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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
 : FINAL DECISION AND ORDER
 : LS 0803271 MED
 :
 DAVID S. HASKELL, M.D., :
 RESPONDENT. :
 :

[Division of Enforcement Case No. 05 MED 056 and 06 MED 344]

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

David S. Haskell, M.D.
2323 N. Mayfair Road, Suite 310
Milwaukee, WI 53226

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
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PROCEDURAL HISTORY

The Notice of Hearing and Complaint were filed in this matter on March 27, 2008. Prior to the hearing on the formal complaint, the parties in this matter agreed 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. David S. Haskell, M.D., Respondent herein, whose date of birth is August 27, 1941, is duly licensed to practice medicine and surgery in the State of Wisconsin under license number 16400, which was granted on July 10, 1968.
2. Respondent's last known address filed with the Department of Regulation and Licensing is 2323 N. Mayfair Rd., Suite 310, Milwaukee, WI 53226
3. Respondent is board certified in orthopedics and specializes in that practice area.
4. On July 29, 2004, MH, a 54 year old female patient presented to Respondent with continuing complaints of pain in the right knee. The patient was morbidly obese, weighing 320 lbs. on a 5'2" frame, with a past history of the right knee of a modified Hauser in 1985, a patellectomy repair in 1988, and arthroscopy and chondral abrasion of the patella in 1988. A MRI of the knee in 2000 revealed chronic tendinopathy and x-rays taken in 2001 and 2003 showed medial compartment degenerative arthritis. She had been treated for some time with steroidal injections by Respondent's associate, William McDevitt, M.D.
5. Three radiographs of both of the patient's knees were taken on July 29th which revealed medial compartment degenerative arthritis of the right knee as evidenced by narrowing of the joint space medially.

6. On November 2, 2004, the patient had radiographs taken of the right knee at Elmbrook Memorial Hospital which showed narrowing of the medial compartment of the knee.

7. On November 9, 2004, the Respondent performed a total right knee arthroplasty on Patient MH utilizing a Center Pulse Orthopedics (Zimmer/Intermedics) with ultra congruent, 13 mm polyethylene insert.

8. Respondent employed the Zimmer/ Intermedics insert rather than a posterior stabilizing implant because of the patient's obesity and age and to address the global instability secondary to steroidal arthropathy and the patellectomy, because he believed a more constrained implant would be challenged by her obesity.

9. Patient MH received post surgical physical therapy on several occasions and tolerated the procedures well with no complaints and no instability noted of the surgically repaired knee.

10. On November 24, 2004, two radiographs of the patient's right knee were taken which the Respondent noted on review to indicate excellent seating of the prosthetic components.

11. Patient MH transferred her care to Robert McCabe, M.D, a partner of the Respondent's in December, 2004.

12. In December 2004, the Patient MH experienced difficulty placing weight on the leg and noted the leg to "go out of joint."

13. An x-ray taken on December 23, 2004, showed lateral instability of the patient's right knee and Dr. McCabe recommended additional physical therapy.

14. When no improvement was shown with physical therapy, Dr. McCabe referred the patient for consultation to Thomas Nelson, M.D. on February 22, 2005.

15. On examination of Patient MH, Dr. Nelson found a painful and unstable total right knee replacement with medial collateral ligament insufficiency.

16. On February 25, 2005, Patient MH underwent a revision of the right total knee replacement by Dr. Nelson based on the medial collateral ligament instability. During the course of the operative procedure, Dr. Nelson found the "tibial component had been cemented in backwards with the posterior portion of the component actually facing anterior, and the anterior component of the component facing posterior."

17. Dr. Nelson removed and replaced the tibial component of the original insert during the procedure performed on February 25, 2005.

18. Patient MH was discharged on March 2, 2005, and has successfully recovered from the revision of the original total knee replacement.

19. Respondent's conduct of inserting the tibial component of the Center Pulse Orthopedics (Zimmer/ Intermedics) device at a 180 degree rotation from the correct placement tended to constitute a danger to the patient by requiring replacement of the component at a later procedure with the risks of additional bone loss and the attendant risks of a second surgical procedure.

20. An additional informal complaint involving Respondent entitled 06 MED 344 is pending before the Medical Examining Board. The allegation in that complaint involves Respondent's failure to perform a lumbar laminectomy at the correct level on a different patient in 2004. The Board has made no determination with regard to that allegation.

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's conduct, as set forth in paragraph 19 above, constitutes a violation of Wis. Stats. sec. 448.02(3) and Wis. Admin. Code sec. MED 10.02(2) (h).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. That Respondent is hereby REPRIMANDED by the Board.

IT IS FURTHER ORDERED THAT:

2. Respondent is required to successfully complete 4 hours of continuing education in methods of correct placement of artificial knee components; 4 hours of continuing education in determining correct operative levels during lumbar laminectomy procedures, including intraoperative and positioning radiographs; and 1 hour of continuing education in patient ethics and communications, including discussions of post operative complications. These courses may not be used to satisfy the statutorily required continuing education requirements.

Respondent has provided satisfactory evidence of successful completion of the following courses:

- a) Zimmer Gender Solutions Natural Knee Flex Training (The Zimmer Institute (8 Credits)
- b) AIDET, Increasing Effectiveness of Provider and Patient Communication (Studer Group) (1 Credit)
- c) Contemporary Techniques in Spinal Surgery 2008 (American Academy of Orthopaedic Surgeons) (21 credits)

These courses were completed subsequent to the conduct set forth in this Final Decision and Order and sufficiently address that conduct. The Board therefore recognizes the courses set forth herein as meeting the requirements of this paragraph.

3. On the date of this Order, Respondent has paid the incurred costs of this proceeding to the Department in the amount of Five Thousand (\$5000.00) dollars pursuant to Wis. Stat. § 440.22(2). Costs of the proceedings are recouped in settled cases pursuant to Department policy and do not constitute a fine, penalty, or disciplinary action.

IT IS FURTHER ORDERED that case # 06MED344 is hereby closed.

IT IS FURTHER ORDERED that this Order is effective on the date of its signing.

Wisconsin Medical Examining Board

By: Gene Musser MD
A Member of the Board

11/12/08
Date