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Final Order No. DOH-03-0918- S -MOA
FILED DATE - 8/18/03
Department of Health
By: Heather Coleman
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2000-12796
LICENSE NO.: ME0044044

NEIL E. PAUKER, 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 August 1, 2003, in Orlando, Florida, for the purpose of considering a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Consent Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises, the Board rejected the Consent Agreement and offered a Counter Consent Agreement which Respondent was given 7 days to accept. By letter dated August 7, 2003, Counsel for Respondent timely accepted the Board's Counter Consent Agreement. The Counter Consent Agreement incorporates the original Consent Agreement with the following amendments:

1. The costs set forth in paragraph 3 of the Stipulated Disposition shall be set at \$5,250.00.
2. The requirement for a letter of concern set forth in paragraph 6 of the Stipulated Disposition shall be deleted.

3. Respondent shall receive a REPRIMAND from the Board.

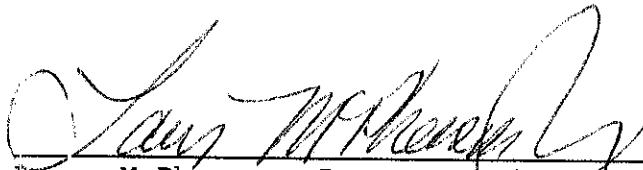
4. The Respondent's license to practice medicine is restricted as follows: The Respondent must remain in compliance with any and all terms of the Professionals Resource Network (PRN) contract. Failure to do so shall constitute a violation of the final order and shall be grounds for further discipline.

IT IS HEREBY ORDERED AND ADJUDGED that the Consent Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the amendments set forth above. 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 11 day of AUGUST, 2003.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for Raghavendra Vijayanagar, M.D., Chair

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 NEIL E. PAUKER, M.D., 14180 Metropolis Avenue, Suite 2, Naples, Florida 33912; to Bruce M. Stanley, Esquire, Henderson, Franklin, et al., P.O. Box 280, Ft. Myers, Florida 33902-0280; and by interoffice delivery to Ephraim Livingston and Pamela Page, Department of Health, 4052 Bald Cypress Way, Dir #C-65, Tallahassee, Florida 32399-3253 this 18 day of August 2003.

Sharon Byler

**STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH CASE NUMBER 2000-12796

NEIL E. PAUKER, M.D.,

Respondent.

_____ /

CONSENT AGREEMENT

Neil E. Pauker, 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.

Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, the Respondent was a licensed physician in the State of Florida having been issued license number ME 44044.

2. The Respondent was charged by an Administrative Complaint filed by the Agency and properly served upon the 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. The Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 456 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. The 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.** The Respondent shall not in the future violate Chapters 456, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, the Respondent shall read Chapters 456, 458, 893 and the Rules of the Board of Medicine, at Section 64B8, Florida Administrative Code.

2. **ADMINISTRATIVE FINE.** The Board shall impose an administrative fine in the amount of five thousand dollars (\$5,000.00) against the Respondent. Unless otherwise determined by the Board, 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 FINES 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 THIRTY (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 OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).

3. **REIMBURSEMENT OF COSTS.** In addition to the amount of any fine noted above, the Respondent agrees to reimburse the Department for any administrative costs incurred in the investigation, prosecution, and preparation of this case, including costs assessed by the Division of Administrative Hearings, if applicable, and by the Board of Medicine office. **The agreed upon Agency costs to be reimbursed in this case is four thousand seven hundred ten dollars and ninety-four cents (\$4,710.94), but not to exceed five thousand two hundred fifty dollars (\$5,250.00).** Unless otherwise determined by the Board, the costs shall be paid by the Respondent to the Board of Medicine within six (6) months of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN SIX (6) MONTHS 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 OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).

4. **COMMUNITY SERVICE.** During the next one (1) year following the filing date of a Final Order in this case, Respondent shall perform twenty (20) hours of community service. Community service shall consist of the delivery of domestic relations services directly to the public, without fee, for the good of the people of the state of Florida. Such community service shall be performed outside the Respondent's regular practice setting. Respondent shall submit a written plan for performance and completion of the community service to the Board for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board quarterly.

5. **CONTINUING MEDICAL EDUCATION.** Within one (1) year of the date of the filing of a Final Order in this cause, Respondent shall attend eight (8) hours of Continuing Medical Education (CME) in ethics. The boundaries course, which Respondent has already taken, shall be credited toward this requirement. 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 and course. The Board confers authority on the Chairman of the Probationer's Committee to approve or disapprove said continuing education hours or course. 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 this medical course within one (1) year of the entry of the Final Order in this matter. All such documentation shall be sent to 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 is required to appear before the Board at the meeting of the Board where this Agreement is considered.

