

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the MATTER OF A PETITION FOR AN
ADMINISTRATIVE INJUNCTION INVOLVING
WILLIAM A. CROFT, JR., D.V.M., Respondent

FINAL DECISION AND ORDER
Order **ORDER 0001951**

Division of Enforcement MED Case Nos. 10 UNL 125, 10 UNL 132, 11 UNL 073

The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make 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, Department of Safety and Professional Services.

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 at Madison, Wisconsin on the 30th day of July, 2012.

A handwritten signature in black ink, appearing to read "Michael J. Berndt", written over a horizontal line.

Michael J. Berndt
Chief Legal Counsel



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the MATTER OF A PETITION FOR AN
ADMINISTRATIVE INJUNCTION INVOLVING
WILLIAM A. CROFT, JR., D.V.M., Respondent

NOTICE OF FILING
PROPOSED DECISION
DHA Case No. SPS-11-0080

Division of Enforcement MED Case Nos. 10 UNL 125, 10 UNL 132, 11 UNL 073

TO: William A. Croft, Jr., D.V.M., Ph.D.
521 Hilltop Drive
Madison, WI 54114-1213

Attorney Kim M. Kluck
Department of Safety and Professional Services
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Department of Safety and Professional Services by the Administrative Law Judge Jennifer Nashold. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. If your objections or argument relate to evidence in the record, please cite the specific exhibit and page number in the record. **Your objections and argument must be received at the Department of Safety and Professional Services, 1400 East Washington Avenue, Room 116, P.O. Box 8935, Madison, Wisconsin 53708, on or before May 29, 2012.** You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the Department of Safety and Professional Services no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After

reviewing the Proposed Decision, the Department of Safety and Professional Services will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin on May 14, 2012.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____

Jennifer E. Nashold
Administrative Law Judge



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

IN THE MATTER OF A PETITION FOR AN
ADMINISTRATIVE INJUNCTION INVOLVING

ORDER 0001951

WILLIAM A. CROFT, JR., D.V.M., Respondent

PROPOSED SPECIAL ORDER
DHA Case No. SPS-11-0080

**Division of Enforcement Case Nos. 10UNL125 (MED), 10UNL132 (MED)
and 11 UNL073 (MED)**

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

William A. Croft, Jr., D.V.M., Ph.D
521 Hilltop Drive
Madison, WI 54114-1213

Department of Safety and Professional Services, Division of Enforcement, by

Attorney Kim M. Kluck
Department of Safety and Professional Services
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Michael J. Berndt
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PROCEDURAL HISTORY

This proceeding was initiated by the filing of a formal Petition by the Department of Safety and Professional Services, Division of Enforcement (Division), on or about August 25, 2011 against William C. Croft, Jr., seeking to enjoin him from engaging in the practice of medicine without a license. On September 16, 2011, Respondent filed an Answer to the Petition.

On September 29, 2011, counsel for the Division filed a Motion to Strike Answer of Respondent on grounds that it was untimely and non-responsive as well as a Motion for Default. The administrative law judge (ALJ) denied the Division's motion with respect to untimeliness, noting that Respondent's answer was only one day late and that Respondent understood the term "filed" to mean "mailed by." However, the ALJ agreed that Respondent's answer was non-responsive to many of the allegations made and ordered Respondent to file an Amended Answer responding to each of the allegations contained in the Petition by November 4, 2011. On or about November 4, 2011, counsel for Respondent filed an Amended Answer and Affirmative Defenses, dated November 3, 2011.

On November 7, 2011, the ALJ issued a Prehearing Conference Report and Scheduling Order. The prehearing conference was re-scheduled to a later date and was held by telephone on November 23, 2011. During the prehearing conference, the contested hearing was scheduled to begin on February 22, 2012 at the Department of Safety and Professional Services in Madison, Wisconsin. On or about January 10, 2012, counsel for Respondent filed a Notice of Withdrawal of Counsel after Respondent communicated to counsel that he must fire her. By letter dated February 17, 2012, the ALJ advised the parties that it was assumed that Respondent intended to represent himself at the hearing as he had not retained other counsel to represent him in this matter. On February 22, 2012, prior to hearing, Respondent confirmed that he intended to represent himself, and a hearing was held.

