

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 : FINAL DECISION AND ORDER  
EDWARD J. ROSENTHAL, M.D., :  
RESPONDENT. : ORDER 0002145

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Division of Legal Services and Compliance<sup>1</sup> Case No. 11 MED 314

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Edward J. Rosenthal, M.D.  
500 W. Silver Spring Drive, Suite K-240  
Glendale, WI 53217-5051

Wisconsin Medical Examining Board  
P.O. Box 8935  
Madison, WI 53708-8935

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Medical Examining Board (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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Edward J. Rosenthal, M.D. (dob July 7, 1960) is licensed in the State of Wisconsin to practice medicine and surgery, having license number 20-30490, first issued on July 1, 1989 with registration current through October 31, 2013. Edward J. Rosenthal, M.D.'s most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 500 W. Silver Spring Drive, Suite K-240, Glendale, Wisconsin 53217-5051.

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<sup>1</sup> The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

## COUNT I

2. On March 16, 2009, Patient A presented to Respondent after being referred by his family physician for gross hematuria. A history and physical were performed. Lab work was reviewed which revealed Patient A's PSA to be 1.62 on November 13, 2008 and 2.37 with PSA %Free I at 13.92 on March 2, 2009. Respondent documented in his impression "Microhematuria with negative CT". Follow up in one month to recheck urine. Respondent did not conduct a digital rectal exam during this time period.

3. On April 22, 2009, Patient A presented to Respondent for follow up humaturia. Respondent documented in his impression "Microhematuria with negative CT". Patient A was scheduled for a cystoscopy under local anesthesia.

4. On May 7, 2009, Patient A presented to Respondent for a cystoscopy under local anesthesia. Respondent documented the following in his Impression:

*Normal surveillance cystoscopy.*

*The patient also has an elevated PSA as of 03/10/09. The PSA had risen to 2.37, which was an increase of 1.62. Using PSA velocity criteria this is a substantial elevation, which puts the patient at risk for prostate cancer. The percent free PSA was 13.92.*

Respondent's Plan indicated: "We are going to obtain a repeat free and total PSA and see patient back in two to four weeks".

5. Respondent did not conduct a digital rectal exam or other diagnostics during this time period.

6. Once a determination had been made that Patient A's free PSA levels were rising, the standard of minimal competence required that Respondent inform Patient A of his options for further diagnostics, including transrectal ultrasounds and/or a biopsy, or continued monitoring, including digital rectal examinations.

7. Patient A next presented to Respondent on August 7, 2009, not in the two to four weeks originally ordered, for follow up hematuria. There was no record of a digital rectal exam.

8. On 8-28-09, Patient A presented for follow up of a weak stream. Respondent performed an uroflowmetry and post void residual. Respondent's notes indicate Patient A was on Cipro for a urinary tract infection from his primary physician. He also indicated no hematuria. Respondent documented the PSA jump again and planned a PSA free and total in 2-3 weeks. Respondent did not conduct a digital rectal exam or other diagnostics during this time period.

9. On September 2, 2009, the family physician ordered a PSA which was normal, with total PSA at 2.51 but free %PSA was low at 14.74, which put Patient A at a 24% risk of prostate cancer. Respondent saw Patient A on September 18, 2009 and again noted the jump in PSA and planned a PSA in 3 months. Respondent did not conduct a digital rectal exam or other diagnostics during this time period.

10. December 10, 2009 the PSA was normal 2.68. On December 17, 2009, Respondent again documented an increased PSA and planned to see the patient in 3 months with PSA in light of recent jump. Respondent did not conduct a digital rectal exam or other diagnostics during this time period.

11. The next PSA was taken on June 10, 2010 which was normal 3.9, but free %PSA was low 20.71 which put Patient A at a 10% risk of prostate cancer.

12. On June 17, 2010, Respondent noted PSA and antibiotic use and planned to follow up in 6 months with another PSA.

13. On July 6, 2010, Patient A requested a referral to a different urologist. On this date, PSA was high 4.23 and free %PSA was low 16.31 which put Patient A at a 17% risk of prostate cancer.

