

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before the
State of Wisconsin
Real Estate Appraisers Board

In the Matter of Disciplinary Proceedings Against
Michael G. Donahue, Respondent

FINAL DECISION AND ORDER

Order No. **0006158**

Division of Legal Services and Compliance Case No. 17 APP 026

The State of Wisconsin, Real Estate Appraisers Board, 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, Real Estate Appraisers Board.

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 7 day of May, 2019.

Carl Clementi *(Signature)*

Member
Real Estate Appraisers Board



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Disciplinary Proceedings Against
Michael G. Donahue, Respondent

DHA Case No. SPS-18-0010
DLSC Case No. 17 APP 026

PROPOSED DECISION ON SUMMARY JUDGMENT

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

Michael G. Donahue #437988
c/o Kenosha Correctional Center
6353 14th Avenue
Kenosha, WI 53143

Wisconsin Real Estate Appraisers Board
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Sarah E. Norberg
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935

The above-captioned matter is before this tribunal on a motion for summary judgment filed by the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division). After being granted an extension of time due to his incarceration, on November 15, 2018, Respondent Michael Donahue (Respondent) filed a cross-motion for summary judgment.¹ The Division filed a response on December 12, 2018. For the reasons set forth below, the Division's motion for summary judgment is granted in all respects, except with regard to its recommended discipline and costs, and Respondent's motion is denied.

¹ The Division objects to Respondent's cross-motion for summary judgment, stating that it was not provided for by the Administrative Law Judge's April 27, 2018 Briefing Order. I will allow Respondent's cross-motion and note that, pursuant to Wis. Stat. § 802.08(6), summary judgment could be granted to Respondent even if he had not requested it. *See* Wis. Stat. § 802.08(6) ("JUDGMENT FOR OPPONENT. If it shall appear to the court that the party against whom a motion for summary judgment is asserted is entitled to a summary judgment, the summary judgment may be awarded to such party even though the party has not moved therefor.")

UNDISPUTED MATERIAL FACTS

1. Respondent is licensed in the State of Wisconsin as a Licensed Appraiser. Respondent's certificate of licensure, number 1771-4, was issued on March 30, 2004 and expired on December 15, 2017. (Amended Complaint ¶ 1 and Answer ¶ 1)

2. On April 1, 2016, a jury convicted Respondent in Walworth County Circuit Court, Case Number 2014CF000348, of Causing Mental Harm to Child, a Class F felony; False Imprisonment, a Class H felony; and Neglecting a Child, a Class A misdemeanor, all three of which were as a Party to a Crime. The jury acquitted Respondent of child abuse. (Amended Complaint, ¶ 3 and Answer ¶ 3; Judgment A, Judgment B and Exhibit C to Norberg Affidavit, attached to the Division's Memorandum in Support of Summary Judgment, hereinafter, Judgment A, Judgment B, and Ex. C)

3. According to the criminal complaint:

- From approximately January 1, 2013 to December 16, 2013, Respondent's son, K.J.D. (DOB October 17, 2001), exhibited various concerning behaviors, including problem with urination (enuresis), problems with defecation (encopresis), the need to wear Pull-Ups, putting his fingers in his mouth to the point of his mouth bleeding, not eating, not showering, urine soaked socks and shoes, sitting in a cold room at a bar, and standing for long periods of time. These behaviors were either caused by or only present when K.J.D. was under the care of Respondent;
- Respondent's phone contained numerous unflattering pictures of K.J.D., including a picture of K.J.D. wearing a green wig, a pink and blue backpack, shoes, and Pull-Ups. K.J.D. appeared to be crying;
- Respondent made K.J.D. keep his hands in his mouth until his lips would bleed and put sanitizer in K.J.D.'s mouth;
- The door on K.J.D.'s bedroom had a backwards lock on it that would prevent K.J.D. from leaving his room, and sometimes the door would be locked from 7:00 p.m. until 8:00 a.m. Respondent would then yell at K.J.D. for urinating in his room;
- Respondent withheld food from K.J.D. and would make K.J.D. stand next to the dinner table when everyone was eating in front of him; and
- K.J.D. would arrive to school disheveled, dirty, soiled and hungry, and one day had the word "die" written multiple times on his arm.

