

## 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

DAVID J. DRAKE, M.D.,  
RESPONDENT.

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FINAL DECISION AND ORDER

0004071

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Division of Legal Services and Compliance Case No. 12 MED 381

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

David J. Drake, M.D.  
P.O. Box 044215  
Racine, WI 53404

Wisconsin Medical Examining Board  
P.O. Box 8366  
Madison, WI 53708-8366

Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190  
Madison, WI 53707-7190

The parties in this matter, through compromise, 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 David J. Drake, M.D., (dob October 22, 1964), is licensed in the State of Wisconsin to practice medicine and surgery, having license number 40447-20, first issued on September 25, 1998, 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 P. O. Box 044215, Racine, Wisconsin 53404.

### Prior Board Order

2. On November 15, 2006, the Medical Examining Board issued a non-disciplinary remedial education order to Respondent as a result of treatment that occurred in March of 2001. The Board determined that Respondent issued an order for vancomycin, to be administered orally, to treat MRSA. Vancomycin is effective in treating MRSA when administered intravenously but not orally.

### Current Case

3. On October 3, 2012, at approximately 8:14 a.m., Patient A, a twenty-five year-old male, was admitted to a county-operated inpatient mental health facility under a petition for emergency detention.

4. Police transported Patient A to a psychiatric crisis unit. At approximately 9:07 a.m., Dr. C.L. conducted a medical screening examination and found no obvious signs of severe head trauma, with "no new onset of sensorimotor deficits." At 10:00 a.m., Dr. C.L. noted:

[Patient A] refuses transfer to a medical acute care hospital for medical clearance and given patient presentation as healthy, not delirious, seems well-nourished, will defer transfer to ER as patient seems likely to erupt or elope.

5. At 10:55 a.m., Dr. C.L. conducted an Abnormal Involuntary Movement Scale (AIMS) and documented that Patient A had normal movement of upper and lower extremities.

6. Dr. C.L. diagnosed Patient A as suffering from psychosis, not otherwise specified.

7. At 2:45 p.m., Patient A was transferred to an acute inpatient unit, where he was anxious, restless, answered questions appropriately, but wanted to leave. A full physical assessment was not completed at that time because the nurse's shift was ending. The initial information was passed on to the next shift.

8. Patient A paced around the nurses' station and walked around the unit.

9. At approximately 5:30 p.m., Patient A reported an unwitnessed fall. At approximately 6:25 p.m. a physician progress note indicates Patient, "stated he fell, couldn't move, needed to go to a 'specialty hospital'."

10. At 6:25 p.m., a physician who saw Patient A after the reported fall conducted a brief exam, determined that a fall was unlikely and declined to transfer Patient A for additional assessment.

11. After Patient A's report of an unwitnessed fall he repeatedly asked multiple staff members to send him to a specialty hospital because he could not move his legs.

12. On October 5, 2012, Respondent was a staff physician in the physical care group at the county facility. Respondent's duties included performing medical consultations, patient histories and physical examinations.

13. Respondent could not determine if Patient A's symptoms were physical or not, but determined it was unnecessary to send Patient A to a hospital for medical clearance at that time.

14. Respondent's assessment and plan were documented in part as follows:

- a. Selective movement disorder with witnessed spontaneous use of all extremities per report of multiple nursing staff; - soft diet ordered per patient request, he also requests 1:1 nursing assistance at all meals as a precondition for eating; PT is seen drinking from cups of water at his bedside without assistance. PT ordered to assist with mobility/conditioning;
- b. Muscular lower back pain secondary to laying in bed;
- c. Conversion Disorder vs. Dependent P.D. [personality disorder] with somatic features.

15. Respondent's order for physical therapy directed evaluation of "lower back pain, weakness, avoid deconditioning secondary to laying in bed; geriatric chair at meals as needed."

16. According to the Diagnostic and Statistical Manual IV-TR (DSM-IV-TR), a condition precedent to a diagnosis of a conversion disorder is the failure of an "appropriate investigation" to fully explain the patient's general medical condition.

17. Respondent did not order diagnostic imaging to assess the cause of Patient A's symptoms, Respondent did not consult with a specialist, nor did he refer Patient A for a full neurological examination.

