

# 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
	:	(90 MED 462)
ENRIQUE W. LUY, M.D.	:	
RESPONDENT	:	

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

Enrique W. Luy, M.D.  
P.O. Box 141  
Wild Rose, WI 54984

Wisconsin Medical Examining Board  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Regulation & Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 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 received this Stipulation and considers it acceptable.

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

## FINDINGS OF FACT

1. Enrique W. Luy, M.D., Respondent, is a physician licensed and registered to practice medicine and surgery in the State of Wisconsin pursuant to license # 20305, granted August 8, 1976. Respondent's latest address on file with the Department of Regulation & Licensing is P.O. Box 141, Wild Rose, WI 54984.

2. On August 27, 1988, the Respondent removed a lipoma from the patient's left shoulder region under local anesthesia. The Respondent soon discovered that the patient had a deep intramuscular lipoma. Intramuscular bleeding immediately occurred. The Respondent packed the wound until the surgery could be completed under general anesthesia.

[illegible]

3. The patient was given home care instructions and discharged from the hospital.

4. On September 8, 1988, the Respondent saw the patient and removed the stitches. The Respondent referred the patient to his colleague.

5. The patient then continued to see the Respondent's colleague and he discovered an abscess on the patient's left shoulder. The patient was then referred back to the Respondent.

6. On October 31, 1988 the Respondent performed an I & D through a different incision which was below the original incision. The drainage was minimal and the wound never entirely cleared.

7. Following the surgery on October 31, 1988, the patient saw the Respondent on four occasions because of continued drainage.

8. The patient was then referred to a surgeon at Theda Clark Hospital, who found a two inch by two inch gauze pad left in the patient's shoulder from the August 27, 1988 surgery.

9. Neither the Respondent nor the OR technician counted the gauze pads during the August 27, 1988 surgery and no record was kept of the number of gauze pads used.

10. Respondent has agreed to participate in a risk management program offered by the University of Wisconsin Medical School Continuing Education Department which was specifically designed by Thomas C. Meyer, M.D., the Director of the Department of Continuing Medical Education, University of Wisconsin School of Medicine.

11. The objectives of the Assessment and Risk Management Program are as follows:

A. Identify the risk-prone areas in Dr. Luy's current practice including:

1. Physical facilities.
2. Office and hospital medical records.
3. Office and hospital procedures including follow up procedures.
4. Drug and prescription policies and behaviors.
5. Telephone issues.
6. Billing and collection procedures.

B. Develop and monitor a program to change the risk-prone facilities, policies, procedures and behaviors related to the Respondent's current practice.

C. Perform a terminal assessment to ascertain the degree of compliance with recommendations made under (A) above.

12. The risk management program will consist of the following:

A. An initial risk assessment conducted at the Wild Rose Clinic and the Wild Rose Community Memorial Hospital in Wild Rose, Wisconsin by the risk management program assessor. The assessor will spend 3-4 hours at the Wild Rose Clinic and the Wild Rose Community Memorial Hospital at which time the

assessor will review the following:

1. The Respondent's current office
  - a. Lay-out and physical facilities
  - b. Office staff's training and behaviors
  - c. Patient waiting time
  - d. Personnel's records, files, procedure manuals, emergency-disaster training, etc.
  - e. Office QA/QI/RM program
  - f. Medical record organization, legibility, comprehensiveness, immunizations, medication lists, allergy lists, telephone contacts, error correction, etc., are within acceptable norms for today's practice.
  - g. Procedures for providing for various legitimate requests for medical records, including records which contain sensitive information.
  - h. QA program includes audit of medical records.
  - i. Informed consent issues.
  - j. Follow up procedures for
    - (1) Patients
    - (2) Lab and x-ray results
    - (3) Patient notification of test results
    - (4) Consultation requests
    - (5) Patient compliance
  - k. Drug and prescription issues
    - (1) Advice and documentation of drug actions and interactions and discussions with patients
    - (2) Telephone prescriptions
    - (3) Prescription pads
    - (4) Injection policies and procedures
  1. Office procedures including
    - (1) Coverage for physicians
    - (2) Telephone procedures
    - (3) Chaperoning
    - (4) Complaint handling
    - (5) Incident reports and their handling
    - (6) Internal quality control
  - m. Billing and collection procedures
2. Hospital current policies and procedures relating particularly to:
  - a. Emergency department
  - b. Operating room
  - c. Informed consent
  - d. QA/QI/RM
  - e. Medical records department

B. A report will be compiled by the risk management program upon completion of the assessment. Such report will provide the following:

1. The current status of all the above compared to acceptable standards.

2. Listing of recommended changes.
  3. Recommendations for additional risk management measures that may be made.
- C. A follow-up procedure by the risk management program shall include:
1. A written follow-up will be sought at 3 and 6 months following the site visit.
  2. A follow-up site visit 12 months after the initial visit to determine the compliance with the recommendations ( 12 B (2) and (3) above). This visit will take approximately 2 hours and will be followed by a report listing the changes that have been made satisfactorily and those that are not satisfactory.

