COURT OF APPEALS
DECISION
DATED AND FILED

February 10, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1297 **Cir. Ct. No. 02CV008310**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

DALE M. BUEGEL,

PETITIONER-APPELLANT,

V.

STATE OF WISCONSIN MEDICAL EXAMINING BOARD,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge. *Affirmed*.

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Dale M. Buegel, M.D., appeals, *pro se*, from a final decision and order of the trial court affirming the final decision and order of the Wisconsin Medical Examining Board. Dr. Buegel contends that the Board erroneously interpreted numerous provisions of the law before entering its final decision and order; his constitutional rights were violated because the Board's

actions were based on "erroneous findings of fact" and not supported by substantial evidence, and he was denied the "ability" to call witnesses; the trial court improperly denied him the "process of discovery regarding irregularities of procedure by the Board"; and the trial court improperly affirmed the issue of costs and the propriety of the Board's actions under WIS. ADMIN. CODE § RL 2.18(4) (2001-02).[1] Because the Board properly concluded that Dr. Buegel failed to comply with the requirements of the September 7, 2000 order; the Board's assessment of costs was proper; the administrative law judge properly quashed the subpoena seeking to call Dr. Darold Treffert as a witness; and the trial court did not erroneously exercise its discretion in denying Dr. Buegel's motion for discovery, we affirm.

I. BACKGROUND.

¶2 This case began when the Wisconsin Department of Regulation and Licensing filed a complaint with the Wisconsin Medical Examining Board alleging that Dr. Buegel's care of several patients had fallen below minimum standards. A hearing was subsequently conducted before an administrative law judge (ALJ) regarding Dr. Buegel's medical license. The ALJ filed a proposed decision, the Board heard objections, and a final decision and order was eventually issued by the Board on September 7, 2000.

¶3 The September 7 order adopted the ALJ's factual findings and conclusions of law and limited Dr. Buegel's license to practice medicine and surgery for an indefinite period of time. The order required Dr. Buegel to satisfy

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

several conditions within one year: (1) complete a 45-hour course in the proper prescribing of controlled dangerous substances; (2) complete an educational program in record keeping; (3) arrange for the sponsors of the courses or programs to certify the results upon completion, and to release the records of his performance and attendance; and (4) cover the costs of any and all required programs. In addition, the order required Dr. Buegel to maintain patient health care records in accordance with the proper requirements of the administrative code, arrange for the review of his patient records by an approved reviewing physician for a period of six months, and submit a report by the reviewing physician regarding his or her opinion as to Dr. Buegel's compliance with the proper administrative requirements for record maintenance. The order indicated that if Dr. Buegel complied with the conditions of the order for two years, the Board would then lift the limitations on Dr. Buegel's license upon petition. Further, the order assessed one half of the costs of the proceeding against Dr. Buegel.

¶4 In October 2000, Dr. Buegel appealed to the trial court by filing a petition for judicial review, contending that the procedure was deficient, the Board misinterpreted the law, and the record did not support the findings of fact. However, he failed to obtain a stay of the order's requirements at the same time. On July 30, 2001, the trial court affirmed the Board's order except for the assessment of costs against Dr. Buegel. Dr. Buegel never appealed the trial court's decision.

¶5 In December 2001, a new complaint was filed alleging that Dr. Buegel had not satisfied the education and record review requirements of the previous order. A hearing was subsequently held and Dr. Buegel apparently admitted that he had not satisfied the requirements of the order, but insisted that

the order was unlawful. The ALJ issued a proposed decision in May 2002. The ALJ's decision proposed that Dr. Buegel's license should be indefinitely suspended, but also that the suspension could be stayed if Dr. Buegel showed that he was enrolled in the requisite educational programs and had arranged to have his records reviewed. It also proposed that the costs for the hearing be assessed against Dr. Buegel.

