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Final Order No. DOH-07-0194-5-MOA
FILED DATE - 3/16/07
Department of Health

STATE OF FLORIDA
BOARD OF MEDICINE

By: Racquel Per
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2005-00890
LICENSE NO.: ME0080412

KENNETH N. WOLINER, M.D.,

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on February 3, 2007, in Orlando, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the following clarification:

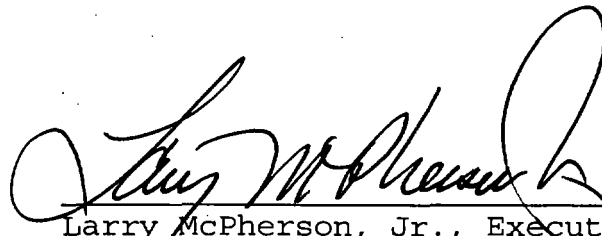
The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$3,351.66.

Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as clarified above.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 15 day of FEBRUARY, 2007.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for H. FRANK FARMER, JR., M.D., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to KENNETH N. WOLINER, M.D., Holistic Family Medicine, 2499 Glades Road, #106-A, Boca Raton, Florida 33431; and 9325 Glades Road, #104, Boca Raton, Florida 33434; to Wilson Jerry Foster, Esquire, 1342 Timberlane Road, Suite 102-A, Tallahassee, Florida 32312-1762; and by interoffice delivery to John Terrel, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 16 day of February, 2007.



**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2005-00890

KENNETH N. WOLINER, M.D.,

Respondent.

SETTLEMENT AGREEMENT

Kenneth N. Woliner, M.D., referred to as the "Respondent," and the Department of Health, referred to as "Department," stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is a state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida, having been issued license number ME 80412.
2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of

Chapter 458, Florida Statutes, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 456 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. Letter Of Concern - Respondent shall receive a Letter of Concern from the Board of Medicine.

2. Fine - The Board of Medicine shall impose an administrative fine of five thousand dollars (\$5,000.00) against the license of Respondent, to be paid by Respondent to the Department of Health, HMQAMS/Client Services, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer, within thirty-days (30) from the date of filing of the Final Order accepting this Agreement. All fines shall be paid by check or money order. The Board office

does not have the authority to change the terms of payment of any fine imposed by the Board.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

3. Reimbursement Of Costs - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any administrative costs incurred in the investigation and preparation of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. The agreed upon amount of Department costs to be paid in this case includes but shall not exceed four thousand dollars four hundred (\$4,400.00). Respondent will pay costs to the Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer within thirty-days (30) from the

date of filing of the Final Order in this cause. Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. Laws And Rules Course - Respondent shall complete the Laws and Rules Course, administered by the Florida Medical Association, within one (1) year of the date of filing of the Final Order of the Board. In addition, Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical education course within one (1) year of the date of filing of the Final Order incorporating this Agreement. **All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was previously provided during the course of any audit or discussion with counsel for the Department.** These hours shall be

In addition to those required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education courses shall consist of a live, lecture format.

5. **Drug Course** - Respondent shall complete the course, "Protecting Your Medical Practice, Clinical, Legal and Ethical Issues in Prescribing Abusable Drugs," sponsored by the University of South Florida, or a Board-approved equivalent, within one year of the date of filing of the Final Order.

6. **Records Course** - Respondent shall complete the course, "Quality Medical Record Keeping for Health Care Professionals," sponsored by the Florida Medical Association, or a Board-approved equivalent, within one year of the date of filing of the Final Order.

7. **Community Service** - Respondent shall perform fifty (50) hours of community service, within one year of the date of filing of the Final Order. Community Service shall be defined as the delivery of medical services directly to patients, or the delivery of other volunteer services in the community, without fee or cost to the patient or the entity, for the good of the people of the State of Florida. Community service shall be performed outside the physician's regular practice setting. Respondent shall submit a written plan for performance and completion of the community service to the Probation Committee for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board as required by the Probation Committee.

8. **Continuing Medical Education** - Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend five (5) hours of Continuing Medical Education (CME) in diagnosis of thyroid conditions. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical course within one (1) year of the date of filing of the Final Order in this matter. All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

STANDARD PROVISIONS

9. **Appearance**: Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

10. **No force or effect until final order** - It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Agreement.

11. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.

12. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 458 or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice medicine. Prior to signing this agreement, the Respondent shall read Chapters 456, 458 and 893 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

13. **Violation of terms considered** - It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 458, Florida Statutes.

14. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. In this regard, Respondent authorizes the Board to review and examine all Investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and

matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

15. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

16. **Waiver of attorney's fees and costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

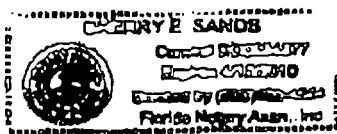
17. **Waiver of further procedural steps** - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

SIGNED this 14 day of December, 2006.


KENNETH N. WOLINER, M.D.

Before me, personally appeared KENNETH N. WOLINER, whose identity is known to me by PASSPORT 047392356 (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 14 day of December, 2006.

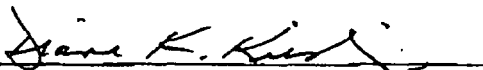



NOTARY PUBLIC

My Commission Expires:

APPROVED this 15th day of December, 2006.

M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary, Department of Health


By: Diane K. Kiasling
Assistant General Counsel
Department of Health

STATE OF FLORIDA
DEPARTMENT OF HEALTH

7/28/05

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2005-00890

KENNETH N. WOLINER, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Medicine against the Respondent, Kenneth N. Wollner, M.D., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 80412.

3. Respondent's last known address is Holistic Family Medicine, 2499 Glades Road, #106-A, Boca Raton, Florida 33431.

4. Respondent is board certified in family medicine by the American Board of Family Medicine.

5. On or about May 20, 2003, Patient W.B., a forty-five (45) year-old male, presented to Respondent with complaints of headaches, feeling weak and lethargic.

6. Respondent did a complete history, completed a physical examination, and did laboratory testing. Respondent diagnosed Patient W.B. as having myofascial trigger point headaches and psoriasis.

7. On June 25, 2003, Respondent saw Patient W.B. and noted that his headache was better. Respondent diagnosed Patient W.B. as having tension headaches, psoriasis, Hashimoto's thyroiditis, and adrenal insufficiency.

8. At the time of Respondent's diagnosis of thyroiditis (inflammation of the thyroid), Patient W.B. had no tenderness of his thyroid, no enlargement of his thyroid, no complaint of soreness in the thyroid area, no elevation of his sedimentation rate, no evidence of a

weight loss, and was not orthostatic, hypotensive, and/or hyperpigmented. Patient W.B. was afebrile and his vital signs were normal.

9. Respondent prescribed Armour Thyroid at 30 mg. q.i.d. and advised the patient to buy Dehydroepiandrosterone (DHEA) 10 mg. and take it every day.

10. From August 12, 2003 through June 21, 2004, Respondent increased Patient W.B.'s Armor Thyroid to 180 mg. even though Patient W.B. had become more symptomatic and experienced increased anxiety, night sweats, recurrent headaches, sluggish in the mornings, fatigue at night, and excessive sweating.

11. On June 21, 2004, Respondent changed Patient W.B.'s thyroid medication to Levoxyl 100 mg. two each morning and one each night, which represented doubling of Patient W.B.'s thyroid medication, even though Respondent had conducted no new thyroid testing since June 2003.

12. On July 12, 2004, Respondent called in a prescription for Cortef 5 mg. four times a day without seeing Patient W.B. and without noting any warning about possible side effects.

13. Armour Thyroid, Levoxyl, and Cortef are legend drugs as defined by Section 465.003(8), Florida Statutes. Substances designated as

legend drugs are required by federal or state law to be dispensed only upon presentation of a prescription written by a licensed health care professional authorized to prescribe prescription medications.

14. On July 12, 2004, Patient W.B. saw another doctor who finally had laboratory testing performed. He faxed the results to Respondent and recommended that Patient W.B. be taken off the thyroid medication. Respondent disagreed and continued the medication.

