

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 :
 :
DIANA L. KRUSE, M.D., : FINAL DECISION AND ORDER
RESPONDENT. : ORDER 0000010

Division of Enforcement Case # 07 MED 239

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

Diana L. Kruse, M.D.
208 Phillips Boulevard
Sauk City, WI 53578

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Medical Examining Board
Department of Regulation & 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 the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Diana L. Kruse, M.D., ("Respondent") was born on April 21, 1951, and is licensed to practice medicine and surgery in the state of Wisconsin pursuant to license number 20-21754. This license was first granted on July 14, 1978.

2. Respondent's most recent address on file with the Wisconsin Medical Examining Board is 208 Phillips Boulevard, Sauk City, Wisconsin 53578.
3. At all times relevant to this proceeding, Respondent was working as a physician at Sauk City, Wisconsin. Respondent is an orthopedic surgeon.
4. Patient L.H. ("the Patient") is a woman born on May 2, 1967.
5. The Patient was injured in a work related motor vehicle accident on January 26, 2006.
6. On September 29, 2006, the Patient presented to Respondent for treatment of continuing pain and disability.
7. On October 13, 2006, the attorney who was representing the Patient in a worker's compensation proceeding wrote to Respondent, with an authorization from the Patient, requesting a copy of the Patient's records in Respondent's possession.
8. Respondent did not release the records to the Patient's attorney, nor did she inform the Patient's attorney that she had any objection to the form or substance of the request.
9. The Patient's attorney sent a second written request, with the Patient's authorization, to Respondent on December 1, 2006.
10. Respondent did not release the records to the Patient's attorney in response to the second written request, nor did she inform the Patient's attorney that she had any objection to the form or substance of the request.
11. On January 2, 2007, the Patient's attorney's staff telephoned Respondent's office, inquiring about the status of the records request; Respondent's staff advised the Patient's attorney that the requested records had been copied and were waiting for Respondent's signature.
12. On January 9, 2007, the Patient's attorney's staff telephoned Respondent's office again, asking the status of the records request; Respondent's staff reported that the person who handled records requests was out sick.

13. On January 24, 2007, the Patient's attorney's office made a third telephone status inquiry, and Respondent's staff reported that the records were still sitting on Respondent's desk awaiting her signature.
14. On February 21, 2007, the Patient's attorney sent a third written request for the records, again enclosing authorization from the Patient.
15. Respondent did not release the records in response to the three telephone status inquiries in January 2007, nor did she release the records in response to the third written request in February 2007.
16. On March 6 2007, the Patient's attorney sent a fourth written request for the records.
17. On March 6, 2007, the Patient's attorney emphasized the written requests with a telephone call to Respondent's office.
18. Respondent's staff informed the Patient's attorney on March 6, 2007, that it was Respondent's policy to prioritize responses to records requests by the court date for the case for which the records are requested.
19. The Patient's attorney's staff informed Respondent's staff that Respondent's refusal to provide the records pursuant to request was a complete obstacle to preparing the claim on behalf of the Patient, the necessary first step to getting a hearing date.
20. On March 15, 2007, the Patient's attorney's staff made yet another telephone plea for the records the Patient's attorney had first requested in October 2006. Respondent's staff told the attorney's staff that they would "get the message upstairs" in hopes of getting something moving.
21. On March 15, 2007, the Patient's attorney sent a written request for the records to Respondent's office by fax, asking that Respondent release the records without forcing the Patient's attorney to file a complaint against Respondent with the Department of Regulation and Licensing.
22. On March 30, 2007, the Patient's attorney placed a telephone call to Respondent's office, requesting that Respondent return the call.
23. Respondent did not return her Patient's attorney's call.

