

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
: FINAL DECISION AND ORDER  
RAFAEL I. CARBONELL, M.D., : LS 0705221 MED  
RESPONDENT. :

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[Division of Enforcement Case No. 04 MED 127]

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

Rafael I. Carbonell, M.D.  
4020 Remington Oaks Circle  
Cary, NC 27519

Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

Wisconsin Medical Examining Board  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

PROCEDURAL HISTORY

This disciplinary proceeding was commenced by the filing and service of a Complaint and Notice of Hearing on May 22, 2007. 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 Medical Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Rafael I. Carbonell, M.D., Respondent, date of birth October 24, 1963, is licensed and currently registered by the Wisconsin Medical Examining Board to practice medicine and surgery in the state of Wisconsin, pursuant to license number 36476, which was first granted April 28, 1995.

2. Respondent's last address reported to the Department of Regulation and Licensing is 4020 Remington Oaks Circle, Cary, NC 27519.

3. Respondent's practice specialty is internal medicine.

4. During the events of this matter, Respondent was employed as a physician at Doctor's Clinic (Clinic) of Wisconsin Rapids, S.C., in Wisconsin Rapids, Wisconsin.

5. Respondent began providing professional services to Ms. A in 1996, when she was 16 years old. Over the next few years, Ms. A saw Respondent and other physicians at the Clinic.

6. On October 24, 2002, Respondent had an extensive discussion with Ms. A regarding her excessive alcohol use and withdrawal issues. She did not want to be hospitalized and he prescribed chlorthalidone (brand name Librium) to reduce symptoms associated with alcohol withdrawal.

7. On December 2, 2002, Respondent admitted Ms. A to Riverview Hospital in Wisconsin Rapids, Wisconsin, with severe nausea and vomiting, which Respondent assessed to be from alcohol withdrawal. Following her discharge, Respondent saw Ms. A at the Clinic on December 9 and she told Respondent that she was going to try to stay away from alcohol and did not want to go to AA or counseling.

8. On January 7, 2003, Respondent saw Ms. A at the Clinic.

a. Ms. A said that two days earlier, the father of her daughter left a threatening message on Ms. A's answering machine. She told Respondent she had reported this to the police and was under a lot of pressure and was unable to sleep.

b. She told him she was back to drinking because alcohol helped her to relax and deal with her problems.

c. He noted that the previous day he had called in a prescription for Librium 25 mg because she was ready to quit again. That prescription had not been noted in her treatment record.

d. He also noted that because of her difficulty sleeping, he had provided her with Ambien, a brand of zolpidem and a controlled substance, in 10 mg doses, but it remained difficult for her to sleep. Ambien should not be taken with alcohol because it increases drowsiness and dizziness. Respondent had provided samples of Ambien, but there is no note in Ms. A's record of when or where he provided them to her.

e. Respondent's assessment was:

- 1) Severe stress due to threats.
- 2) Depression.
- 3) Alcohol abuse.
- 4) Insomnia.

f. Ms. A did not feel safe at her home and asked Respondent for help. Respondent gave Ms. A approximately \$100 so she and her daughter could stay at a local hotel.

9. Ms. A checked into the hotel on January 7. Respondent went to Ms. A's hotel room and had sexual contact with Ms. A. While Ms. A was at the hotel on January 8, she called Respondent and asked him to take her to alcohol detoxification. Respondent took her to Riverview Hospital and admitted her for alcohol detoxification.

10. On January 16, 2003, Ms. A was attacked in a parking lot by a masked unknown person. After the attack, Respondent had Ms. A and her daughter stay at his residence with him, his wife and his children for a few days for her safety.

11. Respondent saw Ms. A at the Clinic on February 6. He noted that her mood was improved, but also noted "I have been helping her by adjusting her medications and giving her reassurance. . . . She lost her job, she has missed school a few times and she has been hiding at different places, being an extremely stressful situation. . ." His assessment included multiple stressful situations and depression.

12. During January through March, 2003, Respondent engaged in sexual contact and sexual intercourse with Ms. A on multiple occasions.

