

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

NATHAN E. SMITHBERG, M.D.,  
RESPONDENT.

FINAL DECISION AND ORDER  
93 MED 345

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

Nathan E. Smithberg, M.D.  
7697 Hilltop Lane  
Chippewa Falls, WI 54729

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 agree to the terms and the final decision of this matter, subject to the approval of this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the following:

*Austin:*  
*See attached letter*  
*(not part of)*  
*Final Decision & Order*

FINDINGS OF FACT

1. Respondent Nathan E. Smithberg (dob 11/15/57) is and was at all times relevant to the facts set forth herein a physician and surgeon licensed in the State of Wisconsin pursuant to license #29227, first granted on 4/22/88. Respondent is an emergency room physician
2. Respondent smoked marijuana for nonmedical purposes and without legal authorization to do so, on a recurring basis of approximately three or four times per year, most recently in the autumn of 1994 while on a fishing trip on Lake Michigan.

CONCLUSIONS OF LAW

3. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to §448.02(3), Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.
4. The conduct described in paragraph 2, above, violated § Med 10.02(2)(p) and (r), Wis. Adm. Code in that such use violated §161.41(3r), Wis. Stats. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

## ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Nathan E. Smithberg, M.D., is REPRIMANDED for his unprofessional conduct in this matter

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of respondent is LIMITED as provided in §448.02(3)(e), Wis. Stats., and as follows:

1. Respondent shall abstain from all personal use of controlled substances as defined in Sec. 161.01(4), Stats. except when necessitated by a legitimate medical condition and then only when prescribed by his personal treating physician.
2. Respondent shall supply random monitored urine, blood or hair specimens as the Board's designee shall (through the Department Monitor) direct. The designee shall request the specimens from Respondent and these requests shall be random with respect to the hour of the day and the day of the week.
3. Respondent shall keep the Department Monitor informed of a manner in which respondent can be reached, and shall be available for contact by the Department Monitor, at all times.
4. All requested urine, blood or hair specimens shall be provided by Respondent within five (5) hours of the request for the specimen. All urine specimen collections shall be a split sample accomplished by dividing urine from a single void into two specimen bottles. The total volume of the split sample shall be at least 45 ml. of urine. All split sample urine specimens, blood specimens and hair specimens shall be collected, monitored and chain of custody maintained in conformity with the collection, monitoring and chain of custody procedures set forth in 49 CFR Part 40. Urine specimen collections shall be by direct observation if:
  - a. The Respondent must provide an additional specimen because Respondent's initial specimen was outside of the normal temperature range (32.5 - 37.7°C/90.5 - 99.8°F) and respondent refuses to have an oral body temperature measurement or respondent does provide an oral body temperature measurement and the reading varies by more than 1°C/1.8°F from the temperature of the urine specimen;
  - b. Respondent's last provided specimen was determined by the laboratory to have a specific gravity of less than 1.003 and creatinine concentration below 0.2 g/l;
  - c. The collection site person observes Respondent acting in such a manner to provide reason to believe that Respondent may have attempted or may attempt to substitute or adulterate the specimen. The collection site person, if he or she believes that the initial urine specimen may have been adulterated or a substitution made, shall direct Respondent to provide an additional observed urine specimen;
  - d. The last provided specimen resulted in a positive or suspected positive test result for the presence of controlled substances; or
  - e. The Medical Examining Board (or any member of the Board) or the Department Monitor directs that the urine specimen collection be by direct observation.

