STATE OF WASHINGTON

DEPARTMENT OF HEALTH

Olympia, Washington 98504

RE: Daniel P. Elskens, MD
Master Case No.: M2020-546
Document: Stipulation to Informal Disposition

Regarding your request for information about the above-named practitioner; attached is a true and correct copy of the document on file with the State of Washington, Department of Health, Adjudicative Clerk Office. These records are considered Certified by the Department of Health.

Certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

STATE OF WASHINGTON
WASHINGTON MEDICAL COMMISSION

In the Matter of the License to Practice as a Physician and Surgeon of: **DANIEL P. ELSKENS,MD** License No. MD.MD.60614358 Respondent.	**No. M2020-546** **STIPULATION TO INFORMAL DISPOSITION**

Pursuant to the Uniform Disciplinary Act, Chapter 18.130 RCW, the Washington Medical Commission (Commission) issued a Statement of Allegations and Summary of Evidence (Statement of Allegations) alleging the conduct described below. Respondent does not admit any of the allegations. This Stipulation to Informal Disposition (Stipulation) is not formal disciplinary action and shall not be construed as a finding of unprofessional conduct or inability to practice.

1. ALLEGATIONS

1.1 On November 20, 2015, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently expired in renewal. Respondent is eligible to renew his expired license. Respondent is board certified in neurological surgery.

1.2 On or about November 16, 2016, Respondent performed an anterior discectomy and fusion on Patient A. Patient A had long-standing neck pain radiating into her upper back and extremities. Patient A had undergone a previous fusion at C4-5 and C5-6 performed by another surgeon many years prior.

1.3 Respondent intended to perform the discectomy and fusion at level C3-4 and at what he believed was level C6-7.

1.4 On or about December 7, 2016, Patient A returned to the hospital for a post-operative examination. Per hospital policy, a physician assistant performed the examination, even though Respondent was available. Respondent relied on the physician assistant to review the post-operative x-rays and to go over them with Patient A. Patient A complained of neck and shoulder pain, as well as arm numbness at times, but reported some improvement.

1.5 On December 19, 2016, Patient A called Respondent's office complaining of persistent headache, stabbing pain across her shoulders, and weakness in the legs. She described the pain as a level 10. The physician assistant told Patient A she could wean herself out of her collar and take short walks. The physician assistant said he would order an MRI if the symptoms worsen.

1.6 On December 22, 2016, Patient A called Respondent's office complaining of pain and requesting that Respondent order an MRI. Respondent ordered an MRI. The MRI was performed on January 6, 2017. Since Patient A was not local, there was a delay in getting the MRI images to Respondent.

1.7 On February 14, 2017, Respondent saw and examined Patient A. Respondent noted Patient A was doing poorly, and also noted the fusion was performed at level C7-T1 instead of C6-7. Respondent offered to perform an additional surgery.

1.8 In July 2017, Patient A underwent corrective surgery by another surgeon at a different facility.

1.9 The wrong-level surgery and the delay in discovering that the surgery was performed at the wrong level resulted in Patient A suffering pain for several months.

1.10 As a result of this case, Respondent has made changes in his practice. Respondent now has important people in the room verbally agree that the procedure is taking place at the correct level, and he asks for a formal reading by the radiologist before the procedure begins. Following the procedure, if Respondent does not personally see the patient for the first post-operative visit, he personally reviews the post-operative films and does not rely on a colleague's interpretation.

2. STIPULATION

2.1 The Commission alleges that the conduct described above, if proven, would constitute a violation of RCW 18.130.180(4).

2.2 The parties wish to resolve this matter by means of a Stipulation pursuant to RCW 18.130.172(1).

2.3 Respondent agrees to be bound by the terms and conditions of this Stipulation.

2.4 This Stipulation is of no force and effect and is not binding on the parties unless and until it is accepted by the Commission.

2.5 If the Commission accepts the Stipulation it will be reported to the National Practitioner Data Bank (45 CFR Part 60), the Federation of State Medical Boards' Physician Data Center and elsewhere as required by law.

