

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

CASE NO. 0061481

v.

IRVING ROYCE, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW, the Petitioner, Department of Professional Regulation, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against IRVING ROYCE, M.D., hereinafter referred to as "Respondent," and alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.30, Florida Statutes, Chapter 435, 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 NE 0010545. Respondent's last known address is 17122 West Dixie Highway, North Miami Beach, Florida 33160-4615.

3. At all times material hereto Respondent was a dispensing practitioner who presented himself as a practicing psychiatrist.

4. From on or about October 2, 1984, to on or about July 8, 1985, Respondent provided medical care and treatment to Patient #1.

5. Patient #1 first presented to Respondent's office on or about October 2, 1984, complaining of a weight loss problem, nervousness, and agitated depression. Patient #1's boyfriend had committed suicide, and Patient #1 had recently experienced the death of her mother.

6. Respondent diagnosed Patient #1 as suffering from "depressive reaction" and alcoholism, but stated that Patient #1 did not have an abusive personality.

7. On or about October 2, 1984, Respondent began treating Patient #1 with Lasix. 5 cc and Vitamin B-12.

8. Lasix is a legend drug as defined by Section 465.003(7), Florida Statutes.

9. On or about October 9, 1984, Patient #1 presented to Respondent's office complaining of being irritable at work. Patient #1 also complained of an itching sensation in the vulva and skin areas.

10. On or about October 9, 1984, Respondent prescribed Lasix 1 cc, Vitamin B-12, Plegine #40 Sinequan 100 mg. (at bedtime) and Valium 10 mg. (as needed).

11. Plegine is a legend drug as defined by Section 465.003(7), Florida Statutes, which contains Phendimetrazine, a controlled substance listed in Schedule III of Chapter 893, Florida Statutes.

12. Sinequan is a legend drug as defined by Section 465.003(7), Florida Statutes.

13. Valium is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains Diazepam, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

14. Plegine is generally contraindicated in highly nervous or agitated patients, patients with a history of drug abuse, and in patients taking other central nervous system stimulants.

15. On or about October 16, 1984, Patient #1 was seen in Respondent's office complaining of feelings of panic, dizziness and weakness. Respondent prescribed Lasix 5 mg., Vitamin B-12, Inderal 80 mg. (one before work), Didrex 50 mg. (13 times a day) and Valium 10 mg.

16. Inderal is a legend drug as defined by Section 465.003(7), Florida Statutes.

17. Didrex is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains Benzodiazepine, a controlled substance listed in Schedule III of Chapter 893, Florida Statutes.

18. Didrex is sympathomimetic amine agent and a Central Nervous System (CNS) stimulant.

19. Concomitant use of Didrex in a patient receiving Plegine is contraindicated.

20. On or about October 23, 1984, Patient #1 presented to Respondent's office to discuss her premonition that she was going to die sometime between the periods of November 13, 1984, and December 31, 1984. Respondent indicated in his records that

Patient #1 tends to "drink to the point of oblivion." Respondent prescribed Valium 10 mg. and Plegine #30 (1 1/2 - 2 before meals).

21. On or about October 30, 1984, Patient #1 presented to Respondent's office complaining that she was depressed. Respondent prescribed Plegine #30, Valium, and Inderal 80 mg.

22. On or about November 6, 1984, Patient #1 was seen in Respondent's office complaining of trouble sleeping. Respondent indicated in the medical record that Patient #1 had a rectal fissure, and that Patient #1 was experiencing pain. Respondent prescribed Darvocet N-100, Didrex 50 mg., Valium 10 mg., and Plegine #30.

23. Darvocet is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains Propoxyphene, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

✓24. On or about November 10, 1984, Patient #1 presented to Respondent's office complaining that she was very depressed. Respondent prescribed Ketalar (Ketamine) 75 mg. intravenous (IV) and Brevital 1 cc.

25. Ketalar (Ketamine) is a legend drug as defined by Section 465.003(7), Florida Statutes.

26. Ketalar (Ketamine) is a rapid acting anesthetic, which induces euphoria, confusional states, and hallucinations. Ketalar is indicated for use as an anesthetic agent. When Ketalar is used on an outpatient basis, the patient should not be

released until recovery from anesthesia is complete, and then should be accompanied by a responsible adult.

27. The use of Ketalar (Ketamine) in psychiatry is controversial, and limited. By the prevailing standards of medical practice in the community, the use of Ketalar for treatment of the psychiatric disorders reported for Patient #1 would constitute experimentation on a human subject.

