

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

Final Order No. AHCA-95-01209 Date 9-1-95

AGENCY FOR HEALTH CARE
ADMINISTRATION, BOARD OF
MEDICINE,

Petitioner,

v.

DOUGLAS GENE MCCREE, M.D.,

Respondent.

FILED
Agency for Health Care Administration
AGENCY CLERK
R.S. Power, Agency Clerk
By: Brandon L. Power
Deputy Agency Clerk

CASE NUMBER: 92-11106
LICENSE NUMBER: ME 0009271

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on August 4, 1995 in Palm Beach Gardens, Florida, for consideration of a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in the above-styled case. Upon consideration of the Consent Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise advised in the premises, the Board rejected the Consent Agreement proposed and offered an amendment at the hearing, which amendment was accepted without objection by the parties.

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 with the following amendment:

1. Paragraph 5. of the Stipulated Disposition is amended to reflect that the suspension of Respondent's license to practice medicine in the State of Florida is hereby stayed.

Accordingly, the parties shall adhere to and abide by all of

the terms and conditions of the Consent Agreement, as amended.

This Final Order takes effect upon filing with the Clerk of the Agency.

DONE AND ORDERED this 30 day August, 1995.

BOARD OF MEDICINE


GARY E. WINCHESTER, M.D.
CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by certified U.S. Mail to Douglas Gene McCree, M.D., 700 2nd Avenue North, Suite 301, Naples, Florida 33940, Wilson Jerry Foster, Esquire, 1342 Timberlane Road, Suite 101-A, Tallahassee, Florida 32312 and by interoffice delivery to Larry G. McPherson, Jr., Chief Medical Attorney, Agency for Health Care Administration, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, at or before 5:00 P.M., this _____ day of _____, 1995.

MARM M. HARRIS, Ed.D.
Executive Director

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

DOAH CASE NO. 94-5119
AHCA CASE NO. 92-11106

DOUGLAS G. MCCREE, M.D.,

Respondent.

CONSENT AGREEMENT

Douglas G. McCree, M.D., referred to as the "Respondent," and the Agency for Health Care Administration, referred to as "Agency," 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.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 0041495.

2. Respondent was charged by an Administrative Complaint filed by the Agency 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 as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint.

STIPULATED CONCLUSIONS OF LAW

1. 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. 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. The Agency agrees that the facts as set forth in the Administrative Complaint do not constitute a violation of Section 390.001(2), Florida Statutes, and further agrees to voluntarily dismiss Count Two of the Administrative Complaint upon the Board's acceptance of this Consent Agreement.

STIPULATED DISPOSITION

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

2. FINE. The Board shall impose an administrative fine in the amount of \$7,000 (seven thousand dollars) against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within ONE HUNDRED EIGHTY (180) days of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE 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 180 DAYS 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. REPRIMAND. The Respondent shall receive a reprimand from the Board of Medicine.

4. OBLIGATIONS/REQUIREMENTS. Within one (1) year of the filing of the Final Order incorporating the terms of this Agreement, Respondent shall attend fifty (50) extra hours of Category I Continuing Medical Education in obstetrics/gynecology and, twenty-one (21) extra hours of Category I Continuing Medical Education in record keeping and/or risk management (10 hours of which may be obtained by attending 2 days of Medical Board meetings and 8 hours of which may be obtained by completion of the course "Quality Medical Record Keeping for Health Care Professionals," provided by the Florida Medical Association). Respondent shall submit a written plan to the Chairman of the Probationer's Committee for approval prior to the completion of said continuing education hours. The Board confers authority on the Chairman of the Probationer's Committee to approve or disapprove said continuing education hours. 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 these medical education courses 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 Agency. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education courses shall consist of a formal, live lecture format.

5. SUSPENSION. Respondent shall be placed on suspension for one (1) year with all but ninety (90) days of the suspension being lifted as long as Respondent does not violate any terms of this Agreement.

6. It is expressly understood that this Agreement is subject to the approval of the Board and the Agency. 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.

7. Respondent shall appear before the Board at the meeting of the Board where this Agreement is considered. Respondent, in conjunction with the consideration of this Agreement by the Board, shall respond to questions under oath from the Board, Board Staff of Agency Staff. The Respondent shall be prepared to explain the circumstances involved in this matter and what measures have been taken to prevent a recurrence.

8. Should this Agreement be rejected, no statement made in furtherance of this Agreement 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.

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

10. 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.

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

12. 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 6th day of July, 1995.

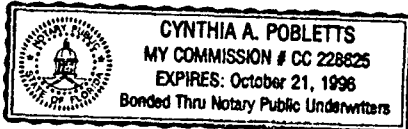
Douglas Gene McCree
Douglas Gene McCree, M.D.

