

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**
: **ORDER 0002055**
JAVIER A. RINCON, M.D., :
RESPONDENT. :

Division of Enforcement Case #12 MED 4

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

Javier A. Rincon, M.D.
1660 Highland Dr
Elm Grove, WI 53122

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Safety and Professional Services
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the 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

1. Respondent Javier Andres Rincon, M.D. (dob January 13, 1961) is and was at all times relevant to the facts set forth herein a physician and surgeon licensed in the State of Wisconsin pursuant to license #29828-20, first granted on September 23, 1988. Respondent is a family practitioner, and is certified by the American Board of Family Practice.

2. For many years, Respondent provided care and treatment to Ms. A, a woman born in 1969, and to her husband and children.

3. In June, 2011, Ms. A informed Respondent at an office visit that she and her family were moving out of state. At the end of the office visit, the patient asked to kiss Respondent, and he permitted her to kiss him on his cheek.

4. Respondent later telephoned Ms. A with the results of a medical test, using his cell phone. At some later time, and using Respondent's cell phone number, Ms. A invited Respondent to meet for a cocktail, and he accepted. Ms. A and Respondent began to send text messages to each other, and met on several occasions, including having sexual intercourse.

5. Ms. A and her family began a move, but returned within a few days. Ms. A and Respondent continued to meet for sexual encounters, including intercourse, and to engage in an activity commonly known as "sexting." Ms. A also returned to Respondent's care for an episode of gastritis and for medication refills, which he provided.

6. These activities continued until December, 2011, when the patient's husband discovered explicit text messages on Ms. A's telephone, and went to the administrator of the clinic where Respondent practiced. Respondent was asked to resign, and did so.

7. Since January, 2012, Dr Rincon has been voluntarily engaging in psychotherapy with a psychiatrist, Walter T. Davison, M.D., who submitted a written report stating in part that "there is insufficient evidence to support a diagnosis of personality disorder." Dr. Davison further opined that Respondent was safe to resume practice, and was unlikely to "break the bond of trust" with his patients.

8. In May 2012, at the request of the Division of Enforcement, Respondent had a psychological evaluation performed by Gary R. Schoener, a licensed psychologist in Minneapolis who has extensive experience evaluating health care practitioners who have become involved sexually with patients. Mr. Schoener's report concluded and recommended:

- a. Respondent does not show evidence of any sexual impulse control disorder, sociopathy, or any personality disorder.
- b. Some in clarity regarding maintenance of professional boundaries may have played a role, and Respondent might benefit from a workshop on this topic.
- c. Respondent should develop an appropriate professional, social media policy if and when he returns to practice.
- d. Respondent should continue in individual psychotherapy until such time as he and his therapist feel that full insight and understanding have been obtained regarding the relationship, and related events.
- e. Respondent can safely return to practice. The events which led to this incident were singular and situational. There is no evidence that the sexual contact involved fraud on his part or a subverting of medical practice.
- f. Any health care employer should be alerted to the fact that in this case at least, Respondent was careless with his interaction with a female patient via text, etc. Any social media policy (see above) needs to be identified and followed.
- g. In conjunction with his therapist, Respondent should develop a practice schedule which provides for balance in his life, and which supports his marriage and family life.

CONCLUSIONS OF LAW

A. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 448.02(3), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

B. The conduct described in ¶¶4-6, above, violated Wis. Adm. Code § Med 10.02(2)(zd). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

SUSPENSION

1. The license of Javier A. Rincon, M.D., Respondent, to practice medicine and surgery in the State of Wisconsin is **SUSPENDED** for a period of twelve (12) months, effective immediately. At the end of the twelve months, the period of suspension shall end without further order of the Board.

STAY OF SUSPENSION

2. The suspension of Respondent's license is hereby **STAYED** immediately and shall remain stayed during the period of suspension as long as he is in compliance with the Terms and Conditions, below.

3. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any term or condition below. Repeated violation is defined as the multiple violation of the same provision or violation of more than one provision.

4. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:

- a. Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
- b. Actual notice to Respondent or Respondent's attorney.

5. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.

6. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code § SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of

Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS FOR STAY

7. Respondent shall report any change of employment status, residence, address or telephone number to the Department Monitor within five days of the date of a change.

Practice Supervisor

8. Respondent shall provide a copy of this Final Decision and Order to his supervisory authority, forthwith. If Respondent changes his practice setting, he shall immediately provide a copy of this Final Decision and Order to his supervisory authority at the new location.

9. Respondent's practice supervisory authority shall submit written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance and shall include any complaints made against Respondent by patients or their family. It is Respondent's responsibility to ensure that the reports are submitted when due.

Psychotherapist

10. Within 30 days of the date of this Order, Respondent shall provide proof to the Department Monitor that he has begun or continued treatment with a psychotherapist approved by the Board or its designee to address the issues identified by Mr. Schoener and that the psychotherapist has been provided with a copy of this Final Decision and Order and the report of Mr. Schoener. The frequency of sessions shall be at least monthly and the goal of the therapy is to assist Respondent in keeping his personal and professional life in balance. Dr. Davison is approved as a psychotherapist.

11. The psychotherapist shall provide quarterly reports to the Department Monitor, which shall state how many sessions have been held that quarter and whether Respondent has been cooperative with treatment.

Professional Boundaries Education

12. Respondent shall, no later than December 31, 2012, demonstrate satisfactory completion of one of the following programs, or an equivalent course which has been preapproved by the Board or its designee:

- a. Intensive Course in Medical Ethics, Boundaries and Professionalism (including the reflective essay and post-reflective essay) offered by Case Western Reserve University School of Medicine.
- b. Maintaining Proper Boundaries offered by Vanderbilt University School of Medicine.
- c. Maintaining Proper Boundaries, jointly sponsored by the University of Texas Southwestern Medical Center and the Santé Institute of Professional Education and Research.

13. If Respondent is unable to complete any of the courses described in paragraph 12 because of illness or other circumstance found to be acceptable by the Board or its designee, Respondent shall, prior to the required completion date, petition for a reasonable extension of time within which to take and complete the course or an equivalent course.

14. Respondent is responsible for paying the full cost of attending the course.

MISCELLANEOUS

15. Respondent shall have a female employee present during any intimate examination of a female patient, including pelvic, breast, buttock and rectal examinations, and during any examination during which an intimate part is likely to be exposed. Respondent shall document the identity of the female employee in the patient health care record. This requirement is permanent.

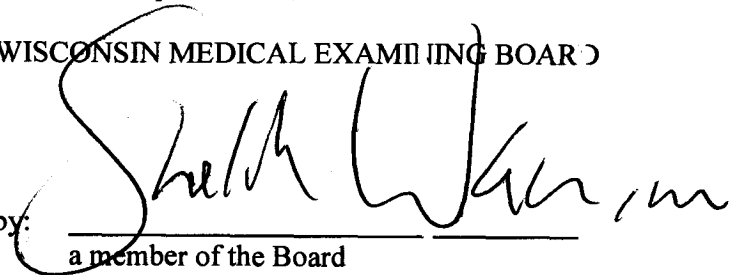
16. Pursuant to Wis. Stat. § 440.22(2), within six months of the date of this Order, Respondent shall pay to the Department of Safety and Professional Services the costs of this proceeding in the amount of \$1,200.

17. All requests, notices, reports and payments required by this Order shall be provided to:

Department Monitor
Department of Safety and Professional Services
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935
Fax (608) 266-2264
Telephone (608) 267-3817

Dated this September 19, 2012.

WISCONSIN MEDICAL EXAMINING BOARD

by: 
a member of the Board

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