STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATION
BOARD OF MEDICINE

In the Matter of

JESSE KETCHUM, M.D.
Reapplication for Reinstatement /

ORDER DENYING REAPPLICATION FOR REINSTATEMENT

WHEREAS, on or about May 5, 1987, Jesse Ketchum, M.D., hereafter Applicant, filed with the Board a reapplication for reinstatement of his license to practice medicine, hereafter Reapplication, in accordance with the provisions of 1980 AACS R 338.988, and the Department of Attorney General, by Thomas L. Sparks, Assistant Attorney General, filed a Response In Opposition To Reapplication For Reinstatement Of License, hereafter Response, dated May 22, 1987; and

WHEREAS, the Board at a regularly scheduled meeting held in Lansing, Michigan, on June 18, 1987, considered Applicant's Reapplication and the Response and determined that there is not a reasonable possibility that it could grant reinstatement; now, therefore

IT IS HEREBY ORDERED that the Board refuses to consider the Reapplication submitted by Applicant.

IT IS FURTHER ORDERED that this Order shall be effective on the dated signed by the Board's Chairperson as set forth below.

Signed this 18th day of June, 1987.

MICHIGAN BOARD OF MEDICINE

By Charles C. Vincent M.D.
Charles C. Vincent, M.D.
Chairperson

This is the last and final page of the Order Denying Reapplication For Reinstatement in the matter of Jesse Ketchum, M.D., before the Michigan Board of Medicine, consisting of two (2) pages, this page included.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

JESSE KETCHUM,

Petitioner,

v

MICHIGAN DEPARTMENT OF LICENSING & REGULATION, BOARD OF MEDICINE,

Respondent.
_____/

No. 84-52419-AA

OPINION AND ORDER

Judge Thomas L. Brown
P11303

At a session of said Court, held in said County and State, this 15th day of April, 1986.

PRESENT: HONORABLE THOMAS L. BROWN, CIRCUIT JUDGE

Petitioner seeks review, pursuant to the Michigan Administrative Procedures Act (MAPA) section 103, MCLA 24.303; MSA 3.560(203), of the Respondent Board of Medicine's (Board) Final Order Denying Reinstatement. That order, signed April 30, 1984, denied Petitioner's application for reinstatement of his license to practice medicine in Michigan. Petitioner's application was filed pursuant to MCLA 333.16245; MSA 14.15 (16245) and MCLA 333.16247; MSA 14.15 (16247).

MCLA 333.16247, supra, vests the Board with discretionary authority to reinstate a license previously revoked, "if, after a hearing, the board is satisfied that the applicant is of good moral character, is able to practice the profession with reasonable skill and safety to patients, and should be permitted in the public interest to resume practice." Following hearing on the petition, the Administrative Law Judge (ALJ) issued his February 22, 1984, opinion recommending the petition be denied. The Board's final order adopted the ALJ's findings of fact and conclusions of law, and denied the petition.

Petitioner asserts eight claims of error. The parties have fully briefed and argued the issues, and the court has reviewed the entire administrative record. The court here addresses the issues in the order set forth in the Petitioner's brief.

Petitioner first argues that the Board's findings of fact, conclusions of law, and the final order are not supported by

competent, material and substantial evidence on the whole record, as required by MAPA section 106, MCLA 24.306; MSA 3.560(206). The Board found that Petitioner failed to establish by clear and convincing evidence that he meets the MCLA 333.16247, supra, requirements for reinstatement.

"Good moral character" is defined by statute as "the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner." MCLA 338.41; MSA 18.1208(1). There was evidence which cast doubt upon the Petitioner's honesty and openness. Marian Agby testified that, although her name appears on a petition attached as "Exhibit O" to Petitioner's Petition for Reinstatement of License, she did not sign that document. (TR Vol IV, May 4, 1983, pp 29-30). Affidavits received as Complainant's exhibits "C" and "D", and sponsored by witness Hoin (Tr Vol IV, May 4, 1983, pp 31-46), cast doubt upon Petitioner's moral character. The Board's findings are supported on the record.

Also supported on the record is the Board's finding that Petitioner failed to establish by clear and convincing evidence his ability to practice his profession with reasonable skill and safety to his patients. Petitioner's testimony concerning hypoxia and anoxia caused Dr. Horsch to testify that Petitioner's testimony displayed a profound lack of knowledge, contained irresponsible statements, and failed to meet the standard of a physician. (Tr Vol II, March 10, 1983, pp 141-146). Thus, the findings of fact, conclusions of law, and final order are supported by the requisite record evidence.

