

**FILED**

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STATE OF FLORIDA  
DEPARTMENT OF HEALTH

BOARD:	Medicine
CASE NUMBER:	95-12976
COMPLAINT MADE BY:	M. L.
DATE COMPLAINT RECEIVED:	8-7-1995
COMPLAINT MADE AGAINST:	Gisella Garcia-Leyva, M.D. 211 4th Ave. N. St Petersburg, FL 33201
INVESTIGATED BY:	James Nunez/Clearwater
REVIEWED BY:	Albert Peacock/ve
STAFF RECOMMENDATION:	Close (PL-82)

NOTICE OF DISMISSAL/CLOSING ORDER

THE COMPLAINT: Complainant alleges that the Subject practiced below the standard of care, in violation of 458.331(1)(t), Florida Statutes; and failed to maintain adequate medical records, in violation of 458.331(1)(m), Florida Statutes.

THE FACTS: The Subject was charged by Administrative Complaint for failure to perform any statutory or legal obligation placed upon a licensed physician in that she failed to appear at a hearing on the involuntary placement under the Baker Act of patient G.I.

This case was initiated upon receipt of a letter from the Circuit Court Judge in the Sixth Florida Judicial Circuit, Pinellas County, to the Executive Director of the Board of Medicine complaining that the Subject and another physician failed to appear at a Baker Act hearing on July 12, 1995, regarding the involuntary placement of Patient G.I. in a psychiatric institution.

During trial preparation Petitioner has found out that the alleged failure occurred apparently as result of recent changes in the location and manner of conducting the Baker Act hearings initiated by the new Circuit Court Judge.

Prior to that, the Baker Act hearings in the Pinellas County were conducted at set hours, on set days of the month at the hospital where the patient was placed. Under such routine, the physicians involved in the Baker Act patient placement as well as their scheduling secretaries knew beforehand that on a certain day the physician had to be at the hospital for the hearing. The routine was efficient and no complaints were registered regarding the appearance at the Baker hearings of the physicians who executed the petitions for involuntary placement.

The new Judge altered the routine in that he scheduled the Baker hearings on various days without establishing the manner in which the physicians were to be notified of the hearing. As a result, a number of physicians failed to appear at the hearings either because notifications on a short notice disturbed their previous professional commitments or because they were simply not notified.

Currently, the Judge who placed the complaint has been replaced by another Judge who has reverted to the old routine of holding the Baker Act hearings on set days and no problems have surfaced.

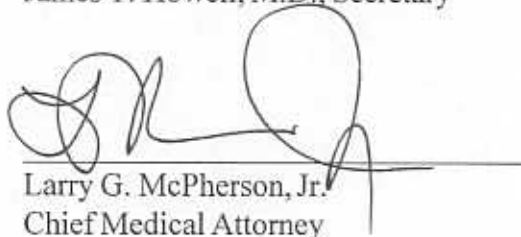
If this case goes to trial, Petitioner will not be able to prove that the Subject had been given proper and timely notification of the date of the Baker Act hearing on July 12, 1995.

THE LAW: There is sufficient evidence for the Panel to have found probable cause in the case. However, based upon information obtained during trial preparation of this case, the Department, by and through the Agency of Health Care Administration, pursuant to the provisions of Section 20.43(3)(f), has determined that there is insufficient evidence to support the prosecution of allegations of violations of Chapter 458, Florida Statutes, or the rules promulgated therein. Therefore, pursuant to Section 455.621(2), Florida Statutes, this case is DISMISSED.

It is, therefore, ORDERED that this matter should be and the same is hereby DISMISSED.

DONE and ORDERED this 16 day of September, 1997.

James T. Howell, M.D., Secretary



Larry G. McPherson, Jr.  
Chief Medical Attorney

AP/ve

PCP: September 15, 1997