28. Respondent failed to obtain full, informed, and written consent from Patient #1, prior to the treatment of Patient #1 with Ketalar.

29. Brevital is a legend drug as defined by Section 465.0039(7), Florida Statutes, and contains Methohexital, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

30. On or about November 13, 1984, Patient #1 arrived at Respondent's office for her therapy session. Respondent prescribed Elavil 10 mg. and Librium 10 mg.

31. Elavil is a legend drug as defined by Section 465.003(7), Florida Statutes.

32. Librium is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains chlorthalidone, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

33. On or about November 20, 1984, Patient #1 was seen in Respondent's office complaining that she was depressed. Respondent prescribed Xylocaine, Didrex 50 mg., Plegine #30, Elavil (2 at bedtime), Librium 10 mg., and Seconal 100 mg. IV.

34. Xylocaine is a legend drug as defined by Section 465.003(7), Florida Statutes.

35. Seconal is a legend drug as defined by Section 465.003(7), Florida Statutes, which contains Secobarbital, a controlled substance listed in Schedule II of Chapter 893, Florida Statutes.

36. On or about November 27, 1984, Patient #1 presented to Respondent's office. Respondent prescribed Valium 10 mg., Dixerax 50 mg., and Retalar 75 mg. IV.

37. On or about December 4, 1984, Patient #1 presented to Respondent's office, stating that she was having memories of psychic experiences. Respondent indicated in his medical notes that Patient #1 uses "coke," but not every day. Respondent's notes further indicated that Patient #1 was coughing profusely and experiencing pain. Respondent prescribed Retalar 75 mg. IV, Valium 10 mg., Sudafed 60 mg. and Brevital 2 cc.

38. On or about December 11, 1984, Patient #1 was seen in Respondent's office complaining of anal and vaginal pain. Respondent diagnosed Patient #1 as having a rectal fissure, and did not refer the patient to an appropriate physician for treatment.

39. On or about December 17, 1984, Respondent prescribed Retalar 80 mg. IV, Inderal 80 mg., Valium, 10 mg. and Hycodaphen (one every 6 hours) for Patient #1.

40. Hycodaphen is a legend drug as defined by Section 465.003(7), Florida Statutes, which contains Hydrocodone, a controlled substance listed in Schedule III of Chapter 893, Florida Statutes.

41. On or about December 13, 1984, Patient #1 was seen in Respondent's office complaining of pain in her anal region. Respondent prescribed Ketalar 1 cc IV and Gantrisin 500 mg.

42. Gantrisin is a legend drug as defined by Section 465.003(7), Florida Statutes.

43. On or about December 18, 1984, Patient #1 presented to Respondent's office, stating that she had been crying all morning. Respondent indicated that Patient #1 was experiencing nervous attacks. Respondent prescribed Inderal 80 mg. and Ketalar 80 mg. IV for Patient #1.

44. On or about December 24, 1984, Patient #1 presented to Respondent's office complaining of pain in her anal canal. Respondent indicated in the records that Patient #1 was able to numb the pain with a solution of "coke." Respondent prescribed Ketalar .08 cc IV and Percodan.

45. Percodan is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains Oxycodone, a controlled substance listed in Schedule II of Chapter 893, Florida Statutes.

46. On or about December 24, 1984, Patient #1 presented to Respondent's office complaining of anal pain. Respondent treated Patient #1 with Percocet #6. Respondent also prescribed Ketalar .08 cc IV and Darvocet N-100.

47. Percocet is a legend drug as defined by Section 465.003(7), Florida Statutes, which contains Oxycodone, a controlled substance found in Schedule II of Chapter 893, Florida Statutes.

48. On or about January 8, 1985, and on or about January 15, 1985, Respondent prescribed Ketalar 1 cc IV and Benadryl 1 cc IV. Respondent's medical records of Patient #1 do not list a reason for prescribing said drugs.

49. Benadryl is a legend drug as defined by Section 465.003(7), Florida Statutes.

50. On or about January 17, 1985, Patient #1 presented to Respondent's office complaining that she was very depressed because she had been neglected at work. Respondent prescribed Ketalar .08 cc IV.

51. On or about January 22, 1985, Patient #1 presented to Respondent's office complaining of pain in her abdomen and constant diarrhea. Respondent prescribed Ketalar 1 cc, Benadryl .04 cc, and for Patient #1's diarrhea Respondent prescribed Paregoric.

