

Final Order No. DOH-06-2317-S -MOA
FILED DATE - 12/14/06
Department of Health
By: Alicia Saffo
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NOS.: 2005-00374
2005-00754
2001-01342
LICENSE NO.: ME0059359

DHVANIT VIJAPURA, 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 11, 2006, in St. Petersburg Beach, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises, the Board rejected the Settlement Agreement and offered a Counter Settlement Agreement which Respondent was given 7 days to accept. By correspondence dated November 30, 2006, counsel for Respondent accepted the Counter Settlement Agreement on behalf

of Respondent. The Counter Settlement Agreement incorporates the original Settlement Agreement with the following amendments:

1. The fine set forth in Paragraph 2 of the Stipulated Disposition shall be increased \$15,000.00.

2. The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$15,881.90.

3. The requirement for an unobstructed window or glass door shall be deleted.

4. Respondent shall not examine or treat any female patients without a female employee (chaperone) present in the room. A log shall be maintained which documents the presence of the chaperone and said log shall be immediately available to a probation monitor or Department inspector upon request.

5. The requirement for a PRN evaluation as set forth in Paragraph 5 of the Stipulated Disposition shall be clarified to require that Respondent comply with any and all recommendations of the PRN evaluation.

6. The Responsibilities of the Monitor/Supervisor set forth in Paragraph (7)(A)v., of the Stipulated Disposition shall be amended to require that 100% of the female patient charts must be available for the monitor/supervisor's review until the

Respondent is evaluated by the Professionals Resource Network (PRN) and demonstrates compliance with PRN recommendations.


7. Respondent shall document completion of a professional boundaries course within one year from the date this Final Order is filed.

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement 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 Settlement Agreement as amended.

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

DONE AND ORDERED this 13 day of DECEMBER, 2006.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for MARK S. AVILA, M.D., Vice-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 DHVANIT VIJAPURA, M.D., 221 East 23rd Street, Suite F, Panama City, Florida 32405; to Bruce Lamb, Esquire, 2700 Suntrust Financial Centre, 401 East Jackson Street, 27th Floor, Tampa, Florida 33602-5841; and by interoffice delivery to John Terrel, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 14 day of December, 2006.



Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

2005 JUN 21 PM 12: 05
PRACTITIONER REGULATION
LEGAL

DEPARTMENT OF HEALTH,

Petitioner,

v.

**DOH Case Nos. 2001-01342,
2005-00374 and 2005-00754**

DHVANIT VIJAPURA, M.D.,

Respondent.

SETTLEMENT AGREEMENT

Dhvanit Vijapura, 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 a state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

STIPULATED FACTS

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

59359.

2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules adopted pursuant thereto. True and correct copies of the Administrative Complaints are attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaints 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 456 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaints, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent. Respondent

enters into this Stipulated Disposition to minimize his exposure to increased fees and costs.

STIPULATED DISPOSITION

1. **Reprimand** - The Board shall reprimand the license of Respondent.

2. **Fine** - The Board of Medicine shall impose an administrative fine of ten thousand (\$10,000.00) dollars against the license of Respondent, to be paid by Respondent to the Department of Health, HMQAMS/Client Services, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer, within thirty-days (30) from the date of filing of the Final Order accepting this Agreement. All fines shall be paid by check or money order. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF

THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

3. Reimbursement Of Costs - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any administrative costs incurred in the investigation and preparation of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. The agreed upon amount of Department costs to be paid in this case is actual costs up to but not to exceed sixteen thousand (\$16,000.00) dollars. Respondent will pay costs to the Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer within thirty-days (30) from the date of filing of the

Final Order in this cause. Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS/HER 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 WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. **Community Service** - Respondent shall perform one hundred (100) hours of community service, within one year of the date of filing of the Final Order. Community Service shall be defined as the delivery of medical services directly to patients, or the delivery of other volunteer services in the community, without fee or cost to the patient or the entity, for the good of the people of the State of Florida.

Community service shall be performed outside the physician's regular practice setting. Respondent shall submit a written plan for performance and completion of the community service to the Probation Committee for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board as required by the Probation Committee.

5. **Evaluation/Physician Assessment** – Within thirty (30) days of the Final Order of the Board, Respondent shall undergo an evaluation by a PRN (Professionals Resource Network) approved evaluator to assess whether the Respondent is safe to practice medicine. The evaluator's report is to be sent directly to the Board's Probation Committee.