18. Respondent did not conduct an "appropriate investigation" into Patient A's general medical condition because he failed to exclude a physical cause of Patient A's symptoms.

19. Under the circumstances of this case, the standard of minimal competence required Respondent, on October 5, 2012, to conduct a full and complete physical examination or to refer Patient A to another practitioner who was equipped to do so.

#### Assessment of Clinical Competence

20. On April 1 and 2, 2015, Respondent underwent, at his own expense, an assessment of his ability to evaluate patients who present with impaired mobility and possible neurological concerns. The assessment was conducted by LifeGuard, an individualized physician clinical competency assessment program recognized as a resource by the Federation of State Medical Boards.

21. On May 11, 2015, the LifeGuard evaluators issued a written report that concluded:

Based on this evaluation of Dr. Drake's ability to evaluate and examine patients with impaired mobility related to possible neurological issues, the LifeGuard examiner had no concern about Dr. Drake's skills or abilities in this area. He demonstrated exceptional skills and knowledge for a family physician presented with neurological causes of impaired mobility.

22. Respondent neither admits nor denies the conduct described in paragraphs 3-19, above. In resolution and as a compromise of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

#### 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. On October 5, 2012, Respondent David J. Drake, M.D., engaged in unprofessional conduct pursuant to Wis. Admin. Code § Med 10.02(2)(h)(2002) by failing to conduct an adequate physical examination after a patient's un-witnessed fall. Respondent's conduct created an unacceptable risk of severe injury or death due to an undiagnosed physical condition.

3. As a result of the above conduct, David J. Drake, M.D., is subject to discipline pursuant to Wis. Stat. § 448.02(3).

#### ORDER

1. The attached Stipulation is accepted.

2. Respondent David J. Drake, M.D., is REPRIMANDED.

3. Within 90 days from the date of this Order, David J. Drake, M.D., shall pay COSTS of this matter in the amount of \$1800.00.

4. Payment of costs shall be made payable to the Wisconsin Department of Safety and Professional Services and 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 7190, Madison, WI 53707-7190  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

5. In the event Respondent fails to timely submit payment of costs as ordered, Respondent's license (40447-20) 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.

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

WISCONSIN MEDICAL EXAMINING BOARD

by:   
A Member of the Board

June 17, 2015  
Date

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

DAVID J. DRAKE, M.D.,  
RESPONDENT.

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STIPULATION

0004071

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Division of Legal Services and Compliance Case No. 12 MED 381

Respondent David J. Drake, M.D., and the Division of Legal Services and Compliance, Department of Safety and Professional Services, in compromise, 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, as a compromise, 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. Respondent is represented by Attorney Todd Weir.

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.

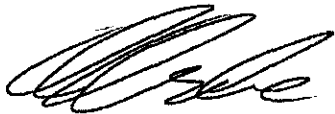
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by 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. The parties to this Stipulation agree that this Stipulation and the recommendation for the Board's adoption of the attached Final Decision and Order constitutes a compromise to resolve the pending disciplinary action. The Stipulation is intended in part to avoid the expense of further litigation, while providing adequate public protection.

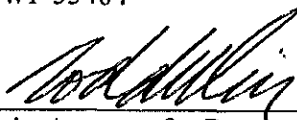
8. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

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



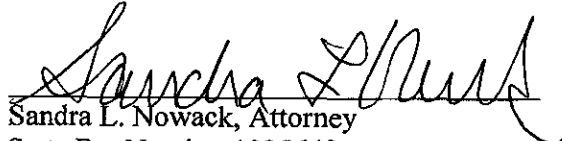
David J. Drake, M.D., Respondent  
P.O. Box 044215  
Racine, WI 53404

June 12, 2015



Todd Weir, Attorney for Respondent  
Otjen, Gendelman, Zitzer, Johnson & Weir, S.C.  
20935 Swenson Drive, Suite 310  
Waukesha, WI 53186

6/12/15  
Date



Sandra L. Nowack, Attorney  
State Bar Number 1025643  
Division of Legal Services and Compliance  
P.O. Box 7190

6/12/15  
Date



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