STATE OF WASHINGTON

DEPARTMENT OF HEALTH

Olympia, Washington 98504

RE: Howard Levine
Docket No.: 98-10-A-1028 MD
Document: Final Order

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld:

> The identity of the complainant if the person is a consumer, health care provider, or employee, pursuant to RCW 43.70.075 (Identity of Whistleblower Protected) and/or the identity of a patient, pursuant to RCW 70.02.020 (Medical Records – Health Care Information Access and Disclosure)

If you have any questions or need additional information regarding the information that was withheld, please contact:

> Adjudicative Clerk Office
> P.O. Box 47879
> Olympia, WA 98504-7879
> Phone: (360) 236-4677
> Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to Nancy Ellison, Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of the License to Practice As a Physician and Surgeon of: HOWARD J. LEVINE, MD License No. MD8342 Respondent.	)	**Docket No. 98-10-A-1028MD** STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW AND AGREED ORDER

The Medical Quality Assurance Commission, (Commission), by and through Rosemary J. Irvin, Department of Health Staff Attorney, and Howard J. Levine, M.D., represented by Jeffrey R. Johnson, Attorney, stipulate and agree to the following:

Section 1: PROCEDURAL STIPULATIONS

1.1 Howard J. Levine, M.D. Respondent, was issued a license to practice as a physician and surgeon by the State of Washington in March 1982.

1.2 On May 7, 1999, the Commission issued a Statement of Charges against Respondent.

1.3 The Statement of Charges alleges that Respondent violated RCW 18.130.180(1), (4), (7), (10) and (24). Respondent denied the allegations of the Statement of Charges in his Answer filed on or about May 17, 1999.

1.4 Respondent understands that the State is prepared to proceed to a hearing on the allegations in the Statement of Charges. The State understands that Respondent is prepared to proceed to a hearing to defend against the allegations in the Statement of Charges.

1.5 Respondent understands that he has the right to defend himself against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.6 Respondent understands that, should the State prove at a hearing the allegations in the Statement of Charges, the Commission has the power and authority to impose sanctions pursuant to RCW 18.130.160.

1.7 Respondent and the Commission agree to expedite the resolution of this matter by means of this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order (Agreed Order).

1.8 Respondent waives the opportunity for a hearing on the Statement of Charges contingent upon signature and acceptance of this Agreed Order by the Commission.

1.9 This Agreed Order is not binding unless and until it is signed and accepted by the Commission.

1.10 Should this Agreed Order be signed and accepted it will be subject to the reporting requirements of RCW 18.130.110 and any applicable interstate/national reporting requirements.

1.11 Should this Agreed Order be rejected, Respondent waives any objection to the participation at hearing of all of the Commission members who heard the Agreed Order presentation.

Section 2: STIPULATED FACTS

All patients referenced are identified in the attached Confidential Schedule. Much of the supporting evidence in this case is testimonial. There is considerable divergence in Respondent's and the State's positions on the accuracy, credibility and reliability of this testimonial evidence. In order to expedite a resolution, where necessary, the salient points of divergence in the testimonial evidence are stated.

The State and Respondent acknowledge the existence of the following evidence and that, if proven at hearing, there is sufficient evidence to support a finding of unprofessional conduct by the Commission.

2.1 On April 10, 1995, Patient A presented at Respondent's office requesting a termination of pregnancy. The pregnancy was determined to be a second trimester pregnancy of approximately 15 weeks. A laminaria was inserted and the Patient was told to return the next day for the termination. The next day, on April 11, 1995, the Respondent performed a therapeutic abortion on Patient A. Respondent's notes do not document any particular concern after the termination.

> 2.1.1 Patient A's account: Patient A experienced an onset of severe pain during the termination procedure. She continued to have extreme abdominal pain following the procedure and notified Respondent before she left the clinic. When Patient A returned home with her mother, Patient A continued to complain of pain. Patient A's mother was so concerned about Patient A that she did not fill the pain medication prescriptions that were provided by the Respondent. Patient A's mother called the Respondent's office. The office staff told Patient A's mother that Patient A should come to the Respondent's clinic. The Respondent called at around 6:00 p.m., before Patient A was transported. When Patient A's mother told Respondent that Patient A was sleeping, Respondent recommended that Patient A take aspirin and use a heating pad.

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2.1.2 Respondent's account: Neither Patient A nor her mother called Respondent's clinic on the evening following the termination. As reflected in Respondent's chart, at 11:00 a.m., on April 12, 1995, the day following the termination, Patient A called Respondent's office and was advised to return to the office. Patient A stated she would go in to the office, but did not go in. Around 2:30 p.m., when Respondent noted that Patient A had not returned to the office, he called Patient A's home and spoke to her mother. Patient A's mother stated her daughter seemed better and had gone to sleep. Respondent advised her to call if there was any problem and told her to bring Patient A into the office the next morning.

