

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

CULLY R. WHITE, D.O.  
RESPONDENT.

**0002777**

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Division of Legal Services and Compliance  
Case Nos. 09MED223, 11MED354, 11MED376 and 13MED146

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

Cully R. White, D.O.

By: Attorney Dennis P. Coffey  
Mawicke & Goisman, S.C.  
1509 N. Prospect Avenue  
Milwaukee, WI 53202

And by: Attorney Maureen A. Molony  
Von Briesen & Roper, S.C.  
Three South Pinckney Street, Suite 1000  
Madison, WI 53703

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

Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 8935  
Madison, WI 53708-8935

On July 26, 2012, the Division of Legal Services and Compliance (formerly the Division of Enforcement) commenced formal action in case no. 09 MED 223. On June 19, 2013, in case no. 13 MED 146, the Division presented a Petition for Summary Suspension, but the Board lacked a quorum to take action. Formal proceedings have not commenced in case numbers 11 MED 354 and 11 MED 376. The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Medical Examining Board (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, Conclusions of Law and Order.

## FINDINGS OF FACT

1. Respondent Cully R. White, D.O., (dob June 10, 1968) is licensed in the State of Wisconsin to practice medicine and surgery, having license number 42084-21, first issued on May 5, 2000, and with registration current through February 28, 2014. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is P.O. Box 88170, Milwaukee, WI 53202.

2. On February 26, 2004, Respondent performed a *lumbar laminectomy* on the wrong side of Patient A's spine and did not inform Patient A of the intraoperative error.

3. Respondent contends that he did not operate on the wrong side of Patient A's spine and his decision to access the surgical site as he did was intentional. Respondent concedes that Patient A did not give informed consent for the approach Respondent used to access the surgical site.

4. Between January 8-9, 2013, at the Center for Personalized Education for Physicians (CPEP), 7351 Lowery Boulevard, Suite 100, Denver Colorado, Respondent voluntarily underwent an assessment of his competence in the practice of spine surgery.

5. On January 24, 2013, CPEP notified Respondent that results of a cognitive function screening test were mixed and indicated he had difficulty processing information. According to the CPEP correspondence, the level of concern identified in the assessment warranted an expedient comprehensive neuropsychology examination.

6. Respondent agreed not to perform surgery unless and until a neuropsychologist cleared him as having sufficient cognitive functioning to safely practice medicine and surgery.

7. On February 8 and 12, 2013, Sara J. Swanson, Ph.D., Division Chief, Department of Neurology, Division of Neuropsychology at Froedtert and Medical College Clinics, Milwaukee, Wisconsin, conducted the assessment.

8. Dr. Swanson determined that Respondent had a generally normal neurocognitive profile, with relative weaknesses in reading speed and processing speed (visual scanning and timed mental flexibility). Dr. Swanson noted that Respondent reported seeing 50 patients per day in his outpatient practice. Respondent reported performing twice as many surgeries as his peers, and performing his surgeries faster than other physicians. Respondent reported doing more than 600 spine surgeries annually. Dr. Swanson recommended considering a reduction in the number of surgeries Respondent performs.

9. Dr. Swanson reported:

1. While Dr. White has mild weaknesses in reading and visual scanning speed described above, these do not rise to the severity to limit his ability to practice medicine.

2. Visual processing speed weakness and slower reading fluency should be considered when planning time to read medical records.
3. Dr. White may want to consider the volume of work he does.

10. On March 19, 2013, the CPEP assessment and report were completed. A portion of the CPEP assessment relies on file review by board certified neurosurgeons. The board certified evaluators examined medical charts from patients Respondent saw as follows: October 2012 outpatient charts; October 2012 inpatient charts; and July through August 2012 surgical schedules. The evaluators opined, inter alia, that Respondent sometimes undertook more invasive surgical intervention than was warranted, and sometimes were not consistent with Respondent's diagnosis of the same patient. The assessment of Respondent's patient files were summarized as follows:

Dr. White demonstrated good knowledge of surgical technique and approaches, but both chart reviews and discussions raised concerns about his foundational knowledge of the clinical diagnosis of neurosurgical spine conditions. Dr. White's clinical judgment and reasoning ranged from good to poor, with concerns in the area of surgical planning and decision-making. Dr. White's communication skills with the Simulated Patients (SP) were variable; his communication with peers was adequate. His documentation in patient charts submitted for review was marginally adequate with some concerns noted; his documentation of the SP encounters was acceptable.

