

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 ORDER
 : (91 MED 172)
 :
HERBERT J. FEITELBERG, D.P.M., :
RESPONDENT. :

The parties to this proceeding for purposes of sec. 227.53, Stats. are:

Herbert J. Feitelberg, D.P.M.
Brown Deer Foot Clinic
3900 W. Brown Deer Road
Brown Deer, WI 53209

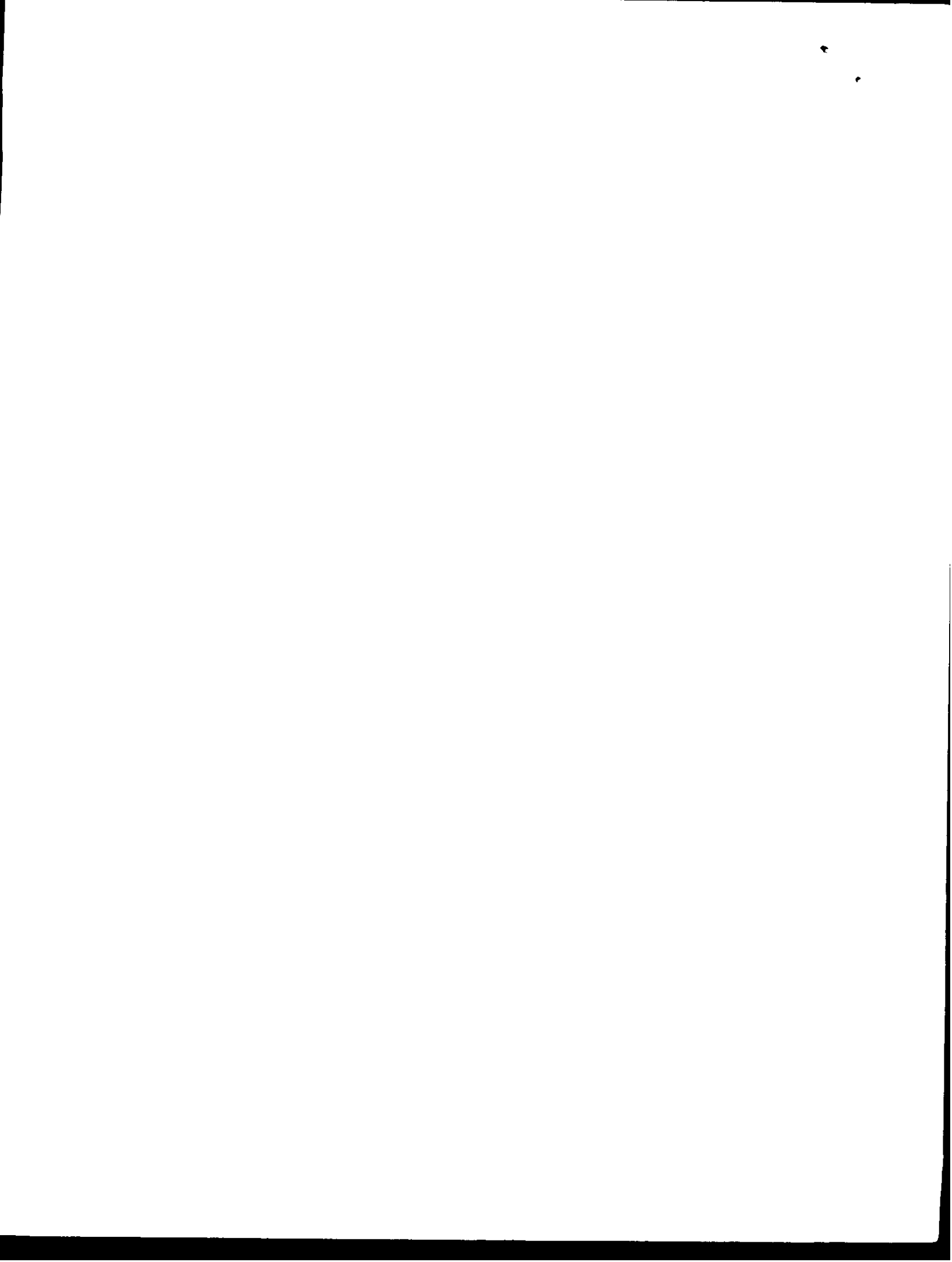
Wisconsin Medical Examining Board
1400 E. Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
1400 E. Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

The Wisconsin Medical Examining Board received a Stipulation submitted by the parties to the above-captioned matter. The Stipulation, a copy of which is attached hereto, was executed by Herbert J. Feitelberg, D.P.M., personally, and by John A. Fiorenza, attorney for Dr. Feitelberg, and by Gilbert C. Lubcke, attorney for the Department of Regulation and Licensing, Division of Enforcement. Based upon the Stipulation of the parties, the Wisconsin Medical Examining Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Herbert J. Feitelberg, D.P.M., Brown Deer Foot Clinic, 3900 W. Brown Deer Road, Brown Deer, Wisconsin 53209, was born on 9/4/41 and has been licensed and currently registered to practice podiatry in the state of Wisconsin since 6/28/76, license #392.