6. **Restriction of Practice** - Respondent's practice is restricted in that Respondent may not examine or treat female patients unless an unobstructed window or glass door has been installed in the treatment or consulting rooms at all locations where the doctor treats patients, and, whenever a female patient would be requested to disrobe any portion of her clothing, unless in the presence of another Florida licensed health care provider who shall maintain a log of each such

patient contact with said log to be immediately available to a probation monitor or Department inspector upon request.

7. **Probation** - Effective on the date of the filing of the Final Order incorporating the terms of this Agreement, Respondent's license to practice medicine shall be placed on probation for a period of two (2) years. The purpose of probation is not to prevent Respondent from practicing medicine but rather, is a supervised educational experience designed by the Board to make Respondent aware of certain obligations to Respondent's patients and the profession and to ensure Respondent's continued compliance with the high standards of the profession through interaction with another physician 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 physician, hereinafter referred to as the "monitor",

whose responsibilities are set by the Board. Indirect supervision does not require that the monitor practice on the same premises as 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 Respondent's specialty area unless otherwise provided by the Board. In this regard, Respondent shall allow the monitor access to Respondent's medical records, calendar, patient logs or other documents necessary for the monitor to supervise Respondent as detailed below.

ii. **Required Supervision:**

a) If the terms of the Consent Agreement include indirect or direct monitoring of the licensee's practice, Respondent shall not practice medicine without an approved monitor/supervisor, as specified by the Agreement, unless otherwise ordered by the Board.

b) The monitor/supervisor must be licensee under Chapter 458, Florida Statutes, in good standing and without restriction or limitation on his license. In addition, the Board 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 Board may also reject any proposed monitor/supervisor for good cause shown.

iii. Mechanism For The Approval Of A Monitor/Supervisor:

a) **Temporary Approval** - The Board confers authority on the Chairman of the Probation Committee to temporarily approve Respondent's proposed 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 the 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.**

b) **Formal Approval** - Respondent shall have the monitor/supervisor with Respondent at Respondent's first probation appearance before the Probation Committee. Prior to the consideration of the monitor/supervisor by the Probation Committee, 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 vita and a description of current practice from the proposed monitor/supervisor to the Board office no later than fourteen (14) days before 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 Probation Committee. It shall be Respondent's responsibility to ensure the appearance of the monitor/supervisor as directed. Failure of the monitor/supervisor to appear as directed shall constitute a violation of the terms of this Consent Agreement and shall subject Respondent to disciplinary action.

iv. Change In Monitor/Supervisor - In the event that Respondent's monitor/supervisor is unable or unwilling to fulfill the responsibilities of a monitor/supervisor as described above, Respondent shall immediately advise the Probation Committee of this fact. Respondent shall immediately submit to the Chairman of the 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 Probation 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 at which the issue of the Probation Committee's approval of Respondent's new monitor/supervisor shall be addressed.

v. **Responsibilities Of The Monitor/Supervisor**

- The Monitor shall:

a) Review 25 percent of Respondent's active patient records at least once every quarter for the purpose of ascertaining the appropriateness of Respondent's treatment. The monitor shall go to Respondent's office at least once every quarter and review Respondent's calendar or patient log and select the records to be reviewed.

b) The monitor may make unannounced inspections of Respondent's offices and may randomly select female patients to contact for the purpose of discussing Respondent's treatment.

c) Consult with Respondent on such cases the scope of which shall be as follows:

1) Any records review requirements; and

2) Maintain contact with Respondent on a frequency of at least once per quarter. In the event that the monitor, after diligent effort, is not able to make timely contact with Respondent, then the monitor shall immediately report this fact in writing to the Probation Committee.

d) Submit reports on a quarterly basis, in affidavit form, which shall include:

1) A brief statement of why Respondent is on probation;

2) A description of Respondent's practice (type and composition);

3) A statement addressing Respondent's compliance with the terms of probation;

4) A brief description of the monitor's relationship with Respondent;

5) A statement advising the Probation Committee of any problems which have arisen; and

6) A summary of the dates the monitor went to Respondent's office, the number of records reviewed, the overall quality of the records reviewed, the initials of patients that the monitor contacted and the patient comments, and the dates Respondent was in contact with the monitor pursuant to subsection c), 3), above.

