

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BUREAU OF HEALTH SERVICES
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MEMIE C. BURTON, JR., M.D.
_____ /

Complaint No. 43-99-0190-00
CONSENT ORDER AND STIPULATION

CONSENT ORDER

An administrative complaint was filed with the Disciplinary Subcommittee of the Board of Medicine on December 29, 1999, charging Memie C. Burton, Jr., M.D., (Respondent) with having violated section 16221(a), (b)(i) of the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 *et seq*; MSA 14.15(1101) *et seq*.

By stipulation contained in this document, Respondent does not contest the allegations of fact and law in the complaint. Respondent understands that by pleading no contest he does not admit the truth of the allegations but agrees that the Disciplinary Subcommittee may treat the allegations as true for resolution of the complaint. Respondent agrees that the Disciplinary Subcommittee may enter an order treating the allegations as true.

The Disciplinary Subcommittee has reviewed the stipulation contained in this document and agrees that the public interest is best served by resolution of the outstanding complaint.

Therefore, the Disciplinary Subcommittee finds that the allegations of fact contained in the complaint are true and constitute a violation of sections 16221(a) and (b)(i) of the Public Health Code.

Accordingly,

IT IS ORDERED that for each of the violations Respondent's license is LIMITED for a minimum period of one year commencing on the effective date of this order. The periods of limitation shall run concurrently. The details of the limitation are as follows:

- A. Respondent shall not practice medicine in the area of obstetrics.

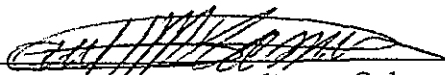
IT IS FURTHER ORDERED that should Respondent violate any term or condition set forth here, it may be determined that Respondent has violated an order of the Disciplinary Subcommittee, 1996 AACRS, R 338.1632, and section 16221(g) of the Public Health Code.

IT IS FURTHER ORDERED that in the event Respondent petitions for reclassification of the license, the petition shall be in accordance with section 16249 of the Public Health Code and rules promulgated thereunder.

IT IS FURTHER ORDERED that this order shall be effective on the date signed by the Disciplinary Subcommittee or its authorized representative, as set forth below.

Signed this 28th day of March, 2001.

MICHIGAN BOARD OF MEDICINE

By  _____
Chairperson, Disciplinary Subcommittee

STIPULATION

The parties stipulate and agree as follows:

1. Respondent does not contest the allegations set forth in the complaint and agrees that the Disciplinary Subcommittee may treat the allegations of fact and law as true, which finding shall have the same force and effect for purposes of this consent order as if evidence and argument were presented in support of the allegations. Further, Respondent understands and intends that by so stating he is not admitting the truth of the allegations but is agreeing that the Disciplinary Subcommittee may enter its order treating the allegations as true for purpose of resolution of the complaint.

2. Respondent understands and intends that by signing this stipulation he is waiving the right pursuant to the Public Health Code, rules promulgated thereunder, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 *et seq*; MSA 3.560(101) *et seq*, to require the State to prove the charges set forth in the complaint by presentation of evidence and legal authority, and to appear with an attorney and such witnesses as Respondent may desire to present a defense to the charges before the Disciplinary Subcommittee or its authorized representative.

3. Factors taken into consideration when determining the proposed sanction include the following:

- A. Respondent has cooperated fully in the resolution of this matter.
- B. Respondent is the director of integrated surgical services of the Indian Phoenix Medical Center in Phoenix, Arizona and is thus not presently practicing in Michigan.

4. Respondent understands that reclassification of the license is not automatic but that pursuant to section 16249 of the Public Health Code, and rules promulgated pursuant thereto, Respondent must establish that he will practice in a safe and competent manner and that it is in the public interest for the license to be reclassified.

5. The Board's conferee, Roger Hertz, M.D., who has indicated support of this proposal, and the Department's representative or the undersigned assistant attorney general are free to discuss this matter with the Disciplinary Subcommittee and recommend acceptance of the resolution set forth in the consent order.

