

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
JAMES E. STOLL, JR., M.D., :
RESPONDENT. :

ORDER 0006347

Division of Legal Services and Compliance Case No. 16 MED 169

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

James E. Stoll, Jr., M.D.
975 Port Washington Road, Suite 110
Grafton, WI 53024

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 James E. Stoll, Jr., M.D. (DOB May 16, 1955), is licensed in the state of Wisconsin to practice medicine and surgery, having license number 26052-20, first issued on July 1, 1984, 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 975 Port Washington Road, Suite 110, Grafton, Wisconsin 53024.

2. Respondent is certified by the American Board of Orthopaedic Surgery and specializes in orthopaedic spinal surgery.

3. At all times pertinent to this matter, Respondent practiced orthopaedic medicine at a Milwaukee-area healthcare facility.

4. In 2001, prior to treatment with Respondent, Patient A, a male born in 1954, underwent cervical fusion at C6-C7 performed by another surgeon.

5. In November 2013, Patient A presented to Respondent with complaints of neck pain following a work-related injury.

6. On December 11, 2013, Patient A underwent cervical spine MRI as ordered by Respondent which demonstrated mild protrusion of the intravertebral disc at C5-C6 and a disc herniation at C7-T1.

7. On January 4, 2014, Respondent informed Patient A that there was pathology at both the C5-C6 and C7-T1 levels. Respondent recommended that Patient A undergo anterior cervical fusion at C7-T1. Patient A consented and surgery was scheduled.

8. On January 28, 2014, Patient A was admitted for surgery and signed a written consent for Respondent to perform an anterior cervical fusion at C7-T1.

9. On January 28, 2014, Respondent performed anterior cervical fusion at C5-C6, rather than at the intended C7-T1 level.

10. On the day of surgery, Patient A was 5'11" and weighed 284 pounds. A surgical timeout was conducted by Respondent and the surgical team for the purpose of confirming the correct patient and procedure. The procedure was verified as an anterior cervical fusion at C7-T1 level and the rough site for the surgical incision was correctly marked on the anterior left side of Patient A's neck.

11. Respondent made a surgical incision and due to the patient's size, the opening in which to perform the surgery was much smaller than in an average sized patient. Respondent placed a needle in Patient A's spine as a surgical marker (marker). An x-ray was taken and Respondent viewed the x-ray images in the operating room. Due to Patient A's large neck, the surgical positioning required, and the scarring at C6-C7 from prior surgery, Respondent determined that he could not place the marker at C7-T1. For those reasons, Respondent opted to place the marker higher up at C5-C6. Respondent planned to count down from the marker at C5-C6 to the intended level to perform surgery. During surgery, Respondent saw the marker at C5-C6 level and mistakenly thought it was the level at which he was to perform the surgery. Respondent removed the vertebrae and noted there was pathology at the C5-C6 level. Respondent then placed instrumentation and inadvertently performed Patient A's anterior cervical fusion at the C5-C6 level.

12. Following surgery, a post-operative film was taken and interpreted by a radiologist. The radiologist who reviewed and interpreted the x-ray films did not know the level at which the fusion was to be performed. The radiologist's report, dated January 28, 2014, at 6:15 p.m., stated the following:

FINDINGS:

No vertebral body compression fracture. Demonstration of anterior cervical fusion with intervertebral spacer at C5-6. Miniplate and cortical screws bridge the C5-6 interspace. Prevertebral soft tissues are unremarkable. Craniocervical junction is unremarkable. No Osseous masses.

IMPRESSION:

Anterior fusion at C5-6 as discussed above.

13. On January 29, 2014, Patient A was discharged from the facility. Respondent charted a discharge summary in Patient A's healthcare record on January 29, 2014, at 7:21 a.m. which stated that anterior cervical fusion was performed at the C7-T1 level.

14. Prior to Patient A's discharge from the facility, Respondent failed to recognize that he had performed surgery at the incorrect level. Respondent has represented to the Department that although the radiologist's report came to his inbox, he did not read the report as he had already reviewed the actual x-ray images.

15. On February 10, 2014, Respondent saw Patient A for a post-operative office visit. Patient A was taking Percocet 5-325 mg (as needed) and reported that his preoperative pain had resolved. A cervical spine x-ray was taken. Respondent viewed the x-ray images and noted that the fusion was healing.

16. On March 3, 2014, Respondent saw the patient for a post-operative office visit at which time Patient A reported muscle weakness in both hands. A cervical spine x-ray was taken. Respondent viewed the x-ray images and noted that the fusion was healing. Respondent provided reassurance to Patient A and ordered physical therapy.

17. A radiologist interpreted the images and reported on March 3, 2014, a fusion at C6-C7:

FINDINGS: There is anterior fusion with an intervertebral spacer and screws at the C5- C6 level similar to the prior study. There is bony fusion at C6-C7 similar to the prior exam.

18. On April 3, 2014, Respondent saw Patient A for a post-operative office visit. Patient A reported that his arm pain was gone and that he was doing a home exercise program. A cervical spine x-ray was taken. Respondent viewed the x-ray images and noted that the fusion was healing and released the patient to return to work.

19. A radiologist interpreted the images and reported on April 3, 2014, a stable, solid bony fusion at the C6-C7 disc space.

20. On May 15, 2014, Respondent saw Patient A for a post-operative office visit. Patient A reported that since returning to work, his neck pain had returned and he had developed bilateral arm symptoms. A cervical spine x-ray was taken. Respondent viewed the x-ray images and noted that the fusion was healing. Respondent ordered an MRI to rule out "other problems."

