

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

MICHAEL C. DUSSAULT, M.D., :
RESPONDENT. :

FINAL DECISION AND ORDER
LS# 0708211MED

Division of Enforcement Case # 04MED343

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

Michael C. Dussault, M.D.
248 McHenry Street
Burlington, WI 53105

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 & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A disciplinary proceeding was commenced in this matter by the filing of a Notice of Hearing and Complaint with the Wisconsin Medical Examining Board on 8/21/07. Prior to the hearing on the Complaint, the parties in this matter agreed to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the 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. Dussault, M.D., date of birth 7/7/48, is duly licensed as a physician and surgeon in the state of Wisconsin, license #21659. This license was first granted on 7/14/78.
2. Respondent's most recent address on file with the Wisconsin Medical Examining Board is 248 McHenry Street, Burlington, Wisconsin 53105.
3. At all times relevant to this action, Respondent was working as a physician and surgeon at the Burlington Clinic at 248 McHenry Street in Burlington, Wisconsin.
4. Respondent specializes in orthopedic surgery.
5. ALR, the patient herein, date of birth 4/14/85, injured her right knee on 5/8/03 while playing softball. The patient presented at Respondent's office on 5/9/03 for evaluation of her knee. Respondent examined the patient's right knee, obtained AP, lateral and sunrise views of the knee, prescribed anti-inflammatory medications, recommended physical therapy and ordered an MRI.
6. The patient returned to Respondent's office on 5/28/03 and Respondent reviewed the results of the MRI with her. The results of the MRI were compatible with a tear of the anterior cruciate ligament, hereinafter referred to as the ACL. Respondent reviewed the treatment options with the patient and recommended arthroscopically aided ACL reconstructive surgery. The patient accepted the Respondent's recommendation and the surgery was scheduled for and performed on 6/30/03.
7. The patient was discharged from the hospital following the ACL reconstructive surgery on 6/30/03 with crutches and an analgesic pump. Respondent also prescribed physical therapy for the patient to assist with her rehabilitation.
8. Respondent continued to follow the patient postoperatively. Respondent noted that the patient was not progressing in her rehabilitation as he anticipated that she should be. He continued to adjust her physical therapy program and added dynamic bracing for both flexion and extension. Respondent noted at an office visit with the patient on 8/6/03 that the patient was way behind in regaining her range of motion and was lacking 10 degrees of full extension and had only about 100 degrees of flexion. At the patient's appointment with Respondent on 9/16/03, the patient demonstrated a regression in her range of motion lacking 20 degrees of full extension and being able to flex her knee to only about 80 degrees. Respondent did not take any further action to evaluate the patient at that time to determine the cause for her delayed rehabilitation and regression in range of motion. The patient was leaving for college out of the area but Respondent recommended that she return for another office visit with him in approximately one month.
9. The patient did not return to Respondent after 9/16/03 but on 9/25/03 obtained a second opinion from another orthopedic surgeon near where she went to school. This orthopedic surgeon examined the patient's knee and obtained AP, lateral, notch and sunrise views of the patient's right knee. The x-rays indicated that the femoral interference screw was proud and projected into the joint. The lateral view disclosed that the femoral tunnel and the femoral bone block associated with the ACL reconstruction graft as placed by Respondent had been positioned too far anteriorly in the distal femur although on clinical examination there was no evidence of instability of the knee. The Respondent disputes the degree to which the femoral tunnel was anterior but agrees that the tunnel was not in the ideal position. On 10/3/03 the patient underwent surgery to remove the femoral interference screw and to regain range of motion in the knee. During this surgery, the surgeon removed the original graft as well as the interference screw. The patient later underwent an additional surgery to redo the ACL reconstruction.
10. Respondent's conduct in providing medical care for the patient fell below the minimum standards of competence accepted in the profession in the following respects:
 - a. Respondent malpositioned the graft by placing the femoral tunnel too far anteriorly in the distal femur.
 - b. Respondent failed to timely obtain an x-ray of the patient's right knee in the post-operative period

when the patient was not progressing in her physical therapy as anticipated and, in fact, showed regression in the range of motion of her right knee.

11. Respondent's conduct created the following unacceptable risks for the patient:
 - a. The malpositioning of the graft placed the ACL graft at risk for a potential adverse functional outcome and, in addition, created unacceptable restrictions on the range of motion of the knee as well as the risks associated with additional surgery necessary to correct and properly treat the patient's condition.
 - b. The failure to obtain a timely x-ray of the patient's right knee delayed diagnosis and, thereby, subjected the patient to unnecessary extended discomfort, pain and disability and delayed and potentially made more difficult the correction of the patient's limited range of motion of her knee.
12. A minimally competent physician, to avoid or minimize the unacceptable risks to the patient, would have:
 - a. Positioned the graft and femoral tunnel posteriorly in the distal femur.
 - b. Obtained x-rays of the patient's right knee to assist in diagnosis and treatment planning when the patient failed in the post-operative period to demonstrate progress in regaining range of motion and, in fact, showed evidence of regression in her range of motion.

