

21

Final Order No. DOH-03-1203-S-MOA
FILED DATE - 10/20/03
Department of Health

STATE OF FLORIDA
BOARD OF MEDICINE

By: Heather Coleman
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH Case No.: 2002-07253
License No.: ME0055324

JOSE CARLOS LOPEZ, 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 October 3, 2003, in Ft. Lauderdale, Florida, for the purpose of considering a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Consent Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises, the Board rejected the Consent Agreement and offered a Counter Consent Agreement which was accepted on the record by the parties. The Counter Consent Agreement incorporates the original Consent Agreement with the following amendment:

The fine set forth in paragraph 2 of the Stipulated Disposition shall be increased to \$10,000.

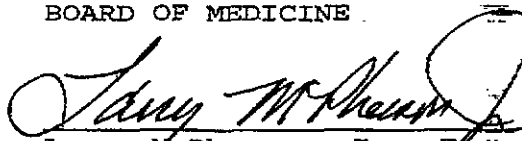
IT IS HEREBY ORDERED AND ADJUDGED that the Consent Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the amendment set forth

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

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

DONE AND ORDERED this 17th day of OCTOBER, 2003.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for Raghavendra Vijayanagar, 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 JOSE CARLOS LOPEZ, M.D., 782 Northwest 42nd Avenue, Suite 343, Miami, Florida 33126; to FRANK A. Rubino, Esquire, 2601 South Bayshore Drive, Suite 1400, Coconut Grove, Florida 33133; and by interoffice delivery to Denise O'Brien and Pamela Page, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 20th day of October, 2003.

Erica L. Prime

**STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH CASE NUMBER 2002-07253

JOSE CARLOS LOPEZ, M.D.,

Respondent.

CONSENT AGREEMENT

JOSE CARLOS LOPEZ, 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 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.

STIPULATED FACTS

1. At all times material hereto, the Respondent was a licensed physician in the State of Florida having been issued license number ME 55324.

2. The Respondent was charged by an Administrative Complaint filed by the Agency and properly served upon the Respondent with violations of Chapter 458, Florida Statutes, and the rules enacted 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.

STIPULATED CONCLUSIONS OF LAW

1. The 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. The Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent admits that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. **FUTURE CONDUCT.** The Respondent shall not in the future violate Chapters 456, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, the Respondent shall read Chapters 456, 458, 893 and the Rules of the Board of Medicine, at Section 64B8, Florida Administrative Code.

2. **ADMINISTRATIVE FINE.** The Board shall impose an administrative fine in the amount of two thousand dollars (\$2,000.00) against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within thirty (30) days of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINES IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND THE RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN THIRTY DAYS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).**

3. **REIMBURSEMENT OF COSTS.** In addition to the amount of any fine noted above, the Respondent agrees to reimburse the Department for any administrative costs incurred in the investigation, prosecution, and preparation of this case, including costs assessed by the Division of Administrative Hearings, if applicable, and by the Board of Medicine office. **The agreed upon Agency costs to be reimbursed in this case is one thousand two hundred fifty-nine dollars and eighty-eight cents (\$1,259.88).** The costs shall be paid by the Respondent to the Board of Medicine within thirty of its imposition by Final Order of the Board. **THE 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 CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN THIRTY OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).**

4. **SUSPENSION.** Respondent's license shall be placed on indefinite suspension until such time as Respondent appears before the Board and demonstrates to the Board that he is able to practice medicine with reasonable skill and safety. The Respondent may appear before the Board at the time the consent agreement is considered in order to establish that he is able to practice medicine with reasonable skill and safety. Prior to appearing before the Board to request termination of suspension, The Respondent shall enter into a PRN Contract and Evaluation and comply with all terms and/or recommendations.

5. **PROBATION.** Upon termination of the suspension, Respondent shall enter into a Probation agreement as determined by the Board at that time.

6. **REQUIREMENT.** Respondent shall never use controlled substances unless prescribed by a licensed physician.

STANDARD PROVISIONS

1. 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 a Final Order incorporating the terms of this Agreement is entered by the Board.

2. Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

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

4. 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.

5. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this matter.

6. This agreement 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 consideration of the Agreement. Furthermore, should this joint 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.

EXHIBIT B

STANDARD TERMS APPLICABLE TO CONSENT AGREEMENTS

The following are the standard terms applicable to all Consent Agreements, including supervision and monitoring provisions applicable to licensees on probation.

A. PAYMENT OF FINES. Unless otherwise directed by the Consent Agreement, all fines shall be paid by check or money order and sent to the Board address as set forth in paragraph E, below. The Board office does not have the authority to change terms of payment of any fine imposed by the Board.

