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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : FINAL DECISION
 : AND ORDER
DALE BUEGEL, MD, : LS0201021MED
RESPONDENT. :

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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

Dated this 24th day of July, 2002.

Darold Treffert
Chairperson
Board of Nursing

BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

PROPOSED DECISION

LS0201021MED

DALE M. BUEGEL, M.D.,

RESPONDENT.

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Dale M. Buegel, M.D.

6980 North Port Washington Road

Suite 202

Glendale, WI 53217

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

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on January 2, 2002. Dr. Buegel's Answer was filed on January 16, 2002. The hearing in this matter was held on March 27, 2002. Attorney Arthur Thexton appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. At least from January 17, 2002 to March 6, 2002, Attorney Michael J. Wirth, Peterson, Johnson & Murray, S.C., represented Dr. Buegel in this proceeding. Thereafter, Dr. Buegel appeared pro se. The transcript was filed on April 17, 2002.

Based upon the record herein, the Administrative Law Judge recommends that the Medical Examining Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Dale M. Buegel (d.o.b. 12/16/50), 6980 North Port Washington Road, Suite 202, Glendale, WI 53217, was at all time material to the Complaint filed in this matter a physician and surgeon licensed by the State of Wisconsin, license #21620, which was first granted on July 14, 1978.

2. Dr. Buegel is a physician with Board certification in adult psychiatry.

3. On September 7, 2000, the Medical Examining Board issued a Final Decision and Order in which it concluded that Dr. Buegel's conduct in failing to properly assess a patient's medical condition and document the results accordingly, constituted a violation of s. MED 10.02 (2) (h), Code and s. 448.02 (3) (b), Stats. In its Final Decision and Order, the Board limited Dr. Buegel license to practice medicine and surgery for an indefinite period of time as follows:

1. Respondent shall, no later than one year from the date of this Order, take and successfully complete:

(a) The 45-hour course in Proper Prescribing of Controlled Dangerous

Substances sponsored by Forensic and Educational Consultants of Margate, New Jersey, or an equivalent course approved in advance by the Board or its designee.

(b) An educational program established through the University of Wisconsin

Continuing Medical Education program (which may conduct any program through the Medical College of Wisconsin or another CME provider) in record keeping, or another similar program approved in advance by the Board or its designee.

(c) Respondent shall arrange for the course sponsors approved above to certify

to the Board the results of the course work upon completion and to release all records of his performance and attendance.

(d) Respondent shall be responsible for all costs associated with taking the course work required under this Order and shall pay the cost of any examination required for successful completion of the course work.

2. Respondent shall maintain patient health care records in his practice of medicine in accordance with the requirements set forth in s. Med 21.03, Wis. Adm. Code.

Respondent shall arrange for the review of his patient records by a physician satisfactory to the board for a period of six months. At the end of six months, respondent shall be responsible for submission to the board of a report by the reviewing physician setting forth the reviewing physician's opinion whether the records meet the minimum requirements of s. Med 21.03, Code.

3. Upon a showing by respondent of complete, successful and continuous compliance for a period of two (2) years with the conditions and limitations set forth in this Order, the Board may grant a petition by respondent for return to full licensure.

4. In its September 7, 2000 Final Decision and Order, the Board also ordered Dr. Buegel to pay one-half of the costs of the proceeding.

5. Dr. Buegel received a copy of the Board's September 7, 2000 Final Decision and Order no later than October 2, 2000.

6. Dr. Buegel has not completed any of the requirements contained in paragraphs 1 and 2 of the Board's Final Decision and Order dated September 7, 2000. He has not done any of the following:

(a) Taken or successfully completed the 45-hour course in Proper Prescribing of Controlled Dangerous Substances sponsored by Forensic and Educational Consultants of Margate, New Jersey, or an equivalent course approved in advance by the Board or its designee.

(b) Taken or successfully completed an educational program established through the University of Wisconsin Continuing Medical Education program (which may conduct any program through the Medical College of Wisconsin or another CME provider) in record keeping, or another similar program approved in advance by the Board or its designee.

(c) Arranged for the course sponsors approved above to certify to the Board the results of the course work upon completion and to release all records of his performance and attendance.

(d) Maintained his patient health care records in his practice of medicine in accordance with the requirements set forth in s. Med. 21.03, Wis. Adm. Code.

(e) Arranged for the review of his patient records by a physician satisfactory to the board for a period of six months.