FINDINGS OF FACT

On the evidence presented, the undersigned ALJ makes the following findings of fact:

1. Respondent possesses a Ph.D. in pathology from the University of Wisconsin-Madison, which was conferred in 1975. In addition, Respondent is a licensed veterinarian. Respondent has published or co-published several articles in various journals, including in *The*

Journal of the American Medical Association, on topics such as arsenic exposure from burning chromium-copper-arsenate-treated wood, trichothecene toxicosis, and trichothecene mycotoxicosis (Resp. Exs. 1; 4, 5, 6; Tr., pp. 125-30).¹

2. Respondent has also been retained in litigation and has testified in court as an expert in lawsuits involving arsenic poisoning and products liability, the latter of which has included a case involving mold in an HVAC unit of an SUV and cases in which Respondent was hired to assist in determining the cause of death (Tr., pp. 125-145).

3. Respondent does not possess the degree of a doctor of medicine or osteopathy. He does not possess an equivalent degree as determined by the Wisconsin Medical Examining Board. He is not licensed to practice medicine in Wisconsin or any other state in the United States. He has not taken the National Board of Medical Examiners examination. Respondent is not a medical doctor (Div. Ex. 9, pp. 9- 10; Tr., p. 45).

4. Respondent's office for the Environmental Diagnostic Group is located at 521 Hilltop Drive, Madison, Wisconsin 53711 (Div. Ex. 1; Div. Ex. 9, p. 19).

FACTS RELATING TO 10UNL125 (MED) (Patient E.Y.)

5. During the period of time between September and October of 2010, Respondent produced three reports indicating that he performed testing on behalf of E.Y. in order to check for mycotoxins (Petition, ¶ 4; Answer, ¶ 4).

6. In a report dated October 12, 2010 on Environmental Diagnostic Group, Inc., letterhead, Respondent provided a diagnosis based on his analysis of a urine sample provided by E.Y. (Div. Ex. 1; Petition, ¶ 5; Answer, ¶ 5).

¹ The Respondent's Exhibits are referred to as "Resp. Ex."; the Division's Exhibits as "Div. Ex."; and the February 22, 2012 Hearing Transcript as "Tr." The Division's August 25, 2011 Petition is referred to as "Petition" and the Respondent's November 3, 2011 Amended Answer and Affirmative Defenses as "Answer."

7. The report is addressed to E.Y. based on a urine sample collected on October 7, 2010 and processed by Respondent on October 12, 2010. Respondent assigned a score of “6” to the urine sample out of a possible score of “18” using the following criteria: no bacterial growth in 777 mls of urine submitted, amount of protein within the urine sample, exposure of sulfuric acid to the urine resulted in charring or blackening of urine spot and extraction resulted in the identification of Trichothecene Mycotoxins at a ppm activity (Div. Ex. 1; Petition, ¶ 6; Answer, ¶ 6).

8. Based on those criteria, Respondent noted the following diagnosis under the section entitled “Diagnosis:” “Toxic effect of Aflatoxin and Trichothecene Mycotoxins.” (Div. Ex. 1, p. 1). He noted the following under the section entitled “Conclusion:”

As demonstrated with the isolation from your urine [E.Y.] is being exposed to **low levels** of Trichothecene Mycotoxins, which are very poisonous to humans and especially children. These results indicate that there is a mild systemic yeast infestation within [E.Y.’s] body. Yeast organisms generate Trichothecene Mycotoxins accounting for the **low levels** observed within his urine and represent the second phase of this disease, Trichothecene Mycotoxicosis.

(Div. Ex.1, pp. 1-2; Petition, ¶ 7; Answer, ¶ 7).

9. The report is signed as follows by Respondent: “William A. Croft, Medical Pathologist” (Div. Ex. 1, p. 2; Petition, ¶ 8; Answer, ¶ 8).

