



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
Olympia, Washington 98504

RE: Michael S. Clark, MD  
Master Case No.: M2011-1132  
Document: Statement of Allegations

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:

The identity of the complainant if the person is a consumer, health care provider, or employee, pursuant to RCW 43.70.075 (Identity of Whistleblower Protected) and/or the identity of a patient, pursuant to RCW 70.02.020 (Medical Records - Health Care Information Access and Disclosure)

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  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice  
as a Physician and Surgeon of:

**MICHAEL S. CLARK, MD**  
License No. MD00039466

**No. M2011-1132**

**STATEMENT OF ALLEGATIONS  
AND SUMMARY OF EVIDENCE**

Respondent

The Disciplinary Manager of the Medical Quality Assurance Commission (Commission), on designation by the Commission, makes the allegations below, which are supported by evidence contained in program file number 2010-150659. The patients referred to in this Statement of Allegations and Summary of Evidence are identified in the attached Confidential Schedule.

**1. ALLEGATIONS**

1.1 On May 1, 1998, the state of Washington issued Respondent a limited license to practice as a physician and surgeon as a medical resident. On February 7, 2001, the state of Washington issued Respondent an unlimited license to practice as a physician and surgeon. Respondent's license is currently active.

1.2 Throughout the course of his doctor patient relationship with Patient A, Respondent failed to maintain appropriate professional boundaries. Respondent's actions were unethical and placed the patient at unreasonable risk of harm from substandard care, including:

1.2.1 As early as 2002 through August 2008 Respondent's medical care for Patient A took place in non-clinical settings such as Patient A's residence and Patient A's office. During this time, Respondent failed to adequately chart his medical treatment for Patient A.

1.2.2 Respondent failed to keep contemporaneous records of prescriptions for medication that he issued to Patient A for a period beginning as early as August 2002 through January 2009.



1.2.3 Between May 2007 and February 2008 Respondent entered into financial arrangements with Patient A, including the acceptance of personal gifts and favors from Patient A and providing money to Patient A, including:

- a. Respondent accepted a \$2500 contribution from Patient A for a college fund for Respondent's offspring;
- b. Respondent accepted a twenty thousand dollar (\$20,000) deposit by Patient A reserving Respondent a seat for a future commercial sub-orbital space flight, and
- c. Respondent loaned Patient A at least one thousand dollars (\$1,000).

1.3 Respondent failed to maintain appropriate professional boundaries in his medical treatment for Patient B. From approximately May of 2008, Respondent's treatment of Patient B took place in non-clinical setting such as Patient B's home. Respondent didn't have Patient B appear for treatment at his medical office until approximately January 9, 2009. Between May 2008 and January 2009, Respondent failed to keep contemporaneous records of prescriptions for medication that he issued to Patient B and failed to adequately chart his medical treatment for Patient B.

1.4 Respondent failed to chart consent from Patients A and B before disclosing each of their confidential health care information to the other.

## 2. SUMMARY OF EVIDENCE

2.1 Investigative report prepared for the Commission in this matter.

## 3. ALLEGED VIOLATIONS

3.1 The facts alleged in Section 1, if proven, would constitute unprofessional conduct in violation of RCW 18.130.180(1), (4) and (20) which provide in part:

**RCW 18.130.180 Unprofessional conduct.** The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder of the crime described in the indictment or information, and of the person's violation of the

statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

(20) The willful betrayal of a practitioner-patient privilege as recognized by law;

#### **4. NOTICE TO RESPONDENT**

4.1 The Commission has determined that this case may be appropriate for resolution through a Stipulation to Informal Disposition pursuant to RCW 18.130.172(2). A proposed Stipulation to Informal Disposition is attached, which contains the disposition the Commission believes is necessary to address the conduct alleged in this Statement of Allegations and Summary of Evidence.

4.2 If Respondent agrees that the disposition imposed by the Stipulation to Informal Disposition is appropriate, Respondent should sign and date the Stipulation to Informal Disposition and return it within fourteen (14) days to the Medical Quality Assurance Commission at PO Box 47866, Olympia, WA 98504-7866.

