

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
DAVID M. NIENHUIS, M.D., :
RESPONDENT. : **ORDER 0008695**

Division of Legal Services and Compliance Case No. 23 MED 085

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

David M. Nienhuis, M.D.
Waukesha, WI 53188

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 David M. Nienhuis, M.D., (Year of Birth 1960) is licensed in the state of Wisconsin to practice medicine and surgery, having license number 33303-20, first issued on June 24, 1992, 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 matter, Respondent practiced as an otolaryngologist at a hospital in Waukesha, Wisconsin.

3. On February 13, 2023, the Department received a Claims Paid Report indicating a settlement payment was made on Respondent's behalf regarding the death of Patient A, a female

born in 1955 with metastatic brain cancer who elected to undergo an endoscopic opacification of the sinus performed by Respondent to relieve her chronic sinus symptoms.

4. During the May 23, 2018 surgery, Respondent inadvertently passed his surgical tools through the posterior cribriform plate into Patient A's brain, believing it was the ostia, causing a subdural and subarachnoid hematoma, and ultimately Patient A's death.

5. Respondent has now retired from the practice of medicine.

6. Respondent denies engaging in unprofessional conduct and maintains that Patient A's injury was a known risk of the procedure. However, Respondent does not wish to incur expenses in contested disciplinary proceedings. Therefore, 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 these matters pursuant to Wis. Stat. § 448.02(3) and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

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 number 33303-20) is accepted.

3. This surrender constitutes Respondent's permanent relinquishment of his license to practice medicine and surgery in the state of Wisconsin, and any appurtenant right to renew that 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. If Respondent applies for any other credential in the state of Wisconsin under Wis. Stats., chs. 440 through 480, he shall pay the costs of this matter in the amount of \$267.00 before any application for a credential will be considered by the applicable board or Department.

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

WISCONSIN MEDICAL EXAMINING BOARD

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

8/16/2023
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DAVID M. NIENHUIS, M.D.,
RESPONDENT.

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:
:

STIPULATION

ORDER 0008695

Division of Legal Services and Compliance Case No. 23 MED 085

Respondent David M. Nienhuis, 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 Sean Gaynor.

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.

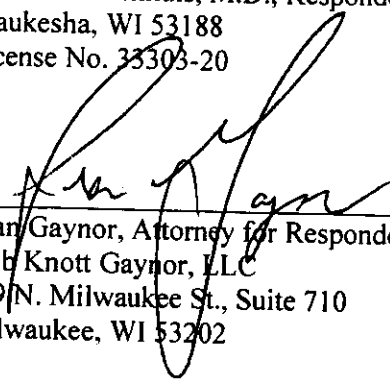
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

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.

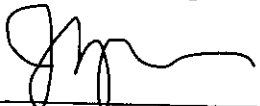
9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

/s/ David M. Nienhuis, M.D.
David M. Nienhuis, M.D., Respondent
Waukesha, WI 53188
License No. 33303-20

July 14, 2023
Date


Sean Gaynor, Attorney for Respondent
Leib Knott Gaynor, LLC
219 N. Milwaukee St., Suite 710
Milwaukee, WI 53202

7/14/23
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

7/19/2023
Date