10. The analysis contained in the October 12, 2010 report was performed by Respondent in Wisconsin. Respondent prepared the report dated October 12, 2010 in Wisconsin which included the diagnoses of trichothecene mycotoxicosis and systemic yeast infestation. Both of these conditions are departures from the complete health or proper condition of the human body (Div. Ex. 9, pp. 12-16; Div. Ex. 1; Tr., pp. 45, 75).

11. In a report dated October 16, 2010 on Environmental Diagnostic Group, Inc., letterhead, Respondent provided a diagnosis based on his analysis of a skin biopsy which was

collected on October 12, 2010 and received on October 14, 2010. Under the section entitled

“Microscopy: One Specimen,” Respondent indicted the following findings:

- There is a mild amount of basket-weave fibrinous inflammation observed on the epidermal surface in a uniform application.
- There is thickening of the epidermis of between 4-8 cells thick due to inhibition of protein synthesis. (Normal is 1-3 cells thick)
- The skin biopsy did extend to the full depth of the dermis to reveal the full depth of the fibrin deposition.
- There is hyaline-appearing fibrinous inflammation just beneath the basement membrane and it continues well into the deep dermis, demonstrating the classic fingerprint of moderate chronic exposure, of approximately seven to eight years in duration, to Trichothecene Mycotoxins.
- Several arteries are partially to totally occluded with fibrinous inflammation or exudates . . . , consistent with severe poisoning of the Trichothecene Mycotoxins. . .
- The uniform reaction to the dermis observed is consistent with fungal vapors of Trichothecene Mycotoxins.
- ...
- The Periodic Acid Schiff (PAS) of the small arteries indicates PAS positive reaction to yeast infection within the systemic circulation. There is a severe infection of yeast observed within the small and larger arteries.
- The Gomori Methenamine Silver (GMS) stain of the skin tissue reveals a strong positive reaction indicating that the fungal Trichothecene Mycotoxins are present and filling the deep dermis with fibrin. . .
- The stage of progression of this chemical poisoning of Trichothecene Mycotoxins is evaluated as **Mid Stage II** of III Stages.

(Div. Ex. 2, pp. 1-2; Petition, ¶ 9; Answer, ¶ 9).

12. Respondent noted the following diagnosis under the section entitled “Diagnosis:”

“The pathology clearly demonstrates severe chronic poisoning for approximately 7-8 years in duration to Med State II from exposure to the highly irritating epoxides, Trichothecene Mycotoxins, via vapors, dermal contact and inhalation, which is consistent with the formation and progression of the disease called Trichothecene Mycotoxicosis.” (Div. Ex. 2, p. 2). He noted the following under the section entitled “Conclusion:”

It is my opinion to a reasonable degree of pathologic, scientific and medical certainty, that the ingestion, dermal exposure, and inhalation of Trichothecene Mycotoxins by [E.Y.] has caused a high number of adverse health effects to his central nervous system, brain, spinal cord, peripheral nervous system, skeletal,

respiratory, cardiovascular, digestive, hepatic, pancreatic, renal, reproductive, lymphatic and immune systems and remaining systems.

(Div. Ex. 2, p. 4; Petition, ¶ 10; Answer, ¶ 10).

13. The report was prepared by Respondent who identified himself in the report as a “Medical Pathologist” (Div. Ex. 2, p. 4).

14. The analysis contained in the October 16, 2010 report was performed by Respondent in Wisconsin. Respondent prepared the report dated October 16, 2010 in Wisconsin which included the diagnoses of trichothecene mycotoxicosis and severe yeast organisms observed within the small arteries of the skin. Both of these conditions are departures from the complete health or proper condition of the human body (Div. Ex. 9, pp. 23-24, 34-35; Div. Ex. 2; Tr., pp. 46, 75).

FACTS RELATING TO 10UNL132 (MED) (Patient X)

15. In a report dated May 20, 2010, on Environmental Diagnostic Group, Inc., letterhead, Respondent provided a diagnosis based on his analysis of a skin biopsy which was collected on May 18, 2010 and received on May 19, 2010 for Patient X, a then-58 year-old female (Div. Ex. 3; Petition, ¶ 13; Answer, ¶ 13).

