

FILED

Department of Professional Regulation
AGENCY CLERK

DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

A. Wilson

DEPARTMENT OF PROFESSIONAL
REGULATION,

CLERK _____

DATE 2-18-91

Petitioner,

-vs-

DPR CASE NUMBER: 89-002212
LICENSE NUMBER: ME 0034692

HERMAN MILLER, M.D.,

Respondent.

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on February 2, 1991, in Tampa, Florida, for consideration of a Stipulation (attached hereto as Exhibit A) entered into between the parties in the above-styled case. Upon consideration of the Stipulation, the documents submitted in support thereof, the arguments of the parties, and being otherwise advised in the premises,


IT IS HEREBY ORDERED AND ADJUDGED that the Stipulation as submitted be and is hereby approved and adopted in toto and incorporated by reference herein. Accordingly, the parties shall adhere to and abide by all of the terms and conditions of the Stipulation.

This Order takes effect upon filing with the Clerk of the Department.

Attachment #1

DONE AND ORDERED this 12th day of February, 1991.

BOARD OF MEDICINE


ZACHARIAH P. ZACHARIAH, M.D.
CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to Herman Miller, Jr., M.D., 10525 Chippendale Circle, East, Jacksonville, Florida 32218 and Roy Lewis, Attorney at Law, 203 Washington Street, Jacksonville, Florida 32202 and by interoffice delivery to Mary B. Radkins, Attorney at Law, Department of Professional Regulation, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, at or before 5:00 P.M., this 18 day of February, 1991.



Orders/MillerH 2/2/91

attachment #1

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

vs.

DOAH CASE NO. 90-4391
DPR CASE NO. 8902212

HERMAN MILLER, JR., M.D.,

Respondent.

STIPULATION

Herman Miller, Jr., M.D., the Respondent, and the Department of Professional Regulation, referred to as Department, stipulate and agree to the following joint Stipulation and to the entry of a Final Order of the Board of Medicine, referred to as Board, incorporating this Stipulation and agreement in this matter.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 0034692.
2. Respondent was charged by an Administrative Complaint filed by the Department and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit A.
3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint attached hereto as Exhibit A.

STIPULATED CONCLUSIONS OF LAW

1. Respondent, in his capacity as a licensed physician, admits that in such capacity he is subject to the provisions of Chapters 455 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

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

STIPULATED DISPOSITION

1. Respondent shall not in the future violate Chapters 455, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto.

2. The Board shall impose an administrative fine in the amount of \$4,000.00 against the Respondent. The fine shall be paid by the Respondent to the Executive Director of the Board within one year of the imposition by Final Order of the Board.

3. The Respondent shall receive a reprimand from the Board of Medicine.

4. Effective the date of filing of the Final Order incorporating the terms of this Stipulation, Respondent's license to practice medicine shall be placed on probation for a period of two (2) years. The terms and conditions of probation shall include:

a. Respondent shall comply with all state and federal statutes, rules and regulations pertaining to the practice of medicine, including Chapters 455, 458, and 893, Florida Statutes, and Rule 21M, Florida Administrative Code.

b. Respondent shall appear before the Board or its designated probationer's committee at the first meeting after said probation commences, at the last meeting of the Board's designated probationer's committee preceding termination of the probation, semiannually, and at such other times as requested by the Board's probationer's committee. Respondent shall be noticed by the Board staff of the time, date and place of the Board's Probationer's Committee whereat Respondent's appearance is required. Failure of Respondent to appear as requested or directed shall be considered a violation of the terms of this Stipulation, and shall subject the Respondent to disciplinary action.

c. In the event the Respondent leaves the State of Florida for a period of thirty days or more or otherwise does not engage in the active practice of medicine in the State of Florida, then certain provisions of Respondent's probation (and only those provisions of the probation) shall be tolled as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the State of Florida. Respondent must keep current residence and business addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses. Furthermore, Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of medicine in Florida.

d. In the event that Respondent leaves the active practice of medicine in this state for a period of thirty days or more, the following provisions of his probation shall be tolled:

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01/1/14

i. The time period of probation shall be tolled.

ii. The provisions regarding supervision whether direct or indirect by another physician, included in paragraphs "f", "g", and "h" below.

iii. The provisions regarding preparation of investigative reports detailing compliance with this Stipulation shall be tolled. See paragraphs "j" below.