2.2 On April 13, 1995, Patient A's mother brought Patient A to the Respondent's clinic. Patient A had a temperature of 100.8 and hemoglobin of 10.2 when she was at Respondent's office. She was very uncomfortable. She was given Methergine IM and Rocephen IM, 250 mg. The Respondent was upset with Patient A for not filling or taking the prescriptions.

2.2.1 Patient A's account: Patient A's mother called Respondent and requested a referral to a hospital, but Respondent declined to do so and told her to bring her daughter into the office.

2.2.2 Respondent's account: The mother did not call on April 13 and request referral to a hospital, but brought her daughter into the office in the morning as she had been instructed the night before.

2.2.3 Patient's Account: When Patient A returned to Respondent's clinic, she was very pale and had been unable to retain food or drink. Patient A's mother requested that Respondent send Patient A to a hospital. The Respondent refused and requested that Patient A stay at his office for observation and re-evaluation. Patient A's mother told the Respondent that she remembered how "*well*" the clinic had watched her daughter previously and how she was very worried about leaving Patient A unattended. One of Respondent's staff wrote in the chart "does not wish to go to the hospital." Patient A left Respondent's office because she was not comfortable being observed at that office.

2.3.4 Respondent's account: When Patient A was in his office on April 13, 1995, his diagnosis was rule out perforation and rule out broad ligament hematoma. He prescribed observation in his clinic's recovery room and sedation as necessary. Patient A refused to remain in Respondent's office. Before Patient A left Respondent's office on April 13, 1995, Patient A signed a form acknowledging she was leaving against medical advice. After Patient A signed a release against medical advice form, the urgency of receiving immediate medical evaluation and treatment was stressed by Respondent's staff before she left the premises.

2.3 Patient A next sought treatment on April 16, 1995, when she went to an Emergency Room. She gave a history of termination of pregnancy on April 11, 1995, and reported increasing lower

abdominal pain for the past 2-3 days, temperatures as high as 104° , and a little vaginal bleeding. The admitting diagnosis was abdominal pain consistent with endometritis. Patient A was admitted to the hospital and antibiotics were prescribed. On April 18, 1995, while still in the hospital, an ultrasound was performed and a pelvic mass was noted. Later that day, an exploratory laparotomy was performed. Upon exploration of the abdominal cavity, it was noted that Patient A had a perforation of the uterus in the posterior aspect of the uterus. A large pelvic abscess involving the uterus, tubes, ovaries, and appendix was found, and there was a marked amount of pus within the peritoneal cavity. Necrosis and devascularization of a portion of the small bowel was present. A total abdominal hysterectomy, bilateral salpingo-oophorectomy, appendectomy, and small bowel resection were performed on Patient A.

2.4 On August 15, 1991, Patient B presented at Respondent's office requesting a termination of pregnancy. Since Patient B was in the second trimester of her pregnancy, a laminaria was inserted and the Patient was instructed to return the next day for the termination procedure. On or about August 16, 1991, the Respondent performed a second trimester termination of pregnancy on Patient B. At the time of the abortion, Patient B was told the risks of termination of pregnancy by Respondent's office assistant. Respondent's notes do not document any particular concern after the procedure.

2.4.1 Patient B's account: The laminaria was inserted by a woman who was not a doctor, and therefore was not qualified to insert the laminaria. The next day the patient returned for the TOP procedure. Two to three minutes into the procedure, Patient B felt a sharp pain in the top of her abdomen. The pain continued, unabated after the procedure. Patient B and her escort were told to leave the clinic when they requested to see the doctor. Patient B called the Respondent after she left the clinic. Respondent told Patient B that she was having an allergic reaction to the prophylactic antibiotic, tetracycline. Respondent told Patient B to discontinue taking the drug. Patient B's pain continued and she again called the Respondent. The Respondent told Patient B that she must have the flu. Patient B told the Respondent that she was planning to leave for Wyoming. Respondent told Patient B that it was okay for her to travel to Wyoming.

2.4.2 Respondent's account: Respondent inserted the laminaria. He has no recollection of such conversations after the patient left his clinic. He does not remember talking with Patient B or any family members of Patient B, after she left the clinic. Perforation is a recognized risk of termination of pregnancy, and may occur despite the exercise of reasonable care.

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2.5 On August 17, 1991, Patient B began her trip to Wyoming by car. Several days later, in Wyoming, Patient B was hospitalized for abdominal pain, with nausea and vomiting. During emergency exploratory surgery, doctors discovered that Patient B had a perforated uterus and small bowel necrosis with mesenteric laceration.