16. The attending physician for Patient X is identified on the report as Adrienne Sprouse, M.D., and the dermatologist is identified as Gerald Imber, M.D. Under the section entitled “Microscopy: One Specimen,” Respondent indicted the following findings:

- There is a moderate amount of basket-weave fibrinous inflammation observed on the epidermal surface in a uniform application.
- There is a thin layer of dense fibrin intimately attached to the epidermis.
- There is thickening of the epidermis of between 7-8 cells thick. Normal is 1-3 cells thickness. This thicken [sic] epidermis indicates lack of protein synthesis within the body and a slow healing rate.
- The skin biopsy did extend to the full depth of the dermis to reveal the full depth of the fibrin deposition.
- There is hyaline-appearing fibrinous inflammation just beneath the basement membrane and it continues well into the deep dermis, demonstrating the classic

fingerprint of moderate chronic exposure of approximately four years in duration to Trichothecene Mycotoxins.

- Several arteries are partially occluded with fibrinous inflammation or exudates . . . , consistent with severe poisoning of the Trichothecene Mycotoxins. There is an average of 37.6 microns of fibrin deposited within these arteries from four measurements taken.
- The uniform reaction to the dermis observed is consistent with fungal vapors of Trichothecene Mycotoxins.
- . . .
- The Periodic Acid Schiff (PAS) of the small arteries indicates PAS positive reaction to yeast infection within the systemic circulation. There is a severe infection of yeast observed within the small and larger arteries.
- The Gomori Methenamine Silver (GMS) stain of the skin tissue reveals a strong positive reaction indicating that the fungal Trichothecene Mycotoxins are present. . . .
- The Trichrome stain confirms the fibrin-collagen deposition within the dermis responding to the exposure vapors of the highly irritating Trichothecene Mycotoxins.
- The stage of progression of this chemical poisoning of Trichothecene Mycotoxins is evaluated as **Late Stage II** (of III Stages).

(Div. Ex. 3, pp. 1-2; Petition, ¶ 14; Answer, ¶ 14).

17. Respondent noted the following diagnosis under the section entitled “Diagnosis:”
“The pathology clearly demonstrates severe chronic poisoning for approximately 4 years in duration to **Late Stage II** from exposure to the highly irritating epoxides, Trichothecene Mycotoxins, via vapors, dermal contact and inhalation, which is consistent with the formation and progression of the disease called Trichothecene Mycotoxicosis.” (Div. Ex. 3, p. 2). He noted the following under the section entitled “Conclusion:”

It is my opinion to a reasonable degree of pathologic, scientific and medical certainty, that the ingestion, dermal exposure, and inhalation of Trichothecene Mycotoxins by [Patient X] has caused a high number of adverse health effects to her central nervous system, brain, spinal cord, peripheral nervous system, skeletal, respiratory, cardiovascular, digestive, hepatic, pancreatic, renal, reproductive, lymphatic and immune systems and remaining systems.

(Div. Ex. 3, p. 4; Petition, ¶ 15; Answer, ¶ 15).

18. The report is signed as follows by Respondent: “William A. Croft, Medical Pathologist” (Div. Ex. 3, p. 4; Petition, ¶ 16; Answer, ¶ 16).

19. The analysis contained in the May 20, 2010 report was performed by Respondent in Wisconsin. Respondent prepared the report dated May 20, 2010 in Wisconsin which included the diagnoses of trichothecene mycotoxicosis. This condition is a departure from the complete health or proper condition of the human body (Div. Ex. 9, pp. 34 – 37; Div. Ex.3; Tr., pp. 46-48, 75).

FACTS RELATING TO 11UNL073 (MED) (Patient A.B.)

20. In a 13-page report dated May 1, 2010, on Environmental Diagnostic Group, Inc., letterhead, Respondent provided diagnoses based on his analysis of tissue slides and brain slides which were collected during an autopsy of the deceased, A.B., on March 9, 2010 (Div. Ex. 4; Petition, ¶ 17; Answer, ¶ 17).

