

FILED

Department of Professional Regulation  
AGENCY CLERK

DEPARTMENT OF PROFESSIONAL REGULATION  
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL  
REGULATION,

Petitioner,

-vs-

SAYYED ARSHAD HUSSAIN, M.D.,

Respondent.

CLERK \_\_\_\_\_

DATE \_\_\_\_\_

5-1-91

DPR CASE NUMBER: 0100962  
DOAH CASE NUMBER: 90-4699  
LICENSE NUMBER: ME 0036077

FINAL ORDER

This cause came before the Board of Medicine (Board) pursuant to Section 120.57(1)(b)10, Florida Statutes, on April 13, 1991, in Ft. Lauderdale, Florida, for the purpose of considering the Hearing Officer's Recommended Order, Respondent's Exceptions to the Recommended Order, Petitioner's Response to Respondent's Exceptions and Petitioner's Exceptions, and Respondent's Response to Petitioner's exceptions (copies of which are attached hereto as Exhibits A, B, C. and D, respectively) in the above-styled cause. Petitioner, Department of Professional Regulation, was represented by Bruce D. Lamb, Attorney at Law. Respondent was present and represented by Rodney W. Morgan, Attorney at Law.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. In order to correct a scrivener's error, the second sentence of the second paragraph of numbered paragraph 13 is

changed to read, "Pt. had been in Tampa one year ago and he decided to come back here." Otherwise, the findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein.

2. There is competent substantial evidence to support the findings of fact by the Board.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein.

3. There is competent substantial evidence to support the conclusions of law.

#### RULINGS ON EXCEPTIONS

##### **Respondent's Exceptions**

1. Respondent's Exception 1 is GRANTED on the basis that the statement of fact at issue is, due to a scrivener's error, not supported by competent substantial evidence. Petitioner agrees that Respondent's exception is the correct statement of the evidence.

2. Respondent's Exception 2 is REJECTED for the reasons asserted by Petitioner. There is competent substantial evidence to support the Hearing Officer's ruling.

3. Petitioner's Exception 3 is REJECTED on the basis that there is competent substantial evidence to support the Hearing Officer's ruling.

4. The last paragraph of Petitioner's Exceptions is REJECTED on the basis that it lacks sufficient specificity to require rulings on the issues referenced.

**Petitioner's Exception**

Petitioner's Exception is REJECTED on the basis that resolution of the issue is not material to a resolution of the cause at issue and that there is competent substantial evidence to support the Hearing Officer's ruling.

**PENALTY**

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Hearing Officer be ACCEPTED and ADOPTED.

WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent shall pay an administrative fine in the amount of \$10,000, the first \$5,000 to the Executive Director within one year of the date this Final Order is filed and the second \$5,000 to the Executive Director within two years of the date this Final Order is filed.

2. Respondent's license to practice medicine in the State of Florida is placed on PROBATION for a period of two years, subject to the following terms and conditions:

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 Rules 21M, Florida Administrative Code.

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

c. In the event Respondent leaves the State of Florida for a period of thirty (30) 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 the probation shall be tolled:

1. The time period of probation shall be tolled.

2. The provisions regarding supervision whether direct or indirect by another physician, included in paragraphs f through h below.

3. The provisions regarding preparation of investigative reports detailing compliance with this Order. See paragraph k below.

e. 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.

f. Respondent shall not practice except under the indirect supervision of a physician fully licensed under Chapter 458 who has been approved by the Board or its Probation Committee. Absent provisions for and compliance with the terms regarding temporary approval of a monitoring physician, as provided below, Respondent shall cease practice and not practice until the Probation Committee or the Board approves a monitoring physician. Respondent shall have the monitoring physician with him at his first probation appearance before the Probation 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. Failure of the Respondent or the monitoring physician to appear at the scheduled Probation Committee meeting shall constitute a violation of this Order. Prior to the approval of the monitoring

physician by the Committee, Respondent shall submit to the Committee a current curriculum vitae and a description of the current practice from the proposed monitoring physician. Said materials shall be received by the Board office no later than fourteen days before Respondent's first scheduled probation appearance. The attached definition of a monitoring physician is incorporated herein. The responsibilities of the monitoring physician shall include:

- (1) Submit quarterly reports, 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.

