

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE LICENSE OF :
: FINAL DECISION AND ORDER
: FOR REMEDIAL EDUCATION
JAY C. LICK, D.O., :
LICENSEE. : **ORDER 0007276**

Division of Legal Services and Compliance Case No. 16 MED 207
Division of Hearings and Appeals Case No. SPS-19-0041

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

Jay C. Lick, D.O.
Madison, WI 53705

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 July 19, 2019, 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 10.03(2)(b). On August 8, 2019, Respondent filed an Answer which denied that Respondent had committed unprofessional conduct. On August 16, 2019, a prehearing conference was held by the Administrative Law Judge (ALJ) at which time a hearing date was set for June 1-4, 2020, and deadlines for filing motions, conducting discovery and naming witnesses were established (Prehearing Order).

On August 23, 2019, the Respondent filed a Motion to Dismiss which was denied by the ALJ on September 30, 2019. On October 14, 2019, the Division filed a Motion to Strike and Motion for Summary Judgment which were denied by the ALJ on December 13, 2019.

On December 30, 2019, the Division filed its Preliminary Witness List which included board-certified obstetrician/gynecologist (ob/gyn) expert witness, Gregory Tyler, M.D. On January 17, 2020, Respondent provided deposition testimony. On February 13, 2020, Division

expert witness Dr. Tyler provided expert deposition testimony. On February 28, 2020, the Respondent filed its Preliminary Witness List which included board-certified ob-gyn expert witness, Brenda Jenkin, M.D., and two other board-certified ob-gyn expert witnesses, as well as fact witnesses. On March 19, 2020, the ALJ ordered that that the previously issued scheduling order and hearing be adjourned indefinitely due to the pandemic. On January 20, 2021, Respondent expert witness Dr. Jenkin provided expert deposition testimony.

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. Licensee Jay C. Lick, D.O. (DOB xx-xx-1972) is licensed by the State of Wisconsin to practice medicine and surgery, having license number 53723-21, first issued on November 2, 2009, with registration current through October 31, 2021. Licensee's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Madison, Wisconsin 53705.

2. Licensee is board-certified by the American Board of Obstetrics and Gynecology and, at all times relevant to this matter, practiced that specialty.

3. On December 2, 2014, Patient A, a female born in 1965, saw Licensee at the clinic and following a pelvic examination they agreed that Patient A would undergo a total vaginal hysterectomy (TVH) with a bilateral salpingectomy, which is the removal of the fallopian tubes. If the removal of the ovaries were also included, it would be called a TVH with bilateral salpingoophorectomy.

4. On August 12, 2015, Patient A called and told a clinic RN that she was ready to schedule the TVH with bilateral salpingectomy. The clinic where Licensee practiced and the hospital where the surgery was to be performed had separate electronic medical record (EMR) systems that did not share data. On August 25, 2015, the clinic scheduler electronically sent a record to the hospital's central scheduling that Patient A should be scheduled for a TVH with bilateral salpingectomy on October 26, 2015. This information was entered in the hospital's EMR.

5. At the October 6, 2015 preoperative visit, Patient A initially told Licensee she also wanted her ovaries removed during the procedure. Licensee counseled Patient A that she would benefit from keeping her ovaries into advanced age, including having a reduced chance of osteoporosis and heart disease. After discussion, Patient A decided not to have her ovaries removed and to proceed with the TVH and bilateral salpingectomy. Clinic procedure required the patient to sign the surgical consent form at the preoperative visit. The procedure shown on the

consent form, which Patient A read and signed during the visit was “total vaginal hysterectomy, bilateral salpingectomy.”

6. Patient A telephoned the clinic shortly after leaving the visit and said that she had changed her mind and wanted her ovaries removed as part of the procedure. Licensee made a handwritten change to the consent form by adding the words “bilateral salpingoophorectomy.” Licensee did not cross out the words “bilateral salpingectomy” on the consent form and recognizes, in hindsight, that he should have done so.

7. Licensee did not make an entry of the change to the procedure in the clinic EMR as the telephone discussion took place after the conclusion of the office visit. On October 6, 2015, a registered nurse made a separate telephone note in Patient A’s clinic EMR which said that Licensee and Patient A had added a bilateral oophorectomy (removal of ovaries) to the October 26, 2015 procedure.

8. On October 26, 2015, Licensee entered preoperative orders at the hospital. The board in the pre-surgical area and the hospital’s EMR, which he viewed, showed the procedure to be “total vaginal hysterectomy, bilateral salpingectomy.” Licensee opened another computer window to find and read the information in the clinic’s EMR. Licensee reviewed Patient A’s progress note from the December 2, 2014, clinic visit, returned to the hospital’s EMR, and entered “total vaginal hysterectomy bilateral salpingectomy” in the procedure order field. Licensee did not review his October 6, 2015, clinic note, nor did he review the nurse’s separate note of the telephone call with Patient A during which the procedure was changed to include ovary removal. Licensee admits, in hindsight, it would have been better had he reviewed his most recent clinic note with Patient A.

