

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
VICTOR A. TONEY, P.A.,	:	LS09031813MED
RESPONDENT.	:	

[Division of Enforcement Case No. 05 MED 237]

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

Victor A. Toney, P.A.
307 Washington Street, Apt. 106
Horicon, WI 53032

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

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. Victor A. Toney, P.A., Respondent, date of birth January 8, 1961, is licensed by the Wisconsin Medical Examining Board as a physician assistant in the state of Wisconsin pursuant to license number 969, which was first granted June 27, 1997.
2. Respondent's last address reported to the Department of Regulation and Licensing is 307 Washington Street, Apt. 106, Horicon, WI 53032.
3. During 2003 through 2005, Respondent was employed as a physician assistant at the Richland Medical Center, Ltd., in Richland Center, Wisconsin.
4. During that time, Respondent was residing with his significant other and her teenage daughter. The daughter had a friend, Ms. A, who had attended school with the daughter, but who was then living in Iowa with her father.
 - a. Ms. A visited the daughter at Respondent's residence and sometime between November of 2003, when Ms. A became 17, and spring 2004, Ms. A and Respondent began having consensual sexual contact and intercourse. They kept their relationship secret.
 - b. Ms. A was having difficulties living with her father and did not want to live with her mother. In June 2004, Respondent and his significant other agreed with Ms. A's father that Ms. A could live with them and attend

the local high school. Ms. A moved into their residence in early June 2004.

c. The sexual relationship continued through mid-November 2004.

5. Respondent provided Ms. A with medical care on only two occasions:

a. On June 14, 2004, Ms. A fell off a horse and suffered a deep laceration on her arm and was treated by physicians at Richland Hospital. Discharge instructions included having a follow-up visit in a week. On June 24, Ms. A went to the clinic for the post operative follow-up and Respondent examined the wound, removed some of the stitches and checked her range of motion.

b. On November 8, 2004, Respondent noted in Ms. A's clinic chart that she had a hot tub induced folliculitis on her back, arms and abdomen and that other family members had a similar rash. Respondent prescribed her Keflex 250 mg. three times a day for a week.

6. Having consensual sexual intercourse with a person who is 17 is a misdemeanor criminal offense in violation of Wis. Stat. § 948.09, Sexual Intercourse with a Child, a law the circumstances of which substantially relate to the circumstances of practice under Respondent's license.

7. In November 2004, Respondent ended the sexual relationship. Ms. A threatened to reveal the relationship, if he would not continue it. Following that, on November 17, 2004, Respondent was seen in the Meriter Hospital Emergency Department in Madison for suicidal thoughts. He was admitted to psychiatry and discharged on November 23 with the diagnoses of Depressive Disorder, Anxiety Disorder and Alcohol Dependence.

8. Following the November 23, 2004 discharge from Meriter, Respondent received out-patient treatment for alcohol dependence at Richland County Health and Human Services and the White Pine Center in Richland Center. Respondent has abstained from the use of alcohol since November 14, 2004. There was no evidence that Respondent's alcohol use and dependence impaired his practice as a physician assistant.

9. In December 2004, Ms. A reported Respondent's sexual conduct to a high school counselor, who reported it to the police.

a. On February 28, 2005, Respondent was charged in Richland County Wisconsin Circuit Court with Sexual Intercourse with a Child.

b. On March 9, 2006, the Court approved a diversion agreement which provided that after 48 months, the charges would be dismissed if Respondent had abided by the conditions of the agreement. The conditions included:

1) No unsupervised contact with females under the age of 18 during the pendency of the agreement.

2) Payment of the costs of the victim's counseling not covered by insurance.

3) Maintaining absolute sobriety during the pendency of the agreement.

c. Respondent was in compliance with all conditions of the diversion agreement. During 2007, Respondent and Ms. A established a personal relationship and they reside together at this time. On October 4, 2007, after only 19 months, the Court dismissed the charges on the motion of the District Attorney.

10. At the suggestion of the Division of Enforcement, Respondent was psychologically evaluated by a Madison psychologist with experience evaluating and treating people who have committed sexual offenses. The evaluation report concludes:

a. There is no evidence that Respondent is sexually deviant.

b. Respondent is at low risk to reoffend sexually.

CONCLUSIONS OF LAW

1. The Wisconsin 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. By violating a law the circumstances of which substantially relate to the circumstances of practice under his credential, Respondent has committed unprofessional conduct as defined by Wis. Adm. Code § Med 10.02(2)(z) and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Victor A. Toney, P.A., Respondent, is hereby REPRIMANDED for the above conduct.

2. Respondent shall, within 180 days of the date of this Order, pay to the Department of Regulation and Licensing the costs of this proceeding in the amount of \$950.00 pursuant to Wis. Stat. § 440.22(2).

3. All payments required by this Order 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
Telephone (608) 267-3817

4. In the event Respondent fails to pay costs as ordered, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

5. This Order is effective on the date it is signed.

Wisconsin Medical Examining Board

By: Gene Musser, MD
A Member of the Board

3/18/09
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
VICTOR A. TONEY, P.A.,	:	LS _____ MED
RESPONDENT.	:	

[Division of Enforcement Case No. 05 MED 237]

It is hereby stipulated and agreed, by and between Victor A. Toney, P.A., Respondent; Kevin F. Milliken of Relles, Long & Milliken, L.L.P., attorneys for Respondent; and John R. Zwieg, 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 investigation of Respondent’s licensure by the Division of Enforcement. Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
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 a 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 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’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, 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 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.
7. 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 accordance with standard Department procedure.
8. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Victor A. Toney, P.A.
Respondent
307 Washington Street, Apt. 106
Horicon, WI 53032

Date

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

Date

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

Date