

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE
ADMINISTRATION,

PETITIONER,

vs.

CASE NO. 94-12517

GILBERT N. FERRIS, 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 Gilbert N. Ferris, 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 0012047. Respondent's last known address is 1823 Buford Court, Tallahassee, Florida 32308.
3. Respondent is board certified in psychiatry.
4. Rule 59R-35.002(1) [formerly 61F6-31.002(1)], Florida Administrative Code, provides that an Advanced Registered Nurse Practitioner (ARNP) shall only perform medical acts of diagnosis,

EXHIBIT A

treatment, and operation pursuant to a protocol between the ARNP and a Florida licensed medical doctor, osteopathic physician, or dentist.

5. Rule 59R-35.002(3) [formerly 61F6-31.002(3)], Florida Administrative Code, further provides that the original of the protocol shall be filed with the Agency for Health Care Administration yearly, and a copy of the protocol shall be kept at the site of practice of each party to the protocol.

6. On or about July 31, 1992, Respondent entered into a supervisory arrangement with Jamie G. Cook, ARNP, and he signed a Protocol with Ms. Cook that was filed with the Agency. The Protocol provided that Ms. Cook would practice psychiatric mental health nursing under the general supervision of Respondent.

7. The Protocol between Respondent and Ms. Cook failed to describe the duties of Respondent with respect to consultation and supervision of Ms. Cook's practice of psychiatric mental health nursing. Furthermore, the Protocol failed to list the specific conditions requiring the direct evaluation of Ms. Cook's patients by Respondent.

8. Respondent failed to renew the Protocol with Ms. Cook and to file the original with the Agency during the years 1993 and 1994 as required by Rule 59R-35.002(3), Florida Administrative Code.

9. On or about April 19, 1994, Ms. Cook telephoned in a prescription for sixty (60) units of Lorazepam to a pharmacy for Patient #1. Respondent allowed Ms. Cook to use his Drug

Enforcement Administration (DEA) registration number when calling in this prescription.

10. On or about May 28, 1994, Ms. Cook telephoned in another prescription for sixty (60) units of Lorazepam for Patient #1. Respondent allowed Ms. Cook to use his DEA registration number when calling in this prescription.

11. On or about June 30, 1994, Ms. Cook telephoned in another prescription for sixty (60) units of Lorazepam for Patient #1. Respondent allowed Ms. Cook to use his DEA registration number when calling in this prescription.

12. Lorazepam is a legend drug as defined by Section 465.003(7), Florida Statutes, and is a Schedule IV controlled substance listed in Chapter 893, Florida Statutes. Lorazepam is a central nervous system depressant indicated for the management of anxiety. Lorazepam can produce physical and psychological dependence, and it is recommended that the physician prescribing the drug periodically reassess it's usefulness for the patient.

13. Respondent never examined Patient #1, nor did Respondent ever discuss Patient #1's condition with Ms. Cook.

COUNT ONE

14. Petitioner realleges and incorporates paragraphs one (1) through thirteen (13) as if fully set forth herein this Count One.

15. Respondent aided an unlicensed person in practicing medicine in that Respondent allowed Ms. Cook to use his DEA registration number to call in prescriptions for Patient #1.

16. Based on the preceding allegations, Respondent has violated Section 458.331(1)(f), Florida Statutes, by aiding, assisting, procuring, or advising any unlicensed person to practice medicine contrary to this chapter or to a rule of the agency or the board.

COUNT TWO

17. Petitioner realleges and incorporates paragraphs one (1) through thirteen (13) and paragraph fifteen (15) as if fully set forth herein this Count Two.

18. Respondent failed to adequately supervise the activities of an ARNP acting under his supervision in that Respondent: failed to adequately define his supervisory role in the Protocol entered into with Ms. Cook; failed to timely renew and file the Protocol with Ms. Cook; and allowed Ms. Cook to prescribe controlled substances to Patient #1, using his DEA number, without Respondent having examined Patient #1 or even discussed her case with Ms. Cook.


19. Based on the preceding allegations, Respondent has violated Section 458.331(1)(dd), Florida Statutes, failing to supervise adequately the activities of those physician's assistants, paramedics, emergency medical technicians, or advanced registered nurse practitioners acting under the supervision of the physician.

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 24 day of April, 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
WFW/ceb
PCP: April 19, 1995
Katims, Diblan, Ashkar

FILED
AGENCY FOR
HEALTH CARE ADMINISTRATION
DEPUTY CLERK

CLERK Brandon R. Moore
DATE 4-26-95

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

v.

AHCA CASE NO. 94-12517

GILBERT N. FERRIS, M.D.,

Respondent.

CONSENT AGREEMENT

Gilbert N. Ferris, 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 0012047.

