

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE
ADMINISTRATION,

PETITIONER,

vs.

CASE NO. 92-14618

OSCAR KLEIN, M.D.

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Agency for Health Care Administration, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against Oscar Klein, 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; Section 20.42, 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 0038601. Respondent's last known address is 503 Manatee Avenue, Suite E, Bradenton Beach, Florida 34217.

3. Respondent's specialties are psychiatry, neurology and general medicine and he is not board certified.

4. On or about May 1, 1991, Patient #1, a twenty (20) year old female, presented to Respondent with a complaint of a right eye

irritation and swelling for the past three days. Patient #1 was noted to have been rubbing her right eye because of the itching.

5. Respondent performed a visual examination of Patient #1 and noted erythema of the upper and lower eyelids of the right eye, accompanied by swelling and moderate conjunctivitis. Respondent placed Floricine dye into Patient #1's right eye and noted the presence of a mild corneal abrasion.

6. Respondent diagnosed Patient #1 with conjunctivitis of the right eye and mild corneal abrasion probably secondary to rubbing.

7. Respondent did not obtain an adequate history from Patient #1, in order to adequately assess her complaints, in that he failed to include a possible history of trauma to the eye or a history of herpes.

8. Respondent treated Patient #1 by prescribing Neodexare eye drops (topical steroid) and Ponticine eye drops (topical anesthetic).

9. Neither topical steroids or topical anesthetics are indicated for treatments of a corneal abrasion.

10. At approximately 7:30 p.m., on or about May 1, 1991, Patient #1 telephoned Respondent complaining that she was still experiencing pain in the right eye. Respondent told Patient #1 to discontinue the Ponticine eye drops, and he prescribed Vicodin pain medication in its place. Respondent advised Patient #1 to return to his office if her complaints persisted.

11. On or about May 5, 1991, Patient #1 presented to the emergency room at HCA Blake Hospital complaining of pain in her right eye. Patient #1 was examined by the emergency room physician, Dr. Joseph Craigmyle, and diagnosed with herpetic conjunctivitis. Dr. Craigmyle prescribed Viroptic eye drops and Percocet for pain, and he told Patient #1 to follow-up with an ophthalmologist, Dr. Richard Hector, the following morning. Patient #1 was further instructed to throw away both medications prescribed by Respondent.

12. On or about May 6, 1991, Patient #1 presented to the ophthalmologist, Dr. Hector, for follow-up examination. Physical examination revealed a dendritic lesion on Patient #1's right cornea, and Dr. Hector diagnosed Patient #1 with Herpes Simplex Virus (HSV) keratitis of the right eye. Dr. Hector gave Patient #1 a prescription for Viroptic.

13. Respondent practiced medicine below the acceptable standard of care in that Respondent: failed to adequately assess Patient #1's condition in that he did not ascertain whether or not she had a history of herpes or a history of eye trauma; failed to appropriately diagnose Patient #1's condition in that he incorrectly diagnosed her with a corneal abrasion instead of the proper diagnosis of herpes virus infection of the right eye; failed to appropriately refer Patient #1 to an ophthalmologist for evaluation; and inappropriately treated Patient #1 with topical steroids and topical anesthetic.

14. Based on the preceding allegations, Respondent has violated Section 458.331(1)(t), Florida Statutes, through 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: permanent revocation or suspension of 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 22 day of June, 1995.


Douglas M. Cook, Director


Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR THE AGENCY:

Larry G. McPherson, Jr.
Chief Medical Attorney
Agency for Health Care Administration
1940 North Monroe Street
Tallahassee, Florida 32399-0750
Florida Bar #788643
LGM/ceb/jto
PCP: June 14, 1995
Katims, Diblan, Dauer

FILED

AGENCY FOR
HEALTH CARE ADMINISTRATION
DEPUTY CLERK

CLERK 

DATE 6-26-95

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

v.

AHCA CASE NO. 92-14619

OSCAR KLEIN, M.D.,

Respondent.

CONSENT AGREEMENT

OSCAR KLEIN, 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 0038601.
2. Respondent was charged by an Administrative Complaint filed by the Agency and properly served upon Respondent with violations of Chapters 455 and 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 attached Administrative Complaint, if proven, would constitute violations of Chapters 455 and 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. Prior to signing this agreement, the Respondent read Chapters 455, 458, and 893 and the Rules of the Board of Medicine in Section 59R, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of \$2,000.00 against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within sixty (60) days of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND THE RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN 60 DAYS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN**

CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B, PARAGRAPH 1 OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).