¶6 On July 24, 2002, the Board heard oral arguments and issued a decision and order essentially adopting the ALJ's proposed decision. The Board intended to make several minor changes to the wording of the order, for clarification purposes, but those changes were not incorporated due to a scrivener's error. Accordingly, one month later, the Board declared the July 2002 decision and order to be void and replaced *nunc pro tunc*[2] by the new order of August 8, 2002. The "amended" order included a more detailed explanation of some of the requirements.

¶7 On August 21, 2002, Dr. Buegel filed a petition for judicial review in the trial court. Shortly thereafter, Dr. Buegel was served with the affidavits of costs, with instructions that he had until September 7, 2002, to file objections to the affidavits. He does not appear to have objected to the affidavits. On March 27, 2003, the trial court affirmed the August 8, 2002 order. Dr. Buegel now appeals.

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[2] *Nunc pro tunc* means "[h]aving retroactive legal effect through a court's inherent power <the court entered a *nunc pro tunc* order to correct a clerical error in the record>." BLACK'S LAW DICTIONARY 1097 (7th ed. 1999). Further, "[w]hen an order is signed '*nunc pro tunc*' as of a specified date, it means that a thing is now done which should have been done on the specified date." ***Id.*** (citation omitted and emphasis added).

II. ANALYSIS.

A. The Board properly concluded that Dr. Buegel failed to comply with the requirements of the September 7 order.

¶8 Dr. Buegel contends that the trial court "did not properly decide if the Board violated section 227.48(1) of Chapter 227 Administrative Procedure and Review."[3] He insists that the trial court employed an improper standard of review, erred when it "argued" that he was precluded from challenging the legality of the September 7 order under the doctrine of claim preclusion, and erred "by drawing conclusion [sic] about [his] intent with regard to the Board's order without citation of evidence." We disagree.

¶9 Appellate review as to whether the doctrine of claim preclusion applies presents a question of law. ***DePratt v. West Bend Mut. Ins. Co.***, 113 Wis. 2d 306, 310, 334 N.W.2d 883 (1983). As such, it is subject to *de novo* review. *See* ***id.*** The doctrine of claim preclusion states that:

> [A] final judgment is conclusive in all subsequent actions between the same parties as to all matters which were litigated or which might have been litigated in the former proceedings. A valid and final judgment on the merits in favor of the defendant bars another action by the plaintiff on the same claim or cause of action.… The purpose of the doctrine of [claim preclusion] is to prevent repetitive litigation. Fairness to the defendant and sound judicial administration require that at some point litigation over the particular controversy must come to an end.

[3] Dr. Buegel repeatedly refers to WIS. STAT. § 227.48(1) in making his argument that the September 7, 2000 order was "unlawful." He appears to argue that the timing of the delivery and the time-specific requirements of the order render the order unlawful pursuant to § 227.48(1). Yet, § 227.48(1) merely provides: "Every decision when made, signed and filed, shall be served forthwith by personal delivery or mailing of a copy to each party to the proceedings or to the party's attorney of record."

Id. at 310-11 (footnotes omitted). Thus, three factors must be present for an earlier proceeding to bar the present claim: "(1) an identity between the parties or their privies in the prior and present suits; (2) an identity between the causes of action in the two suits; and, (3) a final judgment on the merits in a court of competent jurisdiction." ***Northern States Power Co. v. Bugher***, 189 Wis. 2d 541, 551, 525 N.W.2d 723 (1995). Essentially, under the doctrine of claim preclusion, a final judgment is conclusive as to all matters that were, or which might have been, litigated in the previous proceeding. ***Id.*** at 550.

¶10 Here, the parties involved in both proceedings are the same—Dr. Buegel and the Board. Thus, the first factor is satisfied.

¶11 The claim Dr. Buegel makes now, that the September 7 order was unlawful, was a matter that could have been litigated in the previous proceeding, but was not. Although Dr. Buegel claims that he did not know that the timelines set forth in the September 7 order would be impossible to meet, thus rendering the order "unlawful," before he filed the petition for judicial review in October, or apparently at any point during the six month timeframe during which he could have amended the petition, we find that argument unpersuasive.

