

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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# FILE COPY

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
JOSEPH M. SIERRA, M.D.,	:	LS9104102MED
RESPONDENT.	:	

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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 Board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 24 day of October, 1991.

Michael P. Rehs MD

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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	Case No. LS-9104102-MED
JOSEPH M. SIERRA, M.D.,	:	
RESPONDENT	:	

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PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 2.036, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

Joseph M. Sierra, M.D.  
3549 46th Avenue South  
Minneapolis, MN 55406

Medical Examining Board  
1400 East Washington Ave.  
P.O. Box 8935  
Madison, WI 53708

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

POSTURE OF CASE

- A. This case was initiated by the filing of a complaint with the Medical Examining Board on April 10, 1991. A disciplinary proceeding ("hearing") was scheduled for June 18, 1991. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail to Dr. Sierra.
- B. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on June 18, 1991. Dr. Sierra appeared in person. The Medical Board was represented by Attorney Steven Gloe of the Department of Regulation and Licensing's Division of Enforcement. That disciplinary proceeding forms the basis for this Proposed Order.
- C. The record was kept open for thirty days following the hearing, during which time Dr. Sierra was to execute releases and arrange to have assessment reports related to the disciplinary actions in Colorado and Minnesota forwarded to Mr. Gloe, who was then to summarize them and submit both the documents and the summary for the record.
- D. Reports were received from Minnesota on July 10, 1991.
- E. A response was received from Colorado on August 26, 1991, consisting only of documents already obtained, with no assessment reports.

## FINDINGS OF FACT

1. The Respondent, Joseph M. Sierra, M.D., holds license #24115 to practice medicine and surgery in the State of Wisconsin. That license was granted on October 9, 1981 (complaint, item #1).

2. Dr. Sierra's current address is 3549 46th Avenue South, Minneapolis, MN 55406 (complaint, item #2).

3. The Colorado Board of Medical Examiners took disciplinary action against Dr. Sierra's license to practice medicine and surgery in that state, which resulted in a Stipulation and Order dated May 13, 1988 (exhibit A to the complaint). The factual basis for the disciplinary action is contained in paragraph 9 of the Stipulation and Order:

9. Respondent admits and agrees as follows:

a. Respondent and patient A entered into a physician-patient relationship for the purpose of surgical treatment of a palpable breast mass. Respondent performed a biopsy on the breast mass, without a prior mammogram, which revealed histologically only normal adipose and muscle tissue. Respondent did not further investigate if the breast mass was benign. Respondent, at the same time of the breast biopsy, performed a bilateral augmentation mammoplasty using a vertical incision.

b. Respondent and patient B entered into a physician-patient relationship for the purpose of surgical treatment of a palpable breast mass. Respondent performed a biopsy of the breast mass, without a prior mammogram, which revealed histologically normal adipose tissue. Respondent did not further investigate if the breast mass was benign. Respondent, at the same time of the breast biopsy performed a bilateral augmentation mammoplasty.

c. Respondent and patient C entered into a physician-patient relationship for the purpose of surgical treatment of a partial arm amputation from farm equipment. Respondent attempted a reanastomosis of the arm without appropriate assistance, equipment or consultation. Subsequently, patient C developed gas gangrene secondary to the closure of the arm and required amputation of the limb.

d. On or about July 11, 1984 to August 16, 1984 respondent entered an inpatient treatment program for alcohol and substance abuse at DePaul Rehabilitation Hospital, Milwaukee, Wisconsin.

e. On or about August 21, 1986 the Director of the DePaul Rehabilitation program wrote the Board that respondent completed 2 years of an impaired physician program that included quarterly reports of weekly random urine drug screens and involvement with Alcoholics Anonymous.

Relevant terms of the discipline which was imposed are contained in paragraphs 13 and 14 of the Stipulation and Order:

13. Respondent shall not practice surgery, except as an assistant surgeon, in all manual and operative procedures for correction of deformities or defects, surgical repair of injuries, and surgical diagnosis and care of

diseases, as must be undertaken in a hospital operating room or ambulatory surgical center in accordance with the generally accepted standards of professional surgical care. The restriction shall not apply to respondent's activities as part of a surgical residency program accredited by the American Board of Surgery. ....

