

STATE OF FLORIDA
BOARD OF MEDICINE

18

DEPARTMENT OF HEALTH,

Petitioner,

Final Order No. DOH-99-0329-5 -MOA Date 3-31-99

FILED

Department of Health
Angela Hall, AGENCY CLERK

By: Ronda Bryan
Deputy Agency Clerk

vs.

CASE NO.: 93-10435
LICENSE NO.: ME0033129

PHILIP F. WATERMAN, II, M.D.,

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on February 6, 1999, in Jacksonville, Florida, for consideration of a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in the above-styled cause. Upon consideration of the Consent Agreement, 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 Consent Agreement 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 the terms and conditions of the Consent Agreement.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 26th day of March, 1999.

BOARD OF MEDICINE



JAMES CERDA, M.D.
CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Philip F. Waterman, III, M.D., c/o Bruce D. Lamb, Esquire, Shear, Newman, Hahn & Rosenkranz, 201 E. Kennedy Boulevard, Suite 1000, Tampa, Florida 33601; and by interoffice delivery to Larry G. McPherson, Jr., Chief Attorney, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, on or before 5:00 p.m., this _____ day of _____, 1999.

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to Philip F. Waterman, II, M.D., Suite 100, Cape Coral, FL 33990, Bruce D. Lamb, Esquire, 201 East Kennedy Blvd., Suite 1000, Tampa, FL 33601, and interoffice delivery to Larry McPherson, Jr. , Chief Attorney, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, at or before 5:00 p.m., this _____ day of _____, 1999.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

v.

AHCA CASE NO. 93-10435

PHILIP F. WATERMAN, II, M.D.,

Respondent.

_____ /

CONSENT AGREEMENT

Philip F. Waterman, II, M.D. referred to as the "Respondent," and the Department of Health, referred to as "Department," stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes. Pursuant to the provisions of Section 20.43(3), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

STIPULATED FACTS

1. At all times material hereto, the Respondent was a licensed physician in the State of Florida having been issued license number MF 0033129.
2. The Respondent was charged by an Administrative Complaint filed by the Department of Health and properly served upon the 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 as Exhibit A.
3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint.
4. Respondent admits that recent information now leads to the knowledge that performance of an amniocentesis prior to twelve (12) gestation weeks is below the standard of care.

STIPULATED CONCLUSIONS OF LAW

1. The Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 455 and 458, Florida Statutes, and the jurisdiction of the Agency and the Board.
2. The Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.
3. Respondent admits that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. FUTURE CONDUCT. The Respondent shall not in the future violate Chapters 455, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, the Respondent read Chapters 455, 458, 893 and the Rules of the Board of Medicine, at Section 64B8, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of \$6000.00 against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within one (1) year of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINES IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND THE RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN ONE (1) YEAR OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B, PARAGRAPH 1 OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).**

3. Respondent shall receive a Letter of Concern from the Board of Medicine.

4. Respondent shall spend three (3) days with a Perinatologist observing technique and treatment of fetus and maternal patient in early gestational stages. Observation to be completed within six (6) months of the Final Order of the Board, with credit for one day already completed. Perinatologist to be board certified in Maternal-Fetal medicine and hold current unrestricted license to practice medicine in Florida.

5. Continuing Medical Education, Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend twenty (20) hours of Continuing Medical Education (CME), in prenatal risks. Respondent shall submit a written plan to the Chairman of the Board for approval prior to the completion of said continuing education hours and course. The Board confers authority on the Chairman of the Board to approve or disapprove said continuing education hours or course. In addition, Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical course within one (1) year of the entry of the Final Order in this matter. All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was previously provided during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education course shall consist of a formal, live lecture format.

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STANDARD PROVISIONS

This Consent Agreement shall be governed to the extent applicable by the attached "Standard Terms Applicable to Consent Agreements", Exhibit B, which is incorporated as if fully set forth herein.

1. It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless a Final Order incorporating the terms of this Agreement is entered by the Board.

2. Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

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

4. Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

5. Upon the Board's adoption of this Agreement, the parties hereby agree that each party will bear his own attorney's fees and costs resulting from prosecution or defense of this

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matter. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this matter.

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

SIGNED this 5th day of JAN., 1999.

Philip F. Waterman II MD
PHILIP F. WATERMAN, II, M.D.

Before me, personally appeared Philip F. Waterman II whose identity is known to me by personally (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 5th day of January, 1999.

Susan T. Mahan
NOTARY PUBLIC

My Commission Expires



SUSAN T. MAHAN
My Comm Exp. 6/28/2001
Bonded By Service Inc
No. CG645769
Personally Known () Other ()

APPROVED this 7 day of January, 1999.

Robert G. Brooks, M.D., Secretary



By: Larry G. McPherson, Jr.
Chief Attorney
Medical Section

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Exhibit B**STANDARD TERMS APPLICABLE TO CONSENT AGREEMENTS**

The following are the standard terms applicable to all Consent Agreements.

A. PAYMENT OF FINES. Unless otherwise directed by the Consent Agreement, all fines shall be paid by check or money order and sent to the Board address as set forth in paragraph E, below. The Board office does not have the authority to change terms of payment of any fine imposed by the Board.

B. COMMUNITY SERVICE AND CONTINUING EDUCATION UNITS. Unless otherwise directed by the Consent Agreement, all community service requirements, continuing education units/courses must be completed, and documentation of such completion submitted to the Board of Medicine at the address set forth below in paragraph E, WITHIN ONE YEAR OF THE DATE OF THE FINAL ORDER.

