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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST : FINAL DECISION AND ORDER
:
NEAL A. MELBY, M.D., :
RESPONDENT. : ORDER 0000957

Division of Enforcement Case No. 08MED253

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

Neal A. Melby, M.D.
551 Hospital Road
New Richmond, WI 54017

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. Neal A. Melby, M.D. (DOB July 4, 1940) is licensed and registered to practice medicine and surgery in the state of Wisconsin pursuant to license number 16298, which was first granted on February 26, 1968.

2. Respondent's address of record with the Wisconsin Medical Examining Board is 551 Hospital Road, New Richmond, WI 54017.

3. Respondent is a board certified general surgeon who practices medicine in western Wisconsin. The scope of his surgical practice includes gynecological procedures he was trained to do during his residency, from 1977-1982, at La Crosse Lutheran Hospital Gunderson Clinic Surgical Program.

4. On September 10, 2005, 28-year-old Patient LD gave birth to her first child.

5. On November 1, 2005, Patient LD saw her family physician who arranged a pelvic ultrasound performed by a radiologist because the patient reportedly had some pelvic pain and bloody spotting. The radiologist verbally reported that the ultrasound findings were compatible with retained products of conception, and later his written report indicated that the findings were "very suspicious for retained products of conception." The family physician then consulted Respondent and informed him of the patient's history and the ultrasound findings. The Respondent saw the patient and concluded she was a candidate for dilation and curettage ("D&C").

6. On November 1, 2005, between 19:51 to 20:28, Respondent performed a D&C on Patient LD, who ultimately left the operating room in stable condition and without evidence of major bleeding. Several hours later, Patient LD had 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 emergently reassessed the patient, and determined that post-operative bleeding should be addressed through a laparotomy and possible hysterectomy.

7. Respondent performed a laparotomy and discovered a major ongoing hemorrhage. Patient LD experienced intraoperative blood loss of an estimated 2,200 cc. Respondent observed a large laceration extending the length of the uterus from the cervix on the right side. Respondent characterized the laceration as, "not just a simple perforation, but a very extensive laceration which extended along the entire side of the uterus." In retrospect, Respondent believes this bleeding was probably related to his twisting of tissue in the cervix to detach it from the wall of the uterus.

8. Respondent performed a hysterectomy, which he determined necessary for Patient LD's survival.

9. Patient LD commenced a civil action against Respondent and the family physician in St. Croix County Circuit Court, Case No. 07CV70. The claims against Respondent were settled out of Court prior to a jury trial, but the claims against the family physician proceeded to trial. Notwithstanding the fact that the Respondent was no longer a Defendant at the time of the jury trial, that he did not defend himself or present evidence at the trial, and that he did not have legal counsel participating on his behalf at the trial, the jury was asked to decide if there was negligence by the family physician or by Respondent, or both. On September 26, 2008, at the end of the jury trial, the jury concluded and the court found, in pertinent part:

- a. Respondent was negligent with respect to his care and treatment of Patient LD;
- b. Such negligence was a cause of injury to Patient LD.

10. A court's finding of negligence is presumptive evidence that a respondent committed negligence in treatment, pursuant to Wis. Stat. § 448.02(3)(b).

11. The Court's finding in St. Croix County Circuit Court, Case No. 07CV70 that Respondent was negligent in his care and treatment of Patient LD, causing injury, was made after a jury trial in which Respondent did not participate as a Defendant.

12. Under the facts and circumstances of this case, professional standards required more than ultrasonic evidence of retained products of conception after spontaneous delivery, due to high false-positive rates caused by an abundance of decidual material and blood clots. Failure to allow more time for additional investigation created an unacceptable risk that the patient faced an unnecessary procedure and potentially resultant complications.

13. Respondent neither admits nor denies the allegations but has agreed to resolution of this matter by Stipulation.

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 more likely than not violated Wis. Admin Code § 10.02(2)(h), Respondent is therefore subject to discipline pursuant to Wis. Stat. § 448.02(3)(b).

ORDER

IT IS HEREBY ORDERED that Neal A. Melby, M.D., Respondent, is hereby REPRIMANDED for the above conduct.

IT IS FURTHER ORDERED that:

1. The license of Neal A. Melby, 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 will be responsible for paying the full cost of attendance at this course. Respondent will not apply any of the continuing education credits earned in satisfaction of this Order toward satisfaction of the Wis. Stat. § 448.13 biennial training requirements.

IT IS FURTHER ORDERED that:

2. Within ninety (90) days from the date of this Order, Respondent shall pay the costs of this proceeding in the amount of TWO THOUSAND FOUR HUNDRED dollars (\$2,400.00). Payment shall be made 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

3. Violation of term of this Order may be construed as conduct imperiling public health, safety and welfare and may result in 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. 16298) 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.

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

MEDICAL EXAMINING BOARD

By: Skalo MD MBA
A Member of the Board

7/20/11
Date

08MED253/MELBY/NOWACK/LH/2-28-11