STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE ADMINISTRATION, BOARD OF MEDICINE,

Petitioner,

v.

SABIH KAYAN, M.D.,

Respondent.

Final Order No. AHCA-96-00250 Date 3-6-96
FILED
Agency for Health Care Administration
AGENCY CLERK
R.S. Power, Agency Clerk
By: Ronda L. Bryan
Deputy Agency Clerk

AHCA CASE NO: 92-17009
DOAH CASE NO: 94-5120
LICENSE NO: ME 0037022

FINAL ORDER

THIS MATTER was heard by the Board of Medicine (hereinafter Board) pursuant to Section 120.57(1)(b)10., Florida Statutes, on February 3, 1995, in Tallahassee, Florida, for consideration of the Hearing Officer's Recommended Order (Attached as App. A) in the case of Agency for Health Care Administration, Board of Medicine v. Sabih Kayan, M.D. At the hearing before the Board, Petitioner was represented by Larry G. McPherson, Jr., Chief Medical Attorney. Respondent was present and represented by Bruce D. Lamb, Esquire. Upon consideration of the Hearing Officer's Recommended Order and after review of the complete record and having been otherwise fully advised in its premises, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. The Hearing Officer's Recommended Findings of Fact are approved and adopted and are incorporated herein by reference as the Findings of Fact of the Board in this cause.

2. There is competent, substantial evidence to support the Board's findings herein.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and subject matter of this case pursuant to Section 120.57 and Chapter 458, Florida Statutes.

2. The Findings of Fact set forth above do not establish that Respondent has violated Sections 458.331(1)(t) and (m), Florida Statutes as charged in the Amended Administrative Complaint in AHCA Case No. 92-17009, DOAH Case No. 94-5120.

3. The Conclusions of Law of the Recommended Order are approved and adopted and incorporated herein.

DISPOSITION

Based upon the Recommended Findings of Fact and Conclusions of Law of the Hearing Officer's Recommended Order it is hereby determined that the Respondent is not guilty of violating Sections 458.331(1)(t) and (m), Florida Statutes.

WHEREFORE, it is found, ordered and adjudged that this matter is hereby DISMISSED.

NOTICE

The parties are hereby notified pursuant to Section 120.59(4), Florida Statutes, that an appeal of this Final Order may be taken pursuant to Section 120.68, Florida Statutes, by filing one copy of a Notice of Appeal with the Clerk of the Agency for Health Care Administration and one copy of a Notice of Appeal with the required filing fee with the District Court of Appeal within thirty (30) days of the date this Final Order is filed.

DONE and ORDERED this 1st DAY OF March, 1996.

BOARD OF MEDICINE

Gary E. Winchester M.D.
GARY E. WINCHESTER, M.D.
VICE-CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order and its attachments have been forwarded by U.S. Mail to Sabih Kayan, M.D., 5405 Cypress Center Drive, Suite 297, Tampa, Florida 33609-1025, Bruce D. Lamb, Esquire, P.O. Box 2378, Tampa, Florida 33601 and J. Lawrence Johnston, Hearing Officer, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550 and by hand delivery to Larry G. McPherson, Jr., Chief Medical Attorney, Agency for Health Care Administration, 1940 North Monroe Street, Tallahassee, Florida 32399-0792 on this ______ day of ________________, 1996.

____
Marm Harris, Ed.D.
Executive Director

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE ADMINISTRATION, BOARD OF MEDICINE, Petitioner, vs. SABIH KAYAN, M.D., Respondent.	)	CASE NO. 94-5120

RECOMMENDED ORDER

A formal administrative hearing was held in this case on August 1, 1995, in Clearwater, Florida, and on September 7, 1995, in Tampa, Florida, before J. Lawrence Johnston, Hearing Officer, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Steven Rothenburg, Esquire
Agency for Health Care Administration
9325 Bay Plaza Boulevard
Suite 210
Tampa, Florida 33619

For Respondent: Bruce D. Lamb, Esquire
Shear, Newman, et al.
Post Office Box 2378
Tampa, Florida 33601

STATEMENT OF THE ISSUE

The issue in this case is whether the Board of Medicine should discipline the Respondent, Sabih Kayan, M.D., on charges contained in a two-count, Amended Administrative Complaint, AHCA Case No. 92-17009. Count I alleges that the Respondent violated Section 458.331(1)(t), Fla. Stat. (1989), by: (1) failing to adequately evaluate the mental status of Patient #1 before

ordering him transferred from B-Wing to a Delta Unit of the Pinellas County Jail; (2) failing to adequately and/or further evaluate the patient after the transfer; and (3) failing to adequately monitor and/or further evaluate the patient following the institution of the drug Ascendin. Count II alleges that the Respondent failed to keep adequate medical records in violation of Section 458.331(1)(m), Fla. Stat. (1989).

PRELIMINARY STATEMENT

On November 4, 1993, the Department of Business and Professional Regulation (DBPR) filed an Administrative Complaint against the Respondent in DBPR Case No. 92-17009. The Respondent disputed the charges and requested formal administrative proceedings. On September 16, 1994, the successor agency to the DBPR, the Agency for Health Care Administration (AHCA), referred the matter to the Division of Administrative Hearings (DOAH).

Initially, the case was scheduled for final hearing on March 16-17, 1995, but AHCA's Motion to Amend Administrative Complaint and Motion for Continuance of Final Hearing were granted.

AHCA's Amended Administrative Complaint was filed on March 15, 1995, and AHCA moved to reschedule final hearing. By Notice of Hearing issued on May 1, 1995, final hearing was rescheduled for August 1-2, 1995, in Clearwater, Florida.