15. On or about July 19, 2004, Respondent saw Patient W.B. at which time Patient W.B. was taking Cortef 3.5 mg. once a day, Levothyroxine 300 mg. per day, plus nutrients. Respondent then also prescribed Adderall 10 mg. one-half to one mg. two times a day without any discussion of the addicting potential of this medication nor its possible side effects. Adderall, an amphetamine, is only indicated for attention-deficit hyperactivity disorder and narcolepsy and has no application to any condition that Patient W.B. was experiencing.

16. Adderall® contains amphetamine in sufficient quantities to be classified as a schedule II controlled substance listed in Chapter 893, Florida Statutes. Adderall has a high potential for abuse and has a currently accepted but limited medical use in treatment in the United

States. Abuse of this substance may lead to severe physical and psychological dependence.

17. Patient W.B. last saw Respondent on September 29, 2004, when he was demonstrating significant symptoms of hyperthyroid which were not recognized by Respondent.

18. On or about October 20, 2004, Patient W.B. presented to a subsequent treating physician with complaints of weight loss, night sweats, insomnia and weakness.

19. Patient W.B. was diagnosed as clinically and chemically hyperthyroid, weak and depressed showing evidence of being overdosed on thyroid and hydrocortisone medication, which required gradual weaning based on the length of time the unnecessary medications were prescribed.

COUNT 1

20. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19) as if fully set forth herein.

21. Section 458.331(1)(t), Florida Statutes (2003)(2004), provides that the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as

being acceptable under similar conditions and circumstances is grounds for discipline by the Board of Medicine.

22. Respondent failed to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician, in one or more of the follow ways:

a) by prescribing thyroid hormone replacement medication to the patient whose thyroid levels were normal prior to treatment;

b) by failing to adequately assess the patient's complaints and symptoms;

c) by inappropriately interpreting the patient's laboratory results;

d) by diagnosing the patient with adrenal insufficiency who showed no biochemical indication;

e) by failing to perform an ACTH stimulation test;

f) by prescribing a stimulant amphetamine to the patient with no clinical indication or need for the drug;

g) by diagnosing the patient with Hashimoto's thyroiditis who had no indication clinically or biochemically.

h) by failing to consult with an endocrinologist rather than treating conditions that did not exist;

- i) by inaccurately diagnosing the patient;
- j) by rendering unnecessary treatment to the patient resulting in the patient becoming hyperthyroid; or
- k) by prescribing unnecessary medications to the patient resulting in the patient becoming overdosed on those medications.

23. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2003)(2004), by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT TWO

24. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19) as if fully set forth in this count.

25. Section 458.331(1)(m), Florida Statutes (2003)(2004), provides that failure to keep legible medical records that justify the course of treatment of the patient constitutes grounds for discipline by the Board of Medicine.

26. Respondent failed to keep legible medical records that justify the course of treatment, in one or more of the follow ways:

~~a) by failing to document any discussion of potential side effects of the medications;~~

b) by failing to document any discussion of addicting potential of the medications;

c) by failing to keep medical records which adequately assess the patient's complaints and symptoms; or

d) by failing to document any side effects suffered by the patient.

27. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2003)(2004), by failing to keep legible medical records that justify the course of treatment of W.B.

COUNT THREE

28. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19) as if fully set forth in this count.

29. Section 458.331(1)(q), Florida Statutes (2003)(2004), provides that prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice constitutes grounds for discipline by the Florida Board of Medicine. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or

otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

30. Respondent inappropriately prescribed legend drugs, including controlled substances inappropriately, in one or more of the following ways:

a) by prescribing thyroid hormone replacement medication to a patient whose thyroid levels were normal prior to treatment;

b) by prescribing a stimulant amphetamine to a patient with no clinical indication or need for the drug; or

c) by inappropriately prescribing Levothyroxine and Cortef to the patient resulting in the patient being overdosed on the medications.


31. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2003)(2004), by prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the Respondent's professional practice.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 31st day of July, 2006.

M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary, Department of Health

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Debra Bailey
DATE: 8/1/06


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(850) 245-4640
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DKK/sdw

PCP: 7/28/06
PCP Members: El-Bakri, Tucker & Long

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.