

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

WILLIAM J. MOFFETT, M.D.,
RESPONDENT

FINAL DECISION
AND ORDER

LS9102191M&D

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 July 1 .

Michael P. Melroms

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	Case No. LS-9102191-MED
WILLIAM J. MOFFETT, M.D.,	:	
RESPONDENT	:	

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:

William J. Moffett, M.D.
Garfield Counseling Center
4010 West Madison
Chicago, IL 60624

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 February 19, 1991. A disciplinary proceeding ("hearing") was scheduled for April 23, 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. Moffett at the last address on file with the Board, 5306 South Greenwood, #3, Chicago, IL 60615. This mailing was returned, undelivered. Through the Illinois Professional Regulation office, an office address was obtained for Dr. Moffett, and he was served by certified mail at the Garfield Counseling Center, 4010 W. Madison, Chicago, IL 60624.

B. On April 11, 1991, Attorney Edward Williams requested a continuance on behalf of Dr. Moffett, to "obtain the necessary facts and data from Dr. Moffett so that a Hearing may not be necessary." That request was granted and the hearing was rescheduled to May 29, 1991.

C. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as rescheduled on May 29, 1991. Dr. Moffett did not appear, either in person or by attorney. 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.

D. At the close of the disciplinary hearing, Mr. Gloe requested that Dr. Moffett be given fifteen days in which to submit evidence of completion of continuing medical education (CME) hours. That request was granted, and the record was held open until June 13, 1991.

E. Following the hearing, Mr. Williams sent Mr. Gloe documentation of some, but not all, of Dr. Moffett's required CME hours. Along with this incomplete documentation, Mr. Williams requested an additional thirty days in which to submit complete documentation. This request was not granted, and the record was closed.

FINDINGS OF FACT

1. The Respondent, William J. Moffett, M.D., holds license #23612 to practice medicine and surgery in the State of Wisconsin. That license was granted on February 9, 1981 (complaint, item #1).

2. Dr. Moffett failed to submit proof of required CME hours for the period 1984-1985 (complaint, item #2; exhibit #3).

3. The Medical Examining Board has attempted since early 1987 to have Dr. Moffett provide this proof (exhibits #3 and #4). Dr. Moffett has requested additional time to do this (exhibit #5; transcript, p. 13). Proof of satisfaction of the CME requirement for 1984-1985 was not submitted as of the date the record was closed in this proceeding.

4. Dr. Moffett failed to notify the Medical Examining Board of a change of address.

5. Dr. Moffett failed to appear, either in person or by counsel, at the disciplinary proceeding.

CONCLUSIONS OF LAW

I. 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 13, Wis. Admin. Code.

II. The Medical Examining Board has jurisdiction over the respondent, William J. Moffett, M.D., by virtue of fact #1 above and paragraph A under "Posture of Case".

III. The respondent is in default, under sec RL 2.14, Wis. Admin. Code, by virtue of fact #5 above.

IV. By the conduct described in facts #2 and #3 above, Dr. Moffett has violated ch. Med 13, Wis Admin. Code. This constitutes unprofessional conduct under sec. Med 10.02(2)(a), Wis. Admin. Code. and sec. 448.01(11), Wis. Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license previously granted to William J. Moffett, M.D. to practice medicine and surgery in the State of Wisconsin be suspended, effective fourteen days after this order is signed. Dr. Moffett's license shall remain suspended indefinitely, (1) until he provides proof of having completed 30 CME hours, either in the 1984-1985 biennium, or in excess of the required number in subsequent years, or by some combination thereof; and (2) until he pays the costs involved in this proceeding.

OPINION

Dr. Moffett failed to provide the Board with proof of satisfaction of the CME requirement in ch. Med 13, Wis. Admin. Code for the 1984-1985 biennium. Since early 1987, the Board has been trying to get Dr. Moffett to comply. Although Dr. Moffett's written responses indicate that he would be able to show completion of the requirement, he has failed for over three years to provide the necessary documentation.

