

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE APPRAISERS BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

PATRICK A. WILBORN,  
RESPONDENT.

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FINAL DECISION AND ORDER

**ORDER 0006323**

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Division of Legal Services and Compliance Case No. 14 APP 068

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

Patrick A. Wilborn  
233 East Pier Street  
Port Washington, WI 53074

Wisconsin Real Estate Appraisers Board  
P.O. Box 8366  
Madison, WI 53708-8366

Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190  
Madison, WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Real Estate Appraisers Board (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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Patrick A. Wilborn (DOB 07/20/1951) is certified by the State of Wisconsin as a Certified General Appraiser, having certificate of licensure and certification number 43-10, first issued on September 23, 1991 and current through December 14, 2019. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 233 East Pier Street, Port Washington, Wisconsin 53074.

2. On September 26, 2014, Respondent performed an appraisal of a commercial property located at 500 East Bay Road, Algoma, Wisconsin (Algoma). The subject property was a Community Based Residential Facility (CBRF).

3. On October 1, 2014, Respondent performed an appraisal of a commercial property located at 143 School Creek Trail, Luxemburg, Wisconsin (Luxemburg). The subject property was a CBRF.

4. On or about December 3, 2014, the Department received a complaint alleging that the subject appraisals violated the Uniform Standards of Professional Appraisal Practice (USPAP). Division of Legal Services and Compliance (DLSC) Case Number 14 APP 068 was subsequently opened for investigation.

5. Respondent's appraisals were reviewed by DLSC and it was determined that the appraisals and appraisal reports violated USPAP Rules and/or Standards Rules (SR) as follows:

a. Respondent failed to provide a clear and complete analysis and reconciliation regarding Algoma's previous sale in August 2013. [SR 1-5(b).]

b. In the Algoma report, Respondent failed to identify and analyze the value for furniture, fixtures, and equipment (FF&E) and intangible assets of the CBRFs included in the appraisal. [SR 1-2(e)(iii), SR 1-4(g).]

c. In the Luxemburg report, Respondent failed to independently verify the actual market value of the FF&E, but instead relied upon the value set forth in the individual Offer to Purchase of the subject property. [SR 1-2(f), SR 1-4, SR 2-1(a, b, c).]

d. Respondent provided additional information regarding the appraisals at the request of the lender but failed to incorporate that information into his appraisal reports, resulting in reports which are misleading to the intended users. [Scope of Work Rule, SR 2-1(a, b, c), Standard 10, SR 10-2(a)(ix).]

e. In the Income Approach, Respondent failed to provide support for or verify his estimated capitalization rate or income multiplier for the Luxemburg report. [Scope of Work Rule, SR 2-2(a)(vii, viii, xi).]

f. In the Algoma report, Respondent incorrectly indicated the estimated capitalization rate of 8.8% was lower than the 8.7% rate provided by the Realty Rates Market Survey. In the Luxemburg report, Respondent calculated 1,736 square feet of courtyard area in the Cost Approach at \$27.77 per square foot, but in the Sales Comparison Approach he adjusted the courtyard area at \$60.00 per square foot. [Scope of Work Rule, SR 1-1(b, c).]

g. In the Income Approach, Respondent combined "bed" rents with real estate rents. [Competency Rule, SR 1-1(a).]

h. Respondent failed to provide a meaningful analysis of the subjects' highest and best use. [Scope of Work Rule, SR 2-2(a)(vii, viii, xi), SR 9-4(b)(i, ii, iii, vii).]

6. Respondent does not agree with the above findings of fact but does not wish to contest DLSC Case no. 14 APP 068.

7. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

#### CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Appraisers Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 458.26, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated the USPAP Competency Rule by failing to be competent to perform the assignment.

3. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated the USPAP Scope of Work Rule by failing to include the research and analyses that are necessary to develop credible assignment results.

4. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated USPAP SR 1-1(a, b, c) by:

a. failing to be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible result;

b. committing a substantial error of omission or commission that significantly affected an appraisal; and

c. rendering appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

5. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated USPAP SR 1-2(e)(iii) by failing to identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal.

6. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated USPAP SR 1-2(f) by failing to identify any extraordinary assumptions necessary in the assignment.

7. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated USPAP SR 1-4 by failing to collect, verify, and analyze all information necessary for credible assignment results.

8. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated USPAP SR 1-4(g) by failing to analyze the effect on value of any personal property, trade fixtures, or intangible items when included in the appraisal.

9. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated USPAP SR 1-5(b) by failing to analyze all sales of the subject property that occurred within the three years prior to the effective date of the appraisal.

10. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated USPAP SR 2-1(a, b, c) by:

- a. failing to clearly and accurately set forth the appraisal in a manner that will not be misleading;
- b. failing to include in his appraisal report sufficient information to enable the intended users of the appraisal to understand the report properly; and
- c. failing to clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.

11. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated USPAP SR 2-2(a)(vii, viii, xi) by:

- a. failing to summarize the scope of work used to develop the appraisal;
- b. failing to summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports his analyses, opinions, and conclusions; and
- c. failing to clearly and conspicuously state all extraordinary assumptions and hypothetical conditions and state that their use might have affected the assignment results.

12. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated USPAP SR 9-4(b)(i, ii, iii, vii) by failing to analyze the effect on value, when necessary for credible assignment results when developing an appraisal of an interest in a business enterprise or intangible asset, of:

- a. the nature and history of the business enterprise or intangible asset;
- b. financial and economic conditions affecting the business enterprise or intangible asset, its industry, and the general economy;

- c. past results, current operations, and future prospects of the business enterprise; and
- d. the economic benefit of tangible and intangible assets.

13. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated USPAP Standard 10 by failing to communicate each analysis, opinion, and conclusion in a manner that is not misleading in reporting the results of an appraisal of an interest in a business enterprise or intangible asset.

14. By the conduct described in the Findings of Fact, Patrick A. Wilborn violated USPAP SR 10-2(a)(ix) by failing to be consistent with the intended use of the appraisal and, at a minimum, summarizing the information analyzed, the appraisal procedures followed, and the reasoning that supports his analyses, opinions, and conclusions.

15. As a result of the above violations, Patrick A. Wilborn has violated Wis. Admin. Code § SPS 86.01(1) and (2), and is therefore subject to discipline pursuant to Wis. Stat. § 458.26(3)(b), (c) and (i).

#### ORDER

1. The attached Stipulation is accepted.
2. Respondent Patrick A. Wilborn is REPRIMANDED.
3. The Certified General Appraiser certificate of licensure and certification issued to Patrick A. Wilborn (number 43-10) is permanently LIMITED from performing appraisals on Senior Living Enterprise properties; including but not limited to the following:
  - a. Community Based Residential Facilities,
  - b. Assisted Living Facilities,
  - c. Residential Care Apartment Complexes, and
  - d. Nursing Homes.
4. The Certified General Appraiser certificate of licensure and certification issued to Patrick A. Wilborn (number 43-10) is FURTHER LIMITED as follows:
  - a. Within 30 days from the date of this Order, Respondent shall successfully complete the USPAP (15 hours) course offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the course.
  - b. The USPAP (15 hours) course shall be taken online.
  - c. Respondent shall submit proof of successful completion of the ordered education in the form of verification from the institution providing the education

to the Department Monitor at the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or the Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.

d. This limitation shall be removed from Respondent's certificate of licensure and certification after satisfying the Board or its designee that Respondent has successfully completed the ordered education.

5. Within ninety (90) days from the date of this Order, Patrick A. Wilborn shall pay COSTS of this matter in the amount of \$1,395.

6. Requests for pre-approval, proof of successful course completion and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

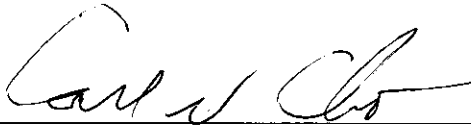
Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190, Madison, WI 53707-7190  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

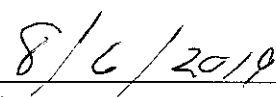
You may also submit this information online via DSPS' Monitoring Case Management System, here: <https://app.wi.gov/DSPSMonitoring>.

7. In the event Respondent violates any term of this Order, Respondent's certificate of licensure and certification (number 43-10), or Respondent's right to renew his certificate of licensure and certification, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative, refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

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

WISCONSIN REAL ESTATE APPRAISERS BOARD

by:   
A Member of the Board

  
Date

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE APPRAISERS BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

PATRICK A. WILBORN,  
RESPONDENT.

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STIPULATION

**ORDER 0006323**

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Division of Legal Services and Compliance Case No. 14 APP 068

Respondent Patrick A. Wilborn and the Division of Legal Services and Compliance, Department of Safety and Professional Services, stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, 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 Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- 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, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by Attorney Michael D. Dean

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Real Estate Appraisers Board (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.

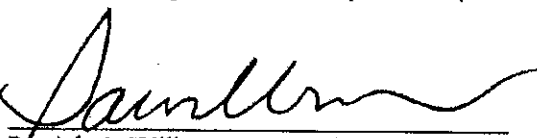


5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by 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.

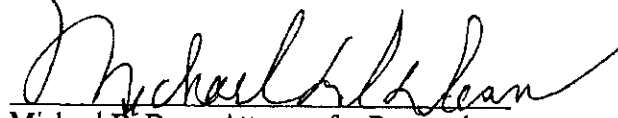
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such 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.

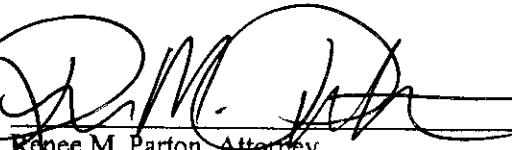
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

  
Patrick A. Wilborn, Respondent  
233 E. Pier St.  
Port Washington, WI 53074  
Credential no. 43-10

6-19-19  
Date

  
Michael D. Dean, Attorney for Respondent  
Michael D. Dean, LLC  
P.O. Box 2545  
Brookfield, WI 53008

6-20-19  
Date

  
Renee M. Parton, Attorney  
Laura M. Varriale, Attorney  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

6/20/2019  
Date