

FILED

Department of Professional Regulation
AGENCY CLERK

DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

v.

LUIS A. HERRERO, M.D.,

Respondent.



CLERK _____

DATE _____

8-12-92

DPR CASE NUMBER: 89-04528
LICENSE NUMBER: ME 0020719

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on August 7, 1992, in Tallahassee, 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:

1. Paragraph 2 of the Stipulated Disposition is amended to reduce the administrative fine to \$1,000.

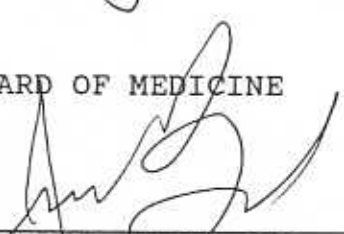
2. Paragraph 3 of the Stipulated Disposition is amended to replace the reprimand with a letter of concern, thus the Respondent shall receive a letter of concern from the Board of Medicine.

Accordingly, the below 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 Department.

DONE AND ORDERED this 7 day August, 1992.


BOARD OF MEDICINE



JAMES N. BURT, 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 Luis A. Herrero, M.D., 516 Lakeview Road, Villa #6, Clearwater, Florida 34619, Sondra Goldenfarb, Esquire, 2454 McMullen Booth Road, Building C., Suite 501-A, Clearwater, Florida 34619 and by interoffice delivery to Larry G. McPherson, Jr., Chief Medical Attorney, Department of Professional Regulation, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, at or before 5:00 P.M., this 12th day of August, 1992.



DOROTHY J. FAIRCLOTH
Executive Director

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL REGULATION,

Petitioner,

v.

DPR CASE NO. 89-004528

LUIS A. HERRERO, M.D.,

Respondent.

CONSENT AGREEMENT

LUIS A. HERRERO, M.D., referred to as the "Respondent", and the Department of Professional Regulation, referred to as "Department", stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board", incorporating the Stipulated Facts and Stipulated Disposition in this matter.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 0020719.
2. Respondent was charged by 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 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 Department 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.

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 \$5,000 against the Respondent. The fine shall be paid by the Respondent to the Executive Director of the Board within 180 days of its imposition by Final Order of the Board.

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

4. Respondent shall attend 40 hours of Category I Continuing Medical Education courses within one year of the Board's Order accepting this Consent Agreement in the area of Psychiatry with an emphasis on psychogenic pain disorder. Respondent shall submit a written plan to the Chairman of the Probation Committee for course approval prior to the completion of said courses. Respondent shall submit documentation of completion of these courses to the Board. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board of the Chairman of the Probation

Committee, said courses shall consist of a formal live lecture format.

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

6. 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 or Department Staff.

7. 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.

8. Respondent and the Department 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 Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibits "A" herein.

9. 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.

10. 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 Department in connection with this matter.

11. 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 9th day of June, 1992.


Luis A. Herrero, M.D.

Sworn to and subscribed
before me this 9 day
of June, 1992. by Luis A. Herrero, M.D., who
is known to me and who did take an oath.

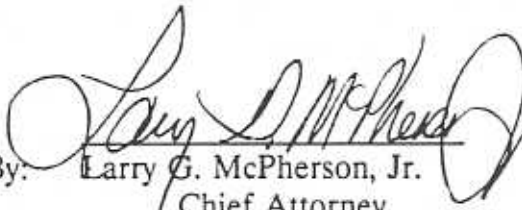
Lucy C. Butcher
NOTARY PUBLIC

LUCY C. BUTCHER
Notary Public, State of Florida
My Comm. Expires Sept. 15, 1995
No CC133882

My Commission Expires:

APPROVED this, 6 day of June, 1992.

George Stuart
Secretary


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

W

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

PETITIONER,

vs.

CASE NO. 8904528

LUIS A. HERRERO, 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 LUIS A. HERRERO, 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 0020719. Respondent's last known address is 516 Lakeview Road, Villa #6, Clearwater, Florida, 34619.

3. From on or about June 10, 1988, until on or about June 24, 1988, Dr. Fred Lieberman treated Patient #1, a forty-one (41) year old female, for severe stomach pain.

4. On or about June 17, 1988, Dr. Lieberman conducted a gastroscopy on Patient #1 at Morton Plant Hospital, Clearwater, Florida. The gastroscopy had negative results and Dr. Lieberman discharged Patient #1 later that day.

5. On or about June 17, 1988, Dr. Lieberman admitted Patient #1, who was complaining of severe stomach pain, to Morton Plant Hospital. Dr. Lieberman stated in Patient #1's medical records that she had been vomiting for the past several weeks, and had lost thirty (30) pounds in weight during this period of time.