e) Report immediately to the Board any violations by Respondent of Chapters 456 or 458, Florida Statutes, and the rules promulgated thereto.

f) 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 Respondent's monitor to appear as requested or directed. If the approved monitor fails to appear as requested or directed by the Probation Committee, **Respondent shall immediately cease practicing medicine until such time as the approved monitor or alternate monitor appears before the Probation Committee.**

vi. **Reports From Respondent** - Respondent shall submit quarterly reports, in affidavit form, the contents of which may be further specified by the Board, but which shall include:

- a) A brief statement of why Respondent is on probation;
- b) A description of practice location;
- c) A description of current practice (type and composition);
- d) A brief statement of compliance with probationary terms;
- e) A description of the relationship with monitoring physician;
- f) A statement advising the Board of any problems which have arisen; and
- g) A statement addressing compliance with any restrictions or requirements imposed.

viii. Continuity Of Practice:

- a) **Tolling Provisions** - In the event 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 this Settlement Agreement 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 Consent Agreement shall be tolled; and

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 Board may require

Respondent to appear before the Board and demonstrate his ability to practice medicine with skill and safety to patients prior to resuming the practice of medicine in this State.

(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 notified by the Board staff of the date, time and place of the Committee meeting at which Respondent's appearance is required. Failure of Respondent to appear as requested or directed or failure of Respondent to comply with any of the terms of this Agreement shall be considered a violation of the terms of

this Agreement, and shall subject Respondent to disciplinary action.

STANDARD PROVISIONS

8. **Appearance**: Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

9. **No force or effect until final order** - 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 the Board enters a Final Order incorporating the terms of this Agreement.

10. **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.

11. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 458 or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice medicine.

Prior to signing this agreement, the Respondent shall read Chapters 456 and

458 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

12. **Violation of terms considered** - It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 458, Florida Statutes.

13. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. 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. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this 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.

14. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the draft Administrative Complaint attached as Exhibit A.

15. **Waiver of attorney's fees and costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, the parties will bear their 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 and the Board in connection with this matter.

16. **Waiver of further procedural steps** - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review

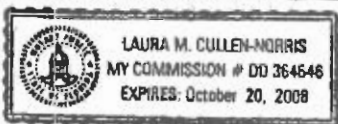
of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

SIGNED this 14th day of June, 2006.

Dhvanit Vijapura

Dhvanit Vijapura, M.D.

Before me, personally appeared Dhvanit Vijapura, whose identity is known to me by FL DL (type of identification) and who, under oath, acknowledges that his/her signature appears above. Sworn to and subscribed before me this 14 day of June, 2006.



Laura M Cullen
NOTARY PUBLIC

My Commission Expires: 10-20-2008

APPROVED this 26th day of June, 2006.

M. Rony Francois, M.D., M.S.P.H., Ph.D.
Secretary, Department of Health

Irving Levine

Irving Levine
Assistant General Counsel
Florida Bar # 0822957
DOH-Prosecution Services Unit
4052 Bald Cypress Way-Bin C-65
Tallahassee, Florida 32399-3265

OCT 19 2005

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

**Case Numbers 2005-00374
and 2005-00754**

DHVANIT VIJAPURA, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Amended Administrative Complaint before the Board of Medicine against the Respondent, Dhvanit Vijapura, M.D., and in support thereof alleges:

1. 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.

2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida having been issued license number ME 59359.

3. Respondent's address of record is 221 East 23rd Street, Suite F, Panama City, Florida 32405.

4. Respondent is board certified in Psychiatry with subspecialty certificates in Addiction Psychiatry and Geriatric Psychiatry.

5. On or about September 13, 2004, Patient L.P., a 28 year-old female, was at Respondent's office when he inappropriately touched her breasts while taking her blood pressure.

6. On or about September 29, 2004, when Patient L.P. was at Respondent's office, he again inappropriately touched her breasts while taking her blood pressure.

7. On or about August 25, 2004, Patient A.A., a 29 year-old female, was at Respondent's office about one week after she had had breast augmentation surgery. Respondent inappropriately asked about the breast size change, the feel of them to both herself and her husband, and how they felt during sexual activity.

8. Respondent inappropriately asked Patient A.A. to view her breasts and she lifted her shirt and bra to show them. He questioned her about her sexual relationship with her husband and inappropriately requested to see the before and after photographs of her breasts.