11. The CPEP assessment report made the following educational recommendation:

CPEP recommends Dr. White participate in a structured, individualized educational intervention to address the identified areas of need. Some of these areas may require moderate time and commitment. Others, such as clinical judgment and reasoning can be challenging to remediate and may require time to ensure success. Dr. White will need to commit himself fully to modify his approach in practice. CPEP opines that, to fully benefit from this educational experience, Dr. White will need to reassess his patient care volume...

Educational Preceptor: Dr. White should establish a relationship with an experienced educational Preceptor in neurosurgery. This involves regularly scheduled meetings to review cases and documentation, discuss decisions related to those cases, review specific topics, and make plans for future learning. The Preceptor serves as an educator and is not intended to function as a practice monitor.

These meetings should include preoperative review of spine cases to discuss patient and procedure selection as well as review of cases involving postoperative complications.

The CPEP report noted that the Preceptor should provide education and coaching on documentation and communication, with consideration given to volume of practice.

12. At the Division's request, Respondent has provided proof of voluntary and successful completion of the following courses, which the Board would have otherwise ordered:

- a. Risk Management Consult: Informed Consent, course and post-test, sponsored by Risk Management, Inc, and approved for five AMA PRA Category 1 credits; and
- b. Risk Management Consult: Avoiding Never Events (including wrong-site surgeries), course and post-test, sponsored by Risk Management, Inc, and approved for six AMA PRA Category 1 credits.

13. On May 14, 2013, in the United States District Court for the Eastern District of Wisconsin as Case No. 13-CR-91, a federal grand jury indicted Respondent for charges that are substantially related to the practice and medicine and surgery. The matter was unresolved and pending as of October 2, 2013.

14. Respondent has agreed to resolve the case pending before the United States District Court as by entering a plea of guilty to one count, wire fraud, a violation of Title 18 U.S.C. § 1343.

15. The Plea Agreement filed in Case No. 13-CR-91 provides that Respondent submitted claims totaling approximately \$265,000 to various insurance companies seeking payment for monitoring services provided by another physician, although the consulting physician did not perform the services as billed. As a result, Respondent improperly received insurance payments totaling approximately \$82,000. Before Respondent was indicted, he repaid all funds received as a consequence of the improper billing.

16. Respondent denies the allegations described in Paragraphs 2 and 3, but is represented by counsel and has elected to resolve these matters by stipulation. In agreeing to the proposed resolution Respondent acknowledges that these facts are legally sufficient to support the Conclusions of Law and Order set out below.

#### CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 448.02(3)(c), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent has engaged in unprofessional conduct and is subject to discipline pursuant to Wis. Stat. § 448.02(3)(c).

3. By the conduct described in the Findings of Fact, Respondent has engaged in practices that tend to constitute dangers to the health, welfare and safety of his patients, which is unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(h).

4. By the conduct described in the Findings of Fact, Respondent has engaged in unprofessional conduct as defined in Wis. Admin. Code § MED 10.02(2)(u) by failing to obtain adequate informed consent for the procedure he performed on February 26, 2004.

5. By the conduct described in the Findings of Fact, the Respondent has engaged in knowingly making a false statement, written or oral, in practicing under his license with fraudulent intent, which is unprofessional conduct as defined in Wis. Admin. Code § MED 10.02(2)(m).

6. By the conduct described in the Findings of Fact, Respondent has engaged in unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(r), by having violated a law substantially related to the practice of medicine and surgery.

7. As a result of the above conduct, Respondent Cully R. White, D.O., is subject to discipline pursuant to Wis. Stat. § 448.02(3)(c).

#### ORDER

1. The attached Stipulation is accepted.

2. The Medical Examining Board accepts the voluntary SURRENDER of the license of Cully R. White, D.O., to practice medicine and surgery in the State of Wisconsin (License No. 42084-21, and the right to renew that license, effective December 17, 2013.

3. Until December 17, 2013, Respondent's license to practice medicine and surgery is further LIMITED as follows:

- a. Respondent shall not perform any surgical procedures.
- b. Respondent shall not accept any new patients.
- c. Respondent shall appropriately transition patients to other health care providers.
- d. Respondent shall notify all current patients of a procedure by which they may obtain their patient health care records after December 17, 2013.