On July 13, 1995, the parties filed a Prehearing Stipulation.

On July 17, 1995, the Petitioner's Motion to Take Official Recognition of the Board of Medicine Discipline and Licensure

Restrictions (codified as F.A.C. Rule Chapter 59R-8) was filed. On July 31, 1995, the Respondent's Motion to Dismiss Administrative Complaint and the Respondent's Motion to Disqualify Expert and Prohibit Expert from Testifying were filed.

At the outset of the final hearing on August 1, 1995, the pending motions were taken up. The Petitioner's Motion to Take Official Recognition was granted. Ruling was reserved on the Respondent's Motion to Dismiss Administrative Complaint. The Respondent's Motion to Disqualify Expert and Prohibit Expert from Testifying was denied.

Next, the Respondent moved ore tenus to continue the final hearing on the ground that his expert witness was unable to travel to the hearing as planned due to Hurricane Erin and would not be able to attend and testify. It was ruled that the hearing should proceed but that it would be continued for the testimony of the Respondent and his expert, which would be presented at a rescheduled session of the final hearing.

On August 1, 1995, the parties had Joint Exhibit 1 admitted in evidence. AHCA also had Petitioner's 1 through 4 admitted in evidence. Petitioner's Exhibit 3 is the transcript of the deposition testimony of one of the AHCA expert witnesses; AHCA also called its other expert witness, over the Respondent's objection. The Respondent called one witness and had Respondent's Exhibits 1 and 2 admitted in evidence.

After the conclusion of the proceedings on August 1, the remainder of the final hearing was continued and was later rescheduled for September 7, 1995, in Tampa, Florida. On

September 7, the Respondent and his expert witness testified. The Respondent also had Respondent's Exhibits 3 and 4 admitted in evidence.

AHCA ordered the preparation of a transcript of the final hearing, and the parties requested and were given 30 days from the filing of the transcript in which to file proposed recommended orders. The complete transcript was filed on September 26, 1995.

Explicit rulings on the proposed findings of fact contained in the parties' proposed recommended orders may be found in the Appendix to Recommended Order, Case No. 94-5120.

FINDINGS OF FACT

1. The Respondent, Sabih Kayan, M.D., is, and has been at all times material to the allegations in the Amended Administrative Complaint, a licensed physician in the State of Florida, having been issued license number ME 0037022.

RESPONDENT'S BACKGROUND

2. The Respondent received his doctor of medicine degree in 1962 from the University of Ege, in Izmir, Turkey. In 1972, the he received a doctorate degree in pharmacology from the University of Iowa, in Iowa City, Iowa. He has taught in the area of pharmacology at the University of Iowa, the University of Ankara, in Ankara, Turkey, and at the University of South Florida, in Tampa, Florida. He is a psychopharmacologist by training and receives referrals of patients from colleagues in difficult cases or cases involving medication management.

3. The Respondent performed post-graduate training in the area of psychiatry, performing an internship at the William S.

Hall Psychiatric Institute, in Columbia, South Carolina, and at the University of South Florida, College of Medicine, Department of Psychiatry. He is board-certified by the American Board of Psychiatry and Neurology.

4. Pharmacology is the science or study of the behavior of medications in living organisms, to determine how the medications behave, the effects they exert, and their beneficial effects or untoward effects in human beings.

5. The Respondent is engaged in the private practice of psychiatry in the Tampa Bay area. He has had significant experience in the institutional practice of psychiatry, having practiced at the Pinellas County Jail as a consulting psychiatrist from February of 1985 through October of 1991, with two short absences.

6. The Respondent has served as an instructor and assistant professor in psychiatry at the University of South Florida, College of Medicine, and has also taught at the University of Iowa and at the University of Ankara, Turkey.

7. The Respondent has served on various committees at hospitals, where he has hospital privileges. He has served as the President of the Staff of Charter Hospital and Chief of Staff of Psychiatry at St. Joseph's Hospital.

8. The Respondent is a member of various professional societies, including the American Suicidology Foundation, which specializes in the assessment and treatment of suicide and the prevention of the same.

9. The Respondent has never been disciplined by the Florida Board of Medicine or any other regulatory board. He has never

had his privileges at any hospital suspended, revoked or otherwise acted against.

10. During the period of time in question, the Respondent had a contractual agreement with a corporation, Correctional Medical Services, Inc., to provide health care services for approximately ten hours a week to persons incarcerated at the Pinellas County Jail. Correctional Medical Services, Inc., had a contract with the Pinellas County Jail to supply health care providers.

11. During the period of time in question, the Respondent served as the psychiatrist on call to the Pinellas County Jail between Monday morning and Friday morning of each week; another psychiatrist, Dr. Dennis, was on call to the Pinellas County Jail from Friday morning through Monday morning each week.

MENTAL HEALTH STAFF AND RESPONSIBILITIES AT PINELLAS COUNTY JAIL

12. During the period of time in question, some mental health professionals were employed directly by the Pinellas County Jail, and other mental health professionals were employed by Correctional Medical Systems, Inc., who provided services to the Pinellas County Jail. The individuals employed directly by the Pinellas County Jail were deemed to be in the Jail's "forensic program or unit". They included: Georgia Brandstadter-Palmer, a psychologist; Donald M. VanDalen, a psychologist; and several forensic social workers, including Mark Wong and Beverly Hill. In addition, psychiatric nurses were employed directly by the Jail. Two psychiatrists were retained by Correctional Medical Systems, Inc., to provide additional mental health services to the inmates.