21. Under the section entitled “Pathology Review,” Respondent noted the following findings and diagnoses, among others:

- A.B. was “poisoned by Trichothecene Mycotoxins which generated the disease Trichothecene Mycotoxicosis.”
- The Trichothecene Mycotoxins deposited in the heart “resulted in myocardial infarction caused by the occlusion of the small arteries.”
- Blastomycosis was “observed within the lung tissue as the primary infection.”
- Decreased blood flow and functional capacity in the liver due to Trichothecene Mycotoxin exposure.
- Prostate cancer which developed due to Trichothecene Mycotoxins.
- Lymphosarcoma within the lung tissue.

(Div. Ex. 4, pp. 7-8, 11; Petition, ¶ 18; Answer, ¶ 18).

22. Respondent stated the following conclusion: “The primary cause of death of [A.B.] was lung failure due to the severe poisoning from his exposure to the vapors of Trichothecene Mycotoxins from living within his contaminated apartment.” (Div. Ex. 4; Petition, ¶ 19; Answer, ¶ 19).

23. Respondent then stated the following final opinion:

It is my opinion to a reasonable degree of pathologic, scientific and medical certainty that the dermal exposure and inhalation of Trichothecene Mycotoxins by the deceased has caused a moderate number of adverse health effects to the central nervous system, brain, spinal cord, peripheral nervous system, skeletal, respiratory, cardiovascular, digestive, hepatic, pancreatic, renal, reproductive, lymphatic and immune systems and remaining systems led to his demise [sic].

(Div. Ex. 4, p. 12; Petition, ¶ 20; Answer, ¶ 20).

24. The report is signed as follows by Respondent: “William A. Croft, Medical Pathologist.” (Div. Ex. 4; Petition, ¶ 21; Answer, ¶ 21).

25. The analysis contained in the May 1, 2010 report was performed by Respondent in Wisconsin. Respondent prepared the report dated May 1, 2010 in Wisconsin which included the diagnoses of trichothecene mycotoxicosis, occlusion of the arteries, blastomycosis, and lymphosarcoma within the lung tissue. All of those conditions represent departures from the complete health or proper condition of the human body (Div. Ex. 9, p. 45; Div. Ex. 4; Tr., pp. 49, 75-76).

26. At hearing, the Division presented the testimony of two experts, Drs. Erik Mitchell and James Eastman. Dr. Mitchell is a medical doctor and a forensic pathologist and is board-certified in anatomic pathology, clinical pathology and forensic pathology. Dr. Eastman is a medical doctor and pathologist, board-certified in anatomic and clinical pathology (Tr., pp. 52-53, 82-83).

27. Anatomic pathology involves the examination of cells and tissues for the purposes of diagnosing disease. Surgical pathology is a sub-discipline within anatomic pathology and involves the examination of tissues removed by a physician in either an office or hospital setting. Surgical and anatomic pathologists examine biopsies from living persons and postmortem studies or autopsies. Clinical pathology is laboratory medicine and includes analyzing biological fluids (Tr., pp. 53-54, 84, 88).

28. These subspecialties require years of medical education and residency training. Dr. Mitchell's medical school education took four years which was then followed by two years of residency training in anatomic pathology and two more years of residency training in clinical pathology. During the course of Dr. Mitchell's medical school and residency training programs, he underwent testing on a frequent basis to assess his competency and understanding of the material. After that, a National Board of Medical Examiners test was required for licensure. (Tr., pp. 57-60).

29. Respondent declared himself to be an "anatomic pathologist" twice during his deposition and stated, "I diagnose, that's what I do." (Div. Ex. 9, p. 26, 41).