(Ex. C)

4. On July 22, 2016, Respondent was sentenced to four years in prison, nine months in county jail and three years of extended of supervision. (Amended Complaint ¶ 5 and Answer ¶ 5; Judgment A and Judgment B)

5. The judgments of conviction were entered on August 2, 2016. (Judgment A and Judgment B)

6. On or about May 18, 2017, Respondent reported his convictions to the Department and this case was subsequently opened for investigation.

7. The record includes an affidavit from Respondent's daughter, M.M.D. (DOB August 1, 2000), as well as a statement which is not notarized or dated, which Respondent asserts was written by K.J.D. The statements from Respondent's children request that Respondent's appraiser license not be revoked. The statements also generally state that Respondent and his children had a good relationship until Respondent's wife (the children's step-mother), Carrie Donahue, entered their lives, and that she manipulated Respondent and made him do things he would not otherwise do. M.M.D.'s affidavit also states that M.M.D. "saw the abuse that [her] little brother endured" and that Respondent "played a very small role in this as mostly all of the abuse" was committed by Ms. Donahue. K.J.D. also states that he knows that Respondent "was still in the wrong for what he has done, but it was all because of Carrie." (Exs. D and E, attached to Respondent's and Memorandum in Support of Motion for Summary Judgment)

8. Respondent has been disciplined by the Wisconsin Real Estate Appraisers Board (Board) on two prior occasions, in 2007 and 2013. The Board's disciplinary actions resulted from Respondent completing appraisal reports in a manner which did not comply with the Uniform Standards of Professional Appraisal Practice (USPAP). In the 2007 case, limitations were placed on his license until he completed specified educational requirements. In the 2013 case, Respondent was reprimanded and he was ordered to complete additional educational requirements. *See In the Matter of Disciplinary Proceedings Against Michael G. Donahue*, LS0709126APP (Sept. 12, 2007); *In the Matter of Disciplinary Proceedings Against Michael G. Donahue*, Order No. 0002572 (Aug. 21, 2013) (attached to Division's Reply Brief).²

DISCUSSION

Standards Governing Summary Judgment

"The summary judgment procedure as provided in s. 802.08, Stats., shall be available to the parties upon approval by the division or the administrative law judge." Wis. Admin. Code § HA 1.10(2).

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Wis. Stat. § 802.08(2). When a motion for summary judgment is made and supported as provided in Wis. Stat. § 802.08, an adverse party "may not rest upon the mere allegations or denials of the pleadings" but "must set forth specific facts showing that there is a genuine issue for trial." Wis. Stat. § 802.08(3). "If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against such party." *Id.*

On a motion for summary judgment, the facts are construed in favor of the non-moving party. *DeHart v. Wis. Mut. Ins. Co.*, 2007 WI 91, ¶ 7, 302 Wis. 2d 564, 734 N.W.2d 394. "[I]f

² Disciplinary decisions may also be found on the Department's website.

there are any material facts in dispute or any reasonable inferences that might be drawn from undisputed facts which point to a result contrary to the one sought by the movant, the motion must be denied.” *Peninsular Carpets, Inc. v. Bradley Homes, Inc.*, 58 Wis. 2d 405, 410, 206 N.W.2d 408 (1973).

Conduct Reflecting Adversely on Respondent’s Fitness to Practice as a Real Estate Appraiser

The Division asserts that the undisputed facts establish a violation of Wis. Admin. Code § SPS 86.01(13), which provides: “No certified or licensed appraiser may engage in conduct which reflects adversely on his or her fitness to practice as a real estate appraiser, including engaging in any unprofessional or unethical conduct in the course of any real estate or appraisal transaction.”