13. Ms. A had appointments with Respondent at the Clinic on February 17, March 5, 10, 18 (Respondent noted: "I also spent some time giving her emotional support and a brief psychological therapy . . .") and April 1. Following February 6, 2003, Ms. A had the following hospitalizations:

a. Admissions to Riverview Hospital by Respondent for alcohol detoxification:

- 1) February 21-24, 2003
- 2) March 22-25, 2003 – (BAC .28)
- 3) March 30-31, 2003
- 4) April 7-9, 2003 – (BAC .21). On April 9, Respondent charted in the hospital record: "I talked to [Ms. A] this a.m. I find it emotionally difficult to continue caring for her. I told her it's hard for me to

sleep, and I'm very sad for her situation. Therefore I requested to be removed from her care and she agreed."

b. On April 19, 2003, because Ms. A became acutely suicidal while intoxicated, a police officer took her to Riverside Hospital Emergency Department for medical clearance. Her BAC was .29 and staff notified Respondent, who was noted as her physician. Ms. A was then admitted to Norwood Health Center in Marshfield, Wisconsin, under a Chapter 51.15 Emergency Mental Health Detention by the police.

c. On April 23, 2003, Ms. A was temporarily committed to the Wood County Unified Services Board by an Order for Temporary Detention issued by Wood County Circuit Court. The Order found probable cause to believe:

"[T]he subject habitually lacks self-control as to the use of alcohol beverages and uses such beverages to the extent that her health is substantially impaired and social or economic function is substantially disrupted and that the condition of the subject is evidenced by a pattern of conduct which is dangerous to herself."

d. On April 23, 2003, pursuant to the temporary commitment, Ms. A was admitted to the Oakside Residential Treatment Program of Ministry Behavioral Health in Stevens Point, Wisconsin for AODA treatment.

e. On May 1, 2003, Wood County Circuit Court issued an Order committing Ms. A to the custody of the Unified Services Board for 90 days, unless discharged earlier by the Board. Ms. A completed treatment and was discharged from the program on May 22, 2003.

14. Ms. A had an appointment with Respondent at the Clinic on June 11 and he prescribed Strattera for probable ADHD. A few days later, she called and told Respondent her daughter had dumped the Strattera in the lake. Respondent called in a refill which had to be refilled a week at a time for three weeks. On June 16, Ms. A called asking for a prescription for Vicoden. Respondent called in a prescription for 15 Darvocet, a brand of propoxyphene and a controlled substance.

15. Ms. A relapsed in the use of alcohol, prescriptive drugs and marijuana and on June 17, 2003, was seen at St. Michael's Hospital with a BAC of .38. She was transferred to Ministry Behavioral Health and after 10 days of a 14 day program, discharged herself against medical advice.

16. Respondent continued to provide Ms. A with medical care and prescriptions until September 17, 2003 when Respondent informed Ms. A that he was leaving the Clinic soon and that she should discuss her continuing care with the new primary care physician she chose.

17. Respondent's conduct in providing care to Ms. A fell below the minimal level of competence for a physician and exposed the patient to an unreasonable risk of harm in that Respondent had sexual contact and sexual intercourse with this patient in these circumstances.

#### CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02(3) and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by engaging in a sexual relationship with his patient, Ms. A, has engaged in unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(zd) and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

3. Respondent, by engaging in a sexual relationship with his patient, Ms. A, has engaged in conduct which constituted a danger to her health, welfare, or safety, which is unprofessional conduct as defined by Wis. Admin. Code § MEI 10.02(2)(h) and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The license of Rafael I. Carbonell, M.D., to practice medicine and surgery in the state of Wisconsin is hereby SUSPENDED for a minimum of two (2) years.

2. Respondent may petition the Medical Examining Board for the termination of the suspension after two years, under the following terms and conditions:

a. Respondent shall have provided proof of having taken and completed a multi-day educational program addressing appropriateness of boundaries between physicians and their patients, which course has been approved by the Board or its designee.

1) The “Intensive Course in Medical Ethics, Boundaries and Professionalism,” a continuing medical education program offered by Case Western Reserve University School of Medicine in Cleveland is approved as meeting the requirements of this paragraph.

2) The PRIM~E (Professional Renewal in Medicine [through] Ethics) course, an educational intervention addressing ethical boundary violations sponsored by the University of Medicine & Dentistry of New Jersey (UMDNJ)-Office of Continuing Education in the Health Professions is approved as meeting the requirements of this paragraph.

