

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

vs.

MARK I. TAPEEN, M.D.,

Respondent.

DBPR CASE NO: 92-02999

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, the Department of Business and Professional Regulation, hereinafter referred to as "Petitioner", and files this Administrative Complaint before the Board of Medicine against MARK I. TAPEEN, 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 20.165, 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 0025494.

3. Respondent's last known address is 7390 N.W. 5th Street, Suite #3, Plantation, Florida 33311. Respondent is Board-certified in pediatrics and at all times relevant hereto has practiced pediatric medicine.

4. On or about May 12, 1987, Patient #1, a 16 year old male, was seen by an associate of Respondent, Michael Morrison, M.D., for

complaints of a sore throat, swollen glands, left ear and jaw pain, and feeling tired but being unable to sleep.

5. Dr. Morrison examined Patient #1 and performed a spot mono test and a beta-hemolytic streptococcus (strep) throat culture; prescribed Atarax to help him sleep and gave samples of Augmentin (an antibiotic) pending the results of the culture. Also given were prescriptions for twenty (20) Darvocet N-100 (for sore throat pain) and Persa-Gel (used in the treatment of acne).

6. Two days later, on or about May 14, 1987, Patient #1's family was referred by the pediatric group to Broward General Medical Center for further tests including a complete blood count, repeat mono spot test, cytomegalovirus titre, toxoplasmosis titre, and erythrocyte sedimentation rate. These tests were performed on May 15, 1987.

7. On or about Thursday, May 14, 1987, Respondent's associate, Dr. Michael Morrison, turned the care of his patient over to the other three doctors of Plantation Pediatric Group, PA, and specifically talked to Respondent regarding Patient #1's symptoms and pending blood tests.

8. On or about May 15, 1987, Patient #1's father spoke with Respondent and requested that antibiotics be prescribed and that Patient #1 be hospitalized. Respondent refilled a prescription for Darvocet.

9. On or about May 15, 1987, Patient #1's father spoke by telephone with Dr. Deborah Hiltz, another associate of Respondent, and was advised that the test results were not in the office yet

but that she would call the hospital and call him back. Dr. Hiltz phoned Patient #1's father back after calling the hospital and advised him that the results she was able to obtain at that time were essentially negative.

10. An employee of PFG received a phone call on or about May 16, 1987 in which the family of Patient #1 requested that he be seen that very day. Respondent's two associates, Dr. Michael Halle and Dr. Deborah Hiltz, also received calls about Patient #1.

11. Respondent's associate, Michael Halle, M.D., spoke with Patient #1's father on the evening of May 16, 1987 around 8:00 P.M. and the father requested that an antibiotic be prescribed, but Dr. Halle declined to do so.

12. Respondent's associate, Dr. Halle, was advised by Patient #1's father that a prescription for Darvocet (which was refilled by Respondent) was dispensed generically. Dr. Halle then called in a prescription for the brand name Darvocet.

13. On or about May 17, 1987, Patient #1 was found at home, unconscious, by family members and was transported by paramedics to University Community Hospital. Patient #1 was then transferred to Hollywood Memorial where he later expired.

14. The medical examiner listed the cause of death as diphtheritic myocarditis but in much later testimony recanted that diagnosis and stated that Patient #1 most probably had strep throat.

15. On or about May 22, 1987, Respondent's associate, Dr. Michael Morrison, returned from vacation, and went to the

offices of FPG where he discussed Patient #1's death and related matters with Dr. Michael Halle.

16. Dr. Morrison took the chart of Patient #1 home and rewrote it in subsequent days, at the suggestion of Dr. Halle.

17. On or about May 23 - 27, 1987, an employee was told by Respondent to copy two entries from one copy of Patient #1's progress notes with Dr. Morrison's handwriting on it to another copy of progress notes that also had Dr. Morrison's handwriting already on it. The first notation was dated May 14, 1987 and read:

"Called BGMC - spoke to outpatient (Ann)
ordered above tests."