- (2) Be available for consultation with Respondent whenever necessary, at a frequency of at least once per week.
- (3) Review 25 percent of Respondent's patient records selected on a random basis at least once every two weeks. In order to comply with this responsibility of random review, the monitoring physician shall go to Respondent's office once every two weeks. At that time, the monitoring physician shall be responsible for making the random selection of the records to be reviewed by the monitoring physician.
- (4) Review all patient records of patients treated for suicidal ideations.
- (5) Consult with Respondent on all cases involving suicidal ideations.
- (6) Report to the Board any violations by the probationer of Chapter 455 and 458, Florida Statutes, and the rules promulgated pursuant thereto.

g. The Board shall confer authority on the Chairman of the Board's Probationer's Committee to temporarily approve Respondent's supervisory/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 supervising/monitoring physician. This information shall be furnished to the Chairman of the Probationer's Committee by way of the Board of Medicine's executive director, within 48 hours after Respondent receives the Final Order in this matter. This information may be faxed to the Board of Medicine at (904) 487-9622, or may be sent by overnight mail or hand delivery to the Board of Medicine, at the Department of Professional Regulation, 1940 North Monroe Street, Suite 60, Tallahassee, Florida 32399-0750. In order to provide time for Respondent's proposed supervisory/monitoring physician to be approved or disapproved by the Chairman of the Probationer's Committee, Respondent shall be allowed to practice medicine while approval is being sought, but only for a period of five working days after Respondent receives the Final Order. If Respondent's supervising/monitoring physician has not been approved during that time frame, then Respondent shall cease practicing until such time as the supervising/monitoring physician is temporarily approved. In the event that the proposed monitoring/supervising physician is not approved, then Respondent shall cease practicing immediately. Should Respondent's monitoring/supervising physician be approved, said approval shall only remain in effect

until the next meeting of the Probationer's Committee. Absent said approval, Respondent shall not practice medicine until a monitoring/supervising physician is approved.

h. In view of the need for ongoing and continuous monitoring or supervision, Respondent shall also submit the curriculum vitae and name of an alternate supervising/monitoring physician who shall be approved by the Board or its Probationer's Committee. Such physician shall be licensed pursuant to Chapter 458, Florida Statutes, and shall have the same duties and responsibilities as specified for Respondent's monitoring/supervising physician, during those periods of time when Respondent's monitoring/supervising physician is temporarily unable to provide supervision. Prior to practicing under the indirect supervision of the alternate monitoring physician or the direct supervision of the alternative supervising physician, Respondent shall so advise the Board in writing. Respondent shall further advise the Board in writing of the period of time during which Respondent shall practice under the supervision of the alternate monitoring/supervising physician. Respondent shall not practice unless he is under the supervision of either the approved supervising/monitoring physician or the approved alternate.

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

- (1) Brief statement of why physician is on probation.
- (2) Practice location
- (3) Describe current practice (type and composition)
- (4) Brief statement of compliance with probation terms.