21. A radiologist interpreted the images and reported on May 15, 2014, a fusion at C6-C7.

22. On May 19, 2014, Patient A underwent MRI. Findings as reported by the radiologist included, the following in part:

IMPRESSION:

Very limited examination. There is significant blooming artifact and distortion from the anterior spinal fusion at C5-C6. This limits evaluation of the mid to lower cervical spine. In the future, consider CT myelogram as clinically indicated.

23. On May 23, 2014, Respondent called the patient to discuss the MRI findings and charted: "adjacent segments unchanged, likely nerve regeneration." Respondent ordered gabapentin in addition to Percocet 5-325 mg for Patient A's pain. Thereafter, Respondent left for Europe and returned to work on June 10, 2014.

24. On May 30, 2014, Patient A was seen by one of Respondent's partners who referred the patient for neurology evaluation and testing. Respondent's partner noted that while significant artifact made interpretation of the MRI very difficult, "the C7-T1 level in the sagittal views appears to be unchanged from his preoperative MRI which was reviewed in detail as well."

25. On June 6, 2014, Patient A saw a neurologist who charted:

"[Patient A] has weakness and sensory loss in both upper extremities consistent with C8 radiculopathy. This is confirmed on neurophysiologic testing."

26. On June 10, 2014, Patient A telephoned Respondent's office to report continued neck, shoulder, and elbow pain; difficulty sleeping and inability to work. Patient A also reported: "I am having radicular symptoms in C8 and this should have been taken care of with surgery." Patient A was given an office visit with Respondent on June 12, 2014.

27. On June 12, 2014, Respondent documented in Patient A's healthcare record that he had incorrectly performed surgical fusion at the C5-C6 level, instead of the C7-T1 level as intended. He advised Patient A that he would require additional surgery.

28. On July 1, 2014, Respondent performed anterior cervical fusion at the intended C7-T1 level on Patient A.

29. Between January 28, 2014 and June 11, 2014, Respondent failed to recognize that had performed surgery on Patient A at the incorrect spinal level and the minimally competent physician would have done so. Respondent has represented to the Department that he did not review the radiology reports of the cervical spine x-rays as he relied on his own interpretation of the images and that his focus was alignment/stability of the hardware, not the level of surgery. Respondent has represented to the Department that when he returned from vacation, he reviewed Patient A's MRI of May 19, 2014, together with the report of the MRI of May 19, 2014, and discovered the error.

30. Following this incident, Respondent has conducted a literature search on wrong site/wrong level surgery.

31. On August 10-11, 2019, Respondent attended the following course: *The Basis of a Rewarding Neurosurgical Career: A Career Guide for New Attending Physicians and Fellows* sponsored by Congress of Neurological Surgeons in Rosemont, Illinois, earning 15 AMA PRA Category 1 credits. The course learning objectives included improvement in patient outcomes, patient safety, and reducing medical errors.

32. 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).

2. By performing a surgical or invasive procedure at the wrong anatomical site as described in the Findings of Fact, Respondent James E. Stoll, Jr., M.D., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(2)(d).

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

ORDER

1. The attached Stipulation is accepted.

2. Respondent James E. Stoll, Jr., M.D. (license number 26052-20), is REPRIMANDED.

3. The Board recognizes the aforementioned continuing 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 90 days from the date of this Order, James E. Stoll, Jr., M.D., shall pay COSTS of this matter in the amount of \$12,071.00.

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
DSPSMonitoring@wisconsin.gov

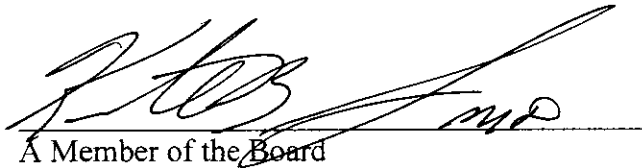
You may also submit this information online via DSPS' Monitoring Case Management System,
here: <https://app.wi.gov/DSPSMonitoring>

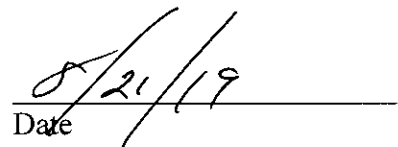
6. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit payment of costs as set forth above, Respondent's license (no. 26052-20) may, in the discretion of the Board or its designee, be further SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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

JAMES E. STOLL, JR., M.D.,
RESPONDENT.

:
:
:
:
:

STIPULATION

ORDER 0006347

Division of Legal Services and Compliance Case No. 16 MED 169

Respondent James E. Stoll, Jr., 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 Todd M. Weir and attorney John Zwieg.

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
James E. Stoll, Jr., M.D., Case No. 16 MED 169

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.

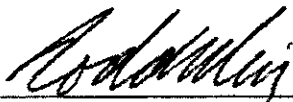
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



James E. Stoll, Jr., M.D., Respondent
975 Port Washington Road
Grafton, WI 53024
License no. 26052-20

Date

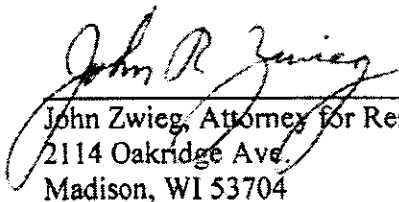
8/9/19



Todd M. Weir, Attorney for Respondent
Otjen, Gendelman Zitzer, Johnson & Weir SC
20935 Swenson Drive, Ste 310
Waukesha, WI 53186-2057

Date

8/5/19



John Zwieg, Attorney for Respondent
2114 Oakridge Ave.
Madison, WI 53704

Date

August 9, 2019

Stipulation
In the matter of disciplinary proceedings against
James E. Stoll, Jr., M.D., Case No. 16 MED 169

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

8/12/19
Date