

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
JESUS F. NUNEZ-GORNES, M.D., : LS 0705211 MED
RESPONDENT. :

[Division of Enforcement Case No. 06 MED 136]

Jesus F. Nunez-Gornes, M.D.
2601 N. Greenview Avenue, Apt. E
Chicago, IL 60614

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 May 21, 2007. 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. Jesus F. Nunez-Gornes, M.D., Respondent, date of birth November 24, 1941, 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 20315, which was first granted August 25, 1976.
2. Respondent's last address reported to the Department of Regulation and Licensing is 2601 N. Greenview Avenue, Apt. E, Chicago, IL 60614.
3. Respondent's practice specialty listed with the Department is gastroenterology.
4. At the time of the events set out below, Respondent was practicing as a physician in the Department of Gastroenterology at the Marshfield Clinic in Marshfield, Wisconsin.
5. Ms. A had been diagnosed with Crohn's disease in 1983. In July 1999, when she was 38 years old, Ms. A presented to the Emergency Department with left flank pain. Over the next few days, she had the following diagnostic tests and results:
 - a. CT Scan: Sigmoid has a relatively narrow wall and is surrounded by a lot of fat as is the rectum. I cannot find any serious disorder at the present time on an acute basis.
 - b. Colonoscopy: Crohn's colitis involving the sigmoid and descending colon. Mucosal bridging at

45 cm.

- c. Biopsy from the colonoscopy: Suspicious for Crohn's disease. Negative for dysplasia.

6. Following discharge from the July 1999 hospitalization, Ms. A was followed by Respondent. Ms. A had typical clinical features associated with "Crohn's disease, with periods of exacerbations and periods of remissions of symptoms." On November 14, 2000, Ms. A was seen by Respondent. She complained of diarrhea, weight loss, low grade fever, abdominal pain and perianal pain. Respondent ordered a CT scan to rule out an abscess and also ordered that if the abscess was ruled out, they would begin treating the Crohn's with Remicade infusions every two weeks.

7. The CT scan was done on November 20 and the report said:

"Segmental thickening of the distal sigmoid colon with luminal narrowing and dilation of the descending colon just proximal to it. While this most likely represents a manifestation of the patient's known Crohn disease, the possibility of an adenocarcinoma is not excluded." (Emphasis added.)

8. On November 21, at Respondent's direction, his department's staff notified Ms. A that the scan was normal.

9. Respondent's conduct in providing care to Ms. A fell below the minimal level of competence for a physician and exposed the patient to an unreasonable risk of harm in that Respondent:

- a. Failed to tell Ms. A that the radiologist raised the possibility of cancer in the November 20, 2000 CT scan report and failed to discuss the finding with the patient.
- b. Failed to discuss with Ms. A the possibility of having a colonoscopy performed and failed to recommend a colonoscopy at that time. (The most recent colonoscopy had been done on July 16, 1999, 16 months earlier.)

10. Ms. A's first Remicade infusion was done on November 29. Respondent saw Ms. A on December 8 and noted that her symptoms were better and the infusions should continue. A second infusion was done on December 13 and the patient had a reaction, received treatment for the reaction and the infusion was continued.

11. Respondent saw Ms. A on December 22 and noted that following the infusions, she would probably start Imuran for the Crohn's disease. Ms. A missed her next infusion appointment on December 28. She next received an infusion on January 4, 2001, but had a severe reaction and the infusion was stopped.

12. On January 16, 2001, Ms. A was seen by Respondent. They discussed her starting on Imuran and she was given a prescription for it. Respondent noted that Ms. A might choose not to take it.

13. Ms. A was not seen by Respondent for a year. She returned on January 21, 2002 and was seen because of increased abdominal symptoms. Respondent recommended a CAT scan to stage her Crohn's disease.

14. The radiologist's CT scan report of February 19, 2002, said:

"There is a grossly abnormal sigmoid right on down to the rectum. While this could easily represent Crohn's disease, with the transmural involvement and the fat infiltration, I am concerned because of the actual bulk and thickness of this whole segment of wall that this may be more than Crohn's disease. This may be carcinoma." (Emphasis added.)