52. Paregoric is a legend drug as defined by Section 465.003(7), Florida Statutes, which contains Opium, a controlled substance listed in Schedule II of Chapter 893, Florida Statutes.

53. On or about January 25, 1985, Patient #1 was seen in Respondent's office complaining that she was having dreams about her boyfriend, who had committed suicide. Respondent prescribed Ketalar .08 cc IV.

54. On or about January 29, 1985, Patient #1 presented to Respondent's office with a rapid pulse and a shaky voice. Respondent prescribed Ketalar 1 cc IV and Benadryl.

55. On or about January 31, 1985, Respondent had Patient #1 undergo Electroconvulsive Therapy (ECT). Moreover, Respondent prescribed Atropine 1 cc, Plegine #42, and Brevital 4 cc.

56. ECT is a psychotherapeutic treatment used in patients with affective disorders. ECT involves the administration of an electric shock to an anesthetized patient.

57. On or about February 1, 1985, Patient #1 presented to Respondent's office. Respondent had Patient #1 undergo a second ECT. Respondent prescribed Atropine 1 cc, Elavil 10 mg. (one at bedtime), and Brevital 4 cc.

58. On or about February 5, 1985, Patient #1 was seen in Respondent's office complaining that she was upset and depressed because of an argument she had with a colleague at work. Patient #1 further indicated that she had no emotional reactions to men. Respondent prescribed Ketalar 75 mg.

59. On or about February 8, 1985, Patient #1 presented to Respondent's office. Respondent had Patient #1 undergo a third ECT. Respondent prescribed Atropine .06 cc and Brevital .04 cc.

60. On or about February 12, 1985, Patient #1 presented to Respondent's office to discuss her feelings of rejection and anger. Respondent prescribed Ketalar 100 mg., Ketalar .07 cc and Plegine 42 tablets.

61. On or about February 15, 1985, Respondent treated Patient #1 with a fourth ECT treatment. Moreover, Respondent prescribed Atropine .06 cc, Brevital .04 cc and Paragoric .04 oz.

62. On or about February 18, 1985, Patient #1 presented to Respondent's office in a depressed and agitated state. Respondent prescribed Katalar 75 mg. IV.

63. On or about February 19, 1985, Patient #1 was seen in Respondent's office, as she was still depressed. Respondent prescribed Katalar 75 mg. IV.

64. On or about February 22, 1985, Respondent saw Patient #1 in his office. Patient #1 indicated that she was feeling much better and not as depressed. Respondent had Patient #1 undergo a fifth ECT. Respondent prescribed Atropine 1 cc and Brevital 3 cc.

65. Patient #1 presented to Respondent's office for the second time on or about February 22, 1985. Respondent prescribed Katalar 75 mg. IV.

66. On or about February 26, 1985, Patient #1 presented to Respondent's office complaining that she had been feeling sexually inhibited. Respondent prescribed Plegine #21 and Katalar 75 mg. IV.

67. On or about March 1, 1985, Patient #1 was seen in Respondent's office. Patient #1 indicated she "felt funny" because she had accepted money from an older male friend. Respondent prescribed Katalar 75 mg. IV.

68. On or about March 5, 1985, Patient #1 presented to Respondent for psychiatric treatment. Respondent prescribed Ketalar 100 mg. IV.

69. On or about March 8, 1985, Patient #1 presented to Respondent's office. Respondent performed a sixth ECT on Patient #1. Respondent prescribed Ketalar 100 mg. IV, Brevital 3 cc and Atropine 1 cc.

70. On or about March 15, 1985, Patient #1 presented to Respondent's office for psychiatric care and treatment. Respondent performed a seventh ECT treatment on Patient #1.

71. A review of Respondent's records of Patient #1 indicates that for the ECT treatments listed in paragraphs fifty-five (55), fifty-six (56), fifty-seven (57), sixty (60), sixty-three (63), sixty-eight (68), and sixty-nine (69), Respondent failed to obtain a review of Patient #1's treatment record by one other physician not directly involved with Patient #1. Moreover, Respondent failed to document such agreement in Patient #1's treatment record, or to obtain the signature of the second physician.