Petitioner next contends the Board's findings of fact, conclusions of law, and final order violate MAPA section 85, MCLA 24.285; MSA 3.560(185). The court finds no merit in this claim.

The third issue raised by the Petitioner is whether MCLA 333.16247, supra, lacks ascertainable standards to guide the Board, resulting in a denial of due process to Petitioner by leaving the decision to caprice or whim.

The court does not find the statute to be unconstitutionally

vague. The three-pronged test contained in the statute sets forth standards as reasonably precise as the subject matter permits. "Good moral character" is carefully defined by statute, as noted earlier. MCLA 338.41, supra. Ability to practice the profession with reasonable skill and safety is as precise as the subject matter permits. The concept of public interest is related to the first two standards. If an applicant is not of good moral character or lacks the ability to practice with reasonable skill and safety, licensure is not in the public interest. The Petitioner's argument is rejected.

Petitioner next claims the Board violated due process by electing to have the hearings conducted by the ALJ rather than before the full Board. The Court ejects this assertion as groundless. The MAPA does not require the entire Board to preside at the formal hearing. The administrative rules cited by the Petitioner are inapposite. Not only do those rules not stand for the proposition asserted, they became effective October 10, 1980, several months after the petition for reinstatement was filed.

The Board's final decision and order must be based upon a consideration of the record as a whole. MCLA 24.285, supra. The MAPA specifically authorizes an ALJ to preside over formal hearings, at the Board's discretion. MCLA 24.279 et seq; MSA 3.560(179) et seq.

Petitioner claims the Attorney General's response to the reinstatement petition was untimely under MAC R 338.986. As noted, the rule took effect October 10, 1980, over five months after the filing of the petition. In any event, the court finds the Petitioner improperly raises this issue for the first time before this court.

Likewise, Petitioner's claim that the Board unduly delayed hearing the reinstatement petition in violation of MCLA 24.271, supra, is without merit. The Court has reviewed the record and finds the matter was first set for hearing on June 5, 1981. After an adjournment of unknown origin, the hearing was resched-

uled to July 30 and August 5, 1981. Petitioner's counsel, Mr. Beers, obtained an adjournment of the July 30 hearing. The matter was continued to November 11 and 18, 1981, and Mr. Beers obtained adjournments of those dates. Hearings were rescheduled for February 16, 1982, and March 17, 1982. Mr. Beers adjourned the February 16, 1982, hearing and, on April 16, 1982, the Board ordered the file closed for lack of progress since the last hearing of August 5, 1981.

Petitioner revived the matter by rescheduling a hearing which was held March 10, 1983. The hearing continued May 3, May 4, and August 8, 1983. Petitioner's brief was filed September 19, 1983, the Attorney General's closing statement was filed October 18, 1983, and Petitioner's reply was filed December 1, 1983. The ALJ issued his opinion February 22, 1984, and the Board's final order was issued April 30, 1984.

There was no undue delay, except that attributable to Petitioner himself.

Petitioner's fifth argument is that the Board violated MAPA section 81, MCLA 24.281; MSA 3.560(181), by not issuing a proposal for decision to which Petitioner could file exceptions before issuance of a final order. The final order to the Board recites that the Board considered the record. No proposal for decision is necessary where the agency officials have reviewed the whole record. Petitioner argues the Board is not entitled to a presumption that its members read the record. The Court makes no such presumption. The order states the Board read the record, and the Court will not further inquire into an agency's decision-making process, except to determine whether the decision finds the minimum requisite evidentiary support on the whole record.

Sixth, Petitioner claims the Board violated the intent and purpose of MCLA 333.116247, supra, and MCLA 338.41, supra, by "its continued inability to look beyond the isolated incidents of Petitioner's past and impartially view the rehabilitation and present ability of Petitioner." (Brief in support of the

Petition for Review, pp 28-29)

Petitioner's position is that our Legislature intended a review of "good moral character" to involve an analysis of the applicant's present propensity to deal fairly, honestly, and openly with the public. The Court agrees. However, Petitioner takes the present/past distinction further than the Court is willing to. Petitioner, perhaps understandably, would prefer that all references to what counsel describes as Petitioner's "unfortunate past" and the "misfortunes" of his past be avoided. The law does not require this. The Michigan Legislature could not have intended to so emasculate the Department of Licensing and Regulation of its authority to protect the public.