4.3 If Respondent does not agree that the terms and conditions contained in the Stipulation to Informal Disposition are appropriate, Respondent should contact Teresa Lanereau, Staff Attorney for the Medical Quality Assurance Commission, PO Box 47866, Olympia, WA 98504-7866, (360) 236-2769 within fourteen (14) days.

4.4 If Respondent does not respond within fourteen (14) days, the Commission will assume Respondent has declined to resolve the allegations by means of a Stipulation to Informal Disposition.

4.5 If Respondent declines to resolve the allegations by means of a Stipulation to Informal Disposition pursuant to RCW 18.130.172(2), the Commission may proceed to

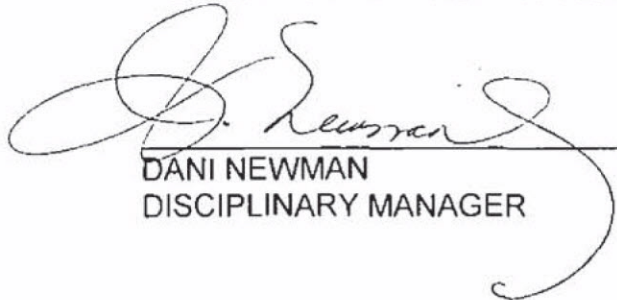


formal disciplinary action against Respondent by filing a Statement of Charges, pursuant to RCW 18.130.172(3).

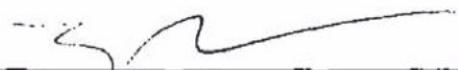
4.6 The cover letter enclosed with this Statement of Allegations and Summary of Evidence was mailed to the name and address currently on file for Respondent's license. Respondent must notify, in writing, the Commission if Respondent's name and/or address changes.

DATED: April 5, 2010

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION



DANI NEWMAN  
DISCIPLINARY MANAGER



TERESA LANDREAU, WSBA #9591  
DEPARTMENT OF HEALTH STAFF ATTORNEY

## CONFIDENTIAL SCHEDULE

This information is confidential and is NOT to be released without the consent of the individual or individuals named herein. RCW 42.56.240(1)

Patient A

Patient B:







STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
Olympia, Washington 98504

RE: Michael S. Clark, MD  
Master Case No.: M2011-1132  
Document: Stipulation to Informal Disposition

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

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**STATE OF WASHINGTON  
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In the Matter of the License to Practice  
as a Physician and Surgeon of:

**MICHAEL S. CLARK, MD**  
License No. MD00039466

Respondent.

**No. M2011-1132**

**STIPULATION TO INFORMAL  
DISPOSITION**

Pursuant to the Uniform Disciplinary Act, Chapter 18.130 RCW, the Medical Quality Assurance 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 May 1, 1998, the state of Washington issued Respondent a limited license to practice as a physician and surgeon as a medical resident. On February 7, 2001, the state of Washington issued Respondent an unlimited license to practice as a physician and surgeon. Respondent's license is currently active.

1.2 Throughout the course of his doctor patient relationship with Patient A, Respondent failed to maintain appropriate professional boundaries. Respondent's actions were unethical and placed the patient at unreasonable risk of harm from substandard care, including:

1.2.1 As early as 2002 through August 2008 Respondent's medical care for Patient A took place in non-clinical settings such as Patient A's residence and Patient A's office. During this time, Respondent failed to adequately chart his medical treatment for Patient A.

1.2.2 Respondent failed to keep contemporaneous records of prescriptions for medication that he issued to Patient A for a period beginning as early as August 2002 through January 2009.



1.2.3 Between May 2007 and February 2008 Respondent entered into financial arrangements with Patient A, including the acceptance of personal gifts and favors from Patient A and providing money to Patient A, including:

- a. Respondent accepted a \$2500 contribution from Patient A for a college fund for Respondent's offspring;
- b. Respondent accepted a twenty thousand dollar (\$20,000) deposit by Patient A reserving Respondent a seat for a future commercial sub-orbital space flight, and
- c. Respondent loaned Patient A at least one thousand dollars (\$1,000).