The Division states that Respondent’s conduct resulting in his convictions reflects adversely on his fitness to practice as a real estate appraiser. The Division notes that appraisal work frequently involves entering personal residences and businesses to evaluate property characteristics, condition and quality and that an appraiser’s trustworthiness is therefore crucial to the work appraisers perform. The Division states that Respondent’s conduct shows he cannot inspire the trust necessary to allow him to perform work in personal residences and businesses.

In response, Respondent first attempts to challenge his convictions. He states that his son, K.J.D., lied about Respondent’s conduct, that K.J.D. was a troubled child due to prior abuse by K.J.D.’s biological mother and her boyfriend, and that K.J.D.’s step-mother was responsible for any abuse that did occur. In support of his assertions, Respondent provides written statements from his children and medical records which he states were introduced at his criminal trial. The medical records show that K.J.D. stated to medical providers that no abuse occurred in his home and that he would misbehave because he was upset that nothing was done to his biological mother and her boyfriend for abusing him. Notably, however, a jury convicted Respondent for his role in mistreating K.J.D., despite the medical records which Respondent states were before the jury. Furthermore, Respondent’s convictions were upheld on appeal. *See State v. Donahue*, No. 2017AP1939-CR, unpublished (Wis. Ct. App. Sept. 19, 2018) (attached to Division’s Reply Brief). This tribunal is not in a position to retry the criminal case, especially with select evidence favorable to one side only. Moreover, the written statements from Respondent’s children do not negate the jury’s verdicts which found beyond a reasonable doubt that Respondent was guilty of causing mental harm to a child, false imprisonment and neglect.

Respondent also asserts that the Division has failed to show a substantial relationship between his criminal conduct and his responsibilities as an appraiser, or that the crimes were committed in the course of any appraisal assignment. Respondent states that he practiced as a Licensed Appraiser from 2004-2017, has done over one thousand appraisal assignments in that time period, has not had any misconduct reported against him, and has been trustworthy and professional in performing his duties as an appraiser. He states that between the time the criminal complaint was filed on August 13, 2014 and his sentencing on July 22, 2016, he was out on bail and performed his job as an appraiser the entire time, including being in clients’ homes and talking to them on the telephone, with no complaints or disciplinary actions taken against him for any wrongdoing.

As a preliminary matter, Respondent is wrong in asserting that he has had no prior complaints against him as an appraiser. As noted above, he has had two disciplinary actions

against him for failing to comply with USPAP. More fundamentally, however, the Division argues that it does not have to prove that there is a substantial relationship between the criminal conduct and the profession of a licensed appraiser because it did not charge Respondent under Wis. Admin. Code § SPS 86.01(12), which prohibits an appraiser from violating “any law, the circumstances of which substantially relate to the practice of a real estate appraiser.” Instead, the Division charged Respondent with violating subsection (13) of this provision, which prohibits an appraiser from engaging in conduct that reflects adversely on his or her fitness to practice as a real estate appraiser. The Division relies on *In re Disciplinary Proceedings Against Johns*, 2014 WI 32, ¶ 38, 353 Wis. 2d 746, 847 N.W.2d 179, in which the Wisconsin Supreme Court construed SCR 20:8.4(b), which states that it is professional misconduct for a lawyer to “commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.” Significantly, the Court stated that “certain criminal conduct is so revealing of character defects, and so undermines public confidence in the legal profession, that it necessarily reflects adversely on an attorney's fitness as a lawyer.” One of the cases upon which the Court relied was *In re Disciplinary Proceedings Against Inglimo*, 305 Wis. 2d 71, 740 N.W.2d 125, in which the Court stated that the language of SCR 20:8.4(b) “contains no such requirement of a nexus between the criminal act and legal services rendered by the lawyer.” *Id.* at ¶ 48. The Court explained:

Our cases have also repeatedly found violations of SCR 20:8.4(b) even though there has been no connection established between the attorney's criminal act and the attorney's legal services to particular clients. . . . The connection required for a violation of SCR 20:8.4(b) is not between a criminal act and the lawyer's provision of legal services, but rather is between a criminal act and a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. A criminal act can reflect adversely on a lawyer's fitness even if the act did not cause the attorney to provide deficient legal services.