The second notation was dated May 15, 1987 and appears in the original chart as follows:

Refill Darvosett #12
as directed Dr. Tafean

18. The rewritten record reflects the first notation accurately; the second notation in the rewritten record shows:

Refill Darvocet #12
1 q 4-6 h Dr.T.

19. During a deposition on or about February 5, 1992, Respondent was specifically asked if Dr. Morrison talked to him regarding the circumstances surrounding the rewriting of the medical chart and Respondent stated:

"Yes. He [Dr. Morrison] told me..that Dr. Halle had asked him to rewrite the chart. ...I don't remember his exact words at that time, but basically that the chart needed to, you know, be completed or something to that effect, I don't really remember exact words."

20. Respondent was asked when he found out about the record being rewritten, and he responded that it had been a couple of weeks after Patient #1's death in May 1987.

21. On or about October 23, 1990, a Department of Professional Regulation attorney, conducting an official inquiry into possible violations by Respondent of Chapter 458, Florida Statutes, interviewed Respondent by telephone concerning the events surrounding the care and outcome regarding Patient #1.

22. During the official interview by the Department attorney, Respondent failed at that time to advise the Department attorney, or any other DPR representative, that Patient #1's chart had been rewritten, even though he knew of the circumstance of the rewrite.

23. On or about October 29, 1990, the Department received a formal written response on behalf of the Respondent to the official DPR inquiry from John Mauro, Esquire, Respondent's Counsel, dated October 25, 1990. The response stated:

I believe that having had the benefit of that interview and also having reviewed [Patient #1's] medical record, there can be no disagreement that [Respondent's] medical involvement with this child was, at best, peripheral.

Here, Respondent directed attention once again to the medical record of Patient #1; however, once again he failed to advise the Department that the medical record had been rewritten.

COUNT ONE

24. Petitioner realleges and incorporates paragraphs one (1) through twenty-three (23) as if fully set forth herein this Count One.

25. Based upon the above, the Respondent violated the requirement to report a licensee in violation of Section 458.331(1)(e), by failing to report to the Department of Professional Regulation that his colleague, Dr. Morrison, had fraudulently rewritten the medical record of Patient #1.

26. Based on the preceding allegation, the Respondent violated Section 458.331(1)(e), Florida Statutes, by failing to report to the Department any person who the licensee knows is in violation of this chapter or of the rules of the Department or the Board.

COUNT TWO

27. Petitioner realleges and incorporates paragraphs one (1) through twenty-three (23) as if fully set forth herein this Count Two.

28. Respondent violated legal requirements by misrepresenting or concealing a material fact during the ongoing inquiry by the Department of Professional Regulation into possible violations of Section 458 in or about October 1990 when he failed to inform or misrepresented by discussing the medical record in the Department's possession as if it were the original when he knew it was a rewritten version.

29. Based on the foregoing, Respondent violated Section 458.331(1)(hh) by misrepresenting or concealing a material fact at any time during any phase of a licensing or disciplinary process or procedure.

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an Order imposing one or more of the following penalties: Permanent 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 26th day of October, 1993.

George Stuart, Secretary

By: Charles J. Tunncliff
Charles Tunncliff
Senior Attorney
Bureau Chief

COUNSEL FOR DEPARTMENT:
Joseph Harrison, J.D., Ph.D.
Contract Counsel for DBPR
Department of Business and Professional Regulation
1940 North Monroe Street, Suite 60
Tallahassee, Florida 32399-0792
(904) 488-0062
PCP: October 21, 1993
Murray, Slade & Varn

FILED
Department of Business and Professional Regulation
CLERK

CLERK Donald Deaffey Jr.

7 DATE 10-26-93

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

MARK I. TAFEEN, M.D.,

Respondent.

