

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	:	FINAL DECISION
	:	AND
NICHOLAS C. DELEO, M.D.,	:	ORDER
RESPONDENT.	:	

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

Nicholas DeLeo, M.D.
12117 West Locust Street
Wauwatosa, WI 53222

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

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter, Nicholas C. DeLeo, M.D., personally and through his attorney, Kathleen E. Bonville, and Pamela M. Stach, attorney for Complainant, agree to the terms and conditions of the attached Stipulation as the final decision in 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 Nicholas C. DeLeo, Respondent herein, 12117 West Locust Street, Wauwatosa, Wisconsin 53222, is a physician duly licensed to practice medicine and surgery in the State of Wisconsin under license number 11855 which was granted on August 9, 1954.
2. That Respondent specializes in the area of family practice.
3. Respondent provided care and treatment for female patient W.T., whose date of birth was December 4, 1925, from approximately March 8, 1984 through June 16, 1986, during which time there were five missed appointments by the patient.
4. On March 14, 1985, patient W.T. presented at Respondent's office with complaints of occasional vaginal spotting and gave a history of a recent PAP smear and last normal menstrual period one year prior.
5. On March 14, 1985, Respondent did not perform a pelvic examination or take a PAP smear for evaluation to determine the cause of the bleeding as patient W.T. stated she had recently had a PAP and the patient had taken prednisone in December of 1984.

CODE RE-RENEWAL ONLY

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6. On August 27., 1985, patient W.T. telephoned Respondent to advise him she was still experiencing spotting. Respondent advised the patient to come in to the office.

7. On September 26, 1985, patient W.T. returned to Respondent's office with complaints of hot flashes and continued spotting.

8. Respondent's medical records on that date indicate the patient was ammenorrhic for the previous two years.

9. On September 26, 1985, Respondent advised the patient to return for a pelvic examination and PAP smear.

10. On October 4, 1985, patient W.T. returned to Respondent's office with complaints of persistent brownish vaginal discharge.

11. On October 4, 1985, Respondent performed a pelvic examination and took a PAP smear for evaluation from patient W.T.

12. Respondent's clinical findings on that date included a notation of a thin bloody discharge from the cervical os and Respondent's impression was menopausal, rule out cancer.

13. Respondent did not perform an endometrial biopsy or a dilatation and curettage on that date but did note dilatation and curettage as a procedure to be considered along with a repeat pelvic in two months.

14. The laboratory evaluation of the PAP smear indicated the sample was A1, however, the sample was noted as insufficient and it was recommended the smear be repeated.

15. Respondent advised patient W.T. that the results of the PAP smear were normal. Respondent asserts, but the patient denied, that Respondent further advised the patient that the cell content was low and the test should be repeated. An appointment for a pelvic and PAP was scheduled for December 26, 1985. Respondent recommended no further procedures.

16. Patient W.T. did not appear for the scheduled office appointment on December 26, 1985.

17. On March 14, 1986, patient W.T. returned to Respondent's office with a major complaint of a bad cough and mentioned a continued bloody vaginal discharge.

18. Respondent does not recall making any further inquiry into the cause of the vaginal bleeding at that time.

19. On March 17, 1985, patient W.T. telephoned Respondent for a prescription for tetracycline and Respondent asserts the patient did not mention any vaginal discharge.

20. On May 20, 1985, patient W.T. telephone Respondent for a refill of the medications and Respondent asserts the patients did not mention any vaginal discharge.

21. On May 30, 1986, patient W.T. telephoned Respondent and advised him she continued to have a vaginal discharge. Respondent advised her to come into the office for an examination.

22. On June 5, 1986 patient W.T. failed to appear for her scheduled office appointment.

23. On June 16, 1986, Respondent performed a pelvic examination during which he noted findings consistent with cervical cancer but which were later found to be a result of a mixed mesodermal tumor of the uterus.

24. The PAP smear taken on June 16, 1986 was reported as A1, however the laboratory report stated that the cancer screen indicated inflammatory and the estrogenic effect had no evaluation due to inflammation.

25. On June 16, 1985, Respondent referred patient W.T. to a gynecological oncologist.

26. Patient W.T. was treated for cancer of the uterus and is now deceased.

27. That Respondent's conduct in providing medical care and treatment for patient W.T. fell below the minimum standards of acceptable medical practice and tended to constitute a danger to the health, welfare and safety of the patient in the following respect:

A. Respondent failed to recognize the seriousness of the patient's medical symptoms and/or failed to adequately advise the patient of the same, including the necessity of immediate diagnostic tests to determine the cause of the patient's medical condition.

