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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MUSTAFA K. DIKTAS, M.D., Case No. LS9707251MED
Respondent

ORDER DENYING PETITION

A closed hearing in the above-captioned matter was held on February 16 and 17, 1998, before Administrative Law Judge Robert T. Ganch. Dr. Diktas appeared in person and by his attorney, Matthew Ricci. The Division of Enforcement appeared by attorney Gilbert C. Lubcke. The matter was subsequently reassigned to Administrative law judge Jacquelynn Rothstein in January of 1999.

The administrative law judge filed her Proposed Decision on June 14, 1999. On July 5, 1999, respondent, by Attorney Ricci, filed his objections to the Proposed decision, and Attorney Lubcke filed his response on July 15, 1999. Mr. Ricci and Mr. Lubcke appeared before the board for oral arguments on respondent's objections on August 25, 1999, and the board considered the matter on that date.

The board filed its Final Decision and Order in the matter on August 31, 1999. A certified mail receipt and affidavit of service establish that the Final Decision and Order was served on Dr. Diktas on September 9, 1999, with Dr. Diktas actually receiving the Final decision and Order on September 15, 1999. A copy of the Final Decision and Order was served on Dr. Diktas' attorney of record, Mr. Ricci, on September 14, 1999, and the certified mail receipt establishes that Mr. Ricci also actually received the Final Decision and Order on September 15, 1999.

By letter dated October 5, 1999, Dr. Diktas petitioned for what was variously characterized as "an appeal with a jury trial," and "a reopening of the case for judicial review," and the board construes this as a petition for rehearing.

As stated above, the Final decision and Order was sent to Dr. Diktas by certified mail, return receipt requested, on September 9, 1999, and on Dr. Diktas' attorney by certified mail, return receipt requested, on September 14, 1999. Service of the Final Decision and Order was complete upon mailing regardless of the date received by the respondent or the respondent's attorney of record. See, In re Proposed Incorporation of City of Pewaukee, 72 Wis.2d 593, 241 N.W.2d 603 (1976), where the court said:

"The crucial question of what constitutes 'service of the decision of the agency' is answered by sec. 227.14, Stats., which provides:

" 'Service of decision. Every decision when made, signed and filed, shall be served forthwith by personal delivery or mailing of a copy to each party to the proceedings or to his attorney of record.'

"We conclude under the clear provisions of these statutes that the 30-day time period commences from the date the decision of the agency is mailed to all the parties. 72 Wis.2d 593, at 596.

Under sec. 227.49, Stats., a petition for rehearing must be filed with all parties of record within 20 days following service of the Final decision and Order, and filing is not complete until actually received by the board. See sec. RL 2.08, Code. See also, Wisconsin Department of Revenue v. Hogan, 198 Wis.2d 792, 543 N.W.2d 825 (Ct. App. 1995).

Because the Final Decision and Order was served on Dr. Diktas on September 9, 1999, the last day for filing a petition for rehearing was September 29, 1999. Dr. Diktas' letter was sent by express mail at 12:14 p.m. on October 7, 1999, and was received by the Department of Regulation & Licensing at 7:30 a.m. on October 8, 1999. The petition was therefore not filed on a timely basis. And even if it is assumed that service on respondent was not complete until the Final decision and Order was served on his attorney of record, the petition was nonetheless not filed in time. The Order was served on Mr. Ricci on September 14, 1999, and the last day for filing the petition under that assumption would be October 4, 1999. Again, the petition was not received in the department until October 8, 1999. Respondent's petition was therefore not filed within the required 20 days, and it must be denied on that basis. Accordingly, it is ordered as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition of Mustafa K. Diktas, M.D. for a rehearing in this matter be, and hereby is, denied.

Dated at Madison, Wisconsin, this 8th day of November, 1999.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

by _____

Ronald E. Grossman, M.D.

Secretary