13. It was the responsibility of Dr. VanDalen to accompany the psychiatrist on "psychiatric sick-call" and participate in assessments and evaluations of inmates who were identified with mental health problems and concerns.

14. The Respondent was not responsible for the supervision of any other mental health providers at the Pinellas County Jail.

LEVELS OF RESTRICTIONS AND MONITORING AT THE PINELLAS COUNTY JAIL

15. During the period of time in question, the Pinellas County Sheriff's Office had issued a directive specifying various levels of restrictions and monitoring which would be utilized on patients who had apparent psychiatric problems. The directive set forth three categories.

16. The first category was suicide precautions. Under suicide precautions, inmates were stripped and issued a paper sheet. Mattresses, sheets, towels, and articles of clothing were removed from the cell. Inmates were placed under direct observation, one on one, with a guard. Inmates were not provided with cigarettes or matches; and all personal items, including eye glasses were removed.

17. The second status was suicide observation. Under suicide observation, inmates were issued a uniform and mattress only. Inmates were not allowed to participate in facility programs, such as recreation, chapel, Alcoholics Anonymous, or educational programs. Inmates were not to receive cigarettes or matches. All personal items, with the exception of eye glasses, magazines and paperback books, were removed from the cell. Inmates were allowed to make telephone calls under direct supervision. Inmates were placed on 15-minute checks by guards.

18. The third level of observation was psychiatric observation. Inmates would continue to be monitored on 15-minute checks but would otherwise resume normal activity within the jail. Inmates would be provided with a bed roll. Inmates on psychiatric observation could be housed either on the Delta Wing or the Bravo Wing. Inmates could be moved from the Bravo Wing to the Delta Wing after being cleared by either of the psychiatrists, or by Dr. Brandstadter-Palmer or Dr. VanDalen.

19. Generally, when inmates became incarcerated and exhibited an apparent psychiatric problem, several individuals would evaluate the patient. The initial evaluation would be performed by a registered nurse, who would classify the inmate. The registered nurse could order that the inmate be placed on suicide precaution, suicide observation, or psychiatric observation.

20. Thereafter, the inmate would be evaluated either by one of the psychiatrists (either the Respondent or Dr. Dennis) or by one of the psychologists (either Dr. Brandstadter-Palmer or Dr. VanDalen). Any of these individuals could change the classification of the inmate to a lower level of observation. Any jail employee could upgrade the level of observation, even guards.

PHYSICAL LAYOUT OF THE PINELLAS COUNTY JAIL

21. The Pinellas County Jail included several medical units. The units in question in this proceeding are the Bravo Unit, otherwise referred to as the B-Wing, and the Delta Units, otherwise referred to as the D-Wings. The Bravo Unit was the

medical infirmary. Inmates with general medical conditions, as well as inmates with mental health problems, were initially housed in the Bravo Unit. The Bravo Unit consisted of four wards in the center, which would house multiple patients. Down the sides of the Bravo Units were 16 cells, eight on each side, plus three isolation cells on one side. The guard station was at one end of the unit. From the guard station, guards could not see the inmates housed in the wards or in most of the individual inmate cells. To observe the inmates housed in these areas, the guard would have to circulate through the Bravo Wing. However, inmates on suicide precaution, suicide observation or (in most cases) psychiatric observation status were housed in single cells visible from the guard station.

22. Each of the three Delta Units consisted of 16 individual cells, arranged in a line, on two levels. The guard was posted so that he could observe all of these individual cells from the guard station.

23. There was no difference in the type of monitoring provided to patients who are on psychiatric observation, between those housed on the Bravo Unit and those housed on the Delta Unit.

PREVIOUS INCARCERATIONS OF THE PATIENT

24. It was the Respondent's practice to review the previous medical history of his patients, including that of inmates at the Pinellas County Jail. The charts at the Pinellas County Jail are cumulative and include individual charts for each admission to the Jail.

25. The Respondent participated in the care of the inmate identified in the Amended Administrative Complaint as Patient #1 in July of 1990. At the time, the patient was known to the Respondent from previous incarcerations.

26. The Respondent was aware that the patient had been incarcerated during November of 1989 and had been evaluated and treated by mental health practitioners at the Pinellas County Jail. At the time of the incarceration of November 19, 1989, the inmate was placed in the Bravo Wing under suicide precaution.

27. On November 24, 1989, five days after his initial incarceration, the patient was ordered released to the general population by the psychiatrist at the Jail at the time. The Respondent did not participate in the care of the patient during the 1989 incarceration.

28. The inmate was again incarcerated on January 17, 1990. Initially, the patient was placed on suicide precautions by the nurse.

29. On January 18, 1990, Dr. Brandstadter-Palmer discontinued suicide precautions and changed the patient to a suicide observation status.

30. On January 27, 1990, the patient was changed from suicide observation to psychiatric observation by Dr. VanDalen.

31. On January 29, 1990, the patient was ordered released to the general population by Dr. Brandstadter-Palmer.

THE INCARCERATION OF JUNE 1990

32. On June 27, 1990, Patient #1 became incarcerated at the Pinellas County Jail once again. The patient was initially screened by a registered nurse and placed on suicide precautions.

33. The first mental health professional to see the patient was Dr. Brandstadter-Palmer, who saw the patient on June 28, 1990. At that time, the inmate denied that he would hurt himself. Dr. Brandstadter-Palmer ordered that suicide precautions be discontinued and that the patient be placed on suicide observation.