Id. at ¶ 49. Similarly, in *In re Disciplinary Proceedings Against Gorokhovsky*, 2013 WI 100, ¶ 25, 351 Wis. 2d 408, 840 N.W.2d 126, the Court held that “[d]omestic violence is an undisputedly serious crime that reflects adversely on [the attorney's] honesty, trustworthiness, or fitness as a lawyer in other respects.”

Based on this precedent, I conclude that the Division has met its burden of establishing as a matter of law that Respondent's cruel and criminal conduct against his 12 year-old son reflects adversely on his fitness to practice as a real estate appraiser and therefore constituted a violation of Wis. Admin. Code § SPS 86.01(13). As a result, the Division is entitled to summary judgment on this issue.

Failure to Report Conviction Within 48 Hours as Required by Wis. Admin. Code § SPS 4.09(2)

Wisconsin Admin. Code § SPS 4.09(2) requires licensed appraisers who are convicted of a felony or misdemeanor to notify the Department in writing of the date, place and nature of the conviction within 48 hours of the entry of the judgment of conviction.

Respondent's judgments of conviction were entered on August 2, 2016, and he admits that he did not notify the Department about his conviction until on or about May 18, 2017, approximately nine months later. Respondent argues that he did not know he was required to report his convictions to the Department and only found out from another inmate that he had to do so, whereupon he notified the Department. However, Respondent is required to know the

rules and regulations governing his profession. The reporting requirement is an important safety measure, designed to protect the public from licensees who may not be safe to practice. The Division is entitled to summary judgment on this violation.

Discipline

In the instant case, both parties agree that the issues of discipline and costs may be decided in this summary judgment proceeding based on the parties' submissions. In determining the appropriate discipline to be imposed, the following factors are considered: (1) rehabilitation of the licensee; (2) protection of the public; and (3) providing a deterrent to other licensees. *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 484, 164 N.W.2d 235 (1969).

Respondent's appraiser license expired on March 15, 2017. The Division requests that Respondent's right to renew his license be revoked. Wisconsin Stat. § 440.08(3)(a) allows the holder of a credential to restore the credential even after its expiration by simply paying the application renewal fee and a late renewal penalty of \$25. Under subparagraph (b), the Department may promulgate rules requiring credential holders who have failed to renew the credential for five years to complete additional requirements to restore their licenses. *See* Wis. Stat. § 440.08(3)(b). Read together, these provisions have been interpreted by the Department to mean that credential holders retain a right to automatically renew their credential within five years of expiration by simply paying the required fees. *See e.g., In the Matter of Disciplinary Proceedings Against Brandon T. Roach*, Order No. 0005126 (Jan. 13, 2017); *In the Matter of Disciplinary Proceedings against Timothy D. Russell*, Order No. 0004883 (Aug. 18, 2016). In the instant case, the Division states that Respondent has an automatic right to renew his license until December 14, 2022.

In requesting that Respondent's right to renew be revoked, the Division notes the serious nature of the criminal conduct and states that Respondent has not taken responsibility for his conduct but instead denies that it occurred and/or blames others.

Respondent requests that no discipline be imposed. In support of his request, Respondent asserts that while in prison, he has taken responsibility for his crimes. Specifically, he states that he should have known that the children's step-mother was abusing his kids when he was not home. He states that he was convicted as a party to a crime because he was married to her and she abused his kids under his roof while they were in his custody. Respondent minimizes his role in the conduct and the evidence required for a jury to have convicted him of causing mental harm to a child, false imprisonment and neglect, convictions which were upheld on appeal. As stated, this tribunal will not second-guess the jury's determination or the appellate court's decision. Instead of taking responsibility for his crimes, Respondent's statements reflect an unwillingness to do so.