72. Respondent had Patient #1 sign, with the Respondent witnessing the following:

Permission for Electro - shock treatments

I, (Patient #1), hereby give permission to Irving Royce, M.D., and his assistants to give me a series of electro - shock treatments, using Anectine, Brevital, Pentothal, and/or Altrophine and any related medication. I have occasional back pains from a previous injury.

Printed name
Signature

witnessed:

I. Royce, M.D.

73. Section 766.103(3), Florida Statutes states:

No recovery shall be allowed in any court in this state against any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, podiatrist licensed under chapter 461, or dentist licensed under chapter 466 in an action brought for treating, examining, or operating on a patient without his informed consent when:

(a)1. The action of the physician, osteopath, chiropractor, podiatrist, or dentist in obtaining the consent of the patient or another person authorized to give consent for the patient was in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical training and experience in the same or similar medical community; and

2. A reasonable individual, from the information provided by the physician, osteopath, chiropractor, podiatrist, or dentist, under the circumstances, would have a general understanding of the procedure, the medically acceptable alternative procedures or treatment, and the substantial risks and hazards inherent in the proposed treatment or procedures, which are recognized among other physicians, osteopaths, chiropractors, podiatrists, or dentists in the same or similar community who perform similar treatments or procedures; or

(b) The patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure had he been advised by the physician, osteopath, chiropractor, podiatrist, or dentist in accordance with the provisions of paragraph (a).

74. Section 458.325, Florida Statutes, states:

(1) In each case of utilization of electroconvulsive or psychosurgical procedures, prior written consent shall be obtained after disclosure to the patient, if he is competent, or to his guardian, if he is a minor or incompetent, of the purpose of the procedure, the common side effects thereof, alternative treatment modalities, and the approximate number of such procedures considered necessary and that any consent given may be revoked by the patient or his guardian prior to or between treatments.

(2) Before convulsive therapy or psychosurgery may be administered, the patient's treatment record shall be reviewed and the proposed convulsive therapy or psychosurgery agreed to by one other physician not directly involved with the patient. Such agreement shall be documented in the patient's treatment record and shall be signed by both physicians.

75. Failure to obtain a review of the patient's treatment by one other physician, not directly involved with the patient; failure to document such an agreement in the patient's treatment record; and failure to obtain the signature of the second physician, prior to the administration of ECT, are violations of Section 458.325(2), Florida Statutes.

76. The concomitant use of Ketalar (Ketamine) with ECT constitutes a failure to practice medicine with an acceptable level of care because of the immediate and sustained confusion which may result from such a practice.

77. On or about March 21, 1985, Patient #1 presented to Respondent's office, stating that she "felt great" because she was in love again. Respondent prescribed Ketalar 100 mg.,

Plegine 21 tablets and Darvocet N-100 20 tablets.

76. On or about March 28, 1985, Patient #1 presented to Respondent's office for psychiatric treatment. Respondent noted that Patient #1 appeared anxious, and he subsequently prescribed Ketalar 100 mg. IV for Patient #1.

79. On or about March 29, 1985, Patient #1 presented to Respondent's office for psychiatric treatment. Respondent subsequently prescribed Ketalar 30 mg. IV and Valium 10 mg. #15.

80. On or about April 4, 1985, Patient #1 presented to Respondent's office for psychiatric care and treatment. Respondent prescribed Ketalar 100 mg. and Vitamin-K 100 tablets.

81. On or about April 5, 1985, Patient #1 presented to Respondent's office for psychiatric care and treatment. Respondent prescribed Ketalar 2 cc IV.

82. On or about April 11, 1985, Patient #1 presented to Respondent's office, complaining that the tension generated by her new job was more than she could handle. Respondent prescribed Ketalar 100 mg. IV.

83. On or about April 26, 1985, Patient #1 presented to Respondent's office for psychiatric care and treatment. Respondent subsequently prescribed Plegine LA #7, Plegine #21, Ketalar 2.25 cc IV and Ativan 2 mg. IV

84. Ativan is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains Lorazepam, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

85. On or about April 29, 1985, Patient #1 presented to Respondent's office for psychiatric care and treatment. Respondent subsequently prescribed Ketalar IV for Patient #1.

86. On or about May 4, 1985, Patient #1 presented to Respondent's office for psychiatric care and treatment. Respondent subsequently prescribed Ketalar 2 cc IV for Patient #1.

87. On or about May 14, 1985, Patient #1 presented to Respondent's office for psychiatric care and treatment. Respondent subsequently prescribed Ketalar 1 vial and Xanax 1 mg. #10.

