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2. Dr. Konkel specializes in orthopedic surgery.

3. An informal complaint received by the Medical Examining Board alleges that on January 14, 1998, Dr. Konkel performed a right ulnar transposition surgery on a 40-year-old male patient instead of an epicondylectomy of the right elbow.

4. Approximately 6 weeks prior to the surgery, the patient was seen by Dr. Konkel. The examination demonstrated classic lateral epicondylitis and surgical treatment for an epicondylectomy was discussed. Dr. Konkel did not complete the preoperative paperwork nor orders on the patient at that time, since the patient was unsure if he wanted to proceed with surgery. Approximately 3 days later the patient called the office to schedule the procedure. The scheduling nurse did not have the chart available for review and the preoperative dictation was not back from the transcriptionist. The surgery was scheduled as an ulnar transposition.

5. On the day of the surgery, the patient signed an operative consent for the wrong procedure. Dr. Konkel did not recall that he had been seeing the patient for epicondylitis, not cubital tunnel syndrome and proceeded with the scheduled wrong procedure.

6. The error was discovered on the first postoperative visit and the patient was made aware immediately. The patient continued care with Dr. Konkel for approximately two weeks. The patient chose to have follow-up care by a different physician.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction in this proceeding pursuant to § 448.02, Stats.

2. The Wisconsin Medical Examining Board has the authority to resolve this proceeding by stipulation without an evidentiary hearing pursuant to § 227.44(5), Stats.

ORDER FOR REMEDIAL EDUCATION

NOW, THEREFORE, IT IS ORDERED that the Stipulation of the parties is approved.

IT IS FURTHER ORDERED, pursuant to the Stipulation of the parties, that Philip D. Konkel, M.D. will participate in and satisfactorily complete the following risk management program:

1. The risk management educational program will be developed by and administered through the University of Wisconsin School of Medicine, Continuing Education Department.

2. An on-site assessment of the physician's office practices and procedures (and those of the hospital, in the discretion of the assessors), to include the office's layout, personnel issues, procedures, medical records, informed consent procedures, follow-up systems, drug and prescription policies, and such other relevant practices and procedures as the assessors may determine are appropriate for review, in their professional

judgment and discretion. Dr. Konkel and his staff will cooperate fully with the assessors in this process, and Dr. Konkel will request that his colleagues cooperate fully in this process.

3. The assessment will be commenced within 30 days of this Final Decision and Order for Remedial Education.

4. A report of the assessment will be written by the assessors, including a proposed educational program which will include a review of the objectives, educational requirements, expected behavior changes for both physician and staff, timeline and budget. The University of Wisconsin School of Medicine, Continuing Medical Education Program will submit the proposed educational program to the Wisconsin Medical Examining Board for approval.

5. Dr. Konkel will commence the educational program within 30 days of the Wisconsin Medical Examining Board's approval of the program, subject to the availability of faculty and staff to initiate the educational program.

6. Dr. Konkel will comply with the timeline of the program and will respond within 14 days to the written follow-up questionnaires to be sent to him approximately 3 and 6 months following the initial site visit. Dr. Konkel will cooperate fully with a final site visit that will be conducted within 30 days of completion of the educational program.

7. Dr. Konkel will complete the educational program and the final site visit within 15 months of the commencement of the educational program.

8. Following the final site visit, the assessors will prepare a final assessment which sets forth Dr. Konkel's compliance with the objectives of the program, including evidence that he has implemented all recommended changes in office procedures and practices, and describes the extent that he has reduced the risks in his practice to a level consistent with the standards of practice of the profession.

9. Within 30 days of the conclusion of the educational program and the final site visit, if they have been satisfactorily completed by Dr. Konkel, the University of Wisconsin School of Medicine, Continuing Medical Education Program, will certify to the Wisconsin Medical Examining Board that the educational program and the final site visit have been completed and that he has met the objectives of the program.

10. Dr. Konkel will pay the costs of the assessment, educational program and site visits, including the professional fees and expenses of the assessors and faculty, within 30 days of the dates on which statements for professional services and expenses are submitted to him.

IT IS FURTHER ORDERED that certifications, affidavits or other documents required to be filed with the Wisconsin Medical Examining Board be filed with:

Department Monitor

Department of Regulation and Licensing

Division of Enforcement

P.O. Box 8935

1400 East Washington Ave.

All certifications, affidavits or other documents required to be filed with the Wisconsin Medical Examining Board will be deemed filed with the Wisconsin Medical Examining Board upon receipt by the Department Monitor.

IT IS FURTHER ORDERED that Dr. Konkel will appear before the Wisconsin Medical Examining Board, if an appearance is requested by the Board, at the conclusion of the risk management program to establish that he has complied with all of the terms of this Final Decision and Order for Remedial Education.

IT IS FURTHER ORDERED that Philip D. Konkel, M.D. is responsible for compliance with all of the terms and conditions of this Final Decision and Order for Remedial Education. Dr. Konkel will promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order or of any failure of the University of Wisconsin School of Medicine, continuing medical Education Program and all entities and/or individuals participating in the implementation of the Risk Management Program to timely fulfill his/her responsibilities under the terms of this Order.

IT IS FURTHER ORDERED that pursuant to § 448.02(4), Stats., if the Wisconsin Medical Examining Board determines that there is probable cause to believe that Philip D. Konkel, M.D. has violated the terms of this Final Decision and Order for Remedial Education of the Wisconsin Medical Examining Board, the Board may order that the license of Dr. Konkel to practice medicine and surgery in the state of Wisconsin be summarily suspended pending investigation of the alleged violation.

The rights of a party aggrieved by this Final Decision and Order for Remedial Education to petition the Wisconsin Medical Examining Board for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin, this 17th day of September, 2003.

WISCONSIN MEDICAL EXAMINING BOARD

Alfred Franger

Secretary