

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD
IN THE MATTER OF THE LICENSE OF :

RICHARD M. COWIN, D.P.M..
RESPONDENT

FINAL DECISION AND ORDER
Case # LS 9806241MED

Division of Enforcement Cases # 93 MED 106; 94 MED 129; 94 MED 410

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

Richard M. Cowin, D.P.M.
9151 Point Cypress Drive
Orlando, Florida 3283

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

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

The Wisconsin Medical Examining Board has received a Stipulation submitted by the parties to the above-captioned matter. The Stipulation, a copy of which is attached hereto, was executed by Richard M. Cowin, D.P.M., personally, and by his attorney, Paul Gagliardi, and by Claudia Berry Miran, 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. Richard M. Cowin, D.P.M., 9151 Point Cypress Drive, Orlando, Florida, was born on June 11, 1955, and has been licensed to practice podiatry in the state of Wisconsin since June 19, 1986, license #556. He is currently not registered.
2. The Department of Regulation and Licensing has received Claims Paid Reports for malpractice actions involving Dr. Cowin. These reports form the basis for the investigative files 93 MED 106, 94 MED 129, and 94 MED 410. Dr. Cowin contests any allegations of professional misconduct relative to these investigations.
3. Dr. Cowin is currently licensed to practice podiatry in Florida.
4. Dr. Cowin, in consideration of his retirement from the practice of podiatry in the State of Wisconsin, has agreed that he will not register in Wisconsin at any time in the future without meeting the considerations set forth in the Order below.

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CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction in this matter pursuant to sec. 448.02(3)(c), Stats.

2. The Wisconsin Medical Examining Board has the authority to resolve this matter by stipulation without an evidentiary hearing pursuant to sec. 227.44(5), Stats.

ORDER

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

IT IS FURTHER ORDERED that Dr. Cowin shall not practice or attempt to practice podiatry in the State of Wisconsin when not currently registered.

IT IS FURTHER ORDERED that in the event that Dr. Cowin elects to re-register, he will

- Notify the Medical Examining Board, in writing, of his intention to re-register;
- Take and pass any examination(s) the Medical Examining Board deems appropriate at that time. The examination(s) are to be taken and passed within 1 year of the Board Order requiring said examination(s);
- Be in compliance with this Final Decision and Order.

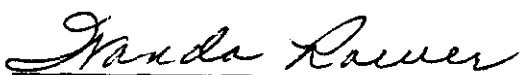
IT IS FURTHER ORDERED that the pending investigations, 93 MED 106, 94 MED 129 and 94 MED 410, shall be, and hereby are, closed without further proceedings.

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. Cowin 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. Cowin 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 24 day of June, 1998

WISCONSIN MEDICAL EXAMINING BOARD



Wanda Roever, Secretary

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Dept. of Regulation & Licensing
Division of Enforcement

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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD
IN THE MATTER OF THE LICENSE OF

RICHARD M. COWIN, D.P.M.,
RESPONDENT

STIPULATION

Case # LS9806241MED

Division of Enforcement Cases # 93 MED 106; 94 MED 129; 94 MED 410

It is hereby stipulated between Richard M. Cowin, D.P.M., personally and by his attorney, Paul Gagliardi, and Claudia Berry Miran, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. Richard M. Cowin, D.P.M., 9151 Point Cypress Drive, Orlando, Florida, was born on June 11, 1955, and has been licensed and registered to practice podiatry in the state of Wisconsin since June 19, 1986, license #556.

2. These investigations, 93 MED 106, 94 MED 129 and 94 MED 410, are pending before the Wisconsin Medical Examining Board. Dr. Cowin maintains that he did not engage in any wrongdoing in his care of these patients.

3. Dr. Cowin consents to the resolution of these investigations by stipulation and entry of a formal Decision and Order, a copy of which is attached hereto and incorporated herein, without the issuance of a formal complaint.

4. Dr. Cowin is aware of his right to seek legal representation and has had an opportunity to obtain legal advice prior to signing this stipulation.

5. Dr. Cowin is aware of and understands each of 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 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.

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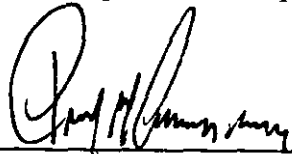
6. Dr. Cowin voluntarily and knowingly waives the rights enumerated in paragraph 5 above.

7. The parties waive all costs of these proceedings

8. The stipulation and the proposed Final Decision and Order shall be presented directly to the Medical Examining Board for its consideration and adoption.

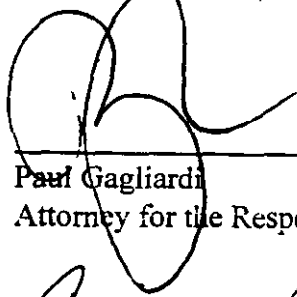
9. This Stipulation is subject to approval by the Case Advisor and by the Attorney Supervisor in the Division of Enforcement, and acceptance by the Wisconsin Medical Examining Board. If any term of this Stipulation or the incorporated Final Decision and Order is not approved by the Case Advisor and by the Attorney Supervisor, and accepted by the board, then no term of this Stipulation or the Final Decision and Order will be binding in any matter on any party, 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.

10. The parties to the Stipulation agree that the attorney for the Division of Enforcement and the Case Advisor, James Chambers, M.D., may appear before the Wisconsin Medical Examining Board for the purpose of speaking in favor of this agreement and answering questions that the members of the board may have in connection with their deliberation on the Stipulation. Any appearance by any party pursuant to this paragraph shall be preceded by proper and timely notice to all parties to this proceeding.



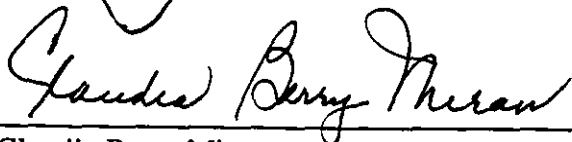
Richard M. Cowin, D.P.M.

May 18, 1998
Date



Paul Gagliardi
Attorney for the Respondent

5-26-98
Date



Claudia Berry Miran
Attorney
Division of Enforcement

6/11/98
Date

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

In the Matter of the License of

Richard M. Cowin, D.P.M.,

AFFIDAVIT OF MAILING

Respondent.

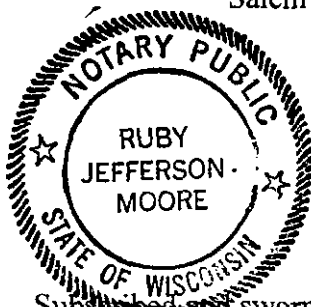
STATE OF WISCONSIN)
)
COUNTY OF DANE)

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 June 26, 1998, I served the Final Decision and Order dated June 24, 1998, LS9806241MED, upon the Respondent Richard M. Cowin'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 Respondent'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 Z 233 819 526.

Paul Gagliardi, Attorney
24414 75th Street
Salem WI 53168



Kate Rotenberg
Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 26th day of June, 1998.

Ruby Jefferson-Moore
Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: PAUL GAGLIARDI 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 6/26/98. 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

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) (c). 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 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. . . .

(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.