24. On April 6, 2007, the Patient's attorney's staff made yet another attempt to obtain the records by making a telephone call to Respondent's office; once again, Respondent's staff represented that the records were on Respondent's desk for review.
25. Despite the numerous contacts from her Patient's attorney requesting the records necessary for the protection of her Patient's interests, Respondent still declined to release the records.
26. On April 23, 2007, the Patient's attorney sent yet one more written request for the records, again mentioning the alternative of a complaint being filed against Respondent with the Department of Regulation and Licensing.
27. Respondent still failed to release the records.
28. On July 11, 2007, the Patient's attorney finally filed a complaint against Respondent with the Department of Regulation and Licensing, for her failure to release her Patient's records to her Patient's attorney in order that the Patient's interests could be protected.
29. On July 25, 2007, the Division of Enforcement wrote to Respondent, enclosing a copy of her Patient's attorney's complaint, and requesting a narrative of Respondent's treatment of the Patient, and a certified copy of the Patient's health care records for the period June 1, 2005, through February 1, 2006. The Division's letter requested a response by August 15, 2007.
30. On the deadline, Respondent responded to the Division by fax, and indicated that she had also sent the Patient's records to the Patient's attorney that same day.
31. Respondent was the subject of two other investigations by the Division of Enforcement, Department of Regulation and Licensing, on complaints of failure to comply with requests for patient records.
32. Respondent was REPRIMANDED by the Medical Examining Board on January 25, 2006, for failing to comply with two different patients' attorneys' requests for patient health care records needed by the patients' attorneys for the protection of those patients' interests. At the time, Respondent represented to the Division, and, through the Division, to the Medical Examining Board, that she had hired an

additional staff member to whom she had assigned the primary duty of copying patient health care records.

33. On December 7, 2007, the Division of Enforcement sent a letter to Respondent, requesting a statement of her reasons for failing to comply with the Patient's attorney's multiple requests for the Patient's records, and further requesting a response by January 15, 2008.
34. On January 15, 2008, Respondent faxed a one sentence note to the Division stating that she would fax her response to the Division's December 7, 2007, letter on January 16, 2008.
35. On January 16, 2008, Respondent faxed a three page letter to the Division, stating, in essence, that she did not comply with any of the multiple requests for her Patient's records because she is too busy to do so, and because the staff person she had hired on the occasion of the previous complaints about her records production was no longer working for her.
36. Respondent's letter of January 16, 2008, further stated that Respondent proposed to address her repeated failures to comply with patient records requests by contacting every attorney who requested patient records from her, to develop a working relationship with the attorney, and to help her prioritize her response to records requests.
37. Respondent's letter of January 16, 2008, represents that since late July 2007, when she learned that the Division was investigating this case, her usual weekday work day begins at 3 a.m. and continues to 6 p.m., when she is too tired to do any more paperwork, and that she works weekends doing hospital rounds and paperwork for an average of eight hours daily. Respondent further represents that she is on call for emergency room patients one week out of every five, and there is extra work during those weeks.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. § 448.02(3), and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).
2. The conduct described in paragraph(s) 4 through 29, above, constitutes a violation of Wisconsin Administrative Code § MED 10.02(2)(z).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license of Diana L. Kruse, M.D., to practice medicine and surgery in the State of Wisconsin is hereby SUSPENDED for one week, effective January 24, 2010.
 - a. During the period of suspension, Dr. Kruse may not be present at any health care facility or health care professional's office at the same time as any patient except for the purpose of receiving care as a patient herself.
 - b. During the period of suspension, Dr. Kruse may continue to complete and transmit documentation of patient care she provided prior to the beginning of the period of suspension.
2. Following the period of suspension, the license of Diana L. Kruse, M.D., is LIMITED for a period of one year from the date of this Order, by the conditions that:
 - a. Dr. Kruse shall continue to employ the healthcare practice management consulting firm with which she has been working to oversee all business operations of her medical practice.
 - b. Dr. Kruse shall, within thirty calendar days of the date of the request, respond to and comply with or explicitly refuse to comply with all requests for patient records that are made to her in accordance with Wis. Stat. s. 146.83 (2007-2008). If Dr. Kruse refuses to comply with any request for patient records which is made to her, her response shall state the reason or reasons for the refusal.

IT IS FURTHER ORDERED that:

3. The expiration of the period of formal limitation of the license shall not be construed as approval to engage in any conduct which violates any standard, rule, or statute governing the practice of medicine in the state of Wisconsin, or permission to neglect any responsibility attendant to the practice of medicine in the state of Wisconsin.
4. Respondent shall, within 180 days from the date of this Order, pay costs of this proceeding in the amount of Two Thousand Three Hundred (\$2300.00) dollars.

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 (608) 267-3817
Fax (608) 266-2264

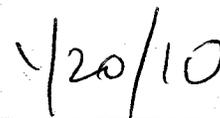
5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to pay costs as ordered or fails to comply with any of the terms of the LIMITED LICENSE, the Respondent's license(#21754) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.
6. This Order is effective on the date of its signing.

Wisconsin Medical Examining Board

By:



A Member of the Board



Date