

## 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  
FRANCIS X. DOWNEY, M.D., :  
RESPONDENT. : **ORDER 0006901**

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Division of Legal Services and Compliance Case No. 19 MED 585

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

Francis X. Downey, M.D.  
Scottsdale, AZ 85260

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 Francis X. Downey, M.D. (DOB xx-xx-1960), is licensed in the State of Wisconsin to practice medicine and surgery, having license number 34829-20, first issued on September 23, 1993, with registration current through October 31, 2021. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Scottsdale, Arizona 85260.

2. At all times relevant to this proceeding, Respondent was a cardiac surgeon at a Hospital located in Milwaukee, Wisconsin.

3. On October 20, 2014, Respondent performed coronary artery bypass grafting surgery on Patient M.S. Up until this surgery, Patient M.S. was a longtime cigarette smoker.

4. On February 18, 2015, Respondent saw Patient M.S. for a follow-up visit and ordered a chest CT scan after Patient M.S. was diagnosed with dehiscence of closure of sternum.

5. The results of the CT scan were interpreted in part as follows:

Lungs: Indeterminate spiculated 1.5 cm right apical nodule. Neoplasm cannot be excluded. Whole-body PET/CT is recommended for further evaluation.

6. On February 24, 2015, Respondent saw Patient M.S. for a follow-up visit. Respondent's charting for the visit included the CT scan results, including the apical nodule and the radiologist's recommendation for a PET/CT scan. Nevertheless, Respondent did not inform Patient M.S. of the apical nodule nor order a PET/CT scan.

7. Respondent admits to inadvertently overlooking the portion of the radiology report regarding the apical nodule and PET/CT scan, indicating it was an unanticipated finding that was not related to the reason for the ordered radiology exam.

8. Patient M.S. did not learn of the lung nodule or receive cancer treatment until March 2016. Patient M.S. died on October 27, 2016 of metastasized lung carcinoma.

9. 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 the conduct described in the Findings of Fact, Respondent Francis X. Downey, 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. As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 448.02(3).

#### ORDER

1. The attached Stipulation is accepted.

2. Respondent Francis X. Downey, M.D., is REPRIMANDED.

3. Within 90 days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$687.00.

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

You may also submit payment online via DSPS' Monitoring Case Management System, here: <https://dpsmonitoring.wi.gov/>

5. In the event Respondent violates any term of this Order, Respondent's license (No. 34829-20), 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: Shelton A. Wasserman, MD  
A Member of the Board

7/15/2020  
Date

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

FRANCIS X. DOWNEY, M.D.,  
RESPONDENT.

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:

STIPULATION

**ORDER 0006901**

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Division of Legal Services and Compliance Case No. 19 MED 585

Respondent Francis X. Downey, 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 James R. Gutglass.


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.

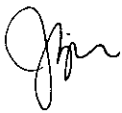
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

  
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Francis X. Downey, M.D., Respondent  
License No. 34829-20

4/9/2020  
Date

  
\_\_\_\_\_  
James R. Gutglass, Attorney for Respondent  
Gutglass, Erickson, Larson & Schneider, S.C.  
735 North Water Street, Suite 1400  
Milwaukee, WI 53202-4106

6-11-20  
Date

  
\_\_\_\_\_  
Julie A. Zimmer, Prosecuting Attorney  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

6/16/2020  
\_\_\_\_\_  
Date