6. The foregoing consent order is approved by the respective parties and may be entered as the final order of the Disciplinary Subcommittee in this cause.

7. The foregoing proposal is conditioned upon its acceptance by the Disciplinary Subcommittee, the parties expressly reserving the right to further proceedings without prejudice should the consent order be rejected.

AGREED TO BY:

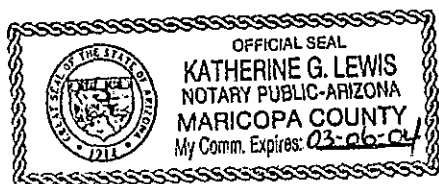
Howard C. Marderosian
Howard C. Marderosian (P17080)
Assistant Attorney General
Attorney for Complainant
Dated: 1/12/01

AGREED TO BY:

Memie C. Burton, Jr.
Memie C. Burton, Jr., M.D.
Respondent

State of Arizona)
County of Maricopa)^{ss}

On the 05 day of January, 2001, Memie C. Burton, Jr., M.D. signed this consent order and stipulation in front of me.



Katherine G. Lewis
Notary Public, Maricopa County
State of Arizona
My commission expires: 03-06-04

This is the last and final page of a consent order and stipulation in the matter of Memie C. Burton, Jr., M.D., pending before the Disciplinary Subcommittee of the Michigan Board of Medicine, and consisting of five pages, this page included.

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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BUREAU OF HEALTH SERVICES
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MEMIE C. BURTON, JR., M.D.

Complaint No. 43-99-0190-00

ADMINISTRATIVE COMPLAINT

Attorney General Jennifer M. Granholm, through Assistant Attorney General Howard C. Marderosian, on behalf of the Department of Consumer & Industry Services, Bureau of Health Services (Complainant), files this Complaint against Memie C. Burton, Jr., M.D. (Respondent), alleging upon information and belief as follows:

1. The Board of Medicine (Board), an administrative agency established by the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 *et seq*; MSA 14.15(1101) *et seq*, is empowered to discipline licensees under the Code through its Disciplinary Subcommittee.
2. Respondent specializes in the practice of obstetrics and gynecology (OB/GYN) and at all times relevant to this matter practiced in Arizona.
3. Respondent at all times relevant to this matter was also licensed to practice medicine in Michigan.

4. S.C. (initials will be used to protect patient confidentiality) was an obstetric patient of Respondent's beginning in August of 1994. Respondent was responsible for providing prenatal and obstetric care to S.C. S.C. was 37 years old with a history of two prior live births. Her first child was delivered vaginally in 1985. The second child was delivered by Cesarean section as a result of fetal distress. The second child's birth weight was 10 lbs., 11 oz. S.C.'s last prenatal period occurred on April 1, 1994, and her due date was January 6, 1995. S.C.'s weight was approximately 290 lbs. Respondent did not evaluate the circumstances of the 1991 Cesarean section despite its relevance to her current pregnancy regarding whether a trial of labor should be allowed.

5. Respondent conducted four obstetrical ultrasounds. The first on August 10, 1994, showed a 20-21 week, intrauterine pregnancy. The second on October 16, 1994, showed a 32-33 week pregnancy. The third on November 23, 1994, showed a 34 week pregnancy. The final ultrasound was performed on December 30, 1994, for the purpose of ruling out macrosomia. The sonographer estimated fetal weight at 8 lbs. 4 oz.

6. On November 29, 1994, Respondent conducted a three hour fasting blood sugar, the results of which were as follows: a fasting blood sugar of 73 mg/dl (normal 65-110), one hour 173 mg/dl (normal 65-110), two hour 170 mg/dl (normal 65-110) and three hour 77 mg/dl (normal 65-110).

