

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	(91 MED 367)
ROBERT G. SHURTLEFF, M.D.,	:	
RESPONDENT.	:	

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

Robert G. Shurtleff, M.D.
1836 South Ave,
LaCrosse, WI 54601

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. Robert G. Shurtleff, M.D., Respondent, is a board certified anesthesiologist licensed and registered to practice medicine and surgery in the State of Wisconsin pursuant to license # 23508, granted October 17, 1980. Respondent's latest address on file with the Department of Regulation & Licensing is 1836 South Avenue, LaCrosse, WI 54601.

2. Respondent's specialty area of practice is anesthesiology.

3. On June 12, 1989 Dr. Shurtleff was in charge of anesthetic for a 9 year old patient who was on cardiac bypass for intra-cardiac repair.

4. An unlicensed perfusionist attached tubing to the bypass machine incorrectly and the patient's mean blood pressure was at approximately 7mms Hg for 27 minutes until the surgeon was informed.

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5. At the time the surgeon was informed the tubing was then put on correctly and an adequate blood pressure was maintained. The patient was permanently brain damaged.

6. The Respondent failed to inform the surgeon that the 9 year old patient's blood pressure had fallen to approximately 7mmHg.

7. 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.

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

a) An initial risk assessment conducted at the Gunderson Clinic in LaCrosse, Wisconsin by the risk management program assessor. The assessor will spend 2-4 hours at the Clinic at which time the assessor will review the following:

- 1) Hospital policies and procedures related to: "usual anesthetics, anesthesia for bypass surgery, pediatric anesthesia, obstetric anesthesia.
- 2) Hospital and anesthesiologist department QA/RM/QI programs.
- 3) Record keeping prior to, during and following administration of anesthetics.
- 4) Dr. Robert Shurtleff's record keeping.
- 5) Use of CRNA's and anesthesiologist's responsibilities for supervision.
- 6) Background, training and experience of Dr. Robert Shurtleff in anesthesia for pediatric open-heart surgery.
- 7) Calibration data relating to regular testing of equipment.
- 8) Consent forms for anesthesia.
- 9) Documentation of patient communications procedures.

b) The assessor will conduct the following interviews:

- 1) QA/RM/QI director.
- 2) Senior CRNA.
- 3) Chair of Anesthesiology
- 4) Dr. Robert Shurtleff
- 5) Director of Operating Suite
- 6) Director of Anesthesia Recovery Unit
- 7) Chief perfusionist

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

- 1) a comparison of Dr. Robert Shurtleff's hospital with the National Criteria for Anesthesiology Practice,

13. 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. Stats.

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 3 through 6, 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.

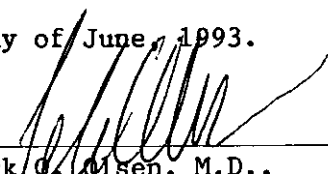
IT IS FURTHER ORDERED that the Respondent's license to practice medicine and surgery in the State of Wisconsin shall be and hereby is limited as follows:

1. Dr. Robert Shurtleff, 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 day of June, 1993.



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

2) documentation of changes made since the June 12, 1989 incident,

3) recommendations for possible changes in the hospital and Surgery Suite policies and procedures, and Dr. Robert Shurtleff's behaviors,

4) recommendations for areas of possible additional risk management procedures.

d) 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. These questionnaires take approximately 1 hour to complete.

2) A site visit lasting approximately 2 hours will take place 12 months after the initial visit.

9. The objectives of the Risk Management Program are as follows:

A. Identify and report recommended changes in the risk-prone areas in Dr. Shurtleffs'

1. Hospital including

a. Policies and procedures related to anesthetic practice including "usual" surgery, by-pass surgery, pediatric surgery and obstetrics

b. Record keeping practices

c. Policies and procedures related to

(i) CRNA'S

(ii) Equipment calibration and testing

(iii) Consent forms

d. QA/QI/RM programs

e. Changes made as a result of the incident which precipitated this assessment

2. Personal behaviors including those in a, b, and c above

3. Background, training and experience especially related to pediatric open heart surgery.

B. Develop and monitor program to change any risk-prone items under A above.

C. Perform a terminal assessment to ascertain the degree of compliance with the recommendations in A above.

10. Respondent agrees to bear the costs of the Risk management program.

11. At the completion of the UW risk management assessment 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 9 and thus been able to reduce the risk in his practice.

12. Successful completion of the program will be determined by the Respondent satisfactorily complying with the objectives as set forth in paragraph 9 to the extent that he has reduced the risk in his practice to a satisfactory level.

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 : STIPULATION
ROBERT G. SHURTLEFF, M.D., :
RESPONDENT. :

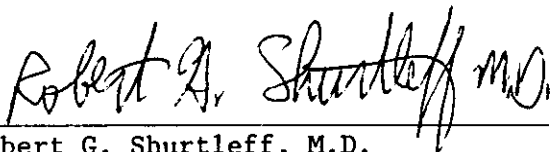
It is hereby stipulated and agreed, by and between, Robert G. Shurtleff, M.D., Respondent; Paul H. Robinson, attorney for Respondent; and, Deborah S. Wright and John R. Zwieg, attorneys for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation (file 91 MED 367).
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, and has obtained such 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, his attorney, 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.

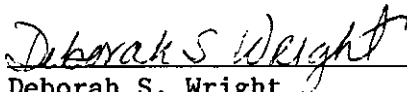
Dated: June 14, 1993.


Robert G. Shurtleff, M.D.
Respondent

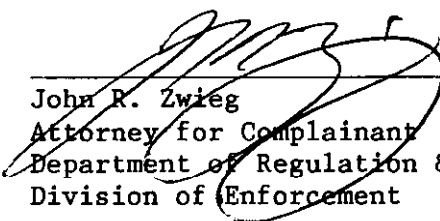
Dated: June 14, 1993.


Paul H. Robinson
Attorney for Respondent

Dated: June 17, 1993.


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

Dated: June 17, 1993.


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

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Dept. of Regulation & Licensing
Division of Enforcement

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 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 banking 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.