34. The Respondent saw the patient on the morning of June 29, 1990. He performed a psychiatric evaluation of the patient. This psychiatric evaluation included a review of the existing records, the obtaining of a history and the performance of a mental status examination. The Respondent's diagnosis was that the patient was in a psychotic state. The patient denied any suicidal ideation. The Respondent ordered Thorazine, an anti-psychotic medication. The patient had previously received Thorazine, and it had been helpful in treating his psychosis in the past.

35. Thorazine is the brand name of Chlorpromazine, an anti-psychotic medication which becomes effective within minutes.

36. The Respondent did not believe that the patient was a suicide risk at that time and ordered that the patient be changed from suicide observation to psychiatric observation. The change served a therapeutic purpose for the patient, but it did not change the frequency of the monitoring of the patient by the guards, and the patient remained on 15-minute guard checks. In addition, the patient's location was not changed at that time.

37. The inmate was seen on June 30, 1990 by Dr. Dennis, the other psychiatrist. Dr. Dennis noted in the patient's chart that

the patient denied suicidal ideation but that the patient appeared to be psychotic. Dr. Dennis ordered that psychiatric observation be continued. Dr. Dennis could have returned the patient to suicide observation of suicide precaution but did not do so.

38. The patient was again seen by Dr. Dennis on July 1, 1990. The patient again denied active suicidal ideation. Dr. Dennis ordered a continuation of the current monitoring. Dr. Dennis could have changed the patient to suicide observation or suicide precaution but did not do so.

39. The inmate was seen again on July 2, 1990 by the Respondent. The Respondent performed a psychiatric evaluation of the patient on that date. The patient exhibited some signs of depression and was withdrawn. The patient was not agitated, nor was he expressing any suicidal ideation or plans. The patient did not indicate that he wished to be dead. The Respondent ordered Ascendin, an anti-depressant. The Thorazine was continued and appeared to be effective on his psychosis.

40. Ascendin is an anti-depressant medication. Unlike most anti-depressant medications, which can aggravate psychotic symptomology, Ascendin itself is related to an anti-psychotic medication; and Ascendin is partially converted in the human body to a chemical with anti-psychotic properties. For this reason, the Respondent selected Ascendin as an appropriate anti-depressant for use in this patient.

41. The inmate was seen on July 3, 1990, by Dr Dennis, who recorded that there was no change in the inmate's status. The

inmate was also seen by Dr. VanDalen on July 3, 1990, who indicated that the inmate was compliant and taking his medication and that there was no real change in his condition.

42. On July 4, 1990, the patient was seen by the Respondent and Dr. VanDalen. The Respondent performed a mental status examination of the patient on July 4th. A mental status examination is a psychiatric evaluation. The patient was not psychotic at the time of the performance of this examination. His affect had improved from the visit two days prior and the patient expressed no suicidal ideation. The Respondent recorded that the inmate was appropriate and pleasant.

43. The Respondent ordered the patient transferred to the Delta Unit from the Bravo Unit. This order was for a therapeutic purpose to help in his recovery. The order for the transfer did not result in any less monitoring of the patient. The patient remained under 15-minute checks, and his status of psychiatric observation remained intact.

44. On July 4, 1990, the Respondent conferred with Dr. VanDalen in regard to the decision to transfer this patient to the Delta Unit. It was the policy between the Respondent and the two psychologists, Dr. VanDalen and Dr. Brandstadter-Palmer, that if the two health care practitioners seeing the patient did not agree with the recommendation for downgrading precautions, or transferring a patient, the more cautious approach would be utilized. Dr. VanDalen did not disagree with the Respondent's decision to transfer the patient.

45. Dr. VanDalen recorded the transfer of the patient to a Delta Unit in his chart entries and further recorded that the

inmate was quiet, resting, in no acute distress, with no new behavioral management problems noted.

46. On July 4, 1990, it was Dr. VanDalen's opinion that the inmate had exhibited stability qualities which would enable him to be moved to a less restrictive area in the jail facility.

47. On July 5, 1990, the patient was seen by Mark Wong, a forensic social worker.

48. On July 7, 1990, at approximately 1:00 p.m., the inmate was found hanging in his cell. He was resuscitated and transferred to a hospital.

49. There is no record indicating that the inmate was seen by any mental health personnel on July 6 or 7, 1990.

50. The Respondent was not scheduled to work over the July 4, holiday weekend. Dr. Dennis, along with the staff of the forensic unit, was responsible for seeing the patients on the Delta Unit on those days.

51. Generally, once an inmate is transferred from the Bravo Unit to the Delta Unit, the individuals in the forensic program, Dr. Palmer, Dr. VanDalen, Mark Wong and the other social workers and therapists provide primary mental health care, and may request the consultation of a psychiatrist as needed.

52. The system in place at the Pinellas County Jail would require the patient to be seen by mental health personnel while on the Delta Unit.

53. Nurses saw the patient on July 5 and July 6, and the monitoring of the efficacy of medications by nursing and other non-physician personnel is acceptable and within the standard of care.

54. The evidence establishes that the level of observation in the Pinellas County Jail was not controlled by the location of the patient but rather by the status ordered. The evidence establishes that Patient #1 had been on 15 minute checks for some time before the order to transfer the patient to the Delta Unit. The transfer to the Delta Unit did not result in any lesser observation of the patient than had been imposed for several days.

55. The Petitioner failed to establish that the Respondent failed to adequately evaluate Patient #1's mental status prior to transferring the patient to the Delta Unit as alleged in paragraph 22 of the Amended Administrative Complaint. The evidence establishes that the Respondent performed a mental status examination of the patient prior to transferring the patient to the Delta Unit.

