

Government Code sections 11505(a) and 11520.

FINDINGS OF FACT

The allegations of the Accusation, a true and correct copy of which is attached hereto as Exhibit 2 and incorporated by reference herein, are found to be true. (See also Exhibit 3 hereto, Record of Out-of-State Discipline.)

DETERMINATION OF ISSUES

Pursuant to the foregoing Findings of Fact, respondent has committed acts constituting unprofessional conduct in violation of Business and Professions Code sections 2234(b), 2234(e) and 2305 and conduct subject to discipline within the meaning of Business and Professions Code section 141(a).

DISCIPLINARY ORDER

Physician and Surgeon's certificate number A-20384 issued to David E. Papendick, M.D. is revoked.

Respondent shall not be deprived of making a request for relief from default as set forth at Government Code section 11520(c) for good cause shown. However, such showing must be made in writing by way of motion to vacate the default decision and directed to the Division of Medical Quality, Medical Board of California at 1430 Howe Avenue, Sacramento, CA 95825 within seven (7) days of service of this decision.

This decision shall become effective on March 22, 1999 at 5:00 pm.

DATED: February 18, 1999

MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BY Carole H. Hurvitz, M.D.

2 CAROLE H. HURVITZ, M.D.
CHAIR, PANEL B

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7

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO October 30 19 98
BY [Signature] ANALYST

8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation) Case No. 16-98-84486
Against:)
12)
13 DAVID E. PAPENDICK, M.D.) ACCUSATION
801 Fourth Street)
Algoma, WI 54201)
14)
Physician and Surgeon's)
15 Certificate No. A-20384,)
16 Respondent.)

17
18 The Complainant alleges:

19 **PARTIES**

20 1. Complainant, Ronald Joseph, is the Executive
21 Director of the Medical Board of California (hereinafter the
22 "Board") and brings this accusation solely in his official
23 capacity.

24 2. On or about September 17, 1962, Physician and
25 Surgeon's Certificate No. A-20384 was issued by the Board to
26 David E. Papendick, M.D. (hereinafter "respondent"), and at all
27 times relevant to the charges brought herein, this license has

1 been in full force and effect. The said license expired on
2 January 31, 1998 and is in delinquent status.

3 JURISDICTION

4 3. This accusation is brought before the Division of
5 Medical Quality of the Medical Board of California, Department of
6 Consumer Affairs (hereinafter the "Division"), under the
7 authority of the following sections of the California Business
8 and Professions Code (hereinafter "Code") and/or other relevant
9 statutory enactment:

10 A. Section 2227 of the Code provides that the Board
11 may revoke, suspend for a period not to exceed one year, or
12 place on probation, the license of any licensee who has been
13 found guilty under the Medical Practice Act, and may recover
14 the costs of probation monitoring if probation is imposed.

15 B. Section 2234(b) of the Code provides that gross
16 negligence constitutes unprofessional conduct.

17 C. Section 2234(e) of the Code provides that the
18 commission of any dishonest or corrupt act substantially
19 related to the qualifications, functions or duties of a
20 physician and surgeon constitutes unprofessional conduct.

21 D. Section 2261 of the Code provides that knowingly
22 making or signing any certificate or other document directly
23 or indirectly related to the practice of medicine that
24 falsely represents the existence or nonexistence of a state
25 of facts constitutes unprofessional conduct.

26 E. Section 2305 of the Code provides that the
27 revocation, suspension, or other discipline, restriction, or

1 limitation imposed by another state upon a license to
2 practice medicine issued by that state, or the revocation,
3 suspension, or restriction of the authority to practice
4 medicine by any agency of the federal government, that would
5 have been grounds for discipline in California under the
6 Medical Practice Act, constitutes grounds for discipline for
7 unprofessional conduct.

8 F. Section 125.3 of the Code provides that the Board
9 may request the administrative law judge to direct any
10 licentiate found to have committed a violation or violations
11 of the licensing act, to pay the Board a sum not to exceed
12 the reasonable costs of the investigation and enforcement of
13 the case.

14 G. Section 141(a) of the Code provides that a
15 disciplinary action taken by another state, any agency of
16 the federal government, or by another country against a
17 holder of a California physician and surgeon's certificate
18 for any act substantially related to the practice of
19 medicine may be a ground for disciplinary action in
20 California.

