

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
JOHN W. ZWIACHER, M.D., : FINAL DECISION AND ORDER
RESPONDENT. :
 : ORDER 0002354

Division of Legal Services and Compliance¹ Case No. 12 MED 187

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

John W. Zwiacher, M.D.
P.O. Box 876641
Wasilla, AK 99687

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 John W. Zwiacher, M.D., (dob June 25, 1954) is licensed in the State of Wisconsin to practice medicine and surgery, having license number 20-36823, first issued on August 11, 1995, and current through October 31, 2013. Dr. Zwiacher's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is P.O. Box 876641, Wasilla, Alaska 99687.

¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

2. On January 26, 2012, Respondent entered into a Consent Agreement and Proposed Decision and Order (Order) with the State of Alaska Department of Commerce, Community, and Economic Development Division of Corporations, Business and Professional Licensing, Before the State Medical Board (Alaska Medical Board). The basis for the imposition of discipline against Respondent in the State of Alaska involved:

- a. Respondent's failure to send lung fluid for cytology analysis for a patient who was subsequently diagnosed with stage III B non-small cell lung cancer; and
- b. Respondent, on an application for renewal of his license, erroneously answered "No" to the question of whether he had been subject of an investigation or currently under investigation by any licensing jurisdiction. The non-disclosure was not an attempt to mislead; it was an error.

A true and correct copy of the Alaska Medical Board Order is attached to this document as Exhibit A. Exhibit A is incorporated into this document by reference.

3. The Board has no evidence that Respondent failed to meet a professional standard or engaged in substandard care of a patient in the State of Wisconsin.

4. Respondent explains that there are extenuating circumstances underlying the Alaska Medical Board action. He states that he entered the agreement to resolve the matter, while maintaining that he did not violate the standard of care under the circumstances.

5. Respondent willingly enters this agreement to resolve this action. He considers Wisconsin his home state and intends to return in the future. He has not been disciplined by this Board in the past.

CONCLUSIONS OF LAW

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

2. By the conduct described in the Findings of Fact, Respondent John W. Zwiacher, M.D., engaged in unprofessional conduct pursuant to Wis. Admin. Code § Med 10.02(2)(q) by having discipline taken against his medicine and surgery license in another state.

3. As a result of the above conduct, John W. Zwiacher, M.D., is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

1. The attached Stipulation is accepted.
2. Respondent John W. Zwiacher, M.D., is REPRIMANDED.
3. Within ninety (90) days from the date of this Order, Respondent John W. Zwiacher, M.D., shall pay COSTS of this matter in the amount of \$450.00.

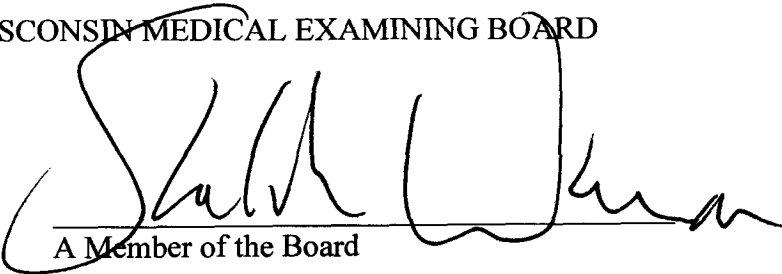
4. Payment of costs shall be made payable to the Wisconsin Department of Safety and Professional Services and sent to the Department Monitor at the address below:

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

5. 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, Respondent's license (no. 20-36823) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs.

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

WISCONSIN MEDICAL EXAMINING BOARD

by:  _____
A Member of the Board

3/20/13
Date

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
BEFORE THE STATE MEDICAL BOARD

In the Matter of:)
)
John Zwiacher, M.D.)
)
Respondent.) Case No. 2800-10-003

CONSENT AGREEMENT

IT IS HEREBY AGREED by the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing (Division) and John Zwiacher, M.D. (Respondent) as follows:

1) **Licensure.** Respondent is currently licensed as a physician in the State of Alaska, and holds License number MED S 5805. This license was first issued on May 10, 2006, and will expire unless renewed by December 31, 2012.

2) **Admission/Jurisdiction.** Respondent admits and agrees that the State Medical Board (Board) has jurisdiction over the subject matter of his license in Alaska and over this Consent Agreement.

