

## 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  
ELMER G. LEHMAN III, M.D., :  
RESPONDENT. :

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0005300

Division of Legal Services and Compliance Case No. 16 MED 124

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

Elmer G. Lehman III, M.D.  
201 N. Mayfair Road 3<sup>rd</sup> Floor  
Wauwatosa, WI 53226

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 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 Elmer G. Lehman III, M.D. (DOB August 19, 1958), is licensed in the state of Wisconsin to practice medicine and surgery, having license number 25977-20, first issued on July 1, 1984, with registration current through October 31, 2017. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 201 N. Mayfair Road 3rd Floor, Wauwatosa, Wisconsin 53226.

2. Respondent is board certified by the American Board of Obstetrics and Gynecology with a subspecialty in Gynecologic Oncology.

3. On December 27, 2012, Patient A presented to Respondent with complaints of a pelvic mass and endometriosis. Patient A's medical history included uterine fibroids documented by ultrasound and two laparoscopies for adhesiolysis with a bladder injury.

4. Respondent documented an enlarged tender mass consistent with endometriosis and fibroids in his exam findings, as well as Patient A's request for definitive surgical intervention.

5. Patient A was scheduled to undergo an elective robotic hysterectomy with bilateral salpingo-oophorectomy on January 17, 2013. Patient A was to undergo pre-operative labs, including pregnancy test, within 72 hours of the scheduled surgery date.

6. Patient A presented on January 15, 2013, to have the pre-op labs drawn. The lab results, including notice of a positive pregnancy test, were logged into Patient A's chart the following day.

7. A nurse, RN1, was responsible for conferring with the patient the night before the procedure to assemble pertinent information and procure results of pre-op testing. On the form used for that purpose, "no" is indicated for both the "pregnant" and "lactating" categories, which was charted as being confirmed by RN1.

8. On the date of surgery, another nurse, RN2, was responsible for reviewing physician orders and confirming the results of pre-admissions testing, including pre-op lab results. RN2 did not confirm the results of Patient A's pre-op pregnancy test.

9. On the date of surgery, a third nurse, RN3, was responsible for interviewing Patient A and reviewing physician orders, labs, and any other relevant testing prior to surgery. RN3 did not confirm the results of Patient A's pre-op pregnancy test.<sup>1</sup>

10. On the date of surgery, anesthesiologist Gregory D. Rypel, M.D., performed a pre-surgical evaluation of Patient A. He signed an anesthesia pre-op order form which called for a pregnancy test on all female patients such as Patient A, unless specifically waived by the physician. There was no waiver indicated in Patient A's chart, but Dr. Rypel did not confirm the results of Patient A's pre-op pregnancy test.<sup>2</sup>

11. Respondent performed surgery on Patient A as scheduled, during which it was first discovered that Patient A was pregnant.

12. In resolution 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).

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<sup>1</sup> The conduct of the involved nurses was reviewed by the Board of Nursing. No disciplinary action was taken.

<sup>2</sup> Dr. Rypel is a co-Respondent in this case.

2. Respondent Elmer G. Lehman III, M.D., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.02(2)(h) (Nov. 2002) by engaging in conduct which tends to constitute a danger to the health, welfare, or safety of a patient.

3. As a result of the above violation, Elmer G. Lehman III, M.D., is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

1. The attached Stipulation is accepted.

2. Respondent, Elmer G. Lehman III, M.D., is REPRIMANDED

3. Within sixty (60) days of the date of this Order, Elmer G. Lehman III, M.D., shall pay COSTS of this matter in the amount of \$530.00.

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:

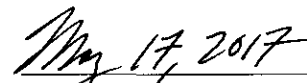
Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190, Madison, WI 53707-7190  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

5. 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, Respondent's license (no. 25977-20) 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

  
Date

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

ELMER G. LEHMAN III, M.D.,  
RESPONDENT.

:  
:  
:  
:  
:  
:

STIPULATION

0005300

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Division of Legal Services and Compliance Case No. 16 MED 124

Respondent Elmer G. Lehman III, 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. Respondent is represented by Attorney Patrick J. Knight.
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.


Stipulation  
In the matter of disciplinary proceedings against  
Elmer G. Lehman III, M.D., Case No. 16 MED 124

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.

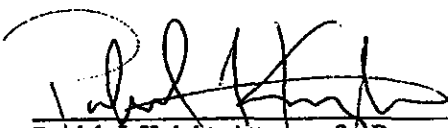
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or Respondent's 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.

  
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Elmer G. Lehman III, M.D., Respondent  
201 N. Mayfair Road 3<sup>rd</sup> Floor  
Wauwatosa, WI 53226  
License no. 25977-20

5/7/17  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Patrick J. Knight, Attorney for Respondent  
Gimbel, Reilly, Guerin, Brown, LLP  
330 E. Kilbourn Avenue, Suite 1170  
Milwaukee, WI 53202

5/4/17  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Yolanda Y. McGowan, Prosecuting Attorney  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

5/4/17  
\_\_\_\_\_  
Date