(f) Arranged for submission to the board of a report, by the physician approved to review his patient records, setting forth the reviewing physician's opinion whether respondent's records meet the minimum requirements of s. Med 21.03, Code.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this matter pursuant to s. 448.02 (3) Wis. Stats., and s. MED 10.02 (2) Wis. Adm. Code.

2. Respondent's conduct, as described in Findings of Fact 6 herein, constitutes a violation of s. MED 10.02 (2) (b), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license (#21620) of Dale M. Buegel to practice medicine and surgery in the state of Wisconsin shall be, and hereby is, **SUSPENDED** for an **INDEFINITE PERIOD** of time.

IT IS FURTHER ORDERED that:

(1) Petition for Stay. Dr. Buegel may petition the Board at any time for a stay of the suspension of his license. In conjunction with such petition, Dr. Buegel shall submit

documentation satisfactory to the Board establishing that:

(a) He has enrolled in the 45-hour course in Proper Prescribing of Controlled Dangerous Substances sponsored by Forensic and Educational Consultants of Margate, New Jersey, or an equivalent course approved in advance by the

Board or its designee.

(b) He has enrolled in an educational program established through the University of Wisconsin Continuing Medical Education program (which may conduct any program through the Medical College of Wisconsin or another CME provider) in record keeping, or another similar program approved in advance by the Board or its designee.

(c) He has arranged for the course sponsors approved above to certify to the Board the results of the course work upon completion and to release all records of his performance and attendance.

(d) He will maintain the patient health care records in his practice of medicine in accordance with the requirements set forth in s. Med 21.03, Wis. Adm. Code.

(e) He has made arrangements for the review of his patient records by a physician satisfactory to the board for compliance with s. Med 21.03, for a period of 6 months.

(2) Board Action. Upon its determination that Dr. Buegel can safely and competently return to the active practice of medicine, the Board may stay the suspension for a period of three (3) months, conditioned upon compliance with the conditions and limitations set forth in paragraph (3).

(a) Dr. Buegel may apply for consecutive three (3) months extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed upon respondent's practice during the prior three (3) month period.

(b) Upon a showing by Dr. Buegel of complete, successful and continuous compliance for a period of one (1) year with the terms of paragraph (3), below, the Board may grant a petition by respondent for return of full licensure if it determines that he has complied with all of the requirements set forth in paragraphs 1 and 2 of the Board Order contained in its Final Decision and Order dated September 7, 2000.

(3) Conditions of Stay

(a) Dr. Buegel shall remain enrolled in the educational course work identified in paragraph (1) (a) and (b) above until successful completion of the course work. Upon completion of the course work, Dr. Buegel shall arrange for the course sponsors to certify to the Board the results of the course work and to release all records of his performance and attendance.

(b) Dr. Buegel shall submit satisfactory evidence to the Board that he has maintained the patient health care records in his practice of medicine in accordance with the requirements set forth in s. Med 21.03, Wis. Adm. Code.

(c) Dr. Buegel shall submit satisfactory evidence to the Board that the physician designated to review his patient records for 6 months for compliance with s. Med 21.03, Code has in fact commenced reviewing his patient records. At the end of 6 months, Dr. Buegel shall be responsible for submission to the board of a report by the reviewing physician setting forth the reviewing physician's opinion whether the records meet the minimum requirements of s. Med 21.03, Code.

(d) Dr. Buegel shall be responsible for all costs associated with taking the course work required under this Order and shall pay the cost of any examination required for successful completion of the course work.

(4) Petition for Modification of Terms: Respondent may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats.,

s. 227.01 (3) and 227.42.

(5) Department Monitor: The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions, and requesting additional monitoring and surveillance. The Department Monitor may be reached as follows:

Department Monitor

Department of Regulation & Licensing, Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

FAX (608) 266-2264

TEL. (608) 267-3817

(6) Costs: Pursuant to s. 440.22 Wis. Stats., the cost of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed on behalf of the Medical Examining Board.

OPINION

The complainant alleges in its Complaint that by engaging in the conduct described therein, respondent

violated s. Med 10.02 (2), (b), Wis. Adm. Code. The evidence presented establishes that the violation occurred.

I. Applicable Law

Section 448.02 (3), (b), Stats., reads, in part, as follows:

(b) After an investigation, if the board finds that there is probable cause to believe that the person is guilty of unprofessional conduct or negligence in treatment, the board shall hold a hearing on such conduct.

Section Med 10.02 (2). The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding or abetting the same:

(b) Violating or attempting to violate any term, provision, or condition of any order of the Board.

