

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

THOMAS MARKS, M.D.,
RESPONDENT.

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FINAL DECISION AND ORDER

ORDER 0008420

Division of Legal Services and Compliance Case No. 23 MED 048

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

Thomas Marks, M.D.
Windham, NH 03087

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 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 Thomas Marks, M.D., (Year of Birth 1952) is licensed in the state of Wisconsin to practice medicine and surgery pursuant to the Interstate Medical Licensure Compact (Compact), having license number 1294-320, first issued on May 26, 2021, 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 Windham, New Hampshire 03087.

2. On February 8, 2023, Respondent's license and registration were automatically suspended pursuant to Wis. Stat. § 448.980(10)(b), which requires all licenses issued to a physician by Compact member boards be automatically suspended without further action by the Board if a license granted to the physician by a member board in the state of principal license is suspended.

3. On January 26, 2023, the New Hampshire Board of Medicine (NH Board) ordered the emergency suspension of Respondent's New Hampshire license after the NH Board learned that Respondent had been arrested on charges of Aggravated Felonious Sexual Assault, Attempted Aggravated Felonious Sexual Assault, and Sexual Assault (x2). The NH Board found that Respondent's alleged conduct (unwanted sexual contact and acts with a patient and subsequent criminal charges) demonstrated that Respondent posed an imminent threat to public safety.

4. At all times relevant to this proceeding, Respondent practiced orthopedic surgery at a hospital in Claremont, New Hampshire (Hospital). New Hampshire is the state of Respondent's principal Compact license.

5. On January 24, 2023, Respondent was arrested at the Hospital after the police conducted an operation involving a patient wearing a wire. Respondent admitted to engaging in sexually explicit conduct with the patient.

6. 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. Stats. §§ 448.02(3) and 448.980(10), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. Based on the Findings of Fact, Respondent engaged in unprofessional conduct by engaging in sexually explicit conduct, sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient, pursuant to Wis. Admin. Code § Med 10.03(2)(f).

3. Based on the Findings of Fact, Respondent engaged in unprofessional conduct by having a credential pertaining to the practice of medicine and surgery or any act constituting the practice of medicine and surgery become subject to adverse determination by any agency of this or another state, pursuant to Wis. Admin. Code § Med 10.03(3)(c).

4. Based on the Findings of Fact, Respondent engaged in unprofessional conduct by violating or being convicted of any of the conduct listed in Table 10.03, any successor statute criminalizing the same conduct, or if in another jurisdiction, any act which, if committed in Wisconsin would constitute a violation of any statute listed in Table 10.03. Table 10.03 lists Wis. Stat. § 940.225(1), (2) or (3), first, second, or third degree sexual assault.

5. As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

1. The attached Stipulation is accepted.

2. The VOLUNTARY PERMANENT SURRENDER by Respondent of his license and registration to practice medicine and surgery in the state of Wisconsin (license no. 1294-320) is accepted.

3. This surrender constitutes Respondent's permanent relinquishment of his license and registration to practice medicine and surgery in the state of Wisconsin, and any appurtenant right to renew that license and registration. The Board will not, at any time in the future, process or otherwise consider an application or attempt at renewal by Respondent of credentials necessary to practice medicine and surgery in the state of Wisconsin.

4. In the event Respondent applies for another credential in the state of Wisconsin under Wis. Stat. chs. 440 through 480, Respondent shall, as a prerequisite to application, pay the costs of this matter in the amount of \$578.00.

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

WISCONSIN MEDICAL EXAMINING BOARD

By: Stephan A. Wacker, MD
A Member of the Board

3/15/2023
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

THOMAS MARKS, M.D.,
RESPONDENT.

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STIPULATION

ORDER 0008420

Division of Legal Services and Compliance Case No. 23 MED 048

Respondent Thomas Marks, 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.

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. 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.



Thomas Marks, M.D., Respondent
Windham, NH 03087
License No. 1294-320

March 2, 2023
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

03/03/2023
Date