iv. The community service requirements detailed in paragraph "l" below shall be tolled.

e. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Probationers' Committee may require Respondent to appear before the Probationers' Committee and demonstrate his ability to practice medicine with skill and safety to patients prior to resuming the practice of medicine in this State.

f. Respondent shall not practice except under the indirect supervision of a physician fully licensed under Chapter 458, Florida Statutes, approved by the Board's Probationer's Committee or the Board. If Respondent wants to request approval of his monitoring physician from the Board, he may do so at the time this Stipulation is presented to the Board. If approval is sought from the Board, however, Respondent shall have his monitoring physician present at the Board meeting whereat this Stipulation is considered. If the monitoring physician is not approved at the same meeting whereat the Stipulation is addressed, then the approval of the monitoring physician shall only be addressed by the

Probationer's Committee thereafter. To effectuate approval by the Board, Respondent shall also submit a curriculum vitae to the Board at least fourteen days before this matter is considered by the Board. Respondent shall also provide the proposed monitoring physician, in advance, a copy of this Stipulation and the Administrative Complaint issued in this proceeding. If Respondent decides to have the approval of his monitoring physician done by the probationer's Committee, Respondent shall have the monitoring physician with him at his first probation appearance before the Board's Probationer's Committee. Prior to approval of the monitoring physician by the committee, the Respondent shall provide to the monitoring physician a copy of the Administrative Complaint and Final Order filed in this case. A failure of the Respondent or the monitoring physician to appear at the scheduled probation committee meeting shall constitute a violation of the Board's Final Order. Prior to the approval of the monitoring physician by the committee, Respondent shall submit to the committee a current curriculum vitae and description of the current practice from the proposed monitoring physician. Said materials shall be received in the Board office no later than fourteen days before Respondent's first scheduled probation appearance. The attached provisions regarding monitoring physicians are incorporated herein as part of the terms and conditions of this Stipulation. The responsibilities of the monitoring physician shall include:

1. Respondent's monitoring physician shall appear before the probationer's committee at the first meeting

of said committee following commencement of the probation, and at such other times as directed by the committee. It shall be Respondent's responsibility to ensure the appearance of his monitoring physician as requested or directed. Failure of the monitoring physician to appear as requested or directed shall constitute a violation of the terms of this Stipulation and shall subject the physician to disciplinary action.

ii. Respondent's monitoring physician shall submit reports on a quarterly basis, in affidavit form, which shall include:

a. Brief statement of why physician is on probation.

b. Description of probationer's practice.

c. Brief statement of probationer's compliance with terms of probation.

d. Brief description of probationer's relationship with monitoring physician.

e. Detail any problems which may have arisen with probationer.

Respondent shall be responsible for ensuring that the monitoring physician submits the required reports.

iii. Be available for consultation with Respondent whenever necessary, at a frequency of at least once per week.

iv. Review 25 percent of Respondent's pregnancy termination patient records on a random basis at least once every month, for the purpose of ascertaining the thoroughness of documentation of the patient's history and

physical examination, tests performed, diagnosis, and proposed treatment.

v. Consult with Respondent on all cases involving the second-trimester elective termination of a pregnancy. For the purposes of this Stipulation, the scope of the consultation shall be as follows: the appropriateness of the procedure, an assessment of gestational age, the means of effecting the abortion, and proposed postoperative care. The advisability of obtaining a sonogram shall be specifically addressed, and if deemed advisable, the cost shall be borne by Respondent and not the patient.

vi. Report to the Board any violations by the probationer of Chapters 455 and 458, Florida Statutes, and the rules promulgated pursuant thereto.

vii. Maintain contact with Respondent on a frequency of at least once per month. In the event that the monitor is not contacted by Respondent on a frequency of at least once per month, then the monitoring physician shall immediately report this fact to the Board, in writing.

g. The Board shall confer authority on the Chairman of the Board's Probationer's Committee to temporarily approve Respondent's monitoring physician. In order to obtain this temporary approval, Respondent shall submit to the Chairman of the Probationer's Committee the name and curriculum vitae of the proposed monitoring physician. This information shall be furnished to the Chairman of the Probationer's Committee at the time that this Stipulation is approved by the Board. Said approval shall only remain in effect until the next meeting of

the Probationer's Committee. If the proposed monitoring physician is not approved, Respondent shall immediately cease practice. Absent said approval, Respondent shall not practice medicine until a monitoring physician is approved by the Board's Probationer's Committee.

