also testified that in his opinion, Dr. Mussari's prescribing of meperidine to Patient 1, without determining the patient's condition, was prescribing other than in the course of legitimate professional practice. (Tran. p.200-201).

In reference to the patient's medical records, Dr. Factor testified that the medical records maintained by Dr. Mussari for Patient 1 were not adequate records. Dr. Factor stated that patient records should be maintained for purposes of recording notes about prior treatment; to document whether a patient refused treatment or a particular evaluation and to justify the treatment provided. Dr. Factor further stated that if the complete medical record maintained by Dr. Mussari consisted of the information contained in Exhibit #4, the record is not an adequate record, and that in his opinion, it is below minimal standards for a physician to turn over his only copy of a medical record to a patient. (Tran. p.201-205).

Dr. Mussari testified that he made a clinical diagnosis on the basis of the patient's complaints and history, and that he prescribed meperidine to Patient 1 because of her complaints of severe headaches. Dr. Mussari admitted that he did not perform or order any diagnostic test to determine the cause of the patient's headaches; that he did not obtain the patient's prior treatment records; that he did not consult with any physician who had diagnosed or treated the patient for a brainstem tumor or for any other medical condition; that he did not refer the patient to another physician for evaluation, and that he did not attempt any alternative treatment for the patient's headaches other than prescribing meperidine. (Tran. p.94-95; 110, 118-120; 124).

As to the frequency and quantity of meperidine which he prescribed to Patient 1, Dr. Mussari elected not to respond to questions and invoked his constitutional rights under the Fifth Amendment. Dr. Mussari did state hypothetically, that if a patient suffers from severe pain related to either a brain tumor or terminal cancer with horrible pains, a physician prescribes as much pain-relieving medication that he decides will be sufficient to relieve the pain. Dr. Mussari stated that he did not believe that it is inappropriate to prescribe medication for relief of pain, especially when the doctor knows the personality of the patient and knows from the patient's history that the patient is not asking for drugs to nourish a drug habit. (Tran. p. 113-116).

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In reference to the patient's medical records, Dr. Mussari testified that he gave Patient 1 the records because she told him that she wanted the records and that she did not wish to have her records divulged to the Department of Regulation & Licensing; that the medical record which he gave to Patient 1 consisted of more information than that found in Exhibit #4, which consists of a one page document, and that he did not retain a copy of the records because he knew what the patient's diagnosis was, what treatment the patient had been given and he knew the status of the patient's records from previous physicians. (Tran. p. 104-109).

The evidence establishes that Dr. Mussari provided medical care and treatment to Patient 1, at least from May, 1984 to December, 1986, and that he prescribed meperidine to Patient 1, in addition to numerous other drugs, during that time period. The prescriptions for injectable meperidine HCL contained 100 mg./ml. concentration. The meperidine prescribed in tubex form contained 100 mg. of meperidine in each tubex. (Exhibits #6 and #7).

The evidence clearly establishes that prior to prescribing meperidine to Patient 1, Dr. Mussari did not make an adequate diagnosis of the cause of the patient's headaches, either by obtaining prior treatment records, contacting other treaters or performing an evaluation.

Dr. Mussari admitted that did not perform or order any diagnostic test to determine the cause of the patient's headaches; that he did not obtain the patient's prior treatment records; that he did not consult with any physician who had diagnosed or treated the patient, and that he did not refer the patient to another physician for evaluation.

Dr. Mussari testified that he made a clinical diagnosis of the cause of the patient's headaches on the basis of the patient's complaints and history. According to Dr. Factor, a clinical diagnosis is appropriately used where there are no signs or laboratory studies available to make a more definitive diagnosis. Dr. Factor testified that it is below minimal standards for a physician to diagnose a space occupying lesion in the brain based entirely upon a clinical diagnosis (Tran. p. 110, 206-208).

In reference to the patient's medical records, the evidence establishes that Dr. Mussari did not maintain adequate medical records for Patient 1. It is not clear from the evidence what documents were contained in the patient's medical records prior to and at the time Dr. Mussari transferred the records to the patient. Dr. Mussari testified that he gave the patient a "package", and that the files contained more than the information found in Exhibit #4. Investigator Ellefson testified that the patient provided her with a copy of the records that the patient received from Dr. Mussari, which consisted of a manila folder containing a single page with several entries indicating that Dr. Mussari had written prescriptions for meperidine. (Tran. p. 58-60, 106-109; Exhibit #4).

Notwithstanding the fact that the evidence is not clear as to what documents were initially contained in the patient's medical records, the evidence clearly establishes that Dr. Mussari did not retain a copy of the patient's medical records for his own reference. According to Dr. Factor, it is below minimal standards for a physician to turn over his only copy of a medical record to a patient (Tran. p.201-205).