14. The subsequent treating urologist did a prostate biopsy on July 28, 2010. On September 23, 2010 the urologist did a lymphadenectomy and prostatectomy which found localized prostate cancer, stage T2c.

15. Respondent failed to properly and timely assess Patient A's condition, including but not limited to a digital rectal exam.

16. Respondent's conduct as set forth above created an unacceptable risk that a cancer would unnecessarily go undetected and advance in severity resulting in fewer treatment options, and therefore endangering the health, welfare and safety of Patient A.

17. Respondent neither admits nor denies the allegations in the above Findings of Fact but has elected to resolve this matter by this Order, which Respondent agrees is legally sufficient to justify the Order imposed below.

#### COUNT II

18. Under circumstances without exceptions identified in Wis. Stat. § 448.30, Respondent failed to inform Patient A of reasonable options for further diagnostics, including transrectal ultrasounds and/or a biopsy, or continued monitoring, including digital rectal examinations.

#### COUNT III

19. On May 21, 2012, June 22, 2012 and August 1, 2012, an investigator for the Department wrote to Respondent on behalf of the Board requesting further information. Respondent failed to respond to these requests for a period of more than 60 days.

#### CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 448.02(3), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in Count I of the Findings of Fact, Edward J. Rosenthal, M.D. engaged in unprofessional conduct pursuant to Wis. Admin. Code § MED 10.02(2)(h).

3. By the conduct described in Count II of the Findings of Fact, Edward J. Rosenthal, M.D. violated Wis. Stat. § 448.30 by failing to inform Patient A about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments.

4. By the conduct described in Count III of the Findings of Fact, Edward J. Rosenthal, M.D. engaged in unprofessional conduct pursuant to Wis. Admin. Code § MED 10.02(2)(zc).

5. As a result of the above conduct, Edward J. Rosenthal, M.D. is subject to discipline pursuant to Wis. Stat. § 448.02(3).

#### ORDER

1. The attached Stipulation is accepted.
2. Respondent Edward J. Rosenthal, M.D. is REPRIMANDED.
3. The medicine and surgery license issued to Edward J. Rosenthal, M.D. (license number 20-30490) is LIMITED as follows:
  - a. Within nine (9) months of the date of this Order, Respondent shall successfully complete four (4) hours of education on the topic of appropriate monitoring and evaluation, including further diagnostics, after increase in free PSA levels, and two (2) hours of education in informed consent to include the provision to the patient of the alternative treatments and diagnostics and the risks and benefits of each.
  - b. Respondent shall be responsible for obtaining the course(s) required under this Order, for providing adequate course(s) descriptions to the Department Monitor, and for obtaining pre-approval of the course(s) from the Wisconsin Medical Examining Board, or its designee, prior to commencement of the course(s).
  - c. The Board or its designee may reject any course(s) and may accept a course(s) for less than the number of hours for which Respondent seeks approval.
  - d. Within thirty (30) days of completion of each educational component, Respondent shall file an affidavit with the Department Monitor stating under oath that he has attended, in its entirety, the course(s) approved for satisfaction of this requirement along with supporting documentation of attendance from the sponsoring organizations.

e. Respondent is responsible for all costs associated with compliance with this educational requirement.

f. None of the education completed pursuant to this requirement may be used to satisfy any other continuing education requirements that have been or may be instituted by the Board or Department.

g. This limitation shall be removed without further order of the board, upon proof acceptable to the Board's designee that Respondent has successfully completed the required courses.

4. Within 90 days from the date of this Order, Edward J. Rosenthal, M.D. shall pay COSTS of this matter in the amount of \$1,375.00.

5. Proof of successful course completion and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 8935, Madison, WI 53708-8935  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

6. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit payment of costs as ordered or fails to submit proof of successful completion of the ordered education as set forth above, Respondent's license (no. 20-30490) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of costs and completion of the education.

7. This Order is effective on the date of its signing.

WISCONSIN Medical Examining Board

by: Santra L. Ostorn  
A Member of the Board

November 14, 2012  
Date