

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-98-0433 Date 5-4-98

FILED

Department of Health
Angela Hall, AGENCY CLERK

By: Slyspani J. Dora
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

CASE NO.: 94-16220

LICENSE NO.: ME0017682

ROBERT E. COHEN, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on April 3, 1998, in Ft. Lauderdale, Florida, for consideration of a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in the above-styled cause. 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 offered an amendment to the Consent Agreement, 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 additions:

1. The Respondent shall be and hereby is Reprimanded.
2. Under the requirement for direct supervision, the supervising

physician shall be a board certified general surgeon experienced in laparoscopic surgery approved by the Board.

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

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 29th day of April, 1998.

BOARD OF MEDICINE



JOHN W. GLOTFELTY, M.D.
CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Robert E. Cohen, M.D., c/o William F. Fink, Esquire, Wicker, Smith, Tutan, O'Hara, McCoy, Graham & Ford, P.A., 5th Floor Grove Plaza Building, 2900 Middle Street (SW 28th Terrace), Miami, Florida 33133; and by interoffice delivery to Larry G. McPherson, Jr., Chief Attorney, Agency for Health

Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308-
5403, on or before 5:00 p.m., this _____ day of _____,
1998.

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to Robert E. Cohen, M.D., 1150 N. 35th Avenue, Suite 465, Hollywood, FL 33021-6031, to William F. Fink, Esquire, 5th Floor Grove Plaza Building, 2900 Middle Street (SW 28th Terrace), Miami, FL 33133, and interoffice delivery to Larry McPherson, Jr. Chief Attorney, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, at or before 5:00 p.m., this _____ day of _____, 1998.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

AHCA Case No. 94-16220

ROBERT E. COHEN, M.D.,

Respondent.

_____ /

CONSENT AGREEMENT

Robert E. Cohen, 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 0017682.
2. Respondent was charged by an Administrative Complaint filed by the Agency and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.
3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint.

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STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 455 and 458, Florida Statutes, and the jurisdiction of the Agency and the Board.

2. Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent admits that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

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, Respondent read Chapters 455, 458, and 893, Florida Statutes, and the Rules of the Board of Medicine, at Section 64B, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of \$5,000 against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within NINETY (90) days of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS 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 90 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 D OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).

3. PERMANENT RESTRICTION ON PRACTICE. Respondent shall be prohibited from utilizing the veress needle. He shall be limited to using the blunt port and Hassan port techniques only when performing laparoscopic surgery. In the event of improved techniques and procedures, Respondent shall be required to appear before the Board of Medicine prior to utilizing such techniques and procedures.

4. PROBATION. Effective on the date of the filing of the Final Order incorporating the terms of this Agreement, Respondent's license to practice medicine shall be placed on probation for a period of two (2) years. The purpose of probation is not to prevent the Respondent from practicing medicine. Rather, probation is a supervised educational experience designed by the Board to make the Respondent aware of certain obligations to his patients and the profession and to ensure Respondent's continued compliance with the high standards of the profession through interaction with another physician in the appropriate field of expertise. To this end, during the period of probation, Respondent shall be under indirect supervision and comply with the following obligations and requirements:

A. RESTRICTIONS DURING PROBATION. During the period of probation, Respondent's license shall be restricted as follows:

i. SURGICAL SUPERVISION. Respondent may only perform laparoscopic surgery under the direct supervision of a Board-approved physician until he has completed one-hundred (100) cases.

ii. INDIRECT SUPERVISION. Respondent shall practice only under the indirect supervision of a Board-approved physician, hereinafter referred to as the "monitor." In this regard, Respondent shall allow the monitor access to Respondent's records, calendar, patient logs or other documents necessary for the monitor to supervise Respondent as detailed below.