56. Petitioner failed to establish the allegations in paragraph 27 of the Amended Administrative Complaint which alleges that the Respondent failed to adequately monitor and/or further evaluate Patient #1 following his transfer to the Delta Unit. The evidence establishes that the responsibility for monitoring and evaluation of patients housed in the Pinellas County Jail was a responsibility shared by a team of mental health professionals. The primary responsibility for assessment of patients on the Delta Unit was with the forensic program staff--that is, Dr. VanDalen, Dr. Brandsadter-Palmer, and the mental health counselors. The evidence indicates that Dr. Kayan was not scheduled to be in the facility on the dates in question,

and that Dr. Dennis was the responsible psychiatrist during the period of time in question.

57. The Petitioner failed to establish the factual allegations contained in paragraph 28 of the Amended Administrative Complaint which alleges that the Respondent failed to adequately monitor and/or further evaluate Patient #1 following the institution of the drug, Ascendin. The evidence establishes that Ascendin rarely becomes effective in less than ten days after implementation. Therefore, there would be no reason to monitor during the days immediately following the initiation of this drug, except for side effects. In addition, the evidence establishes that it is a common, routine, and acceptable practice for non-medical doctors to monitor the efficacy of medications prescribed by the physician. In any event, the medical doctor responsible for monitoring Patient #1 after the transfer to Delta Wing was Dr. Dennis, not the Respondent.

58. AHCA failed to establish that the 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.

THE MEDICAL RECORDS

59. All of the medical records made for a particular patient at a particular facility must be considered in determining whether records made by a particular physician are adequate.

60. The history already in Patient #1's medical records at the Pinellas County Jail was adequate when the Respondent first

saw the patient in June, 1990. There was no need for the Respondent to duplicate it.

61. No tests were needed or given for Patient #1 in June and July, 1990, so no test results would be expected to be recorded in the patient's medical records.

62. Patient #1's medical records at the Pinellas County Jail include all drugs prescribed, dispensed or administered in June and July, 1990, and the records are adequate to justify their prescription by the Respondent.

63. When the Respondent first saw Patient #1 on June 29, 1990, the medical records of the Pinellas County Jail already indicated that Patient #1 had come to the jail at about 5:30 a.m. on June 27, 1990, after he "allegedly entered a McDonald's [restaurant] and was going to shoot everybody then himself" and that he had been delivered to the jail "with an order for Thorazine 50 mg po [orally] for agitation." The records indicated that, when first seen by the intake nurse at the jail, Patient #1 appeared to be an "angry, noncommunicative w/m [white male]." The records indicate that he was placed on suicide precaution and that a "psych" evaluation was requested.

64. It was recorded later on the morning of June 27, 1990, that the patient told the nurse, "I need to go to a mental hospital," and also requested medication. But the nurse's observation was that the patient was not agitated at the time.

65. At 1 p.m. on June 27, 1990, it was recorded that the patient was quiet and did not answer when spoken to but that no agitation was noted.

66. On June 28, 1990, the records indicate that the patient was seen by Dr. Palmer and that he denied that he would hurt himself. Dr. Palmer noted no agitation, although the patient seemed somewhat confused and seemed to have poor impulse control. The record indicates that, based on her examination and evaluation, Dr. Palmer discontinued suicide precautions and placed the patient on suicide observation.

67. When the Respondent saw the patient on June 29, 1990, he recorded that the patient was "highly anxious" and was requesting Thorazine on a regular basis. It was recorded that the patient's thoughts were "racing" but that the patient denied "SI's" [suicidal ideation]. The records indicate that the Respondent was starting the patient on Thorazine and changing his status from suicide observation to psychiatric observation.

68. The medical records indicate that, before the Respondent saw the patient again, he was seen twice by Dr. Dennis. The records for June 30, 1990, indicate that the patient continued to deny suicidal ideation but did state that he did not want to live and wanted to be "put to sleep" and that he had bought a gun but could not use it on himself. Dr. Dennis' notes on that day indicate that he thought the patient was "inappropriate" and that he "appeared psychotic." Dr. Dennis noted his decision to continue the patient on psychiatric observation. Dr. Dennis's records for his July 1 examination of the patient were about the same as for June 30, 1990.

69. When the Respondent saw Patient #1 on July 2, 1990, he noted that the patient's was "withdrawn with flat affect" but

that he continued to deny any current suicidal ideation. He noted that he was adding Ascendin.

70. On July 3, 1990, Dr. Dennis noted no change in Patient #1's status.

71. On July 4, 1990, the Respondent noted that Patient #1 was "appropriate" and "pleasant" and that he was transferring the patient to Delta 1, 2 or 3. (No change in the patient's psychiatric observation status was made or noted.)

72. The important medical reason behind the requirement that medical records justify the course of treatment of the patient is to enable other health care practioners to understand the medical doctor's assessment of the patient and treatment plan (and to remind the medical doctor himself) for purposes of continuing assessments and treatment of the patient.

73. It is clear that the medical records of the Respondent, as well as Dr. Dennis, and most of the other health care practitioners involved in the treatment of Patient #1 at the Pinellas County Jail, were minimal. The assessments, or diagnoses, for the patient, particularly by the Respondent, are not clearly stated. But the Respondent's role as psychiatric consultant for the jail was different from the role of a practitioner in the field of psychiatry in a hospital or even private practice setting. Likewise, the role and purpose of the forensic mental health care staff at the jail was different from the role of a practitioner in the field of psychiatry in a hospital or even private practice setting. Despite the shortcomings of the Respondent's medical records, it is found

that AHCA did not prove that they were inadequate for their purposes. They communicated to the Respondent and to the rest of the forensic mental health care staff at the jail what they needed to know about Patient #1.