21 H. Section 16.01(a) of the Budget Act of the State of
22 California provides that no funds appropriated may be
23 expended to pay any Medi-Cal claim for any service performed
24 by a physician while that physician's license is under
25 suspension or revocation due to a disciplinary action of the
26 Medical Board of California.

27 I. Section 16.01(b) of the Budget Act of the State of

1 California provides that no funds appropriated may be
2 expended to pay any Medi-Cal claim for any surgical service
3 or other invasive procedure performed on any Medi-Cal
4 beneficiary by a physician if that physician has been placed
5 on probation due to a disciplinary action of the Medical
6 Board of California related to the performance of that
7 specific service or procedure on any patient, except in any
8 case where the Board makes a determination during its
9 disciplinary process that there exist compelling
10 circumstances that warrant continued Medi-Cal reimbursement
11 during the probationary period.

12 4. Respondent is subject to discipline for
13 unprofessional conduct within the meaning of Code sections
14 2234(b), 2234(e) and 2305 and to discipline for out-of-state
15 disciplinary action within the meaning of Code section 141(a) as
16 more fully set forth hereinbelow.

17 **FIRST CAUSE FOR DISCIPLINE**

18 (Gross Negligence)

19 [Bus. & Prof. Code § 2234(b)]

20 Patient M.M.^{1/}

21 5. Following a telephonic conversation on or about
22 August 17, 1997 with M.M., a 64-year old female, whom respondent
23 had been treating for Lyme Disease and who informed respondent at
24 the time of the telephone call on August 17, 1997 that she
25 believed that she was also suffering from gout, respondent

26 1. The full names of all patients referred to herein will
27 be made available to respondent upon a timely request for
discovery.

1 diagnosed Lyme Disease with gout and prescribed colchicine, .6
2 mg., every 10-15 minutes until M.M. became nauseous or gained
3 relief from her painful condition, but did not personally examine
4 M.M. Respondent's prescription of colchicine for patient M.M.
5 greatly exceeded the accepted dosage frequency.

6 6. Thereafter on or about August 18, 1997, patient
7 M.M.'s daughter informed respondent telephonically that M.M. was
8 suffering from nausea and diarrhea, known side effects of
9 colchicine. Respondent, however, merely directed that M.M.
10 discontinue a previously prescribed antibiotic and requested that
11 M.M. appear for a prompt office examination.

12 7. Thereafter on or about August 19, 1997, patient
13 M.M. was admitted through the emergency department to Kewaunee
14 Hospital in Wisconsin suffering from colchicine toxicity. On
15 August 20, 1997, M.M. expired from cardiac arrest suffered en
16 route for further hospitalization in Green Bay, Wisconsin.

17 8. Respondent's care of patient M.M. set forth above
18 constitutes gross negligence within the meaning of Code section
19 2234(b).

20 SECOND CAUSE FOR DISCIPLINE
21 (Dishonest Act Substantially Related)
22 [Bus. & Prof. Code § 2234(e)]

23 Patient I.M.

24 9. In or about January, 1993 through in or about
25 January, 1995, respondent billed Medicare in 29 separate claims
26 for 44 separate treatment dates for medical psychotherapy
27 services provided to patient I.M. that he in fact did not provide
personally or by properly delegated medical act.

1 10. Respondent's conduct as indicated in paragraph 9,
2 above, constitutes unprofessional conduct within the meaning of
3 Code section 2234(e).

4 THIRD CAUSE FOR DISCIPLINE
5 (Knowing Misrepresentation in Medical Document)
6 [Bus. & Prof. Code § 2261]

7 11. Complainant realleges paragraph 9, above, and
8 incorporates it herein by reference as if fully set forth at this
9 point.

10 12. Respondent's conduct as indicated in paragraph 9,
11 above, constitutes unprofessional conduct within the meaning of
12 Code section 2261.

13 FOURTH CAUSE FOR DISCIPLINE
14 (Out-of-State Discipline)
15 [Bus. & Prof. Code §§ 141(a), 2305]

16 13. Complainant realleges paragraphs 5-7, above, and
17 incorporates them herein by reference as if fully set forth at
18 this point.

