

FILED

Department of Professional Regulation
AGENCY CLERK

S. Wilson

DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE CLERK

DEPARTMENT OF PROFESSIONAL
REGULATION,

DATE 9-16-91

Petitioner,

v.

DOAH CASE NUMBER: 90-04775
DPR CASE NUMBER: 0100042
LICENSE NUMBER: ME 0011152

ASA L. GODBEY, JR., M.D.,

Respondent.

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on August 3, 1991, in Palm Beach, 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 Final Order takes effect upon filing with the Clerk of the Department.

DONE AND ORDERED this 11th day of September, 1991.

BOARD OF MEDICINE



LUIS H. SERENTILL, M.D.
VICE-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 Asa L. Godbey, Jr., M.D., c/o Kenneth E. Brooten, Jr., Esquire, 660 W. Fairbanks Avenue, Winter Park, Florida 37789 and by interoffice delivery to Bruce D. Lamb, Chief Trial Attorney, Department of Professional Regulation, 730 S. Sterling Road, Suite 201, Tampa, Florida 33609, at or before 5:00 P.M., this 16th day of September, 1991.



DOROTHY J. FAIRCLOTH
EXECUTIVE DIRECTOR

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

vs.

DOAH CASE NO. 90-4775
DPR CASE NO. 0100042

ASA L. GODBEY, JR., M.D.,

Respondent.

STIPULATION

ASA L. GODBEY, 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 0011152.

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.

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 \$3,000.00 against the Respondent. The fine shall be paid by the Respondent to the Executive Director of the Board within 90 days of the imposition by Final Order of the Board.

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

4. Respondent shall write an article suitable for publication in a newsletter. The topic of the article will concern the pitfalls for physician treating manipulative patients. The article will be completed and presented to the Board for approval within one year of the imposition of the Final Order of the Board.

5. Effective on the date of the 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 Probationer's Committee at the first meeting after said probation commences, at the last meeting of the Probationer's Committee preceding termination of the probation, quarterly, and at such other times as requested by the committee. Respondent shall be noticed by the Board staff of the Date, time 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 said 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:

i. The time period of probation shall be tolled.

ii. The provisions regarding preparation of investigative reports detailing compliance with this Stipulation. See paragraph 24 below.

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 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. Advise Board of any problems.

6. Respondent shall attend one (1) number of Category I Continuing Medical Education courses as set forth (a) below. Respondent shall complete 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 in his quarterly report. These hours shall be in addition to those hours required for renewal of licensure.

a. Respondent shall attend the course "Protecting Your Medical Practice, Clinical, Legal and Ethical Issues in Prescribing Abusable Drugs", sponsored by the Florida Medical Association and the University of South Florida, or a Board approved equivalent.

b. Respondent understand that during the course of the probation, quarterly reports shall be prepared by investigators with the Department detailing Respondent's compliance with the terms and conditions of this probation. Respondent waives confidentially of these reports as to the Department only so that the Board may review these reports.

c. Respondent shall comply with all of the terms and conditions of the Stipulation.

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

e. 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, the cost of analysis of any blood or urine specimens submitted pursuant to this Stipulation, and the Board's administrative costs directly associated with Respondent's probation. See Section 458.331(2), Florida Statutes.

7. It is expressly understood that this Stipulation is subject to the approval of the Board and the Department. In this regard, 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.

8. 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.

9. 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 only.

10. 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.

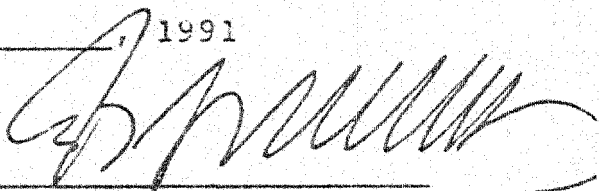
11. Upon the Board's adoption of this Stipulation, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the joint Stipulation of facts, conclusions of law and imposition of discipline, and the Final Order of the Board incorporating said Stipulation.

12. 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.

13. 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 6th day of May, 1991


Asa L. Godbey, Jr., M.D.

Sworn to and subscribed before me this 6th day of May, 1991.

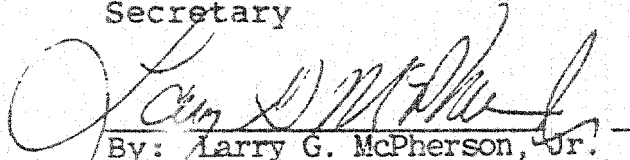
Stephanie C. Lane
NOTARY PUBLIC

Notary Public, State Of Florida At Large
My Commission Expires Mar 29 1992

My Commission Expires:

APPROVED this 2 day of July, 1991.

George Stuart
Secretary


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

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

CASE NO. 0100042

v.

ASA L. GODBEY, JR., 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 Asa L. Godbey, Jr., 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 0011152. Respondent's last known address is 2830 N.W. 41st, Suite #B, Gainesville, Florida 32606.

3. From on or about August 25, 1980 to on or about June 13, 1983, Respondent rendered medical care to patient #1 for, among other things, chronic depression, psychophysiological musculoskeletal reaction, attention deficit disorder, and narcissistic or borderline personality disorder.

4. On or about September 21, 1981, Respondent wrote a letter stating that the patient-physician relationship with patient #1 had ended.

