

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH, )  
)  
PETITIONER, )  
)  
v. )  
)  
EDWARD D. McDADE, JR., M.D., )  
)  
RESPONDENT. )  
\_\_\_\_\_ )

CASE NO. 95-00822

**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 Edward D. McDade, 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 0030354. Respondent's last known address is 8100 Chancellor Drive, #130, Orlando, Florida 32809.

3. Respondent is Board certified in Anatomic and Clinical Pathology.

4. On or about August 10, 1993, Patient J.L., a 50 year old male, presented to Dr. David Staab, a surgeon, for evaluation of recent complaints of chest pain. J.L. had a history of left lung carcinoma which had required previous removal of the upper lobe of his left lung, without recurrence.

5. After reviewing CT scans of J.L.'s lungs, Dr. Staab noted a spot on J.L.'s right lung that was suspicious for malignancy, and scheduled J.L. for a needle biopsy. At the time of this biopsy, Patient J.L. was suffering or had recently been suffering from pneumonitis, an inflammation of the lung tissue.

6. On or about August 13, 1993, Dr. Staab, assisted by Respondent, performed a needle biopsy on Patient J.L. Respondent examined the slides of this biopsy and interpreted the results as being consistent with non-small cell carcinoma, probably adenocarcinoma.

7. As a result of Respondent's pathology report, Patient J.L. underwent a thorascopy (an invasive examination of the lungs with an endoscope) and thoracotomy (an incision through the chest wall) in order to locate the suspected mass and to obtain biopsies. The mass was not successfully located, and the biopsies obtained were either negative for malignancy or not useful for diagnosis.

8. On or about September 10, 1993, Patient J.L. underwent a second thoracotomy and removal of the middle and upper lobes of his right lung. The tissue removed was examined by several pathologists including Respondent, who all agreed that the tissue exhibited signs of benign reactive changes and atypical cells, but was not diagnostic of any malignancy.

9. The slides from J.L. initial needle biopsy of on or about August 16, 1993, were subsequently reviewed by additional pathologists, who found benign reactive changes consistent with pneumonitis, and not diagnostic of malignancy as Respondent had diagnosed. Respondent concurred and retracted his original diagnosis of malignancy.

10. Respondent failed to keep adequate medical records justifying the course of treatment of Patient J.L. by failing to record an adequate medical history, in that Respondent failed to record or consider J.L.'s recent history of pneumonitis in his interpretation of the needle biopsy of on or about August 16, 1993.

11. Respondent practiced medicine below the standard of care, in that Respondent misdiagnosed Patient J.L. as suffering from a malignant lung lesion, resulting in unnecessary invasive procedures and the unnecessary removal of the upper and middle lobes of J.L.'s right lung; and by failing to timely retract his incorrect diagnosis.

#### COUNT ONE

12. Petitioner realleges and incorporates paragraphs one (1) through eleven (11), as if fully set forth herein this Count One.

13. Respondent failed to keep written medical records justifying the course of treatment of the patient, in that Respondent failed to record or consider J.L.'s recent history of pneumonitis in his interpretation of the needle biopsy of on or about August 16, 1993.

14. Respondent is guilty of violating Section 458.331(1)(m), Florida Statutes, by 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.

COUNT TWO

15. Petitioner realleges and incorporates paragraphs one (1) through eleven (11) and paragraph thirteen (13) as if fully set forth herein this Count Two.

16. Respondent practiced medicine below the standard of care, in that Respondent misdiagnosed Patient J.L. as suffering from a malignant lung lesion, resulting in unnecessary invasive procedures and the unnecessary removal of the upper and middle lobes of J.L.'s right lung; and by failing to timely retract his incorrect diagnosis.


17. Respondent is guilty of violating Section 458.331(1)(t), Florida Statutes, through gross or repeated malpractice, or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of 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 455.227(3), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 6 day of August, 1997.

James T. Howell, M.D., Secretary

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK Stephanie Q. Dixon  
DATE 8-8-97

  
\_\_\_\_\_  
Larry G. McPherson, Jr.  
Chief Medical Attorney

**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/hrb**  
**PCP: July 31, 1997**  
**PCP Members: Ashkar and Cherney**

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**v.**

**AHCA Case No. 95-00822**

**EDWARD D. McDADE, Jr., M.D.,**

**Respondent.**

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**CONSENT AGREEMENT**

Edward D. McDade, Jr., 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 0030354.
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 for purposes of these proceedings only.

### 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 \$2,000.00 (two thousand dollars) 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. CONTINUING MEDICAL EDUCATION. Respondent shall attend 10 hours of CMEs in non-gynecological cytology. Respondent shall submit a written plan to the Chairman of the Probationer's Committee for approval prior to the completion of said continuing education hours. The Board confers authority on the Chairman of the Probationer's Committee 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 these medical education 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 Agency. 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. STANDARD PROVISIONS. This Consent Agreement shall be governed, to the extent applicable, by the attached "Standard Terms Applicable to Consent Agreements," Exhibit B, which is incorporated as if fully set forth herein.



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. 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.

7. 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.

8. 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.

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 with the exception of costs noted above, each party will bear her 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.

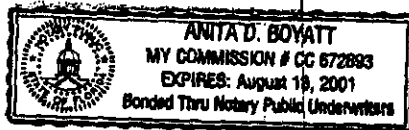
11. This Agreement is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration 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 5<sup>TH</sup> day of MARCH, 1998.

Edward D. McDade, Jr., M.D.  
Edward D. McDade, Jr., M.D.

Before me, personally appeared EDWARD D. MCDADE, JR., MD whose identity is known to me by \_\_\_\_\_ (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 5TH day of MARCH, 1998.



Anita D. Boyatt  
NOTARY PUBLIC

My Commission Expires:

APPROVED this 5 day of March, 1998.

James T. Howell  
Secretary

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

**EXHIBIT B**  
**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 D, 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 D, **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. 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.**

STATE OF FLORIDA  
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

EDWARD D. MC DADE, JR., M.D.,

Respondent.

Final Order No. DOH-98-0429 Date 5-4-98  
**FILED**

Department of Health  
Angela Hall, AGENCY CLERK

By: Stephanie J. Dixon  
Deputy Agency Clerk

CASE NO.: 95-00822

LICENSE NO.: ME0030354

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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,

IT IS HEREBY ORDERED AND ADJUDGED that the Consent Agreement as submitted be and is hereby approved and adopted in toto and incorporated by reference herein. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Consent Agreement.

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

DONE AND ORDERED this 29<sup>th</sup> 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 Edward D. McDade, Jr., M.D., 8100 Chancellor Drive, #130, Orlando, Florida 32809; to McVay Voght, Esquire, Hannah, Voght, Estes & Ingram, P.A., 225 E. Robinson Street, Suite 505, Landmark Center II, Orlando, Florida 32801-4303; 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.

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