References to past incidents were not improperly utilized by the Board in considering Petitioner's good moral character. The Board adopted the opinion of the ALJ dated February 22, 1984, which stated:

> "Good moral character is defined as 'the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.' Based on the testimony of Applicant in relation to his reaction to the [redacted] incident, the responses which he gave to various test questions posited by Mintzes, and the apparent questions raised concerning his affidavits, this Administrative Law Judge finds and so concludes that Applicant has not demonstrated, by clear and convincing evidence, that he is of good moral character. His responses in the above cited areas indicating that he did not know what had happened to [redacted] after the incident and his failure to respond to certain questions put by Mintzes demonstrate both a lack of honesty and openness."

The Court has already found the Board's decision supported on the whole record. The Court finds the same supporting evidence was properly considered by the Board, consistent with the legislative intent underlying MCLA 333.16247, supra, and MCLA 338.41, supra. Petitioner was found to have failed to carry the burden of proving his good moral character, not because of his unfortunate past, but based on his present actions and responses to questions concerning his application for reinstatement.

Next, Petitioner claims the Board abused its discretion

in denying the reinstatement petition. Based upon a reading of the whole record, or even upon the limited synopsis of the record set forth at pages 35-36 of Petitioner's brief to this Court, the Court does not find an abuse of discretion.

Finally, Petitioner claims the Board acted arbitrarily and capriciously, denying Petitioner due process, by failing to set forth standards and criteria in its final order to guide his future reinstatement efforts. The Court agrees with the Board's assertion, in its Brief in Opposition to Petition for Review, that the Board must comply with MCLA 333.16247, supra, but is not obligated to advise an applicant how to develop or prove either good moral character or reasonable skill and safety. The Petitioner alone must bear this responsibility, consistent with his burden of proof. The Board has here complied with MCLA 333.16247, supra.

Petitioner further asserts due process requires that such detailed guidance must be provided an applicant whose petition is denied. The Court agrees this may be so where an existing license is being revoked or a license renewal is being denied. In such instances, a significant property interest of the licensee is being taken away. However, where a license has already been revoked, as here, and reinstatement is sought, the licensee has no property interest which commands the protections proposed by Petitioner.

The Board is not statutorily charged with the responsibility of assisting applicants such as Petitioner in their reinstatement efforts; it is charged with protecting the public interest. In this instance, the Board lawfully and reasonably found reinstatement of Petitioner's license was not in the public interest.

NOW, THEREFORE, for the reasons set forth herein, the Petition for Review is denied.

IT IS SO ORDERED.

Thos. L. Brown

THOMAS L. BROWN, CIRCUIT JUDGE

STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATION

BOARD OF MEDICINE

In the Matter of the Application for Reinstatement of

JESSE KETCHUM, M.D.

_____/ H.O. No. 81-179

FINAL ORDER DENYING REINSTATEMENT

At a regularly scheduled meeting of the
Michigan Board of Medicine held in
Lansing, Michigan, on April 11, 1984.

This matter having come before the Board of Medicine pursuant to the application of Jesse Ketchum, M.D., petitioner herein, for reinstatement of his license to practice medicine in the state of Michigan; formal hearings having been held before a hearing examiner, and the hearing examiner having submitted findings of fact and conclusions of law dated February 22, 1984, a copy of which is attached; and the Board of Medicine having considered the record made herein and adopted the aforesaid findings of fact and conclusions of law, and being fully advised in the premises; now, therefore,

IT IS HEREBY ORDERED that petitioner's application for reinstatement of his license to practice medicine in the state of Michigan shall be and hereby is DENIED.

Signed this 30th day of April, 1984.

MICHIGAN BOARD OF MEDICINE

[S E A L]

By James L. Fenton, M.D.
James L. Fenton, M.D.
Chairperson

STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATION

ADMINISTRATIVE LAW SERVICES OFFICE

IN THE MATTER OF:

JESSE KETCHUM, M.D. Docket No. 81-179

/

OPINION

Hearings were held in the above captioned matter on August 5, 1981; March 10, 1983; May 3, 1983; May 4, 1983 and August 8, 1983.

