STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL REGULATION,

Petitioner,

vs.

CASE NO. 88-1648
(DPR #0079581)

JOYA L. SCHOEN, M.D.,

Respondent.

AMENDED ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, DEPARTMENT OF PROFESSIONAL REGULATION, hereinafter referred to as the "Petitioner", and files this Amended Administrative Complaint before the Board of Medicine against JOYA L. SCHOEN, M.D., hereinafter referred to as "Respondent", and alleges:

1. Petitioner, DEPARTMENT OF PROFESSIONAL REGULATION, is the state agency charged with regulating the practice of medicine pursuant §20.30, Fla. Stat., Chapters 455 and 458, Fla. Stat.

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 0020200. Respondent's last known address is 1900 North Orange Avenue, Orlando, Florida 32804.

3. From on or about March 1986 through October 1986, Ray Baldwin rendered medical care and treatment to patient K.I. at

EXHIBIT "A"

000001

the Preventive Health Care Center, located at 1900 North Orange Avenue in Orlando, Florida.

4. On a date unknown to Petitioner at this time, Ray Baldwin examined and diagnosed patient K.I.

5. Ray Baldwin proposed a course of medical treatment for patient K.I. including cytotoxic testing, candida antibody tests, colonic therapy and use of the drug Nystatin.

6. Ray Baldwin sold an unknown amount of Nystatin powder to patient K.I.

7. Nystatin is a legend drug pursuant to Chapter 465, Fla. Stat.

8. Ray Baldwin is not licensed nor qualified to diagnose medical conditions, perform testing or conduct colonic therapy without the supervision and direction of a licensed physician.

9. Respondent did not supervise or direct Ray Baldwin in his diagnosis and treatment of patient K.I.

10. Respondent delegated professional responsibilities to a person when she knew or had reason to know that such a person was not qualified by training, experience, or licensure to perform them.

11. Respondent allowed her medical offices to be used by Ray Baldwin for the purpose of rendering medical diagnosis and treatment to patient K.I.

12. Respondent aided, assisted, procured or advised an

unlicensed person to practice medicine contrary to Chapter 458, Fla. Stat., or to a rule of the Department or Board.

13. Respondent knew that Ray Baldwin was not licensed to practice medicine in the state of Florida.

14. Respondent failed to report to the Department a person whom she knew to be in violation of Chapter 458, Fla. Stat., or a rule of the Department of Board.

15. Cytotoxic testing, candida antibody testing and colonic therapy are considered experimental procedures by prevailing standards of medical practice in the community.

16. Respondent failed to ensure that patient K.I. signed a full, informed and written consent before undergoing the above specified medical procedures.

17. In her treatment of patient K.I., Respondent failed 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.

18. On or about November 1985, Respondent referred patient V.B. to Ray Baldwin.

19. From on or about November 1985 through October 1986, Ray Baldwin rendered medical care and treatment to patient V.B. at the Preventive Health Care Center located at 1900 North Orange Avenue in Orlando, Florida.

20. On a date unknown to Petitioner at this time, Ray Baldwin examined and diagnosed patient V.B.

21. Ray Baldwin proposed a course of medical treatment for patient V.B. including cytotoxic testing, candida antibody tests,

RAST tests, hair analysis and barium enema x-rays, coffee enemas and colonic therapy.

22. Ray Baldwin recommended to patient V.B. that she enter a detoxification program conducted by him at the clinic.

23. Ray Baldwin is not licensed nor qualified to diagnose medical conditions, perform testing or conduct colonic therapy without the supervision and direction of a licensed physician.

24. Respondent failed to adequately supervise Ray Baldwin in his diagnosis and treatment of patient V.B.

25. Respondent delegated professional responsibilities to a person when she knew or had reason to know that such a person is not qualified by training, experience, or licensure to perform them.

26. Respondent allowed her medical offices to be used by Ray Baldwin for the purpose of rendering medical diagnosis and treatment to patient V.B.

27. Respondent aided, assisted, procured or advised an unlicensed person to practice medicine contrary to Chapter 458, Fla. Stat., or to a rule of the Department or Board.

28. Respondent knew that Ray Baldwin was not licensed to practice medicine in the state of Florida.

29. Respondent failed to report to the Department a person whom she knew to be in violation of Chapter 458, Fla. Stat., or a rule of the Department or Board.

30. Cytotoxic testing, candida antibody testing and colonic therapy are considered experimental procedures by prevailing standards of medical practice in the community.

000019

31. Respondent failed to ensure that patient V.B. signed a full, informed and written consent before undergoing the above specified medical procedures.

32. In her treatment of patient V.B., Respondent failed 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 I

33. Petitioner realleges paragraphs 1 through 32 above as if fully set forth herein this Count I.

34. Based on the foregoing, Respondent violated §458.331(1)(w), Fla. Stat., by delegating professional responsibilities to a person when the licensee delegating such responsibility knows or has reason to know that such a person is not qualified by training, experience, or licensure to perform them.