Before me, personally appeared DOUGLAS GENE McCREE, whose identity is known to me by PERSONALLY KNOWN (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 5th day of July, 1995.

Cynthia A. Pobletts
NOTARY PUBLIC

My Commission Expires:



APPROVED this 21 day of July, 1995.

Douglas M. Cook
Director

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

STANDARD TERMS APPLICABLE TO CONSENT AGREEMENTS

The following are the standard terms applicable to all consent agreements, including supervision and monitoring provisions applicable to licensees on probation.

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 set forth in paragraph E, below. The Board office does not have the authority to change the 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. Respondent must keep current residence and practice addresses on file with the Board. 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 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 costs 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 costs directly associated with Respondent's probation.

E. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines, reports, correspondence and inquiries shall be sent to: **Board of Medicine, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, Attn: Final Order Compliance Officer.**

F. PROBATION TERMS. If probation was imposed by the Final Order of the Board, the following provisions are applicable.

1. DEFINITIONS:

a. INDIRECT SUPERVISION is supervision by a monitoring physician (monitor) 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 Respondent's specialty area unless otherwise provided by the Board.

b. DIRECT SUPERVISION is supervision by a supervising physician (supervisor) whose responsibilities are set by the Board. Direct supervision requires that the supervisor and Respondent work in the same office. The supervising physician shall be board-certified in the Respondent's specialty area unless

otherwise provided by the Board.

c. PROBATION COMMITTEE or "committee" are members of the Board of Medicine designated by the Chairman of the Board to serve as the Probation Committee.

2. REQUIRED SUPERVISION.

a. If the terms of the consent agreement include indirect monitoring of the licensee's practice (MONITORING) or direct monitoring of the licensee's practice (SUPERVISION), the Respondent shall not practice medicine without an approved monitor/supervisor, as specified by the Consent Agreement, unless otherwise ordered by the Board.

b. The monitor/supervisor 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 monitor/supervisor on the basis that he has previously been subject to any disciplinary action against his medical license in this or any other jurisdiction, is currently under investigation, or is the subject of a pending disciplinary action. The monitor/supervisor must be actively engaged in the same or similar specialty area unless otherwise provided by the Board or Committee and be practicing within a reasonable distance of the Respondent's practice, a distance of no more than twenty (20) miles unless otherwise specifically provided for in the consent agreement. The Board or Committee may also reject any proposed monitor/supervisor for good cause shown.

c. MECHANISM FOR APPROVAL OF

MONITOR/SUPERVISOR:

(1). TEMPORARY APPROVAL. The Board confers authority on the Chairman of the Board's Probation Committee to temporarily approve Respondent's monitor/supervisor. To obtain this temporary approval, Respondent shall submit to the Chairman of the Probation Committee the name and curriculum vitae of the proposed monitor/supervisor at the time this agreement is considered by the Board. **Once a Final Order adopting this Agreement is filed, Respondent shall not practice medicine without an approved monitor/supervisor. Temporary approval shall only remain in effect until the next meeting of the Probation Committee.**

(2). FORMAL APPROVAL. Respondent shall have the monitor/supervisor with him at his first probation appearance before the Probation Committee. Prior to consideration of the monitor/supervisor by the Committee, the Respondent shall provide to the monitor/supervisor a copy of the Administrative Complaint and Final Order in this case. Respondent shall submit a current curriculum vitae and a description of current practice from the proposed monitor/supervisor to the Board office no later than fourteen days before the Respondent's first scheduled probation appearance. Respondent's monitor/supervisor shall also appear before the Probation Committee at such other times as directed by the Committee. It shall be Respondent's responsibility to ensure that the appearance of his monitor/supervisor as directed. Failure of the monitor/supervisor to appear as directed shall constitute a

violation of the terms of this Stipulation and shall subject the Respondent to disciplinary action.

d. CHANGE IN MONITOR/SUPERVISOR. In the event that Respondent's monitor/supervisor is unable or unwilling to fulfill his responsibilities as a monitor/supervisor as described above, then the Respondent shall immediately advise the Board of this fact. Respondent shall immediately submit to the Chairman of the Board's Probation Committee the name of a temporary monitor/supervisor for consideration. Respondent shall not practice pending approval of this temporary monitor/supervisor by the Chairman of the Probation Committee. Furthermore, Respondent shall make arrangements with his temporary monitor/supervisor to appear before the Probation Committee at its next regularly scheduled meeting for consideration of the monitor/supervisor by the Committee. Respondent shall only practice under the auspices of the temporary monitor/supervisor (approved by the Chairman) until the next regularly scheduled meeting of the Probation Committee whereat the issue of the Committee's approval of the Respondent's new monitor/supervisor shall be addressed.