9. Through prior conduct with other patients and facility staff, Respondent has demonstrated a propensity toward inappropriate sexual behavior in one or more of the following ways:

- a. On or about November 30, 1999, while C.C., an employee of the facility, was present during the evaluation of an elderly female resident, Respondent inappropriately put his hand under C.C.'s shirt, pushed her bra up above her left breast, and placed his hand on the breast. This was reported to the police;
- b. On or about August 30, 2000, Patient L.W., during a visit with Respondent, was asked about her heart rate and then Respondent indicated that he wished to perform a heart examination. He told Patient L.W. that he had forgotten to bring his stethoscope, directed her to sit next to him and remove her bra so that he could manually assess her heart rate. Respondent placed his hand on Patient L.W.'s breast,

moved his hand around on her breast and nipple area, and made moaning noises;

- c. On or about February 23, 2000, Ms. M.L. was at a job interview conducted by the Respondent. As he took M.L. on a tour of the facility, he inappropriately placed his open hand on her rear-end and gently pushed her into one of the offices. Then as she was leaving, Respondent put his arm around her and kissed her on the cheek. This was reported to the police.

10. Section 458.331(1)(j), Florida Statutes (2000-2004), provides that exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity constitutes grounds for disciplinary action by the Board of Medicine.

11. Respondent committed sexual misconduct in one or more of the following ways: a) by inappropriately touching Patient L.P.'s breasts while taking her blood pressure; b) by inappropriately asking Patient A.A. about the breast size change, the feel of them to both herself and her husband, and how they felt during sexual activity; c) by inappropriately asking Patient A.A. to view her breasts and questioning her about her sexual relationship with her husband and inappropriately requesting to see

the before and after photographs of her breasts; d) by demonstrating a propensity toward inappropriate sexual behavior by improperly assessing Ms. C.C.'s heart rate by placing his hand on her bare breast, by directing Patient L.W. to sit next to him and remove her bra so that he could manually assess her heart rate and then placing his hand on Patient L.W.'s breast, moving his hand around on her breast and nipple area, and making moaning noises, and by inappropriately placing his open hand on Ms. M.L.'s rear-end and gently pushing her into one of the offices and as she was leaving, putting his arm around her and kissing her on the cheek.

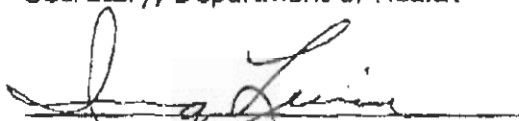
12. Based on the foregoing, Respondent has violated Section 458.331(1)(j), Florida Statutes (2000-2004), by exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of

fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 17th day of October, 2005.

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



Irving Levine
Assistant General Counsel
Florida Bar # 0822957
DOH, Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Phone: 850-414-8126
Fax: 850-414-1989

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Theresa McKinn
DATE 10-19-05

Reviewed and approved by: ajg (Initials) 8/15/05 (date)

PCP: October 14, 2005

PCP Members: Gustavo Leon, M.D. (Chairperson), Mammen Zachariah, M.D., and John Bee

DOH v. Dhyanit Vijapura, M.D., Case 2005-00374 and 2005-00754

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

DOH v. Dhvmit Vijapura, M.D., Case 2005-00374 and 2005-00754

MAY 09 2006

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2001-01342

DHVANIT VIJAPURA, M.D.,

RESPONDENT.

AMENDED ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Amended Administrative Complaint before the Board of Medicine against the Respondent, Dhvanit Vijapura, M.D., and in support thereof alleges:

1. 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.

2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida having been issued license number ME 59359.

3. Respondent's address of record is 221 East 23rd Street, Suite F, Panama City, Florida 32405.

4. Respondent is board certified in Psychiatry with subspecialty certificates in Addiction Psychiatry and Geriatric Psychiatry.

FACTS RELATING TO PATIENT C.C.

5. On or about November 30, 1999, Respondent came to Glen Cove Nursing Pavilion to perform a psychiatric evaluation of a resident.

6. Present during the evaluation was, Ms. C.C., an employee of the facility.

7. During the evaluation of the resident, Respondent noticed that Ms. C.C. was having pain in her hand and wrist. Respondent stopped the examination of the resident and began questioning Ms. C.C. about the pain and her skin coloring.