- (5) Describe relationship with monitoring/supervising physician.
- (6) Advise Board of any problems.

j. Respondent shall attend 30 hours of Category I Continuing Medical Education courses within one year, 5 in risk management and 25 in psychiatry and relating to dealing with patients with suicidal indications. Respondent shall submit a written plan to the Chairman of the Probationer's Committee for approval prior to completion of said courses. The Board confers authority on the Chairman of the Probationer's Committee to approve or disapprove said continuing education courses. In addition, Respondent shall submit documentation of these continuing medical education courses in his quarterly/semiannual reports. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board or the Chairman of the Probationer's Committee, said continuing education courses shall consist of a formal live lecture format.

k. During this period of probation, semi-annual investigative reports will be compiled by the Department of Professional Regulation concerning Respondent's compliance with the terms and conditions of probation and the rules and statutes regulating the practice of medicine.

l. Respondent shall pay all costs necessary to comply with the terms of the Order issued based on this proceeding. Such costs include, but are not limited to, the cost of preparation of investigative reports detailing compliance with the terms of this proceeding, the cost of analysis of any blood or urine specimens

submitted pursuant to the Order entered as a result of this proceeding, and administrative costs directly associated with Respondent's probation. See Section 458.331(2), Florida Statutes.

This order takes effect upon filing with the Clerk of the Department of Professional Regulation.

DONE AND ORDERED this 26<sup>th</sup> day of April, 1991.

BOARD OF MEDICINE



ZACHARIAH P. ZACHARIAH, M.D.  
CHAIRMAN

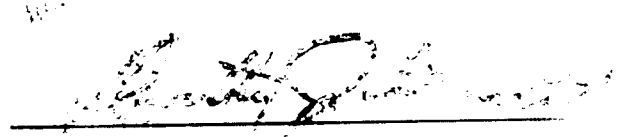
NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to Sayyed Arshad Hussain, M.D., 2416-1 Barley Club Court, Orlando, Florida 32821 and Rodney W. Morgan, Attorney at Law, 3333 Henderson Boulevard, Suite 110, Tampa, Florida 33609, by U.S. Mail to K. N. Ayers, Hearing Officer, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550; and by interoffice delivery to Larry G. McPherson, Jr., Acting Chief Medical Attorney, Department of Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-0792 at or before 5:00 P.M., this 14 day of

May, 1991

A handwritten signature, possibly "K. N. Ayers", is written over a horizontal line. The signature is somewhat stylized and difficult to read.

Orders/April

HussainS

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

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DEPARTMENT OF PROFESSIONAL  
REGULATION, BOARD OF MEDICINE,

Petitioner,

vs.

SAYYED ARSHAD HUSSAIN,

Respondent.

CASE NO. 90-4699

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, K. N. Ayers, held a formal hearing in the above-styled case on January 31, 1991, at Tampa, Florida.

APPEARANCES

For Petitioner: Mary B. Radkins, Esquire  
Department of Professional  
Regulation  
1940 North Monroe Street  
Tallahassee, Florida 3299-0792

For Respondent: Rodney W. Morgan, Esquire  
Galloway Executive Center, Ste. 110  
3333 Henderson Boulevard  
Tampa, Florida 33609

STATEMENT OF THE ISSUES

Whether Respondent failed to practice medicine with the requisite level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances; and whether he kept written medical records justifying the course of treatment of a patient.

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PRELIMINARY STATEMENT

By Administrative Complaint filed April 19, 1990, the Department of Professional Regulation, seeks to revoke, suspend, or otherwise discipline the license of Sayyed Arshad Hussain, as a medical doctor. As grounds therefore, it is alleged that on or about October 2, 1986, a young man apprehended in preparing to take his own life, was brought by a Hillsborough County deputy sheriff to the Hillsborough County Mental Health Center Crisis Stabilization Unit (CSU) for an involuntary examination. At the center, the patient was screened by an unlicensed crisis center counsellor who concluded the patient was not suicidal and telephoned Respondent, the on-call psychiatrist for the crisis center. As a result of the crisis center counsellor's report the patient was released without being examined by Respondent. The medical records comprised the results of the counsellor's interview with the patient with no indication of any independent effort by Respondent to justify overriding the Law Enforcement officer's delivery of the patient for involuntary examination and, if necessary, commitment. Shortly after the patient's release he completed the suicide, the commission of which he had earlier been thwarted.