APPEARANCES:

Joseph Reid, Esq. on behalf of Jesse Ketchum (hereafter 'Applicant')

Thomas L. Sparks, Assistant Attorney General on behalf of the Board of Medicine (hereafter 'Complainant')

SUMMARY OF PROCEEDINGS:

This is a proceeding for the reinstatement of a medical license. Applicant's license was revoked by order of the board on November 21, 1974; the board finding that Applicant had violated Sections 11(2)(h) and (i) and 12(1) of the Medical Practice Act, 1973 PA 185; MCLA 338.1801 et seq.; MSA 14.542(1) et seq. (hereafter the 'Act').

On April 29, 1980, Applicant filed a Petition for Reinstatement. An answer in opposition to the petition was filed by the Complainant on February 24, 1981.

After the close of proofs, Applicant and Complainant were granted leave to file briefs in this matter. Applicant filed its brief on September 19, 1983 while Complainant filed its brief on October 18, 1983.

SUMMARY OF EXHIBITS:

Applicant presented 153 exhibits, all of which were admitted as evidence.

Exhibits 1 through 6; 8 through 67; and 69 through 151 represented continuing medical education seminar credits from December 5, 1979 through March 7, 1983. Exhibit 7 is a "psychological assessment" prepared by Barry Mintzes, Ph.D., a licensed psychologist. Exhibit 152 is a Physician's Recognition Award presented to Applicant by the American Medical Association and Exhibit 153, an "Order for Return of Fingerprints, Arrest Card and Description" issued on June 29, 1982 by the Recorder's Court for the city of Detroit.

Complainant presented 5 exhibits, the disposition of which occurred in the following manner:

Exhibit Letter and Descriptions	Disposition
Exhibit A - Answer of Jesse Ketchum to first amended complaint for damages and motions to strike - [redacted] v Ketchum.	Not Admitted
Exhibit B - Excerpt transcript of partial opending statement of attorney Preddy in [redacted] v Ketchum.	Not Admitted
Exhibit C - Affidavit of Thomas Addis.	Admitted
Exhibit D - Affidavit of Elenor Zynger.	Admitted
Exhibit E - Deposition of Michael Meloni, M.D.	Admitted

FINDINGS OF FACT:

Applicant presented his own testimony, the testimony of Samuel I. Lerman, M.D.; Father Norman F. Shadley and Barry Mintzes, Ph.D. all in support of his good moral character.

Dr. Lerman testified that he met Applicant in 1970 at a course being given at the University of Buffalo, New York; that he then admired his technical skills in an operation which he had observed; that he then met him about five or six years ago while both were attending continuing education courses at the

Detroit Medical Center; that he found Applicant taking courses in every area of medicine; that he is aware that Applicant was convicted of negligent homicide in New York; that he has had lunch with Applicant on six occasions in the last three years; that he has encountered Applicant in the library doing research and looking up articles in the medical libraries; that he has discussed on eight or ten occasions some of his patients' medical problems and received an excellent medical opinion; that he believes he is well qualified as a physician; that he is of good moral character; that he has been rehabilitated; that it would be in the public interest to permit Applicant to resume his practice; that he is aware that Applicant's license was revoked; that he was not aware of any incident that occurred within the state of Michigan; that he observed Dr. Tommy Evans, then Chief of Obstetrics/Gynecology at Hutzel Hospital paying considerable respect to Applicant.

Barry Mintzes testified as follows: that he is a licensed psychologist; that he has extensive experience in the correctional arena; that he began therapy with Applicant in the late fall of 1982; that he saw Applicant three times; that in addition to the above he also had Applicant come in for some psychological testing; that he has conducted hundreds of clinical interviews with people who have served time in prison; that he employed the Minnesota Multiphasic Personality Inventory, the Sacks Sentence Completion Test, and the House-Tree-Person Test; that the results indicated that Applicant was somewhat guarded in the test taking and suggested the possibility of some underlying feeling of inadequacy which he was attempting to cope with at the time; that he believed that Applicant is doing a lot of things at the present time to cope adequately with what had been