Respondent's other arguments are more on-point, although he has not provided any proof with respect to several of his assertions. Respondent asserts that he has been a model inmate, has worked with a social worker, and has been involved in parenting education. He states he has had inmate and custody review once per year and that each year, he has been given a reduced custody rating. He contends that he has had no rule or conduct reports since being incarcerated and that last September, he was transferred to a minimum security work center in Kenosha Correctional Center (KCC), Wisconsin. He states that he has a driver's job at KCC, which means he goes out

into the community and drives other inmates to their jobs in the community. He argues that once he is released in 2021, he should be given the opportunity to practice his profession and be able to support himself.

The legislature has expressed a clear policy preference for attempting to rehabilitate those convicted of crimes where possible rather than barring them from employment. This policy is expressed in Wis. Stat. § 111.335(4)(b), which prohibits an employer or licensing agency from terminating an individual from employment or licensing for a criminal conviction unless the circumstances of the crime are substantially related to the circumstances of the job or licensed activity. *See* Wis Stat. §§ 111.322 and 111.335(3). This policy is further expressed in recent statutory changes which require licensing agencies to consider evidence of rehabilitation. *See* Wis. Stat. 111.335(4)(c) and (d). If there is competent evidence of sufficient rehabilitation and fitness to perform the licensed activity, termination from licensing is not permitted. *Id.* Competent evidence of sufficient rehabilitation and fitness to perform the licensed activity includes: documentation showing release and completion of probation, extended supervision or parole or other evidence that at least one year has elapsed since release from a correctional institution without subsequent conviction of a crime, along with evidence showing compliance with all conditions of probation, extended supervision or parole; evidence of the nature and seriousness of any offense of which the person was convicted; evidence of all circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense; the age of the individual at the time the offense was committed; the length of time that has elapsed since the offense was committed; letters of reference by persons who have been in contact with the individual since his release from any correctional institution; and all other relevant evidence of rehabilitation and present fitness. Wis. Stat. § 111.335(4)(d)2.

Applying these factors, Respondent has not shown competent evidence of sufficient rehabilitation and fitness to perform his duties as an appraiser. However, given Respondent's attempts at rehabilitation, particularly his efforts to repair his relationship with his son, and given that Respondent's conduct did not occur in the context of his providing appraisal services, I cannot conclude that permanent revocation of his appraiser license is warranted. The purpose of discipline in professional licensing cases is not to punish the licensee for criminal conduct – that is addressed by the criminal justice system. Rather, the purpose of professional discipline is to rehabilitate the credential holder where possible, protect the public, and deter others from engaging in such conduct. The Division is correct that Respondent's criminal conduct was deplorable, which is why he was convicted and sentenced to prison. With regard to his appraiser license, however, I conclude that a suspension is more appropriate than revocation under the facts of this case.

Accordingly, based on the factors set forth in *Aldrich*, and consistent with the policies expressed by the legislature in Wis. Stat. §§ 111.332 and 111.335, Respondent's right to renew his appraiser's license is suspended for a period of three years from the date of the Final Decision and Order in this case. At the end of the three-year period, Respondent may petition the Board to have the suspension lifted, and the Board, in its discretion, may then determine whether or not he should be granted the right to renew his license, and if so, under what conditions.

Costs

As a result of Respondent's right to renew his license being suspended, the Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. *See* Wis. Stat. § 440.22(2).

In exercising such discretion, the Board must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. The Department and professional boards have also, in previous orders, considered the following factors when determining if all or part of the costs should be assessed against a Respondent: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the Respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department is a program revenue agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and (7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, Order LS0802183CHI (Aug. 14, 2008). It is within the Board's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

The following facts are particularly relevant to the instant case. First, the Division proved the counts it alleged. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failing to prove those counts. In addition, Respondent has been disciplined twice before by the Board. Further, Respondent's conduct is serious, resulting from criminal conduct which reflects adversely on his fitness to practice as a real estate appraiser and his failure to report his convictions in a timely manner. As previously noted, however, the conduct did not occur within the context of Respondent providing appraisal services. Moreover, as a result of Respondent's serious conduct, Respondent's right to renew his license has been suspended for a significant period of time, three years. Operating in Respondent's favor, however, is the fact that the discipline sought by the Division, revocation, was not imposed. In addition, Respondent has participated at all stages in this proceeding, despite the fact that he is incarcerated. Finally, I note that the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. Any costs not paid by Respondent will therefore have to be borne by licensees who have not engaged in misconduct.

