

## 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 THE LICENSE OF :  
MOLLY A. DAY, M.D., :  
LICENSEE. :  
FINAL DECISION AND ORDER  
FOR REMEDIAL EDUCATION  
**ORDER 0008312**

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Division of Legal Services and Compliance Case No. 22 MED 070

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

Molly A. Day, M.D.  
Stoughton, WI 53589

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. Licensee Molly A. Day, M.D., (Year of Birth 1988) is licensed in the state of Wisconsin to practice medicine and surgery, having license number 75590-20, first issued on July 6, 2021, with registration current through October 31, 2023. Licensee's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Stoughton, Wisconsin 53589.

2. At all times relevant to this proceeding, Licensee practiced as an orthopedic surgeon at a surgical center in Madison, Wisconsin (Center).

3. On October 11, 2021, Patient A, a male born in 1962, presented to Licensee at the Center for a scheduled left shoulder arthroscopy with rotator cuff repair and biceps tenodesis.

4. During the pre-operative surgical team huddle, the nurse (Nurse B) asked Licensee how she wanted her epinephrine prepared, "in the bag or on the field." Licensee told Nurse B "on the field," meaning mixed with a local anesthetic such as Marcaine, drawn up into a syringe, and placed on the field. Licensee explained she injects "local with epi" to help with pain control postoperatively. Nurse B then asked, "30 cc, right?" and Licensee answered in the affirmative.

5. It is common practice and within the standard of care during arthroscopic shoulder surgery to administer a large syringe of at least 30cc of .25% percent Marcaine with a small amount of epinephrine to help with bleeding and to control pain postoperatively. It usually comes premixed for direct administration but may also be prepared by the surgical team. The nurse dispenses the medication to the scrub technician who then draws the medication into a syringe and places it on the field.

6. According to the Joint Commission's National Patient Safety Goals, effective January 2021 for hospital programs, all medications, medication containers (including syringes), and other solutions on and off the sterile field in perioperative and other procedural settings should be labeled with the medication's name, strength and amount if they are not immediately administered, and verified both verbally and visually.

7. Licensee provided sworn statements from two other orthopedic surgeons at the Center indicating that prior to this incident, syringes used in cases at the Center were inconsistently labeled.

8. Nurse B presented Licensee with two vials of epinephrine, a large, reusable vial containing 30 mL and a small, single-use vial containing 1 mL, and asked which vial Licensee used. Licensee replied "either" and pointed to the 30 mL vial, thinking that the small amount of epinephrine needed could be drawn from the vial and mixed with the local anesthetic. Licensee did not specify the amount of epinephrine to mix with Marcaine.

9. Nurse B brought the 30 mL vial of epinephrine to the scrub technician, verbalized its contents, and poured the contents into a medication cup on the sterile field. The scrub technician then drew all 30 mL of epinephrine into a 30cc syringe and placed the syringe on the field. The scrub technician claims she labeled the syringe "Epi," but Licensee maintains there was no label on the syringe.

10. When Licensee returned from scrubbing for the procedure, the expected syringe was on the field. Licensee began the procedure and injected the contents of the syringe into Patient A without verifying its contents. Patient A quickly developed an abnormal heart rhythm and a code was initiated. Despite life-saving measures being attempted, Patient A died.

11. This Final Decision and Order for Remedial Education does not constitute professional discipline. Licensee denies any unprofessional conduct or deviation in the Standard of Care, but to resolve this matter, Licensee consents to the entry of the following Conclusions of Law and Order.

## 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. Within six (6) months of the date of this Order, Licensee shall at her own expense take and successfully complete three (3) hours of education in effective communications and three (3) hours of education on root cause analysis as follows:

- a. Each course attended in satisfaction of this Order must be pre-approved by the Board or its designee. Licensee shall be responsible for locating course(s) satisfactory to the Board and for obtaining the required approval of the course(s) from the Board or its designee. Licensee must take and pass any exam offered for the course(s).
- b. Licensee 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 and may not be used in any future attempt to upgrade a credential.
- c. The Board's monitoring liaison may change the number of credit hours and/or education topics in response to a request from Licensee. The monitoring liaison may consider the topic availability and/or hours of education when determining if a change to the ordered education should occur.

3. Requests for course approval and proof of successful course completion 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) 266-2112; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

Licensee may also submit this information online at: <https://dpsmonitoring.wi.gov>.

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

WISCONSIN MEDICAL EXAMINING BOARD

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

12/21/22  
Date

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF THE LICENSE OF	:	
	:	STIPULATION
MOLLY A. DAY, M.D.,	:	
LICENSEE.	:	<b>ORDER 00083 12</b>

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Division of Legal Services and Compliance Case No. 22 MED 070

Licensee Molly A. Day, 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. 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 Claire Dalle Molle.

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.

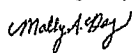
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by 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 or Licensee'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 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. Licensee is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order for Remedial Education 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 Licensee in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order for Remedial Education.

DocuSigned by:  
  
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Molly A. Day, M.D., Licensee  
Stoughton, WI 53589  
License No. 75590-20

11/8/2022  
Date

  
Claire Dalle Molle, Attorney for Licensee  
Grieve Law, LLC  
5610 Medical Circle, Suite 34  
Madison, WI 53719

11/9/22  
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

11/10/2022  
Date