14. Respondent's license to practice medicine shall be placed on probation for three (3) years subject to the following conditions and limitations:

- a. Respondent shall maintain sobriety and shall totally abstain from alcohol and controlled substances.
- b. Respondent shall continue to maintain treatment for his substance abuse problem with a licensed Colorado psychologist or psychiatrist approved by the Panel (the "treatment monitor"). The person selected and approved as the treatment monitor for respondent shall report to the Panel concerning Respondent's state of sobriety and compliance with this order. ....
- c. Urine testing of respondent shall be required of respondent on a random basis, but not less than two times a week, ....
- d. Respondent shall self-administer antabuse in an amount and on a frequency determined to be appropriate by the treatment monitor ....
- e. Respondent's practice of medicine shall be monitored by Board approved monitor (the "practice monitor") who shall report in writing to the Board ....
- f. A failure of the treatment or practice monitor to submit the required reports to the panel on a timely basis and in complete form shall be construed by the panel as a violation of the terms of probation ....

....

4. An Amendment to the above stipulation and order was entered into by Dr. Sierra and the Board on June 9, 1989 (exhibit B to the complaint), which contained the following as paragraph 5:

5. Respondent and the Panel agree as follows:

- a. Respondent shall provide proof satisfactory to the Panel of completion of 75 hours per yearly period of American Medical Association Category I Continuing Medical Education credits as defined by the Accreditation Council for Continuing Medical Education;
- b. Thirty hours of the 75 hours of continuing medical education described in paragraph 5.a. shall consist of at least 30 hours per yearly period of an intensive family practice review course to be approved by the Panel;
- c. The yearly period described in paragraph 5.a. shall commence upon the effective date of this amendment.
- d. In lieu of the requirements of paragraphs 5.a., b. and c. of this amendment, respondent shall attend and successfully complete a Panel-approved residency training program.
- e. The Panel approves as a residency training program for the purposes of paragraph 5.d. of this amendment, the residency program at the Hennepin County Medical Center in Minneapolis, Minnesota, to be attended by respondent from June 23, 1989 to June 25, 1990.

f. While respondent attends this approved residency training program, the respondent shall not be required to comply with paragraphs 13, 14.b., 14.c., 14.d., 14.e., and 14.f. of the stipulation and order. All of respondent's responsibilities under these paragraphs shall resume upon his return to medical practice in the state of Colorado.

g. The time period while respondent is attending the approved residency training program shall be credited to the 3-year probationary period of paragraph 14 of the stipulation and order.

....

5. Dr. Sierra and the Minnesota Board of Medical Examiners entered into a Stipulation and Order dated July 8, 1989 (exhibit C to the complaint), whereby the Board issued Dr. Sierra a license to practice medicine and surgery in that state, with the following terms imposed upon that license:

a. Applicant is prohibited from performing surgery except when under the direct supervision of surgeons in the residency course at Hennepin County Medical Center, Minneapolis, Minnesota;

b. Applicant shall abstain completely from alcohol and all mood-altering chemicals unless they are prescribed by a treating physician or dentist who has been informed of Applicant's drug use history;

c. Applicant shall attend Alcoholics Anonymous meetings on a weekly basis. Monthly reports shall be submitted to the Board from Applicant's Alcoholics Anonymous sponsor(s) regarding his attendance and progress;

d. Applicant shall join Physicians Serving Physicians and shall attend monthly meetings of that organization. Quarterly reports shall be submitted to the Board from Applicant's Physicians Serving Physicians sponsor(s) regarding his attendance and progress;

e. Applicant shall make arrangements with a supervising physician approved by the Board to order, without notice, blood and urine tests of Applicant four times per month. ....

f. The supervising physician shall meet with Applicant on a monthly basis to review his progress ....

g. Applicant shall meet on a quarterly basis with a designated Board member. ....

h. Applicant shall meet with Stuart V. Thorson, MD, on a monthly basis ....

....