28. Respondent's conduct as set forth above created the following unacceptable risks to the patient:

A. Respondent's failure to recognize the seriousness of the patient's symptoms and/or to advise the patient of the necessity of immediate diagnostic tests to determine the cause of the patient's underlying medical condition, created the risk that the patient would not understand the gravity of her symptoms and thereby not seek necessary medical testing and treatment for her condition in a timely manner. This failure created the risk of delayed diagnosis and treatment of the patient's cancer of the uterus with all of the attendant risks of that condition up to and including the death of the patient.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction in this proceeding pursuant to Wis. Stats. sec. 448.02(3) and 227.44(5).

2. That Respondent's conduct as set forth in the Findings of Fact constitutes conduct within the meaning of Wis. Stats. secs. 448.01 (11) and 448.02(3) and Wis. Adm. Code MED 10.02(2)(h).

ORDER

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

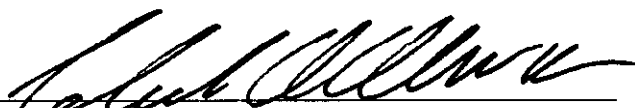
IT IS FURTHER ORDERED that the license of Nicholas C. DeLeo, M.D. to practice medicine and surgery in the State of Wisconsin is hereby limited on the following terms and conditions.

- A. Respondent shall participate in an assessment of his knowledge and skills in the practice of gynecology to be conducted by the University of Wisconsin School of Medicine, Continuing Medical Education Program. The assessment shall be coordinated by Dr. Thomas Meyer and commenced within 60 days of the effective date of this Order.
- B. Respondent shall participate in and successfully complete an educational program established through the Continuing Medical Education Program under the direction and supervision of Dr. Meyer. This program shall be based upon the results of the assessment and involve the diagnosis and treatment of gynecologic conditions and diseases and shall include a home study component, a clinical component, a monitoring component, and an evaluation component. Prior to commencing the educational program, Dr. Meyer shall submit a proposal to the Medical Examining Board for its approval.
- C. In the event Dr. Meyer is unable to develop a program which adequately addresses the issues identified in the assessment, he shall notify the Medical Examining Board of this fact and the matter shall be returned to the Division of Enforcement for further action, and the terms of the Stipulation and Final Decision and Order will be void.
- D. Respondent shall begin the educational program within 30 days of its approval by the Medical Examining Board. He will complete the program within the parameters established by Dr. Meyer.
- E. At the conclusion of the home study and clinical components of the educational program, Dr. Meyer shall submit a report to the Medical Examining Board evaluating Respondent's participation and performance in the program and indicating successful completion of the program by Respondent if accomplished.
- F. Respondent shall participate in a review of his medical records and practice within 60 days of successful completion of the home study and clinical components of the educational program. This review shall be conducted by a physician recommended by Dr. Meyer and approved by the Medical Examining Board. The records to be reviewed will be selected by the reviewing physician. The reviewing physician shall report his or her findings to Dr. Meyer who will provide a written report to the Medical Examining Board regarding these findings at the conclusion of the review.
- G. All expenses incurred under paragraphs A through F above shall be the responsibility of the Respondent.
- H. Respondent shall be responsible for the timely filing of all reports required under paragraphs A through F above.

- I. During the pendency of the home study and clinical portions of the educational program, Respondent shall refer all patients with gynecological complaints or conditions, once identified, to another physician. Respondent shall maintain a record of such referrals and provide such record to the Medical Examining Board or its agents, if requested. Respondent may examine and treat gynecological conditions and diseases to the extent such practice is required as a component of the clinical portion of the educational program set forth in paragraph B above.
- J. Upon certification of successful completion of the home study and clinical portions of the educational program by Dr. Meyer and notification from the Medical Examining Board of receipt of such certification, Respondent may resume the practice of gynecology. In the event that Respondent does not successfully complete those portions of the educational program, the Medical Examining Board shall continue the limitation on Respondent's license set forth in paragraph I above.
- K. Upon conclusion of all portions of the educational program, Respondent shall appear before the Medical Examining Board, at its option, to establish that he has complied with all of the terms and conditions of the Final Decision and Order.

IT IS FURTHER ORDERED that, pursuant to the authority of Wis. Stats. sec. 448.02(4) and Wis. Adm. Code Ch. RL 6, should the Medical Examining Board determine that there is probable cause to believe that Respondent has violated the terms of this Final Decision and Order of the Medical Examining Board, the Board may order that the license of Nicholas C. DeLeo, M.D. to practice medicine and surgery in the State of Wisconsin be summarily suspended pending investigation of the alleged violation.

