

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2002-12522

WEST MAGNON, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Medicine against Respondent, West Magnon, 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 3991.

3. Respondent's address of record is 2010 59th Street West, Suite 5700, Bradenton, Florida 34209-4690.

4. The Professional Resource Network ("PRN"), formerly the Physicians Recovery Network, is the impaired practitioners program for the Board of Medicine, pursuant to Section 456.076, Florida Statutes. PRN is an independent program that monitors the evaluation, care, and treatment of impaired healthcare professionals. PRN oversees random drug screens and provides for the exchange of information between

treatment providers and the Department for the protection of the public.

5. Raymond M. Pomm, M.D., a Board-certified psychiatrist and addictionologist, is the Medical Director of PRN and is charged with responsibility for the oversight of the program and documentation of compliance and noncompliance with PRN monitoring contracts.

6. In or about January 1992, Respondent was admitted into South Miami Hospital to undergo residential treatment of his chemical dependence. While at South Miami Hospital, Respondent reported having a history of extensive alcohol use, including morning-drinking and multiple black-out spells.

7. During the course of his treatment at South Miami Hospital, Respondent tested positive for benzodiazepine during a drug screen that was administered by the hospital. Respondent remained in treatment at South Miami Hospital until about February of 1992, at which time he was discharged with a diagnosis of alcohol dependence.

8. Benzodiazepine is a substance that is found in several drugs that are utilized to treat anxiety disorders and the symptoms of anxiety. Among the drugs that contain benzodiazepine are lorazepam, oxazepam, diazepam, and chlordiazepoxide; each of these drugs is a schedule I/ controlled substance listed in Chapter 893, Florida Statutes. Drugs containing benzodiazepine are frequently used to treat the symptoms associated with alcohol withdrawal because the pharmacologic effects of benzodiazepine are similar to those of alcohol. Many persons who misuse benzodiazepine have been or are heavy users of alcohol.

9. In or about February of 1992, Respondent was discharged from South

Miami Hospital with a diagnosis of alcohol dependence, and admitted to the Talbot Recovery Center in Atlanta, Georgia ("Talbot Center") for extended residential treatment.

10. On or about June 27, 1992, Respondent was discharged from the Talbot Center with a final diagnosis of alcohol dependence, organic brain syndrome, and history of major depression.

11. Simultaneous with his discharge from the Talbot Center, Respondent established a five-year monitoring contract with PRN, which he successfully completed in or about June 1997.

12. In or about March of 2002, PRN asked Respondent to submit to a urine drug screen following its receipt of a report from a local pharmacist concerning several suspicious prescriptions that were issued by Respondent.

13. On or about March 8, 2002, Respondent underwent the drug screen and tested positive for benzodiazepine.

14. Based on its concerns that Respondent might have relapsed into chemical dependence, on or about March 26, 2002, PRN referred Respondent to Kenneth Thompson, M.D., a Board-approved treatment provider, for an evaluation. During the evaluation, Dr. Thompson noted that the Respondent had disorganized thinking, was in denial about his prior alcohol problems, and had admittedly been self-medicating with mood altering chemicals.

15. As part of his evaluation, Respondent underwent another urine drug screen, which returned a second positive result for benzodiazepines. Dr. Thompson diagnosed Respondent with alcohol dependence, benzodiazepine abuse, and major

depression. However, Dr. Thompson was unable to determine whether Respondent was safe to practice with reasonable skill and safety and, therefore, recommended that Respondent undergo a comprehensive inpatient assessment for that purpose.

16. On or about March 27, 2002, Respondent contracted with an independent laboratory to obtain a third urine drug screen. This drug screen did not indicate the presence of any drugs of abuse in Respondent's urine. However, as specifically noted in the laboratory's report, the urine sample obtained from Respondent for the drug screen did not go through the laboratory's chain of custody. As also indicated in the report, the results of Respondent's drug screen were intended by the laboratory to be used only for medical purposes, not for any legal or evaluative purposes.

17. Pursuant to Dr. Thompson's recommendation, on or about March 28, 2002, PRN provided Respondent with a list of inpatient evaluation facilities to choose from and requested that he enter one of the facilities.

18. In a letter dated April 8, 2002, Respondent advised PRN that he would not agree to undergo an inpatient evaluation.

19. On or about April 17, 2002, PRN gave Respondent the opportunity to undergo a second outpatient evaluation in lieu of an inpatient evaluation. Respondent refused to undergo this second outpatient evaluation also.

20. In or about June 2002, Respondent provided the Department with the written results of two mental evaluations, which he had undergone earlier that month. The first of these was a psychological assessment that was performed by Robert J. Greene, Ph.D. The second evaluation was a psychiatric assessment that was performed by Richard L. James, M.D. Neither Mr. Greene nor Dr. James has been approved by the

Board of Medicine to perform mental evaluations on physicians. On or about July 17, 2002, Dr. Pomm reviewed the evaluation reports submitted by Respondent and advised the Department that both of the evaluations were incomplete and invalid. The Department offered Respondent another opportunity to voluntarily undergo an evaluation by a Board-approved evaluator. The Respondent refused to undergo the evaluation initially, but later agreed to it.

21. On or about March 10, 2003, Respondent was evaluated by Martha Brown, M.D., a Board-approved evaluator. During his evaluation, Respondent informed Dr. Brown of his history of alcohol and benzodiazepine use and advised her that he suffered from bipolar disorder. At the conclusion of this evaluation, Dr. Brown opined that Respondent was not capable of practicing medicine with reasonable skill and safety unless he was being monitored by PRN. In particular, Dr. Brown was concerned that Respondent had minimized his past drug and alcohol history and that he was not participating in any type of recovery program, despite his recent positive drug screens. Dr. Brown gave Respondent a diagnosis of alcohol dependency, benzodiazepine abuse versus dependency, major depressive disorder in full remission, and bipolar disorder by patient's history.