2.6 On or about May 6, 1996, the Respondent performed an elective abortion on Patient C. On May 13, 1996, Patient C experienced abdominal pain and a vaginal discharge. Patient C elected to go to the University of Washington, rather than return to Respondent's clinic. At the hospital, the emergency room doctor noted the patient was in no acute distress, with normal vital signs, and a relatively benign abdominal and pelvic exam. Patient C was diagnosed with a slightly elevated white blood count and was discharged home with Vicodin, Motrin, and Flagyl.

2.6.1 Patient C's account: The Respondent was very rough with Patient C positioning her for the abortion. During the procedure, Patient C experienced severe pain. The pain was greater than Patient C remembered from her prior termination. Although Patient C begged Respondent to stop and remove the speculum, Patient C did not notice any change in Respondent's actions as a result of her complaints. During and after the procedure the Respondent was verbally abusive and made degrading comments to the Patient and her companion. The Respondent forcefully questioned Patient C about her choice of birth control and voiced criticism of her choice while she was in stirrups during the termination of pregnancy.
A few days later, Patient C had a fever, dizziness and a vaginal discharge with an offensive odor. She called the Respondent's office and was told to come to the Respondent's clinic. Patient C elected to go to the University of Washington Hospital, as she was afraid to return to the Respondent's clinic.

2.6.2 Respondent's account: Respondent denies the allegations that he was too rough and denies that he was verbally abusive.

2.7 On or about March 1, 1996, the Respondent performed a therapeutic abortion on Patient D.

2.7.1 Patient D's account: Although Patient D did, by letter, thank the Respondent for providing a safe termination of pregnancy, she suggested in the letter that he make changes to his practice to increase the respect and dignity his patients experience. Specifically, Patient D felt she was treated with disrespect because Respondent expressed his disagreement with her choice of birth control in a derogatory tone of voice. She also thought Respondent should warn patients before doing things to them. Respondent yanked on her leg to cause her to scoot forward on the table rather than asking her to move forward, and he inserted the speculum without warning.

2.7.2 Respondent's account: Respondent treated Patient D appropriately.

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2.8 On or about October 4, 1996, Respondent performed an abortion on Patient E. Patient E experienced endometritis from retained products of conception following the termination of pregnancy. This resulted in pain and fever and required a follow-up procedure by another provider.

2.8.1 Patient E's account: During the procedure, Respondent was verbally abusive. During the procedure, she experienced unnecessary intense pain.

2.8.2 Respondent's account: He was not verbally abusive and did not cause an inordinate amount of pain. Endometritris and retained products of conception are known risks of the procedure.

2.9 On or about January 10, 1997, the Respondent performed a termination of pregnancy on Patient F. Patient F did not receive prophylactic antibiotics after the termination procedure and before she left Respondent's clinic, as described in Respondent's discharge instruction sheet. Respondent's records show the procedure was performed at 3:20 p.m. and Patient F was in the recovery room at 3:30 p.m.

2.9.1 Patient F's account: Patient F's procedure was not performed until shortly before closing time. Respondent's staff hustled Patient F out of the clinic because it was closing. When Patient F called the Respondent's answering service to secure the prescription for prophylactic antibiotics which had not been provided as described in Respondent's instruction sheet, Respondent responded angrily in a phone call in which he accused Patient F of unnecessarily calling him.

2.9.2 Respondent's account: Patient F called to obtain the prophylactic antibiotics she had not received at the clinic. Respondent does not know why she did not receive the antibiotics because the normal protocol includes giving out prophylactic antibiotics after the procedure. When Patient F called to get the prescription, Respondent had difficulty getting through to Patient F because her telephone line was blocked. He became frustrated because he was given an incorrect telephone number for Patient F's pharmacy. Respondent believes Patient F verbally abused him during telephone calls they had. Eventually, Respondent was able to determine Patient F's pharmacy, and he called in the prescription.

2.10 On or about February 19, 1997, Patient G presented to Respondent's office for a termination of a second trimester pregnancy. A laminaria was inserted that day. On February 20, 1997, Patient G returned to Respondent's clinic for termination of the pregnancy. Her sister accompanied her in the exam room. When Respondent removed the laminaria, Patient G's sister asked why no one was wearing gloves. The Respondent said they were wearing gloves. The assistant told the sister the doctor was wearing a surgical glove. The Respondent told Patient G that she would have to find another facility to complete her procedure. Patient G and her sister were eventually asked to

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leave and were told the police would be called if they did not leave voluntarily. Shortly thereafter, the Patient and her sister left the clinic. Patient G had the termination completed at Group Health Cooperative.