Dated this 29 day of Sept, 1993.


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

PMS:dms
ATY-2590

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	STIPULATION
	:	(90 MED 141)
NICHOLAS C. DELEO, M.D.,	:	
RESPONDENT.	:	

In order to avoid expensive legal proceedings, it is hereby stipulated between Nicholas C. DeLeo, M.D., personally and through his attorney Kathleen E. Bonville, and Pamela M. Stach, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. Nicholas C. DeLeo, Respondent herein, 12117 West Locust Street, Wauwatosa, Wisconsin 53222, is duly licensed to practice medicine and surgery in the State of Wisconsin under license number 11855 which was granted August 9, 1954, .

2. A Complaint was filed against and duly served upon Respondent on January 27, 1993.

3. Respondent has read the Complaint and understands the nature of the allegations against him.

4. Respondent is aware of and understands each of the Respondent's rights including the right to a hearing on the allegations against him at which time the state has the burden of proving these allegations by preponderance of the evidence; the right to confront and cross-examine witnesses against him; the right to call witnesses in his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decisions 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 of the rights afforded the Respondent under the United States Constitution, the Wisconsin Constitution and the Wisconsin Administrative Code.

5. Respondent freely, voluntarily and knowingly waives each and every one of the rights set forth in paragraph 4 above.

6. The Division of Enforcement and the Respondent recommend that the Wisconsin Medical Examining Board adopt this Stipulation and issue the attached Final Decision and Order in resolution of this matter.

7. For the purpose of this Stipulation only, Respondent withdraws his previously filed Answer with regard to the Complaint and, while neither admitting nor denying the allegations, voluntarily agrees to entry of the attached Final Decision and Order by the Medical Examining Board.

8. Violation of the terms and conditions specified in this Stipulation and Final Decision and Order shall constitute a basis for disciplinary action by the Medical Examining Board.

9. The parties to this Stipulation understand that the Department of Regulation and Licensing, Division of Enforcement will take no further action against Respondent's license based on the allegations contained in the Complaint unless Respondent violates the terms and conditions of this Stipulation and Final Decision and Order in which event the Department may reinstate the Complaint and reinstitute proceedings against Respondent.

10. This agreement in no way prohibits the Medical Examining Board from any further action against Respondent based on acts not alleged in the present Complaint which might be violative of Wisconsin Medical Examining Board statutes and rules.

11. The parties agree to waive the Proposed Decision of the Administrative Law Judge and submit this Stipulation directly to the Medical Examining Board. All parties agree that counsel for the parties and the board advisor assigned to this case, may appear before the Board in open session to argue on behalf of acceptance of this Stipulation.

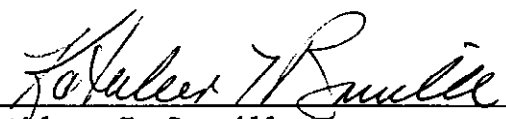
12. This Stipulation and Final Decision and Order, if adopted and entered by the Medical Examining Board, shall become effective on the date of signing.

13. All costs of these proceedings incurred by either party are hereby waived.

14. In the event any term or condition of this Stipulation and Final Decision and Order is not accepted or entered by the Medical Examining Board, then no term of this Stipulation; and Final Decision and Order shall be binding in any manner on any party to this Stipulation.

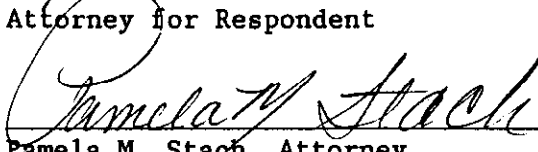
Dated: _____

9/22/93


Kathleen E. Bonville
Attorney for Respondent

Dated: _____

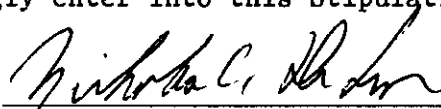
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Pamela M. Stach, Attorney
Department of Regulation and Licensing

I, Nicholas C. DeLeo, M.D., having read the above Stipulation and having discussed its contents with my attorney and understanding its terms, do hereby, freely, voluntarily and knowingly enter into this Stipulation.

Dated: _____

9/21/93


Nicholas C. DeLeo, M.D.
Respondent

PMS:dms
ATY-2591

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 October 5, 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 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