

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE WISCONSIN MEDICAL EXAMINING BOARD

IN THE MATTER OF THE APPLICATION
FOR A LICENSE TO PRACTICE
MEDICINE AND SURGERY OF

WILLIAM A. WAGNER, M D
APPLICANT

96 MED 373

LS 980225 BMED

FINAL DECISION AND ORDER

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

William A. Wagner, M.D
502 S. West St.
Waupun, WI 53963

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 conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Medical Examining 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. William A. Wagner, M.D., Applicant, date of birth September 20, 1925, was licensed by the Wisconsin Medical Examining Board to practice medicine and surgery in the state of Wisconsin pursuant to license number 15827, which was granted October 14, 1966.
2. In May of 1986, there were two separate investigations of Dr. Wagner open in the Division of Enforcement. Investigation 86 MED 002 was based on allegations that Dr. Wagner was practicing medicine and surgery in the state of Wisconsin without having paid his annual assessment to the Patients Compensation Fund. The other investigation, 86 MED 018, was based on allegations that Dr. Wagner had provided substandard care to patients.

3. On May 20, 1986 the Board authorized the issuance of a disciplinary complaint against Dr. Wagner in file 86 MED 002. The disciplinary complaint alleged that Dr. Wagner had practiced medicine without paying into the Fund as required by law and alleged that he made a false statement in practice when he submitted an affidavit claiming an exemption from the Fund requirement. The disciplinary complaint did not relate to investigation 86 MED 018.

4. Dr. Wagner filed a June 5, 1986 answer to the disciplinary complaint, denying the allegations.

5. On August 6, 1986, pursuant to stipulation of the parties, the Board entered a final decision and order resolving the pending disciplinary proceeding, based on 86 MED 002. The Board found that Dr. Wagner had practiced during a time the he had not paid into the Patients Compensation Fund in violation of the statutes and accepted the surrender of Dr. Wagner's license to practice medicine. The Board also ordered, among other things, that if Dr. Wagner were ever to reapply for licensure that he would have to take and pass all examinations then required for original licensure.

6. On August 6, 1986 shortly after the order was issued accepting the surrender of Dr. Wagner's license, the Board closed investigation 96 MED 018 based upon the Board no longer having jurisdiction over the allegations.

7. On October 31, 1986, Dr. Wagner wrote to the Board and asked that his license be reinstated, with waiver of the examination requirement which was contained in the Board's order accepting the surrender of Dr. Wagner's license. The Board denied that petition by Order dated December 11, 1986.

8. Dr. Wagner requested a hearing on that denial and a notice setting the matter for hearing was issued March 30, 1987.

9. The hearing on the denial was stayed so that Dr. Wagner could make a request to the Board for a more limited license. By letter of June 16, 1987, Dr. Wagner, by attorney Steven C. Zach, petitioned the Board for reinstatement of Dr. Wagner's license to permit him to engage in limited practice at the Avenue Counseling Center in Fond du Lac, Wisconsin and with the Manatee County Florida, Health Department. The Board denied that petition by Order dated July 14, 1987.

10. On September 17, 1987, a hearing was held on the Board's denials of Dr. Wagner's petitions for reinstatement.

11. The hearing examiner issued his proposed decision on March 29, 1988 and recommended that Dr. Wagner's license be reinstated without his passing the examinations. The proposed decision opined that because the August 6, 1986 order of the Board did not include any findings of inappropriate patient care by Dr. Wagner that the portion of the order requiring Dr. Wagner to take and pass all examinations required for original licensure was without legal force as there was a lack of evidence in the record to support that part of the order.

12. The Board issued its final decision and order on April 22, 1988. In that decision, the Board varied the proposed decision and denied Dr. Wagner's request that the Board waive the requirement that he take and pass all examinations required for original licensure, prior to being relicensed.

13. Dr. Wagner filed a petition for judicial review of the Board's decision on June 3, 1988. Although required by statute, no notice of appearance, statement of position or certified copy of the record of the administrative proceedings was filed on behalf of the Board. Because of this failure, Dr. Wagner moved for a default judgment against the Board.

14. A notice of appearance on behalf of the Board was filed on February 6, 1990 which indicated that the petition for judicial review had been received at the Board office, but was inadvertently misplaced. By memorandum decision of April 23, 1990 the circuit court granted Dr. Wagner's motion for a default judgment against the Board and ordered that his license be reinstated for the limited purposes he had sought.

15. The Board appealed the circuit court decision to the court of appeals and on December 23, 1992, the court of appeals issued its decision reversing the circuit court's decision and remanding the case back to the circuit court to decide the matter on its merits.

16. Dr. Wagner petitioned the Wisconsin Supreme Court to review the court of appeals' decision and on March 11, 1993 the supreme court agreed to review the court of appeals decision.

17. On February 23, 1994, the supreme court issued its decision affirming the court of appeals decision and remanding the case to the circuit court for its review of the record and consideration of Dr. Wagner's petition for review of the Board's decision on its merits.

18. Upon remand to the circuit court, briefs were filed and oral argument was held on January 20, 1995. On that date, the court issued an oral ruling, which resulted in a written order dated May 16, 1995. The order stated that the Board's explanation of variance did not adequately support or explain the Board's basis for continuing to require that Dr. Wagner pass full examination before having his license restored. The court in rendering the oral decision suggested that the Board might find it necessary to reopen the evidentiary hearing in order to substantiate a basis for its decision.

19. There were then discussions between Dr. Wagner's attorney and the Board's legal counsel to determine whether the matter could be resolved by stipulation and if not how it would go forward procedurally.

20. On October 31, 1995, the Board's legal counsel wrote to the Division of Enforcement and asked that a prosecutor be assigned and an administrative law judge also be assigned to conduct whatever evidentiary hearing was necessary. On November 26, 1996 a prosecutor was assigned and on December 3, 1996 the Division opened file 96 MED 373 on the matter.