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 \$1,500.00 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 "Protecting Your Medical Practice, Clinical, Legal and Ethical Issues in Prescribing Abusable Drugs" sponsored by the Florida Medical Association and the University of South Florida and five (5) hours of Category I Continuing Medical Education courses in Risk Management within one year of the Final Order of the Board. 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 LIMITATION OF PRACTICE AGREEMENT: Respondent shall not

engage in the private practice of medicine. Respondent shall revoke any and all A.R.N.P. protocol agreements. Further Respondent shall not reenter the private practice of medicine nor enter into another A.R.N.P protocol agreement unless he completes the following requirements:

a. QUALITY ASSURANCE CONSULTATION. An independent, certified risk manager will review charts at Respondent's practice including documentation of A.R.N.P. supervision prior to the Board's consideration of this Agreement. This independent consultant shall prepare a report addressing Respondent's practice. Such report, if necessary, will include suggested improvements of the quality assurance of Respondent's practice. Respondent will submit to the Board this report and documentation that demonstrates his compliance with the suggestions enumerated in the consultant's report when the Board considers this Agreement.

b. PUBLICATION OBLIGATION. Respondent shall write and submit to the Probationer's Committee of the Board of Medicine, for approval, an article of publishable quality, within six months of the Final Order. The article shall describe the responsibilities of the psychiatrist when entering into and while maintaining an A.R.N.P. Protocol agreement with a mental health nurse practitioner.

5. 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.

6. 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 whereby he demonstrates what actions have been taken in his medical practice to insure that this type of episode does not reoccur.

7. 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 Petitioner for impeachment purposes.

8. 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.

9. 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.

10. 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.

11. 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.

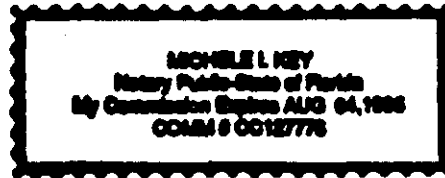
SIGNED this 7th day of ~~June~~^{July}, 1995.

Gilbert N. Ferris M.D.
Gilbert N. Ferris, M.D.

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

Sworn to and subscribed before me this 7th day of ~~June~~^{July}, 1995.

Michael J. Key
NOTARY PUBLIC



My Commission Expires:

Approved this 7th day of ~~June~~^{July}, 1995.

Doug Cook
Director

Randolph P. Collette
By: Larry G. McPherson, Jr.
for Chief Attorney

STANDARD TERMS APPLICABLE TO CONSENT AGREEMENTS

The following are the standard terms applicable to all consent agreements, including supervision and monitoring provisions applicable to licensees on probation.

A. PAYMENT OF FINES. Unless otherwise directed by the consent agreement, all fines shall be paid by check or money order and sent to the Board address set forth in paragraph E, below. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

B. COMMUNITY SERVICE AND CONTINUING EDUCATION UNITS. Unless otherwise directed by the consent agreement, all community service requirements, continuing education units/courses must be completed, and documentation of such completion submitted to the Board of Medicine at the address set forth below in paragraph E, **WITHIN ONE YEAR OF THE DATE OF THE FINAL ORDER.**

C. ADDRESSES. Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses. Furthermore, if the Respondent's license is on probation, the Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of medicine in Florida.

D. COSTS. Pursuant to Section 458.331(2), Florida Statutes, the 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, obtaining supervision or monitoring of the practice, the

cost of quality assurance reviews, and the Board's administrative costs directly associated with Respondent's probation.

E. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines, reports, correspondence and inquiries shall be sent to: Board of Medicine, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, Attn: Final Order Compliance Officer.

F. PROBATION TERMS. If probation was imposed by the Final Order of the Board, the following provisions are applicable.

1. DEFINITIONS:

a. INDIRECT SUPERVISION is supervision by a monitoring physician (monitor) whose responsibilities are set by the Board. Indirect supervision does not require that the monitor practice on the same premises as the Respondent, however, the monitor shall practice within a reasonable geographic proximity to Respondent, which shall be within 20 miles unless otherwise provided by the Board and shall be readily available for consultation. The monitor shall be Board-certified in the Respondent's specialty area unless otherwise provided by the Board.

b. DIRECT SUPERVISION is supervision by a supervising physician (supervisor) whose responsibilities are set by the Board. Direct supervision requires that the supervisor and

Respondent work in the same office. The supervising physician shall be board-certified in the Respondent's specialty area unless otherwise provided by the Board.

c. PROBATION COMMITTEE or "committee" are members of the Board of Medicine designated by the Chairman of the Board to serve as the Probation Committee.