h. In the event that the Respondent's monitoring physician is unable or unwilling to fulfill his responsibilities as a monitoring physician, as prescribed above, then the Respondent shall immediately advise the Board of this fact. Respondent shall further submit to the Chairman for the Board's Probationer's Committee the name of a temporary monitoring physician for approval. Respondent shall not practice pending approval of this temporary monitoring physician by the Chairman of the Probationer's Committee. Furthermore, Respondent shall make arrangements with his temporary monitoring physician to appear before the Probationer's Committee at its next regularly scheduled meeting, for approval of the monitoring physician by the Committee. Respondent shall only practice under the auspices of the temporary monitoring physician (approved by the Chairman) until the next regularly scheduled meeting of the Probationer's Committee whereat the issue of the Committee's approval of the Respondent's new monitoring physician shall be addressed.

k. Respondent shall submit quarterly reports, in affidavit form, the contents of which shall be specified by the Board. The reports shall include:

- i. Brief statement of why physician is on probation.
- ii. Description of practice location.
- iii. Describe current practice (type and composition).
- iv. Brief statement of compliance with probationary terms.
- v. Describe relationship with monitoring physician.
- vi. Advise Board of any problems,
 - i. Respondent shall attend 20 hours of Category I Continuing Medical Education courses per year in the area of obstetrics and gynecology and 10 hours per year in the area of risk management and record-keeping. Respondent shall submit a written plan to the Probationers' Committee for approval prior to completion of said courses. In addition, Respondent shall submit documentation of completion of these continuing medical education courses with his quarterly report. These hours shall be in addition to those hours required for renewal of licensure.
 - j. Respondent understands that during the course of the probation, semiannual reports shall be prepared by investigators with the Department detailing Respondent's compliance with the terms and conditions of this probation. Respondent waives confidentiality of these reports as to the Department only so that the Board may review these reports.
 - k. Respondent shall comply with all of the terms and conditions of the Stipulation.

1. Respondent shall perform 100 hours of community service in a not-for profit setting, outside of the physician's office, per year. Community service shall consist of medical service without fee for the good of the people of the State of Florida. Respondent shall submit a written plan for performance and completion of the community service to the Probationer's Committee for approval prior to the performance of said community service. Affidavits detailing the community service performed shall be filed with the Board quarterly.

m. Respondent agrees to the issuance of an emergency suspension order by the Secretary of the Department upon a finding of probable cause to believe that the terms of this Stipulation, as incorporated by a Final Order, have been violated.

n. Respondent shall pay all costs necessary to comply with the terms of the Final Order issued based on this Stipulation. Such costs include, but are not limited to, the cost of preparation of investigative reports detailing compliance with the terms of this Stipulation, and the Board's administrative costs directly associated with Respondent's probation. See Section 458.331(2), Florida Statutes.

5. It is expressly understood that this Stipulation is subject to the approval of the Board and the Department. In this regarding, the foregoing paragraphs (and only the foregoing paragraphs of the Stipulated Facts, Stipulated Conclusions of Law and Stipulated Disposition) shall have no force and effect unless a Final Order is entered incorporating the terms of this Stipulation, by the Board.

6. Respondent shall appear before the Board at the meeting whereat this Stipulation is considered. Respondent, in conjunction with the consideration of this Stipulation by the Board, shall respond to questions under oath from the Board, Board Staff or Department Staff.

7. Should this Stipulation be rejected, no statement made in furtherance of this Stipulation, by the Respondent may be used as direct evidence against the Respondent in any proceeding. However, such statements may be used by the Petitioner for impeachment purposes.

8. Respondent and the Department fully understand that this joint Stipulation and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against the Respondent for acts or admissions not specifically set forth in the Administrative Complaint attached as Exhibit "A" herein.

9. Upon the Board's adoption of this Stipulation, 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 joint Stipulation of facts, conclusions of law and imposition of discipline, and the Final Order of the Board incorporating said Stipulation.

10. Upon the Board's adoption of this Stipulation, the parties hereby agree that each party will bear his own attorney's fees and costs resulting from prosecution and/or defense of this proceeding. Respondent waives the right to

seek any attorney's fees or costs from the Department in connection with this disciplinary proceeding.

