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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST : FINAL DECISION AND ORDER
: :
MARVIN D. KLINGLER, M.D., : *ORDER 0000859*
RESPONDENT. :

Division of Enforcement Case No. 08MED253

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

Marvin D. Klingler, M.D.
Baldwin Medical Group
730 10th Ave.
P.O. Box 300
Baldwin, WI 54002

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

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

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 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. Marvin D. Klingler, M.D. (DOB September 30, 1959) is duly licensed and registered to practice medicine and surgery in the state of Wisconsin pursuant to license number 35833-20, which was first granted on August 5, 1994.

2. Respondent's address of record with the Wisconsin Medical Examining Board is Baldwin Medical Group, 730 10th Ave., P.O. Box 300, Baldwin, WI 54002.

3. Respondent is board certified as a family practitioner.

4. On September 10, 2005, 28-year-old Patient LD gave birth to her first child. Respondent was Patient LD's family physician and followed her through the pregnancy and postpartum period. When Patient LD gave birth, Respondent was unavailable for the delivery.

5. Patient LD gave birth over a second-degree perineal laceration, which was attended by another physician. The placenta was complete, with a three-vessel cord, and it delivered spontaneously in a "Schultz" presentation (shiny surface of amniotic membranes, indicative of the fetal, rather than maternal, side of the placenta).

6. On September 20, 2005, Patient LD presented to Respondent with no complaints regarding her health. Respondent noted that she had no significant issues other than being a bit tired and a little depressed.

7. On October 31, 2005, Patient LD presented to Respondent for a post-delivery examination. The patient requested Depo-Provera for birth control. She had pain and burning with urination, as well as pain in the vaginal area, and with bimanual examination. Respondent noted that during the birth Patient LD had a midline second degree perineal laceration, which had been repaired. There was no swelling or deformity but Respondent noted he could not see the cervix well. Respondent did not do a pap smear because the patient was bleeding vaginally.

8. Respondent felt the patient may have had a mild infection, but her white blood cell count was normal and urinalysis showed no additional signs of infection. Respondent identified differential diagnoses as: pelvic pain post-delivery, infection, postpartum endometritis and retained products of conception. Respondent placed Patient LD on clindamycin for two weeks and ordered a pelvic ultrasound.

9. Respondent did not order a pregnancy test. Respondent states that he understood Patient LD had one attempt at intercourse, but "had not completed the act". Respondent was aware that Patient LD was breastfeeding and believed there was no risk of pregnancy.

10. On November 1, 2005, Patient LD underwent a pelvic ultrasound performed by a radiologist. The ultrasound results showed the endometrial stripe abnormally thickened to 5 to 6 mm in an irregular echogenic appearance, with color Doppler flow present. The radiologist reported that the findings were "very suspicious for retained products of contraception." Respondent did not review the film himself. Respondent shared the results with Patient LD and, with her permission, contacted Dr. NM, a surgeon, who thought the patient was a candidate for dilation and curettage ("D&C").

11. Prior to referring Patient LD for a D&C, Respondent did not research alternate differential diagnoses or treatment options.

12. Later on November 1, 2005, Patient LD was admitted to the hospital where Respondent completed a history and physical in which he discussed the risks and benefits of a D&C. Patient LD signed the informed consent and Respondent ordered a D&C.

13. On November 1, 2005, between 19:51 to 20:28, Patient LD underwent a D&C, and left the operating room in stable condition. The surgeon reported that after a suction curettage using a 10 mm cannula did not obtain any tissue:

[w]e then used the serrated curette and were able bring what appeared to be the lining of the endometrium down, however, this was not a normal lining, this appeared to be a fragment of tissue. We then used the Kocher clamp on this and simply twisted the tissue until it actually came down on its own, and did have the appearance of calcified and sclerotic placental membranes.

14. Several hours later, the hospital notified Respondent that Patient LD was exhibiting bright red vaginal bleeding, a hypotensive spell, low blood pressure, and a drop in hemoglobin, from 13 grams pre-operatively, to 7.9 grams. Respondent reported to the hospital, arranged fluid resuscitation and arranged for the surgeon to emergently reassess the patient. Upon reassessment, the surgeon agreed with Respondent's consideration of post-operative bleeding and arranged for a laparotomy and possible hysterectomy.

15. The surgeon performed a laparotomy and exploration with Respondent assisting. The surgeon discovered a major ongoing hemorrhage, and Patient LD experienced an estimated intraoperative blood loss of 2,200 cc. The surgeon observed a large laceration extending from the cervix on the right side, along the lateral side of the uterus. The surgeon characterized the laceration as, "not just a simple perforation, but a very extensive laceration which extended along the entire side of the uterus." The surgeon performed a hysterectomy, which he determined necessary for Patient LD's survival.