7. On November 25, 1994, the fundal height was recorded at 47 cm. S.C. had appointments with Respondent on November 27, 1994, and December 30, 1994. On the last date, S.C.'s fundal height was 50 cm and her weight was 309 pounds. As

noted in ¶5, *supra*, a sonogram conducted that date resulted in an estimated fetal weight of 8 lbs. 4 oz. Respondent scheduled S.C. for induction of labor to begin on January 1, 1995, because of a possible diagnosis of macrosomia.

8. S.C. presented herself to the Phoenix Indian Medical Center at 07:30 on December 31, 1994, in labor. At the time of admission, S.C. reported that she had been in labor since 05:00. Respondent was notified of S.C.'s admission. At 08:40, contractions were reported at every 2 - 3 minutes of moderate intensity. Her blood pressure was reported at 136/80 and the fetal heart tones (FHT) were noted to have minimal variability. S.C. was turned to her left side and was provided juice for hydration.

9. At 10:45 S.C. began to leak thick muconium, the FHTs were in the 120 range with fair long-term variability (LTV) and mild variable decelerations. A fetal scalp electrode was applied. At this time, S.C.'s cervix was 6-7 cm dilated and 100% effaced. At 10:55 Respondent transferred S.C. to the labor floor. At 11:00, late decelerations were noted on the FHTs which continued for the remainder of the delivery. At 11:05, S.C.'s blood pressure was 142/80, the FHTs were in the 130 range, contractions were every 2-3 minutes, and S.C. was dilated to 8 cm. Late decelerations in the FHTs were noted at 10:30 and 10:50. At 11:30, the labor and delivery flow chart indicates that S.C. was dilated to 8 cm and the fetus was located at a -3 station.

10. At 12:45, S.C.'s blood pressure was recorded at 143/82 and the FHTs were in the 120 range with four LTVs. The cervix was dilated to 8 cm and the fetus remained in the -3 station.

11. At 13:52, Respondent initiated an oxytocin infusion to induce labor. The fetus remained at the -3 station, S.C.'s blood pressure was 169/90, the FHTs were in the 140 range, and contractions were reported at every 4-5 minutes. The fetus remained at the -3 station. At 15:25, Respondent increased the oxytocin to 6 milliunits per minute. At this time, the cervix was still dilated to 8 cm with the head unengaged at a -2 station. The FHTs continued to show signs of late decelerations.

12. Following the increase of the oxytocin (15:25) to 6 ml per unit, S.C.'s cervix remained dilated to 8 cm and the head remained unengaged at the -2 station. At 16:30 there was an abrupt change in both the FHTs and pressure tracing which was highly suggestive of a uterine rupture.

13. At 16:56, the FHTs dropped to the 80s followed by late decelerations. At this same time, S.C. had a hypertonic contraction coincident with her having a large bowel movement. No further uterine contractions were recorded from this point on. Decelerations became more marked with wide swings and beat-to-beat variability ceased.

14. Respondent increased the oxytocin to 7-8 ml per minute at 17:02. Unabated bradycardia began at 17:12, at which time Respondent ordered a Cesarean section. Following the delivery, the fetus was pronounced dead. The fetus' birth weight was 10 lbs. 3 oz.

15. Based upon the foregoing, Respondent's conduct was in violation of section 16221(a) and (b)(i) for the following reasons:

- a) Respondent failed to evaluate the circumstances of S.C.'s 1991 Cesarean section in order to determine if a trial of labor were appropriate for her current pregnancy.
- b) Respondent failed to diagnose fetal distress, ignoring such signs as the general lack of beat-to-beat variability, a pattern of late deceleration, and the passing of thick muconium following rupture of the membranes.
- c) Respondent failed to diagnose and treat cephalopelvic disproportion.
- d) Respondent failed to evaluate the progress of S.C.'s labor and take appropriate action based upon the circumstances.
- e) Respondent decided to initiate oxytocin and gradually increased the dose despite the circumstances of ongoing abnormal fetal heart rates, thick muconium, high presenting part, cephalopelvic disproportion and evidence of late deceleration.
- f) Respondent failed to diagnose and treat uterine rupture based on the abrupt change in the fetal heart rate and pressure tracings at 16:30 which were consistent with a uterine rupture. The standard of care required Respondent to abandon the trial labor and proceed to an emergency Cesarean section.
- g) Respondent failed to diagnose macrosomia.

