

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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In The Matter of a Petition for  
Declaratory Ruling involving,

WISCONSIN SOCIETY OF  
ANESTHESIOLOGISTS,

PETITIONER,

and

GOVERNOR JIM DOYLE  
ATTORNEY GENERAL PEG LAUTENSCHLAGER  
CENTERS FOR MEDICARE AND MEDICAID SERVICES  
PODIATRISTS AFFILIATED CREDENTIALING BOARD  
WISCONSIN ASSOCIATION OF NURSE ANESTHETISTS  
WISCONSIN BOARD OF NURSING  
WISCONSIN DEP'T OF HEALTH AND FAMILY SERVICES  
WISCONSIN DEP'T OF REGULATION AND LICENSING  
WISCONSIN HOSPITAL ASSOCIATION  
WISCONSIN MEDICAL SOCIETY  
WISCONSIN SOCIETY OF PODIATRIC MEDICINE

INTERESTED PARTIES.

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MEMORANDUM ON PREHEARING  
CONFERENCE

Case No. LS0511012MED  
[Wis. Stat. § 227.44]

To: Petitioner, Wisconsin Society of Anesthesiologists  
Attorney Michael G. Laskis  
Foley & Lardner LLP  
150 East Gilman Street  
P.O. Box 1497  
Madison, WI 53701-1497

Interested Parties:

Governor Jim Doyle  
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Wisconsin Hospital Association  
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Wisconsin Medical Society  
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Wisconsin Dep't. of Health and Family Services  
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Wisconsin Society of Podiatric Medicine  
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One South Pinckney Street, Suite 600  
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Wisconsin Association of Nurse Anesthetists  
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Wisconsin Board of Nursing  
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Wisconsin Medical Examining Board  
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Podiatrists Affiliated Credentialing Board  
Attorney Jacquelynn Rothstein  
Office of Legal Counsel  
Wisconsin Dep't. of Reg. and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935

#### THE CONFERENCE

A prehearing conference was held in the above-captioned matter on Friday, November 11, 2005 at 9:00 AM in Room 121A at the Department of Regulation and Licensing, 1400 East Washington Avenue, Madison, Wisconsin 53708.

At the prehearing the ALJ noted that:

- a) This matter was commenced by the Wisconsin Society of Anesthesiologists by a Petition to the Medical Examining Board for a Declaratory Ruling, dated July 22, 2005.
- c) The Petition, filed under Wis. Stat. § 227.41, requests the Medical Examining Board to "... issue a Declaratory Ruling affirming that in Wisconsin anesthesia may be lawfully administered by CRNAs only under the supervision of a duly licensed anesthesiologist or other physician."
- b) At its September 2005 meeting, the Medical Examining Board acted to appoint an administrative law judge to hear the Petition.

#### PARTIES

For the purpose of this matter the parties are denominated as the "Petitioner" and "Interested Parties."

The Medical Examining Board is the decisionmaker in this matter and is considered a party only for purposes of review under Wis. Stat. § 227.53.

The parties who appeared the prehearing conference were:

Wisconsin Society of Anesthesiologists represented by Foley & Lardner LLP appearing by Attorney Michael G. Laskis; Wisconsin Association of Nurse Anesthetists and Wisconsin Society of Podiatric Medicine, represented by Quarles and Brady, LLP, by Attorney Stan Davis; Wisconsin Department of Regulation and Licensing, represented by its Office of Legal Counsel (DRL-OLC) by Attorney William Black; Wisconsin Board of Nursing,

represented by DRL-OLC by Attorney Colleen Baird; Podiatrists Affiliated Credentialing Board, represented by DRL-OLC by Attorney Jacquelynn Rothstein

The Wisconsin Medical Examining Board appeared at the conference represented by DRL-OLC, by special counsel Dennis Schuh.

At the conference, the Wisconsin Society of Podiatric Medicine requested that it be added as an Interested Party. There was no objection and the request was granted.

The Podiatrists Affiliated Credentialing Board submitted a letter to the Medical Examining Board dated October 3, 2005, expressing an interest in this matter. (Copy of letter enclosed.) The Podiatrists Affiliated Credentialing Board was added as an Interested Party.

The administrative law judge noted that Wis. Stat. § 227.41(1) provides that a "... declaratory ruling shall bind the agency and all parties to the proceedings on the statement of facts alleged, unless it is altered or set aside by a court."

#### SERVICE OF PAPERS ON ALL PARTIES

Every pleading, notice, motion, brief and other paper, including proposed findings of fact and conclusions of law, required to be filed with the administrative law shall be served upon each of the parties identified above unless the administrative law judge orders otherwise.

#### SETTLEMENT DISCUSSIONS.

The administrative law judge requested the parties to engage in discussions that would settle the issues relating to physician supervision of nurse anesthetists and avoid a need to litigate matters raised in the Petition. The administrative law judge requests the parties who appeared at the prehearing conference to begin settlement discussions immediately and to report progress in reaching agreement through a letter to the administrative law judge on or before December 29, 2005.

In the opinion of the administrative law judge, the parties should be encouraged to settle the issues raised in the Petition through discussion and conciliation because of important practical and public policy reasons, especially the need to protect the health, safety, and welfare of surgical patients, the importance of fostering cooperation between health care professionals, the large number of parties interested and affected, and the complexities of resolving legal issues relating to the scope of a professional practice. (With respect to the latter, see e.g., *Tom Welch Accounting Service v. Walby*, 29 Wis. 2d 123, 138 N. W. 2d 139 (1965), and, more recently, an Attorney General's opinion of January 30, 2001 (OAG 1-01) discussing the overlapping areas of the practice of chiropractors, physical therapists and massage therapists.)

#### PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The prehearing conference included a discussion of the need to clarify facts and issues raised in the petition. Those identified include:

1. What is the nature of the supervision which the Petitioner contends must be exercised by a physician over a nurse anesthetist under Wisconsin law?
2. What is the nature of the supervision which must be exercised by a physician over a nurse anesthetist under regulations of the United States Department of Health and Human Services?

3. How do the supervision requirements for nurse anesthetists identified in the Petition apply to the practice of podiatry under subch. IV of ch. 448?
4. How do the supervision requirements for nurse anesthetists identified in the Petition apply to pre-operative and post-operative care?
5. What is the legal authority to administer anesthesia of a Certified Registered Nurse Anesthetist (CRNA) who holds a credential as an advanced practice nurse prescriber under Wis. Stat. ch. 441? How are CRNAs regulated by the State of Wisconsin? What is the scope of practice of a CRNA?

#### PROPOSED FINDINGS OF FACT AND CONCLUSION OF LAW

For the purposes of determining whether there are any genuine issues as to any material fact that require an evidentiary hearing, or issues of law that require briefing, the administrative law judge requested that the parties submit proposed findings of fact and conclusions of law. All parties shall have an opportunity to submit proposed findings and conclusions.

The administrative law judge anticipates that he will request briefs from the parties after proposed findings and conclusions are filed according to the schedule below. A party need not have filed proposed findings and conclusions as a condition for filing a brief on the issues.

The parties and the administrative law judge established a schedule for filing proposed findings of fact and conclusions of law, as follows:

- A) Petitioner shall file its Proposed Findings of Facts and Conclusions of Law with the administrative law judge and all parties on or before January 16, 2006.
- B) Any Interested Party may respond to the Petitioner's Proposed Findings of Facts and Conclusions of Law by filing its Proposed Findings of Facts and Conclusions of Law with the administrative law judge and all parties on or before March 3, 2006.
- C) Petitioner may supplement its Proposed Findings of Facts and Conclusions of Law on or before April 17, 2006.

#### REQUEST BY WISCONSIN MEDICAL SOCIETY

Following adjournment of the prehearing conference on November 11, 2005, a representative of the Wisconsin Medical Society requested that counsel for the Wisconsin Medical Society be permitted an opportunity to file Proposed Findings of Facts and Conclusions of Law in response to the Proposed Findings and Conclusions filed by any Interested Party. This request will be granted unless an objection is filed by a party on or before December 5, 2005.

Unless objections are filed, the Wisconsin Medical Society may file Proposed Findings of Facts and Conclusions of Law on or before April 17, 2005 in response to the Proposed Findings of Fact and Conclusions of Law filed by any Interested Party.

If any objection is filed, the administrative law judge will schedule a hearing on the objection.

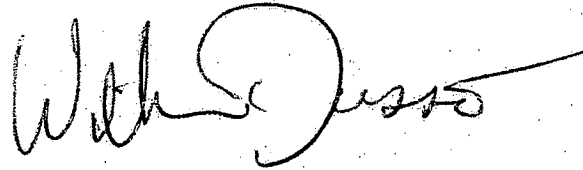
#### PREHEARING CONFERENCE

A prehearing conference will be held on Friday, April 28, 2006, at 9:00 AM in Room 121A at 1400 East Washington Avenue, Madison, Wisconsin 53708. The purpose of the April 28, 2006 conference is to discuss resolution of any outstanding issues, including a date for hearing and a schedule for filing legal briefs.

FILING WITH THE ADMINISTRATIVE LAW JUDGE

Papers may be filed with the administrative law judge at:

William Dusso, Administrative Law Judge  
Office of Legal Counsel, Attention Joel Garb  
Department of Regulation and Licensing  
1400 East Washington Avenue  
Madison WI 53708

A handwritten signature in black ink, appearing to read "William Dusso", with a long horizontal flourish extending to the right.

William Dusso  
Administrative Law Judge  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935  
Telephone:  
Office: (608) 261-2385 (Joel Garb)  
Home: (608) 277-0853

Dated: November 21, 2005.

Jim Doyle  
Governor

WISCONSIN DEPARTMENT OF  
REGULATION & LICENSING

1400 E Washington Ave  
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Celia M. Jackson  
Secretary



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October 3, 2005

Wisconsin Medical Examining Board  
1400 E. Washington Avenue  
Madison, WI 53714

Dear Chairman Franger and Honorable Members of the Medical Examining Board:

At our meeting on September 27, 2005, the Podiatrists Affiliated Credentialing Board (Podiatry Board) reviewed the petition for Declaratory Ruling that the Wisconsin Society of Anesthesiologists filed with the Medical Examining Board (MEB). In it, the MEB was asked to consider whether Wisconsin's scope of practice laws require certified registered nurse anesthetists to be supervised by an anesthesiologist or other physician when administering anesthesia.

Certified registered nurse anesthetists (CRNA) undergo rigorous training before becoming eligible to administer anesthesia. The Podiatry Board strongly believes that CRNAs have the requisite training, education, and experience to work collaboratively with health care professionals in the administration of anesthesia, including podiatrists. Towards that end, we urge the MEB, to the extent it has the authority to do so, to allow CRNAs to administer anesthesia without having a physician in a direct supervising role. Alternatively, we request that podiatrists be among those health care providers eligible to supervise CRNAs.

Additionally, the Podiatry Board would appreciate being notified of any hearings the MEB intends to hold on this subject. I am interested in testifying about this topic and look forward to being kept abreast of any further developments regarding it.

Very truly yours,

*Lisa Reinicke, D.P.M.*  
*by JBR*

Lisa Reinicke, D.P.M.  
Chair

Podiatrists Affiliated Credentialing Board