

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
MICHAEL C. JANOWAK, M.D.,	:	<u>LS 0505101 MED</u>
RESPONDENT.	:	

[Division of Enforcement Case No. 04 MED 066]

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

Michael C. Janowak, M.D.  
888 Thackeray Trail  
Oconomowoc, WI 53066

Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

Wisconsin Medical Examining Board  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

PROCEDURAL HISTORY

The Notice of Hearing and Complaint were filed in this matter on May 10, 2005. A hearing is scheduled to be held. The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Medical Examining 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

1. Michael C. Janowak, M.D., Respondent, date of birth July 28, 1947, is licensed and currently registered by the Wisconsin Medical Examining Board to practice medicine and surgery in the state of Wisconsin pursuant to license number 18235, which was first granted February 22, 1973.
2. Respondent's last address reported to the Department of Regulation and Licensing is 888 Thackeray Trail Oconomowoc, WI 53066.
3. Respondent's practice specialty is otorhinolaryngology and at the time of the following events, Respondent practiced at Central Otologic, Ltd., in Oconomowoc and other locations.
4. In early 2002, 34-year-old Mr. A, who was having difficulties with his ears, was referred to Respondent by Mr. A's internist. On February 15, 2002, Respondent took a history from Mr. A and performed a physical examination. His findings and plan were:
  - a. Mr. A had a history of ear infections and in the past had tubes inserted.
  - b. Mr. A had been on antibiotics for 10 days.
  - c. The right ear had adequate retraction, pocket collapse and possible cholesteatoma and non-healing perforation of the ear drum.
  - d. There was substantial deflection of the nasal septum to the right side, which could be contributing to the persistent ear disease.

- e. He was placed on an inter-nasal steroid.
- f. A CT scan was to be done of the right middle ear space and of the sinuses.
- g. It might be necessary to perform surgery to both the ear and the nose in order to improve the ear.

5. The CT scans were performed on February 21. The radiologist reported:

- a. The temporal bone CT showed a soft tissue density 7 mm in diameter on the right side in the external acoustic meatus, which appeared contiguous with the tympanic membrane. The radiologist thought the etiology was scarring or cerumen rather than cholesteatoma.
- b. The sinus CT showed:
  - (1) Rightward deviation of nasal septum.
  - (2) Large (3 cm) polyp in left maxillary sinus.
  - (3) Bilateral mucosal maxillary thickening (moderate on the left and small on the right).
  - (4) Left maxillary infundibulum is not patent.
  - (5) Frontal sinuses and ethmoid air cells patent.

6. Mr. A returned to Respondent's office on February 25. Respondent listed his diagnoses as: hearing loss with mass in right ear, deflected septum, nasal obstruction, turbinate obstruction and sinus disease. Respondent recommended, and Mr. A consented to, the following surgeries:

- a. Right tympanoplasty with tragus perichondrial underlay graft.
- b. Septoplasty.
- c. Bilateral endoscopic maxillary antrostomies with removal of disease.
- d. Bilateral endoscopic anterior and posterior ethmoid resections.
- e. Bilateral endoscopic middle turbinate resections.

7. On March 21, 2002, Respondent performed the recommended surgeries on Mr. A at Oconomowoc Memorial Hospital.

8. In performing the bilateral endoscopic anterior and posterior ethmoid resections and the bilateral endoscopic middle turbinate resections, Respondent did not recommend more conservative treatment that may have been indicated by Mr. A's history, clinical examination and CT scans.

9. While Respondent was performing the sinus surgical procedures, Respondent damaged Mr. A's cribriform plate and perforated the dura which resulted in an opening between the sinuses and Mr. A's brain. Respondent was unaware that this occurred.

10. Respondent provided post-operative follow up care to Mr. A on April 12, July 1 and 17, August 2, 16 and 30, September 16 and 25, and October 4 and 23, 2002. During this post-operative period, Mr. A was experiencing clear drainage from his right nostril. Mr. A complained about the drainage to family and friends and also reported it to Respondent during post-operative visits.

11. Respondent had listed "cerebrospinal fluid perforation" as a risk of surgery and should have suspected that the fluid draining from Mr. A's nose might be cerebral fluid from a defect created by the surgery. Among other things, Respondent failed to test the fluid to determine what it was and failed to perform any diagnostic procedures relating to the fluid.

12. On October 29, 2002, Mr. A was at home when he became ill, lost consciousness and was transported by ambulance to Community Memorial Hospital in Menomonee Falls. He was unresponsive upon arrival at the hospital, never regained consciousness and died on October 30, 2002. Final diagnosis was meningitis pneumococcal.

13. It is more likely than not that the defect in the dura caused during the surgery performed by Respondent was a cause in Mr. A's death.

#### History of Other Complaints

14. This is the only complaint about Respondent's practice ever received by the Board or the Department in the 32 years Respondent has been licensed and practicing in Wisconsin.

## Individualized Physician Assessment

15. During 2006, at the request of the Division of Enforcement, Respondent voluntarily participated at his own expense in an individualized physician assessment performed by the University of Wisconsin Office of Continuing Professional Development (Evaluators).

a. The Evaluators were provided with the facts of this case and asked to develop an assessment plan to determine Respondent's knowledge and skills in relation to his practice and to the facts of this case.

b. The objectives of the assessment proposed by Evaluators were to determine the adequacy of Respondent's:

- 1) Judgments regarding the accepted management, documentation, and referral of patients presenting in his otolaryngology practice.
- 2) Knowledge of appropriate investigations (and their interpretation) regarding the illnesses of patients presenting in his otolaryngology practice.
- 3) Knowledge of the basic pathophysiology underlying the otolaryngologic problems that his patients have.
- 4) Ability to make judgments regarding when his patients should be operated on, and what the surgical risks are.
- 5) Ability to interact with patients in a professional and efficient manner and his ability to explain risks and document the encounters in a meaningful way.

c. The assessment process included making a profile of Respondent's practice, Test Stimulated Discussions Chart Stimulated Recall and Standardized Patient Encounters.

d. The Evaluators' written evaluation report was provided on September 19, 2006. The conclusion of the assessment is that Respondent's judgment, knowledge and abilities are adequate for the routine practice of otolaryngology in his community. The report further concluded that Respondent refers readily and appropriately when patient problems arise that are not within his skill set.

## CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02(3), and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by engaging in the conduct set out above, has engaged in conduct which tends to constitute a danger to the health, welfare, or safety of a patient, which is unprofessional conduct as defined by Wis. Admin. Code § MEI 10.02(2)(h) and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

## ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Michael C. Janowak, M.D., Respondent, is hereby REPRIMANDED.

2. Based upon the results of Respondent's individual evaluation by the University of Wisconsin Office of Continuing Professional Development, no limitations or continuing medical education are ordered.

3. Respondent shall, within 90 days of the date of this Order, pay to the Department of Regulation and Licensing the costs of this proceeding in the amount of \$5,160.00 pursuant to Wis. Stat. § 440.22(2).

4. Reports, petitions, notices and payment shall be provided to:

Department Monitor  
Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Ave.  
P.O. Box 8935  
Madison, WI 53708-8935  
Fax (608) 266-2264  
Telephone (608) 267-3817

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 that Respondent fails to pay costs as ordered, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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

Wisconsin Medical Examining Board

By: Gene Musser MD  
A Member of the Board

11/15/06  
Date