a very difficult history and a very difficult set of circumstances; that testing showed no evidence of any unusual characterological flaws and no evidence of any unusual psychological functioning; that he did not discover anything in Applicant's personality which would make him unfit to practice his profession or demonstrated a lack of good moral character; that he prepared a psychological assessment of Applicant (Applicant's Exhibit 7); that Applicant also filled out a questionnaire presented by Mintzes; that Applicant responded with the word "none" when presented with a question detailing various feelings which he had about himself; that in response to a question asking what his five main fears were, Applicant replied with the word "none"; that the above reply was consistent with Mintzes evaluation of Applicant; that Applicant responded with a "n/a" to specific questions concerning self-description; that Applicant had no remorse concerning the 1971 incident in New York resulting in the patient's death and Mintzes felt that this was an appropriate response under the circumstances; that he does not have a copy of the Peer Review Report of New York state; that when asked to list all physicians seen in the last five years he listed Dr. Michael Megler and David Lowy; that the materials provided to Mintzes did not contain the opinion of the Administrative Law Judge issued in 1974.

Father Norman Shadley testified as follows: that he is a priest in the Episcopal Church; that he has known Applicant for approximately two years; that Applicant brings his son to church each Sunday and on Thursday so that his son can sing in the choir; that Applicant attends the medweek services and dinners; that Applicant is not immoral and that he is of good moral character; that his knowledge of the past events in Applicant's life pertaining to his loss of license was gained both through converstaions with Applicant and through documents

provided to Father Shadley by Applicant.

Richard Horsch, M.D. testified on behalf of Complainant, in the following manner: that he is an anesthesiologist; that after reading pages 52 through 61 of the transcript in which Applicant was being cross-examined by Mr. Sparks (Transcript - Volume 1, pgs. 52-61), Horsch opined that he could not "believe that anyone with formal training in medicine, who was a physician, could have such a profound lack of knowledge pertaining to anoxia and hypoxia and could say that the human brain could go from 10 to 15 minutes totally without oxygen before it is injured, and that the only form of injury is death, and that there is nothing in between, such as partial brain damage, coma, et cetera. It is inconceivable to me that any physician could make those claims . . ."; that the testimony given by Applicant which was reviewed by Horsch does not meet the standard of care of a physician; that the only document that Horsch used in arriving at his opinion was the transcript referenced above; that he rendered his opinion based upon the assumption that Applicant's answers were rendered in an academic sense as opposed to Applicant's own personal experiences.

Michael J. Meloni, Jr., M.D. testified by deposition in the following manner: that he was a surgical resident at Jackson Memorial Hospital and was present during an operation performed on [redacted] on July 26, 1977; that Applicant was the anesthesiologist present; that toward the end of the procedure [redacted] became bradycardic and hypotensive and suffered a corneal respiratory arrest; that Meloni and a Dr. John King were finishing the procedure when a great deal of activity began taking place at the anesthesiologist's head of the table; that he asked Applicant what was wrong and Applicant responded that the patient had become hypotensive and bradycardic; that

Dr. McCarthy, Applicant's supervisor, was summoned and upon arrival recognized that the anesthetic gas knob on the anesthesia machine had been turned up all the way so that [redacted] was receiving only anesthetic gas without oxygen. McCarthy then corrected the situation so that [redacted] was receiving a large amount of oxygen and minimal amounts of anesthesia; that she had suffered hypoxic brain damage and remained in a coma for the rest of her life; that it was the delivery of the nitrous oxide rather than oxygen which caused her cardiopulmonary arrest which in turn caused the brain damage; that he did not actually see Applicant turn the dials on the anesthesia machine; that the slowdown in the heart rate came at about the same time as Applicant's hurried activity at the head of the table; that he did not notice any signs before the incident of a lack of oxygen; that there was not evidence of any type of intestinal distention caused by nitrous oxide on [redacted]; that Applicant was the only person by the anesthetic machine for the preceeding several minutes before the incident.

Marion Agby, a witness for Complainant, testified as follows: that her name was affixed to an exhibit to Applicant's Petition for Reinstatement and that it was not her signature and that she did not sign the document.

Jean Hoin, a witness for Complainant, testified as follows: that she is an investigator for the Department of Licensing and Regulation; that she attempted to verify the names on the above-referenced exhibit; that two persons who signed the above-referenced exhibit signed affidavits detailing the circumstances under which they signed (Complainant's Exhibit C and D).