30. Both Dr. Mitchell and Dr. Eastman testified that Respondent engaged in the practice of medicine by performing the work described in the Division's Exhibits 1, 2, 3 and 4. Dr. Mitchell testified that the entire report marked as Division's Exhibit 4 consists of activity which constitutes "examining into the fact, condition or cause of human health or disease" and that the work described in the Division's Exhibits 1 and 2 also constitutes "examining into the fact, cause or condition of human health or disease." (Tr., pp. 76-77). With regard to the Division's Exhibit 3, Dr. Eastman testified that Respondent engaged in the practice of surgical pathology by accumulating clinical history, looking at the gross appearance of surgical specimens, preparing microscopic descriptions, and offering a diagnosis (Tr., pp. 117-18).

31. Dr. Mitchell characterized as "complete fiction" Respondent's diagnosis for A.B. of trichothecene mycotoxicosis contained in Respondent's report under the subheading "anatomic diagnoses." (Tr., pp. 65-66). He also refuted many other diagnoses made by Respondent, including Respondent's diagnosis of sarcoma (Tr., pp. 55-76).

DISCUSSION

Burden of Proof.

The Division states that its burden of proof in these proceedings is preponderance of the evidence. Wisconsin Admin. Code § HA 1.17(2) provides: “**(2)** BURDEN OF PROOF. Unless the law provides for a different standard, the quantum of evidence for a hearing decision shall be by the preponderance of the evidence.” Because the law does not provide for a different standard, the Division must show by a preponderance of the evidence that Respondent engaged in the practice of medicine without a license.

Violation of Wis. Stat. § 448.03.

Respondent does not possess the degree of a doctor of medicine or osteopathy and has not been to medical school. He does not possess an equivalent degree as determined by the Wisconsin Medical Examining Board. He is not licensed to practice medicine in Wisconsin or any other state in the United States. He has not taken the National Board of Medical Examiners examination. Respondent acknowledges that he is not a medical doctor (Div. Ex. 9, pp. 9-10; Tr., p. 45). The Division has sought to enjoin Respondent from practicing medicine pursuant to Wis. Stat. § 440.21² by requesting that a special order be issued.

Wisconsin Stat. § 448.03(1)(a) provides: “No person may practice medicine and surgery, or attempt to do so or make a representation as authorized to do so, without a license to practice medicine and surgery granted by the board.”

² The relevant provision states:

440.21. Enforcement of Laws Requiring Credential.

(1) The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

Wisconsin Stat. § 448.01(9)(a), (b) and (d) provide in pertinent part that the practice of medicine includes the following activities: “to examine into the fact, condition or cause of human health or disease, or to treat, operate, prescribe or advise for the same, by any means or instrumentality;” “to apply principles or techniques of medical sciences in the diagnosis or prevention of any of the conditions described in par. (a) and in sub. (2);” and “to offer, undertake, attempt or do or hold oneself out in any manner as able to do any of the acts described in this subsection.”

Wisconsin Stat. § 448.01(2), Wis. Stats., defines “disease” to mean “any pain, injury, deformity or physical or mental illness or departure from complete health or the proper condition of the human body or any of its parts.”

The requirements for licensure to practice medicine and surgery are set forth in Wis. Stat. § 448.05 and state that the applicant must: (1) possess a diploma from a medical or osteopathic college approved by the Board; (2) complete a 12-month postgraduate training at a facility approved by the Board; (3) pass an examination by the board or pass a national examination approved by the Board; and (4) complete an application for licensure. The Medical Examining Board has adopted rules governing the application and examination for a license to practice medicine and surgery in Chapter Med 1, Wis. Admin. Code.

Wisconsin Stat. § 448.03(2) provides the statutory exceptions to the requirement that a license is required to practice medicine, most of which are quite specific and clearly not applicable to Respondent. Section 448.03(2) also contains a “catch-all” provision which creates an exception to the licensing requirement “as otherwise provided by statute.” Respondent has not pointed to any statute that permits him to practice medicine and research has not uncovered any such statute.