COUNT II

35. Petitioner realleges paragraphs 1 through 32 above as if fully set forth herein this Count II.

36. Based on the foregoing, Respondent violated §458.331(1)(f), Fla. Stat., by aiding, assisting, procuring or advising any unlicensed person to practice medicine contrary to this Chapter or to a rule of the Department or Board.

COUNT III

37. Petitioner realleges paragraphs 1 through 32 above as if fully set forth herein this Count III.

38. Based on the foregoing, Respondent violated

§ 458.331(1)(e), Fla. Stat., by failing to report to the Department any person whom the licensee knows to be in violation of this Chapter or a rule of the Department or Board.

COUNT IV

39. Petitioner realleges paragraphs 1 through 32 above as if fully set forth herein this Count IV.

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

COUNT V

41. Petitioner realleges paragraphs 1 through 32 above as if fully set forth herein this Count V.

42. Based on the foregoing, Respondent violated § 458.331(1)(t), Fla. Stat., by gross or repeated malpractice or 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 VI

43. Petitioner realleges paragraphs 1 through 32 above as if fully set forth herein this Count VI.

44. Based on the foregoing, Respondent violated § 458.331(1)(q), Fla. Stat., 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. For the purposes of this paragraph it shall be legally presume that prescribing, dispensing, administering, mixing or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his intent.

WHEREFORE, the 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 9th day of February, 1989.

Larry Gonzalez, Secretary

By: Stephanie Daniel
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Newell & Stahl, P.A.
817 North Gadsden Street
Tallahassee, Florida 32303-6313
904/681-3883

FILED
Department of Professional Regulation
AGENCY CLERK

CLERK

DATE 2-10-89

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL REGULATION,

Petitioner,

vs.

DOAH No. 88-1648
DPR No. 0079581

JOYA L. SCHOEN, M.D.,

Respondent.

STIPULATION

Joya L. Schoen, M.D., hereinafter referred to as Respondent, and the Department of Professional Regulation, hereinafter referred to as Department, hereby stipulate and agree to the following joint Stipulation and Final Order of the Board of Medicine, hereinafter referred to as Board, incorporating this Stipulation and the agreement in the above-styled manner.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida, having been issued license number ME 0020200.

2. Respondent was charged by an Amended Administrative Complaint filed by the Department and properly served upon Respondent with violations of Chapter 458, Fla. Stat., and the rules enacted pursuant thereto. A true and correct copy of the Amended Administrative Complaint is attached and incorporated by reference as Exhibit "A".

3. Respondent neither admits nor denies the allegations of fact contained in the Amended Administrative Complaint attached

as Exhibit "A".

STIPULATED CONCLUSIONS OF LAW

1. Respondent, in her capacity as a licensed physician, admits that in such capacity she is subject to the provisions of Chapters 455 and 458, Fla. Stat., and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts set forth in the Amended Administrative Complaint, if true, would constitute violations of Chapter 458, Florida Statues, as alleged in the Amended Administrative Complaint.

STIPULATED DISPOSITION

1. Respondent shall not in the future violate Chapters 455, or 458, Fla. Stat., or the rules promulgated pursuant thereto.

2. The Board shall impose an administrative fine in the amount of $3,000 against the Respondent. The fine shall be paid by the Respondent to the Executive Director of the Board, $1,500 to be paid within 6 months of the imposition of the fine by Final Order of the Board, $1,500 to be paid within 12 months of the imposition of the fine by Final Order of the Board.

3. The Respondent shall receive a reprimand from the Board of Medicine.

4. Effective the date of filing of the Final Order incorporating terms of this Stipulation, Respondent's license to practice medicine shall be suspended for a period of six months.

5. With respect to the above-mentioned suspension, the

full term of said suspension shall be stayed. However, should Respondent violate the terms of this stipulation and/or the provisions of Chapter 458, Florida Statutes, while said suspension is still in effect, said stay shall be lifted and Respondent shall serve the remainder of said suspension.