II. Evidence Presented

(A) In General

On September 7, 2000, the Medical Examining Board issued a Final Decision and Order in which it concluded that Dr. Buegel's conduct in failing to properly assess a patient's medical condition and document the results accordingly, constituted a violation of s. MED 10.02 (2) (h), Code and s. 448.02 (3) (b), Stats. In its Final Decision and Order, the Board limited Dr. Buegel's license to practice medicine and surgery for an indefinite period of time as follows:

1. Respondent shall, no later than one year from the date of this Order, take and successfully complete:
 - (a) The 45-hour course in Proper Prescribing of Controlled Dangerous Substances sponsored by Forensic and Educational Consultants of Margate, New Jersey, or an equivalent course approved in advance by the Board or its designee.
 - (b) An educational program established through the University of Wisconsin Continuing Medical Education program (which may conduct any program through the Medical College of Wisconsin or another CME provider) in record keeping, or another similar program approved in advance by the Board

or its designee.

(c) Respondent shall arrange for the course sponsors approved above to certify

to the Board the results of the course work upon completion and to release all records of his performance and attendance.

(d) Respondent shall be responsible for all costs associated with taking the course work required under this Order and shall pay the cost of any examination required for successful completion of the course work.

2. Respondent shall maintain patient health care records in his practice of medicine in accordance with the requirements set forth in s. Med 21.03, Wis. Adm. Code.

Respondent shall arrange for the review of his patient records by a physician satisfactory to the board for a period of six months. At the end of six months, respondent shall be responsible for submission to the board of a report by the reviewing physician setting forth the reviewing physician's opinion whether the records meet the minimum requirements of s. Med 21.03, Code.

3. Upon a showing by respondent of complete, successful and continuous compliance for a period of two (2) years with the conditions and limitations set forth in this Order, the Board may grant a petition by respondent for return to full licensure.

The Board also ordered Dr. Buegel to pay one-half of the costs of the proceeding. Dr. Buegel received a copy of the Board's September 7, 2000 Final Decision and Order no later than October 2, 2000. *Tr. p. 45, lines 17-20.*

On October 11, 2000, Dr. Buegel appealed the Board's Final Decision and Order to Milwaukee County Circuit Court pursuant to ch. 227, Wis. Stats. Except as to the requirement that Dr. Buegel pay the costs of the proceeding, the Circuit Court affirmed the Board's Final Decision and Order. Dr. Buegel did not appeal the Circuit Court's decision and the appeal period has expired.

As of the day of the hearing, Dr. Buegel had not completed any of the requirements contained in paragraphs 1 and 2 of the Board's September 7, 2000, Final Decision and Order. Dr. Buegel admitted at the hearing that he had not complied with any portion of the Board Order and offered many reasons (none of which are valid) for not complying with the Board's Order. *Tr. p. 46, lines 20-25.*

Although there is some evidence in the record regarding Dr. Buegel's attempts to obtain a stay of the Board's Order from the Circuit Court, no order was ever issued by the Court staying the Board's Order. In November and December of 2001, after the Board referred an informal complaint relating to Dr. Buegel's failure to comply with the Order to the Division of Enforcement for investigation, Dr. Buegel made several attempts to contact the Board directly for clarification of the Board's Order. Dr. Buegel's letter relating to those attempts were forwarded to the Division of Enforcement and were never considered by the Board. *Ex. 20, 21.*

Finally, Dr. Buegel testified at the hearing that he has no intention of ever complying with the Board's Order. When asked if he was willing to comply with the Board's Order of September 2000, Dr. Buegel said that the Board's Order is not lawful. He said that if the Board expects him to comply with an order they should write a lawful order. He said that he would comply with a lawful order of the Board. As noted above, Dr. Buegel elected not to appeal the Circuit Court's ruling and the appeal period has expired. *Tr. p. 53, lines 7-11; p. 91, lines 2-10.*

(B) Prescribing Course (Margate, New Jersey)

Dr. Buegel said that he did some preliminary searches on the Internet looking for prescribing courses, but did not recall being able to find anything at that time. He said that he also could not find the Margate, New Jersey course on the Internet. He said that he eventually received information on the Margate, New Jersey course on June 19, 2001. *Tr. p. 47.*

Dr. Buegel further testified that he would not have been able to take the prescribing course offered in 2000 in Margate because the course was offered in September and he did not receive the Board Order until October 2000. He said that the 2001 course was offered from September 10-14th; that he did not sign up for the 2001 course because it was offered outside the one year time period specified by the Board Order, and that there was also issues of timeliness in reference to finding out the results of the judicial review to see if he was even required to complete the course. He also said that he does not believe that he was required to register for the course because the Board order is unlawful from the violation of its timeliness of service and because of some Constitutional concerns and legal irregularities, not the least of which the state said that it was using MED 21.03 to judge his 1992 records.