4. The Medical Examining Board retains sole discretion of whether or not to entertain a future application by Respondent to practice medicine and surgery. The prerequisites for future application set out below should not be interpreted as an indication that the Medical Examining Board will grant Respondent a license at any time in the future.

5. The Medical Examining Board will not consider any application for licensure unless and until Respondent first satisfies the following conditions to the satisfaction of the Board, or the Board's credentialing liaison or other designee:

- a. At least three years have passed from the date of this Order;
- b. Within 60 days of the date of application, or as otherwise approved by the Board's designee, Respondent shall have undergone an assessment establishing his competence to practice medicine and surgery, by an assessment program

acknowledged by the Federation of State Medical Boards and preapproved by the Board's Credentialing Liaison. Respondent shall provide the assessment program with a copy of this Order, and shall execute authorizations for release(s) of information such that the Board's credentialing liaison or other designee may communicate freely with the assessment program staff;

- c. Respondent completes, to the satisfaction of the Board's credentialing liaison, all education and training recommended by the competence evaluator; and
- d. Respondent Cully R. White, D.O., has paid the Department's COSTS of \$11,876.00.

6. If the Medical Examining Board agrees to consider an application for licensure in the future, a license to practice medicine and surgery will not be issued unless and until Respondent meets all requirements for licensure set out at Wis. Stat. § 448.05, to the Board's satisfaction.

7. If the Medical Examining Board agrees to grant licensure to Respondent in the future, the Board may limit the license in any manner the Board deems appropriate.

8. Proof of compliance with any part of this Order and payment of costs (payable to the Wisconsin Department of Safety and Professional Services) shall be sent to the Department Monitor at the address below:


Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 8935, Madison, WI 53708-8935  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

9. Violation of any of the terms of this Order, including performing any surgical procedure, 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.

10. Case Nos. 11 MED 354 and 11 MED 376 are closed for prosecutorial discretion.

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

WISCONSIN MEDICAL EXAMINING BOARD

By:   
A Member of the Board

20 November 2013  
Date

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

CULLY R. WHITE, D.O.,  
RESPONDENT.

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:  
:

STIPULATION

**0002777**

Division of Legal Services and Compliance  
Case Nos. 09 MED 223, 11 MED 354, 11 MED 376 and 13 MED 146

Respondent Cully R. White, D.O., and the Division of Legal Services and Compliance,  
Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigations by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation. It is the parties intent that this Stipulation resolves all matters concerning Respondent and currently pending with the Wisconsin Medical Examining Board.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by Attorneys Maureen Molony and Dennis Coffey.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Medical Examining (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.



5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or Respondent's attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

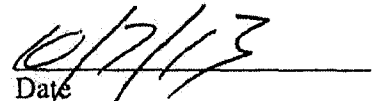
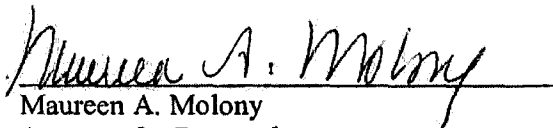
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

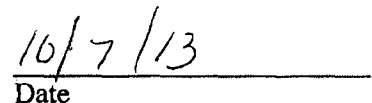
9. Respondent knows, understands and agrees that the decision of whether or not to grant Respondent a license to practice medicine and surgery in the future is entirely within the discretion of the Medical Examining Board.

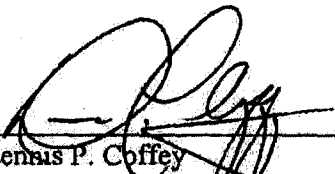


Cully R. White, D.O., Respondent  
P.O. Box 88170  
Milwaukee, WI 53202

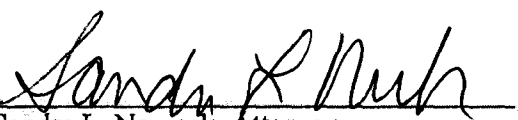
  
Date

Maureen A. Molony  
Attorney for Respondent  
Von Briesen & Roper, S.C.  
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Madison, WI 53703  
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608- 661-3995

  
Date

  
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10/7/13  
Date

  
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State Bar No. 1025643  
608-266-8098

10/7/13  
Date