22. On or about April 10, 2003, PRN provided Respondent with a monitoring contract and requested that he execute it. Respondent has refused to execute a monitoring contract with PRN and has refused to undergo comprehensive inpatient assessment.

23. Section 458.331(1)(s), Florida Statutes, sets forth grounds for disciplinary action by the Board of Medicine and provides that a physician may be subject to discipline

for being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

24. Respondent is unable to practice medicine with reasonable skill and safety to patients due to one or more of the following reasons:

- a. Respondent's relapse as evidenced by benzodiazepine positive drug screens in March of 2002;
- b. Respondent's untreated addiction disorder;
- c. Respondent's possible cognitive function problems;
- d. Respondent's refusal to undergo a comprehensive inpatient assessment;
- e. Respondent's denial and minimization of his prior alcohol and benzodiazepine problems; and/or
- f. Respondent's refusal to submit to monitoring by PRN.

25. Based on the foregoing, Respondent has violated Section 458.331(1)(s), Florida Statutes, by being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

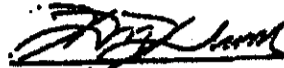
WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the 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 15th day of May, 2003.

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

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Nick R. Kenon
DATE 5/19/03



Kim M. Kluck
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
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(850) 488-4518
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knk

Reviewed and approved by: DKC (Initials) 4/30/03 (date)

PCP: May 9, 2003

PCP Members: Gustavo Leon, M.D. (Chairperson), Nabil El Sanadi, M.D., and John Beebe

Magnon, DOH Case No. 2002-12522

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

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH CASE NUMBER 2002-12522

WEST MAGNON, M.D.,

Respondent.

CONSENT AGREEMENT

West Magnon, 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 3991.
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 one thousand dollars (\$1,000.00) 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 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 SIXTY (60) 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 ten thousand six hundred

seventy-six dollars and eighteen cents

(\$10,676.18). The costs 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 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 SIXTY (60) 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).**

4. **SUSPENSION.** Respondent's license to practice medicine shall be suspended until such time as Respondent can appear before the Board and demonstrate the ability to practice medicine with reasonable skill and safety. The suspension shall not relieve Respondent of the responsibility to renew his license at the end of each licensure period.

5. **PROBATION:** Upon reinstatement, if any, licensure long with terms and conditions to be set by the Board at that time. One of the conditions of reinstatement shall be a continued monitoring contract with PRN and

compliance with any and all terms of said contract (executed by Respondent on June 18, 2003).

6. **MITIGATING FACTORS:** In arriving at this disposition the parties considered the following mitigating factors: Respondent has no prior discipline with the Board.

STANDARD PROVISIONS

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 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.

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. 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.

C. 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.

D. 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.

E. PROBATION TERMS. If probation was imposed by the Final Order of the Board, the following provisions are applicable.

1. CONTINUITY OF PRACTICE

a. TOLLING PROVISIONS. In the event the Respondent leaves the State of Florida for a period of thirty days or more or otherwise does not engage in the active practice of medicine in the State of Florida, then certain provisions of Respondent's probation (and only those provisions of the probation) shall be tolled as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the State of Florida:

i. The time period of probation shall be tolled.

ii. The provisions regarding preparation of investigative reports detailing compliance with this Stipulation shall be tolled.

b. ACTIVE PRACTICE. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Probation Committee may require Respondent to appear before the Probation Committee and demonstrate his ability to practice medicine with skill and safety

to patients prior to resuming the practice of medicine in this State.

SIGNED this 18 day of JUNE

2003.

West B. Magnon

WEST MAGNON, M.D.

Before me, personally appeared West B. Magnon, MD whose identity is known to me by personally, driver's license (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 18th day of June, 2003.

Christina A. Roboe

NOTARY PUBLIC
Comm. No. 921891
My Commission Expires: April 6, 2004

APPROVED this 30th day of June, 2003.

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

Wings S. Benton
By: Wings S. Benton

Deputy General Counsel
Department of Health

Kim M. Kluck
Assistant General Counsel

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Prosecution Services Unit
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(850) 414-8126
(850)414-1989

Erica J. Rowe

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2002-12522
LICENSE NO.: ME0003991

WEST MAGNON, M.D.,

Respondent.

FINAL ORDER

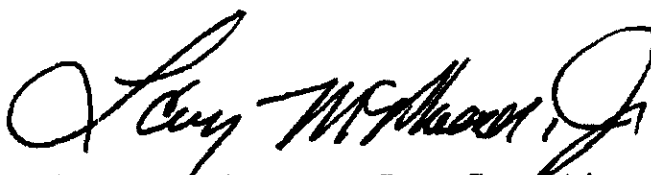
THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on August 1, 2003, in Orlando, Florida, for the purpose of considering a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Consent Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the Consent Agreement as submitted is hereby approved and adopted in toto and incorporated herein by reference. 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 21 day of OCTOBER,
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 WEST
MAGNON, M.D., 2010 59th Street West, Bradendon, Florida 34209-
4690; to Carl J. Robie, Esquire, 1800 Second Street, Suite 757,
Sarasota, Florida 34236-5952; and by interoffice delivery to
Ephraim Livingston and Pamela Page, Department of Health, 4052
Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this
22nd day of October, 2003.