Based on the foregoing, 80 percent of the costs of this proceeding shall be assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that:

1. The Division's motion for summary judgment is granted, and Respondent's motion for summary judgment is denied, with respect to the issue of whether Respondent engaged in

conduct which reflects adversely on his fitness to practice as a real estate appraiser, in violation of Wis. Admin. Code § SPS 86.01(13).

2. The Division's motion for summary judgment is granted, and Respondent's motion for summary judgment is denied, with respect to the issue of whether Respondent failed to report his convictions within 48 hours, in violation of Wis. Admin. Code § SPS 4.09(2).

3. Respondent's right to renew his license as a real estate appraiser is suspended for a period of three years, commencing on the date a final decision and order is issued in this matter. After three years, Respondent may petition the Board to have the suspension lifted, and the Board, in its discretion, may decide to grant or deny the petition, and, if the petition is granted, may impose any conditions or limitations it deems appropriate.

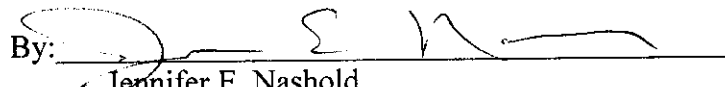
4. Respondent shall pay 80 percent of the costs of this proceeding to the Department of Safety and Professional Services in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

IT IS FURTHER ORDERED that the terms of this Order are effective the date of the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin on January 29, 2019.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: 
Jennifer E. Nashold
Administrative Law Judge

NOTICE OF RIGHTS OF APPEAL

TO: Michael G. Donahue #437988
c/o Kenosha Correctional Center
6353 14th Avenue
Kenosha, WI 53143

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is **May 10, 2019**. 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 Final Decision is shown above.

The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for rehearing must be served upon the respondent at the address listed 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. The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law. 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, the proceedings shall be in the county where the dispute arose. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and 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 final Decision and 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 30 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 Final Decision and 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 Final Decision and 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:

Real Estate Appraisers Board
4822 Madison Yards Way
P.O. Box 8366
Madison, WI 53708-8366

227.49 Petitions for rehearing in contested cases.

(1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.53 Parties and proceedings for review.

(1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review of the decision as provided in this chapter and subject to all of the following procedural requirements:

(a)

1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board, the credit union review board, or the savings institutions review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1. to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review of contested cases shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review under this

subdivision shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this subdivision commences on the day after personal service or mailing of the decision by the agency.

227.57 Scope of review.

(1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, testimony thereon may be taken in the court and, if leave is granted to take such testimony, depositions and written interrogatories may be taken prior to the date set for hearing as provided in ch. 804 if proper cause is shown therefor.

(2) Unless the court finds a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action.

(3) The court shall separately treat disputed issues of agency procedure, interpretations of law, determinations of fact or policy within the agency's exercise of delegated discretion.

(4) The court shall remand the case to the agency for further action if it finds that either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure.

(5) The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

(6) If the agency's action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence in the record.

(7) If the agency's action depends on facts determined without a hearing, the court shall set aside, modify or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility.

(8) The court shall reverse or remand the case to the agency if it finds that the agency's exercise of discretion is outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained to the satisfaction of the court by the agency; or is otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(9) The court's decision shall provide whatever relief is appropriate irrespective of the original form of the petition. If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as it finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(10) Upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it. The right of the appellant to challenge the constitutionality of any act or of its application to the appellant shall not be foreclosed or impaired by the fact that the appellant has applied for or holds a license, permit or privilege under such act.