Dr. Buegel also testified that he did not take any steps to enroll in either the Margate course or another course following his decision not to appeal the Circuit Court ruling affirming the Board's Order. He said that at some point he did try to find an alternative course that might be acceptable to the board, as permitted by the Order. He said that they (he and Mr. Thexton) had a meeting on November 21, 2001 about what other courses were acceptable. He said that Mr. Thexton offered some suggestions about how he could find a course that was suitable, including a suggestion that he contact Marlene Meyer about information on the courses. Dr. Buegel testified that he contacted Marlene Meyer on about November 28, 2001, to obtain information about the prescribing courses. According to Dr. Buegel, Ms. Meyer did not have any information on the courses. *Tr. p. 48.*

Dr. Buegel said that he also searched the websites for the University of Wisconsin Department of Continuing Education; he searched the Cleveland Clinic; he called a number of people at Mercer University at their office of Continuing Medical and at the learning center there. He said that he spoke to Carolyn LeMar and someone named Jenny at Mercer, but they could not indicate that Mercer was offering any such course. In addition, the individuals that he talked to at the University of Wisconsin, Sarah Affleckson and Rhonda Dix, were not able to provide information about that course or the course on record keeping. *Tr. p. 49-59.*

Finally, in November of 2001, Dr. Buegel sent a letter to the Board in which he discussed various issues, including clarification regarding the requirements for continuing education. He stated the following in his letter [*Tr. p. 50; Exhibit 20, third page*]:

I would also ask the Board to clarify its requirements for continuing education. Though Mr. Thexton gave me the name of Marlene Meyer at your offices in Madison, she is unaware of the educational resources that Mr. Thexton mentioned in his meeting. Specifically the Cleveland Clinic Center for Continuing Education, Mercer University, the University of Wisconsin have no 40 hour course on the subject of prescribing of controlled substances. It is my understanding that the Margate, New Jersey course is held once per year in September. The University of Wisconsin does have a 13 hour home study course on the subject of "Chronic Non-cancer Pain." Please let me know if this course meets

with Board approval.

(C) Record Keeping Course

In reference to the record-keeping course, Dr. Buegel testified that he contacted the University of Wisconsin Department of Continuing Education. He said that they could not tell him that there was such a course available. They did confirm what he had known previously of the program that involved an analysis of several years of records, maybe five years of records of a physician and costing \$5,000 to determine a course of study for a particular physician. He said that he asked Mr. Thexton about that course during their November 21, 2001 meeting and Mr. Thexton said that was not what was meant by the order. He said that Rhonda Dix did suggest a conference on legal and ethical issues effecting pain management as possible, but it did not sound like that would meet the board's requirement. *Tr. p. 51.*

Dr. Buegel said that he still does not have any information on the record review course other than Mr. Thexton's assurances that it exists somewhere. He said that he contacted the University Department of Continuing Education in the medical school by telephone and received no idea that such a course even existed. He did not attempt communication by letter or by personal contact.

(D) Physician Review of Patient Records

In reference to obtaining a physician acceptable to the Board to review his patient records, Dr. Buegel said that it was his understanding at least from my own thinking that the educational course should be completed first. He said that he did inquire of Mr. Thexton at the November 21, 2001 meeting about whether Dr. Davison would be an acceptable supervisor for that since that is part of his job as department chairman at the hospital to monitor such things. Dr. Buegel said that Mr. Thexton told him that he did not think that would be acceptable.

