

# 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  
ERNESTO L. MARTIN, M.D., : LS 0710221 MED  
RESPONDENT. :

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[Division of Enforcement Case # 07 MED 167]

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

Ernesto L. Martin, M.D.  
1501 S. Wolf Road #320  
Prospect Heights, IL 60070

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

A Notice of Hearing and Complaint were filed and served in this matter on October 22, 2007. Prior to the hearing or the formal complaint, 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 the attached Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Ernesto L. Martin, M.D., Respondent, date of birth December 12, 1957, is licensed by the Wisconsin Medical Examining Board to practice medicine and surgery in the state of Wisconsin pursuant to license number 49951, which was first granted November 30, 2006. The registration of Respondent's license expired on October 31, 2007, but could be renewed by his payment of fees and providing proof of having obtained the required continuing education.

2. Respondent's last address reported to the Department of Regulation and Licensing is 1501 S. Wolf Road #320, Prospect Heights, IL 60070.

3. Respondent's practice specialty is psychiatry.

Conduct with Ms. A in Illinois

4. Respondent has been actively licensed to practice medicine in the state of Illinois since 1994. Respondent was practicing as a psychiatrist at the Mathers Clinic in Rockford, Illinois on April 5, 2006 when Ms. A (DOB 4/6/58) first saw Respondent for psychiatric treatment. Ms. A was referred to Respondent because the Lexapro (antidepressant/anxiolytic) she was taking was not effective.

5. Ms. A had follow-up appointments with Respondent on May 8 and June 13, 2006. On June 13, she mentioned she was experiencing problems with hypertension medications prescribed by her primary care practitioner (PCP).

Respondent took Ms. A's blood pressure, listened to her heartbeat and called Ms. A's PCP and made an appointment for Ms. A that afternoon. Respondent asked Ms. A to contact him with the results of that appointment and gave her his business card containing his cell phone number.

6. In late afternoon on June 15, Respondent called Ms. A at her residence saying he was in the neighborhood and wanted to stop by and check her blood pressure. Ms. A told Respondent "no" three times before agreeing to let him stop by. Respondent arrived at approximately 6:15 p.m. and took Ms. A's blood pressure.

7. At 9:00 p.m. on June 21, Respondent called Ms. A at her residence to check on her. Ms. A asked Respondent if he could provide her with Lunesta, a prescription sleep aid. He told her he would give her some samples when he came to check her blood pressure. A short time later, Respondent arrived at her home and took her blood pressure. The following occurred:

a. Respondent told Ms. A that he didn't want to be her doctor any more and kissed her passionately on the mouth and began to remove Ms. A's shirt and bra.

b. Respondent told Ms. A that he wanted to perform oral sex on her. When she refused, he said he would like to have her perform oral sex on him.

c. Ms. A left the room for a moment and when she returned, Respondent was lying on the sofa with his erect penis exposed. Ms. A performed oral sex on Respondent. [During an interview by a Rockford police detective on August 9, 2006, Respondent admitted that Ms. A performed oral sex on him at her home.]

d. Before leaving, Respondent asked Ms. A to go to a medical conference in Boston with him but she declined to do so.

8. On the evening of Sunday, June 25, Respondent called Ms. A at her residence and told her he had returned from the Boston conference and could be at her home in an hour and a half. Respondent arrived there between 10:30 and 11:00 p.m. Respondent performed oral sex on Ms. A and they then engaged in sexual intercourse.

9. On Saturday, July 1, Respondent went to Ms. A's residence and made breakfast before they engaged in sexual intercourse.

10. Respondent's conduct with Ms. A was below the minimal standards of his profession and exposed Ms. A to risks of harm to which a minimally competent physician would not expose a patient.

#### Conduct with Ms. B in Wisconsin

11. Beginning January 2, 2007, Respondent was employed as the Medical Director at CRC Health Group Beloit Treatment Center (Center), an outpatient substance abuse treatment clinic providing Methadone maintenance and Buprenorphine detoxification services in Beloit, Wisconsin.