8. Respondent told Ms. C.C. that she might have Raynaud's disease and inquired as to whether she had a heart murmur. Ms. C.C. denied any knowledge of a heart murmur and Respondent told her to see a cardiologist.

9. Respondent then told Ms. C.C. to put her hand on the side of her breast to see if she could feel her heartbeat. When she could not feel

her own heartbeat and before she could respond to either authorize or refuse to allow him to do so, Respondent put his hand under her shirt, pushed her bra up over her left breast, and placed his hand on C.C.'s breast.

10. At this point, Respondent established a physician/patient relationship with Ms. C.C., hereinafter referred to as "Patient C.C."

11. Respondent indicated that he could not feel her heartbeat and asked Patient C.C. to move behind a curtain and bend over so that he could feel for her heartbeat again. Patient C.C. refused.

12. Respondent failed to prepare a medical record of his examination of Patient C.C.

13. A reasonably prudent similar physician would have performed a full physical exam on Patient C.C. before rendering a diagnosis; performed a cardiac exam on Patient C.C. before diagnosing her with a cardiac-related condition; and/or assessed the heartbeat by auscultation (with a stethoscope).

14. A reasonable and prudent similar physician would not have used his hand on the patient's bare breast to perform this part of the

examination; and/or would not have attempted to continue the improper examination behind a curtain.

15. A reasonably prudent similar physician would have kept records of the evaluation of Patient C.C., including the date of the evaluation, a preliminary history, and/or a diagnosis and treatment plan.

**COUNT ONE – SEXUAL MISCONDUCT IN
REGARD TO PATIENT C.C.**

16. Petitioner realleges and incorporates paragraphs one (1) through fifteen (15), as if fully set forth herein.

17. Section 458.331(1)(j), Florida Statutes (1999), provides that exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity constitutes grounds for disciplinary action by the Board of Medicine.

18. Respondent committed sexual misconduct in one or more of the following ways: a) by improperly assessing Patient C.C.'s heart rate by placing his hand on her bare breast; b) by requesting Patient C.C. to step behind a curtain so that he could continue the improper examination.

19. Based on the foregoing, Respondent has violated Section 458.331(1)(j), Florida Statutes (1999), by exercising influence within a

patient-physician relationship for purposes of engaging a patient in sexual activity.

**COUNT TWO – FAILURE TO PRACTICE MEDICINE WITHIN THE
REQUIRED STANDARD IN REGARD TO PATIENT C.C.**

20. Petitioner realleges and incorporates paragraphs one (1) through fifteen (15), as if fully set forth herein.

21. Section 458.331(1)(t), Florida Statutes (1999), provides that failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonable prudent similar physician constitutes grounds for disciplinary action by the Board of Medicine.

22. Respondent practiced medicine below the acceptable standard of care in that he attempted to assess Patient C.C.'s heartbeat by feeling her breast instead of by the correct method of auscultation.

23. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (1999), by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonable prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT THREE – MEDICAL RECORDS VIOLATION
REGARDING PATIENT C.C

24. Petitioner realleges and incorporates paragraphs one (1) through fifteen (15), as if fully set forth herein.

25. Section 458.331(1)(m), Florida Statutes (1999), provides that failing to keep legible 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 constitutes grounds for disciplinary action by the Board of Medicine.

26. Respondent failed to keep adequate medical records that identify the licensed physician and that justify the course and scope of treatment of the patient in that Respondent failed to prepare a medical record documenting his assessment, examination and diagnosis of Patient C.C.

27. Based on the foregoing allegations, Respondent has violated Section 458.331(1)(m), Florida Statutes, by failing to keep legible 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.

FACTS RELATING TO PATIENT L.W.

28. On or about July 21, 2000, Patient L.W. presented for the first time to Respondent for treatment for drug addiction.

29. Respondent showed Patient L.W. to his office and talked to her about her addiction for approximately twenty (20) minutes. Respondent then provided to Patient L.W. a prescription for Librium and advised her to make a follow-up appointment.

30. Librium is a Schedule IV controlled substance indicated for the management of anxiety disorders or for the short-term relief of anxiety symptoms, withdrawal symptoms of acute alcoholism, and preoperative apprehension-and anxiety.

31. On July 21, 2000, Respondent did not obtain a complete patient history, did not physically examine Patient L.W. and did not perform any diagnostic tests on Patient L.W.