11. This Stipulation is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. 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 Stipulation. Furthermore, should this joint Stipulation not be accepted by the Board, it is agreed that presentation to and consideration of this Stipulation 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.

SIGNED this 31st day of October, 1990.

Herman Miller, Jr., M.D.
Herman Miller, Jr., M.D.

Sworn to and subscribed
before me this 31st day
of October, 1990.

Janina W. Williams
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. DEC. 22, 1993
BONDED THRU GENERAL INS. UND.

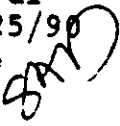
APPROVED this 7th day of January, 1990.

Larry Gonzalez
Secretary



By: Stephanie A. Daniel
Chief Medical Attorney

MBR/dr
07/25/90
1154



PROVISIONS REGARDING MONITORING/SUPERVISING PHYSICIANS

Provisions governing physicians ordered to work under supervision of monitoring and supervising physician.

I. DEFINITIONS:

Indirect Supervision is supervision by a monitoring physician whose responsibilities are set by the Board. Indirect Supervision does not require that the monitor practice on the same premises as the Respondent, however, the monitor shall practice within a reasonable geographic proximity to Respondent, which shall be within 20 miles unless otherwise provided by the Board and shall be readily available for consultation. The monitor shall be board-certified in the same specialty area in which Respondent practices.

Direct Supervision is supervision by a supervising physician. Direct supervision requires that the supervisor and Respondent work on the same premises. Specific responsibilities are set by the Board. The supervising physician shall be board-certified in the same specialty area in which Respondent practices.

II. Provisions governing all supervised or monitored physicians:

a. The Respondent shall not practice without a supervisor/monitor unless otherwise ordered by the Board.

b. The supervisor/monitor must be a licensee under Chapter 458, Florida Statutes, in good standing and without restriction or limitation on his license. In addition, the Board or Committee may reject any proposed supervisor/monitor

on the basis that he has previously been subject to any disciplinary action against his medical license in this or any other jurisdiction. The supervisor/monitor must be actively engaged in the same or similar specialty area unless otherwise provided by the Board or Committee. The Board or Committee may also reject any proposed supervisor/monitor for good cause shown.

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STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

CASE NO. 8902212

v.

HERMAN MILLER, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW, the Petitioner, Department of Professional Regulation, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against Herman Miller, M.D., hereinafter referred to as "Respondent," and alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.30, Florida Statutes, Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes.

2. Respondent is and has been at all times material hereto a licensed physician in the State of Florida, having been issued license number ME 0034692. Respondent's last known address is 3676 Cathedral Oaks Place, Jacksonville, Florida 32217-4208.

3. Patient #1, a sixteen (16) year old female had a positive pregnancy test on or about October 31, 1988.

4. On or about November 4, 1988 patient #1 was examined by her treating physician who concluded that patient #1's uterus

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Attachment #4

was 14-15 weeks in size, fundal height 14 cm, and fetal heart rate 140.

5. After consulting with her treating physician, patient #1 elected to have an abortion. Her treating physician then referred her to Respondent because her treating physician would not perform an abortion in the second trimester.

6. On or about December 5, 1988, Respondent saw patient #1 for the first time and on that same day performed a vacuum abortion on this patient. Respondent realized that the fetus had a gestation age of 22 weeks.

7. After completing the procedure, Respondent waited for thirty (30) minutes and found no bleeding, he prescribed Stadal, Phenagen #3; Methergine 2 mg and TCN Sumycus 500 mg.

8. On or about December 6, 1988, between 2:00 am and 6:30 am, patient #1 expired, and according to the Medical Examiner, her cause of death was multiple perforations in different sites of her uterus.

9. Respondent's medical records fail to reflect any preoperative evaluation or an assessment of fetus' gestational age.

10. Respondent failed to perform an ultrasound and given patient #1's history of irregular periods and an operative note indicating a large amount of placental tissue, Respondent should have performed an ultrasound and observed patient #1 for a longer period of time to assess the gestational age and viability before performing the abortion.

11. Respondent failed to reflect the following in his medical records: patient's history; a complete physical examination including internal examination of the uterus, evaluation of external genitalia and cervix; the method of evacuation; the use of forceps or any other kind of instruments to remove bony parts; and an assessment of the products of conception that were removed.

