

## 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

JAMES J. FOSKETT, M.D.,  
RESPONDENT.

:  
:  
: FINAL DECISION AND ORDER  
:  
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**ORDER 0008305**

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Division of Legal Services and Compliance Case No. 21 MED 527

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

James J. Foskett, M.D.  
Waukesha, WI 53188

Wisconsin Medical Examining Board  
P.O. Box 8366  
Madison, WI 53708-f8366

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. James J. Foskett, M.D. (Respondent), (Year of Birth 1954) is licensed in the state of Wisconsin to practice medicine and surgery, having license number 28660-20, first issued on July 1, 1987, with registration current through October 31, 2023. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Waukesha, Wisconsin 53188.

2. At all times relevant to this proceeding, Respondent practiced as an orthopedic surgeon at a hospital located in Fort Atkinson, Wisconsin (Hospital).

3. On December 3, 2021, the National Practitioner Databank (NPDB) reported that a settlement payment was made to Patient A on behalf of Respondent, to settle an action alleging that Respondent negligently performed a hip surgery.

4. On December 20, 2017, Patient A presented to the Hospital emergency department complaining of right hip pain and loss of mobility as a result of a fall she experienced the previous night. Triage information noted that Patient A, a 60 year old female, was diagnosed with multiple conditions, including morbid obesity.

5. Respondent admitted Patient A to the Hospital with a nondisplaced/minimally displaced peritrochanteric femur fracture of the right hip. On December 21, 2017, Respondent performed open reduction and internal fixation (ORIF) surgery, with a gamma nail, on Patient A.

6. In March 2018, Patient A underwent a hip x-ray and it was determined that there was fractured hardware in the right femur, including a fracture of the proximal intramedullary rod and the distal interlocking screw. The x-ray also revealed possible slight increased impaction/angulation at the right proximal femur fracture sight.

7. The standard of minimally competent medical practice in the case at hand, and in light of the diagnosis of morbid obesity, would have been to recognize the significant displacement of the fracture caused by the mal-insertion of the implant, remove the implant, close the patient, and transfer the patient to a higher level of care.

8. On October 18 and 19, 2022, Respondent completed continuing medical education (CME) coursework in AAOS/OTA Trauma Update in Tactics and Techniques, Intertrochanteric Femur Fracture, totaling 10.25 CME credits.

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

#### CONCLUSIONS OF LAW

1. The 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 in 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 is REPRIMANDED..

3. The Board accepts the CME Respondent has already completed, as identified in paragraph 8 of the Findings of Fact, as satisfying the education the Board would have otherwise ordered in this matter. None of this education may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department.

4. Within ninety (90) days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$1,328.00.

5. Any requests, petitions, payments of costs (made payable to Department of Safety and Professional Services), and other information required by this Order shall be submitted to:

Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190, Madison, WI 53707-7190  
Telephone (608) 266-2112; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

Respondent may also submit this information online at: <https://dspsmonitoring.wi.gov>.

6. In the event Respondent violates any term of this Order, Respondent's license and registration (no. 28660-20), or Respondent's right to apply to renew his license and registration, 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.

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

WISCONSIN MEDICAL EXAMINING BOARD

By:   
A Member of the Board

12/21/22  
Date

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

JAMES J. FOSKETT, M.D.,  
RESPONDENT.

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STIPULATION

**ORDER 0008305**

Division of Legal Services and Compliance Case No. 21 MID 527

James J. Foskett, 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 Kristen Nelson.

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. Respondent is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order will be reported as required by the National Practitioner Databank (NPDB) Guidebook and as otherwise required by any licensure compact or any other state or federal law.

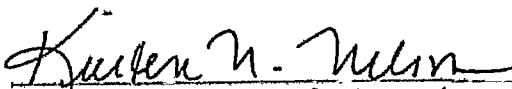
9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



James J. Foskett, M.D., Respondent  
Waukesha, WI 53188  
License No. 28660-20

11-23-2022

Date



Kristen Nelson, Attorney for Respondent  
Gimbel Reilly Guerin Brown, LLP  
330 E. Kilbourn Ave., Suite 1170  
Milwaukee, WI 53202

11/28/2022

Date



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

November 30, 2022

Date