3) Prior to taking any other program, Respondent shall request and have received approval from the Board, or its designee, that the program meets the requirement of this paragraph.

b. Respondent shall, at his own expense, have undergone an assessment by a mental health care practitioner or practitioners with experience in assessing health care practitioners who have become involved sexually with patients.

1) The practitioner or practitioners performing the assessment must have been approved by the Board or its designee, with an opportunity for the Division of Enforcement to make its recommendation, prior to the assessment being performed.

2) The Division of Enforcement shall provide the assessor(s) and Respondent with those portions of the investigative file which the Division believes may be of assistance in performing the assessment. Respondent may provide the assessor(s) and the Division with any information Respondent believes will be of assistance in performing the assessment.

3) Respondent shall authorize the assessor(s) to provide the Board, or its designee, with the evaluation report and all materials used in performing the evaluation and shall provide the Board, or its designee, and the Division with the opportunity to discuss the assessment and findings with the assessor(s).

c. The assessor(s) shall have rendered opinion(s) to a reasonable degree of professional certainty that Respondent can practice with reasonable skill and safety to patients and public.

d. Respondent shall pay to the Department of Regulation and Licensing the costs of this proceeding in the amount of \$3,875.00 pursuant to Wis. Stat. § 440.22(2).

3. If Respondent has complied with the requirements for the termination of the suspension, the Board may limit Respondent’s license in any manner necessary to address issues raised by the facts of this case or by the assessment, including but not limited to:

a. Psychotherapy, at Respondent's expense, by a therapist approved by the Board, to address specific treatment goals, with periodic reports to the Board by the therapist.

b. Additional professional education in any identified areas of deficiency.

c. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Board, with periodic reports to the Board by the supervisor.

4. If Respondent believes that any refusal to end the suspension or that any limitation imposed by the Board is inappropriate, Respondent may seek a class 1 hearing pursuant to Wis. Stat. § 227.01(3)(a), in which the burden shall be on Respondent to show that the Board’s decision is arbitrary or capricious. The suspension or limitations on Respondent’s license shall remain in effect until there is a final decision in Respondent’s favor on the issue.

5. All petitions, requests, notifications and payment shall be mailed, faxed or delivered to:

Department Monitor  
Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Avenue  
P.O. Box 8935

Madison, WI 53708-8935

Fax: (608) 266-2264

6. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order.

7. This Order is effective on the date of its signing.

Wisconsin Medical Examining Board

By: Gene Musser, MD  
A Member of the Board

7/18/07  
Date

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
RAFAEL I. CARBONELL, M.D.,	:	<u>LS 0705221 MED</u>
RESPONDENT.	:	

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[Division of Enforcement Case No. 04 MED 127]

It is hereby stipulated and agreed, by and between Rafael I. Carbonell, M.D., Respondent; Kevin F. Milliken of Relles Long & Milliken, LLP, attorneys for Respondent; and John R. Zweg, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary proceeding against Respondent's licensure by the Division of Enforcement (file 04 MED 127). Respondent consents to the resolution of this matter by stipulation and without a hearing.

2. Respondent understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has obtained advice of legal counsel prior to signing this Stipulation.

4. Respondent neither admits nor denies the allegations in this matter but agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation 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 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, 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 consideration of this attempted resolution.

6. Attached to this Stipulation are Respondent's current wall and wallet registration certificates. If the Board accepts the Stipulation, Respondent's license to practice medicine and surgery shall be reissued at the time the suspension is terminated in accordance with the terms of the attached Final Decision and Order. If the Board does not accept this Stipulation, Respondent's certificates shall be returned to Respondent with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

8. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is public record and will be published in accordance with standard Department procedure.

9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue

the attached Final Decision and Order.

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Rafael I. Carbonell, M.D.  
Respondent  
4020 Remington Oaks Circle  
Cary, NC 27519

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Date

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Kevin F. Milliken  
Relles, Long & Milliken, LLP  
Attorneys for Respondent  
301 N. Broom Street  
Madison, WI 53703-5216

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Date

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John R. Zwiig  
Attorney for Complainant  
Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935

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Date