6. The above stipulation and order was rescinded and replaced by an Amended Order on January 20, 1990 (exhibit D to the complaint). All of the above terms were contained in the new order, along with the following:

c. Respondent is notified that the ingestion of small amounts of poppyseeds or food containing poppyseeds may result in the ingestion of sufficient opiate compound to give a positive test for those drugs. Having been fully notified of that fact, Respondent is advised and understands that the Board will not accept eating such food as an explanation for the presence of drugs in a blood or urine test(.)

7. No assessment reports regarding Dr. Sierra have been received from the state of Colorado.

8. Reports regarding Dr. Sierra received from Minnesota contain the following information:

i. A letter from Dr. Harley Racer dated 7-13-89 stating that he is Dr. Sierra's academic advisor at the Hennepin County Medical Center, and that he will serve as his supervising physician.

ii. A letter from David Cornehl, Dr. Sierra's AA sponsor, dated 12-19-89, reporting that Dr. Sierra had been attending and participating in AA meetings.

iii. A quarterly report from Dr. Racer dated 12-21-89 in which he describes Dr. Sierra's performance as excellent, and discusses Dr. Sierra's positive test for opiates on Sept. 25, 1989, ascribing it to eating poppyseeds in baked goods. Regarding this incident, he states "I believe that the Board has received statements from Dr. John C. Benninghoff confirming Dr. Sierra's consumption of poppyseed rolls on Monday, September 25, 1989, the date on which his urine screen was collected and was positive."

iv. A letter from Dr. LaMonte Koop dated 1-19-90 stating that he has known Dr. Sierra for 2 1/2 years and "I have seen this individual as one who exemplifies dedicated, quality sobriety."

v. A letter from David Cornehl dated 1-25-90, stating "I am very proud to be Joe's sponor. He is showing a very promising AA member" (sic).

vi. Reports by Medical Board Member Mary Hartmann dated 2-6-90, 7-6-90, 9-15-90, and 3-10-91, all favorable.

vii. A progress report dated 6-7-90 from Dr. Racer, stating that Dr. Sierra continues to receive "top rankings from all of his clinical rotations."

viii. A follow-up letter dated 7-13-90 from Dr. Racer, reporting "excellent progress" in the residency program, and stating that he supports Dr. Sierra's forthcoming request to remove the blood and urine test limitation from his license.

ix. A letter from the Minnesota Board to Dr. Sierra, dated 1-24-91, notifying him that reports documenting AA meetings, PSP meetings, and meetings with his supervising physician had not been supplied as required.

x. A drug screen report dated 2-17-91 showing all negative readings for tests run on 6-1, 6-7, 6-14, 6-18, 6-27, 7-6, 7-9, 7-19, 7-25, 7-30, 8-7, 8-14, 8-16, 8-23, 8-28, 9-6, 9-13, 9-21, 9-24, 10-5, 10-12, 10-19, 10-26, 10-31, 11-5, 11-9, 11-16, 11-23, 11-26, 12-2, 12-12, 12-19, 12-28, 1-4, 1-11, 1-17, 1-25, 1-31, 2-6, and 2-11 (presumably in 1990 and 1991).



- xi. A letter dated March 5, 1991 from Diane Naas, Executive Director of the PSP program, reporting that Dr. Sierra attended 17 of 20 monthly meetings.
- xii. A quarterly report dated 4-1-91 from Dr. Racer stating that Dr. Sierra's evaluation reports from his residency program have been "truly outstanding."
- xiii. A letter dated 4-19-91 from Ezekiel Ambruse, (AA) Squad secretary, stating "Mr. Sierra has been attending weekly Squad meetings in a very commendable manner."
- xiv. An undated letter from David Stott, a member of Dr. Sierra's AA group/squad, reporting positively on his involvement and contribution.
- xv. An undated letter from Ezekiel Ambruse, Squad Secretary/Asst. Squad Leader, reporting favorably on Dr. Sierra's participation.
- xvi. Eighteen reports from different departments in the Hennepin County Medical Center covering the period from 6-23-89 to 5-1-91, all rating his performance as "satisfactory (13)", "very satisfactory (3)", "bordering on exceptional (1)" or "excellent (1)".
- xvii. A letter dated 7-7-91 from Dr. Racer, reporting "steady and brilliant progress both in his training program and in his personal recovery program ..." Attached to this letter is another drug screen report with the notation that the "report contains data from 6/1/1990 to 4/16/1991", repeating the readings in (x.) above, and adding negative results for tests conducted on 2-19, 2-21, 2-25, 3-4, 3-7, 3-14, 3-22, 3-29, 4-4 4-12, and 4-16.