74. AHCA failed to establish the factual allegations in paragraph 23 of the Amended Administrative Complaint, which alleges that there is inadequate written documentation in the medical records to justify the Respondent's transfer of Patient #1. To the contrary, the evidence established that Dr. Kayan had documentation sufficient to justify his decision to transfer the patient to the Delta Unit, and that other participants in the mental health treatment to the patient were in agreement with this decision.

75. Probably a primary reason why this case was prosecuted as a disciplinary proceedings was that AHCA's consultants misread or misunderstood the medical records. As a result, initially they were under the mistaken belief that Dr. Kayan's July 4, 1990, order discontinued the patient's suicide precaution status and transferred him to the general population. Even when disabused of this misconception, they mistakenly believed that the transfer to the Delta Wing entailed a change of status from either suicide precaution or suicide observation to psychiatric observation. In addition, they did not adequately understand Dr. Kayan's role as a consulting psychiatrist for the jail's employed forensic mental health care staff, or that his responsibilities were shared with Dr. Dennis.

CONCLUSIONS OF LAW

76. Section 458.331, Fla. Stat. (1989), provides in pertinent part:

> (1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:
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> * * *
>
> (m) Failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.
>
> * * *
>
> (t) 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. The board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph. As used in this paragraph, "repeated malpractice" includes, but is not limited to, three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of $10,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the physician. As used in this paragraph, "gross 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," shall not be construed so as to require more than one instance, event, or act. Nothing in this paragraph shall be construed to require that a physician be incompetent to practice medicine in order to be disciplined pursuant to this paragraph.
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> * * *
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> (2) When the board finds any person guilty of any of the grounds set forth in subsection (1), including conduct that would constitute a substantial violation of

subsection (1) which occurred prior to licensure, it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or certification with restrictions, to the department an application for licensure, certification, or registration.

(b) Revocation or suspension of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed $5,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the physician on probation for a period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the physician to submit to treatment, to attend continuing education courses, to submit to reexamination, or to work under the supervision of another physician.

(g) Issuance of a letter of concern.

(h) Corrective action.

(i) Refund of fees billed to and collected from the patient.

In determining what action is appropriate, the board must first consider what sanctions are necessary to protect the public or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the physician. All costs associated with compliance with orders issued under this subsection are the obligation of the physician.

(3) In any administrative action against a physician which does not involve revocation or suspension of license, the division shall have the burden, by the greater weight of the evidence, to establish the existence of grounds for disciplinary action. The division shall establish grounds for revocation or suspension of license by clear and convincing evidence.

77. As found, under either the "clear and convincing" standard of proof or the "preponderance of the evidence" standard, AHCA did not prove that the Respondent violated either paragraph (m) or (t) of Section 458.331(1), Fla. Stat. (1989).

78. As to paragraph (m) of the statute, the courts have recognized that the particular practice setting can influence the extent of detail required in medical records. See Robertson v. Dept. of Prof. Reg., 574 So. 2d 153, 156 (Fla. 1st DCA 1990)(more detail may be required in a hospital setting than in a private office setting); Breesmen v. Dept. of Prof. Reg., 567 So. 2d 469, 471 (Fla. 1st DCA 1990)(JCAH standards for a "reasonably prudent physician" may be more extensive than the requirements of the medical practice statute and may require physicians to document the reasons why potential treatment alternatives were rejected, something not required by the practice statute.) But paragraph (m) requires only that medical records "justify the course of treatment." In Robertson, at 156, the court equated this with a requirement that records include "a minimum amount of information . . . so that 'neutral third parties can observe what transpired during the course of treatment of a patient.'"

79. Finally, it is noted that F.A.C. Rule 59R-9.003 elaborates on the reasons for the requirement that physicians maintain medical records and expands on the specific requirements for maintaining medical records. But that rule was not adopted until January, 1992, and cannot be applied in this disciplinary proceeding. See Delk, D.D.S., v. Dept. of Prof. Reg., 595 So. 2d 966 (Fla. 5th DCA 1992)(dentist could not be found guilty of a statute enacted after the alleged conduct); Willner, M.D., v. Dept. of Prof. Reg., 563 So. 2d 805 (Fla. DCA 1990)(statute increasing range of possible fine for disciplinary violation could not be used for conduct preceding enactment of the

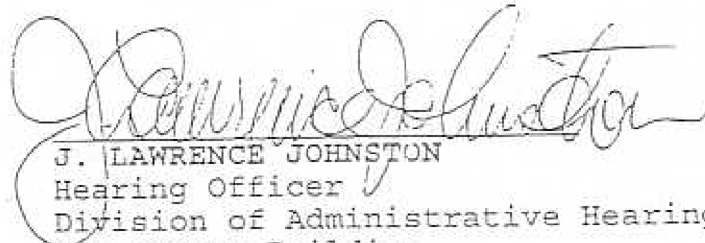
statute); Jordan v. Dept. of Prof. Reg., 522 So. 2d 450 (Fla. 1st DCA 1988)(administrative rules establishing penalty guidelines are presumed to operate prospectively only); Hector v. Dept. of Prof. Reg., 504 So. 2d 469 (Fla. 1st DCA 1987)(disciplinary statutes are presumed to operate prospectively only).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Board of Medicine enter a final order dismissing the Amended Administrative Complaint.