16. On November 4, 2005, Respondent discharged Patient LD from the hospital.

17. Patient LD commenced a civil action against the surgeon and Respondent. On September 26, 2008, in St. Croix County Circuit Court, Case No. 07CV70, the court found, in pertinent part:

a. Respondent was not negligent with respect to his care and treatment of Patient LD.

b. Respondent did not fail to disclose information about the treatment necessary for Patient LD to make an informed decision.

18. The question of whether Respondent conducted appropriate inquiry into alternative diagnoses, and or whether Respondent violated rules of the Medical Examining Board was not specifically addressed in the circuit court case.

19. Section 448.30, requires that "[a]ny physician who treats a patient shall inform the patient about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments."

19. Wisconsin's courts have interpreted § 448.30 to require disclosure of "what is reasonably necessary for a reasonable person to make an intelligent decision with respect to the choices of treatment or diagnosis." See *Jandre v. Physicians Ins. Co. of Wisconsin*, 2010 WI App 136, (Sept. 28, 2010), citing *Bubb v. Brusky*, 2009 WI 91, 321 Wis. 2d 1, 768 N.W.2d 903.

20. At all times relevant to this matter, physicians who met the standard of minimal professional competence under the facts and circumstances of this case knew that a presumed diagnosis of retained products of contraception after spontaneous deliver was especially prone to high false-positive rates. Minimally competent family physicians who diagnose and treat vaginal bleeding know that the high false positive rates are due to an abundance of decidual material and blood clots.

21. Because of the high false-positive rates in postpartum ultrasound for the detection of retained products of conception, minimally competent physicians resort to surgical treatment only after 24-48 hours of more conservative treatment, or for patients with overt infection, severe abdominal pain, or excessive bleeding.

22. Respondent's care of Patient LD fell below the standard of minimal competence in the following respects:

- a. Respondent ordered a postpartum pelvic ultrasound and relied on the results to order surgical intervention in less than 12 hours of the ultrasound, despite the high percentage of false positive postpartum ultrasound results;
- b. Respondent failed to conduct a pregnancy test before concluding that the patient had retained products of contraception, despite the fact that the patient had attempted intercourse, which could have resulted in a pregnancy;
- c. Respondent did not adequately consider other possible diagnoses or treatment methods.

23. Respondent's conduct as set forth above constituted a danger to the health, welfare and safety of Patient LD and created an unacceptable risk that Patient LD would experience complications of unnecessary surgery.

24. Respondent neither admits nor denies the allegations but agrees to this resolution.

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. 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). Respondent is therefore subject to discipline pursuant to Wis. Stat. § 448.02(3).

3. Wis. Stat. § 448.02(3)(h) authorizes the Board to impose discipline for medical acts that constitute negligence and/or that violate the danger rule, Wis. Admin. Code § MED 10.02(2)(h), the “danger rule”.

4. A jury’s determination in a civil suit that Respondent did not commit negligence does not bar the Board’s determination that Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(h).

ORDER

IT IS HEREBY ORDERED that the Marvin D. Klingler, M.D., is hereby REPRIMANDED.

IT IS FURTHER ORDERED that the license of Marvin D. Klingler, M.D. to practice medicine and surgery in the State of Wisconsin is hereby LIMITED, as follows:

a. Within 6 months of the date of this Order, Respondent shall provide proof sufficient to the Board or its designee of Respondent’s satisfactory completion of 6 hours of continuing education in management of postpartum complications. The course or courses attended in satisfaction of this Order must be pre-approved by the Medical Examining Board or its designee. The course on Advanced Life Support in Obstetrics, sponsored by the American Academy of Family Physicians, is preapproved.

b. Upon Respondent providing proof sufficient to the Board or its designee that he has completed the required remedial education, the limitation is to be removed from Respondent’s credential without further action of the Board.

c. Respondent is responsible for paying the full cost of attendance at this course. Respondent shall not apply the remedial education credits earned in satisfaction of this Order toward satisfaction of any Wis. Stat. § 448.13 biennial training requirements.

IT IS FURTHER ORDERED that Respondent shall, within 60 days from the date of this Order, pay costs of this proceeding in the amount of EIGHT HUNDRED FIFTY dollars (\$850.00). Payment shall be made payable to the Wisconsin Department of Regulation and Licensing and mailed to the Department Monitor at:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935
Fax (608) 266-2264
Telephone (608) 267-3817

1. 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 timely submit payment of the costs or fails to comply with the ordered continuing education as set forth above, the Respondent's license (No. 35883-20) may, in the discretion of 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.

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

MEDICAL EXAMINING BOARD

By: Skoules MD MPA 5/18/11
A Member of the Board Date

KLINGLER/08MED253/NOWACK/LH/2-24-11