

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



### Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

#### Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>

- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DSPS website:** An individual who believes that information on the website is inaccurate may contact [DSPS@wisconsin.gov](mailto:DSPS@wisconsin.gov)

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

---

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

JAMES P. FOGARTY, M.D.,  
RESPONDENT.

:  
:  
:  
:  
:

**FINAL DECISION AND ORDER**

**0002949**

---

Division of Legal Services and Compliance<sup>1</sup> Case No. 12 MED 217

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

James P. Fogarty, M.D.  
2021 Cenex Drive, Suite K  
Rice Lake, WI 54868

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

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 James Patrick Fogarty, M.D., (dob February 9, 1945), is licensed in the state of Wisconsin to practice medicine and surgery, having license number 18691-20, first issued on January 31, 1974, with registration current through October 31, 2015. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2021 Cenex Drive, Suite K, Rice Lake, Wisconsin 54868. Respondent is certified by the American Board of Surgery, and is also licensed in Michigan.

---

<sup>1</sup> The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

2. On March 9, 2009, Respondent removed a firm nodule, thought to be a sebaceous cyst, located between the top of the scrotum and the base of the corpus cavernosum of Patient A, a 44-year-old man.

3. The patient, and the patient's father, reported that immediately following the procedure, Respondent spoke to them, stating that Respondent had "nicked the urethra" but that it would be all right. Respondent later testified that he did not recall making this statement.

4. On March 11, 2009, the patient returned to care. Respondent's chart note states: "He has probably a two and a half time size diameter penis with some bleeding that has occurred. This is actually down from what he said it was yesterday. He is able to urinate without difficulty. At this point observation and ice pack is indicated. I would like to see him again in a week for reevaluation, or sooner if problems develop."

5. The patient later testified that he was unable to urinate after the procedure, or the next morning, when he called Respondent's office. (There is no notation in Respondent's chart of such a call.) The patient further testified that the following morning, when he attempted to urinate, the urine came out of the incision, and that at the office visit with Respondent (on that same day), Respondent squeezed his scrotum, and urine came out of the incision again.

6. On Tuesday, March 16, 2009, the patient returned to Respondent's office. Respondent's chart note states: "[Patient A] is seen in follow-up for his dissection that proves to be a fistulous tract. He can pee out his penis, but he also has urine coming out the side of the base of the incision, consistent with a fistula. I discussed this with Dr. Katz. He is going to see him Wednesday and probably do a flexible cystoscope on him to see if we can identify the damage that occurred from trying to remove this nodule at the base of the scrotum. In the meantime he is to stay on his Pyridium and his antibiotics."

7. The patient later testified that he was not able to urinate out of the tip of his penis from the time of the surgery until the time that he saw Dr. Katz.

8. The patient ultimately required extensive reconstruction of his urethra, which was found to have been blocked by a suture placed adjacent to the urethra by Respondent.

9. On March 2, 2012, a jury found, and the court subsequently approved the finding, that Respondent was negligent in his care and treatment of Patient A, and that Respondent failed to disclose information about the surgery necessary for the patient to make an informed decision.

#### 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 pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent James P. Fogarty, M.D., engaged in negligence in treatment, pursuant to Wis. Stat. § 448.02(3)(b).

3. By the conduct described in the Findings of Fact, Respondent James P. Fogarty, M.D., engaged in unprofessional conduct pursuant to Wis. Admin. Code § Med 10.02(2)(h) by engaging in practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

4. As a result of the above conduct, James P. Fogarty, M.D., is subject to discipline pursuant to Wis. Stat. § 448.02(3).

#### ORDER

1. The attached Stipulation is accepted.
2. Respondent James P. Fogarty, M.D., is REPRIMANDED.
3. The medicine and surgery license issued to James P. Fogarty, M.D., (license number 18691-20) is LIMITED as follows:
  - a. Within 3 months of the date of this order, Respondent shall have undergone a focused professional practice evaluation of his surgical technique, by direct observation. No fewer than 3 procedures shall be observed, of which at least 2 shall be inguinal hernia repairs, and at least one shall be a resection of a lipoma from any body part. Respondent is responsible for obtaining an evaluating surgeon(s), acceptable to the Board or its designee (and who shall be certified by the American Board of Surgery, and shall not be associated with Respondent in practice), and for all expenses associated with the evaluation. The evaluation report shall be submitted in writing to the Department Monitor. If the results of the evaluation reveal any deficits, the Board may order appropriate continuing education or further limitation; Respondent shall have the opportunity to comment on any such proposed order, before it is imposed.
  - b. Within 6 months of the date of this Order, Respondent shall successfully complete 4 hours of continuing medical education in the area of informed consent.
  - c. Respondent shall be responsible for obtaining the course(s) required under this Order, for providing adequate course(s) descriptions to the Department Monitor, and for obtaining pre-approval of the course(s) from the Wisconsin Medical Examining Board, or its designee, prior to commencement of the course(s).
  - d. The Board or its designee may reject any course(s) and may accept a course(s) for less than the number of hours for which Respondent seeks approval.
  - e. Within thirty (30) days of completion of each educational component, Respondent shall file an affidavit with the Department Monitor stating under oath that he has attended, in its entirety, the course(s) approved for satisfaction of this requirement along with supporting documentation of attendance from the sponsoring organizations.

- f. Respondent is responsible for all costs associated with compliance with this educational requirement.
- g. None of the education completed pursuant to this requirement may be used to satisfy any other continuing education requirements that have been or may be instituted by the Board or Department.

4. Within 4 months from the date of this Order, James P. Fogarty, M.D., shall pay COSTS of this matter in the amount of \$2,050.

5. Proof of successful course completion and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent 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

6. 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 costs as ordered or fails to submit proof of successful completion of the ordered education as set forth above, Respondent's license (no. 18691-20) 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 and completion of the education.

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

WISCONSIN MEDICAL EXAMINING BOARD

by:

  
A Member of the Board

akt

  
Date

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

---

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

JAMES P. FOGARTY, M.D.,  
RESPONDENT.

:  
:  
:  
:  
:  
:

**STIPULATION**

---

Division of Legal Services and Compliance<sup>1</sup> Case No. 12 MED 217

Respondent James P. Fogarty, M.D., 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 investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

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.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Medical Examining Board (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.

---

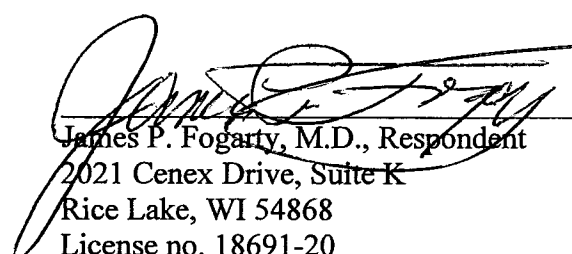
<sup>1</sup> The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

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, 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.

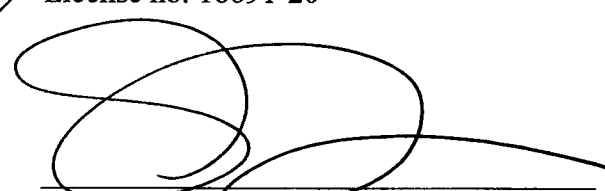
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

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.



James P. Fogarty, M.D., Respondent  
2021 Cenex Drive, Suite K  
Rice Lake, WI 54868  
License no. 18691-20

12/4/13  
Date



Arthur Thexton, Prosecuting Attorney  
Division of Legal Services and Compliance  
P.O. Box 8935  
Madison, WI 53708-8935

12-4-13  
Date