

2-16

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION  
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

PETITIONER,

vs.

CASE NO. 96-02301

LOWELL K. CUNNINGHAM, M.D.,

RESPONDENT.

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~~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 Lowell K. Cunningham, 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; 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 0011433. Respondent's last known address is 1027-B West Main Street, Leesburg, Florida 34748.

3. Respondent's area of specialty Psychiatry.

4. Between January, 1995, and February, 1996, Respondent prescribed Morphine, Oxycodone, Dihydrocodeine Bitartrate, Hydrocodone, Triazolam, Alprazolam, Chloral Hydrate, Diazepam, and

Phenobarbital to Patient R.C. Each of the prescriptions was filled.

5. Morphine is a Schedule II Controlled Substance, pursuant to Chapter 893, Florida Statutes.

6. Oxycodone is a Schedule II Controlled Substance, pursuant to Chapter 893, Florida Statutes.

7. Dihydrocodeine Bitartrate is a Schedule III Controlled Substance, pursuant to Chapter 893, Florida Statutes.

8. Hydrocodone is a Schedule III Controlled Substance, pursuant to Chapter 893, Florida Statutes.

9. Triazolam is a Schedule III Controlled Substance, pursuant to Chapter 893, Florida Statutes.

10. Alprazolam is a Schedule IV Controlled Substance, pursuant to Chapter 893, Florida Statutes.

11. Chloral Hydrate is a Schedule IV Controlled Substance, pursuant to Chapter 893, Florida Statutes.

12. Diazepam is a Schedule IV Controlled Substance, pursuant to Chapter 893, Florida Statutes.

13. Phenobarbital is a Schedule IV Controlled Substance, pursuant to Chapter 893, Florida Statutes.

14. The controlled substances listed above possess a significant potential for misuse and abuse, which could lead to drug overdose and death.

15. In or about July and August of 1995, Respondent prescribed over eight hundred (800) tablets of Hydrocodone to Patient V.M. Each of the prescriptions was filled.

16. Between on or about April 4, 1995 and on or about July 14, 1995, Respondent prescribed over one thousand (1000) tablets of Hydrocodone and Lorazepam to Patient R.J. Each of the prescriptions was filled.

17. Lorazepam is a Schedule IV Controlled Substance, pursuant to Chapter 893, Florida Statutes and is indicated for the relief of pain. Lorazepam may be habit forming.

18. Respondent excessively and inappropriately prescribed controlled substances to Patients R.C., V.M., and R.J. without a legitimate medical purpose.

19. Respondent practiced medicine below the acceptable level of care in that there is no medical or psychiatric condition that would warrant the amount of prescribing described above.

20. Respondent practiced medicine below the standard of care and by prescribing and distributing controlled substances to Patients R.C., V.M., and R.J. without a legitimate medical purpose.

COUNT ONE

21. Petitioner realleges paragraphs one (1) through twenty-one (21), as if fully set forth herein this Count One.

22. Respondent is guilty of excessively and inappropriately prescribing controlled substances to Patients R.C., V.M., and R.J. without a legitimate medical purpose.

23. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes, prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the

physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his intent.

COUNT TWO

24. Petitioner realleges and incorporates paragraphs one (1) through twenty-one (21) and twenty-three (23), as if fully set forth herein this Count Two.

25. Respondent is guilty of practicing medicine below the acceptable level of care in that there is no medical or psychiatric condition that would warrant the amount of prescribing described above, and by prescribing and distributing controlled substances to Patients R.C., V.M., and R.J. without a legitimate medical purpose.

26. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes, 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 22 day of March, 1996.

Douglas M. Cook, Director



Larry G. McPherson, Jr.  
Chief Medical Attorney

**COUNSEL FOR AGENCY:**

Larry G. McPherson, Jr.  
Chief Medical Attorney  
Agency for Health Care Administration  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792  
Florida Bar #788643  
RPC/jto  
PCP: March 21, 1996  
PCP Members: Katims, Cherney, Glotfelty

**FILED**

AGENCY FOR  
HEALTH CARE ADMINISTRATION  
DEPUTY CLERK

CLERK



DATE

3-22-96

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

**AGENCY FOR HEALTH CARE  
ADMINISTRATION,**

**Petitioner,**

**v.**

**DOAH CASE NO. 96-1581  
AHCA CASE NO. 96-02301**

**LOWELL K. CUNNINGHAM, M.D.,**

**Respondent**

**REVISED CONSENT AGREEMENT**

Lowell K. Cunningham, 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 0011433.
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.

*Len*

## 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 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, the Respondent read Chapters 455, 458 and 893 and the Rules of the Board of Medicine, at Section 59R, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of two thousand five hundred dollars (\$2,500.00) against the Respondent. The fine shall be paid by the Respondent to the Executive Director of the Board of Medicine within sixty (60) days of its imposition by Final Order of the Board. THE RESPONDENT ACKNOWLEDGES THAT 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 SIXTY (60) DAYS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH TIME AS WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B, PARAGRAPH A OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).**

3. REPRIMAND. The Respondent shall receive a reprimand from the Board of Medicine.

~~4. RESTRICTION ON PRESCRIBING~~ Respondent shall be restricted from prescribing any and all Schedule II narcotic medications until such time as he appears before either the Board of Medicine or the Probationer's Committee thereof, and demonstrates that he can prescribe such medications with skill and safety to patients. Respondent understands that although the Probationer's Committee may make a recommendation to the Board regarding the removal of this restriction, only the Board of Medicine has the authority to remove the restriction. For the purposes of this Consent Agreement, "Schedule II narcotic medications" shall be defined as: medications described as Schedule II controlled substances in Section 893.03(2)(a)(1), Florida Statutes, and that contain substances derived from opium or opium-like compounds, that possess analgesic effects associated with significant alteration of mood and behavior, and with the potential for dependence and tolerance following repeated administration.