32. On or about July 28, 2000, Patient L.W. returned for a second appointment with Respondent. Patient L.W. was again shown to Respondent's office to discuss her addiction and treatment. Respondent did not obtain a patient history, did not physically examine Patient L.W., and did not perform any diagnostic tests. At the conclusion of the appointment, Respondent provided Patient L.W. prescriptions for Librium, Neurontin, and Celexa.

33. Neurontin is a legend drug indicated as adjunctive therapy in the treatment of partial seizures with and without secondary generalization in adults with epilepsy.

34. Celexa, also a legend drug, is used for treatment of depression.

35. On or about August 30, 2000, Patient L.W. returned to Respondent for a third visit. During this visit, Respondent asked Patient L.W. about her heart rate and indicated that he wished to perform a heart examination.

36. Respondent told Patient L.W. that he had forgotten to bring his stethoscope; he directed her to sit next to him and remove her bra so that he could manually assess her heart rate. Respondent placed his hand on Patient L.W.'s breast, moved his hand around on her breast and nipple area, and made moaning noises.

37. Again, Respondent obtained no history, performed no additional examination, and performed no diagnostic tests.

38. At the conclusion of the appointment, Respondent provided to Patient L.W. prescriptions for Librium and Celexa and told her that her future visits would be half price.

39. A reasonably prudent similar physician would have performed a general physical examination and laboratory testing before prescribing any anti-anxiety medication to a substance abuse patient.

40. A reasonably prudent similar physician would have assessed the heart rate using a stethoscope rather than by hand and would not hold the breast or touch the nipple area during an assessment of the patient's heart.

**COUNT FOUR - SEXUAL MISCONDUCT IN REGARD
TO PATIENT L.W.**

41. Petitioner realleges and incorporates paragraphs one (1) through four (4) and paragraphs twenty-eight (28) through forty (40), as if fully set forth herein.

42. Section 458.331(1)(j), Florida Statutes (2000), provides that exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity constitutes grounds for disciplinary action by the Board of Medicine.

43. Respondent committed sexual misconduct in one or more of the following ways: a) by asking Patient L.W. to partially disrobe (remove her bra) in his office when the examination did not require the patient to disrobe; b) by assessing Patient L.W.'s heart rate by placing his hand on her bare breast; c) by holding Patient L.W.'s breast and touching her nipple area during the exam; d) by offering half-price visits to Patient L.W. after conducting the inappropriate examination.

44. Based on the foregoing, Respondent has violated Section 458.331(1)(j), Florida Statutes (2000), by exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity.

**COUNT FIVE – FAILURE TO PRACTICE MEDICINE WITHIN THE
REQUIRED STANDARD IN REGARD TO PATIENT L.W.**

45. Petitioner realleges and incorporates paragraphs one (1) through four (4) and paragraphs twenty-eight (28) through forty (40), as if fully set forth herein.

46. Section 458.331(1)(t), Florida Statutes (2000), provides that failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonable prudent similar physician constitutes grounds for disciplinary action by the Board of Medicine

47. Respondent practiced medicine below the acceptable standard of care in one or more of the following ways: a) by failing to perform a complete patient history on the initial visit; b) by failing perform a general physical examination; c) by failing to order any laboratory tests before prescribing anti-anxiety medication to a substance abuse patient.

48. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2000), by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonable prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT SIX – MEDICAL RECORDS VIOLATION
REGARDING PATIENT L.W.

49. Petitioner realleges and incorporates paragraphs one (1) through four (4) and paragraphs twenty-eight (28) through forty (40), as if fully set forth herein.

50. Section 458.331(1)(m), Florida Statutes (2000), provides that failing to keep legible medical records 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 constitutes grounds for disciplinary action by the Board of Medicine.

51. Respondent failed to keep adequate written medical records in one or more of the following ways: a) by failing to adequately document an initial examination of Patient L.W.; b) by failing to document a complete history; c) by failing to justify the prescribing of an anti-anxiety drug to a substance abuse patient without appropriate physical examination and/or laboratory testing.

52. Based on the foregoing, Respondent has violated Section 458.331(1)(m), Florida Statutes, by failing to keep written medical records 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.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 9th day of May, 2006.

M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary, Department of Health

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Theresa McKown*
DATE 5-9-06

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PCP: May 10, 2002
PCP Members: Ashkar, El Sanadi and Beebe

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.