

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

JAMES BALISTRIERI, M.D.,
RESPONDENT.

FINAL DECISION
AND ORDER

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

James J. Balistrieri, M.D.
1235 North Milwaukee Street
Milwaukee, WI 53202

Wisconsin 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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. That James J. Balistrieri, M.D., Respondent, DOB September 14, 1921, is licensed but not currently registered to practice medicine in the state of Wisconsin, pursuant to license #14092, which was granted August 21, 1961. Respondent's last address reported to the Wisconsin Department of Regulation and Licensing is 1235 North Milwaukee Street, Milwaukee, WI 53202.

2. That at all times relevant to this matter Respondent's specialty was psychiatry.

3. That the Wisconsin Department of Regulation and Licensing, Division of Enforcement, opened investigative file 90 MED 302, based upon a Claims Paid Report from the office of the Commissioner of Insurance which showed that \$75,000.00 was paid to a claimant by a medical malpractice insurance company based upon the claimant's allegations that Respondent provided inappropriate treatment for the claimant's emotional/psychological problems, while under Respondent's care in 1976.

4. That on September 20, 1991 Investigator Dale Nash of the Division of Enforcement, contacted Respondent and interviewed him regarding the allegations made by Complainant. In the course of that interview, Respondent indicated that he was aware that his current registration to practice medicine and surgery in the state of Wisconsin would be expiring on November 1, 1991. Respondent further stated that he had no plans to retire and would be seeking renewal of his license. Respondent further advised Investigator Nash that he was represented by an attorney and requested that further contacts be made through the attorney.

5. That Respondent voluntarily elected not to renew his registration to practice medicine and surgery in the state of Wisconsin when it expired on November 1, 1991 and has not renewed it to this date.

6. That Respondent is not licensed to practice medicine in any other state.

7. That Respondent has agreed never to apply for a current registration to practice medicine and surgery in the state of Wisconsin and has also agreed never to apply for a license to practice medicine and surgery in any other state within the United States of America.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to sec. 448.02(3), Wis. Stats.

2. The Wisconsin Medical Examining Board has authority to enter into the stipulated resolution of this matter pursuant to sec. 227.44(5), Wis. Stats.

3. That Respondent's conduct in providing inappropriate treatment to a patient suffering from emotional/psychological problems, constitutes a violation of sec. 448.02(3)(b) and Wis. Adm. Code sec. MED 10.02(2)(h).

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that James J. Balistrieri, M.D., shall never apply for a registration to practice medicine and surgery in the state of Wisconsin.

IT IS FURTHER ORDERED, that James J. Balistrieri, M.D., shall never apply for a license to practice medicine and surgery in any state within the United States of America.

Dated at Madison, Wisconsin this 24 day of ~~April~~^{June}, 1992.

B. Ann Neviasec
B. Ann Neviasec, Secretary
Wisconsin Medical Examining Board

JRZ:kcb
ATY-2001

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

| | | |
|----------------------------------|---|-------------|
| IN THE MATTER OF | : | |
| DISCIPLINARY PROCEEDINGS AGAINST | : | STIPULATION |
| | : | |
| JAMES J. BALISTRIERI, M.D., | : | 90 MED 302 |
| RESPONDENT. | : | |

It is hereby stipulated and agreed, by and between, James J. Balistrieri, M.D., Respondent; David P. Geraghty of Coffey, Coffey & Geraghty, attorneys for Respondent; and, John R. Zwieg, attorney for the Wisconsin Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation (file 90 MED 302) by the Department of Regulation and Licensing, Division of Enforcement, which contains the allegation that Respondent provided inappropriate treatment for a patient's emotional and psychological problems in 1976. Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by clear, satisfactory and convincing evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of his right to seek legal representation and has exercised that right prior to signing this stipulation.

4. Respondent does not admit the allegations against him, but agrees to the adoption of the attached Final Decision and Order by the Medical Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

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

7. The parties to this stipulation agree that the member of the Board appointed as the investigative advisor in this matter may appear before the Board in open or closed session for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

Dated this 8th day of June ~~April~~, 1992.

James J. Balistreri
James J. Balistreri, M.D.
Respondent

Dated this 8th day of June ~~April~~, 1992.

David P. Geraghty
David P. Geraghty
Coffey, Coffey & Geraghty
Attorneys for Respondent

Dated this 26th day of March, 1992.

John R. Zwieg
John R. Zwieg, Attorney
Department of Regulation & Licensing
Division of Enforcement

ATY2-1698

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 June 29, 1992.