

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
HARRY D. MALCOLM, M.D., :
RESPONDENT. : **ORDER 0007387**

Division of Legal Services and Compliance Case No. 20 MED 354

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

Harry D. Malcolm, M.D.
Hayward, WI 54843

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 Harry D. Malcolm, M.D. (Year of Birth 1958), is licensed in the state of Wisconsin to practice medicine and surgery, having license number 38164-20, first issued on August 9, 1996, 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 Hayward, Wisconsin 54843.

2. At all times relevant to this proceeding, Respondent practiced family medicine at a clinic located in Hayward, Wisconsin (Facility).

3. Division of Legal Services and Compliance Case No. 20 MED 354 was opened after the Department received a complaint alleging that Respondent engaged in a sexual relationship with two of his female adult patients.

4. Respondent was Patient A's primary care provider from 2002 through March of 2010. In 2010, Respondent began dating Patient A. Respondent and Patient A were married in 2012 and divorced in June of 2020.

5. Respondent was Patient B's obstetrical care provider beginning in 2006. Respondent initiated a sexual relationship with Patient B in 2014. Between November 2013 through April 2018, Respondent provided care and treatment to Patient B via telephone encounters, physician orders, prescription medications, and refills.

6. On August 21, 2020, the Facility terminated Respondent's employment after the Facility's investigation concluded that Respondent engaged in sexual relationships with Patients A and B while acting as their physician.

7. Respondent has cooperated with the Department's investigation and admits to engaging in sexual relationships with Patients A and B.

8. 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 engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(2)(f) by engaging in sexually explicit conduct, sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient, a patient's immediate family, or a person responsible for the patient's welfare.

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 is REPRIMANDED.

3. The medicine and surgery license issued to Harry D. Malcolm, M.D., (license number 38164-20) in the State of Wisconsin is SUSPENDED for thirty (30) days beginning May 22, 2021, through June 20, 2021.

4. The medicine and surgery license issued to Harry D. Malcolm, M.D., (license number 38164-20) is LIMITED as follows:

- a. Within one-hundred fifty (150) days of the date of this Order, Respondent shall at Respondent's own expense take and successfully complete the *Medical Ethics, Boundaries, and Professionalism* course offered by the Case Western Reserve University School of Medicine for a total of 15.75 AMA PRA Category 1 Credits.
- b. Respondent shall submit proof of successful completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department.

5. The medicine and surgery license issued to Harry D. Malcolm, M.D., (license number 38164-20) is also PERMANENTLY LIMITED as follows:

- a. Respondent is prohibited from conducting any breast, genital and/or vaginal examinations on any female patient without a chaperone being present and the presence of the chaperone must be documented in the patient health care record.
- b. This limitation is permanent and cannot be removed from Respondent's license.

6. Within ninety (90) days from the date of this Order, Harry D. Malcolm, M.D., shall pay COSTS of this matter in the amount of \$1,486.00.

7. Proof of successful course completion and 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

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

8. In the event Respondent violates any term of this Order, Respondent's license (no. 38164-20), 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.

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

WISCONSIN MEDICAL EXAMINING BOARD

By: Stephen A. Wasserman, MD
A Member of the Board

19 May 2021
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

HARRY D. MALCOLM, M.D.,
RESPONDENT.

STIPULATION

ORDER 0007387

Division of Legal Services and Compliance Case No. 20 MED 354

Harry D. Malcolm, M.D. (Respondent) 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 Stacic H. Rosenzweig.

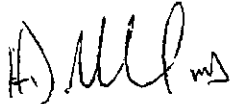
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Medical Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent 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, 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.



Harry D. Malcolm, M.D., Respondent
Hayward, WI 54843
License No. 38164-20


21 April 2021

Date

Stacie H. Rosenzweig, Attorney for Respondent
Halling & Cayo, SC
320 E. Buffalo Street, Suite 700
Milwaukee, WI 53202

4/22/2021

Date



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

4/23/2021

Date