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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

GENE F. KISHEL, M.D.,
RESPONDENT

FINAL DECISION AND ORDER
93 MED 535

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

Gene F. Kishel
910 North Sixth Avenue
Virginia, MN 55792

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

FILE COPY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision 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. Gene F. Kishel, M.D. (D.O.B. 06/02/37) is duly licensed to practice medicine and surgery in the state of Wisconsin (license #17636). This license was first granted on July 14, 1971.

2. Dr. Kishel's most recent address on file with the Wisconsin Medical Examining Board is 910 North Sixth Avenue, Virginia, MN 55792.

3. On May 8, 1993, the Minnesota Medical Board of Medical Practice issued an order imposing discipline against Dr. Kishel's license to practice medicine in medicine in Minnesota. A true and correct copy of the May 8, 1993 Order is attached to this Order as Exhibit A. Exhibit A is incorporated by reference into this document.

4. Dr. Kishel does not currently practice in Wisconsin.

5. In resolution of these proceedings, Dr. Kishel consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

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

2. The Wisconsin Medical Examining Board is authorized to enter into the attached stipulation and issue the following order, pursuant to Wis. Stats. §§227.44(5) and 448.02(3).

3. The respondent's conduct, as described above, constitutes unprofessional conduct contrary to §448.02(3), Wis. Stats. and §MED 10.02(2)(q), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Dr. Kishel is REPRIMANDED.

IT IS FURTHER ORDERED that Dr. Kishel's license to practice in Wisconsin is LIMITED as follows: prior to engaging in the practice of medicine and surgery in the state of Wisconsin, Dr. Kishel shall notify the State of Wisconsin Medical Examining Board of his intent to resume practice in this State. Prior to his resumption of Wisconsin practice, the Board in its discretion may require written responses to any questions the Board may have concerning the facts and circumstances related to the imposition of discipline in Minnesota or otherwise concerning Dr. Kishel's ability to practice medicine in the state of Wisconsin. The Board may in the exercise of its discretion in addition require Dr. Kishel to appear before the Wisconsin Medical Examining Board or its designated agent to address any concerns the Board may have regarding Dr. Kishel's ability to safely and competently practice medicine. If the Board has continuing concerns about Dr. Kishel's ability to safely and competently practice as a result of his responses to written questions and/or his appearance before the Board, it may in its discretion impose such terms and conditions upon Dr. Kishel's license as it deems necessary for public safety and welfare. The imposition of conditions under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. §§227.01(3) and 227.42.

Pursuant to the authority of §448.02(4) and Wis. Adm. Code RL ch. 6, should the Medical Examining Board determine probable cause to believe that Gene F. Kishel has violated any of the terms of this Order, the Board may construe such conduct as conduct imperiling public health, safety and welfare and may summarily suspend Dr. Kishel's license pending further investigation of the alleged violation.

This Order shall become effective upon the date of its signing.

MEDICAL EXAMINING BOARD

By: Clark O. Olsen, M.D.
Clark O. Olsen, M.D., Secretary
Medical Examining Board

5/26/94
Date

BEFORE THE MINNESOTA
BOARD OF MEDICAL PRACTICE

Ephraim A

In the Matter of the
Medical License of
Gene F. Kishel, M.D.

STIPULATION
AND ORDER

Date of Birth: 6/2/37
License Number: 19,719

IT IS HEREBY STIPULATED AND AGREED, by and between Gene F. Kishel, M.D. (hereinafter "Respondent"), and the Minnesota Board of Medical Practice (hereinafter "Board") as follows:

1. During all times herein, Respondent has been and now is subject to the jurisdiction of the Board from which he holds a license to practice medicine and surgery in the State of Minnesota;

FACTS

2. For the purpose of this stipulation, the Board may consider the following facts as true:

a. Beginning in August 1986, Respondent acted as Medical Director of the LP Medical Specialist, Ltd., and was responsible for supervising other physicians, employees and/or agents of the LP Medical Specialist, Ltd. As supervising physician and Medical Director, it was Respondent's duty to review and sign patient charts;

b. At all relevant times, the two optometrists referred to in these allegations practiced as employees or agents of LP Medical Specialist, Ltd.;

c. On February 18, 1986, while on a routine check-up for her diabetes condition at LP Medical Specialist Ltd., patient #1 (DOB: 5-8-35) complained about her eyes to her treating physician, who diagnosed the eye condition to be the sequela of a common cold, and prescribed a Visine AC to use as needed;

d. On April 15, 1986, patient #1 again complained about her eyes and was referred to the HMO referral desk for appropriate care. Patient #1 was then referred to an optometrist;

e. On April 15, 1986, patient #1 was examined by an optometrist and diagnosed as having a probable episcleritis. The optometrist prescribed medications for patient #1, namely Blephamide drops, a legend drug, and supplied said drugs to patient #1. The optometrist did not have a medical license permitting the diagnosis or treatment or the dispensing of said drug;

f. From April 15, 1986 through December 29, 1986, patient #1 continued to be examined and treated for her chronic right eye condition exclusively by two optometrists. During this 9 month period, patient #1 was never referred to an ophthalmologist;

g. On December 29, 1986, patient #1 was finally referred to a physician specializing in ophthalmology. Upon examination, patient #1 was immediately referred to the University of Minnesota, under the care of an ophthalmologist. The ophthalmologist determined that patient #1's condition had been misdiagnosed;

h. From April 1986 through December 1986, there are no notes in patient #1's records indicating that she had ever been seen by physicians to prescribe her medications. In spite of this knowledge, from August 1986 through December 1986, Respondent continued to review and sign off on all optometrist's chart notes as supervising physician and Medical Director of the LP Medical Specialist, Ltd.;

i. On at least one occasion, Respondent allowed and signed prescriptions, the contents of which were determined by the optometrists, which were not prescribed as the result of a direct examination by Respondent;

j. Patient #1 suffered a permanent, partial loss of vision in her right eye causing her to be effectively blind.