2. REQUIRED SUPERVISION.

a. If the terms of the consent agreement include indirect monitoring of the licensee's practice (MONITORING) or direct monitoring of the licensee practice (SUPERVISION), the Respondent shall not practice medicine without an approved monitor/supervisor, as specified by the Consent Agreement, unless otherwise ordered by the Board.

b. The monitor/supervisor must be a licensee under Chapter 458, Florida Statutes, in good standing and without restriction or limitation on his license. In addition, the Board or Committee may reject any proposed monitor/supervisor on the basis that he has previously been subject to any disciplinary action against his medical license in this or any other jurisdiction, is currently under investigation, or is the subject of a pending disciplinary action. The monitor/supervisor must be actively engaged in the same or similar specialty area unless otherwise provided by the Board or Committee and be practicing within a reasonable distance of the Respondent's practice, a distance of no more than twenty (20) miles unless otherwise specifically provided for in the consent agreement. The Board or Committee may also reject any proposed monitor/supervisor for good cause shown.

c. MECHANISM FOR APPROVAL OF

MONITOR/SUPERVISOR:

(1). TEMPORARY APPROVAL. The Board confers authority on the Chairman of the Board's Probation Committee to temporarily approve Respondent's monitor/supervisor. To obtain this temporary approval, Respondent shall submit to the Chairman of the Probation Committee the name and curriculum vitae of the proposed monitor/supervisor at the time this agreement is considered by the Board. Once a Final Order adopting this Agreement is filed, Respondent shall not practice medicine without an approved monitor/supervisor. Temporary approval shall only remain in effect until the next meeting of the Probation Committee.

(2). FORMAL APPROVAL. Respondent shall have the monitor/supervisor with him at his first probation appearance before the Probation Committee. Prior to consideration of the monitor/supervisor by the Committee, the Respondent shall provide to the monitor/supervisor a copy of the Administrative Complaint and Final Order in this case. Respondent shall submit a current curriculum vitae and a description of current practice from the proposed monitor/supervisor to the Board office no later than fourteen days before the Respondent's first scheduled probation appearance. Respondent's monitor/supervisor shall also appear before the Probation Committee at such other times as directed by the Committee. It shall be Respondent's responsibility to ensure that the appearance of his monitor/supervisor as directed. Failure of the monitor/supervisor to appear as directed shall constitute a violation of the terms of this Stipulation and shall subject the Respondent to disciplinary action.

d. CHANGE IN MONITOR/SUPERVISOR. In the event that Respondent's monitor/supervisor is unable or unwilling to fulfill his responsibilities as a monitor/supervisor as described above, then the Respondent shall immediately advise the Board of this fact. Respondent shall immediately submit to the Chairman of the Board's Probation Committee the name of a temporary monitor/supervisor for consideration. Respondent shall not practice pending approval of this temporary monitor/supervisor by the Chairman of the Probation Committee. Furthermore, Respondent shall make arrangements with his temporary monitor/supervisor to appear before the Probation Committee at its next regularly scheduled meeting for consideration of the monitor/supervisor by the Committee. Respondent shall only practice under the auspices of the temporary monitor/supervisor (approved by the Chairman) until the next regularly scheduled meeting of the Probation Committee whereat the issue of the Committee's approval of the Respondent's new monitor/supervisor shall be addressed.

3. CONTINUITY OF PRACTICE

a. TOLLING PROVISIONS. In the event the Respondent leaves the State of Florida for a period of thirty days or more or otherwise does not engage in the active practice of medicine in the State of Florida, then certain provisions of Respondent's probation (and only those provisions of the probation) shall be tolled as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the State of Florida:

(1). The time period of probation shall be tolled.

(2). The provisions regarding supervision whether direct or indirect by another physician, and required reports from the monitor/supervisor shall be tolled.

(3). The provisions regarding preparation of investigative reports detailing compliance with this Stipulation shall be tolled.

(4). Any provisions regarding community service shall be tolled.

b. ACTIVE PRACTICE. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Probation Committee may require Respondent to appear before the Probation Committee and demonstrate his ability to practice medicine with skill and safety to patients prior to resuming the practice of medicine in this State.

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

Final Order No. AHCA-95-01287 Date 9-11-95

AGENCY FOR HEALTH CARE
ADMINISTRATION, BOARD OF
MEDICINE,

Petitioner,

v.

GILBERT N. FERRIS, M.D.,

Respondent.

FILED

Agency for Health Care Administration
AGENCY CLERK

R.S. Power, Agency Clerk

By: Brandon H. Moore
Deputy Agency Clerk

CASE NUMBER: 94-12517
LICENSE NUMBER: ME 0012047

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on August 5, 1995 in Palm Beach Gardens, 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 following amendments:

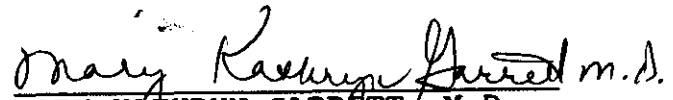
1. The discipline described in Paragraph 4. a. and b. of the Stipulated Disposition shall be stayed until and unless Respondent returns to the private practice of medicine in the State of Florida.

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

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

DONE AND ORDERED this 8th day September, 1995.

BOARD OF MEDICINE


MARY KATHRYN GARRETT, M.D.
VICE-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 Gilbert N. Ferris, M.D., 1823 Buford Court, Tallahassee, Florida 32308, Blake Hayward, Esquire, Dennis & Bowman, P.A., P.O. Box 15589, Tallahassee, Florida 32317-5589 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.

MARM M. HARRIS, Ed.D.
Executive Director