88. Xanax is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains Alprazolam, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

89. On or about May 16, 1985, Patient #1 presented to Respondent's office, stating she had been feeling relaxed all day. Respondent prescribed Xanax 1 mg. #14, Placidyl 500 mg. #10, Plegine #42 and Ketalar 2 cc IV.

90. On or about May 21, 1985, Patient #1 presented to Respondent's office, complaining that she had suffered a panic attack earlier in the day. Respondent prescribed Ketalar 100 mg. IV.

91. On or about May 23, 1985, Patient #1 presented to Respondent's office for psychiatric care and treatment. Respondent subsequently prescribed Ketalar 100 mg. IV for Patient #1.

92. On or about May 30, 1985, Patient #1 presented to Respondent's office for psychiatric care and treatment. Respondent prescribed Darvocet N-100 #15, Xanax 1 mg. #14, Placidyl 500 mg. #10, Ketalar 1.5 cc IV, and Benadryl 1 cc for Patient #1.

93. On or about May 30, 1985, Patient #1 returned to Respondent's office for further psychiatric care and treatment. Respondent prescribed Ketalar 2 cc IV, and Plegine #42.

94. On or about June 6, 1985, Patient #1 presented to Respondent's office for further psychiatric care and treatment. Respondent prescribed Ketalar 2.25 cc IV, and Plegine #21.

95. On or about June 11, 1985, Patient #1 presented to Respondent's office for psychiatric care and treatment. Respondent prescribed Ketalar 2.25 cc and Plegine #21 for Patient #1.

96. On or about June 18, 1985, Patient #1 presented to the Respondent's office for psychiatric care and treatment. Respondent prescribed Placidyl 500 mg. IV #14, Xanax 1 mg., Plegine #21 and Brevital.

97. Placidyl is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains Ethchlorvynol, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

98. On or about June 22, 1985, Patient #1 was seen in Respondent's office complaining of nervousness and that she was having trouble sleeping. Respondent suggested more ECT and

Patient #1 stated she would consider it. Respondent prescribed Brevital 1 cc.

99. On or about June 25, 1985, Patient #1 presented to Respondent's office, stating she felt much better. Respondent prescribed Placidyl 500 mg., Xanax 1 mg., Benadryl 10 mg. and Brevital 1 cc.

100. On or about July 8, 1985, Patient #1 presented to Respondent's office complaining that she was nervous and that she was having trouble sleeping. Respondent prescribed Xanax 1 mg. #14 and Placidyl 500 mg. #14.

101. On or about July 11, 1985, Patient #1 was found dead in her apartment.

102. The report of the Medical Examiner listed the cause of death for Patient #1 as "polydrug abuse." Polydrug abuse refers to substance abuse by Patient #1 of two (2) or more drugs.

103. Respondent failed to practice medicine with an acceptable level of care, in that he failed to diagnose Patient #1's addictive and abusive personality.

104. Respondent inappropriately and excessively prescribed legend drugs, including controlled substances, over a ten (10) month period to Patient #1 without proper justification.

105. Respondent practiced outside of his expertise, in that he treated Patient #1's rectal fissure during the course of Patient #1's psychiatric treatment.

COUNT ONE

106. Petitioner realleges and incorporates paragraphs one (1) through one hundred five (105) as if fully set forth herein this Count One.

107. Respondent failed to keep written medical records justifying the course of treatment of Patient #1, including, but not limited to, the following: Respondent's medical records of Patient #1 do not justify Respondent's failure to diagnose Patient #1's abusive and addictive personality; Respondent's medical records do not justify Respondent's inappropriate and excessive prescribing of controlled substances and other legend drugs, especially Ketalar, over a ten (10) month period; Respondent's medical records failed to justify Respondent's failure to seek a consultation with another physician, and document said consultation to performing ECT on Patient #1; Respondent's medical records fail to justify Respondent's inappropriate use of Ketalar (Ketamine) treatment concomitantly with ECT.

108. Based upon the foregoing, Respondent has violated Section 456.331(1)(n), Florida Statutes, by failing to keep written medical records justifying 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.

COUNT TWO

109. Petitioner realleges and incorporates paragraphs one (1) through one hundred five (105), and one hundred seven (107) as if fully set forth herein this Count Two.