Applicant testified in the following manner: that he is of good moral character; that he has been attending continuing education seminars and lectures in all fields of medicine at various hospitals in the Detroit area on a daily basis since

December of 1979 (Applicant's Exhibits 1 through 151, except for 7); that he had gone to Florida in 1976 to study to become an anesthesiologist at Jackson Memorial Hospital in Miami; that while at the hospital he was an anesthesia resident; that this entailed being supervised by a staff licensed instructor from the university; that in July of 1977 he was the anesthesiologist with regard to a [redacted]; that after the surgical procedure had been completed an incident occurred where there was some difficulty in the [redacted] case concerning the type of gas that she was receiving; that he did not know [redacted] condition after surgery nor did he attempt to find out; that when asked about hypoxia he replied that a patient would become cyanotic during the period of hypoxia and no other physical signs would be noted; that it is the anesthesiologist's responsibility to make sure that the patient is getting the right quantities of gases; that a patient deprived of oxygen for 15 minutes will die and that there is no other permanent damage; that he has had his license revoked in five states and Ontario, Canada, because of the incident which occurred in New York in 1971; that he takes his eight year old son to services at church on Sunday and also to choir practice on Tuesday, Thursday and right before service on Sunday; that his conviction for indecent and obscene conduct in Recorder's Court for the city of Detroit was set aside (Exhibit 153) and that this conviction was one of the allegations and subsequent findings made by the board in its Final Order; and that he feels that he possesses the professional skills necessary to provide medical services to the public.

CONCLUSIONS OF LAW:

Applicant bears the burden of proving, by clear and convincing evidence, that he meets the requirements for reinstatement of his license.

Section 16247 of the Public Health Code, 1978 PA 368, as amended; MCLA 333.1101 et seq; MSA 14.15(1101) et seq, reads as follows:

> "(1) A board may reinstate a license or issue a limited license to an individual whose license has been suspended or revoked under this part if, after a hearing, the board is satisfied that the applicant is of good moral character, is able to practice the profession with reasonable skill and safety to patients, and should be permitted in the public interest to resume practice. As a condition of reinstatement, the board may impose a disciplinary or corrective measure authorized under this part and require that the licensee attend a school or program selected by the board to take designated courses or training to become competent or proficient in those areas of practice in which the board finds the licensee to be deficient. The board may require a statement on a form approved by it from the chief administrator of the school or program attended or the person responsible for the training certifying that the licensee has achieved the required competency or proficiency.
>
> "(2) A license suspended or revoked for grounds stated in section 16221(b)(i), (iii), or (iv) shall not be reinstated until the board finds that the licensee has become mentally or physically able to practice with reasonable skill and safety to patients. The board may conduct further examination of the licensee, at the licensee's expense necessary to verify that the licensee has become mentally or physically able. A licensee affected by this section shall be afforded the opportunity at reasonable intervals to demonstrate that he or she can resume competent practice in accordance with standards of acceptable and prevailing practice."

GOOD MORAL CHARACTER

Good moral character is defined as "the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner." Based on the testimony of Applicant in relation to his reaction to the [redacted] incident, the responses which he gave to various test questions posited by Mintzes, and the apparent questions raised concerning his affidavits, this Administrative Law Judge finds and so concludes that Applicant has not demonstrated, by clear and convincing

evidence, that he is of good moral character. His responses in the above cited areas indicating that he did not know what had happened to [redacted] after the incident and his failure to respond to certain questions put by Mintzes demonstrate both a lack of honesty and openness.

ABILITY TO PRACTICE

It is uncontroverted that Applicant has amassed numerous hours of continuing medical education since late 1979. In fact, it is undisputed that he has attended lectures or seminars almost on a daily basis since that time.

However, it is also undisputed that a certain incident involving a female patient [redacted] occurred in Florida in 1977. Based on Dr. Meloni's testimony, this incident was a direct result of Applicant. When asked about this incident and hypoxia in general, Applicant's responses were challenged by Dr. Horsch. After a careful review of the record, this Administrative Law Judge is convinced that Applicant has failed to meet his burden to establish by clear and convincing evidence that he is able to practice the profession with reasonable skill and safety to patients.

PUBLIC INTEREST

For the reasons stated above pertaining to ability to practice, this Administrative Law Judge also concludes that Applicant has not met his burden, by clear and convincing evidence, to demonstrate that it would be in the public interest to permit him to resume his practice.

Dated: 2-22-84

Ronald M. Basso
Administrative Law Judge