

STATE OF FLORIDA
DEPARTMENT OF HEALTH

MAR 13 2006

DEPARTMENT OF HEALTH,

PETITIONER,

v.

DOH CASE NO. 2005-65432

JAMES HERIVAUX, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW Petitioner, Department of Health, and files this Administrative Complaint before the Board of Medicine against Respondent James Herivaux, M.D., and alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.
2. Respondent is and has been at all times material hereto a licensed physician in the state of Florida, having been issued license number ME 75322.
3. Respondent's address of record is 62 Old Sylvan Lake Road, Hopewell Junction, NY 12533.
4. On June 16, 2005, a Final Order (June Order) was filed by the Florida Board of Medicine in the matter of the Department of Health vs. James Herivaux, M.D., Case number 2004-26904.

5. That June Order approved, adopted in toto, and incorporated by reference a Consent Agreement submitted by the parties. The terms of the Consent Agreement included: the Board issued a Letter of Concern to Respondent; Respondent shall not in the future violate Chapters 456, 458 and 893, Florida Statutes or the rules promulgated thereto; Respondent shall pay an administrative fine of FIVE THOUSAND DOLLARS (\$5,000.00) within thirty (30) days of its imposition by Final Order of the Board; Respondent shall reimburse the Department for administrative costs in the amount of THREE HUNDRED TWENTY DOLLARS AND EIGHTY THREE CENTS (\$320.83) within thirty (30) days of their imposition by Final Order of the Board; Respondent's license to practice medicine shall be suspended until Respondent provides the Board with evidence of Respondent's good standing in any and all jurisdiction in which he is licensed to practice and Respondent appears before the Board and demonstrates that his license is in good standing and unencumbered.

6. To date Respondent has failed to pay the administrative fine of FIVE THOUSAND DOLLARS (\$5,000.00).

7. To date Respondent has failed to pay the administrative costs of THREE HUNDRED TWENTY DOLLARS AND EIGHTY THREE CENTS (\$320.83).

COUNT I

8. Petitioner realleges and incorporates paragraphs one (1) through seven (7) as if fully set forth herein this Count One.

9. Section 458.331(1)(g), Florida Statutes (2005), provides for discipline by the Board of Medicine to any licensee who fails to perform a legal or statutory duty placed upon a licensee.

10. Respondent, by failing to pay the administrative fine and costs imposed through a lawful order of the Board has failed to perform a legal or statutory obligation placed upon his license.

11. Based on the foregoing, Respondent violated Section 458.331(1)(g), Florida Statutes (2005), by failing to perform a legal or statutory duty placed upon a licensee.

COUNT II

12. Petitioner realleges and incorporates paragraphs one (1) through seven (7) as if fully set forth herein this Count Two.

13. Section 458.331(1)(x), Florida Statutes (2001), provides that violating a lawful order of the board or department previously entered in a disciplinary hearing constitutes grounds for disciplinary action by the Board of Medicine.

14. Respondent failed to pay the administrative fine of FIVE THOUSAND DOLLAR (\$5,000.00) fine due within thirty days of the date of filing of the Final Order in case number 2004-26904, which was filed on June 16, 2005.

15. Respondent failed to pay the three hundred twenty dollars and eighty three cents (\$320.83) in costs within thirty days of the filing of the Final Order entered in case number 2004-26904, which was filed on June 16, 2005.

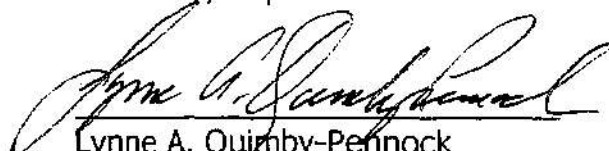
25. Based on the foregoing, Respondent violated Section 458.331(1)(x), Florida Statutes (2005), by violating a lawful order of the board or department previously entered in a disciplinary hearing.

WHEREFORE, 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 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 13th day of March, 2006.

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

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Sheresa McKinnon
DATE 3-13-06


Lynne A. Quimby-Pennock
Florida Attorney Number 0394572
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Telephone 850.245.4640 ext. 8144
Facsimile 850.245.4681

LAQP

PCP: 03.10.06

PCP Members: Ashkar, Avila, Beebe

DOH v. JAMES HERIVAUX, M.D., DOH CASE NO. 2005-65432

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.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2005-65432

JAMES HERIVAUX, M.D.

Respondent.

SETTLEMENT 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 violations 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 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.

STIPULATED DISPOSITION

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

2. **Suspension Language:** Respondent's license shall be suspended until such time as Respondent complies with the prior Final Order, issued on June 16, 2005, in the matter of the Department of Health vs. James Herivaux, M.D., Case number 2004-26904.

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 includes but shall not exceed ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00). 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 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 LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT 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. **Laws And Rules Course** - Respondent shall complete the Laws and Rules Course, administered by the Florida Medical Association, within one (1) year of the date of filing of the Final Order of the Board. 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 education course within one (1) year of the date of filing of the Final Order incorporating this Agreement. **All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was previously provided during the course of any audit or discussion with counsel for the Department.** These hours shall be in addition to those required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education courses shall consist of a live, lecture format.

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.

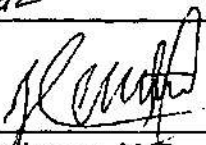
10. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction 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 17 day of APRIL, 2006.



James Herivaux, M.D.

STATE OF N.Y.
COUNTY OF KINGS ss:

Before me, personally appeared James Herivaux, whose identity is known to me or by NY DRIVERS LIC #85851257 (type of identification) and who, under oath, acknowledges that his appears above.

Sworn to and subscribed before me this 17 day of April, 2006.

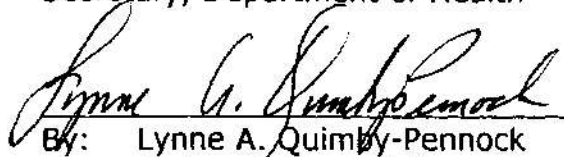
ANDREW VARELA
NOTARY PUBLIC, State of New York
No. 244087050
Qualified in Richmond County
Certified in Kings County
Comm. Expires Jan. 31, 2008

NOTARY PUBLIC

My Commission Expires:

APPROVED this 21 day of April, 2006.

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



By: Lynne A. Quimby-Pennock
Assistant General Counsel
Department of Health

AA

Final Order No. DOH-06-1034-S-MOA
FILED DATE - 6-20-06
Department of Health
By: Theresa McKown
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2005-65432
LICENSE NO.: ME0075322

JAMES HERIVAUX, 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 June 2, 2006, in Orlando, 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,

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 following clarification:


The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$289.23.

Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement 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 19 day of JUNE, 2006.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for Mammen P. Zachariah, 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 John Terrel and Dana Baird, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 20th day of June, 2006.



Deputy Agency Clerk