

AM

By: Theresa McKown
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-18111

LICENSE NO.: ME0082602

GERALD B. APPLGATE, 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 April 8, 2006, in Tampa, Florida, for the purpose of considering a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Consent 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 Consent Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the following clarification:

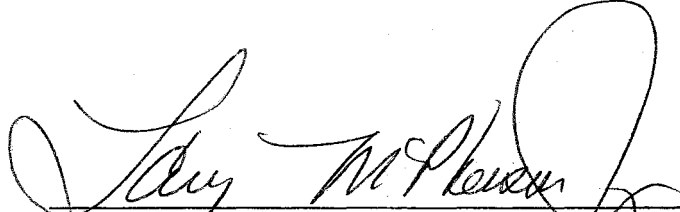
The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$1,274.41.

Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Consent 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 18 day of APRIL, 2006.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for MAMMEN P. ZACHARIAH, 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 GERALD B. APPLGATE, M.D., P.O. Box 545, Wexford, PA 15090-0545; and P.O. Box 402098, Miami Beach, Florida 33140-0098; to Kenneth Metzger, Esquire, 101 North Monroe Street, Suite 1090, Tallahassee, Florida 32301; and by interoffice delivery to John Terrel and Wings Benton, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 19th day of April, 2006.



Deputy Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH

PRACTITIONER REGULATION
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DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2004-18111

GERALD B. APPLGATE, M.D.

Respondent.

CONSENT AGREEMENT

Gerald B. Applegate, 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 82602.

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 ten thousand dollars (\$10,000.00) 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 CONSENT 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 will not exceed one thousand two hundred seventy-four dollars

and forty-one cents. 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 CONSENT 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. **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.

STANDARD PROVISIONS

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

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

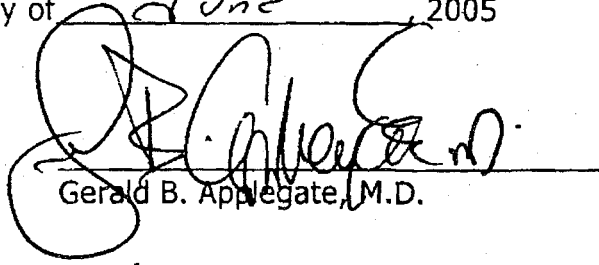
Furthermore, should this Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

12. **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.

13. **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.


14. **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 27th day of June, 2005


Gerald B. Applegate, M.D.

Before me, personally appeared Gerald B. Applegate, whose identity is known to me by [REDACTED] (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 27th day of June, 2005.

 Eduardo Andres
My Commission DD141048
Expires August 12, 2008


NOTARY PUBLIC

My Commission Expires: August 12, 2008.

APPROVED this 10th day of August, 2005.

John O. Agwunobi, M.D., M.B.A., M.P.H.
Secretary, Department of Health

Wings S. Benton
By: Wings S. Benton
Deputy General Counsel
Department of Health

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**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2004-18111

GERALD B. APPLGATE, 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 Respondent, Gerald B. Applegate, 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 82602.

3. Respondent's address of record is Post Office Box 402098, Miami Beach, Florida 33140-0098.

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4. The Commonwealth of Pennsylvania State Board of Medicine ("CPSBM") is the licensing authority regulating the practice of medicine in the State of Pennsylvania.

5. On or about February 18, 2004, the CPSBM entered a Consent Agreement and Order ("Order"), which imposed a five thousand (\$5,000.00) dollar fine and suspended Respondent's license to practice medicine ninety (90) days, which was stayed, and Respondent's license was placed on probation for ninety (90) days.

6. The Order entered by the CPSBM constitutes disciplinary action against the Respondent's license to practice medicine in the State of Pennsylvania.

7. Respondent failed to report, in writing, to the Florida Board of Medicine within thirty (30) days of the February 18, 2004 disciplinary action taken by the CPSBM.

COUNT ONE

8. Petitioner re-alleges and incorporates paragraphs one (1) through seven (7) as if fully set forth herein.

9. Section 458.331(1)(b), Florida Statutes (2003), provides that having a license or the authority to practice medicine revoked, suspended,

or otherwise acted against by licensing authority of any jurisdiction constitutes grounds for disciplinary action by the Board of Medicine.

10. The February 18, 2004 Order issued by the CPSBM, which imposed and then stayed the suspension, placed the Respondent's license on probation and fined him five thousand (\$5,000.00) dollars constitutes disciplinary action against the Respondent's Pennsylvania medical license.

11. Based on the foregoing, Respondent has violated Section 458.331(1)(b), Florida Statutes (2003), by having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction.

COUNT TWO

12. Petitioner re-alleges and incorporates paragraphs one (1) through seven (7) as if fully set forth herein.

13. Section 458.331(1)(kk), Florida Statutes (2003), provides that failing to report to the board, in writing, within 30 days if action as defined in Section 458.331(1)(b), Florida Statutes, has been taken against one's license to practice medicine in another state, territory or country constitutes grounds for disciplinary action by the Board of Medicine.

14. Respondent failed to report, in writing, to the Florida Board of Medicine within thirty (30) days of the disciplinary action.

15. Based on the foregoing, Respondent has violated Section 458.331(1)(kk), Florida Statutes (2003), by failing to report to the board, in writing, within 30 days if action as defined in Section 458.331(1)(b), has been taken against one's license to practice medicine in another state, territory or country.

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 26th day of April, 2005.

John O. Agwunobi, M.D., M.B.A., M.P.H.
Secretary, Department of Health



J. Blake Hunter
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
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(850) 414-8126
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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK Neather Coleman

DATE 4-27-05

/jbh

PCP: April 22, 2005

PCP Members: El-Bahri, Patrowicz, Dyches

Reviewed and approved by: ce (initials) 12/20/04 (date)

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.