¶12 Dr. Buegel essentially argues that the timelines were unrealistic, yet it is unclear as to whether he ever sought to have the requirements stayed while he petitioned the trial court for judicial review, and it does not appear that he sought clarification of the order until after he was notified that he was not in compliance with the requirements. Indeed, one of Dr. Buegel's arguments is that the September 7 order in part required him to have completed six months of record review by March 2001 (exactly six months after the September 7 order was signed), and that was impossible because he did not even receive the order until

October. It appears that this inconsistency could have been discovered upon a close reading of the order when it was received, and thus, he could have initiated some sort of challenge to the reasonableness of the order or a request for clarification. However, Dr. Buegel chose not to elect either option.

¶13 Furthermore, Dr. Buegel argues that the Board had several opportunities to reconsider or correct the unreasonable timelines, but he fails to consider that he could, and perhaps should, have challenged them as well, as his opportunity to do so has now passed. He had six months to amend his petition for judicial review of the September 7 order, and he did not do so.[4] While Dr. Buegel maintains that he was unaware of the "unlawfulness" of the order during that time period, we find that argument unpersuasive because at least some of the alleged "unreasonableness" should have been, and seemingly was, apparent by then.

¶14 The trial court affirmed the September 7 order, and Dr. Buegel did not appeal. As that was a final judgment on the merits, all three factors have been satisfied. We conclude that Dr. Buegel is precluded from pursuing the claim that the September 7 order was unlawful.

¶15 Thus, it is only necessary to determine whether the Board properly concluded, in its August 8, 2002 decision and order, that Dr. Buegel failed to meet the requirements of the September 7 order. "In reviewing a trial court's ruling on an administrative decision, our standard of review is the same as that applied by the trial court[,]" ***Barakat v. DHSS***, 191 Wis. 2d 769, 777, 530 N.W.2d 392 (Ct. App. 1995), and "we review the decision of the agency … , not that of the

[4] Interestingly enough, the trial court's decision was not even issued until July 2001, nine months after the petition was filed.

ALJ or the circuit court[,]" ***Bosco v. LIRC***, 2003 WI App 219, ¶30, __ Wis. 2d __, 671 N.W.2d 331, *review granted*, 2004 WI 1 (Wis. Nov. 17, 2003) (No. 03-0662). Further, an agency's factual findings will be upheld if supported by substantial evidence. ***Jicha v. DILHR***, 169 Wis. 2d 284, 290, 485 N.W.2d 256 (1992); WIS. STAT. § 227.57(6).[5] Accordingly, the issue is whether the Board's conclusion that Dr. Buegel failed to meet the requirements of the September 7 order was supported by substantial evidence.[6]

¶16 The Board accepted the ALJ's findings of fact and conclusions of law in regard to Dr. Buegel's case. While the Board did alter the wording of the order of the proposed decision for its final decision and order, it essentially

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[5] WISCONSIN STAT. § 227.57(6) provides:

> 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.

[6] Contrary to Dr. Buegel's contention, the trial court did not employ an improper standard of review. The trial court used the "substantial evidence test." Dr. Buegel contends that ***Gimenez v. State Medical Examining Board***, 203 Wis. 2d 349, 353-54, 552 N.W.2d 863 (Ct. App. 1996), sets forth the proper standard for this case. He essentially insists that here, as in ***Gimenez***, the question is whether the Board failed to "fulfill its duties under" certain sections of WIS. STAT. ch. 227 concerning administrative procedure and review, and thus "involves a question of law on which we owe no deference to the Board." ***Gimenez***, 203 Wis. 2d at 353-54. Dr. Buegel is mistaken. As has been indicated above, the question is not whether the Board failed to fulfill its duties under certain sections of ch. 227, such as WIS. STAT. § 227.48(1), as Dr. Buegel attempts to argue; instead, our concern is whether the Board's factual finding—that Dr. Buegel failed to meet the conditions—was supported by substantial evidence. That question, unlike the question in ***Gimenez***, is subject to the "substantial evidence test." *See* ***Gimenez***, 203 Wis. 2d at 353-54 ("Our review of the Board's decision would ordinarily be governed by the 'substantial evidence test.' Under this test, we would only determine if its findings are reasonably supported by the evidence. Here, however, the principal issue pertains to whether the Board fulfilled its duties under § 227.47(1), STATS., to adequately support its decision with written findings. This issue involves a question of law[.]") (citation and footnote omitted).