13. The Respondent agrees to bear the costs of the Risk management program.

14. At the completion of the UW risk management program, the Respondent will be evaluated on the basis of a site visit approximately one year after the initial assessment. This assessment will determine if the Respondent has achieved the objectives as outlined in paragraph 11 and thus been able to reduce the risk in his practice.

15. Successful completion of the program will be determined by the Respondent satisfactorily complying with the objectives as set forth in paragraph 11 to the extent that he has reduced the risk in his practice to a satisfactory level.

16. Upon successful completion of the UW risk management program, the University of Wisconsin-Madison will provide necessary certification to the Wisconsin Medical Examining Board and to the Respondent, that Respondent has met the objectives of the risk management program.

#### CONCLUSIONS OF LAW

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

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

3. The acts and omissions of Respondent, as set out in Findings of Fact 2 through 9 is negligence in violation of sec. 448.02(3), Wis. Stats.

#### ORDER

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

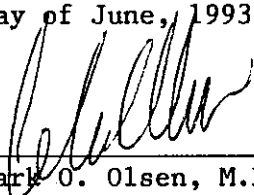
IT IS FURTHER ORDERED that the Respondent's license to practice medicine and surgery in the State of Wisconsin shall be and hereby is limited as follows:

1. Dr. Enrique W. Luy, at his own expense, shall within three months of the date of this order participate in and within fifteen months successfully complete the risk management program, and shall be evaluated upon his achievement of the objectives of successful completion of the program, and evaluation of Respondent's achievement of the program's objectives shall be submitted to the Wisconsin Medical Examining Board by Dr. Meyer, the Director of the Risk Management Program, as soon as possible after Respondent completes the program.

2. If Respondent does not successfully complete the program or does not successfully achieve the objectives of the program the matter shall be referred to the Wisconsin Medical Examining Board to determine an appropriate discipline for the violation set out in Conclusion of Law number 3.

3. That when the Respondent has successfully completed the ordered risk management program and has achieved the objectives of the program such successfully completed program shall be accepted in lieu of other discipline, and this limitation shall expire.

Dated at Madison, Wisconsin this 23<sup>rd</sup> day of June, 1993.



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Clark O. Olsen, M.D.,  
Secretary  
Wisconsin Medical Examining Board

ATY2 4214

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

ENRIQUE W. LUY, M.D.,  
RESPONDENT.

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STIPULATION

It is hereby stipulated and agreed, by and between, Enrique W. Luy, M.D., Respondent; and, Deborah S. Wright and John R. Zwieg, attorneys for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

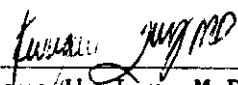
1. This Stipulation is entered into as a result of a pending investigation (file 90 MED 462).
2. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by 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.
3. Respondent is aware of his right to legal representation prior to signing this stipulation.
4. Respondent neither admits nor denies the allegations in this matter, but for personal reasons 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.



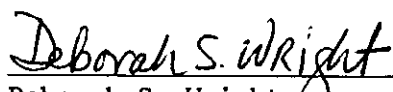
6. The parties to this stipulation agree that the Respondent and the attorneys for the Division of Enforcement may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on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

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.

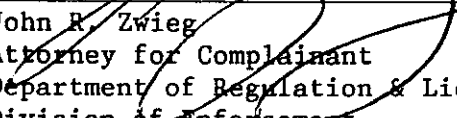
Dated: June 15, 1993.

  
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Enrique W. Luy, M.D.  
Respondent

Dated: June 17, 1993.

  
\_\_\_\_\_  
Deborah S. Wright  
Attorney for Complainant  
Department of Regulation & Licensing  
Division of Enforcement

Dated: June 17, 1993.

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

ATY2-4112



## **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 28, 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) (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 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) 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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