At the hearing Petitioner called four witnesses, Respondent called five witnesses, including himself, and 15 exhibits were offered into evidence. All were admitted except exhibit 8, on which ruling was reserved on the objection thereto. Exhibit 8 is now admitted but no finding will be made on

uncorroborated hearsay contained therein. Exhibit 15 is the deposition of Dr. Menges filed as a late-filed exhibit.

Proposed findings have been submitted by the parties. The only dispute in this case involves what was said during the telephone conversation between the crisis counsellor and Respondent prior to Respondent authorizing the release of this involuntarily presented patient. Treatment accorded those proposed findings is contained in the Appendix attached hereto and made a part hereof.

#### FINDINGS OF FACT

1. At all times relevant hereto Respondent was licensed as a medical doctor in Florida and was under contract with the Hillsborough Community Mental Health Center, Inc. to provide psychiatric services to the mental health center 20 hours per week. (Exhibits 1 and 14.)
2. On October 2, 1986, Michael Burton, a Hillsborough County Deputy Sheriff received a call regarding an emergency in an isolated area on the I-75 north of Tampa. Upon his arrival he found M.H., a 21-year old white male handcuffed in the back seat of a game warden's car.
3. A pick-up truck belonging to M.H. had a flexible hose connected to the exhaust to lead into the cab, several suicide notes and a girl's photograph were in the cab of the pick-up. Burton was told by the game warden that while conducting a routine check of the area, he had come upon M.H. attaching the flexible hose to the exhaust of the pick-up, and he arrested M.H. and called for law enforcement personnel.

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4. M.H. was transferred to Burton's car and, realizing M.H. was suicidal and consequently a danger to himself, Burton concluded M.H. should be committed and he called for a wrecker to tow away M.H.'s vehicle. M.H. did not agree to voluntary commitment and he was held for involuntary commitment.

5. Due to the isolated location the wrecker took more than an hour to arrive on the scene. During this period Burton talked to M.H. who told Burton he was from South Dakota, he had come to Florida looking to work without success, that he hadn't bathed or eaten for a week, that he had been placed on parole in South Dakota for burglary and that in leaving the state he had violated his parole, and that life was no longer worth living. He also told Burton that although he had been stopped this time (from suicide) he wouldn't be stopped the next time.

6. While awaiting the arrival of the wrecker Burton prepared some of HRS-MH Form 3052A (BA-52) (Exhibit 2) which is the report of law enforcement officer to justify the involuntary presentment of a client for examination to insure the client is not a danger to himself or to others. This is the procedure generally followed for patients presented by law enforcement officers pursuant to the Baker Act. Burton completed this form when he delivered M.H. to the CSU.

7. Upon arrival of the wrecker Burton departed with M.H. who had no opportunity to speak to the driver of the wrecker.

8. Enroute to the crisis center Burton stopped at a McDonald's restaurant where he bought a hamburger, fries and a coke for M.H.

9. Upon arrival at the crisis center Burton delivered M.H. to the receptionist, had copies made of the suicide notes which he left with the BA-52 containing Burton's opinions regarding M.H. being a danger to himself and the observations supporting that opinion.

10. Those observations recited:

[M.H.] was found hooking a hose up to the exhaust system of his vehicle and had written suicide notes to his girl friend and mother. [M.] advised he came to Tampa from N. Dakota seeking work and has not been able to find anything. He stated he has not eaten or bathed in one week and has nothing to live for. Seemed very depressed and stated that death was the answer. [M.] has had mental health counselling in North Dakota at "Northwest Mental Health Center" involving his girlfriend committing suicide several years ago. He is also on criminal probation in N. Dakota for burglary and has violated his probation in leaving that state. Found in his possession was an article called "Near Death Experiences" that he had been reading, in which he copied an "epitaph" from.

11. The Intake Sheet at the mental health center classified M.H. as a Baker Act patient and the Sheriff's report with suicide notes were attached to the Intake Sheet and presented to the crisis center counsellor to interview the patient and prepare the evaluation.