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III. APPROPRIATE DISCIPLINE

The purposes of imposing discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct, and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

The Administrative Law Judge recommends that the respondent's license be suspended indefinitely, and that he be required to comply with certain conditions prior to receiving permission to resume practice. This recommendation is designed to insure protection of the public and to serve as a rehabilitative measure.

In reference to rehabilitation, one of the findings in this case is that Dr. Mussari failed to make an adequate diagnosis, either by performing or ordering diagnostic tests, obtaining prior treatment records, or by consulting with physicians who had diagnosed or treated the patient. Dr. Mussari testified that he made a clinical diagnosis based upon the patient's complaints and history. Although the violations found here involved the treatment of one patient, the violations are very serious. Dr. Mussari's prescribing of a Schedule II controlled substance to the patient without determining the patient's condition reveals that he lacks competency in a very fundamental aspect of medical practice. Dr. Mussari at no time doubted his decision to prescribe meperidine to the patient based his clinical diagnosis, and he certainly did not give any indication that he planned to alter his practice in the future.

Dr. Mussari testified that he completed a three year psychiatry residency program in 1958; that he practiced psychiatry in Wisconsin until 1980, and that since 1980, he has practiced mainly internal medicine, preventative medicine and vocational psychiatries for community (Tran. p. 88-89). It is apparent that Dr. Mussari needs additional training in the practice of internal medicine before he can successfully practice in that specialty. The recommendation that Dr. Mussari be required to complete a residency program in internal medicine is designed to insure that his transition from the practice of psychiatry to the practice of internal medicine is successful. This measure should provide adequate protection to the public, unless one concludes from the evidence that Dr. Mussari's conduct reflects problems of a more serious nature involving his abilities to make rational decisions and exercise good judgment.

IV. RECOMMENDATIONS

Based upon the evidence presented and the discussions set forth herein, the Administrative Law Judge recommends that the Medical Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin, this 17th day of June, 1991.

Respectfully submitted,

Ruby Jefferson-Moore
Ruby Jefferson-Moore
Administrative Law Judge

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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

PHILIP F. MUSSARI, M.D.,
RESPONDENT.

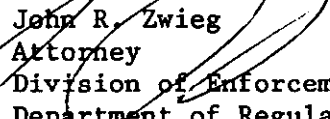
:
:
:
: MOTION FOR COSTS
: PURSUANT TO
: SEC. 440.22, WIS.STATS.
:
:

TO: Philip F. Mussari, M.D.
P.O. Box 409
Necedah, WI 54646

PLEASE TAKE NOTICE that in the event that the Wisconsin Medical Examining Board imposes discipline upon the respondent in this action, the complainant hereby moves the Wisconsin Medical Examining Board for an order assessing all of the costs of the proceeding, as set out in the attached Affidavit in Support of Motion of Costs of the Division of Enforcement and in the Statement of Costs to be filed by the Administrative Law Judge, against the respondent, Philip F. Mussari, M.D., and making the costs payable to the Wisconsin Department of Regulation and Licensing.

This motion is made pursuant to sec. 440.22, Wis. Stats., which allows the assessment of costs of the proceeding by an examining board when the examining board disciplines a license holder.

Respectfully submitted this 18th day of July, 1991.



John R. Zwieg
Attorney
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
(608) 266-9932

ATTY2 845

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
 PHILIP F. MUSSARI, M.D., : AFFIDAVIT IN SUPPORT
 RESPONDENT. : OF MOTION FOR COSTS

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

John R. Zwieg, being duly sworn, deposes and states as follows:

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

2. That in the course of those job duties he was assigned as the prosecutor in the above captioned matter.

3. That set out below 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:

PROSECUTING ATTORNEY EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
8/21/90	Review file and dictate portion of rough draft of Complaint.	3 hr 30 min
8/22/90	Completion of rough draft of Complaint.	1 hr 15 min
8/30/90	Revision of Complaint and addition of more prescriptions.	2 hr 15 min
9/18/90	Telephone conversation with expert witness	45 min
9/19/90	Letter to expert witness.	30 min
9/25/90	Obtain hearing date and assignment of Administrative Law Judge (ALJ), dictate Notice of Hearing and arrange filing of action.	1 hr 15 min
10/25/90	Arrange for deposition and draft letter to Mussari, Notice of Deposition, Subpoena Duces Tecum, and ID of patient.	1 hr 30 min
10/31/90	Telephone conversation with expert witness.	30 min

