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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	PETITION FOR
	:	REHEARING DENIED
RICHARD D. TURCOTT, M.D.,	:	
RESPONDENT.	:	Case No. LS0502031MED

(Division of Enforcement Case No.03 MED 487)

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PROCEDURAL HISTORY

On August 17, 2005, the Medical Examining Board issued a Final Decision and Order dismissing the disciplinary proceedings against Richard D. Turcott, M.D. The Division of Enforcement filed a petition for rehearing, pursuant to Wis. Stat. §227.49, on the basis that the Final Decision and Order was based on a material error of law and is inconsistent with a recent past Board decision. Based upon all information of record herein, the Board finds and orders the following:

The Petition for Rehearing is DENIED.

ANALYSIS

After carefully considering the record, the Board does not find that the petitioner has established the existence of a material error of law in the final decision in this matter. The clear intent of the statutory language in sec. 448.02(3)(cm) is to set a time limit for the investigation of informal complaints against practitioners licensed by the Medical Examining Board. However, the facts involved in this case show that before the informal complaint was screened, the Division of Enforcement made detailed investigatory demands of the respondent on behalf of the Board, and thereby initiated a *de facto* investigation.

The role of the Division of Enforcement in the processing of informal complaints is limited to intake and to providing support for the Board’s decision-making functions. Although the term “intake” is not specifically referenced or defined in the applicable statutes, it is generally defined as the act of taking something in or entering something. The term “investigate,” in contrast, means to make a detailed inquiry or systematic examination in an attempt to learn the facts about something; in an attempt to determine motive, cause or culprit.^[1] The two functions are related, but different. Under the requirements of Wis. Stat. § 448.02(3)(cm), that difference becomes significant. Based upon the facts of record, the Division of Enforcement exceeded their intake function by the nature of its’ investigatory demands, including the threat of sanctions for failure to cooperate, and as a result began an investigation of this matter prior to the Board’s screening of the informal complaint.

The Board recognizes that a prior decision (*In the Matter of the Disciplinary Proceedings against Mark C. Boettcher, M.D., Respondent*, Case No. LS0307291-MED) may have engendered some confusion on the part of the Division of Enforcement as to calculating the timing requirements for commencing a disciplinary action under Wis. Stat. § 448.02(3)(cm). The Division of Enforcement calculated its due date for initiating a formal action based upon the “paper” date following the screening decision to open. A consequence of this calculation now mandates that the complaint must be dismissed, as it was not filed within one year from the date when the investigation actually commenced. The Board believes that its decision in this matter represents a careful analysis of the law as it pertains to the facts of this case.^[2]

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

Lief W. Erickson, Jr., M.D.	September 16, 2005
Secretary of the Board	Date

^[1] Random House Unabridged Dictionary, Second Edition, 1993
^[2] The Board is further cognizant that the Department has promulgated Wis. Admin. Code § RL 2.20 (eff. 4-1-04), which now provides in pertinent part:

(2) ... In computing time limits under s. 448.02 (3) (cm), Stats., the date of initiating an investigation shall be the date of the decision to commence an investigation of an informal complaint following the screening of the informal complaint under s. RL 2.035, except that if the decision to commence an investigation of an informal complaint is made more than 45 days after the date of receipt of the informal complaint in the division, or if no screening of the informal complaint is conducted, the time for initiating an investigation shall commence 45 days after the date of receipt of the informal complaint in the division.

The impact of this decision is limited to cases screened and opened for investigation prior to April 1, 2004.