B. OBLIGATIONS/REQUIREMENTS OF PROBATION. During the period of probation, Respondent shall comply with the following obligations and requirements:

i. During the period of Probation the Respondent agrees that, upon notification to the Respondent to appear at the next Probation Committee meeting and be heard, upon a finding by the Probation Committee that the Respondent failed to comply with any of the terms of this agreement the Committee may SUSPEND his license to practice medicine until he demonstrates to the Committee that he is in compliance with the terms of probation.

ii. Respondent shall appear before the Probation Committee of the Board of Medicine at the first Committee meeting after probation commences, at the last meeting of the Committee preceding scheduled termination of the probation.

and semi-annually. Respondent shall be noticed by the Board staff of the date, time and place of the Committee meeting whereat Respondent's appearance is required. Failure of Respondent to appear as requested or directed shall be considered a violation of the terms of this Agreement, and shall subject the Respondent to disciplinary action.

iii. CONTINUING MEDICAL EDUCATION. Respondent shall complete a minimum of six (6) hours of Category I Continuing Medical Education courses in the area of complications of laparoscopic surgery, and shall complete the required courses within the first year of probation. Respondent shall submit a written plan to the Chairman of the Probation Committee for course approval prior to the completion of said courses. In addition, Respondent shall submit documentation of completion of these courses in his required reports. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board or the Chairman of the Probation Committee, said courses shall consist of a formal live lecture format.

iv. QUALITY ASSURANCE CONSULTATION. An independent, certified risk manager will review Respondent's current practice within six months of the Board's acceptance of this Agreement. Specifically, this independent consultant shall review the office procedures employed at Respondent's practice. This consultant will prepare a report addressing Respondent's practice. This report will include suggested improvements of the quality assurance of Respondent's practice. Respondent will submit this report, as well as documentation that demonstrates his compliance with the suggestions

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enumerated in the report, to the Board for consideration in conjunction with the Agreement. Respondent shall bear the cost of such consultation and any necessary or appropriate follow-up consultation.

v. Respondent shall be responsible for ensuring that the monitor submits all required reports.

C. RESPONSIBILITIES OF THE MONITORING PHYSICIAN.

The Monitor shall:

i. Review all of Respondent's patient records for patients to be treated with laparoscopic surgery, and observe the surgical procedure. In this regard, Respondent shall maintain a log documenting all such patients.

ii. During any period of indirect supervision, the monitor shall go to Respondent's office once every month and shall review Respondent's calendar or patient log and shall review twenty-five percent (25%) the records.

iii. Submit reports on a semiannual basis, in affidavit form, which shall include:

- a) A brief statement of why Respondent is on probation.
- b) A description of Respondent's practice (type and composition).
- c) A statement addressing Respondent's compliance with the terms of probation.
- d) A brief description of the monitor's relationship with the Respondent.

e) A statement advising the Board of any problems which have arisen.

f) A summary of the dates the monitor assisted and observed the Respondent perform laparoscopic surgery.

iii. Report immediately to the Board any violations by the Respondent of Chapters 455 or 458, Florida Statutes, and the rules promulgated thereto.

iv. Respondent's monitor shall appear before the Probation Committee at the first meeting of said committee following commencement of the probation, and at such other times as directed by the Committee. It shall be Respondent's responsibility to ensure the appearance of his monitor to appear as requested or directed. If the approved monitor fails to appear as requested or directed by the Probation Committee, the Respondent shall immediately cease practicing medicine until such time as the approved monitor or alternate monitor appears before the Probation Committee.

v. The Monitor may make any suggestions which will assist the Respondent or the Committee in this matter.

D. REPORTS FROM RESPONDENT. The Respondent shall submit semiannual reports, in affidavit form, the contents of which may be further specified by the Board, but which shall include:

- i. A brief statement of why Respondent is on probation.
- ii. A description of practice location.

- iii. A description of current practice (type and composition).
- iv. A brief statement of compliance with probationary terms.
- v. A description of the relationship with monitoring physician.
- vi. A statement advising the Board of any problems which have arisen: any untoward incidents, malpractice claims, or discipline by any hospital or limitation of practice by any hospital.
- vii. A statement addressing compliance with any restrictions or requirements imposed.

E. STANDARD PROVISIONS. Respondent's probation shall be governed by the attached "Standard Terms Applicable to Consent Agreements," Exhibit B, which is incorporated as if fully set forth herein.

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

5. Respondent shall appear before the Board at the meeting of the Board where this Agreement is considered. Respondent, in conjunction with the consideration of this Agreement by the Board, shall respond to questions under oath from the Board, Board Staff or Agency Staff. Respondent shall be prepared to explain the circumstances involved in this matter and what measures have been taken to prevent a recurrence. However, Respondent shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law.

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

7. Respondent and the Agency fully understand that this joint Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Agency against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit "A" herein.

8. Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

9. Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, each party will bear his own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Agency in connection with this matter.

