

STATE OF FLORIDA  
DEPARTMENT OF PROFESSIONAL REGULATION

BOARD: Medicine  
CASE NUMBER: 90-06840  
COMPLAINT MADE BY: DPR  
DATE COMPLAINT RECEIVED: 5-25-90  
COMPLAINT MADE AGAINST: Harry W. Graff, M.D.  
621 Dupont Plaza Center  
Miami, Florida 33131  
REVIEWED BY: Francesca Plendl, Senior Attorney  
STAFF RECOMMENDATION: Close (PL-82)

CLOSING ORDER

THE COMPLAINT: Complainant alleges that Dr. Graff failed to practice medicine with an acceptable level of care, skill and treatment by ordering toxicology screens and then cancelling them; made or filed a report which he knew to be false; and made deceptive, untrue or fraudulent representations in the practice of medicine.

THE FACTS: Dr. Graff treated Patient #1 between 1979 and 1983 for severe depression. In 1982 the Respondent admitted Patient #1 to a hospital with a diagnosis of Bipolar Disorder. During this hospital stay, a toxicology screen was ordered by the Respondent. It was subsequently cancelled by the laboratory, as one has just been done, and the lab thought that it was a duplicate order. Dr. Graff was not involved in the cancelling of the screen.

In 1987 Dr. Graff sent a letter to the Florida Board of Medical Examiners regarding Patient #1's application for medical licensure. Dr. Graff stated that Patient #1 suffered from and was treated for Bipolar Affective disorder and that he had not experienced another episode since Dr. Graff last treated him. In 1987 Patient #1 had a license granted, but was placed on indefinite probation by reason of having "a bipolar affective disorder and a history of chemical abuse". In 1989 Patient #1 asked Dr. Graff to consider whether it was possible that drug use could have confused the 1982 diagnosis of Bipolar Disorder. In 1990 Dr. Graff reevaluated Patient #1 and sent a letter to the Board stating that he wished to indicate that his diagnosis of Bipolar Affective Disorder was probably and most likely in error. He stated that he was "inclined to give him that diagnosis in 1982 for his benefit as a medical student".

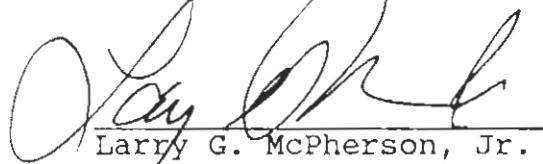
An expert reviewed this matter for the Respondent. He found that Dr. Graff had not in any way deviated from the standard of care. He concluded that Dr. Graff's initial diagnosis of a Bipolar Disorder appeared correct and that it was also appropriate to change this diagnosis due to additional medical information subsequently brought to the attention of Dr. Graff.

THE LAW: There is sufficient evidence for the panel to have found probable cause in this case. However, based upon the above facts, the Department has determined that there is insufficient evidence to support the prosecution of allegations contained therein. Therefore, pursuant to Section 455.225(2), Florida Statutes and Rule 21-31.001, Florida Administrative Code, this case is DISMISSED.

It is, therefore, ORDERED that this matter should be and the same is hereby DISMISSED.

DONE and ORDERED this 19 day of March, 1992

George Stuart, Secretary

  
Larry G. McPherson, Jr.  
Chief Medical Attorney

:fp

PCP. March 12, 1992

STATE OF FLORIDA  
DEPARTMENT OF PROFESSIONAL REGULATION  
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL  
REGULATION,

PETITIONER,

vs.

CASE NO. 90-06840

HARRY W. GRAFF, 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 HARRY W. GRAFF, 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 0007333. Respondent's last known address is 621 Dupont Plaza Center, Miami, Florida 33133.

3. On or about September 23, 1979, Patient #1 underwent psychological evaluation, which revealed "enormous variance in the organization and integration at covert levels as compared to the conscious turmoil and anxiety. The patterns could easily result

from LSD intake."

4. Patient #1 told the psychologist that Patient #1 was hospitalized for about two and one-half (2 1/2) weeks in or about June, 1979, and that he took LSD two (2) days prior to being admitted to the hospital.

5. The psychologist subsequently referred Patient #1 to Respondent.

6. After on or about September 23, 1979, Respondent treated Patient #1 for severe depression, and from on or about September, 1980, to on or about May 26, 1983, Respondent provided psychiatric care and treatment, including psychotherapy, to Patient #1.

7. On or about November 6, 1982, Patient #1 was taken to the emergency room (ER) at Jackson Memorial Hospital (JMH) in Miami, Florida. Patient told the ER staff he had taken LSD, then denied taking it and said he was joking.

