

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

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**PETITIONER,**

**v.**

**CASE NO. 2004-26904**

**JAMES HERIVAUX, M.D.,**

**RESPONDENT.**

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**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, James HerivauX, 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 0075322.
3. Respondent's address of record is 62 Old Sylvan Lake Road, Hopewell Junction, New York 12533.

4. The State of New York Department of Health ("SNYDH") is the licensing authority regulating the practice of medicine in the State of New York.

5. On or about June 19, 2004, the SNYDH entered a Consent Order, adopting a Consent Agreement and Order, which reprimanded and censured Respondent's license; permanently precluded Respondent from seeking reimbursement under no-fault and workers' compensation insurance, either directly or indirectly through a business; placed Respondent's license on probation for a period of five (5) years with conditions and imposed a forty thousand (\$40,000.00) dollar fine.

6. The SNYDH imposed discipline based upon allegations that Respondent provided psychotherapy that could either not be medically justified and/or failed to document adequate justification for the treatment of two (2) different patients.

7. The Consent Order entered by the SNYDH constitutes disciplinary action against the Respondent's license to practice medicine in the State of New York.

8. Section 458.331(1)(b), Florida Statutes (2003), provides that having a license or the authority to practice medicine revoked, suspended,

or otherwise acted against by licensing authority of any jurisdiction constitutes grounds for disciplinary action by the Board of Medicine.

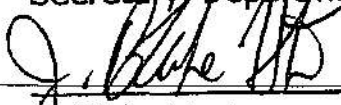
9. The June 19, 2004 Consent Order issued by the SNYDH, which censured and reprimanded Respondent's license to practice medicine, ordered Respondent to pay a fine, placed Respondent's license on probation with conditions and imposed permanent restrictions on Respondent's license constitutes disciplinary action against Respondent's New York medical license.

10. Based on the foregoing, Respondent has violated Section 458.331(1)(b), Florida Statutes (2003), by having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction.

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 14<sup>th</sup> day of February, 2005.

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



J. Blake Hunter  
Assistant General Counsel  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, FL 32399-3265  
Florida Bar No. 0570788  
(850) 414-8126  
(850) 414-1989 FAX

FILED  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK Neethan Coleman  
DATE 2/15/05

/jbh

PCP: February 11, 2005

PCP Members: Fuad Ashkar, M.D. (Chairperson), Mark Avila, M.D., and John Beebe

Reviewed and approved by: pej (initials) 12/21/04 (date)

### 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 James Herivaux, M.D.  
Case No. 2004-26904  
Page 4

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**Respondent.**

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**CONSENT AGREEMENT**

JAMES HERIVAUX, 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 75322.

2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with a violation of Chapter 458, Florida Statutes, and the rules adopted 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 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 Complaint, if proven, would constitute a violation 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.

**STIPULATED DISPOSITION**

1. **Letter Of Concern** - Respondent shall receive a Letter of Concern from the Board of Medicine.

2. **Fine** - The Board of Medicine shall impose an administrative fine of five thousand dollars (\$5,000.00) 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) 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 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 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 are not to exceed one thousand dollars (\$1,000.00). 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



entry 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 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 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. Suspension Language- Respondent's license shall be indefinitely suspended until such time as Respondent provides the Board with evidence of Respondent's good standing in any and all jurisdictions in which Respondent is licensed to practice and Respondent appears before the Board of Medicine and demonstrates that his license is in good standing and unencumbered.

## STANDARD PROVISIONS

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

6. **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.

7. **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.

8. **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, 458

and 893 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

9. **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.

10. **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.

11. **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 Administrative Complaint attached as Exhibit A.

12. **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

13. **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 \_\_\_\_\_ day of \_\_\_\_\_, 2005.

*[Handwritten Signature]*

\_\_\_\_\_  
JAMES HERIVAUX, M.D.

Before me, personally appeared JAMES HERIVAUX,  
whose identity is known to me by Driver's License  
(type of identification) and who, under oath, acknowledges that his/her  
signature appears above.

Sworn to and subscribed before me this 11 day of  
March, 2005.

*[Handwritten Signature]*  
NOTARY PUBLIC

My Commission Expires:

FLENIIDA M. ALVAREZ  
Notary Public, State of New York  
No. 01AL6082497  
Qualified in Kings County  
Commission Expires Oct. 28, 2006

APPROVED this 11<sup>th</sup> day of April, 2005.

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

*[Handwritten Signature]*  
By: Wings S. Benton  
Deputy General Counsel  
Department of Health

J. Blake Hunter  
Assistant General Counsel  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, FL 32399-3265  
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STATE OF FLORIDA  
BOARD OF MEDICINE

By: Heather Coleman  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

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vs.

DOH CASE NO.: 2004-26904

LICENSE NO.: ME0075322

JAMES HERIVAUX, M.D.,

Respondent.

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FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on June 3, 2005, 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 be and is hereby approved and adopted in toto and incorporated herein by reference with the following clarification: The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$320.83.

Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Consent Agreement as clarified above.

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

DONE AND ORDERED this 14 day of JUNE,

2005.

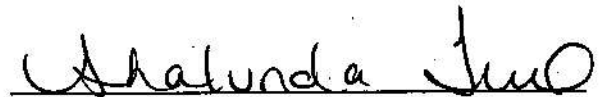
BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director  
for Laurie K. Davies, 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 JAMES HERIVAUX, M.D., 62 Old Sylvan Lake Road, Hopewell Junction, New York 12533; and by interoffice delivery to Denise O'Brien and Dana Baird, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 16 day of June, 2005.



**Deputy Agency Clerk**