

By:

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STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2006-24580

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 1, 2007, in Tampa, 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:

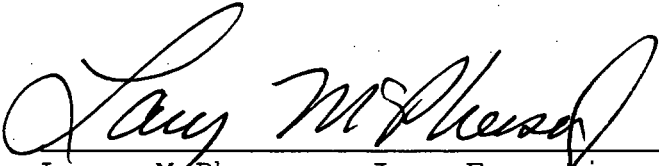
The costs set forth in Paragraph 4 of the Stipulated Disposition shall be set at \$1,306.94.

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 26 day of JUNE, 2007.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for H. FRANK FARMER, JR., 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 Ephraim Livingston, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 27 day of June, 2007.



Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2006-24580

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

2. **Suspension Language:** Respondent's license shall be suspended until such time as Respondent complies with prior Final Order, issued June 16, 2006, in the matter of Department of Health v. James Herivaux, M.D., Case Number 2004-26904, and Final Order, issued June 20, 2006, in the matter of Department of Health v. James Herivaux, M.D., Case Number 2005-65432.

3. **Fine** - The Board of Medicine shall impose an administrative fine of ten thousand dollars (\$10,000.00) 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 (30) days from the date of filing of the Final Order in this cause. 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 LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS 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 FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. **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 prosecution 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 eight hundred eighty dollars and six cents (\$880.06) but shall not exceed one thousand three hundred eighty dollars and six cents (\$1,380.06). 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 (30) days 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.

STANDARD PROVISIONS

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

2. **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.

3. **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.

4. **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.

5. **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.

6. **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.

7. **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.

8. **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.

9. **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 3rd day of April, 2007.

[Signature]
James Herivaux, M.D.

Before me, personally appeared James Herivaux, whose identity is known to me by drivers license # 858512525 (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 3 day of April, 2007.

SIMONE LEVY
Notary Public, State of New York
No. 011F6044753
Qualified in Kings County
Commission Expires: April 21, 2010

[Signature]
NOTARY PUBLIC

My Commission Expires:

APPROVED this 2nd day of May, 2007.

Ana M. Viamonte Ros, M.D., M.P.H.
Secretary, Department of Health

[Signature]
By: Staci Braswell
Assistant General Counsel
Department of Health

SNB:gnt

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO.: 2006-24580

JAMES HERIVAUX, 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 the 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 75322.

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

4. On or about June 16, 2005, the Board of Medicine filed a final order in case number 2004-26904.

5. The final order filed on or about June 16, 2005, 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).

8. On or about June 20, 2006, the Board of Medicine filed a final order in case number 2005-65432.

9. The final order filed on or about June 20, 2006, approved, adopted in toto, and incorporated by reference a Consent Agreement submitted by the parties. The terms of the Consent Agreement included: the Board shall reprimand the license of Respondent; Suspension of Respondent's licenses until such time as Respondent complies with the prior Final Order, issued on June 16, 2005, in case number 2004-26904; Respondent shall not violate Chapters 456, 458 and 893, Florida Statutes, or the rules promulgated thereto; Respondent shall reimburse the Department for administrative costs in the amount of two hundred eighty-nine dollars and twenty-three cents (\$289.23) within thirty (30) days of imposition by Final Order of the Board; 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.

10. To date, Respondent has failed to pay the administrative costs of two hundred eighty-nine dollars and twenty-three cents (\$289.23).

COUNT ONE

11. Petitioner realleges and incorporates paragraphs one (1) through ten (10) as if fully set forth herein.

12. Section 458.331(1)(x), Florida Statutes (2005), provides that violating a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department constitutes grounds for disciplinary action by the Board of Medicine.

13. Respondent failed to pay the administrative fine of five thousand dollars (\$5,000.00) within thirty (30) days of the date of filing of the Final Order in case number 2004-26904, which was filed on June 16, 2005.

14. Respondent failed to pay the administrative costs of three hundred twenty dollars and eighty-three cents (\$320.83) within thirty (30) days of the date of filing of the Final Order in case number 2004-26904, which was filed on June 16, 2005.

15. Based on the foregoing, Respondent has violated Section 458.331(1)(x), Florida Statutes (2005), by violating a lawful order of the Board of Medicine.

COUNT TWO

16. Petitioner realleges and incorporates paragraphs one (1) through ten (10) as if fully set forth herein.

17. Section 458.331(1)(x), Florida Statutes (2006), provides that violating a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department constitutes grounds for disciplinary action by the Board of Medicine.

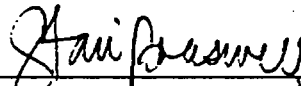
18. Respondent failed to pay the administrative costs of two hundred eighty-nine dollars and twenty-three cents (\$289.23) within thirty (30) days of the date of filing of the Final Order in case number 2005-65432, which was filed on June 20, 2006.

19. Based on the foregoing, Respondent has violated Section 458.331(1)(x), Florida Statutes (2006), by violating a lawful order of the Board of Medicine.

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 14th day of March 2007.

Ana M. Viamonte Ros, M.D., M.P.H.
Secretary, Department of Health



Staci Braswell
Assistant General Counsel
DOH Prosecution Services Unit
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Tallahassee, FL 32399-3265
Florida Bar #28845
(850) 245-4640 x8187
(850) 245-4681 Fax

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *[Handwritten Signature]*
DATE 3/13/07

PCP: March 9, 2007
PCP Members: Ashkar, Barrau, Beebe

7072

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 456.0172(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 any other discipline imposed.