11/5/90	Preparation for Deposition of Mussari, waiting for Mussari, telephone calls to determine why Mussari did not appear.	3 hr
11/6/90	Drafting Motion for Default, Affidavit in Support of Motion for Default, Motion to Compel Discovery or Impose Sanctions and Affidavit in Support.	1 hr
11/15/90	Preparation for and attending Motion Hearing and Deposition of Mussari	2 hr 45 min
11/23/90	Letter to ALJ re scheduling.	15 min
11/23/90	Arranging for deposition of John Rice and Drafting Notice of Deposition.	45 min
11/23/90	Preparation of medical records and filing of Notice of Filing Medical Records.	1 hr 15 min
11/27/90	Preparation for Rice Deposition.	1 hr 30 min
11/28/90	Travel to and from Marshfield and attending Deposition of John Rice, R.P.H.	6 hr 30 min
11/30/90	Letter to expert witness.	15 min
12/4/90	Travel to and from UW Hospital and meeting with expert witness to prepare for hearing.	1 hr 30 min
12/5/90	Meeting with investigator Ellefson and other preparation for hearing.	3 hr 45 min
12/6/90	Preparation for hearing and attending hearing.	8 hr 15 min
1/8/91	Review of Mussari letter to ALJ.	15 min
4/8/91	Legal research regarding physician-patient privilege and use of medical records.	3 hr 45 min
4/9/91	Drafting Complainant's Position Regarding Privileges and Use of Records.	1 hr 45 min
6/18/91	Review of Proposed Decision.	1 hr
6/25/91 through 6/28/91	Review of hearing transcript, legal research, drafting of Objections to Proposed Decision, Argument in support of Objections, and Requested Final Decision and Order.	6 hr 30 min
7/9/91	Review of Mussari letter of objection	45 min
7/17/91	Drafting Motion for Costs and Affidavit.	2 hr 15 min

7/24/91 Time anticipated to be spent in preparing for and making oral arguments to the Medical Examining Board. 1 hr 15 min

TOTAL HOURS : 59 hr 45 min

TOTAL PROSECUTING ATTORNEY EXPENSE AT \$31.91 PER HOUR \$1,906.62

COSTS OF DEPOSITIONS

Depositions taken by Complainant (original and one copy):

- 1. Deposition of Mussari, 11/5/90 (failed to appear) \$ 35.00
- 2. Deposition of Mussari, 11/15/90 280.00
- 3. Deposition of Rice 147.00

TOTAL DEPOSITION COSTS: \$ 462.00

EXPERT WITNESS FEES

Dr. Robert Factor of University Psychiatry Group \$ 375.00

MEDICAL RECORDS

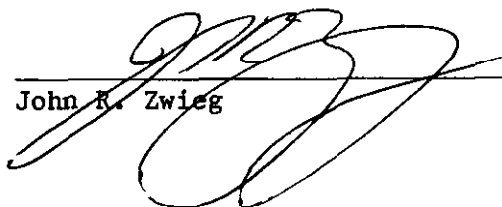
- 1. Marshfield Clinic Records of Patient 1 \$ 5.00
- 2. Mile Bluff Medical Center records of Patient 1 75.88

TOTAL MEDICAL RECORDS EXPENSE: \$ 80.88


MILEAGE

11/28/90 J.R.Z. to Marshfield and back for Rice deposition 291 miles at 25 cents per mile \$ 72.75

TOTAL COSTS \$2,897.25


John R. Zwieg

Subscribed and sworn to before me this 18 day of July, 1991.


Notary Public
My Commission is permanent.

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

PHILIP F. MUSSARI, M.D.,

Respondent

ORDER GRANTING MOTION FOR COSTS

TO: Philip F. Mussari, M.D.
Padre Pio Drive
P.O. Box 409
Necedah, WI 54646

John R. Zwieg
Attorney at Law
1400 East Washington Avenue, Room 183
P.O. Box 8935
Madison, WI 53708

Ruby N. Jefferson-Moore
Administrative Law Judge
1400 East Washington Avenue, Room 171
P.O. Box 8935
Madison, WI 53708

On July 24, 1991, the Medical Examining Board considered the above-captioned matter, and considered as well complainant's Motion for Costs Pursuant to Sec. 440.22, Wis. Stats., filed in the matter on July 18, 1991.

Based upon complainant's Motion for Costs and all other information of record herein, the board orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to Wis. Stats. sec. 440.22, the costs of this proceeding are hereby assessed against Philip F. Mussari, M.D., and shall be payable by him to the Department of Regulation & Licensing.

Mussari Costs

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The Administrative Law Judge is requested to submit her affidavit of costs of this proceeding to the board office within 20 days of the date hereof.

Dated this 11 day of August, 1991.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

by Michael P. Mehr M.D.
Michael P. Mehr, M.D.
Secretary

WRA:BDLS2:649