

**FILED**  
Department of Health  
Angela Hall, AGENCY CLERK

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

By: *Vicki R. Edison*  
Deputy Agency Clerk

BOARD: Medicine

CASE NUMBER: 1991-05270

COMPLAINT MADE BY: DPR

DATE COMPLAINT RECEIVED: April 23, 1991

COMPLAINT MADE AGAINST: Luis F. Guerrero, M.D.  
19960 NW 3<sup>rd</sup> Street  
Pembroke Pines, FL 33029-3444

INVESTIGATED BY: Georgina Jorge  
Miami

REVIEWED BY: John Williams, Contract Counsel

STAFF RECOMMENDATION: Dismiss (PL-82)

**NOTICE OF DISMISSAL/CLOSING ORDER**

THE COMPLAINT: The Respondent was charged by Administrative Complaint with violating the following sections of Florida Statutes:

Section 458.331(1)(k), 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;

Section 458.331(1)(t), gross or repeated malpractice or 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;

Section 458.331(1)(n), exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances, or drugs; and

Section 458.331(1)(m), failing to keep written medical records justifying the course of treatment of the patient.

THE FACTS: The complaint alleges that the Respondent prescribed nutritional supplements that were not medically indicated to nine patients.

Based upon information contained in the file, the witnesses, if still alive, would range in age from 88 to 99 years. Various attempts to contact the witnesses revealed that all nine witnesses are either deceased or unable to be located.

In addition, the Respondent can raise a laches defense based upon the age of the case combined with the resulting prejudice caused by the Respondent's inability to question witnesses as to (1) the complaints with which they presented to him and (2) any effects they experienced from the supplements prescribed by the Respondent. (The underlying events occurred up to eleven years ago, and the unavailability of the witnesses is referenced above.)

Based upon the foregoing information, the agency is without competent evidence to continue the prosecution of the Respondent for the alleged violations of Florida Statutes.

Respondent has agreed to waive any claim for attorney's fees.

THE LAW: There is factual basis for the Panel to have found probable cause in the case. However, during trial preparation of this case, the Agency has determined that there is insufficient admissible evidence to support the prosecution of allegations of violations of Chapter 458, Florida Statutes, or the rules promulgated therein. Therefore, pursuant to Section 455.621(2), Florida Statutes, this case is DISMISSED.

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

DONE and ORDERED this 3<sup>rd</sup> day of March, 2000.

Robert G. Brooks, MD, Secretary

  
Kathryn L. Kasprzak  
Chief Medical Attorney

JW/mlh

PCP: February 25, 2000