3) **Admission/Facts.** Respondent admits to the following facts:

a) In July 2007, Respondent evaluated S.F., a 50 year old woman who smoked one pack of cigarettes a day and whose father died of lung cancer at age 56, and who drank five bourbons a day, for a cough of two weeks duration. Respondent assessed her as suffering from an unspecified pleural effusion and placed a catheter on S. F., which

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Division of Corporations, Business and Professional Licensing
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1 would allow for the drainage of the excess fluid, ordered repeat radiographic studies, and
2 saw her on a frequent basis. The catheter was removed the next month.

3 Respondent continued to treat S.F. and he placed another pleural catheter in
4 January 2008. That catheter was removed in February 2008. Respondent continued to
5 treat S.F. until April 2008. He was unable determine the cause of S.F.'s effusion, but
6 believed it was due to S.F. being a life-long smoker and heavy drinker. At no time during
7 the treatment of the patient did Respondent send any lung fluid for cytology analysis.

8 S.F. was subsequently diagnosed with stage III B non-small cell lung cancer
9 that was widely metastatic. She died in March 2009.

10 In February 2010, after a complaint was filed, a Division investigator
11 informed Respondent in writing that he was the subject of an official investigation by the
12 Division with regard to the medical care provided by S.F. As part of that investigation,
13 Respondent was interviewed by a Division investigator.

14 Respondent applied for renewal of his physician license in October 2010.
15 He falsely answered "No" to the question "Have you been the subject of an investigation
16 by any licensing jurisdiction or are you currently under investigation by any licensing
17 authority or is any such action pending?" The non-disclosure was not an attempt to
18 mislead; it was an error.

19 b) Respondent admits that as a result of the above facts, grounds exist
20 for possible suspension, revocation, or other disciplinary sanctions of his license pursuant
21 to AS 08.01.075, AS 08.64.326(a)(8)(A), and 12 AAC 40.967(2)(B).

1 **4) Formal Hearing Process.** It is the intent of the parties to this Consent
2 Agreement to provide for the compromise and settlement of all issues that were raised in
3 the Accusation to revoke, suspend, or impose disciplinary sanctions against Respondent's
4 license through a formal hearing process.

5 **5) Waiver of Rights.** Respondent understands he has the right to consult with
6 an attorney of his own choosing and has a right to an administrative hearing on the facts in
7 this case. Respondent understands and agrees that by signing this Consent Agreement,
8 Respondent is waiving his rights to counsel and to a hearing. Further, Respondent
9 understands and agrees that he is relieving the Division of any burden it has of proving the
10 facts admitted above. Respondent further understands and agrees that by signing this
11 Consent Agreement he is voluntarily and knowingly giving up his right to present oral and
12 documentary evidence, to present rebuttal evidence, to cross-examine witnesses against
13 Respondent, and to appeal the Board's decision to Superior Court.

14 **6) Effect of Nonacceptance of Consent Agreement.** Respondent and the
15 Division agree that this Consent Agreement is subject to the approval of the Board. They
16 agree that, if the Board rejects this Consent Agreement, it will be void, and a hearing on
17 the Accusation will be held. If this Consent Agreement is rejected by the Board, it will
18 not constitute a waiver of Respondent's right to a hearing on the matters alleged in the
19 Accusation and the admissions contained herein will have no effect. Respondent agrees
20 that, if the Board rejects this Consent Agreement, the Board may decide the matter after a
21 hearing, and its consideration of this Consent Agreement shall not alone be grounds for

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1 claiming that the Board is biased against Respondent, that it cannot fairly decide the case,
2 or that it has received ex parte communication.

3 7) **Consent Agreement, Decision, and Order.** Respondent agrees that the
4 Board has the authority to enter into this Consent Agreement and to issue the following
5 Decision and Order.

6 **PROPOSED DECISION AND ORDER**

7 IT IS HEREBY ORDERED that the license issued to Respondent shall be
8 subject to the following terms and conditions:

9 **A. Civil Fine**

10 Respondent shall pay a fine of one thousand dollars (\$1,000.00) in cash,
11 certified check, or money order payable to the "State of Alaska" within ninety (90) days
12 after this Consent Agreement is accepted by the Board.

13 All payments required by this Consent Agreement shall be addressed to:

14 Quinten D. Warren, Chief Investigator
15 Division of Corporations, Business and Professional Licensing
16 550 West 7th Avenue, Suite 1500
17 Anchorage, Alaska 99501-3567

18 **B. Reprimand**

19 Respondent is hereby reprimanded for his failure to send pleural effusion
20 out for cytology on a stage III B non-small cell lung cancer patient and for his failure to
21 disclose the pendency of this investigation on his 2010 application for license renewal.