21. Since August 6, 1986, Dr. Wagner has not had a current registration of his license to practice medicine and has not practiced medicine and surgery. Wisconsin Administrative Code § MED 14.06(b) provides:

“If the licensee applies for renewal of the license more than 5 years after its expiration, the board shall make such inquiry as it finds necessary to determine whether the applicant is competent to practice under the license in this state, and shall impose any reasonable conditions on reinstatement of the license, including oral examination, as the board deems appropriate. All applicants under this paragraph shall be required to pass the open book examination on statutes and rules, which is the same examination given to initial applicants.”

22. The Special Purpose Examination (SPEX) of the Federation of State Medical Boards of the United States is a high-quality, objective, and standardized cognitive examination used as a tool in the assessment of current knowledge requisite for general, undifferentiated medical practice by physicians who hold or who have held valid, unrestricted licenses in a United States or Canadian jurisdiction.

23. In compromise of the pending matter, Dr. Wagner has modified his request for the reinstatement of his license, as follows:

- a. Dr. Wagner desires the reinstatement of his license to practice medicine and surgery in the state of Wisconsin effective the date of this order.
- b. Dr. Wagner agrees his registration shall not be renewed at this time.
- c. Dr. Wagner agrees that if he ever seeks to renew the registration of his license to practice medicine and surgery in the state of Wisconsin, he shall first take and pass the Special Purpose Examination(SPEX) of the Federation of State Medical Boards of the United States and shall also take and pass the open book examination on statutes and rules, which is the same examination given to initial applicants.
- d. Dr. Wagner understands that to legally practice medicine and surgery in the state of Wisconsin he must be both licensed and registered, and that without registration he will be unable to practice in Wisconsin under his license.

24. In compromise of the pending matter, the Division of Enforcement has agreed to recommend that Dr. Wagner's license be reinstated on the terms and conditions set out in paragraph 23.

CONCLUSIONS OF LAW

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

2. The Wisconsin Medical Examining Board has authority to enter into this stipulated resolution of this matter pursuant to § 227.44(5) , Stats.


ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that

1. The license to practice medicine and surgery in the state of Wisconsin of William A. Wagner is reinstated, effective immediately.
2. The registration of William A. Wagner's license to practice medicine and surgery in the state of Wisconsin shall not be renewed at this time.
3. If William A. Wagner, M.D. shall ever apply to renew the registration of his license to practice medicine and surgery in the state of Wisconsin, he shall first take and pass the Special Purpose Examination(SPEX) of the Federation of State Medical Boards of the United States and shall also take and pass the open book examination on statutes and rules, which is the same examination given to initial applicants.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin this 25th day of February, 1998.



Wanda Roever
Secretary
Medical Examining Board

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STATE OF WISCONSIN
BEFORE THE WISCONSIN MEDICAL EXAMINING BOARD

IN THE MATTER OF THE APPLICATION :
FOR A LICENSE TO PRACTICE :
MEDICINE AND SURGERY OF :

96 MED 373

WILLIAM A. WAGNER, M.D. :
APPLICANT. :

LS980225MED

STIPULATION

It is hereby stipulated and agreed, by and between , William A. Wagner, M.D., Applicant; Steven C. Zach of Boardman, Suhr, Curry & Field, attorneys for the Applicant; and, John R. Zwieg, attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:


1. This Stipulation is entered into in attempted resolution of a pending proceeding on Applicant's request for reinstatement of his license to practice medicine and surgery, case number LS 8703301 MED and Division of Enforcement file 96 MED 373.

2. Applicant agrees to the adoption of the attached Final Decision and Order by the 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. Applicant waives all rights to any appeal of the Board's order, if adopted in the form as attached.

4. 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 have an administrative law judge assigned. 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.

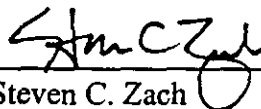
5. The parties to this stipulation agree that the Applicant, Applicant's attorney, the member of the Board appointed as the advisor in this matter, and an attorney for the Division of Enforcement may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

Dated this 22 day of January, 1998.



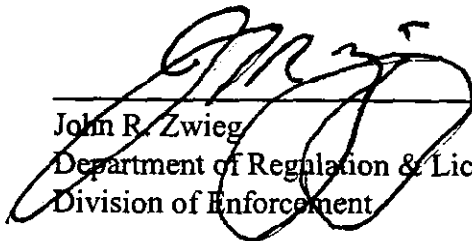
William A. Wagner, M.D.
Applicant

Dated this 28th day of January, 1998.



Steven C. Zach
Boardman, Suhr, Curry & Field
Attorneys for Applicant

Dated this 6th day of January, 1998.



John R. Zwieg
Department of Regulation & Licensing
Division of Enforcement

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE MEDICAL EXAMINING BOARD

In the Matter of the Application for a License to Practice Medicine and Surgery of

William A. Wagner, M.D.,

AFFIDAVIT OF MAILING

Applicant.

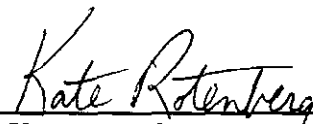
STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On March 3, 1998, I served the Final Decision and Order dated February 25, 1998, LS9802251MED, upon the Applicant William A. Wagner's attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Applicant's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 158 804.

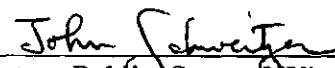
Steven C. Zach, Attorney
One S. Pinckney Street, Suite 410
P.O. Box 927
Madison WI 53701-0927



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 3rd day of March, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: STEVEN C ZACH ATTY

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 3/3/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

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

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

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 section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935