In response to the Notice of Hearing scheduled for April 23, 1991, Dr. Moffett's attorney requested additional time "to obtain the necessary facts and data from Dr. Moffett so that a Hearing may not be necessary". The request was granted, and the hearing was rescheduled to May 29, 1991. Dr. Moffett and his attorney failed to appear for the hearing, but according to Mr. Gloe during the hearing,

Mr. Williams called me last night to inform me that he has been waiting to receive documentation of continuing education credits from Dr. Moffett and that he had just last night received some documentation but not complete documentation. I asked him at that point to fax me what he had so that it could be included in the record today. Mr. Williams called me again this morning and indicated he had received some additional information but again that he had not received complete documentation from the providers of the education. In our discussion I informed Mr. Williams that I would be proceeding with the hearing from my standpoint. I indicated to him that I would ask the administrative law judge to hold the record open for receipt of that documentation for a period of fifteen days (transcript, p. 3).

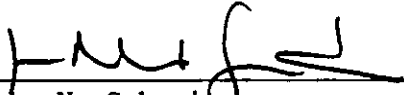
The record was held open until June 13, 1991, and at the end of that period, Mr. Gloe received some information from Dr. Moffett through Mr. Williams, but not enough to satisfy the CME requirement. Mr. Williams also requested that the record be kept open for thirty more days. The request was not made by motion in writing to me and, if it had been, I would have denied it. On the theory that enough is enough, after three years, a rescheduled hearing, and a fifteen-day extension, I have decided to proceed on the record as it now stands.

First, I find Dr. Moffett in default under sec. RL 2.14, Wis. Admin. Code, for having failed to appear at the hearing. I do not find him in default for having failed to file an answer, as the communications back and forth between the attorneys may have misled Dr. Moffett's attorney into thinking that a formal answer would be unnecessary.

Based upon his default and the evidence presented at the hearing, I find that Dr. Moffett has violated ch. Med 13, Wis. Admin. Code, and I find this to be a violation of the chapter as a whole, because it is difficult to point to the single section violated by Dr. Moffett. The central requirement of chapter Med 13, "Continuing Medical Education for Physicians," is contained in sec. Med 13.02(1), Wis. Admin. Code, which states that a physician applying for a certificate of registration must sign a statement certifying that he or she completed the CME requirement. This may or may not have been violated in this case. Although Dr. Moffett's original application for renewal has been destroyed, Mr. Gloe proceeded on the assumption that Dr. Moffett did sign such a statement because he was relicensed (transcript, pp. 7-8). If he did sign the statement, he technically satisfied sec. Med 13.02(1). From exhibit #4, though, it is clear that Dr. Moffett did not complete the required number of hours during the 1984-1985 biennium, and it could be inferred that he violated sec. Med 10.02(2)(c), Wis. Admin. Code, regarding false statements in connection with an application for a license. However, since the record contains insufficient evidence to adequately prove that he did sign the statement, I cannot find him guilty of unprofessional conduct on that basis. (Nor could I find him guilty of a violation which was not charged in the complaint.) At the very least, Dr. Moffett failed to satisfy the requirement contained in sec. Med 13.02(6), Wis. Admin. Code, which says that "The board may require any physician to submit his or her evidence of compliance to the board during the biennium for which 30 hours of credit are required for registration to audit compliance". His failure to submit evidence as required is in fact a violation, although it is clear that this technicality merely reflects the underlying conclusion that he also failed to complete the basic CME requirement.

Finally, failing to comply with the Board's CME requirement constitutes unprofessional conduct under sec. Med 10.02(2)(a), Wis. Admin. Code and sec. 448.01(11), Wis. Stats, and exposes him to the imposition of discipline. For the purpose of discipline, it is important to note that Dr. Moffett has shown very little concern over his Wisconsin license. In addition to his failure to complete the required number of CME hours, and his failure to provide adequate documentation to the Board, he failed to keep the Board informed of a change of address, and he failed to appear for the disciplinary hearing. I agree with Mr. Gloe that the appropriate sanction in this case is an indefinite suspension, to continue until Dr. Moffett satisfies his CME requirement and pays for the costs of the investigation and disciplinary proceeding. An indefinite suspension will relieve Dr. Moffett of the burden of repeatedly requesting extensions of time in which to provide the necessary documentation, and the imposition of costs, as authorized under sec. 440.22, Wis. Stats., is particularly appropriate where a disciplinary hearing could easily have been avoided by the respondent's diligence at any time during the past three years.