He said that in December of 2001, he sent a record off to Dr. Brookoff, who is chairman of Meredith Hospital's comprehensive pain treatment center at the University of Tennessee. Depending on Dr. Brookoff's response, that would be one possible consideration. Dr. Buegel said that he had not heard back from Dr. Brookoff. *Tr. p. 52-53.*

III. Discipline

Having found that Dr. Buegel violated laws relating to the practice of medicine, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Medical Examining Board is authorized under s. 448.02 (3) (c), Stats., to warn or reprimand a person, or limit, suspend or revoke any license, certificate or limited permit granted by the board to a person if it finds that the person is guilty of unprofessional conduct or negligence in treatment.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

In summary, the Division of Enforcement recommends that Dr. Buegel's license be limited, or alternatively, suspended until he completes specific course work acceptable to the Board and arrange for the review of his patient files. If Dr. Buegel's license is suspended, it is recommended that the suspension be stayed on satisfactory evidence that respondent has commenced the educational programs; is in compliance with its requirements; is making satisfactory progress and is not otherwise in violation of the Board Order. In summary, Dr. Buegel recommends that the Board's September 7, 2000 order be vacated; that his license not be suspended because such a suspension risks considerable harm to his patients if he is not allowed to treat them and that he be reimbursed for the costs of his defense.

Based upon the evidence presented, the Administrative Law Judge recommends that

Dr. Buegel's license to practice medicine and surgery be suspended for an indefinite period of time as recommended in the proposed Order. This measure is designed to assure protection of the public and to deter other licensees from engaging in similar misconduct.

The evidence establishes that Dr. Buegel has not complied with the Board's Order despite the fact that it has been more than a year and a half since he received the Order. In addition to receiving a copy of the Board Order, Dr. Buegel also received two notices from the Department Monitor, Theodore Nehring, reminding him that he is required to comply with the Board Order. The first notice that Mr. Nehring sent to Dr. Buegel was a letter, dated September 26, 2000. In his letter, Mr. Nehring informed Dr. Buegel that he was required to complete the 45-hour prescribing course and the educational program offered by the University of Wisconsin Continuing Education Program by September 7, 2001. Mr. Nehring also informed Dr. Buegel that he was responsible for arranging for a physician to review his patient records and that at the end of a six month period the reviewing physician is required to render a report to the Board setting forth his/her opinion regarding whether Dr. Buegel's patient records meet the requirements of Med. 21.03, Wis. Adm. Code. In a letter, dated April 2, 2001, Mr. Nehring informed Dr. Buegel that the reviewing physician should have rendered a report to the Board by March 7, 2001, setting forth his/her opinion as to whether Dr. Buegel's patient records meet the requirements of Med. 21.03, Code. *Exhibits 2 and 3.*

Finally, Dr. Buegel testified at the hearing that he has no intention of ever complying with the Board's Order because the Order is not lawful. However, Dr. Buegel elected not to appeal the Circuit Court's ruling affirming, except as to costs, the Board's Final Decision and Order.

The Administrative Law Judge recommends that Dr. Buegel's license be suspended at least until he files a petition for a stay and submits evidence satisfactory to the Board that he has made some effort to comply with the Board Order. At that time, it is recommended that, if the Board determines that Dr. Buegel can safely and competently return to the active practice of medicine, the suspension be stay for a period of 3 months, conditioned upon compliance with the conditions and limitations set forth in paragraph 3 of the proposed Order. Upon a showing by Dr. Buegel of complete, successful and continuous compliance for a period of one (1) year with the terms of paragraph (3), below, the Board may grant a petition by respondent for return of full licensure if it determines that he has complied with all of the requirements set forth in paragraphs 1 and 2 of the Board Order contained in its Final Decision and Order dated September 7, 2000.

In my opinion, suspension of Dr. Buegel's license is the only viable measure available to the Board. Dr. Buegel testified that he will never comply with the Board's September 7, 2000 Order. He feels that the Order, as written, is unlawful and that the Board should re-write the Order. Yet, he elected not to appeal the Circuit Court's ruling affirming, except as to costs, the Board's Order. Suspension of Dr. Buegel's license will certainly deter other licensees from engaging in similar misconduct. Other licensees will be on notice that they will not be able to "pick and chose" the terms and conditions of an order that they want to comply with. They will be required to comply with the Board orders or obtain a stay or modification of the orders.

Finally, the educational course work; the requirement that Dr. Buegel maintain patient records in accordance with s. Med 21.03, Code and the requirement that he arrange for the review of his patient records by a physician satisfactory to the Board are all designed to provide protection to the public by ensuring that Dr. Buegel is competent and capable of practicing medicine in a manner that safeguards the interest of the public. Dr. Buegel should be required to comply with these conditions.

IV. Costs of the Proceeding

Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Board, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Administrative Law Judge's recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984).

Based upon the record herein, the Administrative Law Judge recommends that the Medical Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 31st day of May 2002.

Respectfully submitted,

Ruby Jefferson-Moore

Administrative Law Judge