15. On February 21, 2002, Ms. A was seen by Respondent. His exam revealed a lower abdominal fullness suggestive of a thickened sigmoid and descending colon. His note of that appointment says: "The CAT scan of the abdomen revealed marked thickening of the sigmoid and rectum consistent with Crohn's disease with transmural involvement." Respondent did not discuss the possibility of cancer with Ms. A and his note does not mention the radiologist's concern.

16. Respondent's conduct in providing care to Ms. A fell below the minimal level of competence for a physician and exposed the patient to an unreasonable risk of harm in that Respondent:

- a. Failed to tell Ms. A that the radiologist raised the possibility of cancer in the February 19, 2002 CT scan report and failed to discuss the finding with the patient.
- b. Failed to discuss with Ms. A the possibility of having a colonoscopy performed and failed to recommend a colonoscopy at that time. (The most recent colonoscopy had been done on July 16, 1999, 31 months earlier.)

17. On March 1, 2002, Ms. A called Respondent's office and reported more blood in her stool. Ms. A was seen by Respondent on March 14 and he noted his impression of Crohn's disease. He also scheduled her to return in a month, with the intention of performing a colonoscopy after her pain improved. Respondent never mentioned the possibility of cancer.

18. On March 29, staff in Respondent's department sent Ms. A the prep for the colonoscopy scheduled for April 4. Ms. A was seen by Respondent on April 4. She presented with the complaint of increased pain in left lower quadrant which now involved the suprapubic area and the right lower quadrant. An abdominal exam was performed by Respondent who noted a hard left lower quadrant mass that he thought was probably a thickened sigmoid which extended into the suprapubic area and the right lower quadrant. There was no mention of the possibility of cancer. Respondent ordered a CT scan which was done that day and the radiologist's report said:

"There is certainly a very complex situation in this patient's abdomen affecting the entire colon. I am very concerned about the integrity of the colonic wall, especially of the descending colon. I have notified the clinical service in charge of my findings."

19. An exploratory laparoscopy was performed by a surgeon on April 8. The pre-operative diagnosis was Crohn's disease of the sigmoid colon. The post-operative diagnosis was invasive mucinous adenocarcinoma of the sigmoid colon and rectum with peritoneal carcinomatosis. The pathology report confirmed adenocarcinoma.

20. On December 9, 2002, Ms. A died as a result of the colon cancer.

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 engaging in the conduct as 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 § 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. Jesus F. Nunez-Gornes, M.D., Respondent, is hereby REPRIMANDED for the above conduct.
2. Respondent's license to practice medicine and surgery in the State of Wisconsin is LIMITED as follows:
 - a. Respondent shall not examine or treat patients until such time that he has satisfactorily completed 16 hours of continuing education on the subject of inflammatory Bowel Disease (IBD) – identification and management of complications, including assessment and management of cancer risk in IBD, which course or courses shall first be approved by the Board, or its designee.
 - b. Upon Respondent providing proof sufficient to the Board, or its designee, that he has completed the education, the Board shall issue an Order removing this limitation of Respondent's license.

3. Respondent is prohibited from applying the educational credits required by this Order toward satisfaction of the continuing education required during the November 1, 2005 through October 31, 2007 registration biennium or subsequent bienniums.

4. 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 \$1,835.00 pursuant to Wis. Stat. § 440.22(2).

5. Requests for approval, notification of completion of educational program(s) and payment shall be faxed, 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

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 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.

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

Wisconsin Medical Examining Board

By: Sujatha Kailas
A Member of the Board

6/20/07
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
JESUS F. NUNEZ-GORNES, M.D.,	:	<u>LS 0705211 MED</u>
RESPONDENT.	:	

[Division of Enforcement Case No. 06 MED 136]

It is hereby stipulated and agreed, by and between Jesus F. Nunez-Gornes, M.D., Respondent; and John R. Zwieg attorney for the Complainant, Department of 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 (file 06 MED 136). 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 been provided an opportunity to obtain 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 or 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 Respondent or his attorney, of any, 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.

Jesus F. Nunez-Gornes, M.D.
Respondent
2601 N. Greenview Avenue, Apt. E
Chicago, IL 60614

Date

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

Date