#### CONCLUSIONS OF LAW

- I. The Medical Examining Board has jurisdiction over the respondent, Joseph M. Sierra, M.D., by virtue of fact #1 above and paragraph A under "Posture of Case" above.
- II. The Medical Examining Board has jurisdiction over the subject matter of this complaint under sec. 15.08(5)(c), Wis. Stats., sec. 448.02(3), Wis. Stats., and ch. Med 10, Wis. Admin. Code, based on facts 3-6 above.
- III. Dr. Sierra is subject to discipline under sec. Med 10.02(2)(q), Wis. Admin. Code., sec. 448.01(11), Wis. Stats., and sec. 448.02(3)(c), Wis. Stats, based on facts 3-6 above.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license previously granted to Joseph M. Sierra, M.D. to practice medicine and surgery in the State of Wisconsin (#24115) be limited as follows:

(A) as long as Dr. Sierra continues to practice in Minnesota, he must cooperate with all restrictions imposed on his license to practice medicine and surgery in Minnesota, and any reported violation of the restrictions imposed by Minnesota may be considered grounds by this Board for summary suspension of his license to practice medicine and surgery in Wisconsin;

(B) Dr. Sierra must inform this Board of any change in the restrictions imposed on his license to practice medicine and surgery in Minnesota, as well as any change in employment or practice (other than within the Hennepin County residency program) within ten days following such change;

(C) if Dr. Sierra satisfies all conditions imposed on his medical licenses in other jurisdictions, specifically Colorado and Minnesota, and if he obtains unlimited licensure in those jurisdictions, the limitations imposed by this order on his Wisconsin license will also be removed, upon presentation of satisfactory documentation to this Board;

(D) if Dr. Sierra practices in Wisconsin without satisfying all conditions imposed on his medical licenses in other jurisdictions, his Wisconsin license will be subject to the following additional conditions, effective the first day he practices in Wisconsin:

- (1) Dr. Sierra must establish a relationship with a health-care professional to act as his supervising therapist, and notify the Board of the designated person; the Board reserves the right to reject the person chosen by Dr. Sierra and to designate another person to act as supervising therapist.
- (2) Dr. Sierra shall abstain from all personal use of alcohol.
- (3) Dr. Sierra shall abstain from all personal use of controlled substances as defined in sec. 161.01(4), Wis. Stats., except when necessitated by a legitimate medical condition, and then only with prior approval of the supervising therapist.
- (4) Dr. Sierra shall report to his supervising therapist all medications and drugs, over-the-counter or prescription, taken by him, within 24 hours of their use.
- (5) Dr. Sierra shall not obtain or possess a U.S. Drug Enforcement Administration (DEA) registration which would allow him to prescribe, dispense, administer or possess controlled substances.
- (6) Dr. Sierra shall participate in a treatment program as directed by his supervising therapist; all costs of the treatment program shall be the responsibility of Dr. Sierra or his health insurer.
- (7) Dr. Sierra shall provide and keep on file, with his supervising therapist and all treatment facilities, current releases which comply with state and federal laws authorizing release to the Medical

Examining Board of all of his medical and treatment records and reports, and authorizing his supervising therapist and any other health-care professionals to disclose to the Medical Examining Board the progress of his treatment.