2.10.1 Patient G's account: The room where the procedure was performed was dirty. The Respondent proceeded to remove the laminaria from Patient G without washing his hands or putting gloves on. The Respondent inflicted unnecessary pain on Patient G. When questioned about his conduct by Patient G's sister, the Respondent became very angry, terminated the procedure and told Patient G and her sister that they would have to get off his property. The Respondent called Patient G and her sister "pathetic." Patient G was bleeding as she was trying to dress. The Respondent told Patient G and her sister that they would have to pay much more money than he normally charged, for him to continue the termination. As Patient G and her sister continued to leave, the Respondent yelled at his receptionist. The Respondent threatened to call every clinic in Seattle to see that Patient G would not be seen. Patient G's sister drove her to Providence Hospital in Everett where Patient G was kept for two hours to determine her stability for transfer to complete the termination of pregnancy.

2.10.2 Respondent's account: Respondent's assistant was wearing gloves. Respondent had a glove on his right hand, the hand he used to remove the laminaria. The room was not dirty. When Respondent said that they were wearing gloves, and the sister saw the gloves, she stated that the gloves had just been put on and she was going to file a complaint because Respondent had "entered her sister's vagina" without a glove. At that point, Respondent felt the Patient (or her sister) was in the office looking for an excuse to file a lawsuit or to file some sort of complaint. Respondent did not want to continue to treat Patient G and told them they would need to go to another facility where they would feel more comfortable. Patient G apologized, but since Respondent did not believe the Patient was bleeding or experiencing other problems, and Respondent did not believe Patient G would be put in danger by receiving treatment elsewhere, Respondent told her she would have to find another facility to complete her procedure. Respondent did not threaten Patient G, was not verbally abusive, and did not say he would only complete the procedure if the patient agreed to pay him more money.

2.11 On or about July 17, 1998, the Respondent performed a termination of pregnancy ("TOP") on Patient H.

2.11.1 Patient H's account: She experienced excruciating pain during the procedure, and Respondent caused unnecessary emotional distress to Patient H in performing the TOP. She does not believe the Respondent allowed enough time from the time of administration of the local anesthetic to the time he began the procedure. Respondent and the Respondent's staff failed to attend to Patient H after performing the TOP.

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2.11.2 Respondent's account: Patient H was appropriately medicated with 50 mg. Demerol IV and 5 mg. Diazepam IV even before the local anesthetic was administered. She was followed in the recovery room after the procedure. The Respondent's office called the patient three days later and was told she was doing fine.

2.12 On or about April 22, 1998, the Respondent performed a TOP on Patient I.

2.12.1 Patient I's account: The medication given before the termination, 50 mg. Demerol IV and 5 mg. Valium IV had no effect. During the procedure, the patient was screaming from pain and told Respondent she was going to pass out. She claims Respondent said, "Just pass out then so we don't have to listen to you."

2.12.2 Respondent's account: The patient was medicated with 50 mg. Demerol IV and 5 mg. Diazepam IV, as per the normal procedure. Before the patient was discharged from the office, she was given Albuprofen for pain. The patient had an uneventful termination of pregnancy. Respondent's office called the patient in routine follow-up the day following the procedure and was told the patient "felt fine." Respondent denies causing unnecessary pain and denies making any inappropriate comments to the patient.

2.13 On May 9, 1997, Respondent entered into a Stipulation of the Parties, Findings of Fact, Conclusions of Law, and Agreed Order with the Washington State Department for Laboratory Quality Assurance Standards. As a result of that Stipulation, Respondent's laboratory received a conditional license to practice as a medical site until October 31, 1998. Respondent's license to operate a medical test site was renewed at the end of the conditional license term after Respondent complied with the terms of the Stipulation.

2.14 The State has expert witnesses whose testimony will support that Respondent failed to meet the standard of care in providing medical care to some or all of the Patients identified herein. Respondent has expert witnesses to support the care and treatment he rendered to the Patients identified herein.

2.15 Respondent failed to use properly licensed medical personnel in the performance of certain medical procedures for one or more of the Patients identified herein.

Section 3: CONCLUSIONS OF LAW

The State and Respondent agree that the State may have sufficient evidence to prove the above findings and that if the State were to prove the allegations of the Statement of Charges at hearing, entry of the following Conclusions of Law would be justified.

3.1 The Commission has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 The above facts, if proven at hearing, would constitute unprofessional conduct in violation of RCW 180.130.180(1), (4), (7), and (10) by the Commission.