2. On 1/5/90, J.L., the patient herein, presented at Dr. Feitelberg's office complaining of pain in his toes. The patient was born on 1/16/24 and was an insulin dependent diabetic with onset dating back to 1949.

3. On 1/5/90, Dr. Feitelberg diagnosed an infection in the second toe of the patient's left foot and under the nail and in adjoining tissue on the patient's left great toe. Dr. Feitelberg incised and drained the infected area and prescribed 40 Keflex 500 mg. with no refills.

4. The patient returned to Dr. Feitelberg's office on 1/9/90. His condition appeared to be improved with no drainage from the great toe or the second toe of the left foot. Dr. Feitelberg prescribed Trental and directed the patient to finish taking the Keflex which he had previously prescribed.

5. The patient returned to Dr. Feitelberg's office on 1/19/90 and again on 1/29/90. On 1/29/90, there was some drainage from the infected area on the patient's left great toe with redness on both the great toe and the second toe of the patient's left foot. Dr. Feitelberg incised and drained the infected area of the left great toe.

6. The patient returned to Dr. Feitelberg's office on 2/19/90 with an ulceration on the tip of the second toe as well as on the tip of the great toe of the left foot. Both areas were debrided. There was also a blackened area on the dorsum of the great toenail bed of the left foot. Dr. Feitelberg directed the patient to continue with betadine soaks and return in one month. If the foot did not look right, Dr. Feitelberg directed the patient to return as soon as possible.

7. The patient returned to Dr. Feitelberg's office on 3/19/90 and was again examined by Dr. Feitelberg for the ulcers on the great and second toes of his left foot. The patient's legs appeared to be better in color on this date and he reported he could walk farther without pain. Dr. Feitelberg debrided some of the tissue on the edges of the blackened area of the great toe and gave him samples and a prescription for more Trental.

8. The patient returned to Dr. Feitelberg's office on 3/22/90 with drainage from the infected area of the great toe. Dr. Feitelberg prescribed 20 Cipro 750 mg. with no refills.

9. The patient returned to Dr. Feitelberg's office on 4/5/90. Dr. Feitelberg observed that the infected area was much less red and the skin lines were becoming more evident. Dr. Feitelberg prescribed 30 Penicillin G, 200,000 units, and authorized three refills.

10. The types of organisms present with the infection that the patient had could be resistant to Penicillin G.

11. The patient returned to Dr. Feitelberg's office on 4/19/90, 5/3/90, and 5/29/90. On 5/3/90, a small amount of odor from the infected area was present. On 5/29/90, the great toe of the patient's left foot was throbbing.

12. Over the period of time Dr. Feitelberg was providing podiatric care for the patient, he did not obtain a vascular consult, obtain a culture and sensitivity studies of the infected areas or take x-rays of the patient's left foot and toes.

13. The patient, following his last appointment with Dr. Feitelberg on 5/29/90, sought medical advice from his regular physician, Richard D. Fritz, M.D., who referred him to a general and vascular surgeon, Lyle G. Henry, M.D. Dr. Henry hospitalized the patient at Columbia Hospital on 6/22/90, performed vascular studies and ultimately amputated the patient's left great toe.

14. Dr. Feitelberg's conduct in providing podiatric care for the patient from 1/5/90 through 5/29/90 fell below the minimum standards of competence established in the profession in the following respects:

a. Dr. Feitelberg failed to culture the lesions on the patient's great toe and second toe of his left foot.

b. Dr. Feitelberg prescribed Penicillin G without the benefit of a culture to treat an infection which could have been the result of organisms that were resistant to Penicillin G.

c. Dr. Feitelberg failed to obtain a vascular consult to assess the patient's peripheral vascular circulatory status.

d. Dr. Feitelberg failed to take an x-ray to determine if the infection present in the patient's great toe and second toe of his left foot had invaded the bone.

15. Dr. Feitelberg's conduct created the following unacceptable risks for the patient:

a. Dr. Feitelberg's failure to obtain cultures of the infected areas and his decision to prescribe Penicillin G created the unacceptable risks that the organisms involved would be resistant to the antibiotics prescribed by Dr. Feitelberg and that the infection would persist, worsen and spread to other tissues not previously infected.

b. Dr. Feitelberg's failure to take x-rays of the patient's left foot and toes created the unacceptable risk that the infection had invaded the bone and would go undetected and, therefore, that appropriate treatment would not be administered to address the infection in the bone.

c. Dr. Feitelberg's failure to obtain a vascular consult created the unacceptable risks that the patient would be denied appropriate treatment either in the form of a surgical procedure to restore adequate circulation to the foot or a timely and appropriate decision concerning an amputation.

