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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
PAUL N. BAEK, M.D., RESPONDENT.	:	ORDER 0000 349

[Division of Enforcement Case Nos. 08 MED 122 and O9 MED 103]

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

Paul N. Baek, M.D.
164 N. Broadway
Green Bay, WI 54303-2728

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 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. Paul N. Baek, M.D., Respondent, date of birth March 5, 1961, 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 30352-20, which was first granted July 1, 1989.

2. Respondent's last address reported to the Department of Regulation and Licensing is 164 N. Broadway, Green Bay, WI 54303-2728.

3. At the time of the events set forth below, Respondent's practice specialty was Neurological Surgery.

4. At the time of the events set forth below, Respondent was employed as a physician with BayCare Clinic LLP in Green Bay, Wisconsin.

PATIENT JA

5. On May 27, 2003, Patient JA presented to the Respondent for a consultation for low back and right lower extremity pain. Patient JA had undergone a series of epidural steroid injections and found no relief. An MRI conducted on November 7, 2002 revealed a foraminal disk herniation at L4-5 on the right, with a Grade 1 spondylolisthesis due to a bilateral pars defect. The Respondent ordered pre-operative x-rays to confirm the degree of slippage was stable.

6. Patient JA elected to undergo a simple diskectomy (with laminectomy and facetectomy). The Respondent discussed the risks and benefits of the procedure with Patient JA. Patient JA opted to forego a fusion, despite the Respondent advising him that the fusion would likely be a better procedure to address all of his symptoms, because Patient JA did not want to lose time at work.

7. On May 29, 2003, the Respondent performed a microscopic diskectomy with laminectomy and partial feacetectomy. Patient JA was admitted to the hospital overnight for incision pain.

8. On June 3, 2003, Patient JA spoke with the Respondent to report that his leg pain tended to be a little better, but his back pain continued. The Respondent prescribed Percocet for pain relief.

9. On June 11, 2003, Patient JA presented to the Respondent for an office visit. Patient JA's symptoms had not improved. The Respondent was concerned with the amount of narcotics being taken to manage his pain. The Respondent ordered another MRI to rule out an infection as the cause of his symptoms.

10. On June 11, 2003, the Respondent reviewed Patient JA's MRI. On June 13, 2003, The Respondent called Patient JA and informed him there was no suggestion of recurrent disk herniation or residual disk herniation at the 4-5 level.

11. On July 1, 2003, Patient JA presented to the Respondent for an office visit. The Respondent recommended another epidural steroid injection, but Patient JA declined as it was of no benefit to him. Patient JA informed the Respondent he no longer wanted to remain in his care and he wished to return to work on July 7, 2003.

12. In April of 2006, Patient JA underwent a fusion surgery, which was recommended by another physcian, and learned that the Respondent's surgery was performed on the left side of his body when it was scheduled for the right side.

13. The Respondent admitted to performing the surgery on the unintended side. The Respondent acknowledges that performing the surgery on the unintended side constitutes a violation of the standard of care.

PATIENT EN

14. In 2004, Patient EN alleged that the Respondent performed surgery on the wrong side of her body. The Respondent intended to perform a right L3-L4 hemilaminectomy, but Respondent's description of the procedure notes "Using the prior incision, the upper portion was incised and subperiosteal dissection was carried out to the left side until the laminae of L3-4 and L4-5 were exposed." Patient EN's discharge summary includes "She did undergo a left-sided L3-4, L4-5 hemi-foraminotomy and discectomy..." The Respondent recognizes the possibility that this procedure was performed on the left side instead of right, but he cannot be certain this was the case.

15. Since 2005, Respondent has implemented JCAHO's "Time Out" procedures to avoid mistakes in the operating room. Respondent has adopted the following procedures:

a. Once surgery is discussed with a patient, the nurse will visit with the patient and will get information regarding the type and the correct site of surgery. The nurse will call the hospital to set up the surgery. On the day of surgery, the nurse will visit with the patient in the pre-op hold area to confirm the correct site. The nurse is present as the first assist in the surgery.

b. On the day of surgery, the patient is interviewed by the pre-op nursing staff and the marking of the correct site and type of surgery is done. Respondent then visits with the patient to confirm the information and another marking is done at the surgical site by the Respondent.

c. Once the patient is in the oeprating room, the Respondent initiates a "Time Out" to confirm: the patient, the type of surgery and the correct side before surgery can start.

16. In October, 2006, the Respondent attended a two-day workshop offered by Harvard Medical School entitled "The Patient Safety Imperative" which addressed medical error and injury prevention.

17. The Respondent and his partners have reviewed the above cases to prevent future mistakes. The Respondent identified failures in the past and they have been corrected with the help of his surgical team and the hospitals where he holds privileges.

18. Respondent's conduct as herein described with regard to patients JA and EN fell below the minimum standards of competence established in the profession in the following respects:

a. Respondent performed microscopic diskectomy with laminectomy and partial facetectomy on the left side of Patient JA's spine rather than the right as intended and performed a left-sided L3-4, L4-5 hemi-foraminotomy and discectomy on Patient EN rather than on the right side as intended.

19. Respondent's conduct as set forth above created the following unacceptable risks to the patients:

a. Performance of surgical procedures at the wrong location does not resolve the existing diagnosed condition, subjects the patients to unnecessary surgery and its attendant risks, and subjects the patients to additional surgery and its attendant risks, required to address the initially diagnosed medical conditions.

20. Respondent's conduct as herein described tended to constitute a danger to the health, welfare and safety of patients JA and EN.

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's conduct as set forth in paragraphs 18 through 20 of the Findings of Fact is a violation of Wis. Stat. § 448.02(3) and Wis. Admin. Code § MED 10.02(2)(h).

ORDER

NOW THEREFORE IT IS ORDERED that the Stipulation of the parties is hereby accepted.

IT IS FURTHER ORDERED that Paul N. Baek, M.D. is hereby REPRIMANDED by the Medical Examining Board.

IT IS FURTHER ORDERED that the Medical Examining Board acknowledges the implementation of the JACHO recommendations by the Respondent and his completion of the two day workshop entitled "The Patient Safety Imperative" provided by the Harvard Medical School and determines that no further discipline is required in this matter.

IT IS FURTHER ORDERED that:

(1) Respondent shall within 90 days of this Order pay costs of this proceeding in the amount of two thousand five hundred ($2,500.00) dollars. Payment shall be made 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 (608) 267-3817
Fax (608) 266-2264

(2) Violation of any 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 timely submit payment of the costs as ordered, the Respondent's license (No. 30352-20) may, in the discretion of the board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs or completion of the continuing education.

This Order is effective on the date of its signing.

MEDICAL EXAMINING BOARD

By: _____ 8/18/10
A Member of the ~~Board~~ Date

08MED122/09ED103/BAEK/LG/08-11-2010