C. ADDRESSES. The Respondent must keep current residence and practice addresses on file with the Board. The Respondent shall notify the Board within ten (10) days of any changes of said addresses. Furthermore, if the Respondent's license is on probation, the Respondent shall notify the Board within ten (10) days in the event that the Respondent leaves the active practice of medicine in Florida.

D. COSTS. Pursuant to Section 458.331(2), Florida Statutes, the Respondent shall pay all costs necessary to comply with the terms of this Consent Agreement. Such costs include, but

are not limited to, the cost of preparation of Investigative Reports detailing compliance with the terms of the Consent Agreement, obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with the Respondent's probation.

E. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines, reports, correspondence and inquires shall be sent to: Board of Medicine, 2020 Capital Circle, SE, Bin # C03, Tallahassee, Florida 32399-3253, Attn: Final Order Compliance Officer.

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE
ADMINISTRATION,
PETITIONER,
vs.

CASE NO. 93-10435

PHILIP F. WATERMAN, II, M.D.,
RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Agency for Health Care Administration, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against Philip F. Waterman, II, 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 20.165, Florida Statutes; Section 20.42, 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 0033129. Respondent's last known address is 650 Del Prado Boulevard, Suite 100, Cape Coral, Florida 33990.
3. Respondent is Board Certified in Obstetric and Gynecology.
4. Patient M.M. had been a patient of Respondent from June 1984.
5. Patient M.M., a forty-six (46) year old female at approximately eight weeks pregnant, presented to Respondent on or

about October 20, 1992, for a prenatal visit, and underwent an ultrasound.

6. Respondent determined there was sufficient amniotic fluid for an amniocentesis, which is the extracting of fluid from the amniotic sac for evaluation.

7. Respondent attempted an amniocentesis on Patient M.M., but was unsuccessful.

8. Respondent failed to obtain proper consultation for Patient M.M.'s amniocentesis, early amniocentesis is a very difficult procedure that is not widely performed or recommended, and should be performed by a Maternal-Fetal medicine physician who does them of a routine basis.

9. Respondent did not document informed consent and consultation of risks involved from the procedure with a signed consent from Patient M.M. for the amniocentesis.

10. On or about October 27, 1992, Patient M.M. presented Respondent approximately nine (9) weeks pregnant and underwent another amniocentesis attempt, which was unsuccessful.

11. Respondent did not obtain a signed consent from Patient M.M. for the amniocentesis.

12. Patient M.M. subsequently developed vaginal bleeding.

13. On or about November 10, 1992, Patient M.M. presented Respondent at approximately ten (10) weeks, and underwent a successful amniocentesis.

14. Respondent inappropriately performed amniocentesis on Patient M.M. who had uterine bleeding, increasing the risk of spontaneous abortion when there was no urgent time factor involved.

15. On or about November 17, 1992, Patient M.M. presented to Respondent with complaints of vaginal bleeding, and was diagnosed with ruptured membranes.

16. Respondent prescribed bedrest and antibiotics for Patient M.M.

17. On or about December 9, 1992, Patient M.M. presented to Respondent with complaints of vaginal bleeding and cramps.

18. An ultrasound of Patient M.M. did not show any fetal heart tones, and fetal parts were seen in the open cervix.

19. Respondent performed a dilation and curettage (D & C) on Patient M.M. for evacuation of the uterus.

20. On or about December 17, 1992, Patient M.M. presented to Respondent for a postoperative check-up, which reported normal results.

21. On or about December 22, 1992, Patient M.M. presented another physician with complaints of persistent vaginal bleeding.

22. Patient M.M. was diagnosed with retained products of conception after a D & C.

23. Patient M.M. underwent a repeat D & C performed by the subsequent physician to evacuate the remaining material from the uterus.

Count One

24. Petitioner realleges and incorporates paragraph one (1) through twenty-three (23) as if full set forth herein this Count One.

25. Respondent is guilty of 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 hospitalization, in that Respondent failed to record notes documenting counseling and failed to obtain signed consent forms from Patient M.M. documenting informed consent for the first two amniocentesis.

26. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes, and is guilty of 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 hospitalization.

Count Two

27. Petitioner realleges and incorporates paragraph one (1) through twenty-three (23) and twenty-five (25) as if set full forth herein this Count Two.

28. Respondent is guilty of performing professional services which have not been duly authorized by the client, or his legal

representative, in that Respondent performed two (2) amniocentesis on Patient M.M. without written consent.

29. Based on the foregoing, Respondent violated Section 458.331(1)(p), Florida Statutes, and is guilty of performing professional services which have not been duly authorized by the client, or his legal representative, except as provided in s. 743.064, s. 766.103, or s. 768.13.

Count Three

30. Petitioner realleges and incorporates paragraph one (1) through twenty-three (23), twenty-five (25) and twenty-eight (28) as if full set forth herein this Count Three.


31. Respondent is guilty of gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, in that Respondent failed to refer Patient M.M. to proper consultation for amniocentesis and inappropriately attempted amniocentesis too early and inappropriately attempted a third amniocentesis on Patient M.M.

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

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an Order imposing one or more of the following penalties: permanent 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 16 day of December, 1994.

Douglas M. Cook, Director


Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR AGENCY:

Larry G. McPherson, Jr.
Chief Medical Attorney
Agency for Health Care Administration
1940 North Monroe Street
Tallahassee, Florida 32399-0792
Florida Bar #788643
RPC/kjh
PCP: December 15, 1994
Murrau, Slade and Varn

FILED
AGENCY FOR
HEALTH CARE ADMINISTRATION
DEPUTY CLERK
CLERK *Brandi L. Moore*
DATE 12-19-94