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MED 5237

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
BEFORE THE STATE MEDICAL BOARD

In the matter of:)
)
Erik Peter Kohler, MD)
)
Respondent)
Case No. 2800-08-002

ACCUSATION

This Accusation filed on December 21, 2010, which initiates a proceeding pursuant to Alaska Statute AS 08.01.075, AS 44.62.360, AS 08.64.326, and AS 08.64.331 to revoke, suspend, or impose other disciplinary sanctions against Medical License No. 5237 issued to Eric Peter Kohler, MD, (Respondent) by the State of Alaska.

In support of this Accusation, Petitioner, Donald Habeger, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development, State of Alaska, alleges in his official capacity as follows:

1. On December 11, 2003, Respondent was issued Medical License No. 5237, which will lapse unless renewed by December 31, 2010.

Patient 1

2. On August 8, 2000, Patient 1 was admitted to Stevens Hospital in the State of Washington. The Respondent operated on Patient 1's back in the early morning hours of August 8, 2000. Several issues have been identified after review of Patient 1's chart.

3. . When Patient 1's chart was reviewed, no pre-operative history or exam, or admission note was found. Also, when reviewing Patient 1's chart, it was found that the

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INITIALS

Respondent dictated what appears to be an admission note within the operative report, not an accepted practice in the practice of medicine.

4. In his post-operative admission note, the Respondent noted that Patient 1 had disc herniations. However, in his operative note dictated at the same time, the Respondent noted osteophytes, only.

5. The Respondent did not comment in the record the findings of the post-operative X-rays or MRI or CT scan – the MRI showed abnormalities.

6. The Respondent did not visit Patient 1 on August 12, 2000, nor did he visit him on August 13th or 16th, 2000.

7. An intra-operative event occurred during the operation and caused damage to Patient 1's spinal cord. As a result, Patient 1 awoke from the procedure with almost complete quadriplegia. Prior to the operation, Patient 1 had no motor impairment.

8. Later, Patient 1 was admitted to the VA hospital in Washington. Patient 1 underwent surgery at the VA hospital to address instability caused by the Respondent's operative procedure.

9. The Respondent did not dictate his discharge summary on Patient 1 until four months after the patient was discharged.

10. There is no record of an assistant in the operative record or the anesthesia record.

11. In 2009, the Alaska State Medical Board found that the Respondent violated as 08.64.334 for not reporting this medical malpractice matter in the time required.

Patient 2

12. Patient 2 suffered a back injury on or about March 22, 2007.

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13. On November 8, 2007, Patient 2 met with Respondent for an evaluation. Various treatment options were discussed, including Kyphoplasty, a procedure which allows medical grade cement (methyl methacrylate) to be placed into the fractured bone to help stabilize the spine. A MRI was scheduled for November 27, 2007.

14. On December 27, 2007, Patient 2 met again with the Respondent to discuss her options and decided to undergo the Kyphoplasty procedure based upon the Respondent's recommendation and representations.

15. On January 4, 2008, the Respondent performed the Kyphoplasty procedure on Patient 2.

16. Following the procedure, Patient 2 was transferred to the Post Anesthesia Care Unit (PACU). She was found to have bilaterial weakness of her legs (post operative paraplegia) upon awakening from anesthesia. A CT scan performed later showed compression of the spinal cord.

17. Patient 2 was taken back to the operating room where the Respondent performed a spinal cord decompression by various methods.

18. Despite the second surgery, Patient 2 continued to suffer a dense left paraplegia and right paraplegia, which failed to resolve while she remained in Mat-Su Regional Medical Center. A post-operative CT scan revealed residual methyl methacrylate that had not been removed during the second surgery.

19. Since the operations, Patient 2 has undergone intensive rehabilitation, including physical and occupational therapy. She was discharged on February 12, 2008.

20. Patient 2 continues to suffer neurologic deficits. Although she has undergone two subsequent surgical procedures, Patient 2 is left with permanent, irreversible

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injuries, including neurologic deficits with lower extremity weakness, and bladder and bowel dysfunction.

COUNT I

21. While performing the Kyphoplasty on Patient 2, the Respondent engaged in professional incompetence, gross negligence or repeated negligent conduct in violation of as 08.64.326(a)(8)(A).

22. The Respondent's violation of as 08.64.326(a)(8)(A) warrants discipline pursuant to as 08.64.331(a), which provides that "If the board finds that a licensee has committed an act set out in as 08.64.326(a), the board may (1) permanently revoke a license to practice; (2) suspend a license for a determinate period of time; (3) censure a licensee; (4) issue a letter of reprimand; (5) place a licensee on probationary status...; (6) impose limitations or conditions on the practice of the licensee; (7) impose a civil fine of not more than $25,000; or (8) impose one or more of the sanctions set out in (1) – (7) of this subsection.

COUNT II

23. While operating on Patient 2, the Respondent engaged in professional incompetence, gross negligence or repeated negligent conduct in violation of as 08.64.326(a)(8)(A).

24. The Respondent's violation of as 08.64.326(a)(8)(A) warrants discipline pursuant to as 08.64.331(a), which provides that "If the board finds that a licensee has committed an act set out in as 08.64.326(a), the board may (1) permanently revoke a license to practice; (2) suspend a license for a determinate period of time; (3) censure a licensee; (4) issue a letter of reprimand; (5) place a licensee on probationary status...; (6) impose limitations or

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conditions on the practice of the licensee; (7) impose a civil fine of not more than $25,000; or (8) impose one or more of the sanctions set out in (1) – (7) of this subsection.

COUNT III

25. Taken together, the Respondent's conduct while operating on Patient 1 & 2 amounts to professional incompetence, gross negligence or repeated negligent conduct in violation of as 08.64.326(a)(8)(A).

26. The Respondent's violation of as 08.64.326(a)(8)(A) warrants discipline pursuant to as 08.64.331(a), which provides that "If the board finds that a licensee has committed an act set out in as 08.64.326(a), the board may (1) permanently revoke a license to practice; (2) suspend a license for a determinate period of time; (3) censure a licensee; (4) issue a letter of reprimand; (5) place a licensee on probationary status...; (6) impose limitations or conditions on the practice of the licensee; (7) impose a civil fine of not more than $25,000; or (8) impose one or more of the sanctions set out in (1) – (7) of this subsection.

Wherefore, in accordance with as 08.01.075 and as 08.64.331, the Division of Corporations, Business and Professional Licensing respectfully requests the Alaska State Medical Board to revoke or suspend Medical License No. 5237 or impose other sanctions within its lawful authority against respondent which the Alaska State Medical Board deems just and proper.

DATED this 21st day of December, 2010, at Anchorage, Alaska.

SUSAN K. BELL, COMMISSIONER

By: _____

Quinten Warren, Chief Investigator for
Donald Habeger, Director
Division of Corporations, Business and Professional Licensing

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