- 5 If either of the above conditions (a) or (c) requires collection of an additional observed urine specimen, the collection of the subsequent specimen shall be accomplished within the required five (5) hours of the request for the initial specimen; the collection of the initial specimen shall not satisfy the requirement that the urine specimen be collected within five (5) hours of the request for the initial specimen.
- 6 Respondent shall at all times utilize a United States Department of Health and Human Services certified laboratory for the analysis of all specimens collected from Respondent.
- 7 Respondent shall utilize only those urine, blood and hair specimen collection sites for collection of Respondent's urine, blood or hair specimens as comply with the United States Department of Transportation collection and chain of custody procedures set forth in 49 CFR Part 40.
- 8 The laboratory and collection site shall maintain a complete and fully documented chain of custody for each urine, blood or hair specimen collected from Respondent.
- 9 Every urine specimen collected from Respondent shall be analyzed at the time of collection for tampering by measurement of the temperature of the specimen and the oral temperature of Respondent. Every urine specimen collected from Respondent shall be further analyzed at the laboratory for tampering by measuring the creatinine concentration and the specific gravity of the specimen. The laboratory may at its discretion or at the direction of the Medical Examining Board or any member thereof conduct additional tests to evaluate the urine specimen for tampering including, but not limited to, pH, color and odor.
10. Every urine, blood or hair specimen collected from Respondent shall be analyzed for alcohol, amphetamine, cocaine, opiates, phencyclidine, marijuana, methadone, propoxyphene, methaqualone, barbiturates, benzodiazepines, or the metabolites thereof. The Medical Examining Board or its designated agent may at any time direct that screens for additional substances and their metabolites be conducted by scientific methods and instruments appropriate to detect the presence of these substances. The laboratory shall conduct confirmatory tests of positive or suspected positive test results by appropriate scientific methods and instruments including, but not limited to, gas chromatography and mass spectrometry.
11. All urine, blood or hair specimens remaining after testing shall be maintained in a manner necessary to preserve the integrity of the specimens for at least seven (7) days; and all positive or suspected positive urine, blood or hair specimens remaining after testing shall be so maintained for a period of at least one (1) year. The Medical Examining Board or any member thereof may direct that the urine, blood or hair specimens be maintained for a longer period of time
12. For the purpose of further actions affecting Respondent's license under this Order, it shall be presumed that all confirmed positive reports are valid. Respondent shall have the burden of proof to establish that the positive report was erroneous and that the respondent's specimen sample did not contain alcohol or controlled substances or their metabolites.
13. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Board's designee shall determine to be appropriate to clarify or confirm the positive or suspected positive urine, blood or hair specimen test results.

14. The laboratory shall report immediately to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement by FAX or telephonic communication: any failure of Respondent to provide a urine, blood or hair specimen within five (5) hours from the time it was requested; or of any inability to locate Respondent to request a specimen. The laboratory shall immediately report all urine specimens suspected to have been tampered with and all urine, blood or hair specimens which are positive or suspected positive for controlled substances or alcohol to the Department Monitor.
15. The laboratory shall within 48 hours of completion of each drug or alcohol analysis mail the report from all specimens requested of Respondent under this Order to the Department Monitor (regardless of whether the laboratory analysis of the specimen was positive or negative for controlled substances, their metabolites or alcohol). Each report shall state the date and time the specimen was requested; the date and time the specimen was collected; the results of the tests performed to detect tampering; and the results of the laboratory analysis for the presence of controlled substances and alcohol.
16. Respondent is responsible for compliance with all of the terms and conditions of this Final Decision and Order. Respondent shall immediately select a laboratory to perform the testing required under this Order, and communicate the name, address, and telephone number of the laboratory to the Department Monitor. It is the responsibility of Respondent to promptly notify the Department Monitor, of any suspected violations of any of the terms and conditions of this Order, including any failures of the laboratory or collection sites to conform to the terms and conditions of this Order.
17. If the Medical Examining Board determines that the laboratory or collection sites have failed to satisfy the terms and conditions of this Final Decision and Order, the Board may, at its sole discretion, direct that Respondent use another laboratory or collection site which will conform to the terms and conditions of this Final Decision and Order.
18. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order.
19. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

IT IS FURTHER ORDERED, that pursuant to §448.02(4), Wis. Stats., if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license and registration of respondent be summarily suspended pending investigation of the alleged violation.

IT IS FURTHER ORDERED, that respondent shall pay the costs of this proceeding, and the Division and Bureau shall file their affidavits of costs within 30 days. Any dispute about the costs shall be determined by the Board's legal counsel, whose decision shall be final.

Dated this 15<sup>th</sup> day of November, 1995

WISCONSIN MEDICAL EXAMINING BOARD

by. W. R. Schwartz, M.D.  
W. R. Schwartz, M.D., Secretary

akt  
223

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD.

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

NATHAN E. SMITHBERG, M.D.,  
RESPONDENT.