3. OBLIGATIONS/REQUIREMENTS. Under the terms of this Agreement, Respondent shall attend (5) hours of Category I Continuing Medical Education courses in Risk Management within one year of the Final Order of the Board. In addition Respondent will attend forty (40) hours CME on assessment skills for the primary care practitioner of which ten (10) must be in assessment and treatment of diseases of the eye. Respondent shall submit a written plan to the Chairman of the Board for approval prior to the completion of said continuing education hours. The Board confers authority on the Chairman of the Board to approve or disapprove said continuing education hours. In addition, Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of the medical courses within one (1) year of the entry of the Final Order in this matter. All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was previously provided during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education courses shall consist of a formal, live lecture format.

4. Respondent will not practice medicine in Florida until the fine is paid, the above referenced CME is complete, and respondent appears before the Board pursuant to paragraph 7 below.

5. PROBATION. Respondent shall be on clinical probation for two years, after his return to the practice of medicine in Florida, during which time Respondent will be indirectly supervised and at least 25% of his office records monitored. This probationary term will run concurrent with and in conjunction with the probationary period imposed by the Board in Case Numbers 8909833 & 8910360.

6. 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.

7. Respondent does not have to appear before the Board at the meeting of the Board where this Agreement is considered. When the Respondent comes before the Board to demonstrate that he has met the obligations of this agreement, he shall, in conjunction with the consideration of this Agreement by the Board, also respond to questions under oath from the Board, Board staff or Agency staff whereby he demonstrates what actions have been taken in his medical practice to insure that this type of episode does not reoccur.

8. Should this Agreement be rejected, no statement made in furtherance of this Agreement by Respondent may be used as direct evidence against the Respondent in any proceeding; however, such statements may be used by the Practitioner for impeachment purposes.

9. Respondent and the Agency fully understand that this joint agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings

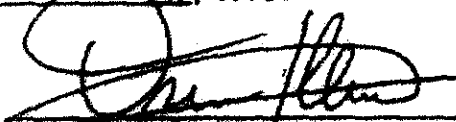
against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit "A" herein.

10. 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.

11. 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.

12. 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 23 day of OCTOBER, 1995.


Oscar Klein, M.D.

Before me, personally appeared Oscar Klein, M.D., whose identity is known to me by Passport D.I. (type of identification) and who, under oath, acknowledges that his signature appears above.

Sworn to and subscribed before me this 23 day of October, 1995.

Edward S. Poterantz
Notary Public

My Commission expires:

EDWARD S. POTERANTZ
NOTARY PUBLIC-STATE OF NEW YORK
NO. 44-8485123
QUALIFIED IN ROCKLAND COUNTY
COMMISSION EXPIRES AUGUST 31, 1998

Approved this 31 day of October, 1995.

Doug Cook
Director

Larry McPherson, Jr.
By: Larry McPherson, Jr.
Chief Attorney

2025 RELEASE UNDER E.O. 14176

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE
ADMINISTRATION, BOARD OF
MEDICINE,

Petitioner,

v.

OSCAR KLEIN, M.D.,

Respondent.

Final Order No. AHCA-95-01804 Date 12/1/95

FILED

Agency for Health Care Administration

AGENCY CLERK

R.S. Power, Agency Clerk

By: Janet L. Bell
Deputy Agency Clerk

CASE NUMBER: 92-14618

HEARING NUMBER: ME 0038601

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on December 1, 1995 in Miami, 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 modification that the transcript of proceedings becomes an attachment to the Consent Agreement and that, when Respondent appears before the Board pursuant to paragraph 7 of the Consent Agreement, he shall also

respond to questions regarding the statement in his curriculum vitae that he was board eligible in psychiatry, neurology and general medicine.

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

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

DONE AND ORDERED this 22 day December, 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 Oscar Klein, M.D., 451 Westend Avenue, #4F, New York, New York, 10024; H. Roger Lutz, Esquire, One Sarasota Tower, Two Tamiami Trail, Fifth Floor, Sarasota, Florida 34236; 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 28th day of December, 1995.

Marm M. Harris
MARM M. HARRIS, Ed.D.
Executive Director