Where the legislature specifically enumerates certain exceptions to a statute, the Wisconsin Supreme Court has concluded that the legislature intended to exclude any other exception. *State v. Delaney*, 2003 WI 9, ¶ 22, 259 Wis. 2d 77, 658 N.W.2d 416 (court applies the canon of “*expressio unius est exclusio alterius*,” i.e., the expression of one thing excludes another). Therefore, regardless of Respondent’s argument to the contrary, he is prohibited from examining into the fact, condition or cause of human health or disease -- that is, from practicing medicine -- because he is not licensed to do so and his conduct in this case does not fall within any of the statutorily enumerated exceptions in Wis. Stat. § 448.03(2).

Respondent does not point to any specific facts or law to negate the Division’s assertion that he has practiced medicine, but instead generally alleges that he is acting as a scientist and as an individual with a Ph.D. in pathology. He also presented evidence that he has been allowed to give expert testimony at trials regarding causation of disease or injury. Regardless of what Respondent believes to be the scope of his practice of pathology, the Wisconsin legislature has determined what constitutes the practice of medicine through its enactment of Wis. Stat. § 448.01(9). Thus, if Respondent’s actions come within the parameters of that provision, he is in violation of the licensing requirement. Moreover, the fact that courts have permitted such testimony does not exempt Respondent from the licensing requirements of Wis. Stat. § 448.03, particularly where the courts were not being called upon to address a medical licensing issue.

The purpose of the licensing statutes is “to protect the public by the requirement of a license as a condition precedent to practicing in a given profession.” *Gilbert v. State of Wisconsin, Medical Examining Board*, 119 Wis. 2d 168, 188, 349 N.W.2d 68 (1984). Occupational licensing requirements are to protect the public’s health and safety from incompetent practitioners. *Id.* By licensing individuals, the State of Wisconsin is assuring the public of the competence of that person. *Id.* If individuals such as Respondent are practicing

medicine without a license, the public has no assurance as to his competence or qualifications. Furthermore, unlicensed practitioners are not subject to discipline by the Medical Examining Board which is authorized to investigate allegations of negligence or professional misconduct by licensed physicians and to impose discipline. Wis. Stat. § 448.02. Respondent is avoiding the quality control aspect of the licensing requirement in Wisconsin and is frustrating the intent of the state legislature's stated purpose for the licensing requirement, which is as follows:

Purpose. It is hereby declared as a matter of legislative policy in the state of Wisconsin that the practice of medicine and surgery and treating the sick is a privilege granted by legislative authority and is not a natural right of persons, and that it is deemed necessary as a matter of such policy in the interests of the health, safety and welfare of the people of Wisconsin to provide for the granting of that privilege and the regulation of its subsequent use to the end that the people of Wisconsin are protected against unprofessional, improper, unauthorized and unqualified practice, and from unprofessional conduct by persons holding a license or certificate granted under this chapter.

A.B. 1067, Section 1, Chapter 383 (Wis. 1975).

The preponderance of the evidence establishes that Respondent has examined into the cause of human disease with regard to E.Y., Patient X and A.B.

With regard to E.Y., the evidence demonstrates that Respondent engaged in the practice of medicine in October of 2010 in that he examined into the fact, condition or cause of E.Y.'s health problems. He did this by performing a urine assay test and by examining a tissue sample slide in October of 2010 and by arriving at diagnoses based on those two tests: (1) trichothecene mycotoxicosis; (2) systemic yeast infestation; (3) severe yeast organisms within the small arteries; (4) moderate loss of tissue cells; and (5) fibrinous inflammation of a number of other major organ systems. Those diagnoses represent departures from the complete health or proper condition of the human body. Respondent did the analyses and report preparation in Wisconsin. The work described in the reports generated constitutes examining into the fact, condition or cause of human health or disease.

The un rebutted evidence also demonstrates that Respondent engaged in the practice of medicine in his conduct regarding Patient X in May of 2010 in that he examined into the fact, condition or cause of Patient X's health condition. He did this by examining a tissue sample slide in May of 2010 and by arriving at two diagnoses based on the evaluation: (1) trichothecene mycotoxicosis, and (2) severe yeast organisms within the small arteries. These conditions are a departure from the complete health or proper condition of the human body. Respondent did the analyses and report preparation in Wisconsin. The work described in the report generated constitutes examining into the fact, condition or cause of human health or disease.