3. CONTINUITY OF PRACTICE

a. TOLLING PROVISIONS. 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:

(1). The time period of probation shall be tolled.

(2). The provisions regarding supervision whether direct or indirect by another physician, and required reports from the monitor/supervisor shall be tolled.

(3). The provisions regarding preparation of investigative reports detailing compliance with this Stipulation shall be tolled.

(4). Any provisions regarding community service shall be tolled.

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

JAM

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

PETITIONER,

vs.

CASE NO. 92-11106

DOUGLAS GENE MCCREE, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Business and Professional Regulation, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against Douglas G. McCree, 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; 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 0009271. Respondent's last known address is 700 2nd Avenue North, Suite 301, Naples, Florida 33940.

3. Respondent is Board Certified in Obstetrics and Gynecology.

4. On or about May 14, 1991, Patient D.M., a fifteen (15) year old female approximately twenty-three (23) weeks pregnant, presented to Respondent at Immokalee Health Care Clinic.

5. Respondent performed a colposcopy on Patient D.M. which revealed mild dysplasia, and noted her cervix to be closed and uneffaced.

6. Respondent advised Patient D.M. to go to his clinic to remove the abnormal tissue by cryocautery, freezing the tissue.

7. On or about May 16, 1991 Patient D.M. presented^{to} Respondent at his clinic without any medical records, and unrecognized by Respondent.

8. Respondent examined Patient D.M. and found her cervix partially dilated and effaced.

10. Respondent mistook Patient D.M. for another patient whom he had reviewed at the Immokalee clinic, and determined by ultrasound that there was no fetus, rather, that patient had a large amount of fluid and Respondent had suggested a dilation and curettage (D&C).

11. Respondent then mistakenly noted in Patient D.M.'s records that Patient D.M. had an ultrasound showing a large amount of fluid with no fetus.

12. Respondent advised Patient D.M. to return for a follow-up and a D&C on May 31, 1991, without benefit of a sonogram of this patient which was indicated prior to surgical procedure.

13. On or about May, 31, 1991, Patient D.M. presented Respondent at approximately twenty-five and a half (25 1/2) weeks pregnant for her follow-up.

14. Respondent explained the D&C to Patient D.M. and obtained a signed consent.

15. Respondent began the D&C by rupturing Patient D.M.'s membranes and suctioning off a large amount of fluid.

16. Patient D.M.'s uterus remained large after removal of the fluid.

17. Respondent ordered a sonogram for Patient D.M.

18. Respondent sent Patient D.M. to another physician for an ultrasound which revealed a viable fetus and a fetal heartbeat high transverse in the uterus.

19. Patient D.M. was transferred and admitted to Naples Community Hospital under the care of the subsequent physician.

20. Patient D.M. developed fetal bradycardia and was taken for an emergency cesarean section.

21. Patient D.M. underwent a cesarean section which delivered an expired fetus.

22. It was inappropriate for Respondent to attempt a termination of Patient D.M.'s pregnancy without properly diagnosing her condition.

23. Respondent failed to recognize the gestational age of Patient D.M.'s fetus at approximately twenty-five and a half (25 1/2) weeks.

24. Section 390.001(2), Florida Statutes, states in part, no termination of pregnancy shall be performed on any human being in the last trimester of pregnancy (after the 24th week of pregnancy).

Count One

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

26. 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 properly diagnose Patient D.M. condition and the gestational age of her fetus, and inappropriately attempted a dilation and curettage in his office.

27. 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.

Count Two


28. Petitioner realleges and incorporates paragraph one (1) through twenty-four (24) and twenty-six (26) as if full set forth herein this Count Two.

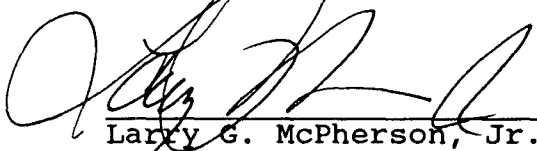
29. Respondent is guilty of failing to perform any statutory or legal obligation placed upon a licensed physician, in that Respondent attempted to perform a termination of Patient D.M.'s pregnancy in violation of Section 390.001(2), Florida Statutes.

30. Based on the foregoing, Respondent violated Section 458.331(1)(g), Florida Statutes, and is guilty of failing to perform any statutory or legal obligation placed upon a licensed physician.

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 1 day of June, 1994.


George Stuart, Secretary


Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Larry G. McPherson, Jr.
Chief Medical Attorney
Department of Business and Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792
Florida Bar #788643
RPC/kjh
PCP: May 26, 1994
Murray, Slade, and Varn

FILED
Department of Business and Professional Regulation
AGENCY CLERK

CLERK Sarah L. Washman
DATE 6-3-94