

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

In the Matter of

**JOSE GILBERTO HIGUERA, M.D.
License Number: 43-01-028049**

**Complaint Number: 43-94-5210-00
Docket Number: 96-0616**

FINAL ORDER

On July 22, 1996, the Department of Attorney General, Health Professionals Division, hereafter Health Professionals Division, filed an Administrative Complaint with the Disciplinary Subcommittee of the Michigan Board of Medicine, hereafter Disciplinary Subcommittee, charging Jose Gilberto Higuera, M.D., hereafter Respondent, with violations of sections 16221(a), 16221(b)(i), and 16221(b)(vi) of the Public Health Code, 1978 PA 368, as amended.

On December 17, 1996, Respondent filed a Motion for Stay of Proceedings, requesting a stay of the administrative proceedings pending resolution of criminal proceedings against Respondent which were based on the same conduct as alleged in the Administrative Complaint.

On January 2, 1997, the Health Professionals Division filed the State's Response to Motion for Stay of Proceedings and the State's Brief in Support of Response in Opposition to Respondent's Motion for Stay of Proceedings.

On January 10, 1997, the administrative law judge issued an Order Granting Partial Stay of Allegations, which ordered the hearing of allegations in paragraphs 7

through 12 of Count I and paragraph 15 of Count II of the Administrative Complaint stayed. It was also ordered that the hearing would go forward as scheduled on paragraphs 13, 14, and 16 through 20 of Count I and paragraphs 21 through 24 of Count III of the Administrative Complaint.

On April 28, 1997, the Health Professionals Division filed a Superseding Administrative Complaint.

An administrative hearing was held in the matter before the administrative law judge who, on October 26, 1998, issued a Proposal for Decision setting forth recommended findings of fact and conclusions of law.

On November 4, 1998, Respondent filed a Motion for Reconsideration of Order Granting Partial Stay, requesting a stay of all administrative proceedings pending resolution of the related criminal matter.

On November 9, 1998, the Health Professionals Division filed the State's Response in Opposition to Respondent's Motion for Reconsideration of Order Granting Partial Stay.

On November 10, 1998, Respondent filed Respondent's Objections to Proposal for Decision.

On November 12, 1998, Respondent filed Respondent's Reply to State's Response in Opposition to Respondent's Motion for Reconsideration of Order Granting Partial Stay.

On November 24, 1998, the Health Professionals Division filed the State's Response to Respondent's Objections to Proposal for Decision.

On December 3, 1998, the administrative law judge issued an Order Denying Reconsideration of Partial Stay and Denying Oral Argument.

On January 19, 1999, Respondent filed a Petition for Remand & Stay with accompanying Brief in Support of Petition for Remand & Stay, requesting that the Board issue an order remanding the matter for hearings on the remaining allegations and staying the administrative proceedings pending final adjudication of the related criminal matter, and requesting oral arguments on the matter.

On January 19, 1999, the Health Professionals Division filed a letter in opposition to Respondent's Petition for Remand & Stay.

The Disciplinary Subcommittee, having reviewed the administrative record, considered the within matter at a regularly scheduled meeting held in Lansing, Michigan, on January 20, 1999, denied Respondent's petition for remand and stay of the administrative proceedings, and Respondent's request for oral arguments.

Further, the Disciplinary Subcommittee affirmed the administrative law judge's findings of fact and conclusions of law in the Proposal for Decision.

IT IS HEREBY ORDERED that for violations of sections 16221(a), 16221(b)(i), and 16221(b)(vi) of the Public Health Code, supra, Respondent's license to practice medicine in the state of Michigan is SUSPENDED for a minimum period of six months and one day, commencing on the effective date of this order. The periods of suspension shall run concurrently.

IT IS FURTHER ORDERED that reinstatement of a license which has been suspended for more than six months is not automatic and, in the event Respondent applies for reinstatement of his license, application for reinstatement shall be in accordance with 1996 MR 7, R 338.1635. Further, Respondent shall supply to the Michigan Board of Medicine, pursuant to section 16247 of the Public Health Code, supra, clear and convincing evidence that Respondent is of good moral character, is able to practice the profession with reasonable skill and safety, and that it is in the public interest for Respondent to resume the practice.

IT IS FURTHER ORDERED that for the aforesaid violations of the Public Health Code, Respondent is FINED in the amount of \$5,000.00, to be paid to the State of Michigan prior to Respondent's application for reinstatement of his license. The fine shall be mailed to the Department of Consumer & Industry Services, Office of Health Services, Credentials Unit, P.O. Box 30185, Lansing, Michigan 48909. The fine shall be paid by

check or money order made payable to the State of Michigan, and the check or money order shall clearly display (or show) the formal complaint number **43-94-5210-00**.

IT IS FURTHER ORDERED that in the event Respondent violates any provision of this order, and if such violation is deemed to constitute an independent violation of the Public Health Code or the rules promulgated thereunder, the Disciplinary Subcommittee may proceed to take disciplinary action pursuant to 1996 MR 7, R 338.1632 and section 16221(g) of the Public Health Code, supra.

