

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 : FINAL DECISION AND ORDER  
SHAWN W. LAIBLY, M.D., : LS 0610261 MED  
RESPONDENT. :

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[Division of Enforcement Case No. 05 MED 344]

Shawn W. Laibly, M.D.  
855 N. Westhaven Drive  
Oshkosh, WI 54904

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

This disciplinary proceeding was commenced by the filing and service of a Complaint and Notice of Hearing on October 26, 2006. 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. Shawn W. Laibly, M.D., Respondent, date of birth May 10, 1966, 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 43278, which was first granted May 16, 2001.

2. Respondent's last address reported to the Department of Regulation and Licensing is 855 N. Westhaven Drive, Oshkosh, WI 54901.

3. Respondent's practice specialty listed with the Department is obstetrics and gynecology.

4. At the time of the events set out below, Respondent was practicing as a physician at Connelly Care Associates, Mercy-Oakwood Outpatient Medical Center in Oshkosh, Wisconsin.

5. On April 2, 2002, Ms. A, a 35-year-old married woman, first saw Respondent for a new patient consult to discuss her prior treatment with two other physicians, one of whom was an obstetrician/gynecologist, and to determine whether she should have a hysterectomy.

a. Ms. A described having constant, painful cramping and irregular menstrual bleeding that was getting worse. Previous care of Ms. A by other physicians included, among other things, treatment for:

- 1) Irregular menstrual periods and bleeding.
- 2) A miscarriage followed by a pregnancy with retained placenta which required dilation &

curettage (D&C).

- 3) A hysteroscopy and laparoscopy to remove scar tissue.
- 4) A diagnosis of Asherman's Syndrome, which is the presence of intrauterine adhesions that typically occur as a result of scar formation after uterine surgery, especially after a D&C.

b. Ms. A also described a surgical procedure performed by her previous obstetrician/gynecologist which Dr. Laibly understood to be an endometrial ablation (i.e., removal of the endometrial tissue within the cavity of the uterus). Based on the history of symptoms, surgeries and the diagnosis of Asherman's Syndrome by another physician, Dr. Laibly believed Ms. A was physically incapable of having children.

6. During the April 2 appointment, Respondent performed a pelvic exam which was essentially normal with a little tenderness on the right side. Respondent also palpated the uterus and noted its size to be in the range for a woman who is not pregnant. Respondent ordered a pelvic ultrasound to rule out any fibroids.

7. On April 11, 2002, following the performance of an ultrasound on Ms. A at Respondent's clinic, Respondent and Ms. A discussed the results. Respondent noted the endometrial cavity appeared quite distorted and that there was only a small amount of endometrial lining near the fallopian tubes which was the probable cause of her irregular bleeding and was also likely contributing to the significant cramping she had been experiencing. Respondent encouraged Ms. A to try to control symptoms and regulate her irregular bleeding with hormone therapy and Ibuprofen, but Ms. A refused hormone therapy. As a result, Respondent told Ms. A she met the indications for a hysterectomy, if she wanted to proceed with that option.

8. On June 14, 2002, Ms. A had a follow-up appointment with Respondent after two months of unsuccessfully attempting to control pain with ibuprofen. During that appointment:

- a. Ms. A complained of continued intermittent bleeding, severe abdominal cramping, headaches, severe breast tenderness and severe stress.
- b. Respondent performed a breast exam.
- c. Respondent noted in the record: "Pelvic exam as previously described," which referred to the April 2 pelvic examination.
- d. Respondent and Ms. A discussed management options regarding dysmenorrhea and ongoing irregular bleeding. Ms. A indicated her decision to have a hysterectomy, because she was frustrated with her symptoms and the lack of successful treatments in the past. Surgery was later scheduled for July 15, 2002.

9. On July 8, 2002, Ms. A saw Respondent for a pre-operative appointment and discussed the risks of surgery with Ms. A and obtained her consent to proceed with the diagnostic laparoscopy and total vaginal hysterectomy.

10. On July 12, 2002, Respondent dictated the History and Physical (H&P) regarding Ms. A, which was sent to the hospital. The H&P did not contain the date that Ms. A was seen or examined. It contained information about a physical exam including detailed information about the pelvic exam that had been done on April 2, 2002.