The un rebutted evidence further shows that Respondent engaged in the practice of medicine in his conduct regarding A.B. in April of 2010 in that he examined into the fact, condition or cause of A.B.'s death. He did this by examining a number of tissue samples which had been taken during the autopsy of A.B. and by arriving at a list of diagnoses based on the evaluation of the slides. Those diagnoses are documented in a report dated May 1, 2010 and include the conclusion that A.B. had died from lung failure due to severe poisoning from exposure to trichothecene mycotoxins. He also diagnosed A.B. with a number of other conditions such as occlusion of the arteries, blastomycosis, and lymphosarcoma. These conditions are a departure from the complete health or proper condition of the human body. Respondent did the analyses and report preparation in Wisconsin. The work described in the report generated constitutes examining into the fact, condition or cause of human health or disease.

Moreover, expert testimony by Drs. Eastman and Mitchell also supports the Division's position that Respondent was practicing medicine by performing the work described in the Division's Exhibits 1, 2, 3 and 4.

CONCLUSIONS OF LAW

1. The Department of Safety and Professional Services has jurisdiction to act in this matter, pursuant to Wis. Stat. § 440.21(1).

2. Pursuant to Wis. Stat. § 440.21(1), the Department has the authority to conduct investigations, hold hearings, and make findings as to whether a person has engaged in a practice without a credential required under chapters 440 to 480.

3. Pursuant to Wis. Stat. § 440.21(1), the Department, if it has reason to believe that a person has engaged in a practice without a credential under chapters 440 to 480, has the authority to issue a special order enjoining the person from the continuation of the practice.

4. In an injunction proceeding, the Division must show by a preponderance of the evidence that Respondent has engaged in the practice of medicine without the required credentials.

5. Wisconsin Stat. § 448.01(9)(a), (b) and (d) provide in pertinent part that the practice of medicine includes the following activities: “to examine into the fact, condition or cause of human health or disease, or to treat, operate, prescribe or advise for the same, by any means or instrumentality;” “to apply principles or techniques of medical sciences in the diagnosis or prevention of any of the conditions described in par. (a) and in sub. (2);” and “to offer, undertake, attempt or do or hold oneself out in any manner as able to do any of the acts described in this subsection.”

6. Wisconsin Stat. § 448.01(2) defines “disease” to mean “any pain, injury, deformity or physical or mental illness or departure from complete health or the proper condition of the human body or any of its parts.”

7. Respondent, by examining into the fact, condition or cause or human health or disease with regard to E.Y., as set out above, has engaged in the practice of medicine, as defined by Wis. Stat. § 448.01(9).

8. Respondent, by examining into the fact, condition or cause or human health or disease with regard to Patient X, as set out above, has engaged in the practice of medicine, as defined by Wis. Stat. § 448.01(9).

10. Respondent, by examining into the fact, condition or cause or human health or disease with regard to A.B., as set out above, has engaged in the practice of medicine, as defined by Wis. Stat. § 448.01(9).

SPECIAL ORDER

For the reasons set forth above, IT IS ORDERED that Respondent William A. Croft, Jr., hereby cease the practice of medicine in the State of Wisconsin as that phrase is defined by Wis. Stat. § 448.01(9), until such time as he may become licensed pursuant to the requirements of Wis. Stat. § 448.05, and Chapter MED 1, Wis. Admin. Code. Specifically, Respondent shall cease from engaging in the following activities: (1) examining into the fact, condition or cause of human health or disease (as disease is defined in Wis. Stat. § 448.01(2)) and treating, operating, prescribing or advising for the same, by any means or instrumentality; (2) applying principles or techniques of medical sciences in the diagnosis or prevention of any of the conditions described in (1); and (3) offering, undertaking, attempting or doing or holding himself out in any manner as able to do any of the acts described in Wis. Stat. § 448.01(9).

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as
to Respondent William A. Croft, Jr.

Dated at Madison, Wisconsin on May 14, 2012.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Jennifer E. Nashold
Administrative Law Judge

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