1.3 Respondent failed to maintain appropriate professional boundaries in his medical treatment for Patient B. From approximately May of 2008, Respondent's treatment of Patient B took place in non-clinical setting such as Patient B's home. Respondent didn't have Patient B appear for treatment at his medical office until approximately January 9, 2009. Between May 2008 and January 2009, Respondent failed to keep contemporaneous records of prescriptions for medication that he issued to Patient B and failed to adequately chart his medical treatment for Patient B.

1.4 Respondent failed to chart consent from Patients A and B before disclosing each of their confidential health care information to the other.

## **2. STIPULATION**

2.1 The Commission alleges that the conduct described above, if proven, would constitute a violation of RCW 18.130.180(1), (4) and (20).

2.2 The parties wish to resolve this matter by means of a Stipulation to Informal Disposition (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 Health Integrity and Protection Databank (HIPDB)(45 CFR Part 61), the Federation of State

Medical Board's Physician Data Center, and elsewhere as required by law. HIPDB will report this Stipulation to the National Practitioner Data Bank (45 CFR Part 60).

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 listserv, 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 forego 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 **Probation.** The Commission places Respondent's license on PROBATION for at least three (3) years from the effective date of this Stipulation.

3.2 **Ethics Course.** Respondent will attend a two-day ethics including practitioner-patient boundary course approved by the Commission Medical Consultant. The ProBE course offered by the Center for Personalized Education for Physicians (CPEP) in Denver, Colorado is pre-approved. Respondent will complete the course before September 2012, unless otherwise allowed in writing by the Commission Medical Consultant. Respondent's future documentation of an emergent need to delay the course until November 2012 may be considered. Respondent will provide the course instructors with a copy of this Stipulation prior to the course. Respondent will sign all necessary waivers to allow the Department staff to communicate with the course instructors as needed. Respondent will submit proof of the satisfactory completion of the course to the Commission. If the course requires Respondent to complete a written report, Respondent will assure that the Commission receives a copy of Respondent's



written report. If the course instructors inform the Commission that Respondent did not receive an "unconditional pass" or otherwise satisfactorily complete the course, the Commission may require Respondent to re-take the course.

3.3 **Washington Physicians Health Program.** Respondent will maintain satisfactory compliance with the contract he signed with the Washington Physicians Health Program (WPHP) until successful completion and discharge with staff approval from the WPHP. Respondent agrees to sign a waiver of confidentiality and release of information from the WPHP to the Commission. Respondent will authorize and request a representative of the WPHP to prepare and submit quarterly reports to the Commission addressing Respondent's progress in treatment, compliance with the treatment program, and ability to practice medicine in a safe manner. The report will be due 30 days prior to scheduled compliance reviews before the Commission. Respondent will inform the maker of the report of the date of each scheduled compliance review. Respondent understands and agrees that should he fail to fully comply with the requirements of the WPHP, all information compiled by the WPHP will be made available to the Commission. Respondent's term of probation shall be extended if recommended by WPHP to ensure adequate monitoring of Respondent's progress.

3.4 **Compliance appearances.** Respondent shall appear before the Commission twelve (12) months from the effective date of this Stipulation, or as soon thereafter as the Commission's schedule permits, and present proof that he is complying with this Stipulation. After the first appearance, Respondent shall continue to make compliance appearances every twelve (12) months unless otherwise instructed in writing by the Commission or its representative, until the Commission releases Respondent from the terms and conditions of this Stipulation.

3.5 **Costs.** Respondent shall reimburse costs to the Commission in the amount of two thousand dollars (\$2,000) which must be received by the Commission within one (1) year of the date of entry of this Stipulation to Informal Disposition. The reimbursement shall be paid by certified or cashier's check or money order, made payable to the Department of Health and mailed to the Department of Health, Medical Quality Assurance Commission at P.O. Box 1099, Olympia, Washington 98507-1099.

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



3.7 **Costs.** Respondent is responsible for payment of all costs incurred in complying with this Stipulation.