STIPULATION  
93 MED 345

It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without a hearing on the formal complaint which has been issued in this matter.

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena, the right to testify personally; 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 respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has obtained legal advice before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties 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 or the proposed Final Decision and Order, 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.

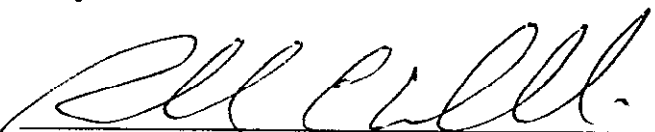
6. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

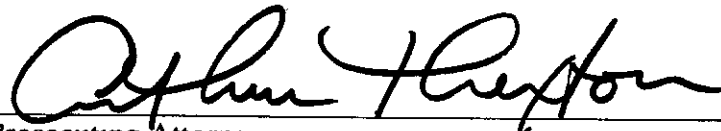
7. The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and view of the case acquired during the investigation.

8 This stipulation is subject to approval by the Division of Enforcement's attorney-supervisor. If approved by the supervisor, the Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. Respondent is informed that should the Board adopt this stipulation, the Board's final decision and order is a public record and will be published in the Monthly Disciplinary Report issued by the department. A summary of the order will be published in the Wisconsin Regulatory Digest issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent.

 10/27/95  
Respondent Date

  
Richard L. Wachowski, Attorney for Respondent  
Date 10/27/95

 10/31/95  
Prosecuting Attorney Date  
Division of Enforcement



STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS  
AGAINST

NATHAN E. SMITHBERG, M.D.,  
RESPONDENT.

: **AFFIDAVIT OF COSTS OF**  
: **OFFICE OF BOARD LEGAL SERVICES**  
: Case No. LS-9507112-MED  
: (93 MED 345)  
:

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

1. I am an attorney licensed to practice law in the State of Wisconsin, and am employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.
2. In the course of my employment, I was assigned as the administrative law judge in the above-captioned matter.
3. The expenses for the Office of Board Legal Services are set out below (these are reconstructed estimates, based on documents in the file):

a. Administrative Law Judge Expense @ \$26.29/hour.

7/11/95 Receive complaint, read, open file	5 min.
8/7/95 Receive answer, read, file	5 min.
8/7/95 Telephone call to attorney Thexton, case put on hold due to pending stip	10 min.
10/18/95 Telephone calls and messages to both attorneys	10 min.
Total:	30 min.

Total allocable costs for Office of Board Legal Services

= \$13.15

  
\_\_\_\_\_  
John N. Schweitzer  
Administrative Law Judge

Sworn to and signed before me this 27<sup>th</sup> day of Nov., 1995.

Donna R. Rittel, Notary Public, State of Wisconsin.

My commission is permanent.

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :

NATHAN E. SMITHBERG, M.D., :  
RESPONDENT. :

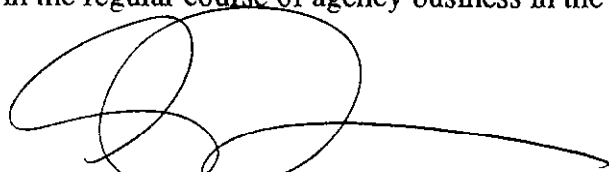
**AMENDED AFFIDAVIT OF COSTS**

93 MED 345

STATE OF WISCONSIN)  
COUNTY OF DANE )

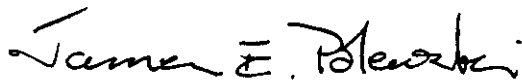
I, Arthur Thexton, being on affirmation, say:

1. That I am an attorney licensed in the state of Wisconsin and am employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;
2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter; and
3. That set out on the attached record are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.



Arthur Thexton, Prosecuting Attorney

Subscribed to and affirmed before me this 12th day of January, 1996.



