

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDING AGAINST

BERNARD W. BEATTIE, M.D.,
RESPONDENT.

:
: FINAL DECISION AND ORDER
: (90 MED 113)
:
:

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

Bernard W. Beattie, M.D.
614 5th Avenue
Antigo, WI 54409

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 to 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. Bernard W. Beattie, M.D., Respondent herein, date of birth May 24, 1924, 614 5th Avenue, Antigo, Wisconsin 54409, is a physician duly licensed and currently registered to practice medicine and surgery in the State of Wisconsin, pursuant to license number 11936, which was granted on August 16, 1954.
2. Respondent practices medicine and surgery as a general practitioner.
3. On January 10, 1990, patient Frederick Fermanich presented at Respondent's office. Mr. Fermanich complained of a rash on his right ankle, of one month duration. Respondent gave the

Y-700 3117

patient Mycoloy Cream and made a diagnosis of stasis dermatitis.

4. Mr. Fermanich had been involved in a physician-patient relationship with Respondent since 1955. Respondent was aware that Mr. Fermanich was hospitalized in 1983 for an acute myocardial infarction and in 1978 for thrombophlebitis.

5. Mr. Fermanich returned to see Respondent on January 17, 1990, complaining of a rash and pain to the right leg and ankle, with no known injury. Respondent made a diagnosis of peripheral phlebitis, in part due to a negative Homan's sign.

6. On January 23, 1990, the patient returned to see Respondent. The patient complained of soreness and tightness of the left chest area and under the arm. Respondent knew that the patient had a long history of angina and ordered a chest x-ray.

7. The patient returned to see the Respondent on January 26, 1990. The patient still complained of chest pain. Respondent told the patient to see a cardiologist on February 1, 1990. An EKG and health history profile were planned for January 29, 1990.

8. On January 31, 1990, the patient was found unconscious on his driveway. The patient died. An autopsy showed massive bilateral pulmonary thromboemboli, with the right leg being the probable origin of these clots.

9. Respondent failed to properly diagnose thrombophlebitis, despite a history of thrombophlebitis and symptoms of that condition.

10. Respondent has been considering retirement for some time and has decided to voluntarily retire on December 31, 1993.

11. Respondent agrees to voluntarily retire from the practice of medicine and surgery in the State of Wisconsin on or before December 31, 1993, and will surrender his current registration to the Medical Examining Board on the date of retirement.

12. Respondent agrees that he will not renew his registration to practice medicine and surgery in the State of Wisconsin at any time following its surrender. Respondent further agrees that he will not practice or attempt to practice medicine or surgery in the State of Wisconsin when not currently registered.

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 this stipulated resolution pursuant to secs. 227.44(5) and 448.02(5), Wis. Stats.

3. The acts and omissions of Respondent, as set out in Findings of Fact 3 through 9, are negligence in violation of sec. 448.02(3), Wis. Stats.

ORDER

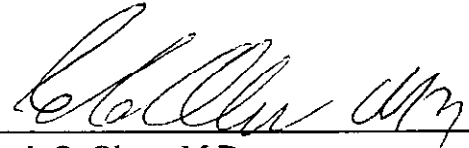
NOW, THEREFORE, IT IS ORDERED that the Stipulation of the parties is approved and adopted.

IT IS FURTHER ORDERED that Respondent shall retire from the practice of medicine and surgery in the State of Wisconsin on or before December 31, 1993 and shall surrender his current registration to the Medical Examining Board on the date of retirement.

Respondent shall not practice or attempt to practice medicine and surgery in the State of Wisconsin at any time following surrender of his current registration. Respondent shall not apply for reregistration to practice medicine and surgery in the State of Wisconsin at any time in the future.

IT IS FURTHER ORDERED that pursuant to the authority of Wis. Stats. sec. 448.02(4), should the Medical Examining Board determine that there is probable cause to believe that Bernard W. Beattie, M.D. has violated the terms of the Final Decision and Order of the Medical Examining Board, the Board may order that the license of Bernard W. Beattie, M.D., to practice medicine and surgery in the State of Wisconsin be summarily suspended pending investigation of the alleged violation.

Dated this 15 day of December, 1993.



Clark O. Olsen, M.D.

Secretary

Wisconsin Medical Examining Board

JMO:pw
ATY-ELG581

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDING AGAINST	:	STIPULATION
	:	(90 MED 113)
BERNARD W. BEATTIE, M.D.,	:	
RESPONDENT.	:	

It is hereby stipulated between Bernard W. Beattie, M.D., Respondent, and Deborah S. Wright and Judith Mills Ohm, attorneys for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. Bernard W. Beattie, M.D., 614 5th Avenue, Antigo, Wisconsin 54409, is a physician duly licensed and currently registered to practice medicine and surgery in the State of Wisconsin, pursuant to license number 11936, which was granted on August 16, 1954.
2. An investigation of Dr. Beattie is pending before the Medical Examining Board (file 90 MED 113).
3. Dr. Beattie 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 providing those allegations by a preponderance of the 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.
4. Dr. Beattie is aware of his right to legal representation prior to the signing of this Stipulation. Dr. Beattie has chosen not to retain an attorney to represent him in this case.
5. Dr. Beattie hereby voluntarily surrenders his current registration to practice medicine and surgery in the State of Wisconsin. Dr. Beattie understands and agrees that he shall not practice or attempt to practice medicine and surgery in the State of Wisconsin when not currently registered.
6. Dr. Beattie agrees that he shall not apply for reregistration to practice medicine and surgery in the State of Wisconsin at any time in the future.
7. For the purposes of this Stipulation, Dr. Beattie agrees that the Medical Examining Board may make and enter the attached Final Decision and Order without prior notice to any party.

8. If any term or condition of this Stipulation and attached Final Decision and Order is not accepted by the Medical Examining Board, then no term or condition of the Stipulation or Order shall be binding in any manner on any party.

9. The parties to this Stipulation agree that Dr. Beattie and the attorneys 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.

10. 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 purpose 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: 11/29/93

Bernard W. Beattie M.D.
Bernard W. Beattie, M.D.
Respondent

Dated: 12/7/93

Deborah S. Wright
Deborah S. Wright
Attorney for Complainant
Department of Regulation and Licensing
Division of Enforcement

Dated: 12/2/93

Judith Mills Ohm
Judith Mills Ohm
Attorney for Complainant
Department of Regulation and Licensing
Division of Enforcement

JMO:pw
ATY-ELG582

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 December 17, 1993.

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 as 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