12. The crisis center counsellor who interviewed M.H. and prepared the summary in exhibit 5, Kris Millrose, holds a

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master's degree in counselling and worked two nights per week at the crisis center. His normal procedure is to interview the client and make notes. He had available the information prepared by Deputy Sheriff Burton when he interviewed M.H. He made no effort to verify conflicts in what M.H. told him and what was contained in the Sheriff's report. He does not recall what he told Respondent during the telephone call, but he deemed it important to share with the doctor that patient had been brought in suicidal and the reasons given on the Baker Act form. He does not recall Respondent questioning him about the suicide notes but believed their existence would have been relayed to the doctor. Respondent concurred with Millrose's evaluation of M.H. and ordered him released.

13. Millrose's evaluation recites:

Pt to CSU as a 21-year old white male, unemployed, single and at large. Pt is on BA-52 via HCSO who found pt parked on state property. Pt states he had been sitting for a long time in this spot drinking beer thinking about his girlfriend in South Dakota and feeling sad over not having job and no place to live. Pt states his main concern was having very little money and no job. Patient was not aware he could go to the Salvation Army. Pt was thinking about suicide this afternoon, but adamantly denies being suicidal at present. Pt states the man who towed his truck today at the request of HCSO offered pt a job and possibly a place to stay.

Pt states there is no work in South Dakota and his girlfriend just started college. Pt had been to Tampa one year ago when he decided to come back here. Pt denies trying to hook up a hose to his exhaust pipe. Pt states HCSO found him sitting in the back of his pick-up truck drinking beer. Pt states

loving life and knows there is hope regardless of the notes he wrote to his mother and girlfriend.

Pt does not appear a danger to himself or others at this time. He is planning on getting a job here or going back to Atlanta where he spent a day on his way to Tampa. Pt states having a little money left as he spent some last night staying in a motel. Pt requested something to eat and was given something.

14. Following his release around 10:00 p.m., M.H. telephoned the wrecker company to see if he could pick up his vehicle and was told he would need a release from the Sheriff. M.H. then made his way across town to the lot where his truck was impounded, climbed the fence, entered his vehicle and drove it through the locked gate around 11:00 p.m. The Sheriff's office called the crisis center to obtain the name of the counsellor and doctor who authorized the release of M.H. Two days later M.H. partially decomposed body was discovered in north Pasco County in the cab of his vehicle with a hose connected to the exhaust leading to the cab.

15. Crisis counsellors report several patients to the doctor during one telephone call. Millrose doesn't recall any specific details of his conversation except that after M.H. had been ordered released and he received the call from the Sheriff's office he again called Respondent to report the incident regarding the truck and Respondent stated patient had an antisocial personality disorder and should be put in jail. Millrose advised the Sheriff's office that M.H. should be arrested.

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16. Following four suicides by patients released from the crisis center in 1986 and 1987 it came to the attention of the public through newspaper articles and to the Department of Health and Rehabilitative Services that several individuals referred to crisis centers under Baker Act procedures had been released without adequate evaluation and had committed suicide.

17. As a result of these inquiries Respondent's attention was recalled to the incident involving M.H. more than one year after October 2, 1986. It was at this time he first reviewed the file and actions that had been taken. This time frame is significant in evaluating Respondent's testimony.

18. Contrary to Millrose's recollection of the specifics of his evaluation of M.H., Respondent testified that he recalls Millrose advising him that M.H. had been brought to the crisis center by a deputy sheriff when M.H. was found attempting to hook up a hose to his exhaust, but that M.H. denied that ever happened. He recalls being told by Millrose that M.H. stated he had been offered a job by the man driving the wrecker, that M.H. was neat in appearance, was not suicidal and exhibited no psychotic symptoms, that patient had some money and a supportive girlfriend. He recalls being told by Millrose that M.H. was picked up on State property drinking beer in his truck, that he had contemplated suicide earlier but was now no longer suicidal. He further testified Millrose didn't tell him about the suicide notes, didn't tell him M.H. had come from South Dakota and was out of work, but that he (Respondent) had

discussed the status of the patient and whether M.H. was a danger to himself. Respondent's testimony that he learned of the suicide of M.H. over a year after the incident and first reviewed the records after that, coupled with Millrose's testimony that several cases would be discussed with the psychiatrist during each phone call, renders Respondent's detailed recollection of the telephone conversation with Millrose totally lacking in credibility.