6. After Dr. Lieberman conducted further workup, which revealed a lack of anatomic finding, he referred Patient #1 to Respondent for psychiatric evaluation.

7. On or about June 22, 1988, Respondent consulted with Patient #1. In Respondent's Report of Consultation, he states that Patient #1's mood was depressed and sad, but she felt good, had a stable energy level, stable pattern of sleeping, had goal directed thought processes, and displayed adequate judgement. He also reported that she denied having anxiety and that she gets along fine with other people. This was the only consultation between Respondent and Patient #1.

8. After the consultation, Respondent diagnosed Patient #1 as suffering from a Psychogenic Pain Disorder and recommended Patient #1 continue current medication, Xanax .25 mg. three (3) times a day, and pursue supportive psychotherapy.

9. On or about June 24, 1988, Dr. Lieberman discharged Patient #1.

10. Psychogenic Pain Disorder is a pain disorder caused by a person's mental, behavioral, and psychological processes.

11. On or about July 11, 1988, Patient #1 presented to Morton Plant Hospital complaining of vomiting and abdominal pain. The hospital staff placed Patient #1 on the psychiatric ward because of Respondent's diagnosis.

12. On the psychiatric ward, Dr. Ali Keskiner, a psychiatrist, treated Patient #1. After talking with Patient #1, Dr. Keskiner opined Patient #1 had a physical problem. Dr. Keskiner then referred Patient #1 to Dr. Eric Weston, a gastroenterologist.

13. Dr. Weston reviewed Patient #1's records and recommended surgery. Dr. William S. Maistrellis conducted exploratory laparotomy on Patient #1 on or about July 21, 1988, and found Patient #1 had cancer of the stomach. Dr. Maistrellis then removed a large portion of Patient #1's stomach. Patient #1 subsequently received chemotherapy for cancer treatment.

14. Respondent diagnosed Patient #1 as suffering from a Psychogenic Pain Disorder based solely on his observation that Patient #1 was depressed. Respondent failed to note that Patient #1 had any of the following: abnormal mental, behavioral, or psychological processes; a personal or family psychiatric history; or a disturbing event that had recently occurred in Patient #1's life.

15. In order to diagnose Patient #1 with Psychogenic Pain Disorder, Respondent should have noted one (1) or more of the

following: abnormal mental, behavioral, or psychological processes; a personal or family psychiatric history; or a disturbing event that had recently occurred in Patient #1's life.

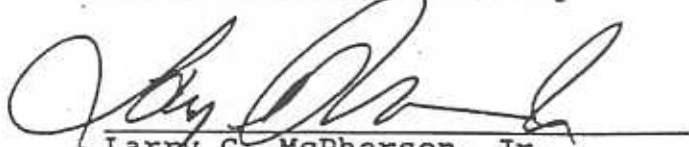
16. Respondent is guilty of gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, in that Respondent diagnosed Patient #1 as suffering from Psychogenic Pain Disorder without taking the appropriate steps to obtain an accurate diagnosis.

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

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an Order imposing one or more of the following penalties: 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 15 day of OCTOBER, 1991.

George Stuart, Secretary


Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Larry G. McPherson, Jr.
Chief Medical Attorney
Department of Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0750
Florida Bar #788643
CJR/dpb/tc
PCP: October 12, 1991
Ashkar, Skinner

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Department of Professional Regulation
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CLERK

DATE

10-22-91

SIGNED this 15 day of OCTOBER, 1991.

George Stuart, Secretary


Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Larry G. McPherson, Jr.
Chief Medical Attorney
Department of Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0750
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DATE

10-22-91



FLORIDA BOARD OF MEDICINE
DEPARTMENT OF PROFESSIONAL REGULATION

Lawton Chiles
Governor

George Stuart
Secretary

August 9, 1993

FLORIDA BOARD OF MEDICINE
1940 North Monroe Street
Tallahassee, Florida 32399-0770
Telephone (904) 488-0595

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Executive Director

Dorothy J. Faircloth

Luis A. Herrero, M.D.
The Manor House
2401 West Bay Drive
Largo, Florida 34640

Dear Dr. Herrero:

Pursuant to the Final Order of the Board dated August 12, 1992 (copy enclosed), you were required to pay an administrative fine and complete 40 hours CME.

This will serve to acknowledge fulfillment of all requirements as set forth in the Final Order.

If you have any questions, please feel free to contact this office at (904) 488-0595.

Sincerely,

Crystal A. Griffin
Professional Regulation Specialist II

/cg

Enclosure

cc: Grover C. Freeman, Esquire