Notary Public  
My Commission is permanent.

akt  
202

STATE OF WISCONSIN  
Department of Regulation & Licensing  
Division of Enforcement  
1400 East Washington Avenue  
Madison, WI 53708-8935

Nathan E. Smithberg  
93 MED 345

Page:  
01/12/93

	HOURS
08/04/93 AKT Screen case for opening investigation.	.30
08/06/93 INV Received and reviewed case file, file maintenance.	.25
08/09/93 INV Letter to Inv. Pehlke.	1.00
08/10/93 INV Telephone conference with Inv. Pehlke office.	.25
08/20/93 INV Telephone conference with Inv. Pehlke, memo of same.	.25
08/24/93 INV Telephone conference with Inv. Pehlke, memo of same.	.50
09/27/93 INV Telephone conference with Inv. Pehlke, memo of same.	1.00
INV Telephone conference with S/A Ohm, memo of same.	.75
INV Conference with Prosecuting Atty re: case investigation strategy and legal tools.	.25
AKT Conference with Inv. Nash re: case investigation strategy and legal tools.	.25
09/28/93 INV Telephone conference with S/A Ohm and memo of same.	.50
09/29/93 INV Telephone conference with D. Kuhnley and memo of same.	1.75

	HOURS
09/30/93	
INV Telephone conference with S/A Ohm.	.25
10/01/93	
INV Telephone conference with S/A Mueller.	.25
INV Telephone conference with D. Kuhnley.	.25
10/12/93	
INV Traveled to Cadott, interviewed Kuhnleys, return.	10.10
10/13/93	
INV Arranged for file retrieval.	.25
10/21/93	
INV Letter to D. Kuhulez, letter to A. Mueller, locate witness, make appointment.	4.00
11/01/93	
INV Conference with J. Linden and J. Dahlkie. Photograph evidence. (Travel to Eau Claire/Chippewa Falls and return.)	9.00
11/04/93	
INV Dictate interview summaries.	2.00
11/11/93	
INV Telephone conference with D. Kuhnley	.25
03/31/94	
INV Telephone conference with D. Kuhnley.	.50
04/26/94	
INV Present case to Medical Board, received instructions to file complaint.	.40
12/06/94	
INV Telephone call to Luther Hospital ER, memo of same.	.50
12/22/94	
INV Letter to respondent.	.50
INV Traveled to Eau Claire, met with respondent.	8.00
12/23/94	
INV Dictate interview summary. Telephone conference with respondent, memo of same.	2.00
INV Delivered urine sample to State Lab. Prepared and mailed hair sample to testing lab.	2.00
INV File memo for Prosecuting Attorney.	.50

	HOURS
01/06/95	
INV Telephone conference with witness Kuhnley and memo of same.	1.00
INV Work on Case Summary Memo.	2.00
01/10/95	
INV Letter to Board Advisor.	1.00
01/17/95	
INV Received and reviewed correspondence from State Hygiene Lab (urine sample results), file.	.25
01/20/95	
INV Received and reviewed correspondence from NMS Lab re: hair sample test results, file same.	.30
01/23/95	
INV Prepare and send file to Board Advisor, finalize Case Summary Memo.	.50
01/27/95	
INV Telephone conference with Atty Wachowski, memo of same.	.50
03/21/95	
INV Conference with Board Advisor.	.50
INV Conference with Prosecuting Atty Thexton.	.25
04/23/95	
AKT Conference with Board Advisor and Inv. Nash re: case disposition.	.30
05/11/95	
AKT Review file. Telephone conference with Dr. Benzer. Draft Complaint, Notice of Hearing, Order for Exam.	2.50
06/28/95	
AKT Letter to Dr. Benzer. Sign and file Complaint and Notice of Hearing.	.40
07/28/95	
AKT Received and reviewed correspondence from ADMC (report evaluating respondent).	.30
08/04/95	
AKT Received and reviewed correspondence from Atty Wachowski (Answer to Complaint).	.20