STATUTES

3. The Board views Respondent's practices as inappropriate in such a way as to require Board action under Minn. Stat. § 147.091, subd. 1(g), (i), and (k) (1992) and Respondent agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify the disciplinary action;

REMEDY

4. Upon this stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Respondent does hereby consent that until further order of the Board, made after notice and hearing upon application by Respondent or upon the Board's own motion, the Board may make and enter an order reprimanding Respondent based upon his activities as medical director in signing the progress notes and at least one prescription of two optometrists for a patient with no physician supervision as to the appropriateness of the care;

5. Within ten days of the date of this order, Respondent shall provide the Board with a list of all hospitals at which Respondent currently has medical privileges. The information shall be sent to H. Leonard Boche, Board of Medical Practice, Suite 106, 2700 University Avenue West, St. Paul, Minnesota 55114;


6. In the event the Board in its discretion does not approve this settlement, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any disciplinary action by either party hereto except that Respondent agrees that should the Board reject this stipulation and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records relating hereto;

7. Respondent has been represented by legal counsel in this matter.

8. Respondent waives any further hearings on this matter before the Board to which Respondent may be entitled by Minnesota or United States constitutions, statutes, or rules and agrees that the order to be entered pursuant to the stipulation shall be the final order herein;

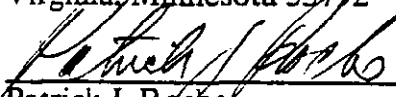
9. Respondent hereby acknowledges that he has read and understands this stipulation and has voluntarily entered into the stipulation without threat or promise by the Board or any of its members, employees, or agents. This stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this stipulation.

Dated: 3/26, 1993.



Gene F. Kishel, M.D.
Respondent

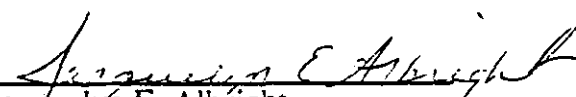
East Range Clinics
910 North Sixth Avenue
Virginia, Minnesota 55792



Patrick J. Roche
Attorney for Respondent

Trenti Law Firm
1000 Lincoln Bldg., P.O. Box 958
Virginia, MN 55792

Telephone:



Jacquelyn E. Albright
Attorney for Board

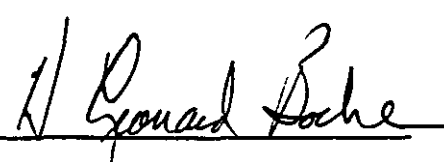
500 Capitol Office Building
525 Park Street
St. Paul, Minnesota 55103

Telephone: (612) 297-2040

Upon consideration of this stipulation and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the terms of this stipulation are adopted and implemented by the Board this 8th day of May, 1993.

MINNESOTA BOARD OF
MEDICAL PRACTICE

By: 

AFFIDAVIT OF SERVICE BY MAIL

RE: In the Matter of the Medical License of Gene F. Kishel, M.D.
License No. 19,719

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY

Sandra J. Curtis, being first duly sworn upon oath, deposes and says:

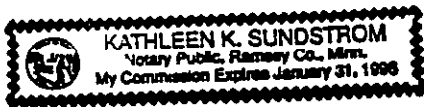
That at the City of St. Paul, county and state aforementioned, on the 10th day of May, 1993, she served the attached Stipulation and Consent Order by depositing in the United States mail at said city, a true and correct copy hereof, properly enveloped, with first class postage prepaid, and addressed to:

Patrick J. Roche
Trenti Law Firm
1000 Lincoln Building
P.O. Box 958
Virginia, Minnesota 55792

Sandra J. Curtis

Subscribed and sworn to before me
this 10th day of May, 1993.

Kathleen K. Sundstrom
Notary Public



STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
GENE F. KISHEL, M.D.,	:	93 MED 535
RESPONDENT	:	

It is hereby stipulated between Gene F. Kishel, personally on his own behalf and Steven M. Gloe, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Dr. Kishel's licensure by the Division of Enforcement (93 MED 535). Dr. Kishel consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Dr. Kishel 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. Dr. Kishel is aware of his right to seek legal representation and has obtained legal advice prior to signing this stipulation.

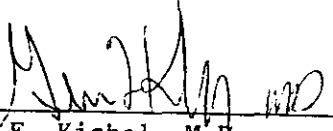
4. Dr. Kishel agrees to the adoption of the attached Final Decision and Order by the Medical Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights 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 attorney for the Division of Enforcement and the member of the Medical Examining Board assigned as an advisor in this investigation 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

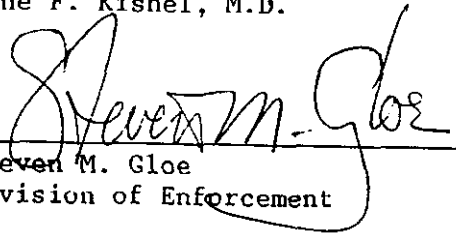
the stipulation.

7. The Division of Enforcement joins Dr. Kishel in recommending the Medical Examining Board adopt this Stipulation and issue the attached Final Decision and Order.



Gene F. Kishel, M.D.

4/28/94
Date



Steven M. Gloe
Division of Enforcement

5-6-54
Date

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.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN MEDICAL EXAMINING BOARD.

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

NOVEMBER 15, 1994.

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

SECTIONS 227.49 AND 227.53, OF THE WISCONSIN STATUTES

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.

227.53 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, the consumer credit review board, the credit union review board, the savings and loan review board or the savings bank 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 5.

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.

5. The savings bank 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 bank 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, the savings and loan review board and the savings bank 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.