RECOMMENDED this 14th day of November, 1995, in Tallahassee, Florida.



J. LAWRENCE JOHNSTON
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative
Hearings this 14th day of
November, 1995.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 94-5120

To comply with the requirements of Section 120.59(2), Fla. Stat. (1993), the following rulings are made on the parties' proposed findings of fact:

Petitioner's Proposed Findings of Fact.

1.-10. Accepted and incorporated to the extent not subordinate or unnecessary.

11. Accepted but subordinate and unnecessary. (He conferred with another psychologist, Dr. Van Dalen.)

12. Last sentence, accepted but subordinate and unnecessary. (He did not see the patient.) The rest is accepted and incorporated to the extent not subordinate or unnecessary.

13. Accepted but subordinate and unnecessary.

14. First sentence, rejected as not proven (and barely intelligible.) Second sentence, accepted (except to the extent related to the first sentence) but subordinate and unnecessary.

15. Accepted and incorporated.

16. Accepted but subordinate and unnecessary.

17. First sentence, rejected as not proven. Second sentence, accepted but subordinate and unnecessary. (There is no requirement that it be "rich.")

18. Accepted and incorporated to the extent not subordinate or unnecessary.

19.-20. Accepted but subordinate and unnecessary.

21. Accepted and incorporated.

22. First sentence, subordinate to facts contrary to those found. Second sentence, accepted and incorporated. Third

sentence, rejected as not proven and as being contrary to facts found and to the greater weight of the evidence. Fourth sentence, accepted and incorporated. Fifth and sixth sentences, rejected as not proven. Last sentence, subordinate to facts contrary to those found.

23. Rejected as not proven and as being contrary to facts found and to the greater weight of the evidence.

24. Generally accepted; in large part subordinate and unnecessary.

25. Accepted and incorporated to the extent not subordinate or unnecessary.

26. First sentence, subordinate to facts found. The rest is rejected as not proven. (Other health care professionals can monitor the patient; besides, the Respondent _did_ see the patient two days after starting the Ascendin, and the evidence was that the patient was the responsibility of another medical doctor on the days following the transfer. Finally, "high" is relative; the risk for the patient had been downgraded from suicide precaution to suicide observation to psychiatric observation.)

27.-28. Accepted and incorporated to the extent not subordinate or unnecessary.

29. Rejected as not proven and as being contrary to facts found.

30. First sentence, rejected as not proven and as being contrary to facts found. Second sentence, accepted but subordinate and unnecessary. Third through fifth sentences, generally accepted, but subordinate and unnecessary. Last two

sentences, rejected as not proven and as being contrary to facts found. (Adequacy is judged by the entire record, not by any single entry.)

31. Rejected as not proven and as being contrary to facts found. (There was no transfer from suicide observation to Delta Unit; there was an intervening transfer to psychiatric observation.)

32. Rejected as not proven and as being contrary to facts found.

33. First sentence, rejected as not proven and as being contrary to facts found. (It makes several assessments, some "very brief and very terse," and some less brief and terse.) Second sentence, rejected as not proven and as being contrary to facts found.

34. First sentence, accepted and incorporated to the extent not subordinate or unnecessary. The rest is cumulative.

35. Rejected as not proven and as being contrary to facts found that the point is "essential." Otherwise, accepted but subordinate and unnecessary.

36. Accepted and incorporated to the extent not subordinate or unnecessary. (It would not have been expected for another eight to twelve days.)

<u>Respondent's Proposed Findings of Fact</u>.

Except as indicated below, the Respondent's proposed findings of fact have been accepted and incorporated to the extent not subordinate or unnecessary:

22. Rejected in part as contrary to facts found and to the greater weight of the evidence. (Inmates housed in the single

cells used for suicide precaution, suicide observation and psychiatric observation can be seen just as well in Bravo.)

28. January 18, 1991, rejected as contrary to facts found and to the greater weight of the evidence. (It was January 18, 1990.)

40. September 3, 1990, rejected as contrary to facts found and to the greater weight of the evidence. (It was July 3, 1990.)

42. Last sentence, rejected as contrary to facts found and to the greater weight of the evidence. (As to Patient #1, monitoring was about the same at the two units.)

50.-69. Largely accepted but subordinate to facts found and unnecessary.

70.-78. Accepted and incorporated to the extent not subordinate or unnecessary.

79. Accepted and incorporated to the extent conclusion of law.

80. Conclusions of law.

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

v. AHCA CASE NO. 92-17009

SABIH KAYAN, M.D.,

Respondent.
______________________________/

AMENDED ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, the Agency for Health Care Administration, hereinafter referred to as "Petitioner," and files this Amended Administrative Complaint before the Board of Medicine against SABIH KAYAN, 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 20.42, Florida Statutes, and Chapters 455 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 0037022. Respondent's last known address is 5405 Cypress Center Drive, Suite 297, Tampa, Florida 33609-1025.

3. Respondent is Board certified in Psychiatry.

4. In June 1990, Respondent had a contractual agreement with Correctional Medical Services to visit the Pinellas County jail for approximately 10 hours a week.

5. Correctional Medical Services provided health care services for persons incarcerated in the Pinellas County jail.

6. On or about June 26, 1990, Patient #1, a 34 year-old male, was transferred from the Veterans Administration Medical Center to the Pinellas County jail after allegedly threatening to shoot individuals and himself at a McDonalds restaurant.