9. Licensee had a discussion with Patient A in the pre-surgery area and told her that he would perform a total vaginal hysterectomy, bilateral salpingectomy and right labial polyp excision. Patient A agreed that the procedure, stated in medical terms, was correct.

10. Consistent with hospital practices, pre-induction, pre-incision, and post-procedure timeouts were conducted. During the pre-induction timeout, Patient A was not sedated. Licensee stated during the timeouts that the procedures would be “total vaginal hysterectomy, bilateral salpingectomy and labial excision,” Licensee read the procedure names from a pink slip provided by a nurse, who obtained it from the hospital’s EMR. No one present in the operating room voiced an objection to the procedure as stated.

11. Patient A’s consent form was not scanned into the hospital’s EMR until after the patient was discharged and it was not available to Licensee or the operating room personnel on the day of the surgery.

12. Licensee performed the TVH and bilateral salpingectomy and did not remove Patient A’s ovaries. While Patient A was in recovery, she asked and discovered that her ovaries had not been removed. Licensee was called, returned to the hospital, and admitted the error. Licensee gave Patient A her options and she elected to return to the operating room and have

Licensee remove her ovaries on that date, which he did. There were no complications from the second surgery.

13. On December 17, 2017, Licensee voluntarily completed “*Risk Management Essentials: Documentation*,” a ten (10) credit continuing medical education (CME) course offered by Medical Risk Management, Inc. Licensee did not use this education to satisfy any continuing education requirement of the Board.

14. Licensee has implemented changes in his personal practice to avoid a similar future event including speaking in plain language during a preoperative discussion with a patient and reviewing the most recent clinic notes prior to a procedure. Licensee has also facilitated changes within his Department to avoid similar mistakes for other patients. Department procedure has been changed so that patients now sign the surgical consent on the day of surgery with the stated procedures listed in plain language, and that information is used during the pre-incision timeout to ensure that the appropriate procedures are performed.

15. In resolution of this matter, Licensee consents to the entry of the following Conclusions of Law and Order.

16. This order does not constitute disciplinary action by the Board and does not include a finding of negligence or unprofessional conduct.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

ORDER

1. The attached Stipulation is accepted.

2. The Board recognizes and accepts the successful completion of the above described CME credits as the equivalent of the education it would have otherwise ordered. None of these CME credits may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department.

3. Within ninety (90) days from the date of this Order, Licensee shall pay COSTS of this matter in the amount of \$15,000.00.

4. Payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Licensee 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

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

5. This Order is effective on the date of its signing.

WISCONSIN MEDICAL EXAMINING BOARD

by: Stephen A. Wacker, MD
A Member of the Board

17 March 2021
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE LICENSE OF :
: STIPULATION
JAY C. LICK, D.O., :
: **ORDER 0007276**
LICENSEE. :
:

Division of Legal Services and Compliance Case No. 16 MED 207

Licensee Jay C. Lick, D.O., 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. Licensee consents to the resolution of this investigation by Stipulation.

2. Licensee understands that by signing this Stipulation, Licensee voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Licensee, 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 Licensee;
- the right to call witnesses on Licensee's behalf and to compel their attendance by subpoena;
- the right to testify on Licensee'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 Licensee under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Licensee is aware of Licensee's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation. Licensee is represented by Attorney David D. Relles and Attorney John R. Zweig.

4. Licensee agrees to the adoption of the attached Final Decision and Order for Remedial Education by the Wisconsin Medical Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order for Remedial Education without further notice, pleading, appearance or consent of the parties. Licensee waives all rights to any appeal of the Board's order, if adopted in the form as attached.

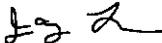
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division

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 Licensee, 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 for Remedial Education.

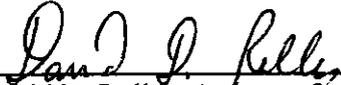
7. Licensee is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order for Remedial Education is a public record and will be published in accordance with standard Department procedure.

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



Jay C. Lick, D.O., Licensee
Madison, WI 53708-8366
License No. 53923-21

2/22/2021
Date



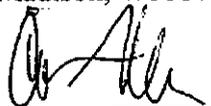
David D. Relles, Attorney for Licensee
Reuter, Whitish & Evans, S.C.
44 East Mifflin St., Ste. 306
Madison, WI 543703

February 22, 2021
Date



John R. Zwieg, Attorney for Licensee
2114 Oakridge Ave.
Madison, WI 53704-5618

February 22, 2021
Date



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

2/22/2021
Date