

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

WAYNE A. BREARLEY, M.D.,
RESPONDENT.

:
:
: FINAL DECISION AND ORDER
:
:
: **ORDER 0007473**

Division of Legal Services and Compliance Case No. 19 MED 177

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

Wayne A. Brearley, M.D.
Wausau, WI 54401-4707

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 Wayne A. Brearley, M.D. (DOB xx-xx-1962), is licensed in the state of Wisconsin to practice medicine and surgery, having license number 45082-20, first issued on October 23, 2002, 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 Wausau, Wisconsin 54401-4707.

2. At all times relevant to this matter, Respondent practiced as an orthopedic surgeon at a clinic in Wausau, Wisconsin.

3. On January 19, 2018, Patient A, a female born in 2000, presented to Respondent with a left transverse midshaft femur fracture suffered in a skiing accident.

4. On January 20, 2018, Respondent performed an intramedullary fixation (antegrade nailing) of Patient A's left femur fracture. Respondent charted no complications and the intraoperative fluoroscopy and post-operative x-ray indicated "near anatomic alignment."

5. Respondent did not remove Patient A from the fracture table and clinically examine her immediately after surgery to confirm there was no malrotation of her left leg, which is a known complication in cases of transverse cross femoral fractures and cannot be detected through imaging.

6. On January 21, 2018, Patient A was discharged from the hospital. Respondent did not treat Patient A after discharge.

7. On May 9, 2018, a CT scan was ordered after Patient A continued to report ongoing internal rotation of her left leg. The results indicated an "abnormal left femoral anteversion angle of 58 degrees with severe internal rotation of the femur presumably related to rotational misalignment at the fracture site of the mid femur."

8. On June 27, 2018, Patient A underwent a left femoral shaft derotational osteotomy to correct the malrotation.

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 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 Wayne A. Brearley, M.D., is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

1. The attached Stipulation is accepted.

2. Respondent is REPRIMANDED.

3. Within 90 days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$975.00.

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

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

5. In the event Respondent violates any term of this Order, Respondent's license (no. 45082-20), 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: Stephen A. Wacker, MD
A Member of the Board

21 July 2021
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

WAYNE A. BREARLEY, M.D.,
RESPONDENT.

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STIPULATION

ORDER 0007478

Division of Legal Services and Compliance Case No. 19 MED 177

Respondent Wayne A. Brearley, 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 Erik H. Monson.

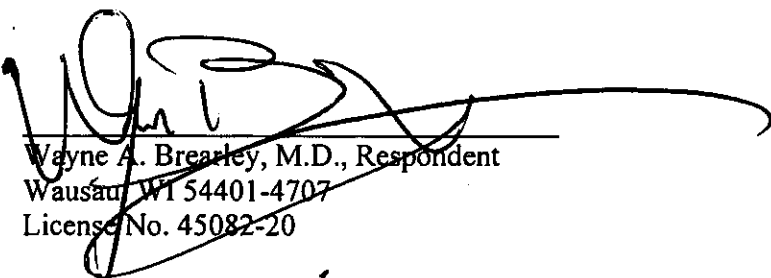
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Medical Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent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

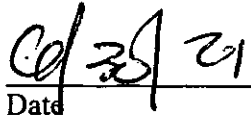
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by 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.

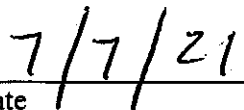
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.


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.


Wayne A. Brearley, M.D., Respondent
Wausau, WI 54401-4707
License No. 45082-20


Date


Erik H. Monson, Attorney for Respondent
Coyne, Schultz, Becker & Bauer, S.C.
150 East Gilman St., Suite 1000
Madison, WI 53703


Date


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

7/7/2021
Date