11. Respondent also completed and sent to the hospital a form which has check offs for ordering lab work, including a pregnancy test. Respondent knew Ms. A and her husband wanted a child and had known they were having sexual intercourse without any form of birth control. However, based on Ms. A's history, symptoms and April 11, 2002 ultrasound, Respondent was not suspicious of pregnancy and did not order a pregnancy test.

12. On July 15, 2002, Respondent performed a diagnostic laparoscopy and observed a 10 to 11 week size enlarged boggy uterus, which Respondent believed to be consistent with adenomyosis. Respondent then performed a vaginal hysterectomy on Ms. A.

13. Later that day, Respondent was informed that the pathologist's examination of Ms. A's removed uterus revealed that it contained a fetus estimated to be at 10 weeks. Respondent immediately reported this finding to Ms. A and to her husband, prior to Ms. A leaving the hospital.

14. Respondent's conduct in providing care to Ms. A fell below the minimal level of competence for a physician in

that Respondent failed to order or perform a pregnancy test to rule out pregnancy, at any time prior to performing the hysterectomy.

15. This is the only complaint about Respondent's practice ever received by the Board or the Department in the 5 years Respondent has been licensed and practicing in Wisconsin.

16. After July 15, 2002, the date of this incident, Respondent, on his own initiative and at his own expense, attended continuing medical education courses which included focus on the diagnosis and treatment of amenorrhea, dysmenorrhea and record keeping. These courses included:

- a. Mayo Clinic OB-GYN Clinic Reviews on November 14, 2002, which included "Surgical Treatment of Dysfunctional Uterine Bleeding," for 1 hour of continuing medical education.
- b. The Osler Institute's Obstetrics/Gynecology Board Review Course on October 4-5, 2003, for 20 hours of continuing medical education.

- c. The Osler Institute's Obstetrics/Gynecology Board Review Course on November 1-4, 2003, for 10 hours of continuing medical education.
- d. The American Educational Institutes' 2003-2004 Medical-Dental-Legal Update, which included 2 hours of continuing education on medical record keeping and documentation.
- e. Physicians Insurance Company of Wisconsin's Office Practice Assessment, on April 26, 2004, which included medical record keeping for 1 hour of continuing education.

17. At all times during this investigation, Respondent has cooperated with the Department's investigation on behalf of the Medical Examining Board and promptly responded to all requests for information. Respondent has tendered \$1,890.00 to the Department of Regulation and Licensing to reimburse the State of Wisconsin for the costs associated with this investigation.

#### CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02(3) and authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).
2. Respondent, by failing to rule out a pregnancy immediately prior to performing a hysterectomy, 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 § MED 10.02(2)(h) and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Shawn W. Laibly, M.D., Respondent, is hereby REPRIMANDED for the above conduct.
2. Respondent having completed the relevant continuing education set out in Finding of Fact 16, no further education is required.
3. Respondent shall, within 90 days of the date of this Order, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$1,890.00 pursuant to Wis. Stat. § 440.22(2).
4. Payment shall be mailed or delivered 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. This Order is effective on the date of its signing.

Wisconsin Medical Examining Board

By: Gene Musser MD  
A Member of the Board

5/16/07  
Date

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
SHAWN W. LAIBLY, M.D.,	:	<u>LS 0610261 MED</u>
RESPONDENT.	:	

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[Division of Enforcement Case No. 05 MED 344]

It is hereby stipulated and agreed, by and between Shawn W. Laibly, M.D., Respondent; Patrick F. Koenen o Hinshaw & Culbertson, LLP, attorneys for Respondent; and John R. Zwieg, attorney for the Complainant, Department o Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary proceeding against Respondent's licensure by the Division of Enforcement (DOE file 05 MED 344). Respondent consents to the resolution of this matter by stipulation and without a hearing.

2. Respondent understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has obtained advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance o consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the administrative law judge for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

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Shawn W. Laibly, M.D.  
Respondent  
855 N. Westhaven Drive  
Oshkosh, WI 54904

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Date

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Patrick F. Koenen  
Hinshaw & Culbertson, LLP  
Attorneys for Respondent  
100 W. Lawrence Street  
Appleton, WI 54911-5754

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Date

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John R. Zwieg  
Attorney for Complainant  
Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935

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Date

[05 MED 344: Costs \$1,890.00]