

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
RICHARD K. MCNUTT, M.D., :
RESPONDENT. :

0005380

Division of Legal Services and Compliance Case Nos. 16 MED 296 and 16 MED 360

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

Richard K. McNutt, M.D.
840 S. Madison Street
Green Bay, WI 54301

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 Richard K. McNutt, M.D. (DOB April 6, 1958), is licensed in the state of Wisconsin to practice medicine and surgery, having license number 27731-20, first issued on July 1, 1986, 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 840 S. Madison Street, Green Bay, Wisconsin 54301.

2. Respondent is certified in Surgery-General by the American Board of Surgery.

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3. On October 24, 2014, Patient A, a male born in 1965, was admitted to a hospital in Green Bay, Wisconsin, for elective surgery. Respondent was Patient A's attending physician for the admission. The below Conclusions of Law are intended to resolve and otherwise be a full and final disposition of any surgical issues pertaining to 16 MED 296.

16 MED 360

4. On the evening of Thursday, May 12, 2016, Patient B, a female born in 1966, was admitted to a hospital in Green Bay, Wisconsin, after a CT scan demonstrated possible mesenteric ischemia and mesenteric arterial occlusion. Respondent was asked to provide a surgical consultation for Patient B. Patient B had an eight month history of abdominal pain and reported that she had not sought health care for many years.

5. There is no medical charting by Respondent for Patient B upon admission but he planned to consult interventional radiology for an angiogram with possible angioplasty and stenting to correct Patient B's mesenteric artery stenosis. Patient B was also under the care of the hospitalist service and was seen by a nurse practitioner member of Respondent's surgical service and charted Respondent's plan.

6. On Friday, May 13, 2016, at 1215, an interventional radiologist performed angiogram and found severe stenosis of the mesenteric artery. The interventional radiologist unsuccessfully attempted to place stents and documented that Patient B would require mesenteric bypass surgery.

7. On Saturday, May 14, 2016, at 1123, a cardiologist cleared Patient B for surgery and charted "preoperative abnormal EKG and shortness of breath, ECHO and Stress test were fairly unremarkable; okay to proceed with surgery." That same day at 1255, a hospitalist charted "Per Dr. McNutt, no surgery this weekend, may be planned for Monday." There is no medical charting showing Respondent evaluated Patient B that day or informed her of his surgical plan including any inherent risks to postponing surgery.

8. On Sunday, May 15, 2016, at 0004, a nurse charted that Patient B was improving but still had pain. At 0842, a hospitalist charted that Patient B had emesis and continued to complain of abdominal pain despite the use of continuous and PCA morphine. That same day at 1121, Respondent charted a progress note for Patient B, which reflects that he examined her and planned to perform bypass surgery as soon as possible rather than postponing surgery until the following day.

9. By 1608 on May 15th, Patient B had not been taken to surgery and nursing notes indicate she had continued emesis. At 1715, Patient B was found unresponsive with 500 mL of brown emesis in a bag. A hospitalist was paged to Patient B's room and nursing notes reflect Respondent was "en route" to the hospital and at 1810, Respondent was at bedside.

10. At 1818, Respondent charted his plan for emergent surgery. At 1928, Respondent performed surgery. Mesenteric ischemia with ischemic colon, stomach, small intestine, liver and gallbladder were confirmed and Respondent removed Patient B's stomach, colon and the

majority of her small intestine. Patient B's condition continued to deteriorate and despite resuscitation efforts, she was pronounced dead at approximately 2100.

11. Respondent attended the 41st Annual Northwestern Vascular Symposium, December 8-10, 2016, Chicago, Illinois, 12.5 AMA PRA Category 1 Credits.

12. Respondent disputes the Findings of Fact to the extent that they support or are suggestive of unprofessional conduct.

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 Richard K. McNutt, M.D., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(2)(b) by departing from or failing to conform to the standard of minimally competent medical practice which creates an unacceptable risk of harm to a patient or the public whether or not the act or omission resulted in actual harm to any person.

3. By the conduct described in the Findings of Fact, Respondent Richard K. McNutt, M.D., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(2)(j) by performing an act constituting the practice of medicine and surgery without required informed consent under s. 448.30, Stats.

4. By the conduct described in the Findings of Fact, Respondent Richard K. McNutt, M.D., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(3)(e) by failing to establish and maintain timely patient health care records under s. Med 21.03, or as otherwise required by law.

5. As a result of the above conduct, Richard K. McNutt, M.D., is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

1. The attached Stipulation is accepted.

2. Respondent Richard K. McNutt, M.D., is REPRIMANDED.

3. The Board recognizes the aforementioned continuing medical education course as the equivalent of the education the Board would have otherwise required. The course attended may not be used in satisfaction of the statutory continuing education requirements for licensure.

4. Within ninety (90) days from the date of this Order, Richard K. McNutt, M.D., shall pay COSTS of this matter in the amount of \$3,750.00.

5. 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 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DPSMonitoring@wisconsin.gov

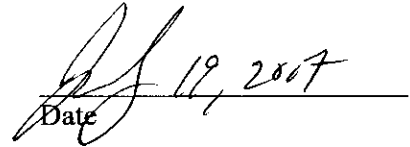
6. In the event Respondent violates any term of this Order, Respondent's license (no. 27731-20), or Respondent's right to renew his license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

7. 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

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

RICHARD K. MCNUTT, M.D.,
RESPONDENT.

STIPULATION

0005380

Division of Legal Services and Compliance Case Nos. 16 MED 296 and 16 MED 360

Respondent Richard K. McNutt, 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 Samuel Leib.


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. 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.



Richard K. McNutt, M.D., Respondent
840 S. Madison Street
Green Bay, WI 54301
License no. 7731-20

7/10/17
Date



Samuel Leib, Attorney for Respondent
Leib, Knott, Gaylor, LLC
219 N. Milwaukee Street, Suite 710
Milwaukee, WI 53202

7/10/17
Date



Colleen L. Meloy, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

7/13/17
Date