adopted the whole of the ALJ's proposed decision, which concluded that Dr. Buegel failed to meet the requirements of the September 7 order. In that decision, the ALJ cited to several admissions and statements made by Dr. Buegel. During the hearing, Dr. Buegel admitted that he had not complied with any portion of the September 7 order. While he seemingly offered reasons for his failure to meet the requirements, and there was some exploration of the efforts he undertook to attempt to enroll in some of the required courses, he *admitted* that he had not met any of the requirements. Further, Dr. Buegel testified that he did not have any intention of complying with the September 7 order because it was unlawful:

> EXAMINER: So as I understand your testimony then you never – never intend to comply with the order?
>
> DR. BUEGEL: With that particular September 7th, 2000 order, no, I do not. It's an unlawful order.
>
> EXAMINER: Okay.
>
> DR. BUEGEL: If the [B]oard expects me to comply with an order they should write a lawful order. I have asked – testified to Mr. Thexton that I would follow a lawful order of the [B]oard.

Although Dr. Buegel contends that "the issue in need of a decision … is whether [he] can be lawfully required to comply with an order that violates the law[,]" we have already determined that, due to the doctrine of claim preclusion, that is not the issue at hand. Accordingly, it appears that there was substantial evidence to

support the Board's conclusion that Dr. Buegel failed to comply with the requirements of the September 7 order.[7]

B. The ALJ did not err in quashing the subpoena of Dr. Treffert.

¶17 Dr. Buegel insists that his right to call a key witness "needed for [his] defense" was violated when the ALJ quashed the subpoena of Dr. Darold Treffert. Dr. Buegel contends that, pursuant to WIS. STAT. § 227.45(6m),[8] he had a right to subpoena Dr. Treffert, that Dr. Treffert's testimony "was being requested

[7] To the extent that Dr. Buegel appears to contend that there was insufficient evidence presented for the Board to determine that he improperly treated patients, we note that his opportunity to argue that issue before this court passed when he failed to appeal the trial court's order affirming the Board's September 7, 2000 final decision and order. This appeal concerns only the trial court order affirming the August 8, 2002 final decision and order of the Board. The Board's August 8, 2002 order concerned only whether Dr. Buegel failed to meet the requirements of the September 7, 2000 order.

Further, to the extent Dr. Buegel maintains that there was insufficient evidence to determine that he failed to maintain his records in compliance with WIS. ADMIN. CODE § Med 21.03, in that none of his medical records were presented as evidence, it is unclear whether Dr. Buegel even made this argument before the trial court in an argument separate from the issue of whether the September 7 order was "unlawful," as it was not addressed in the trial court's decision. Further, he admitted that he had not met any of the requirements, which would presumably include the record keeping requirement.

Finally, with respect to Dr. Buegel's claim that his constitutional rights were violated, we note that he has failed to adequately brief any constitutional issue. Accordingly, "we need not decide the validity of constitutional claims broadly stated but never specifically argued[.]" ***State v. Scherreiks***, 153 Wis. 2d 510, 520, 451 N.W.2d 759 (Ct. App. 1989).

[8] WISCONSIN STAT. § 227.45(6m) provides:

> A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding.

to defend Dr. Buegel against allegations of unprofessional conduct[,]" and "the ALJ was remiss in not allowing testimony of probative value." We disagree.