6. Effective on the date of the filing of the Final Order incorporating the terms of this Stipulation, Respondent's license to practice medicine shall be placed on probation for a period of three years. The terms and conditions of probation shall include:

a. Respondent shall comply with all state and federal statutes, rules, and regulations pertaining to the practice of medicine, including Chapters 455 and 458, Fla. Stat., and Chapter 21M, F.A.C.

b. Respondent shall appear before the Board or its designated probationer's committee at the first meeting after said probation commences, at the last meeting of the Board or its designated probationer's committee preceding termination of the probation, quarterly, and at such other times as requested by the Board or its probationer's committee. Failure of Respondent to appear as requested or directed shall be considered a violation of the terms of this Stipulation, and shall subject the Respondent to disciplinary action.

c. 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, Respondent's probation shall be tolled and shall remain in a tolled status until Respondent returns to active practice in the State of Florida. Respondent must keep current residence and business addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses. Furthermore, Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of medicine in Florida.

d. Respondent shall practice only under the indirect supervision of a physician fully licensed under Chapter 458, Fla. Stat., to be approved by the Board or its Probationer's Committee. Respondent shall have the supervising physician with him at his first probation appearance before the Board's Probationer's Committee. Prior to the approval of the supervising physician by the committee, the Respondent shall provide to the supervising physician a copy of the Administrative Complaint and Final Order filed in this case. A failure of the Respondent or the supervising physician to appear at the scheduled probation committee meeting shall constitute a violation of the Board's Final Order. Prior to the approval of the supervising physician by the committee, Respondent shall submit to the committee a current curriculum vitae and description of the current practice from the proposed supervising physician. Said materials shall be received in the Board office no later than fourteen days before Respondent's first scheduled probation appearance. The attached provisions regarding

supervising physicians are incorporated herein as part of the terms and conditions of this Stipulation. The responsibilities of the supervising physician shall include:

i. Respondent's supervising physician shall appear before the probationer's committee at the first meeting of said committee following commencement of the probation, and at such other times as directed by the committee. It shall be Respondent's responsibility to ensure the appearance of his supervising physician as requested or directed. Failure of the supervising physician to appear as requested or directed with out good cause being shown shall constitute a violation of the terms of this Stipulation and shall subject the physician to disciplinary action.

ii. Respondent's supervising physician shall submit reports on a semi-annual basis, in affidavit, which shall include:

a. Brief statement of why physician is on probation.

b. Description of probationer's practice.

c. Brief statement of probationer's compliance with terms of probation.

d. Brief description of probationer's relationship with supervising physician.

e. Detail any problems which may have arisen with probationer.

Respondent shall be responsible for ensuring that the supervising

physician submits the required reports.

iii. Review ten percent (10%) of Respondent's patient records on a random basis at least once every month, for the purpose of ascertaining the level of Respondent's supervision and utilization of unlicensed practitioners/personnel in her practice.

iv. Report to the Board any violations by the probationer of Chapters 455 and 458, Fla. Stat., and the rules promulgated pursuant thereto.

e. In the event that Respondent's supervising physician is unable or unwilling to fulfill his responsibilities as a supervising physician, as specified above, then the Respondent shall immediately advise the Board of this fact. Respondent shall further submit to the Chairman for the Board's Probationer's Committee the name of a temporary supervising physician for approval. Prior to the approval of the supervising physician by the Committee, Respondent shall submit to the Committee a current curriculum vitae and a description of the current practice from the proposed supervising physician, Said materials shall be received in the Board office no later than 14 days before the Respondent's first scheduled probation appearance. The Respondent shall not practice pending approval of this temporary supervising physician by the Chairman of the Probationer's Committee. Furthermore, Respondent shall make arrangements with his temporary supervising physician to appear before the Probationer's Committee at its next regularly

scheduled meeting, for approval of the supervising physician by the Committee. Failure to appear by the supervising physician as directed shall constitute a violation of the Board's Final Order. Respondent shall only practice under the auspices of the temporary supervising physician (approved by the Chairman) until the next regularly scheduled meeting of the Probationer's Committee whereat the issue of the Committee's approval of the Respondent's new supervising physician shall be addressed.

f. Respondent shall submit quarterly reports in affidavit form, the contents of which shall be specified by the Board. The reports shall include:

i. Brief statement of why physician is on probation.

ii. Description of practice location.

iii. Description current practice (type and composition).

iv. Brief statement of compliance with probationary terms.

v. Description of relationship with supervising physician.

vi. Advise Board of any problems.

g. Respondent shall attend 30 hours of Category I Continuing Medical Education courses in the area of Family Practice annually. These hours shall be in addition to those hours required for renewal of licensure.

h. Respondent understands that during the course of

the probation, quarterly reports shall be prepared by investigators with the Department detailing Respondent's compliance with the terms and conditions of this probation. Respondent waives confidentiality of these reports as to the Department only so that the Board may review these reports.

i. Respondent agrees to pay all reasonable costs of compiling and preparing these investigative reports, including the time spent by investigators in gathering necessary information for said reports.

j. Respondent shall comply with all of the terms and conditions of the Stipulation.

7. Respondent shall perform 60 hours of community service in a not-for-profit setting, outside of the physician's office per year. Community service shall consist of medical service without fee for the good of the people of the State of Florida. Affidavits detailing the community service performed shall be filed with the Board quarterly.

