

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
ARVIND AHUJA, M.D.,
RESPONDENT.

FINAL DECISION AND ORDER

0006106

Division of Hearings and Appeals Case No. SPS-18-0018
Division of Legal Services and Compliance Case No. 15 MED 093

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

Arvind Ahuja, M.D.
6321 Parkview Road
Greendale, WI 53129

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

PROCEDURAL HISTORY

On March 15, 2018, the Division filed a Notice of Hearing and Complaint with the Department of Administration, Division of Hearings and Appeals (DHA) which alleged that Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code §§ Med 10.02(2)(h) and (2)(u). On April 5, 2018, Respondent filed an Answer which denied that Respondent had committed unprofessional conduct. The Answer also contained two affirmative defenses which alleged that the ALJ and the Board lacked jurisdiction to hold a hearing on the matter and discipline Respondent. Respondent filed Motions to Dismiss based on the two affirmative defenses. The motions were briefed and on August 28, 2018 the ALJ issued an Order Denying the Motions to Dismiss.

On September 11, 2018, a prehearing conference was held by the ALJ. At the conference, a hearing date was set for March 12-15, 2019, and deadlines for conducting and naming witnesses were established. On November 21, 2018, the Division filed its Preliminary Witness List which included a neurosurgeon expert witness. On January 10, 2019, Division expert witness Richard L. Carter, M.D., provided expert deposition testimony. On February 4, 2019, Respondent filed its Final Witness List which did not name an expert witness. On February 25, 2019, the parties

exchanged and filed exhibits with the ALJ.

The parties in this matter agree to enter into stipulated resolution in lieu of participating in an evidentiary hearing. The parties in this matter agree to the terms and conditions of the attached Stipulation and agree that the Board may issue this Final Decision and Order, subject to the approval of the 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, Arvind Ahuja, M.D., is licensed in the state of Wisconsin to practice medicine and surgery, having license number 32407-20, first issued on July 24, 1991, with registration current through October 31, 2019. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 6321 Parkview Road, Greendale, Wisconsin 53129.

2. Respondent is a neurosurgeon who is certified by the American Board of Neurological Surgery.

3. On May 18, 2009, Patient A had an anterior cervical decompression and arthrodesis with a right surgical incision, which was performed by another surgeon. Patient A had a fall in 2012 after which she had increased neck pain.

4. Respondent evaluated Patient A and on August 21, 2013 performed an anterior cervical corpectomy with fusion and internal fixation, using an incision on the left side of the neck. No complications were evident during the surgery.

5. On August 22, 2013, Patient A developed swelling at the surgical site, elevated white count, and drainage from the anterior incision. A CT scan was performed on August 23, 2013, which demonstrated a large retropharyngeal collection of fluid and gas which was highly suspicious for an abscess.

6. Respondent suspected infection and recommended exploratory surgery, which he performed on August 22, 2013. During the surgery Respondent discovered a collection of pus, cleaned out the area and attempted to determine the cause of the condition. Respondent could not see any perforation in the esophagus. To ensure there was no leak from the esophagus, he had a colored gas passed down the esophagus and the gas could be seen in the intraoperative cavity. The gas leaked from the right side of esophagus, the opposite side from where Respondent had performed his procedure. Respondent could not find the location of the leak, but attempted to repair it by placing stiches in the esophagus.

7. Esophageal perforations are rare but recognized complications of anterior cervical procedures. They are more common if the patient has had a prior anterior cervical procedure. About 30% of repairs of the esophageal tears require two or more additional repairs. Prior to

Patient A's surgery, Respondent had performed more than 1500 anterior cervical procedures, without any esophageal perforations. The cause of Patient A's esophageal perforation has never been determined.

8. On Sunday, August 25, 2013, during the Memorial Day weekend, Patient A underwent another CT scan, which showed a mild increase in the size of the retropharyngeal fluid collection. Respondent recommended a second exploratory surgery to Patient A and her family. At that time, two cardiothoracic surgeons practiced at the hospital. Respondent called one of them to see if he could assist with the surgery. The cardiothoracic surgeon told Respondent that neither he nor the other cardiothoracic surgeon were available to assist. Respondent called a cardiothoracic surgeon in Phoenix and had a telephone consultation with him prior to performing the surgery.

9. On August 25, 2013, Respondent should have determined whether a cardiothoracic surgeon with appropriate experience was available at another hospital to perform the second exploratory surgery. By not doing so, his conduct fell below the minimal standard of competency and exposed Patient A to unacceptable risks.

10. Respondent obtained written consent from the patient and her family to perform the second exploratory surgery. However, Respondent did not advise the patient or her family that this was the first case in which he had performed the repair of an esophageal puncture. In addition, he did not advise the patient or her family that she could be transferred to another hospital less than an hour away, where the surgery could be performed by a cardiothoracic surgeon, with experience doing the procedure. A reasonable patient would have wanted to know those things before making a decision whether to have Respondent perform the surgery and an appropriate informed consent discussion should have included that information.