16. A minimally competent podiatrist, to avoid or minimize the unacceptable risks, would have:
- a. Cultured the infected lesions on or before 3/22/90.
 - b. Obtained x-rays of the patient's left foot and toes on or before 3/22/90 to determine if the infection had invaded the bone.
 - c. Obtained a vascular consult on or before 4/5/90, to assess the patient's peripheral vascular circulatory status.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction in this proceeding pursuant to sec. 448.02, Stats.
2. The Wisconsin Medical Examining Board has the authority to resolve this disciplinary proceeding by Stipulation without an evidentiary hearing pursuant to sec. 227.44(5), Stats.
3. Dr. Feitelberg's conduct as set forth in the Findings of Fact was unprofessional conduct contrary to sec. 448.02(3), Stats. and Wis. Admin. Code sec. MED 10.02(2)(h) in that he engaged in conduct which tended to constitute a danger to the health, welfare and safety of a patient.
4. The Wisconsin Medical Examining Board has the authority pursuant to sec. 440.22, Stats. to assess the costs of this proceeding against Dr. Feitelberg,

ORDER

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

IT IS FURTHER ORDERED that Herbert J. Feitelberg, D.P.M. is formally REPRIMANDED.

IT IS FURTHER ORDERED that Herbert J. Feitelberg's license to practice podiatry in the state of Wisconsin, license #392, is limited as follows:

- a. Dr. Feitelberg will participate in and satisfactorily complete an educational program directed at the diagnosis and treatment of peripheral vascular disease, the diagnosis and treatment of infectious diseases of the foot and current antibiotic therapy. This program will be developed by and administered through the University of Wisconsin School of Medicine, Continuing Medical Education Program, under the direction and

supervision of Thomas C. Meyer, M.D. This educational program will have an evaluation component, a home study educational component and a clinical component.

b. Dr. Feitelberg will commence an initial assessment and evaluation of his knowledge and skills in the diagnosis and treatment of peripheral vascular disease, the diagnosis and treatment of infectious diseases of the foot and current antibiotic therapy within sixty days of the date of this Final Decision and Order. The purpose for this initial assessment and evaluation is to assist the University of Wisconsin School of Medicine, Continuing Medical Education Program and Dr. Thomas C. Meyer in developing the home study educational component and the clinical component of the educational program.

c. After the initial assessment and evaluation, Dr. Thomas C. Meyer will submit to the Wisconsin Medical Examining Board for approval a specific proposal for a home study educational program and a clinical program. If the University of Wisconsin School of Medicine, Continuing Medical Education Program and Dr. Thomas C. Meyer are unable to develop a home study educational program and a clinical program adequate to address the results of the initial assessment and evaluation, Dr. Thomas C. Meyer will notify the Wisconsin Medical Examining Board and the matter will be returned to the Division of Enforcement for further proceedings.

d. Dr. Feitelberg will commence the educational program within thirty days of the Wisconsin Medical Examining Board's approval of the program, subject to the availability of Dr. Thomas C. Meyer.

e. Dr. Feitelberg will take and pass oral or written evaluations administered over the course of the home study education program and the clinical program.

f. Dr. Feitelberg will complete the educational program and all written and oral evaluations conducted in conjunction with this educational program within one year of commencement of the educational program.

g. At the conclusion of the home study educational component and the clinical component, Dr. Thomas C. Meyer will report to the Wisconsin Medical Examining Board on Dr. Feitelberg's performance in these programs and, if accomplished, will certify to the Wisconsin Medical Examining Board satisfactory completion of the home study educational component, the clinical component and the written and oral evaluations.

h. After Dr. Thomas C. Meyer has certified satisfactory completion of the home study educational component, the clinical component and the written and oral evaluations, Dr. Feitelberg will take and pass an oral examination administered by the Podiatry Examining Council. This examination will be conducted on the date, time and location as the Podiatry Examining Council shall determine.

IT IS FURTHER ORDERED that Dr. Feitelberg will be responsible for all of the costs of developing and administering the initial assessment and evaluation, the home study educational component and the clinical component, and for the cost of conducting the written and oral evaluations. Payment of the costs shall be made in accordance with the payment schedule established by the University of Wisconsin School of Medicine, Continuing Medical Education Program.