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

4. 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.

5. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this matter.

6. 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 5th day of May, 2003.

Neil E. Pauker
Neil E. Pauker, M.D.

Before me, personally appeared NEIL PAUKER, whose identity is known to me by license (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 5 day of MAY, 2003.



JoAnne DeRupo
Commission #DD166383
Expires: Dec 27, 2006
Bonded Thru
Atlanta Bonding Co., Inc.

NOTARY PUBLIC

JoAnne DeRupo

My Commission Expires:

APPROVED this 3rd day of July, 2003.

John O. Agwunobi, M.D., M.B.A.,
Secretary, Department of Health

By: *Wings S. Benton*
Wings S. Benton
Deputy General Counsel
Department of Health

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 as set forth in paragraph E, below. The Board office does not have the authority to change 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. ADDRESSES. The Respondent must keep current residence and practice addresses on file with the Board. The 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 the Respondent leaves the active practice of medicine in Florida.

D. 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 cost 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 cost directly associated with the Respondent's probation.

E. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines/costs shall be sent to Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, FL 32314-6320. ATTN: Medical Compliance Officer. All reports, correspondence and inquiries must be sent to Department of Health, HMQAMS/Client Services/Bin C01, 4052 Bald Cypress Way, Tallahassee, FL 32399-3251, ATTN: Medical Compliance Officer.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

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Petitioner,

v.

DOH Case No. 00-12796

NEIL E. PAUKER, M.D.
Respondent.

FIRST AMENDED ADMINISTRATIVE COMPLAINT

NOW COMES Petitioner, the Department of Health, by and through the Agency for Health Care Administration, and for its Complaint against Neil E. Pauker, M.D. states as follows:

PARTIES

1. The Department of Health is the state agency charged with regulating the practice of medicine under Florida Law.
2. The Respondent, whose address of 7680 Cambridge Manor Place, Ste. 102, Fort Myers, FL 33907, was issued license number ME 0044044 on May 10, 1984, and is board-certified in psychiatry.

SEXUAL MISCONDUCT

3. At all times material to this Complaint, the Respondent was a licensed medical physician within the State of Florida.
4. For an 8-year period, from about January 14, 1988 through about February 5, 1996, Patient L.O. ("L.O."), a 44-year-old female, presented to Respondent for psychiatric treatment.

5. At no time did the Respondent document in L.O.'s records or in any other manner demonstrate that that the physician/patient relationship with L.O. had ended.

6. On or about April 25, 1997, the Respondent engaged with L.O. in a romantic and sexual relationship.

7. From on or about April 1998 through about November of 1999, the Respondent and L.O. lived together in the Respondent's residence located at 1560 A. Matthew Dr., Fort Myers, Florida.

8. The actions of the Respondent as herein described constitute sexual misconduct and a violation of --

- (a) Sec. 458.329, Fla. Stat. (1999)¹ ;
- (b) Sec. 458.331 (1)(j), Fla. Stat. (1999)²;
- (c) Rule 64B8-9.008, Fla. Admin. Code (2000); and,
- (a) Sec. 458.331(1)(x), Fla. Stat. (1999).³

WHEREFORE, the Petitioner requests that, in order to protect the health and safety of the People of the State of Florida, the Respondent be found responsible for the violations alleged, and each of them, and that one or more of the following disciplines be entered against the Respondent:

- (A) Permanent Revocation of his medical license;
- (B) Suspension of his license for an appropriate period of time;
- (C) Restriction of the Respondent's practice;


¹ Now at Sec. 458.329, Fla. Stat. (2000).

² *Id.*

- (D) Imposition of an administrative fine;
- (E) Issuance of a reprimand;
- (F) Placement of the Respondent on probation, with appropriate conditions;
- (G) Assessment of the costs for investigation and prosecution of this case; and,
- (H) Such other and further relief as is appropriate.

SIGNED, this 28th day of January, 2002

JOHN AGUNOBI, M.D., M.B.A.,
Secretary, Department of Health


By: NANCY SNURKOWSKI
Chief Attorney, Practitioner Regulation

COUNSEL FOR DEPARTMENT:
Shirley J. Whitsitt, Fla. Bar No. 0040525
Agency for Health Care Administration
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Tallahassee, FL 32308
Tel: (850) 414-8126
PCP: January 18, 2002
PCP Members: El-Bahri & Long

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK [Signature]
DATE 3/4/02

³ *Id.*