19. Petitioner's expert witness opined that the evidence of lethality contained in the BA-52 and the suicide notes was overwhelming. These included the age and sex of M.H., the fact that he was a long way from home and the availability of supportive services, that he had been drinking alcohol, that he had no job and little money, that he was apprehended in the process of committing suicide, the suicide notes, and the article he had been reading "Near Death Experiences."

20. All expert witnesses who testified in these proceedings agreed that the evidence accompanying the BA-52 clearly indicated M.H. was a danger to himself and should not have been released. Petitioner's and Respondent's experts disagreed only in whether Respondent's actions were in accordance with acceptable medical standards if he was told only what was contained in the narrative prepared by Millrose in exhibit 5.

21. In any case Respondent prepared no records other than those prepared by Millrose to justify overturning the recommendation for further evaluation on the BA-52. Those

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records are inadequate to justify M.H.'s release especially without face-to-face consultation with a psychiatrist or other health professional qualified to make such a determination.

22. The policy of the Hillsborough Community Health Center at this time was that during hours no psychiatrist was on duty at the crisis center patients who were Baker Acted were interviewed by one of the crisis counsellors who made an assessment based upon the BA-52 and the interview, then called the psychiatrist on call to relay the information obtained from the BA-52 and the interview to the doctor who had the final authority to determine whether the patient should be released forthwith or held until face-to-face interview with a qualified health professional was completed.

23. Once a law enforcement officer has presented an involuntary patient to the crisis center for evaluation, it is incumbent on the psychiatrist on duty (on call) to inquire into the facts giving rise to the reasons for the law enforcement officer to conclude the patient is a danger to himself or to others, and to fully inquire into the facts upon which the crisis counsellor concludes to the contrary. Regardless of what Respondent was told by Millrose it is clear that he did not make such inquiries.

24. In failing to fully inquire into the facts upon which Millrose concluded M.H. was not a danger to himself, Respondent delegated the determination that was his alone to make to Millrose and thereby failed to practice medicine with the

requisite standard of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

25. In failing to document any facts upon which he determined that M.H. was not a danger to himself despite the information contained in the BA-52 and in failing to document reasons for concluded that M.H. suffered from an antisocial personality disorder, Respondent failed to keep medical records justifying the actions taken.

26. Despite the practice at the crisis center to the contrary, Rule 10E-5.47, Florida Administrative Code, which was in effect on October 2, 1986 and Section 493.463, Florida Statutes (1985), provides that a person for whom an involuntary examination has been initiated by filing a BA-52 shall not be released by the receiving facility or its contractor without the documented approval of a person who is qualified under the provisions of this chapter to initiate an involuntary examination, i.e., a physician, psychologist licensed pursuant to Chapter 490, psychiatric nurse or clinical worker. The practice of releasing involuntary Baker Acted clients after a telephone report to the psychiatrist conflicts with the intent of this section of the statutes. However, it was the practice at the Hillsborough County Mental Health Center for intake counsellors to evaluate patients brought in during evening hours when no psychiatrist was on duty, telephone the on-call psychiatrist and apprise him of the information contained in the BA-52 and of the

counsellor's evaluation of the patient, at which time the psychiatrist would order the patient held for further evaluation or released.