IT IS FURTHER ORDERED that Dr. Feitelberg will appear before the Wisconsin Medical Examining Board after he has completed the initial assessment and evaluation, the home study educational component, the clinical component, the written and oral evaluations and the oral examination conducted by the Podiatry Examining Council to establish that he has complied with all of the terms of this Final Decision and Order.

IT IS FURTHER ORDERED that Dr. Feitelberg will pay the costs of this disciplinary proceeding in the amount of \$1,478.37 to the Department of Regulation and Licensing, 1400 E. Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935 within ninety days of the date of this Final Decision and Order.

IT IS FURTHER ORDERED that pursuant to sec. 448.02(4), Stats., if the Wisconsin Medical Examining Board determines that there is probable cause to believe that Dr. Feitelberg has violated the terms of this Final Decision and Order of the Wisconsin Medical Examining Board, the Board may order that the license of Dr. Feitelberg to practice podiatry in the state of Wisconsin be summarily suspended pending investigation of the alleged violation.

The rights of a party aggrieved by this Final Decision and Order to petition the Wisconsin Medical Examining Board for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin, this 28th day of March 1996.

WISCONSIN MEDICAL EXAMINING BOARD



Walter R. Schwartz, Secretary

WRS/GCL:deh
DOEATTY-CLG1676

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

STIPULATION
(91 MED 172)

HERBERT J. FEITELBERG, D.P.M.,
RESPONDENT.

It is hereby stipulated between Herbert J. Feitelberg, D.P.M., personally, and by his attorney, John A. Fiorenza, and Gilbert C. Lubcke, attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. Herbert J. Feitelberg, D.P.M., Brown Deer Foot Clinic, 3900 W Brown Deer Road, Brown Deer, Wisconsin 53209, was born on 9/4/41 and has been licensed and currently registered to practice podiatry in the state of Wisconsin since 6/28/76, license #392.

2. A formal Complaint and disciplinary proceeding are pending before the Wisconsin Medical Examining Board.

3. Dr. Feitelberg neither admits nor denies the allegations of the Complaint, but permits the Wisconsin Medical Examining Board to enter the Final Decision and Order, a copy of which is attached hereto and incorporated herein.

4. Dr. Feitelberg agrees to pay \$1,478.37 in costs to the Department of Regulation and Licensing, 1400 E. Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935 within 90 days of the date of the Final Decision and Order.

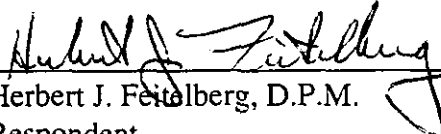
5. Dr. Feitelberg understands that by signing this Stipulation, he freely, voluntarily and knowingly waives his rights, including the right to a hearing on the allegations against him, the right to confront and cross-examine witnesses against him, the right to call witnesses on his behalf and to compel their attendance by subpoena, the right to testify on his own behalf, 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 and Order, the right to petition for re-hearing, the right to judicial review, and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

6. The parties to this Stipulation and the Board Advisors, Michael Mehr, M.D. and Mark Julsrud, D.P.M., may appear before the Wisconsin Medical Examining Board in support of this Stipulation. Any appearance by any party pursuant to this paragraph shall be preceded by proper and timely notice to all parties to this proceeding.

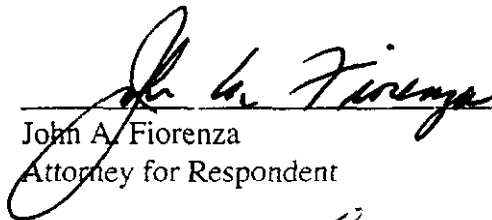
7. This Stipulation is subject to approval by the Board Advisors, Michael Mehr, M.D. and Mark Julsrud, D.P.M., and acceptance by the Wisconsin Medical Examining Board.

8. If any term of this Stipulation or the incorporated Final Decision and Order is not approved by the Board Advisors and accepted by the Wisconsin Medical Examining Board, then no term of this Stipulation or Final Decision and Order will be binding in any manner on any party, and the matter will be returned to the Division of Enforcement for further proceedings.

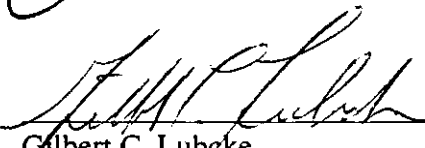
Dated: 1/30/96


Herbert J. Feitelberg, D.P.M.
Respondent

Dated: Jan. 30, 1996


John A. Fiorenza
Attorney for Respondent

Dated: 2/1/96


Gilbert C. Lubeke
Atty. for the Dept. of Regulation and Licensing
Division of Enforcement

GL:deh
DOEATTY-1675

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:

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

April 2, 1996

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 as possible 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 the petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which the 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.