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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

PAUL BARR CHRISTIANSON, M.D.

Respondent

ORDER DENYING PETITION

On May 14, 1993, Stephen O. Murray, attorney for Dr. Christianson filed with the Administrative Law judge in this matter a Motion to Dismiss the proceedings on the grounds that the Complaint filed in the matter fails to state a cause of action against the respondent. Briefs were submitted and, on August 31, 1993, the ALJ filed her Decision and Order, by which respondent's motion was denied.

Mr. Murray and Arthur Thexton, attorney for the complainant, thereafter filed their joint *Petition for Review*, by which the parties petitioned the board to review the order of the ALJ denying the respondent's Motion to Dismiss. The grounds for the petition were stated as follows:

Respondent believes that [the ALJ's] decision involves an erroneous interpretation of Wisconsin law. Both parties to this litigation wish to have the Medical Examining Board review her decision before additional time and money is expended on a hearing concerning whether or not any discipline should be imposed.

The board considered the petition on September 23, 1993, and orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that the *Petition for Review* dated September 12, 1993, filed by the parties hereto be, and hereby is, denied.

DISCUSSION

The *Decision and Order* of the administrative law judge denying respondent's *Motion to Dismiss* is interlocutory in nature and does not dispose of the case, and it is

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not therefore necessary for the ALJ's ruling to be submitted to the board in the form of a proposed decision (see 68 OAG 31). Whether the board exercises its discretion to review the ruling prior to the evidentiary hearing in this case therefore requires a balancing of various interests.

It is certainly to be expected that the respondent would disagree with the ruling of the administrative law judge denying his *Motion to Dismiss* and that he would therefore wish to have the ruling reviewed. That circumstance does not in itself, however, militate for action by the board to review an interlocutory ruling which was fully briefed and argued before an experienced administrative law judge. There is a novel aspect to this *Petition for Review*, however, which is that the prosecutor has joined in the petition.

It must be assumed that the prosecutor agrees with the ALJ's ruling, for if he does not, then it may be further assumed that he would stipulate to a dismissal of the matter. But if it is in fact Mr. Thexton's position that the ALJ's ruling is correct, then why would he join in the *Petition for Review*? According to the Petition, it is to resolve a pivotal legal issue "before additional time and money is expended on a hearing concerning whether or not any discipline should be imposed." Saving time and money in the administrative process is a laudable objective, but one the realization of which in this case relies upon a presumption that the board's ruling will reverse the ruling of the administrative law judge. Should that presumption prove incorrect, then a number of adverse results will occur: the costs of this proceeding, including expenditure of the board's time and resources, will have been increased; the board will have been required to review portions of the record in the matter prior to completion of the evidentiary hearing, thereby giving rise to a possible later charges of bias; and the orderly adjudication of the matter will have been interrupted without any benefit accruing to anyone. These possible results should be -- and may be -- avoided.

There is another factor of perhaps equal importance. The board takes notice of the fact that motions to dismiss are routinely made during the pendency of disciplinary proceedings. It is not necessary to assume that the grant of this petition would give rise to routine submission to the board of appeals from adverse rulings on such motions to recognize the inappropriateness and, perhaps, impropriety of the board's interposing itself into the hearing process in a manner unanticipated by the board's practice act, the Wisconsin Administrative Procedure Act, or the rules of the Department of Regulation and Licensing establishing procedures for disciplinary proceedings before the licensing boards.

At such time as the board receives a Proposed Decision from the administrative law judge recommending findings of fact, conclusions of law and an order, the

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board will review the entire record in the matter, including evidence and arguments relating to any contested conclusion of law. Until that time, however, the board declines to interfere in the established hearing process.

Dated this 7 day of October, 1993.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

by Clark O. Olsen
Clark O. Olsen, M.D.
Secretary

WRA:BDLS2:3723