3.3 The above violations are grounds for the imposition of sanctions under RCW 18.130.160.

Section 4: AGREED ORDER

Based on the preceding Stipulated Facts and Conclusions of Law, Respondent agrees to entry of the following Order:

4.1 It is hereby ordered that Respondent's license to practice medicine and surgery in the State of Washington is suspended indefinitely. Said suspension is stayed so long as the Respondent complies with the terms and conditions in the following paragraphs.

4.2 The Respondent shall, upon receiving written notice from the Commission that this Agreed Order has been accepted, immediately cease performing second-trimester Terminations of Pregnancy ("TOPs"). The Respondent shall not be allowed to petition the Commission to resume performance of second-trimester TOPs at any time in the future.

4.3 The Respondent shall, as of March 1, 2000, cease performing Terminations of Pregnancy ("TOPs") in any form. The Respondent shall not be allowed to petition the Commission to resume performance of TOPs at any time in the future.

4.4 Nothing in this Agreed Order shall prohibit Respondent from hiring one or more independent contractors to perform terminations of pregnancy at Respondent's clinic, so long as Respondent is not involved in the care and treatment of patients with respect to their terminations of pregnancy and does not have supervisory authority over such independent contractors with respect to the care and treatment to be rendered by such independent contractors.

4.5 The Respondent shall ensure that all his employees who perform medical procedures are appropriately and competently trained and licensed.

4.6 Respondent shall obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

4.7 Internet prescribing of Viagra by the Respondent that is currently under investigation with the Department or other cyber consultation, even if this conduct is later determined to be a violation

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of federal, state or local laws or administrative rules, shall not be considered a violation of this Order.

4.8 Respondent shall assume all costs of complying with this Order.

4.9 If Respondent violates any provision of this Order in any respect, the Commission may take further action against Respondent's license.

4.10 Respondent shall inform the Commission and the Adjudicative Clerk's Office in writing, of changes in his residential address.

4.11 In order to monitor compliance with the Order, Respondent agrees that a representative of the Commission may make announced or unannounced visits to Respondent's practice to:

(1) Inspect office and/or medical records,
(2) Interview office staff,
(3) Inspect accounting records and appointment records,
(4) Review other aspects of Respondent's practice.

4.12 Respondent shall appear before the Commission six months from the date this Agreed Order is signed by the Commission, or as soon thereafter as the Commission's schedule permits, and annually thereafter, and present proof that he is complying with the Order. He shall continue to make such compliance appearances annually or as soon thereafter as the Commission's schedule permits, unless otherwise instructed in writing by the Commission or its representative.

4.13 The Respondent shall pay a fine of Eight Thousand Dollars ($8,000) within three years of acceptance of this Order. The Respondent shall pay Two Thousand Five Hundred Dollars ($2,500) within twelve (12) months of the entry of this Order and the additional Two Thousand Five Hundred Dollars ($2,500) within twenty-four (24) months of the entry of this Order, and the final Three Thousand Dollars ($3000) within thirty-six (36) months of the entry of this Order, for a total of Eight Thousand Dollars ($8,000). Payments shall be remitted to the following address:

Department of Health
P.O. Box 1099
Olympia, Washington 98507-1099

4.14 The Commission's oversight and monitoring of Respondent shall continue until Respondent files a written petition for termination of the Commission's oversight and monitoring and, if the Commission so requests, appears personally before the Commission. Termination of the Commission's oversight and monitoring shall be by written order of the Commission. The

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Respondent shall not be allowed to petition the Commission for a termination of the Commission's oversight and monitoring for a period of three (3) years from the effective date of this Order.

4.15 This Agreed Order is not binding on Respondent or the Commission unless accepted by the Commission.

4.16 This Agreed Order shall be effective after it is signed by the Commission Chair on the date it is legally served on the Respondent.

I, Howard J. Levine, M.D. Respondent, certify that I have read this Stipulated Findings of Fact, Conclusions of Law and Agreed Order in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it, that I fully understand and agree to its entry, and that it may be presented to the Commission without my appearance. If the Commission accepts the Stipulated Findings of Fact, Conclusions of Law and Agreed Order, I understand that I will receive a signed copy.

Howard Levine
Howard J. Levine, M.D.
Respondent

Nov 3, 1999.
Date

Jeffrey R. Johnson, WSBA #11082

11/3/99
Date

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Section 5: ORDER

The Commission accepts and enters this Stipulated Findings of Fact, Conclusions of Law and Agreed Order.

Dated this 17 day of November, 1999.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE
COMMISSION

David W. Wilmot MD

Panel Chair

Presented by:

Rosemary J. Irvin, WSBA #8137
Department of Health Staff Attorney

11/4/99
Date

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