

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST

ROLONDO MERCADO TONG, M.D.,  
RESPONDENT.

FINAL DECISION AND ORDER  
96 MED 285

LS970602IMED

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

Rolondo Mercado Tong, M.D.  
799 N. Cedar  
P.O. Box 668  
Chama, NM 87520

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

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

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 Rolondo Mercado Tong (dob 3/15/49) 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 #36529, first granted on 4/28/95. Respondent is a general surgeon. A formal complaint has been filed in this matter, alleging the matters set forth in pars. 2-9, all of which respondent denies.
2. The complaint alleges that the Clark County Sheriff's Department has taken a statement from a 26 year old nurse and former patient of respondent's in which she states that respondent gave her midazolam, a controlled substance, for non-medical purposes, on or about the last week of March, 1996, in a form which is not approved by the FDA. The circumstances of this include the fact that the nurse and respondent were having an affair, and the providing of these substances occurred in the context of their meeting for the purpose of sexual activity and the consumption of alcoholic beverages. Respondent again gave her oral dosage forms of midazolam and alprazolam (more commonly known as Xanax®), both of which are controlled substances, outside the course of legitimate practice, on or about April 10, 1996.
3. The complaint alleges that sheriff's deputies executed a search warrant at respondent's home at N2899 State Highway 73, Neillsville, WI, and office at 219 Sunset Place, Neillsville, WI, and found quantities of an oral dosage form of the benzodiazepine "midazolam," the substance

described by the nurse. This form is not approved for oral dosage in the United States and its importation is not lawful unless pursuant to legitimate research or for personal use pursuant to legitimate prescription. There is no reason to believe that respondent is participating in any legitimate research relating to this substance, or that he has a prescription for personal use of this medication. The search warrant has been found to be invalid by a circuit judge, and such ruling is presently on appeal in the Wisconsin Court of Appeals.

4. The complaint alleges that the Clark County Sheriff's Department has also taken a statement from an 18 year old former patient of respondent's, in which she states that respondent invited her on a date on July 21, 1996. At that time, respondent did not have any knowledge of the young woman other than as a patient. While on this date, respondent attempted to engage her in sexual activity, and offered her alcoholic beverages.

5. The complaint alleges that during the search of respondent's bedroom and bathroom in Clark County, Wisconsin, Sheriff's detectives found hydrocodone samples and midazolam blister-type packages with some tablets removed. In the residence in a camera bag with a nametag bearing respondent's name were also found a box designed to contain 10 ampoules of Versed® (the brand name for injectible midazolam), of which 5 were present and 5 were missing, and a box designed to contain 10 ampoules of fentanyl, of which 8 were present and two were missing. No other medical devices or tools were found in this bag; the bag also contained a camera or videotape recorder battery with a plug-in device for a car cigarette lighter.

6. The complaint alleges that both Versed® and fentanyl are controlled substances used in hospitals, surgical suites, and radiology facilities by anesthesiologists for surgical patients and by nurses doing certain imaging procedures such as MRI's. There is no legitimate reason for a surgeon to maintain or store them at a private residence. They are not used for minor procedures such as suturing wounds, such as a general practitioner or emergency room physician might do, nor are they appropriate for emergency field use, such that a physician would carry them in a kit or typical doctor's "black bag" with other materials appropriate for a physician travelling or making house calls.

7. Respondent was, at that time, registered with the DEA only at his office location of 216 Sunset Place, Neillsville, according to a DEA records check conducted on August 15, 1996, and all Schedule II controlled substances purchased by a practitioner must be shipped only to the registered address, 21 CFR §1309(c). Further, DEA states that it has no record of respondent obtaining the necessary order forms (222 forms) for obtaining fentanyl (a Schedule II controlled substance which can only be obtained by using a DEA 222 form) in Wisconsin.

8. On May 30, 1995, respondent was a party to a proceeding before the New Mexico Medical Review Commission, a body established in a manner substantially identical to §655.02, Wis. Stats. (1983). On that day, the Commission found that there was substantial evidence that respondent was professionally negligent in his treatment of patient Bridget L. This patient had consulted respondent for the purpose of having him set a broken wrist. Civil litigation regarding this matter has not yet been resolved.

9. On April 28, 1993, respondent was a party to a proceeding before the New Mexico Medical Review Commission, a body established in a manner substantially identical to §655.02, Wis. Stats. (1983). On that day, the Commission unanimously found that there was substantial evidence that respondent was professionally negligent in his treatment of patient Josie P. Respondent operated on this patient for the purpose of removing gallstones by laparoscopy. In the course of the surgery, respondent severed the patient's common bile duct. Civil litigation regarding this matter has not yet been resolved.

10. Respondent has relocated to New Mexico and has no intention of returning to Wisconsin or practicing in Wisconsin again.

CONCLUSIONS OF LAW

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

12. The matters set forth in pars. 2-9, above, if proven at a hearing, would constitute unprofessional conduct and/or negligence in treatment.

ORDER

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

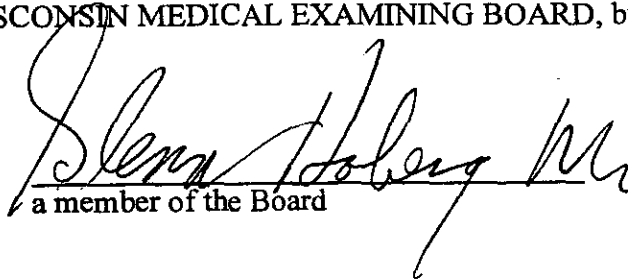
IT IS FURTHER ORDERED, that the SURRENDER of the license to practice medicine of Rolondo Mercado Tong, M.D., in Wisconsin is ACCEPTED.

IT IS FURTHER ORDERED, that respondent shall pay the costs of investigating and prosecuting this matter in the amount of \$300, within 30 days of this order.

Dated this October 22, 1997.

WISCONSIN MEDICAL EXAMINING BOARD, by:

by:

  
a member of the Board

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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

ROLONDO MERCADO TONG, M.D.,  
RESPONDENT.

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**STIPULATION**  
96 MED 285

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It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without a hearing on the formal complaint which has been filed in this matter.

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; 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, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has obtained legal advice before signing this Stipulation.

4. Respondent does not admit the allegations recited in the Findings of Fact, but solely to avoid the expenses and uncertainties of litigation and to settle this matter, agrees to the adoption of the attached Final Decision and Order by the Board. The parties 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 or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this 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 agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

7. The Case Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and view of the case acquired during the investigation.

8. This stipulation is subject to approval by the Division of Enforcement's attorney-supervisor. If approved by the supervisor, the Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. 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 the monthly *Report of Decisions* issued by the department. A summary of the order will be published in the *Wisconsin Regulatory Digest* issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent.

10. Respondent unconditionally surrenders his license to practice medicine and surgery in Wisconsin, and agrees that he will not apply again for a Wisconsin credential. If he does so apply, he agrees that the Board may deny such application and he waives any right to appeal such denial or to a hearing on such denial.

Roberto M. Tong, M.D. 10-17-97  
Respondent Date

Dennis P. Coffey 10/20/97  
Dennis P. Coffey, Attorney for Respondent Date

Arthur Thexton 10/21/97  
Prosecuting Attorney Date  
Division of Enforcement

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## NOTICE OF APPEAL INFORMATION

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**Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.**

**Serve Petition for Rehearing or Judicial Review on:**

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

**The Date of Mailing this Decision is:**

October 23, 1997

### **1. REHEARING**

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

### **2. JUDICIAL REVIEW.**

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)