8. Respondent agrees to the issuance of an emergency suspension order by the Secretary of the Department upon a finding that the terms of this Stipulation, as incorporated by a Final Order, have been violated.

9. It is expressly understood that this Stipulation is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs of the Stipulated Facts, Stipulated Conclusions of Law and Stipulated Disposition) shall have no force and effect unless

a Final Order is entered incorporating the terms of this Stipulation, by the Board.

10. Respondent shall appear before the Board at the meeting of the Board where this Stipulation is considered. Respondent, in conjunction with the consideration of this Stipulation by the Board, shall respond to questions under oath from the Board, Board Staff, or Department Staff.

11. Respondent and the Department fully understand that this joint Stipulation and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against the Respondent for acts or admissions not specifically set forth in the Administrative Complaint attached as Exhibit "A" herein.

12. Upon the Board's adoption of this Stipulation, 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 joint Stipulation of facts, conclusions of law and imposition of discipline, and the Final Order of the Board incorporating said Stipulation.

13. Should this Stipulation be rejected, no statement made, or information submitted, in furtherance of this Stipulation, by the Respondent or his agents, either directly or indirectly, maybe used as direct evidence against the Respondent in any proceeding; however, such statements may be used by the Petitioner for impeachment.

14. Respondent and the Department fully understand that this Joint Stipulation and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against the Respondent for acts or omissions not specifically set forth in the Amended Administrative Complaint attached as Exhibit "A" herein.

15. Upon the Board's adoption of this Stipulation, 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 Joint Stipulation of Facts, Conclusions of Law and Impositions of Discipline, and the Final Order of the Board incorporating said Stipulation.

16. Upon the Board's adoption of this Stipulation, the parties hereby agree that each party will bear his own attorney's fees and costs resulting from prosecution and/or defense of this proceeding. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this disciplinary proceeding.

17. This Stipulation 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 this consideration of the Stipulation. Furthermore, should this Joint Stipulation not be accepted by the Board, it is agreed that presentation to and

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.

SIGNED this 30 day of ~~February~~ March, 1989.

Wellington H. Meffert II
Attorney for Petitioner
817 North Gadsden Street
Tallahassee, Florida 32303

Salvatore A. Carpino
Attorney for Respondent
One Urban Centre, Suite 750
4830 West Kennedy Boulevard
Tampa, Florida 33609

Joya L. Schoen, M.D.
Respondent

Sworn to and subscribed before me this 25 day of MARCH, 1989.

Notary Public

Notary Public
State of Florida at Large
My Commission Expires May 31, 1991

My Commission Expires:

Approved this 30 day of March, 1989.

Lawrence A. Gonzalez
Secretary

~~by:~~ for Stephanie A. Daniel
Chief Attorney
Medical Section

FILED
Department of Professional Regulation
AGENCY CLERK
CLERK
DATE 4-19-89

DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL REGULATION,

Petitioner,

-vs-

JOYA L. SCHOEN, M.D.,

Respondent.

_____/

DPR CASE NUMBER: 0079581
LICENSE NUMBER: ME 0020200

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on April 8, 1989, in Miami, Florida, for consideration of a Stipulation (attached hereto as Exhibit A) entered into between the parties in the above-styled case. Upon consideration of the Stipulation, the documents submitted in support thereof, the arguments of the parties, and being otherwise advised in the premises, the Board rejected the Stipulated proposed and offered an amendment at the hearing, which amendment was accepted without objection by the parties.

IT IS HEREBY ORDERED AND ADJUDGED that the Stipulation as submitted be and is hereby approved and adopted in toto and incorporated by reference herein with the following:

1. Paragraph 7 of the Stipulated Disposition is deleted.

2. Subparagraph 6.d.iii. of the Stipulated Disposition is amended to increase the percentage of medical records to be reviewed from 10 percent to 25 percent.

3. Paragraph 6.g. of the Stipulated Dispostion is amended to increase the number of hours of CME to be attended annually from 30 to 100 and to additionally require that the CME be Board approved.

Accordingly, the parties shall adhere to and abide by all of the terms and conditions of the Stipulation as amended.

This Order takes effect upon filing with the Clerk of the Department.

DONE AND ORDERED this 13 day of April, 1989.

BOARD OF MEDICINE

MARGARET C.S. SKINNER, M.D.
VICE CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to Joya L. Schoen, M.D., 1900 North Orange Avenue, Orlando, Florida 32804 and Salvatore A. Carpino, Attorney at Law, One Urban Centre, Suite 750, 4830 West Kennedy Boulevard, Tampa, Florida 33609, and by interoffice delivery to Stephanie A. Daniel, Attorney at Law, Department of Professional Regulation, 130 North Monroe Street, Tallahassee, Florida 32399-0750, at or before 5:00 P.M., this 19 day of April, 1989.