FURTHER, Respondent is informed that Complainant will rely on 1980 AACS, R 338.970, to substantiate the allegations set forth in this complaint.

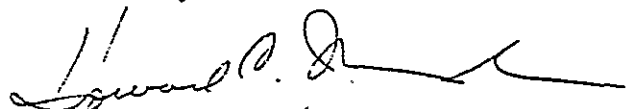
THEREFORE, Complainant requests that this complaint be served upon Respondent and that Respondent be offered an opportunity to show compliance with all lawful requirements for retention of the aforesaid license. If compliance is not shown, Complainant further requests that formal proceedings be commenced

pursuant to the Public Health Code, rules promulgated pursuant to it, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 *et seq*; MSA 3.560(101) *et seq*.

RESPONDENT IS HEREBY NOTIFIED that, pursuant to section 16231(7) of the Public Health Code, Respondent has 30 days from receipt of this complaint to submit a written response to the allegations contained in it. The written response shall be submitted to the Bureau of Health Services, Department of Consumer & Industry Services, P.O. Box 30670, Lansing, Michigan, 48909, with a copy to the undersigned assistant attorney general. Further, pursuant to section 16231(8), failure to submit a written response within 30 days shall be treated as an admission of the allegations contained in the complaint and shall result in transmittal of the complaint directly to the Board's Disciplinary Subcommittee for imposition of an appropriate sanction.

Respectfully submitted,

JENNIFER M. GRANHOLM
Attorney General



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Dated: 12/29/99

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BOARD OF MEDICINE DISCIPLINARY SUBCOMMITTEE

In the Matter of

MEMIE C. BURTON, JR., M.D.
License Number: 43-01-025923

File Number: 43-99-0190-00

ORDER GRANTING RECONSIDERATION AND RECLASSIFYING LICENSE

On March 28, 2001, the Disciplinary Subcommittee of the Michigan Board of Medicine, hereafter Disciplinary Subcommittee, issued a Consent Order and Stipulation which limited the license of Memie C. Burton, Jr., M.D., hereafter Petitioner, for a minimum period of one year for violations of sections 16221(a) and 16221(b)(i) of the Public Health Code, 1978 PA 368, as amended.

On December 5, 2001, Petitioner filed a request for reconsideration of the Consent Order and Stipulation in accordance with the provisions of 1996 AACRS, R 338.1633.

On December 6, 2001, the Department of Consumer & Industry Services, Bureau of Health Services, filed a memorandum taking no position on Petitioner's request for reconsideration.

The Disciplinary Subcommittee, having reviewed the request for reconsideration and response memorandum, considered the within matter at a regularly scheduled meeting held in Lansing, Michigan, on December 12, 2001. Now therefore,

IT IS HEREBY ORDERED that Petitioner's request for reconsideration is GRANTED.

IT IS FURTHER ORDERED that Petitioner is GRANTED an UNLIMITED license to practice medicine in the state of Michigan.

IT IS FURTHER ORDERED that this order shall be effective on the date signed by the Disciplinary Subcommittee's chairperson or authorized representative as set forth below.

Dated: December 18, 2001

**MICHIGAN BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE**

By Thomas C. Lindsay II
Thomas C. Lindsay II, Director
Bureau of Health Services

This is the last and final page of an Order Granting Reconsideration and Reclassifying License in the matter of Memie C. Burton, Jr., M.D., File Number 43-99-0190-00, before the Disciplinary Subcommittee of the Michigan Board of Medicine, consisting of two pages, this page included.