12. On January 17, 2007, Ms. B (DOB 7/3/72) began receiving treatment for opioid dependence at the Center, which included methadone maintenance. Respondent performed a physical examination, signed her initial treatment plan and other documents and provided the orders for her methadone and other medications on January 17. While a patient at the Center, Ms. B saw Respondent for professional services on several occasions.

13. On April 30, Ms. B had an appointment with Respondent at the Center because of daytime drowsiness from trazadone she was receiving for insomnia. Respondent discontinued the trazadone and wrote a prescription for Lunesta. During the appointment, Ms. B and Respondent flirted with one another. Shortly after Ms. B arrived home, Respondent called her and said he had samples of Lunesta that she could try before spending money on the prescription. Ms. B returned to the clinic to pick up the samples.

a. When she pulled into the parking lot, Respondent was outside at his car and gave Ms. B the samples.

b. Respondent asked Ms. B to come into the clinic with him. When they entered his office, Respondent shut the door behind them, put his arm around Ms. B, kissed her on the lips and asked if they could meet later that day when he was finished with his work at the clinic. Ms. B agreed.

c. When Respondent was leaving the clinic, Respondent called Ms. B. They met at a gas station near Ms. B's residence. Ms. B got into Respondent's car and they drove to a public park where they engaged in "heavy

petting” and Ms. B performed oral sex on Respondent.

14. The evening of May 8, Respondent and Ms. B met in a room at the Baymont Inn in Janesville, Wisconsin. Ms. B performed oral sex on Respondent three times before Ms. B left the next morning to go to the Center for her dose of methadone. Ms. B was last seen by Respondent at the Center on May 14. During that appointment, they kissed and Respondent caressed Ms. B’s legs.

15. On May 15, Ms. B told her counselor at the Center about her sexual relationship with Respondent but did not want the counselor to tell anyone about it so Respondent could be protected. The counselor reported it to the Center’s administrators. Respondent was confronted with Ms. B’s allegations on May 17, which he denied. Respondent resigned from his position on May 22.

16. Respondent’s conduct with Ms. B was below the minimal standards of his profession and exposed Ms. B to risks of harm to which a minimally competent physician would not expose a patient.

#### 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) and 448.02(5).

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

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

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The SURRENDER by Ernesto L. Martin, M.D., Respondent, of his license to practice medicine and surgery in the state of Wisconsin is hereby ACCEPTED.

2. If Respondent ever applies for any credential from the Board:

a. He shall meet the criteria then required of original applicants for that credential.

b. The Board shall make such inquiry as it finds necessary to determine whether the applicant is competent to practice, and shall impose any reasonable conditions on reinstatement of the license, including oral examination, as the Board deems appropriate.

c. He shall provide proof sufficient to the Board that he does not have a psychological condition which may interfere with his ability to practice with reasonable skill and safety to patients.

d. The decision whether to grant Respondent a credential, with or without limitations, shall be in the sole discretion of the Board.

e. Prior to the granting of any credential by the Board, he shall have paid the costs of this proceeding in the amount of \$1,775.00, pursuant to Wis. Stat. § 440.22(2). Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed or delivered to:

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

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

Wisconsin Medical Examining Board

By: Gene Musser MD  
A Member of the Board

12/12/2007  
Date

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
ERNESTO L. MARTIN, M.D.	:	<u>LS 0710221 MED</u>
RESPONDENT.	:	

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[Division of Enforcement Case # 07 MED 167]

It is hereby stipulated and agreed, by and between Ernesto L. Martin, M.D., 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 disciplinary proceeding against Respondent's licensure by the Division of Enforcement. Respondent consents to the resolution of this investigation 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 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 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'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 consideration of this attempted resolution.

6. Attached to this Stipulation are Respondent's most recent wall and wallet registration certificates. 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 a public record and will be published in accordance with standard Department procedure.

9. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

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Ernesto L. Martin, M.D.  
Respondent  
1964 Prestwold Place  
Machesney Park, IL 61115

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Date

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

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Date

[07 MED 167: Costs \$1,775.00]

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