2.6 The Statement of Allegations and this Stipulation are public documents. They will be placed on the Department of Health web site, disseminated via the Commission's electronic mailing list, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). They are subject to disclosure under the Public Records Act, Chapter 42.56 RCW, and shall remain part of Respondent's file according to the state's records retention law and cannot be expunged.

2.7 The Commission agrees to forgo further disciplinary proceedings concerning the allegations.

2.8 Respondent agrees to successfully complete the terms and conditions of this informal disposition.

2.9 A violation of the provisions of Section 3 of this Stipulation, if proved, would constitute grounds for discipline under RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

3. INFORMAL DISPOSITION

The Commission and Respondent stipulate to the following terms:

3.1 **Compliance Orientation.** Respondent shall complete a compliance orientation in person or by telephone within **sixty (60) days** of the effective date of this Stipulation. Respondent must contact the Compliance Unit at the Commission by calling (360) 236-2763, or by sending an email to: Medical.compliance@wmc.wa.gov within **twenty (20) days** of the effective date of this Stipulation. Respondent must provide a contact phone number where Respondent can be reached for scheduling purposes.

3.2 **Continuing Medical Education (CME).** Respondent must successfully complete a continuing medical education (CME) course of at least four hours, pre-approved by the Commission or its designee, regarding best practices to avoid wrong-site surgery. Respondent must complete the coursework within **six (6) months** of the effective date of this Stipulation. Respondent shall provide the Commission with course certificates within one (1) month of completion.

3.3 **Paper.** Respondent shall write a paper that details what was learned in the course completed in paragraph 3.2. The paper must be a minimum of one thousand (1,000) words, typewritten, contain a bibliography, refer to any relevant CME completed in paragraph 3.2, and state how Respondent intends to apply what he learned in his practice. The paper must be submitted within two (2) months after completing the related CME pursuant to paragraph 3.2. Respondent should be prepared to discuss the subject matter of the written paper with the Commission at the initial personal appearance. The paper must be submitted to the Commission in electronic format to the following email address: Medical.compliance@wmc.wa.gov

3.4 **Personal Appearances.** Respondent must personally appear at a date and location determined by the Commission in approximately **twelve (12) months** after the effective date of this Stipulation, or as soon thereafter as the Commission's schedule permits. Thereafter, Respondent must make personal appearances annually or as frequently as the Commission requires unless the Commission waives the need for an appearance. Respondent must participate in a brief telephone call with the Commission's Compliance Unit prior to the appearance. The purpose of appearances is to provide meaningful oversight over Respondent's compliance with the requirements of this Stipulation. The Commission will provide reasonable notice of all scheduled appearances.

3.5 **Cost Recovery**. Respondent must pay one thousand dollars ($1,000) to the Commission as partial reimbursement of some of the costs of investigating and processing this matter. Payment must be by certified or cashier's check made payable to the Department of Health and must be received within **ninety (90) days** of the effective date of this Stipulation. Respondent must send payment to:

Department of Health
Washington Medical Commission
P.O. Box 1099
Olympia, Washington 98504-1099

3.6 **Demographic Census.** Washington law requires physicians and physician assistants to complete a demographic census with their license renewal. RCW 18.71.080(1)(b) and 18.71A.020(4)(b). Respondent must submit a completed demographic census to the Commission within **thirty (30) days** of the

effective date of this Stipulation. The demographic census can be found here: wmc.wa.gov/licensing/renewals/demographic-census.

3.7 **Self-Reporting.** Respondent shall report in writing, by email to medical.compliance@wmc.wa.gov, within **thirty (30) days** of the occurrence of any of the following events:

a. Denial, restriction, suspension or revocation of any healthcare-related license for the Respondent in another state;

b. Denial, restriction, suspension or revocation of privileges for the Respondent in any healthcare facility;

c. Any felony or gross misdemeanor charge against the Respondent; and

d. The filing of a complaint in superior court or federal district court against Respondent alleging negligence or request for mediation pursuant to chapter 7.70 RCW.

This requirement supplements and does not supersede the reporting obligations imposed by WAC 246-919-700, et seq. and WAC 246-16-230.