COUNT ONE

12. Petitioner realleges and incorporates paragraphs one (1) through eleven (11) as fully set forth above.

13. Respondent practiced medicine below the level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances in that he failed to perform an ultrasound, assess the fetus' gestational age and viability, and to include in his medical records the following: preoperative evaluation, patient's history, complete physical examination, the method of evacuation and an assessment of the products of conceptions that were removed.

14. Based on the foregoing Respondent violated Section 458.331(1)(t), Florida Statutes, by gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances.

COUNT TWO

15. Petitioner realleges and incorporates paragraphs one (1) through eleven (11) and thirteen (13) as fully set forth above.

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Attachment # 4

16. Respondent failed to keep written medical records that justified the course of treatment in that his medical records failed to include the following: why Respondent failed to perform an ultrasound and assessed patient #1's gestational age, patient history, complete physical examination, the method of evacuation and an assessment of the products of conceptions that were removed.

17. Based on the foregoing Respondent has violated Section 458.331(1)(m), Florida Statutes by failing to keep written medical records justifying the course of treatment of the patient including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

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

SIGNED this 22nd day of May, 1990.

FILED
Department of Professional Regulation
AGENCY CLERK

Larry Gonzalez, Secretary

CLERK

Paul Cope

Stephanie A. Daniel
Chief Medical Attorney

DATE

5-22-90

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Attachments #4

COUNSEL FOR DEPARTMENT:

[Handwritten signature]
Larry G. McPherson
Senior Attorney
Florida Bar No. 788643
Dept. of Professional Regulation
1940 N. Monroe Street, Ste. 60
Tallahassee, Florida 32399-0792
(904) 488-0062

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[Handwritten initials] #U



FLORIDA BOARD OF MEDICINE
DEPARTMENT OF PROFESSIONAL REGULATION

FILED
Lawton Chiles
Governor

BEFORE THE BOARD OF MEDICINE

Department of Professional Regulation
Secretary
DEPUTY CLERK

DEPARTMENT OF
PROFESSIONAL REGULATION,
PETITIONER

CLERK Inna Allen
DATE 2-17-93

DPR CASE NO. 89-002212

FLORIDA BOARD OF MEDICINE
1940 North Monroe Street
Tallahassee, Florida 32399-0770
Telephone (904) 488-0595

v.

Herman Miller, M.D.

RESPONDENT

Chairperson

James N. Burt, M.D.
Jacksonville, Florida

Members

Fuad S. Ashkar, M.D.
Miami, Florida

Pamela A. M. Campbell, Esq.
St. Petersburg, Florida

Richard James Cavallaro, M.D.
Naples, Florida

Edward A. Dauer, M.D.
Fort Lauderdale, Florida

Mary Kathryn Garrett, M.D.
Orlando, Florida

John W. Glotfelty, M.D.
Lakeland, Florida

Manning H. Hanline, Jr., M.D.
Pensacola, Florida

Gerard A. Kaiser, M.D.
Miami, Florida

Richard McEwen
Tallahassee, Florida

Louis C. Murray, M.D.
Orlando, Florida

Gilbert M. Rodriguez
Tampa, Florida

Margaret S. Skinner, M.D.
West Palm Beach, Florida

Gary E. Winchester, M.D.
Tallahassee, Florida

Zachariah P. Zachariah, M.D.
Fort Lauderdale, Florida

Executive Director

Dorothy J. Faircloth

ORDER OF TERMINATION

Upon review of the terms and conditions of the Final Order of the Board of Medicine rendered 2/18/91 the documentation offered on behalf of Respondent, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED:

That Respondent completed his period of probation on 2/17/93 and has complied with all terms of the Final Order rendered 2/18/91. DONE AND ORDERED this 2 day of February, 1993.

BOARD OF MEDICINE

James N. Burt, M.D., Chairperson
Board of Medicine

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by certified mail to Herman Miller, M.D., 3676 Cathedral Oaks Place South, Jacksonville, Florida 32217 and to Roy Lewis, Esquire, 203 Washington Street, Jacksonville, Florida 32202 at or before 5 p.m. of this 17th day of February, 1993.

Dorothy J. Faircloth
Executive Director, Board of Medicine