

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,)
)
 PETITIONER,)
)
 v.) CASE NO. 97-00715
)
 WILLIAM RAFULS-LOZANO, M.D.,)
)
 RESPONDENT.)
 _____)

AMENDED 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 William Rafuls-Lozano, 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; Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes. Pursuant to the provisions of Section 20.43(3), 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 0041063. Respondent's last known address is 1516 Venera Avenue, Coral Gables, Florida 33146-2441.
3. Respondent is board certified in Psychiatry and Neurology.

4. Patient M.S., a 47 year old male, was treated by Respondent from in or about July 1992 through in or about December 1996. Patient M.S. had a history of serious injury from a prior automobile accident resulting in complaints of chronic pain, for which Respondent prescribed narcotic pain medications. Respondent also diagnosed Patient M.S. with bipolar disorder and schizo-affective disorder.

5. As a result of his recovery from his auto accident, Patient M.S. became addicted to narcotic pain medications, and made Respondent aware of this addiction.

6. Codeine is a legend drug as defined by Section 465.003(7), Florida Statutes, and is a Schedule III controlled substance listed in Chapter 893, Florida Statutes. Codeine is a narcotic pain medication that can produce dependence and tolerance of the morphine type, and carries a significant potential for abuse.

7. Between on or about May 1, 1996, and June 6, 1996, Respondent prescribed two hundred seventy (270) tablets of Tylenol with codeine to Patient M.S. Between October 7, 1996, and December 9, 1996, Respondent prescribed five hundred sixty-six (566) tablets of codeine to Patient M.S. These amounts of medications are excessive, particularly in light of Patient M.S.'s admitted addiction to codeine-based narcotic pain medications.

8. Respondent's medical records do not justify the course of treatment of Patient M.S., in that they do not justify the excessive prescription of codeine to an admittedly addicted patient, and they contain no comprehensive initial psychiatric evaluation or organized and consistent treatment plan.

9. A reasonably prudent similar physician would have performed a comprehensive initial psychiatric evaluation, including, but not limited to: detailed histories of M.S.'s present

illness; and family, social and vocational histories; and evaluation of Patient M.S.'s potential for substance abuse and dependence. Respondent failed to perform all of the above.

COUNT ONE

10. Petitioner realleges and incorporates paragraphs one (1) through nine (9), as if fully set forth herein this Count One.

11. Respondent failed to keep written medical records justifying the course of treatment of Patient M.S., in that Respondent's medical records do not justify the excessive prescription of codeine to Patient M.S.; and contain no comprehensive initial psychiatric evaluation or organized and consistent treatment plan.

12. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes, by failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify 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

13. Petitioner realleges and incorporates paragraphs one (1) through nine (9) and paragraph eleven (11) as if fully set forth herein this Count Two.

14. Respondent inappropriately prescribed a legend drug and controlled substance to Patient M.S., in that Respondent prescribed excessive amounts of codeine to Patient M.S. between on or about May 1, 1996, and June 6, 1996, and between on or about October 7, 1996, and December 9, 1996, when he knew or should have known Patient M.S. was addicted to codeine based narcotic pain medications.

15. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes, by 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 a legend drug, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and not in the course of the physician's professional practice, without regard to his intent.

COUNT THREE

16. Petitioner realleges and incorporates paragraphs one (1) through nine (9), eleven (11), and fourteen (14) as if fully set forth herein this Count Three.

17. Respondent practiced medicine below the standard of care, in that Respondent: excessively prescribed codeine-based narcotic pain medications to Patient M.S., when he knew or should have known Patient M.S. was addicted to this class of drugs; failed to perform a comprehensive initial psychiatric evaluation of Patient M.S.; and failed to evaluate Patient M.S.'s potential for substance abuse and dependence.

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 29 day of September, 1998.

James T. Howell, M.D., Secretary



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: September 25, 1998
PCP Members: Slade, Woods, Scoon

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Stephanie Q. Dier*
DATE 9-29-98

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

AHCA Case No. 97-00715

**WILLIAM RAFULS-LOZANO, M.D.,
Respondent.**

7000 MAY 15 AM 8:37
MEDICINE BOARD

CONSENT AGREEMENT

William Rafuls-Lozano, M.D., referred to as the "Respondent," and the Department of Health, referred to as "Department" 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.

Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes. Pursuant to the provisions of Section 20.43(3), 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.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 0041063.
2. Respondent was charged by an Administrative Complaint filed by the Department 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.

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 Department and the Board.
2. Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute a violation 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 64B8, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of \$3,000 against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within thirty (30) 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 30 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 F OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).**

3. QUALITY ASSURANCE CONSULTATION. An independent certified risk manager will review Respondent's current practice within ninety (90) days of the filing of the Final Order in this matter. 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 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.

4. DRUG COURSE. Within one (1) year of the imposition of the Final Order in this matter, 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.

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.

1. It is expressly understood that this Agreement is subject to the approval of the Board and the Department. 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.

2. 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 Department 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.

3. 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.

4. Respondent and the Department 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 Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A herein.

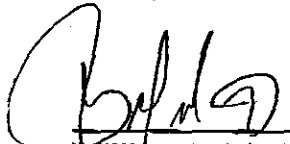
5. Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

6. 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 Department in connection with this matter.

7. 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 11th day of JANUARY ~~1999~~ ^{ERRATA} 2000 (16)



William Rafuls-Lozano, M.D.

Before me, personally appeared William Rafuls-Lozano, 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 11th day of JANUARY, ~~1999~~ ^{ERRATA} 2000. (16)

Sandra Byers
NOTARY PUBLIC

My Commission Expires:

SANDRA BYERS
Notary Public
Commission # CC55742
Commission Exp 5/9/2000

APPROVED this 26th day of JANUARY ~~1999~~ ^{ERRATA} 2000 (16)

Robert G. Brooks, M.D.
Secretary, Department of Health

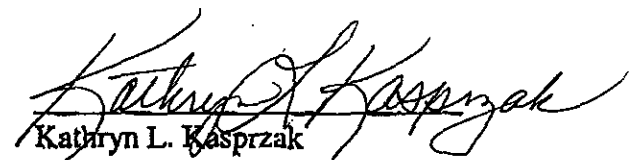
By: 
Kathryn L. Kasprzak
Chief Medical Attorney

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 F, 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 F, **WITHIN ONE YEAR OF THE DATE OF THE FINAL ORDER.**

C. LAWS AND RULES EXAMINATION. Unless otherwise 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/she 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 Donna S. Brown, (850) 487-9672, 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, Client Services Unit, 2020 Capital Circle SE, Bin # C03, Tallahassee, Florida 32399-3253, Attn: Medical 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), physicians assistant, respiratory care practitioner, as set forth in the Consent Agreement, 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), physicians assistant, respiratory care practitioner, as set forth in the Consent Agreement, whose responsibilities are set by the Board. Direct supervision requires that the supervisor and Respondent work in the same office. The supervisor 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 or may 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 the monitor/supervisor, 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 or respiratory therapy in this State.

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

Final Order No. DOH-00-0852- 5 -MOA Date 6-5-00

FILED

Department of Health

Angela Hall, AGENCY CLERK

By: [Signature]
Deputy Agency Clerk

vs.

CASE NO.: 97-00715

LICENSE NO.: ME0041063

WILLIAM RAFULS-LOZANO, 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 7, 2000, in Orlando, Florida, for consideration of a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in the above-styled cause. On the record the Consent Agreement was corrected to reflect that it was based on an Amended Administrative Complaint. 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 28th day of April, 2000.

BOARD OF MEDICINE

Janyal Williams
for GASTON ACOSTA-RUA, M.D.
VICE-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 William Rafuls-Lozano, M.D., 1516 Venera Avenue, Coral Gables, Florida 33146-2441; to Larry Herman, Qualified Representative, Clinical NeuroScience Institute, 1516 Venera Avenue, Coral Gables, Florida 33146; and by interoffice delivery to Kathryn L. Kasprzak, Chief Medical Attorney, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, on or before 5:00 p.m., this _____ day of _____, 2000.