Dated June 19, 1991.



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

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)

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

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 July 29, 1991.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of 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

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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	AFFIDAVIT OF COSTS OF
	:	OFFICE OF BOARD LEGAL SERVICES
WILLIAM J. MOFFETT, M.D.,	:	Case No. LS-91-2191-MED
RESPONDENT.	:	

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

1. He is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.
2. In the course of his employment, he was assigned as the administrative law judge in the above-captioned matter.
3. Set out below are the actual costs of the proceeding for the Office of Board Legal Services in this matter:

a. Administrative Law Judge Expense - John N. Schweitzer

5-29-91	Prepare for and conduct hearing	1/2 hour
6-3-91	Prepare decision	1/4 hour
6-4-91	Prepare decision	1/4 hour
6-17-91	Review transcript and prepare decision	2 hours
6-18-91	Prepare decision	2 hours
6-19-91	Prepare decision	1 hour

		6 hours

Total administrative law judge expense:
6 hours @ \$23/hour (salary + 30% benefits) = \$138

b. Administrative Assistant Expense - Pamela A. Haack

5-29-91	Set up, attend and record hearing	1/2 hour
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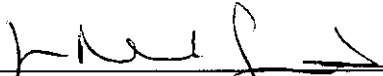
Total administrative assistant expense:
1/2 hour @ \$13.41/hour (salary and benefits) = \$6.70

c. Reporter Expense - Magne-Script, 112 Lathrop Street, Madison, WI 53705

Transcribing 5/29/91 hearing \$39.60


Total reporter expense = \$39.60

Total assessable costs for Office of Board Legal Services \$184.30



John N. Schweitzer
Administrative Law Judge

Sworn to and signed before me
this 30~~th~~ day of July, 1991.



Notary Public, State of Wisconsin
My commission 11-6-94 .

BDLS-493

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : AFFIDAVIT OF COSTS
WILLIAM J. MOFFETT, M.D., :
RESPONDENT. :

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Steven M. Gloe, 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 duties he was assigned as a prosecutor in the above captioned matter; and
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>
5/31/88	Review file	10 min.
8/24/90	Review file, draft correspondence	15 min.
8/30/90	Proof, mail, xerox	10 min.
10/5/90	Case conference, draft complaint	25 min.
10/10/90	Memo, checks re case, revise complaint	45 min.
2/18/91	Review file; draft notice of hearing	30 min.
4/11/91	Telephone conversation	15 min.
4/15/91	Draft correspondence	15 min.
5/28/91	Telephone conversation	10 min.
5/29/91	Telephone conversation Hearing preparation; attend hearing	10 min. 1 hour 45 min.

	Draft correspondence	15 min.
6/5/91	Review correspondence; draft reply	1 hour 15 min.
6/18/91	Draft correspondence; summary	1 hour
7/15/91	Review correspondence; Prepare response to objections	1 hour 30 min.

TOTAL HOURS

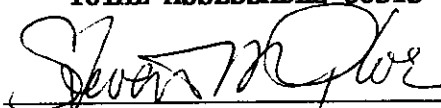
8 hours 50 min.

Total attorney expense for
8 hours, 50 minutes at \$35.00 per hour
(based upon salary, benefits and estimated
agency overhead) equals:

\$ 309.17

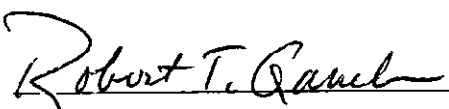
TOTAL ASSESSABLE COSTS

\$ 309.17



Steven M. Gloe

Subscribed and sworn to before me this 30th day of January, 1992.



Notary Public
My commission is permanant.