27. Respondent's expert witnesses, who opined that Respondent did not fail to practice medicine with the requisite standards of care, all based their opinions on hypothetical questions which assumed that Respondent was not made aware of the suicide notes; was not aware of the epitaph found with the suicide notes; was not aware that M.H. had previously received mental health counselling when his girlfriend committed suicide a few years ago; was not aware that M.H. had not eaten or bathed for a week; was not aware patient had stated death was the answer; and was not aware M.H. was in possession of a article entitled "Near Death Experiences", when apprehended; but was told that M.H.'s main concern was having little money, however he had been offered a job and possibly a place to stay by the driver of the wrecker who had picked up his truck; that M.H. appeared relieved when told he could find a room for the night at the Salvation Army; that M.H. did not appear to be a danger to himself, was in good spirits, his mental status was within normal limits, he was cooperative, and his memory and judgment was intact; and that M.H. denied any present intent to commit suicide.

28. In answer to the question regarding his general recollection of the contents of the telephone call between Millrose and Respondent on October 2, 1986, Respondent testified

that he was told that the BA-52 stated M.H. had been trying to hook up a hose to his exhaust, that patient had expressed feeling suicidal; that after being picked up by the police he (M.H.) was with the driver of the wrecker who offered him a job and possibly a place to stay; that the patient appeared properly attired and neat in appearance; that he did not present any psychiatric symptoms; that patient had money for a overnight stay in a motel and was now looking forward to obtaining a job; and also that patient had a supportive girlfriend in the environment.

According to Respondent, Millrose concluded M.H. should be given a chance to go ahead, and made this recommendation to Respondent following a diagnosis of adjustment disorder with depressed moods. In this regard it is noted that M.H.'s girlfriend was in South Dakota and could hardly provide support. No explanation was offered for the failure of Millrose or Respondent to resolve the conflict in the statement M.H. gave to Millrose that he spent last night in a motel and M.H.'s statement to the deputy sheriff that he hadn't eaten or bathed in one week.

29. All expert witnesses concurred that the narrative contained in the BA-52 supporting the officer's conclusions that M.H. was a danger to himself, fully supported this conclusion and described an individual with a very high suicide potential, i.e., a highly lethal patient.

30. Millrose acknowledged that he would have considered the suicide notes significant information to pass on to the psychiatrist before the patient was ordered released, but



Respondent denies ever being made aware of the suicide notes or of any of the information contained in the BA-52 narrative indicating the lethality of M.H.'s actions prior to and after he was picked up by the deputy sheriff and brought to the crisis center. As noted above, Respondent's testimony in this regard is not credible.

#### CONCLUSIONS OF LAW

The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

Respondent is here charged with violation of Sections 458.331(1)(n) and (t), Florida Statutes (1985) which provide the following acts constitute grounds for which a physician's license may be disciplined. These sections state in pertinent part:

(n) Failing to keep written medical records justifying the course of treatment of the patient including, but not limited to, patient histories, examination results, and test results.

\* \* \*

(t) 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 these proceedings in which Petitioner seeks to revoke, suspend, or otherwise discipline the license of Respondent as a medical doctor, the Petitioner has the burden to prove the allegations by clear and convincing evidence. Ferris v. Turlington, 510 So.2d 292 (Fla. 1987).

The only medical records maintained to justify the order to release M.H. who had been brought involuntarily to the crisis center was the comments written by Millrose and, apparently, adopted by Respondent. These records fail to adequately cover the history of the patient as contained in the BA-52. The information contained in the BA-52 was more than adequate to justify holding M.H. at least until the physician had a face-to-face meeting with the patient to evaluate the patient's suicidal potential. These records are inadequate to justify M.H.'s release from the involuntary presentment for evaluation.

With respect to the disputed issue of what Respondent was told by Millrose during the telephonic report on M.H., Millrose understandably did not remember the specifics of a conversation that occurred more than four years ago and testified as to what he would normally report to the psychiatrist in such a telephone call.