¶18 WISCONSIN STAT. § 227.45(1) provides:

> Except as provided in ss. 19.52 (3) and 901.05, an agency or hearing examiner shall not be bound by common law or statutory rules of evidence. The agency or hearing examiner **shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony** or evidence that is inadmissible under s. 901.05. The agency or hearing examiner shall give effect to the rules of privilege recognized by law. **Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact.** Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

(Emphasis added.) Accordingly, § 227.45(1) directs an ALJ to exclude irrelevant testimony. Here, the ALJ determined that Dr. Treffert's testimony was irrelevant to the issue at hand—whether Dr. Buegel failed to comply with the September 7 order. "Decisions on relevance are left to the discretion of the hearing examiner, just as they are to that of a trial court, and will be accepted unless there has been an [erroneous exercise] of discretion." ***Village of Menomonee Falls v. DNR***, 140 Wis. 2d 579, 610, 412 N.W.2d 505 (Ct. App. 1987).

¶19 While Dr. Buegel appears to have argued that Dr. Treffert's testimony and medical opinion would be relevant to determine the standards to be applied in the review of his patient records, the ALJ noted in its interim decision and order quashing the subpoena that the only issue in the case was whether Dr. Buegel had timely complied with the requirements of the September 7 order. The ALJ indicated that: (1) Dr. Buegel had already admitted that he had not completed any of the requirements, and (2) that the order identified the coursework and

record review requirements with which Dr. Buegel was to comply. The ALJ ultimately concluded that, in light of those facts, testimony regarding the standards to be applied in the evaluation of patient records was irrelevant to the determination of whether Dr. Buegel had timely complied with the September 7 order. That was a reasonable conclusion.

¶20 While parties "*may* issue a subpoena to compel the attendance of a witness or the production of evidence[,]" WIS. STAT. § 227.45(6m) (emphasis added), "[t]he agency or hearing examiner *shall* … exclude immaterial, irrelevant or unduly repetitious testimony[,]" § 227.45(1) (emphasis added). Thus, we cannot conclude that the ALJ erroneously exercised its discretion in quashing the subpoena.

C. The trial court did not erroneously exercise its discretion in denying Dr. Buegel's motion for discovery.

¶21 Dr. Buegel insists that the trial court "improperly denied [him] the process of seeking discovery regarding alleged irregularities in the procedure by the Board." He appears to contend that the Board's substitution of the August 8 order for its July 24 order after a closed-door session constitutes the type of irregularity that warrants additional "discovery." He even suggests that the August 8 order was not actually adopted by the Board, and that the July 24 order "may be the only order that was actually considered and adopted by the Board." Accordingly, Dr. Buegel insists that the trial court erred in denying his motion seeking discovery. Again, we disagree.

¶22 Allowing a trial court to hear additional testimony in cases of alleged irregularities, WIS. STAT. § 227.57 provides, in relevant part:

> **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.

(Emphasis added.) "The word 'may' is generally construed as allowing discretion." ***Rotfeld v. DNR***, 147 Wis. 2d 720, 726, 434 N.W.2d 617 (Ct. App. 1988). Accordingly, the decision of whether to allow additional testimony is within the discretion of the trial court. A trial court properly exercises its discretion if it "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Loy v. Bunderson***, 107 Wis. 2d 400, 415, 320 N.W.2d 175 (1982).

¶23 Here, the trial court denied Dr. Buegel's motion for discovery. In its decision and order affirming the Board's August 8 order, the trial court reasoned:

> [Dr. Buegel] has failed to establish to the satisfaction of this court that any irregularity occurred, or what relevance the apparently alleged irregularity would have with respect to his case. The Board gave a relatively extensive explanation for why it ultimately varied its Order from that proposed by the ALJ. In addition, upon request, [Dr. Buegel] was provided with minutes of the closed door session along with an explanation from [the] Office of Legal Counsel, as to the confusion[.][9]

[9] Dr. Buegel also insists that he was never provided with the minutes of the closed-door session, that he was only provided with the minutes of an open meeting that stated that a closed meeting took place, and that the trial court erred in indicating in its decision that he was provided with minutes of the closed-door session. It is unclear from the record what was attached to the letter from the Office of Legal Counsel. Regardless, the trial court's ultimate determination, that there was sufficient explanation to clear up any confusion as to the alleged irregularity, is unaffected, as the body of the letter itself appears to have contained the explanation.