110. Respondent prescribed, dispensed, administered, mixed, or otherwise prepared a legend drug, including any controlled substance, other than in the course of the physician's professional practice, in that Respondent prescribed Plegine for Patient #1, when Respondent knew or had reason to have known that said Patient had a history of drug abuse; Respondent inappropriately prescribed Plegine concomitantly with Didrex, a CNS stimulant, for Patient #1; Respondent inappropriately administered Ketalar, in conjunction with ECT treatment; Respondent inappropriately and excessively prescribed the following controlled substances: Benzodiazepines, Barbiturates, Amphetamines, and Ketalar.

111. Based upon the foregoing, Respondent has violated Section 458.321(1)(g), Florida Statutes, by prescribing, dispensing, administering mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice.

COUNT THREE

112. Petitioner realleges and incorporates paragraphs one (1) through one hundred five (105), one hundred seven (107), and one hundred ten (110), as if fully set forth herein this Count Three.

113. The Respondent failed to practice medicine with that level of care, skill, and treatment, which a reasonably prudent similar physician recognizes as acceptable under similar conditions and circumstances, in that Respondent failed to diagnose Patient #1's addictive and abusive personality; Respondent inappropriately and excessively prescribed legend drugs, most of which were controlled substances, over a ten (10) month period to Patient #1, without proper justification; Respondent failed to acquire a consultation with another physician before ordering ECT for Patient #1; Respondent inappropriately administered ECT treatments in conjunction with Ketalar therapy; and Respondent utilized ECT treatments when they were not indicated.

114. Based upon the foregoing, Respondent has violated Section 456.331(1)(t), Florida Statutes, by being guilty of gross or repeated malpractice of the failure to practice medicine with that level of care, skill, and treatment, which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT FOUR

115. Petitioner realleges and incorporates paragraphs one (1) through six (6), and fifty-five (55) through seventy-five (75), as if fully set for the herein this Count Four.

116. Respondent failed to have Patient #1's treatment record reviewed, and the proposed Electroconvulsive Therapy agreed to by another physician, not directly involved with Patient #1, before the electroconvulsive therapy was administered

to Patient #1. Said act was in violation of Section 458.325(2).

117. Based on the foregoing, Respondent violated Section 458.331(1)(x), Florida Statutes, by being guilty of violating any provision of Chapter 458, a rule of the Board or Department, previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the Department.

COUNT FIVE

118. Petitioner realleges and incorporates paragraphs one (1) through one hundred five (105), one hundred seven (107), one hundred ten (110), one hundred thirteen (113), and one hundred sixteen (116) as if fully set forth herein this Count Five.

119. Respondent practiced beyond the scope permitted by law or performed professional responsibilities which the licensee knows, or has reason to know, that he is not competent to perform, in that Respondent practiced outside his expertise by treating Patient #1's rectal fissure during the course of her psychiatric treatment.

120. Based on the foregoing, Respondent violated Section 458.331(1)(v), Florida Statutes, by being guilty of practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities, which the licensee knows, or has reason to know, he is not competent to perform.

COUNT SIX

121. Petitioner realleges and incorporates paragraphs one (1) through one hundred five (105), as if fully set forth herein this Count Six.

122. Respondent performed a procedure, or prescribed a therapy which, by the prevailing standards of medical practice in the community would constitute experimentation on a human subject, without first obtaining full, informed and written consent, in that Respondent treated Patient #1's psychiatric condition with Ketalar (Ketamine), and utilized Ketalar (Ketamine) in conjunction with ECT treatments.

123. Based on the foregoing, Respondent violated Section 458.331(1)(u), Florida Statutes, by performing any procedure, or prescribing any therapy which, by the prevailing standards of medical practice in the community, would constitute experimentation on a human being, without first obtaining full, informed, and written consent.

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

SIGNED this 6th day of March, 1991.

FILED


Department of Professional Regulation
AGENCY CLERK



CLERK _____

DATE 3-16-91

George Stuart, Secretary


By: Stephanie A. Daniel
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE
ADMINISTRATION, BOARD OF
MEDICINE,

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v.

IRVING D. ROYCE, M.D.

Respondent.