- (8) Dr. Sierra shall supply, at least twice per month, random monitored urine or blood specimens within 24 hours of a request by the supervising therapist; the supervising therapist shall designate whether the specimen is to be blood or urine and who is to observe and verify the collection of the sample; specimens may be re-examined by gas chromatography spectrometry to confirm a positive or suspected positive test result, and Dr. Sierra shall promptly submit to additional tests or examinations as requested by the supervising therapist to clarify or confirm a positive or suspected positive test result; all costs associated with collection and testing shall be the responsibility of Dr. Sierra or his health insurer.
- (9) Dr. Sierra shall be responsible for ensuring that the supervising therapist submits written reports to the Medical Examining Board every 90 days commencing 90 days after designation as supervising therapist, assessing Dr. Sierra's progress in his treatment program, and setting forth the results of the urine and blood tests; Dr. Sierra and the supervising therapist shall immediately report any suspected violation of this order to the Medical Examining Board including, but not limited to, any positive or suspected positive blood or urine test.
- (10) Dr. Sierra shall be responsible for scheduling and appearing before the Medical Examining Board at least twice per year to review the progress of his treatment program.
- (11) Any reported violation of any term of this order shall be considered sufficient grounds for summary suspension of Dr. Sierra's license to practice medicine and surgery in Wisconsin.

IT IS FURTHER ORDERED that Dr. Sierra pay the costs incurred by the Department and Board in the prosecution of this action, and if he fails to pay the costs within sixty (60) days of the date of this order, his license will be summarily suspended, under sec. 440.22(3), Wis. Stats.

This Order becomes effective on the date it is signed on behalf of the Medical Examining Board.

## OPINION

In May of 1988, Dr. Sierra was disciplined by the Colorado Board of Medical Examiners for unprofessional conduct (see note 1). The discipline imposed consisted of two distinct areas of limitations on his license, the first restricting his practice in certain types of procedures to that of an assistant surgeon, and the second basically enforcing and monitoring a program of alcohol and drug abstinence. The Colorado Board's order was modified in June of 1989 to allow Dr. Sierra to participate in a residency program at the Hennepin County Medical Center in Minnesota.

In July of 1989, the Minnesota Board of Medical Examiners simultaneously issued Dr. Sierra a license and limited it, again restricting his practice by prohibiting him from performing surgery except under direct supervision, and setting up a program to enforce and monitor his sobriety. In September of 1989, a test of Dr. Sierra's urine showed a positive reading for opiates, but the Minnesota Board accepted Dr. Sierra's explanation that the positive test must have been the result of his eating poppyseed rolls. The Board may have relied at least partially on a statement from Dr. John C. Benninghoff confirming Dr. Sierra's consumption of such rolls on the date in question (see Finding of Fact 8.iii.), and although that statement is not in evidence here, neither is it in issue here. The Minnesota Board accepted the explanation, and issued an amended order in January of 1990 which renewed the previous limitations along with an added paragraph putting Dr. Sierra on notice that "the Board will not accept eating such food as an explanation for the presence of drugs in a blood or urine test."

Dr. Sierra is subject to disciplinary action by this Board against his Wisconsin license under sec 448.02(3)(c), Wis. Stats. and sec. Med 10.02(2)(q), Wis. Admin. Code, based on disciplinary action taken in another state, and such action is entirely appropriate to address legitimate concerns about Dr. Sierra's competence and substance abuse. However, even given those legitimate concerns and the Board's responsibility to the profession and to the public, there is no need -- especially in light of the favorable reports on Dr. Sierra's progress over the past two years -- to impose more restrictions in Wisconsin than have already been imposed in Minnesota.

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Note 1: Finding of Fact #3 above contains excerpts from the Colorado Stipulation and Order, including paragraph #9 which lists three questionable medical actions. The Stipulation and Order then goes on in paragraph #11 to state: "By the events and conduct set forth in paragraph nine (9) above, respondent admits that he has violated sections 12-36-117(1)(i) and (p), C.R.S. (1985)." Sec. 12-36-117, C.R.S. (1985) is basically a definition of "unprofessional conduct":

(1) "unprofessional conduct" as used in this article means

...

(i) habitual intemperance or excessive use of any habit-forming drug ... or any controlled substance ...;

...

(p) an act or omission constituting grossly negligent medical practice, or two or more acts or omissions which fail to meet generally accepted standards of medical practice ....