5. On or about August 29, 1988, Respondent admitted to a Department investigator that the Respondent had begun to engage in sexual activity with patient #1 beginning in late 1981.

6. On or about November 1, 1988, patient #1 admitted to a Department investigator that patient #1 had begun to engage in sexual activity with the Respondent beginning in or about October of 1981.

7. From in or about October of 1981 to on or about June 13, 1983, Respondent engaged in sexual activity with patient #1.

8. From on or about October 5, 1981 to on or about February 4, 1983, Respondent prescribed Ritalin, 10 mg. to patient #1 in quantities of 100 tablets per prescription.

9. From on or about October 5, 1981 to on or about February 11, 1983, Respondent prescribed *py 1267 patient notes dated Dec. 81 that subject received.* to patient #1 in quantities of 30 tablets per prescription, increasing to 100 tablets per prescription.

10. From on or about December 17, 1981 to on or about February 7, 1983, Respondent prescribed Restoril, 30 mg. to patient #1 in quantities of 12 tablets per the first prescription, increasing to 50 tablets per each following prescription.

11. Based upon, the foregoing prescriptions, a physician-patient relationship existed between Respondent and patient #1,

which existed during the time of their sexual relationship.

12. From on or about November 6, 1981 to on or about February 4, 1983, Respondent failed to perform a physical exam prior to prescribing Ritalin to patient #1 and failed to make an entry in the patient's records to justify those prescriptions.

13. From on or about December 17, 1981 to on or about February 11, 1983, Respondent failed to perform a physical exam prior to prescribing Limbitrol to patient #1 and failed to make an entry in the patient's records to justify those prescriptions.

14. From on or about December 17, 1981 to on or about February 7, 1983, Respondent failed to perform a physical exam prior to prescribing Restoril to patient #1 and failed to make an entry in the patients records to justify those prescriptions.

15. Ritalin is a legend drug as defined by Section 465.003(7), Florida Statutes which contains methylphenidate, a controlled substance listed in Schedule II of Chapter 893, Florida Statutes.

16. Limbitrol is the product name for a tablet containing chlordiazepoxide and ametriptyline. Limbitrol is a legend drug as defined by Section 465.003(7), Florida Statutes and a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

17. Restoril is a legend drug as defined by Section 465.003(7), Florida Statutes, which contains temazepam, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

COUNT ONE

18. Petitioner realleges and incorporates paragraphs one (1) through seventeen (17), as if fully alleged herein this Count One.

19. Based upon the sexual activity which occurred between the Respondent and patient #1 during the physician-patient relationship, Respondent exercised influence over patient #1 for purposes of engaging her in said sexual activity.

20. Based upon the foregoing, Respondent is in violation of Section 458.331(1)(k), Florida Statutes (1979), now Section 458.331(1)(j), Florida Statutes (1989), by exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his physician.

COUNT TWO

21. Petitioner realleges and incorporates paragraphs one (1) through seventeen (17) and nineteen (19), as if fully alleged herein this Count Two.

22. By exercising influence upon patient #1 so as to engage her in sexual activity, Respondent violated Section 458.329, Florida Statutes, a provision of Chapter 458, Florida Statutes, by being guilty of sexual misconduct in the practice of medicine.

23. Based upon the foregoing, Respondent is in violation of Section 458.331(1)(x), Florida Statutes, by violating any

provision of this chapter, a rule of the board or department, or a lawful order of the board of department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

COUNT THREE

24. Petitioner realleges and incorporates paragraphs one (1) through seventeen (17), as if fully alleged herein this Count Three.

25. Respondent failed to practice medicine with an acceptable 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 he failed to perform a physical exam upon patient #1 prior to prescribing Ritalin, Limbitrol and Restoril.

26. Based upon the foregoing, Respondent is in violation of 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 by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT FOUR

27. Petitioner realleges and incorporates paragraphs one (1) through seventeen (17), and twenty-five (25), as if fully alleged herein this Count Four.

28. Based upon Respondent's failure to make entries in patient #1's records to justify prescriptions of Ritalin,

Limbitrol and Restoril, Respondent failed to keep written medical records justifying the course of treatment of patient #1.

29. Based upon the foregoing, Respondent is in violation of Section 458.331(1)(n), Florida Statutes (1981), now Section 458.331(1)(m), Florida Statutes (1989), 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.

COUNT FIVE

30. Petitioner realleges and incorporates paragraphs one (1) through seventeen (17), twenty-five (25) and twenty-eight (28), as if fully alleged herein this Count Five.

31. By failing to perform physical examinations upon patient #1 prior to prescribing Ritalin, Limbitrol and Restoril, Respondent inappropriately and/or excessively prescribed controlled substances to patient #1. Additionally, Respondent prescribed outside the course of his professional practice.

32. Based upon the foregoing, Respondent is in violation of Section 458.331(1)(q), Florida Statutes, by prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances,

inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his intent.

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 5th day of July, 1988.

Larry Gonzalez, Secretary



By: Stephanie A. Daniel
Chief Medical Attorney

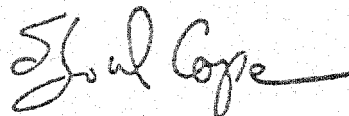
COUNSEL FOR DEPARTMENT:

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