19 14. On or about September 18, 1997, the Wisconsin
20 Medical Examining Board summarily suspended respondent's
21 Wisconsin medical license for his treatment of patient M.M. (See
22 Final Decision and Order, December 17, 1997, attached hereto as
23 Exhibit "A".)

24 15. Respondent's conduct concerning patient M.M. as
25 set forth in paragraphs 5-7, hereinabove, and the disciplinary
26 action of the Wisconsin Medical Examining Board set forth in
27 paragraph 14, above, constitute unprofessional conduct within the
meaning of Code section 2305 and conduct subject to disciplinary
action within the meaning of Code section 141(a).

1 FIFTH CAUSE FOR DISCIPLINE

2 (Out-of-State Discipline)

3 [Bus. & Prof. Code §§ 141(a), 2305]

4 16. Complainant realleges paragraphs 5-7 and 9, above,
5 and incorporates them herein by reference as if fully set forth
6 at this point.

7 17. On or about December 17, 1997, by Final Decision
8 and Order of that date, the Wisconsin Medical Examining Board
9 accepted the disciplinary surrender of respondent's Wisconsin
10 medical license without right of reapplication as a result of
11 respondent's care of patients M.M. and I.M. as set forth
12 hereinabove. (See ibid.)

13 18. Respondent's care of patients M.M. and I.M. as set
14 forth in paragraphs 5-7 and 9, above, and the disciplinary action
15 of the Wisconsin Medical Examining Board set forth in paragraph
16 17, above, constitute unprofessional conduct within the meaning
17 of Code section 2305 and conduct subject to disciplinary action
18 within the meaning of Code section 141(a).

19 PRAYER

20 **WHEREFORE** complainant requests that a hearing be held
21 on the matters herein alleged and that, following the hearing,
22 the Division issue a decision:

23 1. Revoking or suspending Physician and Surgeon
24 Certificate Number A-20384 heretofore issued to respondent David
25 E. Papendick, M.D.;

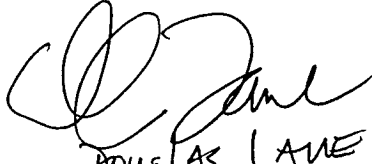
26 2. Revoking, suspending or denying approval of the
27 respondent's authority to supervise physician assistants pursuant
to Code section 3527;

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3. Ordering respondent to pay the Division the actual and reasonable costs of the investigation and enforcement of this case and the costs of probation monitoring if probation is imposed; and

4. Taking such other and further action as the Division may deem necessary or proper.

DATED: October 30, 1998.


Douglas Lane Deputy Director
Ronald Joseph
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

forms\accuse [115 rev]



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

RECEIVED
GENERAL BOARD OF CALIF.
20 SEP 23 AM 9:04
REGISTRATION UNIT

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

CERTIFICATE

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Patrick Braatz, Administrator, Division of Health Professions and Services Licensing, Wisconsin Department of Regulation and Licensing and the legal custodian of records of the Wisconsin Medical Examining Board, do hereby certify that the documents annexed hereto have been compared by me with the originals filed in the office of the Wisconsin Medical Examining Board and that the annexed documents are true and correct copies thereof.

Dated this 15th day of September, 1998.

MEDICAL EXAMINING BOARD

Patrick Braatz
Administrator

Division of Health Professions and Services Licensing

SEAL

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Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

Committed to Equal Opportunity in Employment and Licensing

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDING AGAINST
DAVID E. PAPERDICK, M.D.,
RESPONDENT.

Case No. 95 Med 364, 97 Med 265

LS 9709252 MED

FINAL DECISION AND ORDER

The parties to this proceeding for purposes of s. 227.53, Stats., are:

David E. Papendick, M.D.
~~██████████~~
~~██████████~~

Medical Examining Board
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

The parties in this matter agree to the term and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. David E. Papendick, M.D., ("Respondent") was born on ~~██████████, 1932~~ and is licensed to practice medicine and surgery in the state of Wisconsin pursuant to license number 14465, first granted on September 19, 1962.
2. On August 17, 1997, Respondent took a telephone call from M. M., a 64 year old woman Respondent had been treating for Lyme Disease. M. M. informed Respondent that she believed

she was suffering from gout. Respondent's records for M. M. contain mention of elevated uric acid levels and a diagnosis of Lyme Disease.