At the time of the hearing, the attorney for the complainant, Mr. Gloe, had been unable to obtain information regarding Dr. Sierra from Colorado and Minnesota beyond the fact that his licenses there had been limited. Despite a Request for Production from Mr. Gloe, Dr. Sierra had taken no steps to provide reports related to his personal and professional performance since the disciplinary actions. Given that lack of information, Mr. Gloe's recommendation in his Proposed Decision (exhibit 1) is understandable: to suspend Dr. Sierra's Wisconsin license pending successful completion of the disciplinary restrictions in Colorado and Minnesota, and until he satisfies this Board by completing a relicensure exam that he is competent to practice in Wisconsin. (Parenthetically, Dr. Sierra's failure to act on the Request for Production is an example of the need for private citizens, even professionals, to confer with qualified legal counsel when confronted with a legal issue; it is possible that this disciplinary action could have been resolved by stipulation and without the need for Dr. Sierra to travel to Madison for a hearing, had Mr. Gloe received the documents from Minnesota which are now part of the record.) After Dr. Sierra agreed in the hearing to execute releases for the information, the record was held open to allow time for reports from Colorado and Minnesota to be received and considered.

Documents were received from Minnesota on July 10, 1991, and a response was finally received from Colorado on August 26, 1991. The Colorado response consisted only of copies of the 5-13-88 Stipulation and Order and the 5-23-89 Amendment. The lack of any information regarding Dr. Sierra's performance while practicing in Colorado on a limited license is troubling, and one can only speculate about the content of the reports which were generated while he was being monitored in Colorado. If the Board had to protect the public and the profession based solely on speculation, Mr. Gloe's recommendation would be the only safe approach. However, the lack of reports from Colorado is not attributable to Dr. Sierra, and the reports from Minnesota provide information which is both recent and reassuring enough to allow a recommendation different from Mr. Gloe's.

The Minnesota reports are uniformly positive, with the singular exception of the poppyseed incident in September of 1989 which is referred to in the 12-21-89 quarterly report of Dr. Sierra's supervising physician, Dr. Harley Racer. This tribunal has neither jurisdiction nor reason to reconsider that matter, and can only note that the Minnesota Board was sufficiently convinced by Dr. Sierra's explanation to issue its Amended Order of 1-20-90 continuing his license without additional limitations. That incident aside, the assessments of Dr. Sierra's personal and professional progress range from positive to glowing, and the recommendation in this proposed decision relies on the picture of Dr. Sierra which emerges from those assessments.

Based on a view of Dr. Sierra as a competent recovering physician, there is no need for his license to be suspended, although it should be limited. Both the Colorado and the Minnesota orders impose restrictions on Dr. Sierra's practice, and establish programs to enforce and monitor his rehabilitation. This Board could independently set up its own limitations related to his chemical abuse, but at this time such an approach is unnecessary. It would

only duplicate the actions already taken in two other states, and there is no reason not to piggyback on the programs and the monitoring programs already set up. This is especially so since we can anticipate a change in Dr. Sierra's circumstances in another year when he finishes his three-year residency program. For now it is unnecessary to have Dr. Sierra do anything other than satisfy the program of the state in which he is currently practicing. I have proposed that his license be restricted to require him to comply with the restrictions placed upon his Minnesota license by the Minnesota Board of Medical Examiners, and that a violation of any restriction in Minnesota may be considered grounds for summary suspension of his Wisconsin license. I further propose that if Minnesota and Colorado are sufficiently satisfied with his recovery to remove their restrictions, then there is no need to continue limitations here. However, if he should choose to practice in Wisconsin without having satisfied Colorado and Minnesota, then the full panoply of restrictions appropriate to such a case should be imposed, to assure the protection of the public in the jurisdiction for which this Board has responsibility. In addition, an order for Dr. Sierra to pay the costs of this action is appropriate for two reasons: first, this action was necessary because of unprofessional actions in Colorado which occurred after he obtained his Wisconsin license in 1981, and second, because Dr. Sierra might have been able to avoid the largest part of the costs associated with this action had he responded to the Request for Production.

Dated September 10, 1991.



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

BDLS2-495

## 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) (c). 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) 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, 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.