22 The non-disclosure was not an attempt to mislead; it was an error.

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1 **C. Compliance with Laws**

2 Respondent shall obey all federal, state and local laws, as well as all statutes
3 and regulations governing his license or relating to his fitness to practice, and shall remain
4 in full compliance with any conditions ordered by another licensing jurisdiction.

5 **D. Continuing Education**

6 In addition to the continuing education requirements under Alaska statutes
7 and regulations for his license, Respondent shall complete approximately twenty (20)
8 hours of continuing medical education on thoracic surgery from an American Medical
9 Association approved course or courses within one (1) year after the Board approves the
10 Consent Agreement. Respondent shall provide documentation to the Board's agent
11 proving that he has completed the required hours within fourteen (14) days after their
12 completion.

13 All costs are the responsibility of the Respondent.

14 **E. Good Faith**

15 All parties agree to act in good faith in carrying out the stated intentions of
16 this Consent Agreement.

17 **F. Violation of Agreement**

18 If Respondent fails to comply with any term or condition of this Consent
19 Agreement, the Division may enforce this agreement by immediately suspending
20 Respondent's license, without an additional order from the Board or without a prior
21 hearing, for a violation of this agreement.

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1 If Respondent's license is suspended under this paragraph, as provided
2 above, he will be entitled to a hearing, on an expedited basis, regarding the issue of the
3 suspension. If Respondent's license is suspended, he will continue to be responsible for
4 all license requirements pursuant to AS 08.64.

5 **G. Address of the Board**

6 All required reports or other communication concerning compliance with
7 this Consent Agreement shall be addressed to:

8 Investigator David Newman
9 Division of Corporations, Business and Professional Licensing
10 550 West 7th Avenue, Suite 1500
11 Anchorage, Alaska 99501-3567
12 (907) 269-8177 Fax (907) 269-8195

13
14 It is the responsibility of Respondent to keep the Board's agent advised in
15 writing at all times of his current mailing address, physical address, telephone number,
16 current employment, and any change in employment.

17 IT IS HEREBY FURTHER ORDERED that this Decision and Order shall
18 take effect immediately upon its adoption by the Board and is a public record of the Board
19 and the State of Alaska. The State may provide a copy of it to any person or entity,
20 professional licensing board, federal, state, or local government, or other entity making a
21 relevant inquiry.

22 The action taken by the Board in this Consent Agreement will be reported to
23 the Federation of State Medical Boards, the National Practitioner Data Bank, and other
24 entities as required by law.

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DATED this 21st day of NOVEMBER, 2011 at
ANCHORAGE, Alaska.

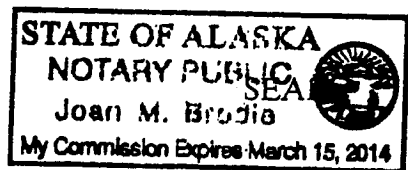
SUSAN K. BELL, COMMISSIONER

By: [Signature]
Quinten D. Warren, Chief Investigator for
Don E. Habeger, Director
Division of Corporations, Business and
Professional Licensing

I, John Zwiacher, have read the Consent Agreement, understand it, and agree to be bound by its terms and conditions.

DATED: 11/15/11 [Signature]

SUBSCRIBED AND SWORN TO before me this 15 day of
November, 2011, at FALMER, ALASKA.



[Signature]
Notary Public in and for STATE OF ALASKA
My commission expires: 3/15/2014

State of Alaska
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STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
BEFORE THE STATE MEDICAL BOARD

In the Matter of:)
)
John Zwiacher, M.D.)
)
Respondent.) Case No. 2800-10-003

ORDER

The Medical Board for the State of Alaska, having examined the Consent Agreement and Proposed Decision and Order, Case No. 2800-10-003, Respondent, license number MED S 5805, adopted the Consent Agreement and Decision and Order in this matter.

This Consent Agreement takes effect immediately upon signature of this Order in accordance with the approval of the Board.

The Division may enforce the Consent Agreement by immediately suspending Respondent's license, without an additional order from the Board or without a prior hearing, for a violation of the Consent Agreement.

DATED this 26th day of January, 2017 at
Anchorage, Alaska.

STATE MEDICAL BOARD

By: [Signature]
Chairperson