Respondent, on the other hand, testified in specific detail that he recalled being told all of the facts from which it would be reasonable to release M.H. and was told none of those facts strongly indicating M.H. to be a highly lethal suicidal candidate. This testimony is simply not credible. According to Respondent's testimony he didn't learn of M.H.'s suicide immediately following his release until more than one year later at which time he reviewed the file. Other evidence was that frequently several patients were discussed with the on-call psychiatrist at one telephone call and nobody testified this

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telephone call was in any wise unique or that it contained only the report involving M.H. or anything else to make this one call so unique that it would be remembered for a long time. There was evidence that October 2, 1986 was a busy night at the crisis center.

It is concluded that Respondent accepted the evaluation of Millrose without inquiring into the reasons Millrose determined the statements by M.H. during his interview were more credible than the facts recited in the BA-52 evaluation.

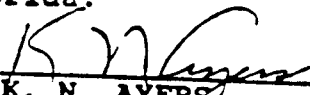
In many respects Respondent was the victim (as was M.H.) of a system of laxity which had become accepted at Hillsborough County Mental Health Center's Crisis Stabilization Unit, in which Baker Act patients were released without first having received a face-to-face evaluation by a physician or other person qualified to determine whether the patient was a danger to himself or others.

Nevertheless, this prevailing laxity is not a valid excuse for the psychiatrist to accept the evaluation by the crisis counsellor without a more than perfunctory inquiry into all of the contents of the BA-52 and the facts upon which a decision to overturn the BA-52 evaluation could appropriately be made. In this regard, Respondent failed 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.

RECOMMENDATION

It is recommended that Hussain be assessed an administrative fine of \$10,000.00 and placed on probation for two years under such terms and conditions as the Board of Medicine deems appropriate.

DONE and ENTERED this 11th day of March, 1991, in Tallahassee, Leon County, Florida.

  
K. N. AYERS  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904)488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of March, 1991.

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

Copies furnished:

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APPENDIX

Proposed findings submitted by Petitioner are accepted except for:

10. The portion of the first sentence "including all of the above relevant observations which supported his opinion." The BA-52 narrative did not contain all of the facts referred to in proposed findings 8.

See HO #10. Although Deputy Burton briefed the "intake person" no evidence was presented that she passed any such additional information on to Millrose.

14. No evidence was presented that a Suicide Rating Scale was available to the crisis counsellors at the CSU. Certainly no such scale was used in this case.
37. M.H. was released from the CSU following a telephone call to Respondent who authorized the release of M.H.

Proposed findings submitted by Respondent are accepted except for:

6. Rejected in part. No credible evidence was presented regarding the scope of the annual survey of the CSU by HRS personnel.
29. Rejected in part. Millrose testified that while he does not recall specific details of his interview with M.H. some 5 years ago, he would normally read all of the information presented with the BA-52.
33. Rejected in part. Millrose did not recall the specific detail that the call regarding M.H. was combined with calls about other clients.
35. Rejected as fact. Accepted as testimony of Respondent.
36. Rejected insofar as inconsistent with HO #12. The summary prepared by Millrose was substantially relayed to Respondent during this telephone call.

37. Rejected.
38. Second sentence rejected.
41. Accepted only insofar as Millrose was convinced M.H. did not meet the criteria for involuntary commitment.
43. Rejected that this was common practice. Accepted that this practice was prevalent.
44. Rejected.
45. Rejected.
47. Second sentence rejected. The requirement for record keeping is that the records be adequate to justify the treatment given.

## MEMORANDUM

**TO:** Compliance Tracking File

**FROM:** Client Services Unit

**DATE:** December 27, 2005

**SUBJECT:** Closing Document

Due to the history and age of this file, it is apparent that it should have been closed; however, no closing order or notice of completion was entered into this file during the normal course of business. In the absence of this documentation, this memorandum will serve as the official closing document and terminates compliance tracking activities for the attached Final Order.