	HOURS	
08/14/95		
AKT Telephone conference with Board Advisor. Draft Stipulation/Final Decision & Order, with letter to Atty Wachowski.	1.50	
09/06/95		
AKT Received and reviewed correspondence from Atty Wachowski. Letter in reply.	.60	
09/25/95		
AKT Telephone conference with Atty Wachowski re: stipulation accepted.	.30	
10/05/95		
AKT Leave message for Atty Wachowski.	.10	
10/18/95		
AKT Receive detailed message from ALJ Schweitzer and Atty Wachowski.	.20	
10/19/95		
AKT Letter to Atty Wachowski. Leave telephone message for Atty Wachowski.	.50	
10/31/95		
AKT Received and reviewed correspondence from Atty Wachowski (signed stipulation). Sign and transmit to Bureau. Prepare and send materials to Atty Wachowski, per his request.	.70	
11/15/95		
AKT Present stipulation to Medical Examining Board.	.20	
11/22/95		
AKT Prepare Statement of Costs.	1.50	
AKT Conference with staff re: costs of evaluation. Leave message for Atty Wachowski.	.20	
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FOR CURRENT SERVICES RENDERED	63.60	1483.
11/01/93	Mileage for Inv. Nash trip to Eau Claire/Chippewa Falls for witness interviews.	93.
12/22/94	Mileage for Inv. Nash trip to Eau Claire to interview witnesses and respondent.	88.
12/22/94	Mileage for Inv. Nash trip to Cadott to interview witnesses.	92.
01/19/95	Testing of urine sample by State Laboratory of Hygiene.	58.
01/31/95	Testing upon hair sample by National Medical Services Lab, Willow Grove PA.	197.

07/21/95	Evaluation of respondent by staff of Addictive Disease Medical Consultants, S.C.	1567.
07/21/95	In-Patient evaluation and urinalysis charges from Milwaukee Psychiatric Hospital.	773.
01/12/96	Received bill from Dr. Jacobson for psychological evaluation of respondent 7/19-20/95	570.
		-----
	TOTAL COSTS	3440.
	BALANCE DUE	\$4,923.
		=====

The above records are kept in the ordinary course of business by the Division and are assessable under s.440.22, Wis. Stats. Hourly rates of \$41/attorney and

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :

NATHAN E. SMITHBERG, M.D., :  
RESPONDENT. :

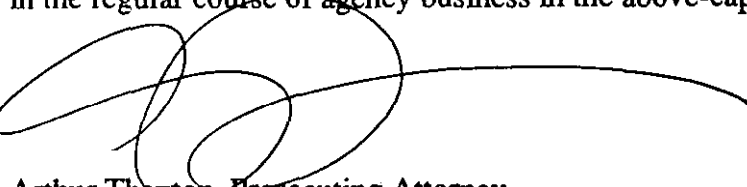
**AFFIDAVIT OF COSTS**

93 MED 345

STATE OF WISCONSIN)  
COUNTY OF DANE )

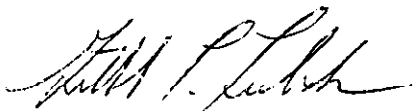
I, Arthur Thexton, being on affirmation, say:

1. That I am an attorney licensed in the state of Wisconsin and am employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;
2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter; and
3. That set out on the attached record are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.



Arthur Thexton, Prosecuting Attorney

Subscribed to and affirmed before me this 27<sup>th</sup> day of November, 1995.



Notary Public  
My Commission is permanent.



STATE OF WISCONSIN  
Department of Regulation & Licensing  
Division of Enforcement  
1400 East Washington Avenue  
Madison, WI 53708-8935

Nathan E. Smithberg  
93 MED 345

Page:  
11/27/9  
4

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12/22/94	
INV Letter to respondent.	.50
INV Traveled to Eau Claire, met with respondent.	8.00
12/23/94	
INV Dictate interview summary. Telephone conference with respondent, memo of same.	2.00
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INV File memo for Prosecuting Attorney.	.50

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INV Work on Case Summary Memo.	2.00
01/10/95	
INV Letter to Board Advisor.	1.00
01/17/95	
INV Received and reviewed correspondence from State Hygiene Lab (urine sample results), file.	.25
01/20/95	
INV Received and reviewed correspondence from NMS Lab re: hair sample test results, file same.	.30
01/23/95	
INV Prepare and send file to Board Advisor, finalize Case Summary Memo.	.50
01/27/95	
INV Telephone conference with Atty Wachowski, memo of same.	.50
03/21/95	
INV Conference with Board Advisor.	.50
INV Conference with Prosecuting Atty Thexton.	.25
04/23/95	
AKT Conference with Board Advisor and Inv. Nash re: case disposition.	.30
05/11/95	
AKT Review file. Telephone conference with Dr. Benzer. Draft Complaint, Notice of Hearing, Order for Exam.	2.50
06/28/95	
AKT Letter to Dr. Benzer. Sign and file Complaint and Notice of Hearing.	.40
07/28/95	
AKT Received and reviewed correspondence from ADMC (report evaluating respondent).	.30
08/04/95	
AKT Received and reviewed correspondence from Atty Wachowski (Answer to Complaint).	.20