3. Respondent diagnosed M. M. of Lyme Disease with gout and prescribed colchicine, one 0.6 mg. tablet every 10 to 15 minutes, to continue until the patient became nauseated or had relief from the pain of her condition. The patient consumed only 10.2 mg.

4. The medication was dispensed from Respondent's office to one of the patient's daughters. The patient took the colchicine as directed, upon information and belief, consuming 17 tablets.

5. Respondent's prescription for the administration of colchicine greatly exceeded the current accepted dosage frequency for colchicine consumption.

6. On Monday, August 18, 1997, the patient's daughter called Respondent to report that the patient was suffering from nausea and diarrhea, which are known side effects of colchicine. Respondent instructed the discontinuance of an antibiotic previously prescribed and requested a prompt office examination.

7. At 10:30 p.m. on Tuesday, August 19, 1997, the patient went to the emergency room at the Kewaunee Hospital where she was assessed as suffering from colchicine toxicity. The patient was transferred by ambulance to a hospital in Green Bay. On the way to Green Bay, the patient suffered cardiac arrest. The patient could not be resuscitated and was pronounced dead at the Green Bay hospital shortly after 2:30 a.m. Wednesday, August 20, 1997.

8. Respondent's failure to personally examine patient on August 17, 1997 fell below acceptable standards and may have exposed patient to additional risks. Respondent requested patient make a prompt office visit.

9. On September 18, 1997, the Medical Examining Board summarily suspended Respondent's license to practice medicine and surgery in the state of Wisconsin pending formal disciplinary proceedings arising out of Respondent's treatment of M. M.

10. Respondent billed Medicare for medical psychotherapy services for the patient I. M. between January, 1993, and January, 1995, claiming forty-four separate dates on twenty-nine separate claims.

11. Respondent did not provide medical psychotherapy services for patient I. M. during this period, nor did he claim the counselor who did provide the services to I. M. as an employee on the quarterly contribution/wage reports he filed with the Unemployment Insurance Division of the Department of Industry, Labor and Human Relations.

12. Respondent responded to an inquiry by the Medicare carrier, stating that Respondent employed the counselor for whose services Respondent submitted claims.

13. Respondent has repaid with interest the Medicare carrier the amount he received in payment of the claims the carrier determined were improper.

14. Respondent has notified his patients that he is retired from the practice of medicine and has tendered the surrender of his license and registration to practice medicine and surgery in Wisconsin.

Conclusion of Law

1. The Medical Examining Board has jurisdiction in this matter pursuant to s. 448.03, Stats.
2. Respondent's conduct in treating M. M. fell below the acceptable standards of the practice of medicine and constitutes a violation of s. Med.10.02(2)(h), Wis. Admin. Code.
3. Respondent's conduct in billing Medicare for services he did not provide personally or through a delegated medical act constitutes a violation of s. Med.10.02(2)(m), Wis. Admin. Code.

Order

Now, therefore, it is ORDERED that Respondent's surrender of his license and registration to practice medicine and surgery in the state of Wisconsin is accepted.

It is further ordered that Respondent shall not apply for reinstatement of his license and registration to practice medicine and surgery in the state of Wisconsin. Should Respondent attempt to apply for re-instatement on a license or registration to practice medicine and surgery, the denial of the application by Respondent shall not constitute a denial of a license application for purposes of ch. RL 1, Wis. Admin. Code and shall not give rise to contested case within the meaning of secs. 227.01(3) and 227.42, Stats.

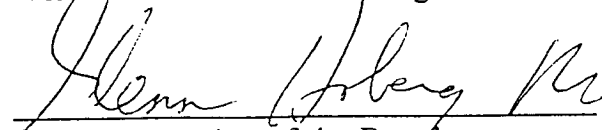
It is further ordered that the cases currently under investigation involving Respondent, 95 MED 163, 96 MED 019, 96 MED 124, and 96 MED 146 to be closed as to Respondent without costs or fees.

This order is effective on the date of its signing.

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

Dated this 17th day of ^{December}~~November~~, 1997

Wisconsin Medical Examining Board


A member of the Board