5. PROBATION. Respondent's license to practice medicine shall be placed on probation for a period of two 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



insure Respondent's continued compliance with the high standards of the profession through interaction with another physicians in the appropriate field of expertise. To this end, during the period of probation, Respondent shall 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. INDIRECT SUPERVISION.** Respondent shall practice only under the indirect supervision of a Board-approved psychiatrist, 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.

**ii.** Respondent may prescribe medications only in compliance with the restrictions set forth below:

**a.** Respondent shall utilize sequentially numbered triplicate prescriptions.

**b.** Respondent shall immediately provide one copy of each prescription to the monitor/supervisor.

**c.** Respondent shall provide one copy of each prescription to the Agency's investigator within one month after issuing said prescription.

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

**i.** 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 at such other times as requested

by the Committee. 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.

ii. Within one (1) year of the filing of the Final Order incorporating the terms of this Agreement, Respondent shall attend a total of (30) hours of Category I Continuing Medical Education (CME). These hours shall include the courses listed in paragraphs B(iii) and B(iv) below, with any remaining hours to be completed in the areas of psychiatry and risk management, in combination. 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.

iii. Respondent shall complete the course, "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, or a Board-approved equivalent,

within one (1) year of the filing of the Final Order incorporating this Agreement. Hours obtained in completing this course shall be included in the thirty (30) hour CME requirement set forth in paragraph B(ii) above.

iv. Respondent shall complete the course "Quality Medical Records Keeping for Health Care Professionals," sponsored by the Florida Medical Association, or a Board-approved equivalent, within one (1) year of the filing of the Final Order incorporating this Agreement. Hours obtained in completing this course shall be included in the thirty (30) hour CME requirement set forth in paragraph B(ii) above.

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 25% percent of Respondent's active patient records at least once a month for the purpose of ascertaining whether Respondent is prescribing appropriately and is practicing medicine within the standard of care as defined in Section 458.331(1)(t), Florida Statutes. The monitor shall go to Respondent's office once every month and shall review Respondent's calendar or patient log and shall select the records to be reviewed.

ii. Submit reports to the Board on a quarterly basis and each of 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 went to Respondent's office, the number of records reviewed, and the overall quality of the records reviewed.

g) Any other reporting requirements.

iii. Maintain contact with the Respondent on a frequency of at least once per month. In the event that the monitor is not timely contacted by Respondent, then the monitor shall immediately report this fact to the Board, in writing.

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.

D. REPORTS FROM RESPONDENT. The Respondent shall submit semiannual reports to the Board, 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.
- 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.

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

7. Respondent 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. The 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.

8. 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.

9. 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.

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

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

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

SIGNED this 22<sup>nd</sup> day of August, 1996.

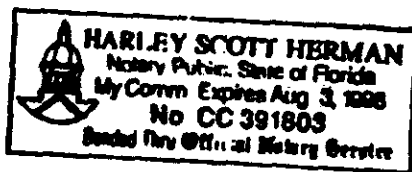
Lowell K. Cunningham, M.D.  
Lowell K. Cunningham, M.D.

Before me, personally appeared Lowell K. Cunningham, 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 22<sup>nd</sup> day of August, 1996.

Harley Scott Herman  
NOTARY PUBLIC

My Commission Expires:



APPROVED this 6<sup>th</sup> day of September 1996.

Douglas M. Cook  
Director

Francesca Plendl for  
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 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. LAWS AND RULES EXAMINATION.** If so directed by the consent agreement, the Respondent shall take and obtain a score of at least 70% correct on the Laws and Rules Examination within six months of the Final Order. The Respondent shall notify the Agency at least one week prior to the date he wishes to take the examination to schedule a time for the examination at one of the Agency's Investigative Offices. The Respondent may take the examination as many times as needed to obtain a passing score of 70%. Contact Kevin Herrmann, (904) 487-9685, at the Agency for Health Care Administration, to schedule a time for the examination, or to answer any questions.



**D. 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.

**E. 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.

**F. 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.

**G. 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's 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  
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Petitioner,

vs.

LOWELL K. CUNNINGHAM, M.D.,

Respondent.

Final Order No. AHCA-96-001311 Date 12/12/96

**FILED**

Agency for Health Care Administration

**AGENCY CLERK**

R.S. Power, Agency Clerk

By: Lisa C. Bonaparte  
Deputy Agency Clerk

CASE NO.: 96-02301

LICENSE NO.: ME0011433

CORRECTED FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on October 4, 1996, in West Palm Beach, 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 rejected the Consent Agreement proposed and offered an amendment, 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 restriction on the prescribing of controlled substances shall be extended to include Schedule II through Schedule V controlled substances.

2. Respondent shall not be permitted to return to the active practice of medicine until such time as he personally appears before the Board and demonstrates his ability to practice medicine with skill and safety.

3. Prior to his resuming practice, Respondent is required to submit a practice plan to be 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 Agency for Health Care Administration.

DONE AND ORDERED this 12<sup>th</sup> day of December, 1996.

BOARD OF MEDICINE

M. Kathryn Garrett M.D.  
M. KATHRYN GARRETT, M.D.  
CHAIRPERSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing

Corrected Final Order has been provided by certified mail to Lowell K. Cunningham, M.D., 1027 B West Main Street, Leesburg, Florida 34748; to Harley Herman, Esquire, 2100 N. Citrus Boulevard, Leesburg, Florida 34748; 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 \_\_\_\_\_, 1996.

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