7. Patient #1 has a significant psychiatric history, including several suicide attempts and other violent incidents.

8. Respondent was aware that Patient #1 made previous suicide attempts, including one occurring in the same jail just months prior to the patient's June 1990 incarceration.

9. Upon arrival, Patient #1 was non-communicative and placed directly in the B-wing of the jail on suicide precaution, which required the patient to be stripped, given a paper gown, with no mattress, blanket, or towels.

10. On or about June 28, 1990, Georgia Brandstadter-Palmer, Ph.D., one of the jail psychologists, documented Patient #1 was somewhat confused and had poor impulse control. Dr. Palmer changed Patient #1's status from suicide precaution to suicide observation.

11. Inmates are allowed a mattress and regular gown while under suicide observation.

12. On or about June 29, 1990, Respondent evaluated Patient #1 and ordered Chlorpromazine 75 mg, 3 times daily, and 100 mg. at night, along with continuing Cogentin as needed. Respondent noted that Patient #1 denied having any suicidal thoughts.

13. Chlorpromazine is a legend drug as defined by Section 465.003(7), Florida Statutes.

14. Cogentin is a legend drug as defined by Section 465.003(7), Florida Statutes.

15. On or about June 30, 1990, Frank Dennis, M.D., a jail psychiatrist, evaluated Patient #1 and documented that the patient stated he did not want to live and that he wanted to be put to sleep. Dr. Dennis further documented that the patient denied any suicidal thoughts.

16. On or about July 1, 1990, Dr. Dennis evaluated Patient #1 again, documenting in the patient's record that Patient #1's responses were inappropriate and that Patient #1 should continue to be monitored.

17. On or about July 2, 1990, Respondent evaluated Patient #1 and documented the patient's attitude as withdrawn, with flat affect, but that Patient #1 denied any suicidal ideations. On this visit, Respondent added the drug Asendin to Patient #1's regimen.

18. Asendin is a legend drug as defined by Section 465.003(7), Florida Statutes.

19. On or about July 3, 1990, interdisciplinary notes concerning Patient #1 indicate there was no change in Patient #1's status.

20. On or about July 4, 1990, Respondent documented that Patient #1 was appropriate and pleasant. On this date, Respondent ordered the transfer of Patient #1 to one of the Delta units.

21. The less restrictive Delta units are an extension of the medical wing where inmates are observed every fifteen minutes by correctional facility guards.

22. Respondent failed to adequately evaluate Patient #1's mental status prior to transferring Patient #1 to the Delta unit.

23. There is inadequate written documentation in Patient #1's medical records justifying the Respondent's transfer of Patient #1.

24. On or about July 7, 1990, while in the Delta unit, Patient #1 attempted suicide by self-strangulation with a bed sheet.

25. On or about July 7, 1990, Patient #1 was transferred to Humana Hospital Northside in a comatose state and suffering from severe anoxia.

26. In the medical records of Patient #1, there is no documentation that Patient #1 was seen by Respondent at any time during the three days he was housed in the Delta unit.

27. Respondent failed to adequately monitor and/or further evaluate Patient #1 following his transfer to the Delta unit.

28. Respondent failed to adequately monitor and/or further evaluate Patient #1 following institution of the drug Asendin.

29. Patient #1 suffered irreversible encephalopathy.

COUNT ONE

30. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-nine (29), as if fully set forth herein this Count One.

31. 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 the Respondent did one or more of the following: failed to adequately evaluate Patient #1's mental status prior to transferring Patient #1 to the Delta unit; failed to adequately and/or further evaluate Patient #1 following his transfer to the Delta unit; and failed to adequately monitor and/or further evaluate Patient #1 following institution of the drug Asendin.

32. Based on the preceding allegations, Respondent violated Section 458.331(1)(t), Florida Statutes, and if 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.

COUNT TWO

33. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-nine (29), and thirty-one (31), as if fully set forth herein this Count Two.

34. Respondent is guilty of failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to patient histories; examination results; test results; records of drugs prescribed, dispensed, or

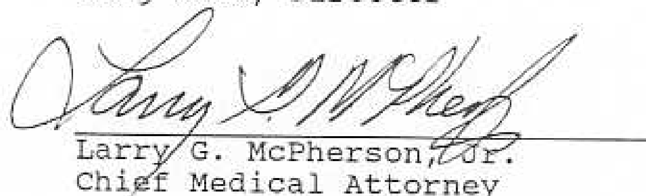
administered; and reports of consultations and hospitalizations, in that the Respondent failed to do one or more of the following: record an adequate assessment of the patient's condition or complaint; record an adequate mental status examination for July 4, 1990, the day Respondent transferred Patient #1 to the Delta unit; record adequate justification for the patient's transfer to the Delta unit; record an adequate examination from July 4, 1990 through July 7, 1990, while the patient was housed in the Delta unit; and/or justify the lack of adequate monitoring of the patient after the patient was transferred to the Delta unit.

35. Based on the preceding allegations, Respondent violated Section 458.331(1)(m), Florida Statutes, and if guilty of failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an Order imposing one or more of the following penalties: 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. The Agency will not be seeking revocation or suspension of the Respondent's license.

SIGNED this 15 day of March, 1995.

Doug Cook, Director



Larry G. McPherson, Jr.
Chief Medical Attorney

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit to the Florida Board of Medicine written exceptions to this Recommended Order. All agencies allow each party at least ten days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should consult with the Florida Board of Medicine concerning its rules on the deadline for filing exceptions to this Recommended Order.

Recommended Order, Case No. 94-5120