13. Respondent, following the issuance of the formal Complaint and prior to the execution of the Stipulation in this disciplinary proceeding, voluntarily attended and satisfactorily completed the following academic programs and hands-on cadaver laboratory courses on the dates indicated:

University of Colorado Fall Orthopaedic Summit Course (9/28/07 – 9/29/07)—12 CMEs

The course included modules on "Sports Medicine And Upper Extremity", "Trauma" and "MIS Hip And Knee" of which 1.5 CMEs were devoted to a segment entitled, "Knee – Ligament. Who Needs Knee Ligament Surgery? ACL Reconstruction Techniques; PCL Reconstruction Techniques".

Arthroscopy Association of North America—Course 105—Knee Lecture Course and Focus Demonstrations (11/1/07 – 11/3/07)—3.5 CMEs

The lecture program included symposia on subjects relating to "Patellofemoral and Meniscus", "Articular Cartilage" and "Ligaments". The symposium on "Ligaments" included presentations directly related to ACL surgery entitled, "Ligament Fixation: How to Choose What to Use"; "ACL Reconstruction Using Double Bundle Techniques: Why It Matters"; "My Pearls and Technique for ACL Reconstruction for Partial (Bundle) Tears"; "Technique Focus Video: All-Inside ACL Reconstruction"; "Evolving Strategies In Revision ACL Reconstructions: Indications and Techniques"; "Optimizing the Approach to the Multiligament-Injured Knee Using Combined Ligament Reconstruction: 10 Pearls in 10 Minutes".

This program also included "Focus Demonstrations" (no CME credits) with the following presentations directly related to ACL reconstructive surgery: "Double Bundle ACL Reconstruction" and "Optimizing Single Bundle ACL Reconstruction with Soft Tissue Grafts Focusing On Proper Tunnel Placement and Strong Slippage Resistance". Each of these focused demonstrations consisted of a surgeon demonstrating a surgical technique on a cadaver and the attending faculty then utilizing the cadaver specimen for hands on training with the help of the instructing surgeon.

American Academy of Orthopaedic Surgeons 75th Annual Meeting (3/5/08 – 3/9/08)

The annual meeting included an instructional course entitled, "Complications of ACL Reconstruction". This instructional course was for 3.5 CME credits.

Arthroscopy Association of North America; New Horizons: Advances in Knee Surgery-Ligament Focus, Masters Experience Course #604 (3/28/08 – 3/30/08)—17.5 CMEs

The instructional program included multiple lectures dealing with ACL reconstructions and 8 to 10 hours of cadaver laboratory instruction in which each participant-surgeon was provided with a cadaver specimen for his own use. With

individual instructor-surgeons present, each participant-surgeon performed various ACL reconstructions on the cadaver assigned to him.

Materials related to each of the above-referenced courses are attached hereto.

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 and Order, pursuant to Wis. Stat. § 227.44(5).
2. The conduct described in paragraphs 5 through 12 above, constitutes a violation of Wis. Stat. § 448.02(3) and Wis. Admin. Code § MED 10.02(2)(h) in that Michael C. Dussault, M.D. engaged in conduct that tended to constitute a danger to the health, welfare and safety of the patient.
3. The Wisconsin Medical Examining Board has the authority pursuant to Wis. Stat. § 440.22 to assess the costs of this proceeding against Michael C. Dussault, M.D.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license of Michael C. Dussault, M.D., to practice medicine and surgery in the state of Wisconsin is hereby limited as follows:
 - a. Michael C. Dussault, M.D. will take and successfully complete a continuing medical education program in current techniques for performing surgical ACL reconstructions and in the evaluation and diagnosis of post-operative complications associated with surgical ACL reconstructions. The continuing medical education program will include an academic component and a hands-on component. The hands-on component will involve a cadaver laboratory program in surgical ACL reconstruction. Dr. Dussault will be responsible to pay the full costs of enrolling and participating in the continuing medical education program.
 - b. Michael C. Dussault, M.D. has satisfied the continuing education program requirement as set forth in paragraph 1.a. of this Order by having taken and satisfactorily completed the continuing medical education courses and cadaver laboratory instruction enumerated in paragraph 13 of the Findings of Fact.
 - c. Michael C. Dussault, M.D. will not apply or attempt to apply any of the continuing medical education credits earned in satisfaction of paragraph 1.a. of this Order toward satisfaction of his Wis. Stat. § 448.13 biennial training requirements.
 - d. Michael C. Dussault, M.D., following completion of the continuing medical education program described in paragraph 1.a. above, will permit a proctor approved by the Wisconsin Medical Examining Board to observe him perform two (2) arthroscopically assisted ACL reconstructions on patients. Dr. Dussault may nominate a physician or physicians competent to perform arthroscopically assisted ACL reconstructions to serve as the proctor but the ultimate determination of the physician to serve as the proctor shall be in the sole discretion of the Wisconsin Medical Examining Board. The proctor, during the course of the two ACL reconstructions he or she is observing, may make recommendations to Dr. Dussault on how to alter the procedures that Dr. Dussault is using to better perform these ACL reconstructive surgeries. The proctor will file a report with the Wisconsin Medical Examining Board describing and critiquing the surgical procedures and techniques utilized by Dr. Dussault when performing the two ACL reconstructions observed by the proctor and will advise the Wisconsin Medical Examining Board whether, in his or her professional opinion, the two arthroscopically assisted ACL reconstructions were competently performed. If the proctor cannot conclude in his report that the two ACL reconstructions were competently performed, the proctor will identify with specificity the deficiencies in Dr. Dussault's surgical procedures and make recommendations to the Wisconsin Medical Examining Board on how these deficiencies can be cured. The report from the proctor will be filed with the Wisconsin Medical Examining Board within 30 days of the date on which both of the proctored ACL reconstructive surgeries have been completed. Dr. Dussault will pay the full costs associated with the proctoring of the two ACL reconstructive surgeries including the professional fees of the proctor and the travel costs of the proctor.
 - e. Any arthroscopically assisted ACL reconstruction surgery performed on a patient by Dr. Dussault