10. This Agreement is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Furthermore, should this joint Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall

not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

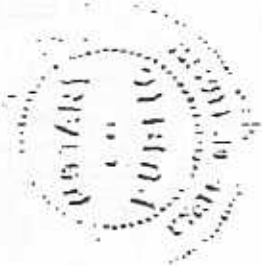
SIGNED this 10 day of March, 1998.

Robert E. Cohen
Robert E. Cohen, M.D.

Before me, personally appeared Robert E. Cohen, M.D. whose identity is known to me by Personally (type of identification) and who, under oath, acknowledges that his/her signature appears above.

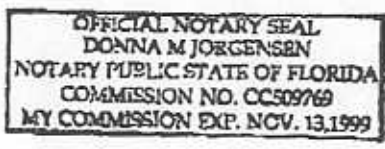
Sworn to and subscribed before me this 10th day of March, 1998.

Donna M. Jorgensen
NOTARY PUBLIC



My Commission Expires:

APPROVED this 16 day of March, 1998.



James T. Howell
Secretary

Larry G. McPherson, Jr.
By: Larry G. McPherson, Jr.
Chief Attorney
Medical Section

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,)
)
 PETITIONER,)
)
 v.)
)
ROBERT E. COHEN, M.D.,)
)
 RESPONDENT.)
_____)

CASE NO. 94-16220

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Health, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against Robert E. Cohen, M.D., hereinafter referred to as "Respondent," and alleges:

1. Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes (Supp. 1996); Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes. Pursuant to the provisions of Section 20.43(3)(f), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.
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 0017682. Respondent's last known address is 3714 Johnson Street, Hollywood, FL 33021-6031.
3. Respondent specializes in Surgery and he is Board Certified.

4. On or about August 16, 1994, Respondent performed a laparoscopic cholecystectomy (removal of the gallbladder) on Patient A.D., a nineteen (19) year old female.

5. On or about August 16, 1994, while Patient A.D.'s gallbladder was being removed through the umbilical port, Patient A.D. became hypotensive (low blood pressure) and tachycardiac (rapid heart beat, more than 100 beats per minute). However, Patient A.D.'s blood pressure was improved by anesthesia.

6. Subsequently, Respondent completed the surgery and returned Patient A.D. to the recovery room with a presumptive diagnosis of a carbon dioxide embolus.

7. Approximately three hour later, Patient A.D. was again found to be hypotensive and tachycardiac and was returned to the operating room for an exploratory laparoscopy which was performed by Respondent. A large amount of blood was found in Patient A.D.'s abdominal cavity and a retroperitoneal hematoma was detected. Patient A.D. was deemed stable and returned to the recovery room.

8. Several hours later, Patient A.D. was once again hypotensive and required a return to the operating room where Respondent detected a bleeding iliac and repaired it.

9. Post-operatively, Patient A.D. developed adult respiratory distress syndrome and died several days following surgery.


10. Respondent failed to appropriately treat and diagnose Patient A.D. in that Respondent failed to timely diagnose Patient A.D.'s laceration of the iliac artery during the Patient A.D.'s initial laparoscopic procedure and failed to recognize that a retroperitoneal hematoma was the cause of Patient A.D.'s shock during the second procedure, resulting in Patient A.D.'s further blood loss, circulatory collapse, re-operation, adult respiratory distress


syndrome and death. A reasonably prudent similar physician under similar conditions and circumstances would have diagnosed Patient A.D.'s laceration of the iliac artery during the initial laparoscopic procedure and would have recognized that retroperitoneal hematoma was the cause of Patient A.D.'s shock during the second procedure.

11. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes, by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician 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 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, the assessment of costs related to the investigation and prosecution of this case, other than costs associated with an attorney's time, as provided for in Section 455.624(3), Florida Statutes, and/or any other relief that the Board deems appropriate.

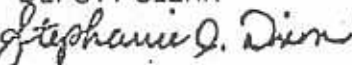
SIGNED this 17 day of July, 1997.


James T. Howell, M.D., Secretary


Larry G. McPherson, Jr.
Chief Medical Attorney

FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK 

DATE 7-17-97

COUNSEL FOR DEPARTMENT:

Larry G. McPherson, Jr.
Chief Medical Attorney
Agency for Health Care Administration
P. O. Box 14229
Tallahassee, Florida 32317-4229
Florida Bar # 788643
RPC/cab
PCP: July 11, 1997
PCP Members: Slade, Woods, and Pardue