8. From on or about November 7, 1982, to on or about November 12, 1982, Respondent admitted Patient #1 to JMH with a diagnosis of Bipolar Disorder.

9. Respondent was Patient #1's attending physician during his hospitalization.

10. During this November, 1982, hospitalization, Patient #1 was admitted to the Psychiatric Emergency Service Extended Evaluation and Treatment Unit, and Respondent ordered toxicology screens using blood and urine. The record indicates the blood sample was sent to the laboratory.

11. Patient #1's discharge diagnosis was Affective Bipolar

Disorder.

12. On or about November 16, 1982, the Discharge Summary for Patient #1 was dictated, and noted that "studies for su**[b]**stances cancelled."

13. On or about May 20, 1987, Respondent sent a letter to the Florida Board of Medical Examiners (Board) regarding Patient #1's application for medical licensure. Respondent stated that Patient #1 suffered from and was treated for Bipolar Affective Disorder, and had not experienced another episode since Respondent last treated Patient #1.

14. On or about December 3, 1987, Patient #1 was granted licensure by endorsement as a medical doctor, but had his license placed on indefinite probation by reason of having "a bipolar affective disorder and a history of chemical abuse."

15. As a term of Patient #1's probation, Patient #1 was to be under the care of a Board-approved psychiatrist.

16. On or about August 15, 1989, Patient #1 sent a letter to Respondent stating that the Board-approved treating psychiatrist suspected that Patient #1's problems were substance abuse induced, rather than Bipolar Affective Disorder.

17. Patient #1, in his letter, asked Respondent "to consider whether it was possible LSD, Cocaine, and marijuana could have confused my diagnosis in 1982."

18. On or about January 10, 1990, Respondent re-evaluated Patient #1 and sent a letter to the Board stating, "I wish to indicate that my diagnosis of Bipolar Affective Disorder was

probably and most likely in error. Again, you know that I was inclined to give him that diagnosis in 1982 for his benefit as a medical student."

19. In a letter dated May 3, 1991, Respondent stated, regarding Patient #1, "[t]he drug use known to me was 'recreational' use of drugs."

COUNT ONE

20. Petitioner realleges and incorporates paragraph one (1) through nineteen (19), above as if fully set forth herein this Count One.

21. 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, in that Respondent, during Patient #1's hospital stay, ordered toxicology screens and an Admission Lab Screen, but the studies were subsequently cancelled prior to being performed.

22. Based on the foregoing, Respondent violated 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 TWO

23. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19), and twenty-one (21), above as if fully set

forth herein this Count Two.

24. Respondent made or filed a report which he knew to be false, in that, regarding Patient #1's application for medical licensure, Respondent related to the Board a diagnosis of Bipolar Affective Disorder for Patient #1, but subsequently changed the diagnosis and told the Board he gave Patient #1 the initial diagnosis for Patient #1's benefit as a medical student.

25. Based on the foregoing, Respondent violated Section 458.331(1)(h), Florida Statutes, formerly Section 458.331(1)(i), Florida Statutes, (1981), by making or filing a report with the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so.

### COUNT THREE

26. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19), twenty-one (21), and twenty-four (24), above as if fully set forth herein this Count Three.

27. Respondent made deceptive, untrue, or fraudulent representations in or related to he receive of medicine, in that Respondent diagnosed Patient #1's as having Bipolar Affective Disorder when Respondent knew or had reason to know that Patient #1's condition was drug induced.

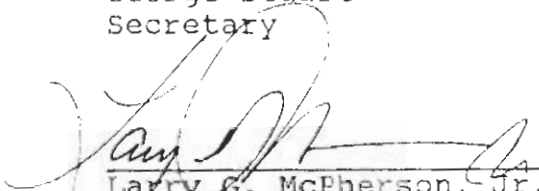
28. Based on the foregoing, Respondent violated Section 458.331(1)(k), Florida Statutes, formerly Section 458,331(1)(l), Florida Statutes, (1981), by making deceptive, untrue, or

fraudulent representations in or related to the practice of medicine or employing a trick or scheme in the practice of medicine.

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 26 day of August, 1991.

George Stuart  
Secretary

  
Larry G. McPherson, Jr.  
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Larry McPherson, Jr.  
Senior Attorney  
Department of Professional  
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1940 North Monroe Street  
Tallahassee, Florida 32399-0750  
Florida Bar #788643  
LAQP/BG/tb  
PCP: August 14, 1991  
Burt and Campbell

**FILED**

Department of Professional Regulation  
Tallahassee, Florida

  
DATE 8-27-91