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

3.9 **Termination of Stipulation.** Respondent may not petition to terminate the terms and conditions of this Agreed Order until at least three (3) years after the effective date of this Stipulation, and after providing proof that he has fully complied with the terms of this Stipulation to Informal Disposition, including an unconditional pass from the approved ethics course and an unconditional recommendation from WPHP stating that Respondent can practice with reasonable skill and safety without the need for ongoing monitoring. When Respondent files such a petition, a date and time will be arranged for Respondent's appearance before the Commission, unless the Commission waives the need for Respondent's personal appearance. The Commission will have sole discretion to grant or deny Respondent's petition.

3.10 **Change of Address.** Respondent must inform the Commission and the Adjudicative Clerk Office in writing, of changes in his residential and/or business address within thirty (30) days of such change.

3.11 **Effective Date.** The effective date of this Stipulation to Informal Disposition 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.

#### **4. COMPLIANCE WITH SANCTION RULES**

4.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions. Tier B of the "Practice Below Standard of Care schedule, WAC 246-16-810, applies to cases where substandard practices create the risk of moderate to severe patient harm. Respondent's care of Patient A and Patient B risked severe or moderate harm because these patients were treated by Respondent for significant medical issues without the safeguards inherent in a clinical setting. The attendant lack of medical charting and failure to document prescriptions created significant gaps in the patients' medical histories. These gaps are detrimental to other providers attempting to care for these patients, particularly in the area of responsible prescribing practices. No



sanction schedule applies to the alleged boundary violations and the alleged unauthorized dissemination of health care information. Therefore, the Commission uses its judgment to impose sanctions for these alleged violations. WAC 246-16-800(2)(d).

4.2 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.

4.3 The aggravating and mitigating factors in this case, listed below, justify moving toward the lower end of mid-range. The sanctions in this case include a minimum of three years of probation, successful attendance of an intensive ethics course, monitoring by WPHP, annual compliance appearances before the Commission, reimbursement of costs, and other terms designed to protect the public.

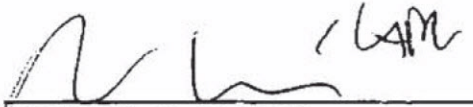
4.4 These sanctions are appropriate within the Tier B range given the facts of the case and the following aggravating and mitigating factors:

- A. As an aggravating factor, Respondent's unprofessional conduct involved more than one patient.
- B. As an aggravating factor, Respondent initially minimized and denied aspects of his unprofessional conduct to the investigator for the Commission.
- C. As a mitigating factor, Respondent did eventually transfer both patients to his clinical practice, and improved recordkeeping thereafter.
- D. As a mitigating factor, Respondent eventually cooperated with the Commission and admitted aspects of his misconduct.
- E. As a mitigating factor, Respondent is agreeing to be evaluated and follow the recommendations of WPHP, with an understanding the term of probation and oversight may be significantly expanded if WPHP so recommends.

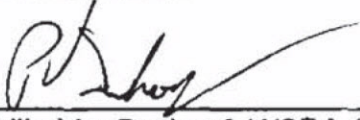
## **5. RESPONDENT'S ACCEPTANCE**

I, MICHAEL S. CLARK, Respondent, certify that I have read this Stipulation to Informal Disposition 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 to Informal Disposition, I understand that I will receive a signed copy.

  
MICHAEL S. CLARK  
RESPONDENT

3/6/2012  
DATE

  
Philip VanDerhoef, WSBA #14564  
ATTORNEY FOR RESPONDENT


3/15/12  
DATE

#### 6. COMMISSION'S ACCEPTANCE

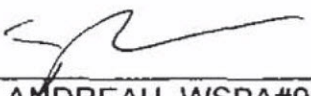
The Commission accepts this Stipulation to Informal Disposition. All parties shall be bound by its terms and conditions.

DATED: April 5, 2012

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION

  
PANEL CHAIR

PRESENTED BY:

  
TERESA LANDREAU, WSBA#9591  
DEPARTMENT OF HEALTH STAFF ATTORNEY