Final Order No. AHCA-95-00115 Date 5-18-95
FILED

Agency for Health Care Administration
AGENCY CLERK

J. J. Power, Agency Clerk
By: *Brandon L. Smith*
Deputy Agency Clerk

AHCA CASE NO: 00-61481
DOAH CASE NO: 91-2811
LICENSE NO: ME 0010545

FINAL ORDER

THIS MATTER was heard by the Board of Medicine (hereinafter Board) pursuant to Section 120.57(1)(b)10., Florida Statutes, on April 8, 1995, in Ft. Lauderdale, Florida, for consideration of the Hearing Officer's Recommended Order, Respondent's Exceptions and Petitioner's Response thereto (Attached as App. A, B and C., respectively) in the case of Agency for Health Care Administration, Board of Medicine v. Irving D. Royce, M.D. At the hearing before the Board, Petitioner was represented by Kenneth J. Metzger, Medical Attorney. Respondent was present and represented by Joseph S. Geller, Esquire. Upon consideration of the Hearing Officer's Recommended Order and after review of the complete record and having been otherwise fully advised in its premises, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. The Hearing Officer's Recommended Findings of Fact are approved and adopted and are incorporated herein by reference as the Findings of Fact of the Board in this cause.

2. There is competent, substantial evidence to support the Board's findings herein.

RULINGS ON EXCEPTIONS TO CONCLUSIONS OF LAW

1. Respondent's Exception to paragraph 124 of the Conclusions of Law of the Recommended Order is rejected for reasons stated in Respondent's Response to Petitioner's Exceptions, attached as App. C.

2. Respondent's Exception to paragraph 125 of the Conclusions of Law of the Recommended Order is rejected for reasons stated in Respondent's Response to Petitioner's Exceptions, attached as App. C.

3. Respondent's Exception to paragraph 155 of the Conclusions of Law of the Recommended Order that Respondent should be issued a Reprimand was granted in part by the Board in rejecting a Reprimand and substituting therefore as the penalty in this case, a Letter of Concern, based upon the limited nature of the violation.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and subject matter of this case pursuant to Section 120.57 and Chapter 458, Florida Statutes.

2. The findings of fact set forth above do not establish that Respondent has violated Sections 458.331(1)(g), (t), (x), (v) and (u), Florida Statutes as charged in Counts Two through Six of the Administrative Complaint.

3. The findings of fact set forth above do establish that Respondent has violated Section 458.331(1)(m), (formerly subsection (1)(n)), Florida Statutes as charged in Count One of the

Administrative Complaint.

3. The Conclusions of Law of the Recommended Order, as amended, are approved and adopted and incorporated herein.

DISPOSITION

Based upon the Recommended Findings of Fact and Conclusions of Law, the Respondent is in violation of Section 458.331(1)(m), (formerly subsection (1)(n), Florida Statutes.

In light of the foregoing Findings of Fact and Conclusions of Law the Board hereby determines that pursuant to Rule 59R-8, Florida Administrative Code, the penalty recommended by the Hearing Officer of a Reprimand is excessive and substitutes therefore a Letter of Concern as the penalty in this case.

WHEREFORE, it is found, ordered and adjudged that the Respondent is guilty of violating Section 458.331(1)(m), (formerly subsection (1)(n), of the Administrative Complaint and pursuant to Rule 59R-8, F.A.C., the Board of Medicine imposes the following penalty:

1. The Respondent shall receive a Letter of Concern from the Board of Medicine regarding the violation of Section 458.331(1)(m), Florida Statutes.

This Final Order becomes effective upon its filing with the Clerk of the Agency for Health Care Administration.

NOTICE

The parties are hereby notified pursuant to Section 120.59(4), Florida Statutes, that an appeal of this Final Order may be taken pursuant to Section 120.68, Florida Statutes, by filing one copy of a Notice of Appeal with the Clerk of the Agency for Health Care

Administration and one copy of a Notice of Appeal with the required filing fee with the District Court of Appeal within thirty (30) days of the date this Final Order is filed.

DONE and ORDERED this 10 DAY OF May, 1995.

BOARD OF MEDICINE

Gary E. Winchester, M.D.
GARY E. WINCHESTER, M.D.
CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order and its attachments have been forwarded by U.S. Mail to Irving D. Royce, M.D. 17122 W. Dixie Hwy., Miami, Florida 33160-4815, Joseph S. Geller, Esquire, 1815 Griffin Road, Suite 403, Dania, Florida 33004, Stuart N. Lerner, Hearing Officer, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550 and by hand delivery to Larry G. McPherson, Jr., Chief Medical Attorney, Agency for Health Care Administration, 1940 North Monroe Street, Tallahassee, Florida 32399-0792 on this _____ day of _____, 1995.

Marm Harris, Ed.D.
Executive Directory