## HOURS

08/14/95	AKT Telephone conference with Board Advisor. Draft Stipulation/Final Decision & Order, with letter to Atty Wachowski.	1.50	
09/06/95	AKT Received and reviewed correspondence from Atty Wachowski. Letter in reply.	.60	
09/25/95	AKT Telephone conference with Atty Wachowski re: stipulation accepted.	.30	
10/05/95	AKT Leave message for Atty Wachowski.	.10	
10/18/95	AKT Receive detailed message from ALJ Schweitzer and Atty Wachowski.	.20	
10/19/95	AKT Letter to Atty Wachowski. Leave telephone message for Atty Wachowski.	.50	
10/31/95	AKT Received and reviewed correspondence from Atty Wachowski (signed stipulation). Sign and transmit to Bureau. Prepare and send materials to Atty Wachowski, per his request.	.70	
11/15/95	AKT Present stipulation to Medical Examining Board.	.20	
11/22/95	AKT Prepare Statement of Costs.	1.50	
	AKT Conference with staff re: costs of evaluation. Leave message for Atty Wachowski.	.20	
	FOR CURRENT SERVICES RENDERED	63.60	1483.00
11/01/93	Mileage for Inv. Nash trip to Eau Claire/Chippewa Falls for witness interviews.		93.00
12/22/94	Mileage for Inv. Nash trip to Eau Claire to interview witnesses and respondent.		88.00
12/22/94	Mileage for Inv. Nash trip to Cadott to interview witnesses.		92.00
01/19/95	Testing of urine sample by State Laboratory of Hygiene.		58.00
01/31/95	Testing upon hair sample by National Medical Services Lab, Willow Grove PA.		197.00

Nathan E. Smithberg

Page:  
11/27/9

07/21/95	Evaluation of respondent by staff of Addictive Disease Medical Consultants, S.C.	1567.0
07/21/95	In-Patient evaluation and urinalysis charges from Milwaukee Psychiatric Hospital.	773.2
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	TOTAL COSTS	2870.1
	BALANCE DUE	\$4,353.2
		=====

The above records are kept in the ordinary course of  
business by the Division and are assessable under  
s.440.22, Wis. Stats. Hourly rates of \$41/attorney and

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## NOTICE OF APPEAL INFORMATION

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**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:**

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 22, 1995

### 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.)

WACHOWSKI, JOHNSON & COHEN, S.C.

ATTORNEYS AT LAW  
Eau Claire, Wisconsin 54702-0145  
Telephone 715-838-2889  
Facsimile 715-838-2099

Richard L. Wachowski  
Ann W. Johnson  
Michael R. Cohen

Opera House Building  
404 S. Barstow Street

Please Reply to  
P O Box 145, 54702-0145

November 15, 1995

Attorney Arthur Thexton  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8953

Re: Nathan E. Smithberg, M.D., 93 MED 345

Dear Mr. Thexton:

Thank you for the materials regarding the form of notice that will be published in this matter. As you can certainly understand, the nature of said notice is extremely important since wrongful conclusions can be withdrawn from inaccurate information. I have reviewed the Monthly Disciplinary Report you provided and it seems to indicate that the actual Order will be published, which is certainly appropriate. In regard to the publication in the Medical Examining Board publication, I reviewed the samples that you provided me and would propose that the notice of Dr. Smithberg's disciplinary action be as follows:

Use of controlled substances in violation of Section MED 10.02(2), (p) and (r). No abuse or dependency determined. To comply with limitations imposed by Board.

I would think that this would meet the requirements present and also would accurately reflect the situation. Please advise if there are any problems or questions.

Yours truly,



Richard L. Wachowski

RLW/t