ANCA CASE NO: 92-02999
DOAH CASE NO: 94-00310

CONSENT AGREEMENT

Mark I. Tafeen, M.D., referred to as the "Respondent", and the Agency for Health Care Administration, referred to as "Agency", 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 0025494.
2. Respondent was charged by an Administrative Complaint

filed by the Agency ¹ 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 Agency 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

Prior to signing this agreement, the Respondent read Chapters 455, 458 and 893 and the Rules of the Board of Medicine, at Section 61F6-18, et. seq., Florida Administrative Code.

¹ Effective July 1, 1994, the Board of Medicine was transferred from the Department of Business and Professional Regulation to the Agency for Health Care Administration, pursuant to Section 20.42, Florida Statutes.

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 five thousand dollars (\$5,000.00) against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within ninety (90) days of its imposition by Final Order of the Board.

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

A) Petitioner and Respondent both understand and agree, without reservation, that a specific requirement of Respondent's Consent Agreement included herein is his complete, truthful, comprehensive, and unrestricted cooperation in the provision of accurate, detailed, completely candid and truthful testimony and evidence in any other AHCA/Board of Medicine administrative cases, investigations, formal hearings, or other proceedings during all stages of those proceedings about those matters that this Respondent has personal, first-hand knowledge and testimony to relate. Specifically, Respondent's failure to comply with this special term and condition by his failure to provide truthful evidence and testimony within his knowledge and ability to relate in other AHCA/Board of Medicine administrative matters or proceedings shall constitute a violation of this Consent Agreement,

and subject him to Board discipline.

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

5. 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 Agency Staff.

6. 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.

7. Respondent and the Agency 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 Agency against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit "A" herein.

8. 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.

9. 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 Agency in connection with this matter.

10. 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.

11. ADDRESSES: 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.

12. COSTS: Respondent shall pay all costs necessary to comply with the terms of this Consent Agreement. Such costs include, but are not limited to, the costs of preparation of Investigative Reports detailing compliance with the terms of the Consent Agreement.

SIGNED this 5 day of JANUARY, 1995.


Mark I. Tafan, M.D.

Before me, personally appeared Mark I. Tafan, M.D.,
whose identity is known to me by Mark I. Tafan, M.D.
(Type of identification & #)
and who, under oath, acknowledges that his/her signature appears
above.

Sworn to and subscribed before me this 5 day of
JANUARY, 1995.


My commission expires:


Notary Public



APPROVED this 11th day of JANUARY, 1995.

Douglas M. Cook,
Executive Director


By: Charles Tunnicliffe
Chief Attorney
Interim Director, Division
of Regulation

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE
ADMINISTRATION, BOARD OF
MEDICINE,

Petitioner,

v.

MARK I. TAPEEN, M.D.

Respondent.

Final Order No. AHCA-92-00218 Date 2-16-95

FILED

Agency for Health Care Administration
AGENCY CLERK

R.S. Foster, Agency Clerk

By: *[Signature]*
Deputy Agency Clerk

CASE NUMBER: 92-02999
DOAH NUMBER: 94-00310
LICENSE NUMBER: ME 0025494

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on February 11, 1995 in Tampa, 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,

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. Accordingly, the parties shall adhere to and abide by all of the terms and conditions of the Consent Agreement.

This Final Order takes effect upon filing with the Clerk of the Agency.

DONE AND ORDERED this 15th day February, 1995.

BOARD OF MEDICINE

Gary E. Winchester, M.D.
GARY E. WINCHESTER, M.D.
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 Mark I. Tafaen, M.D., 7390 N.W. 5th Street, #3, Plantation, Florida 33317-1619, and Wilson Jerry Foster, Esquire, 1342 Timberlane Road, Suite 101A, Tallahassee, Florida 32312-1775, and by interoffice delivery to Larry G. McPherson, Jr., Chief Medical Attorney, Agency for Health Care Administration, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, at or before 5:00 P.M., this _____ day of _____, 1995.

MADM H. HARRIS, Ed.D.
Executive Director