(Footnote added.) The court then quoted a lengthy passage from the letter, which explained in detail why the mix-up—why the first order mistakenly adopted the ALJ's proposed decision in whole instead of the slightly amended and clarified version that was originally intended—occurred and how it was rectified. The trial court was satisfied that this did not amount to the type of procedural irregularity that warranted additional testimony, and that, in fact, it appeared that the modifications actually benefited Dr. Buegel.

¶24 After considering the explanation of the Board, we cannot conclude that the trial court erroneously exercised its discretion in denying Dr. Buegel's motion. Indeed, "[t]hose who exercise the quasi-judicial powers [e]ntrusted to administrative agencies ordinarily should not be harassed by judicial inquiry directed toward ascertaining how they performed their adjudicative function in a particular case." ***Wright v. Industrial Comm'n***, 10 Wis. 2d 653, 661-62, 103 N.W.2d 531 (1960) (footnote omitted). Moreover, "[t]he presumption of regularity that attaches to the decisions of administrative agencies should protect against such harassment based upon mere suspicion." ***Id.*** at 662. Here, Dr. Buegel's contentions appear to amount to mere suspicion.

D. As Dr. Buegel had ample time to object to the award of costs, and failed to do so, the Board's assessment of costs was proper.

¶25 Dr. Buegel contends that the Board's assessment of costs did not satisfy the requirements of WIS. ADMIN. CODE § RL 2.18(4), and thus, the trial court's refusal to disturb the Board's assessment was in error. He insists that the effective date of the Board's final decision and order was July 24, 2002, that he did not receive the affidavit of costs until August 28, 2002, and accordingly, that it was impossible for him to comply with the thirty-day response period set forth in

§ RL 2.18(4). As such, Dr. Buegel maintains that the trial court erred in affirming the issue of costs and the propriety of the Board's actions.

¶26 WISCONSIN ADMIN. CODE § RL 2.18(4) provides:

> When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within 30 days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

Thus, § RL 2.18(4) requires that the affidavits be filed within fifteen days after the final decision and order, and that the respondent be given thirty days from the date of the final decision and order to object. Interestingly, § RL 2.18(4) is silent as to how or when the affidavits should be delivered to the party.

¶27 Regardless, it appears that the two affidavits were filed on June 3 and July 29, 2002, respectively. They were mailed to Dr. Buegel on August 26, 2002, accompanied by a letter indicating that he had until September 7, 2002, to object to the affidavits. It would appear that the only other date relevant to this issue is that of the final decision and order. Dr. Buegel contends that July 24, 2002, was the effective date of the final decision and order, while the Board contends that since that order was replaced *nunc pro tunc* by the August 8, 2002 order, the latter date holds.

¶28 Because the two affidavits were filed well within the required time frame, regardless of whether the effective date was July 24 or August 8,[10] the only remaining question is whether Dr. Buegel had enough time to object. WISCONSIN ADMIN. CODE § RL 2.18(4) provides respondents thirty days from the date of the final decision and order to object to the affidavits, but the Board's letter specifically gave Dr. Buegel until September 7 to object. Thus, Dr. Buegel had until September 7 to object, regardless of whether the effective date was July 24 or August 8 for purposes of § RL 2.18(4), but he failed to do so. As the letter and affidavits were mailed on August 26, and appear to have reached Dr. Buegel by August 28, he was given ample opportunity to object to the assessment of costs by the designated deadline. Accordingly, we cannot conclude that Dr. Buegel was denied the opportunity to object to the affidavits.

¶29 Accordingly, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[10] The copies of the affidavits that are included in the appellate record were signed on June 3 and July 29, respectively. While there is no indication of when the affidavits were officially "filed," we are operating under the assumption that they were filed on the days that they were signed, as there has been no indication to the contrary by either party.