between the last date upon which a party to the Stipulation in this matter executed the Stipulation and the date on which the Wisconsin Medical Examining Board entered this Final Decision and Order and proctored by the physician ultimately approved by the Wisconsin Medical Examining Board to serve as the proctor is eligible to be considered as a proctored ACL reconstructive surgery required by paragraph 1.d. of this Order.

f. Michael C. Dussault, M.D. will not perform any ACL reconstructive surgeries while the terms of this limited license remain in effect except in the presence of the proctor approved by the Wisconsin Medical Examining Board or in the presence of a competent physician nominated by Dr. Dussault to serve as the proctor while that nomination is pending before the Wisconsin Medical Examining Board prior to the approval of a proctor by the Wisconsin Medical Examining Board.

g. Michael C. Dussault's limited license will terminate and his license to practice medicine and surgery in the state of Wisconsin will be restored to full and active status by the Department Monitor without further action required by the Wisconsin Medical Examining Board upon compliance with all of the terms of this Order, including the payment of costs, and upon receipt by the Department Monitor of the report from the proctor stating that both of the arthroscopically assisted ACL reconstruction surgeries observed by the proctor were "competently performed".

IT IS FURTHER ORDERED that:

2. All reports and other documents required to be filed with the Wisconsin Medical Examining Board will be mailed, faxed or delivered to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Telephone no. (608) 267-3817
Fax no. (608) 266-2264

IT IS FURTHER ORDERED that:

3. Michael C. Dussault, M.D. will, within thirty (30) days from the date of this Order, pay costs of this proceeding in the amount of \$22,457.50. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone no. (608) 267-3817
Fax no. (608) 266-2264

4. 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 pay costs as ordered the Respondent's license to practice medicine and surgery in the state of Wisconsin SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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

Wisconsin Medical Examining Board

By: Gene Musser MD
A Member of the Board

8/20/08
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
 : STIPULATION
MICHAEL C. DUSSAULT, M.D. : LS# 0708211MED
RESPONDENT. :

Division of Enforcement Case # 04MED343

It is hereby stipulated between Michael C. Dussault, and by his attorney, Paul R. Erickson; and Gilbert C. Lubcke, for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending formal disciplinary proceeding involving Respondent's licensure by the Wisconsin Medical Examining Board, case 04MED343. Respondent consents to the resolution of this formal disciplinary proceeding by stipulation.

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 Wisconsin Medical Examining 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 Division of Enforcement 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 Wisconsin Medical Examining Board ever assigned as an 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. The Respondent understands that the attorney or other agent for the Division of Enforcement or the case advisor, in responding to questions asked by the Board, may be required to provide information to the Board which may be construed by the Board as not weighing in favor of accepting this proposed Stipulation and Final Decision and Order. The Respondent shall not contend that any responses made by the attorney or other agent for the Division of Enforcement or by the case advisor in response to questions posed by the Board constitute a failure by the attorney or other agent for the Division of Enforcement or by the case advisor to speak in support of this agreement. Additionally, any such Board 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.

Michael C. Dussault, M.D.
248 McHenry Street
Burlington, WI 53105

Date

Paul R. Erickson
Attorney for Michael C. Dussault, M.D.
Gutglass, Erickson, Bonville & Larson S.C.
735 North Water Street, Suite 1400
Milwaukee, WI 53202-4267

Date

Gilbert C. Lubcke, Attorney
Division of Enforcement
Wisconsin Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date