3.8 **Obey Laws.** Respondent must obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

3.9 **Costs.** Respondent must assume all costs that Respondent incurs in complying with this Stipulation.

3.10 **Violations.** If Respondent violates any provision of this Stipulation in any respect, the Commission may initiate further action against Respondent's license.

3.11 **Change of Address or Name.** Respondent must inform the Commission and the Adjudicative Clerk Office in writing of changes in Respondent's name and residential and/or business address within thirty (30) days of such change.

3.12 **Effective Date.** The effective date of this Stipulation is the date the Adjudicative Clerk Office places the signed Stipulation into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Stipulation.

3.13 **Termination of Stipulation**. Respondent may petition the Commission in writing to terminate this Stipulation after two years from the effective date of this Stipulation. Upon receipt of a written petition to terminate, the Commission will arrange a date and a location for Respondent to appear before the Commission, unless the

Commission waives the need for an appearance. An appearance on a petition to terminate may be combined with a required annual appearance. The Commission will have full discretion to grant or to deny the petition. If the Commission denies the petition, Respondent may petition again annually or at an interval determined by the Commission.

4. COMPLIANCE WITH SANCTION RULES

4.1 The Commission applies WAC 246-16-800, *et seq.,* to determine appropriate sanctions, including stipulations to informal disposition under RCW 18.130.172.

4.2 Tier B of the "Practice Below Standard of Care" schedule, WAC 246-16-810, applies to cases where substandard practices caused moderate patient harm or a risk of moderate to severe patient harm. Respondent's care of Patient A caused moderate harm or risk of severe or moderate harm in that Respondent operated at the wrong level and delayed treatment when he did not discover the wrong-level surgery for several months. This placed Patient A at risk of severe harm, a permanent spinal injury. The evidence is not clear and convincing that the patient suffered any permanent, severe injury as a result of Respondent's conduct. Rather, Patient A suffered a moderate injury, namely a second surgery, and additional pain from the delay in discovering the wrong-level surgery. Therefore, schedule B applies.

4.3 Tier B requires the imposition of sanctions ranging from two years of oversight to five years of oversight, unless revocation. Under WAC 246-16-800(3)(d), the starting point for the duration of the sanctions is the middle of the range. The Commission uses aggravating and mitigating factors to move towards the maximum or minimum ends of the range.

4.4 The aggravating and mitigating factors in this case, listed below, justify moving toward the minimum end of the range. The sanctions in this case include a CME course on preventing wrong-site surgery, a paper on what was learned in the CME course, and personal appearances for at least two years.

4.5 These sanctions are appropriate within the Tier B because of the following mitigating and aggravating factors:

4.5.1 Mitigating factors include (a) Respondent accepting responsibility for the outcome of the case, (b) his cooperation with the Commission's investigation, and (c) his changes in his practice to prevent this event from reoccurring.

4.5.2 There are no aggravating factors.

5. RESPONDENT'S ACCEPTANCE

I, DANIEL P. ELSKENS, MD, Respondent, certify that I have read this Stipulation in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Commission without my appearance. If the Commission accepts the Stipulation, I understand that I will receive a signed copy.

DANIEL P. ELSKENS, MD
RESPONDENT

12/10/2020
DATE

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ATTORNEY FOR RESPONDENT

DATE

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6. COMMISSION'S ACCEPTANCE

The Commission accepts this Stipulation. All parties shall be bound by its terms and conditions.

DATED: _____, 2020.

STATE OF WASHINGTON
WASHINGTON MEDICAL COMMISSION

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PANEL CHAIR

PRESENTED BY:

Mill Dlein WSBA 23692 for MLF
MICHAEL L. FARRELL, WSBA NO. 16022
COMMISSION STAFF ATTORNEY

6. COMMISSION'S ACCEPTANCE

The Commission accepts this Stipulation. All parties shall be bound by its terms and conditions.

DATED: January 22, 2021 ~~, 2020.~~

STATE OF WASHINGTON
WASHINGTON MEDICAL COMMISSION

April Jaeger MD
PANEL CHAIR

PRESENTED BY:

MICHAEL L. FARRELL, WSBA NO. 16022
COMMISSION STAFF ATTORNEY