IT IS FURTHER ORDERED that this Order shall be effective 30 days from the date signed by the Disciplinary Subcommittee's Chairperson or its authorized representative, as set forth below.

Dated: January 29, 1999

**MICHIGAN BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE**

By Carole Hakala Engle
Carole Hakala Engle, Director
Health Licensing Division

This is the last and final page of a Final Order in the matter of Jose Gilberto Higuera, M.D., Complaint Number 43-94-5210-00, Docket Number 96-0616, before the Disciplinary Subcommittee of the Michigan Board of Medicine, consisting of five pages, this page included.

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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF OCCUPATIONAL AND PROFESSIONAL REGULATION
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

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HEALTH SERVICES
Complaint and Allegation Division

In the Matter of

JOSE GILBERTO HIGUERA, M.D.
_____ /

Complaint #43-94-5210-00

ADMINISTRATIVE COMPLAINT

Attorney General Frank J. Kelley, through Assistant Attorney General Merry A. Rosenberg, on behalf of the Department of Consumer and Industry Services, Bureau of Occupational and Professional Regulation, Complainant herein, files the within Complaint against Jose Gilberto Higuera, M.D., 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 (DSC).

2. At all times relevant to this Complaint, Respondent held himself out as a Board-certified obstetrician/gynecologist whose primary area of practice was the performance of abortions.

3. Section 16221(a) of the Public Health Code provides the DSC with authority to take disciplinary action against Respondent for a violation of general duty and/or conduct which impairs or may impair his ability to safely and skillfully practice medicine.

4. Section 16221(b)(i) of the Public Health Code provides the DSC with authority to take disciplinary action against Respondent for incompetence, defined at Section 16106(1) to mean "A departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for the health profession, whether or not actual injury to an individual occurs."

5. Section 16221(b) (vi) of the Public Health Code provides the DSC with authority to take disciplinary action against Respondent for a lack of good moral character. Good moral character is defined at Section 1 of 1974 PA 381, as amended; MCL 338.41 et seq; MSA 18.1208(1) et seq, as "the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner."

6. Section 16226 of the Public Health Code provides the DSC with authority to impose a sanction after finding the existence of one or more of the grounds for disciplinary subcommittee action listed in Section 16221.

COUNT I

7. Patient R.T. (initials will be used to protect patient confidentiality) presented to Respondent's office on or about November 26, 1993 for the performance of an abortion.

8. An ultrasound performed that day in Respondent's office confirmed that R.T. was 27 weeks pregnant.

9. Respondent performed a two-day abortion procedure on R.T. which was completed on or about November 27, 1993.

10. The conduct described above constitutes a violation of general duty, and/or conduct which impairs or may impair, Respondent's ability to safely and skillfully practice medicine, in violation of Section 16221(a) of the Public Health Code.

11. The conduct described above constitutes incompetence, in violation of Section 16221(b)(i) of the Public Health Code.

12. The conduct described above demonstrates a lack of good moral character, in violation of Section 16221(b)(vi) of the Public Health Code.

COUNT II

13. Patient D.D. presented to Respondent's office on or about October 14, 1994 for the performance of an abortion.

14. An ultrasound performed that day in Respondent's office indicated that D.D. was 28 weeks pregnant.

15. Respondent initiated the abortion procedure on D.D. on October 14, 1994. This procedure was then completed on October 15, 1994.

16. Respondent has supplied to the State the original patient chart for patient D.D.

17. An evaluation of this original chart confirms that Respondent altered the patient chart of D.D. by removing the ultrasound report indicating that she was

28 weeks pregnant and replacing it with a report indicating that she was 24 weeks pregnant.

18. The conduct described above constitutes a violation of general duty, and/or conduct which impairs or may impair, Respondent's ability to safely and skillfully practice medicine, in violation of Section 16221(a) of the Public Health Code.

19. The conduct described above constitutes incompetence, in violation of Section 16221(b)(i) of the Public Health Code.

20. The conduct described above demonstrates a lack of good moral character in violation of Section 16221(b)(vi) of the Public Health Code.

COUNT III

21. Respondent reused IV bags between patients. He also reused syringes between patients to administer medication through IV lines.

22. Respondent has admitted to the practices described in paragraph 21, supra.

23. The conduct described in paragraph 21, supra, constitutes a violation of general duty, and/or conduct which impairs or may impair Respondent's ability to safely and skillfully practice medicine, in violation of Section 16221(a) of the Public Health Code.

24. The conduct described in paragraph 21, supra, constitutes incompetence, in violation of Section 16221(b)(i) of the Public Health Code.

WHEREFORE, Complainant requests that the within Complaint be served upon Respondent and that Respondent be offered an opportunity to show compliance with all lawful requirements for retention of the 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, pursuant to section 16231(7) of the Public Health Code, that Respondent has 30 days from receipt of this Complaint to submit a written response to the allegations contained in it. 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,

FRANK J. KELLEY
Attorney General



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Dated: July 22, 1996
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