

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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

JAMES TESTOR, M.D.,
RESPONDENT

FINAL DECISION & ORDER
Case # LS9806244MED

Division of Enforcement Case # 97 MED 68

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

James Testor, M.D.
928 W. Mark St.
Winona, MN 55987

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

Department of Regulation and Licensing
Division of Enforcement
1400 East 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 James Testor, M.D., personally, 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. James Testor, M.D., 928 W. Mark St., Winona, MN 55987, was born on May 22, 1925, and has been licensed to practice medicine in the state of Wisconsin since April 22, 1963, license #14596. Dr. Testor's registration expired on October 31, 1997.

2. Dr. Testor specializes in radiology.

3. An investigation, 97 MED 68, is pending before the Wisconsin Medical Examining Board. The investigation is the result of notification by the National Practitioner Data Bank and the Wisconsin Commissioner of Insurance of a malpractice settlement. The report alleges that Dr. Testor's failure to diagnose intrauterine growth retardation through interpretation of ultrasounds resulted in death of the baby in utero. Dr. Testor contests any allegation of professional misconduct relating to this investigation.

4. Dr. Testor has retired from the practice of medicine and surgery.
5. Dr. Testor is not currently licensed to practice medicine and surgery in Minnesota. He does not intend to practice in Minnesota.
6. Dr. Testor, in consideration of his retirement from the practice of medicine and surgery in the state of Wisconsin, has agreed that he will not register or attempt to register at any time in the future.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining board has jurisdiction in this matter pursuant to § 448.02, Stats.
2. The Wisconsin Medical Examining Board has the authority to resolve this matter by stipulation without an evidentiary hearing pursuant to § 227.44(5), Stats.

ORDER

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

IT IS FURTHER ORDERED that Dr. Testor shall not register or attempt to register at any time in the future.

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

IT IS FURTHER ORDERED that the pending investigation, 97 MED 68, shall be, and hereby is, closed without further proceedings.

IT IS FURTHER ORDERED that pursuant to § 448.02(4), Stats., if the Wisconsin Medical Examining Board determines that there is probable cause to believe that Dr. Testor 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. Testor to practice medicine and surgery 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
Wanda Roever, Secretary

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

JAMES TESTOR, M.D.,
RESPONDENT

STIPULATION

Case # LS9806244MED

Division of Enforcement Case # 97 MED 68

It is hereby stipulated between James Testor, M.D., personally, and Claudia Berry Miran, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. James Testor, M.D., 928 W. Mark St., Winona, MN 55987, was born on May 22, 1925, and has been licensed to practice medicine in the state of Wisconsin since April 22, 1963, license #14596. Dr. Testor's registration expired on October 31, 1997.

2. An investigation, 97 MED 68, is pending before the Wisconsin Medical Examining Board. The investigation is the result of notification by the National Practitioner Data Bank and the Wisconsin Commissioner of Insurance of a malpractice settlement. The report alleges that Dr. Testor's failure to diagnose intrauterine growth retardation through interpretation of ultrasounds resulted in death of the baby in utero.

3. Dr. Testor was licensed to practice medicine and surgery in the state of Minnesota. He contacted the Minnesota Board of Medical Practice and requested not to renew his Minnesota license, which expired May 31, 1997, and has retired as a physician in the state of Minnesota. Dr. Testor does not intend to practice medicine and surgery in any state.

4. Dr. Testor, in consideration of his retirement from the practice of medicine and surgery in the state of Wisconsin, agrees he will not register or attempt to register at any time in the future.

5. Dr. Testor consents to the resolution of this investigation by stipulation and entry of a Final Decision and Order, a copy of which is attached hereto and incorporated herein, without the issuance of a formal complaint.

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

7. Dr. Testor 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 his behalf and to compel their attendance by subpoena;
- The right to testify himself;
- The right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- The right to petition for rehearing; and
- All other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

8. Dr. Testor voluntarily and knowingly waives the rights enumerated in paragraph 7 above.

9. The parties waive all costs of these proceedings.

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

11. 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.

12. The parties to the Stipulation and the Case Advisor, Walter R. Schwartz, M.D., may appear before the Wisconsin Medical Examining Board for the purpose of speaking in favor of the 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.

James Testor MD
James Testor, M.D.

6-18-98
Date

Claudia Berry Miran
Claudia Berry Miran
Attorney for the Department of Regulation & Licensing
Division of Enforcement

6/22/98
Date

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

In the Matter of the License of

James Testor, M.D.,

AFFIDAVIT OF MAILING

Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

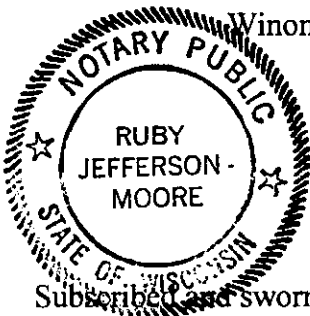
I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

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, LS9806244MED, upon the Respondent James Testor, M.D. by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent 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 233 819 529.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

James Testor, M.D.
928 W. Mark Street
Winona MN 55987



Subscribed and sworn to before me

this 26th day of June, 1998.

Ruby Jefferson-Moore
Notary Public, State of Wisconsin

My commission is permanent.

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

NOTICE OF RIGHTS OF APPEAL

TO: JAMES TESTOR, M.D.

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