11. On August 25, 2013, Respondent performed the second exploratory surgery on Patient A. Respondent cleaned out and drained the area of the abscess and placed two drains. The colored gas did not reveal any esophageal leak. However, when the gastroenterologist assisting Respondent passed a gastroscope down the esophagus and insufflated the area of the repair, air bubbles were visible intraoperatively, indicating a leak. Because the esophagus was constricted in the area of the earlier repair, Respondent removed those sutures and placed new sutures in the esophagus to repair the leak.

12. Patient A remained hospitalized and for a time her condition improved, under Respondent's care. When her condition worsened, Respondent ordered a CT scan on August 30, 2013 which showed a retropharyngeal fluid collection, gas and a 7 mm (1/4 inch) esophageal tear.

13. On August 31, 2013, Respondent had a telephone consultation with a cardiothoracic surgeon at another hospital and discussed whether Patient A should be transferred to that hospital. Following that discussion, Respondent ordered an infectious disease consultation, and that specialist recommended transfer to the other hospital for a cardiothoracic surgery evaluation.

14. On August 31, 2013, Patient A was transferred to another hospital under the care

of the cardiothoracic surgeon. Patient A remained hospitalized there until September 16, 2013. Between August 31, 2013 and May 13, 2016, Patient A underwent numerous surgical procedures, including two esophageal repairs, and follow-up medical care to address the esophageal tear and complications.

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, Arvind Ahuja, M.D., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.02(2)(u) (Nov. 2002) by failing to inform a patient about the availability of all alternative, viable medical modes of treatment and about the benefits and risks of these treatments.

3. By the conduct described in the Findings of Fact, Respondent, Arvind Ahuja, 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.

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

ORDER

1. The attached Stipulation is accepted.

2. Respondent Arvind Ahuja, M.D., is REPRIMANDED.

3. Within ninety (90) days from the date of this Order, Arvind Ahuja, M.D., shall pay COSTS of this matter in the amount of \$20,779.00.

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

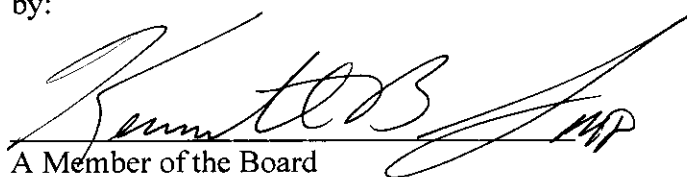
5. In the event Respondent violates any term of this Order, Respondent's license (no. 32407-20), or Respondent's right to renew his license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has

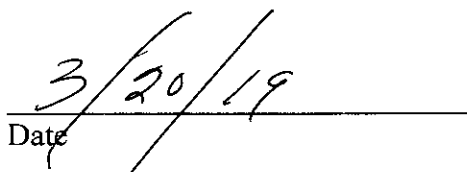
complied with the terms of the Order. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

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

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

ARVIND AHUJA, M.D.,
RESPONDENT.

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STIPULATION

0006106

Division of Hearings and Appeals Case No. SPS-18-0018
Division of Legal Services and Compliance Case No. 15 MED 093

Respondent Arvind Ahuja, 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 John R. Zwiag.

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.

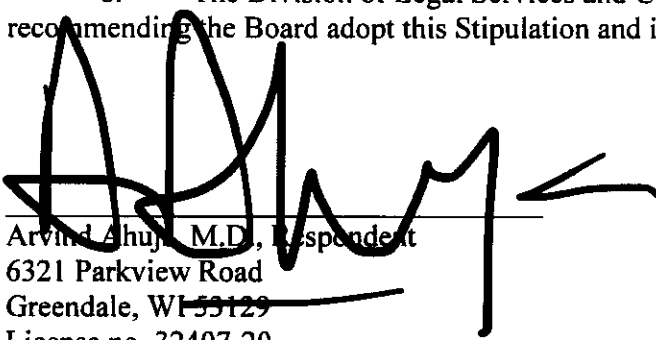
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division

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.

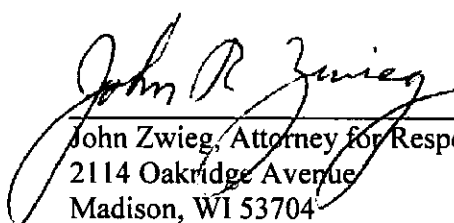
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

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.


Arvind Ahuja, M.D., Respondent
6321 Parkview Road
Greendale, WI 53129
License no. 32407-20

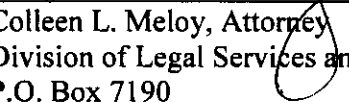
March 5, 2019

Date


John Zwieg, Attorney for Respondent
2114 Oakridge Avenue
Madison, WI 53704

March 5, 2019

Date


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

03/05/2019

Date