

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER  
Case No. LS-0304231-MED

EDWARD C. MILLER, M.D.,  
RESPONDENT.

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

Edward C. Miller, M.D.  
Mercy Clinic West  
1000 Mineral Point  
Janesville, WI 53545

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 April 23, 2003. The Answer was filed on May 7, 2003. The hearing was held on August 26, 2003. The hearing transcript was filed on September 10, 2003. Closing arguments were filed on or before October 14, 2003. Attorney James E. Polewski appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Attorney Randal N. Arnold, Law Offices of Hinshaw and Culbertson, appeared on behalf of Dr. Miller. The Administrative Law Judge filed her Proposed Decision on March 8, 2004. Objections were filed by the Division of Enforcement on March 18, 2004, and oral arguments on the objections were presented to the Medical Examining Board on April 21, 2004.

Based upon the entire record herein, the Medical Examining Board adopts the Findings of Fact of the Proposed Decision and adopts in part, with a variance, the Conclusions of Law and Order.

**FINDINGS OF FACT**

1. Edward C. Miller (d.o.b. 08/03/48), is licensed to practice medicine and surgery in the state of Wisconsin pursuant to license #21506, which was first granted on April 21, 1978.

2. Dr. Miller's last address on file with the Department of Regulation and Licensing is 1000 Mineral Point Avenue, Janesville, Wisconsin 53545.

3. Dr. Miller practice involves providing health care for women, obstetrical and gynecological primary care and GYN surgery. He has practiced in Janesville, Wisconsin for 25 years, including 10 or 11 years at Mercy Clinic West. He has been a clinical instructor at Mercy Hospital in the Family Medicine Residency program for at least 6 years.

4. Dr. Miller saw Patient SQ, a woman aged 56, on October 17, 1995, for a routine checkup. He ordered chest radiographs and a mammogram for the patient.

5. Patient SQ was a long term patient of Dr. Miller's and he knew that she was a long term one-pack-a-day cigarette smoker.

6. Dr. Miller did not order the chest radiographs as a matter of routine, but to demonstrate to Patient SQ the likely changes in her lungs due to her smoking habit.

7. Patient SQ had the mammograms and the chest radiographs performed on October 25, 1995.

8. The radiologist dictated his review of the films on October 25, 1995, and the reports were transcribed on October 26, 1995.

9. In his report, the radiologist reported an impression of the mammograms as "Stable appearance to both breasts. No suspicious areas are seen".

10. In his report, the radiologist reported an impression of the chest radiographs as "Prominent irregular density in the left upper lobe. In addition, there do appear to be several small nodular densities at the left lung base behind the heart. The findings are highly suspicious of metastasis. I would urge CT of the chest to better evaluate the findings".

11. The radiology report of the chest radiographs and the radiology report of the mammograms were delivered to Dr. Miller. Both reports were placed on Dr. Miller's desk at the same time, clipped together, with the mammogram report on top of the report of the chest radiographs.

12. Dr. Miller read the mammogram report down to the "Impression", which stated that "Stable appearance to both breasts. No suspicious areas are seen". Dr. Miller then wrote "OK" on the mammogram report. He did not read the second sheet of the attachment which contained the radiology report of the chest radiographs.

13. Both reports were printed on "no carbon required" paper so that the "OK" that Dr. Miller wrote on mammogram report transferred through to the report of the chest radiographs.

14. On May 14, 1996, Patient SQ was diagnosed with extensive lung cancer with bilateral lung and thoracic spine involvement. Patient SQ died on November 11, 1996.

15. Patient SQ's death was not due to Dr. Miller's failure to read the chest x-ray report.

### **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 the Findings of Fact herein, constitutes negligence in treatment under s. 448.02 (3) (b), Stats.

### **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that no discipline shall be imposed upon the medicine and surgery license (# 21506) of Respondent Edward C. Miller, M.D., in view of his implementation of various corrective measures to address the violation.

**IT IS FURTHER ORDERED** that pursuant to s. 440.22 Wis. Stats., the parties shall bear their own costs of the proceeding.

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

### **EXPLANATION OF VARIANCE**

The Board accepts the Findings of Fact proposed by the Administrative Law Judge (ALJ) in their entirety, however, the second paragraph of the Conclusions of Law is modified to reflect the finding that the Respondent's conduct constituted negligent treatment. The Board finds that a minimally competent physician must read the medical reports, which he orders and actually receives. The Board finds that the minimally competent physician cannot rely upon a system whereby clerical staff reviews, sorts and essentially reads the patient medical reports, while the physician merely goes through the pile of reports, circles the impression and marks approval. The Board further finds that the physician's duty to read a medical report, which he ordered and received, is such a basic function that the failure to read the report constitutes negligence. This required reading must consist of more than a cursory review of the diagnostic impression or summary. Had the Respondent read more than just the summary page of the medical report, he would have easily discovered the negative chest radiographs that appeared on page two of the


radiologist report, despite the fact that the report was misplaced into the wrong pile. The Board finds it unnecessary to rely upon any expert witness testimony in reaching this determination.<sup>1</sup>

Secondly, the Board has decided, given the circumstances of this case, to forego the imposition of discipline upon the Respondent. The Board observes that the Respondent has already implemented adequate measures in his practice to prevent a reoccurrence of the problem conduct. The Respondent testified that he now personally reads all reports, that he receives multiple copies of reports, in both fax and hard copy, that he no longer uses soft carbon paper, and that he requires a personal call from the radiologist when presented with an abnormal x-ray or report.

Finally, the Board has determined that, in view of the outcome, the costs of this proceeding shall not be awarded to the parties. The findings of the Board are partially unfavorable and favorable to each party; the Respondent's conduct is deemed negligence and below the minimum standard, the Department was substantially justified in prosecuting this matter, however, discipline shall not be imposed. Under the circumstances, the parties should bear their own costs in this proceeding.

Dated this 19<sup>th</sup> day of May, 2004.

STATE OF WISCONSIN  
MEDICAL EXAMINING BOARD

by   
Lief W. Erickson, Jr., M.D.  
Secretary

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<sup>1</sup> The Board notes that the determination of negligence is consistent with a portion of the expert witness deposition testimony in the record that a reasonable physician who orders a report should read every page of the report given to the physician.) DEP. TR 10-11.

TO: Randal Arnold - **NOTICE OF RIGHTS OF APPEAL**  
Atty. for Edward Miller

You have been issued an Order. For purposes of service the date of mailing of this Order is May 24, 2004. 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 Order 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 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 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 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 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:

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