B. COMMUNITY SERVICE AND CONTINUING EDUCATION UNITS. Unless otherwise directed by the Consent Agreement, all community service requirements, continuing education units/courses must be completed, and documentation of such completion submitted to the Board of Medicine at the address set forth below in paragraph E, WITHIN ONE YEAR OF THE DATE OF THE FINAL ORDER.

C. ADDRESSES. The Respondent must keep current residence and practice addresses on file with the Board. The Respondent shall notify the Board within ten (10) days of any changes of said addresses. Furthermore, if the Respondent's license is on probation, the Respondent shall notify the Board within ten (10) days in the event that the Respondent leaves the active practice of medicine in Florida.

D. COSTS. Pursuant to Section 458.331(2), Florida Statutes, the Respondent shall pay all costs necessary to comply with the terms of this Consent Agreement. Such costs include, but are not limited to, the cost of preparation of Investigative Reports detailing compliance with the terms of the Consent Agreement, obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with the Respondent's probation.

E. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines/costs shall be sent to Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, FL 32314-6320. ATTN: Medical Compliance Officer. All reports, correspondence and inquiries must be sent to Department of Health, HMQAMS/Client Services/Bin C01, 4052 Bald Cypress Way, Tallahassee, FL 32399-3251, ATTN: Medical Compliance Officer.

SIGNED this 25th day of July, 2003.

[Signature]
JOSE CARLOS LOPEZ, M.D.

Before me, personally appeared Jose C. Lopez, whose identity is known to me by personally (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 25th day of July, 2003.

[Signature]

NOTARY PUBLIC
ISABEL C. MACHIN
My Commission Expires: March 23, 2007

APPROVED this 18th day of August, 2003.

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

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

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2002-07253

JOSE CARLOS LOPEZ, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW Petitioner, the Department of Health, and for its Administrative Complaint against Jose Carlos Lopez, M.D., states as follows:

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. The Respondent is and has been at all times material hereto a licensed physician in the State of Florida, having been issued license number ME 55324 on June 13, 1989. Respondent's last known address is 782 Northwest 42nd Avenue, Suite 343, Miami, Florida 33126.
3. On or about September 11, 1992, in the Eleventh Judicial Circuit in and for Dade County, Florida, the Respondent entered a plea of nolo contendere to the charges of possession of cocaine, unlawful possession of cannabis and use or possession of drug paraphernalia. Adjudication was withheld and Respondent's sentence was suspended.

4. On or about January 30, 2000, the Respondent completed and submitted a Mandatory Practitioner Profile Questionnaire to the Department of Health.

5. The Respondent failed to report this conviction in writing to the Board of Medicine prior to October 1, 1999.

6. Question number VIII. of the questionnaire asked whether the Respondent had ever been convicted or found guilty of, regardless of whether adjudication of guilt was withheld, or pled guilty or nolo contendere to a criminal misdemeanor or felony in any jurisdiction. In response, the Respondent choose the answer "no."

7. On or about June 6, 2001, in the Eleventh Judicial Circuit in and for Dade County, Florida, the Respondent entered a plea of guilty and was adjudicated guilty of the charge of possession of drug paraphernalia with intent to use as reduced in violation of chapter 893.147(1), Florida Statutes, a misdemeanor of the first degree, punishable as provided in chapter 775.082 or 775.083, Florida Statutes.

8. On or about June 6, 2001, in the Eleventh Judicial Circuit in and for Dade County, Florida, the Respondent entered a plea of guilty and was adjudicated guilty of the charge of possession of cannabis of 20 grams or less in violation of Chapter 893.13(6)(b), Florida Statutes, a misdemeanor of the first degree, punishable as provided in chapter 775.082 or chapter 775.083, Florida Statutes.

9. The Respondent failed to report in writing the convictions referenced in Paragraphs seven (7) and eight (8) to the Board of Medicine within thirty days of their entry.

10. The Respondent has failed to update his Mandatory Practitioner Profile in order to include the above convictions.

COUNT ONE - CRIME RELATED TO THE PRACTICE OF MEDICINE

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

12. The Respondent was convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine in that the Respondent:

- (a) Entered a plea of nolo contendere to the charges of possession of cocaine, unlawful possession of cannabis and use or possession of drug paraphernalia on or about September 11, 1992, in the Eleventh Judicial Circuit in and for Dade County, Florida.
- (b) Entered a plea of guilty and was adjudicated guilty of the charges of possession of drug paraphernalia with intent to use and possession of cannabis of 20 grams or less on or about June 6, 2001, in the Eleventh Judicial Circuit and for Dade County, Florida.

13. The above referenced convictions relate to the practice of medicine or Respondent's ability to practice medicine in that a medical doctor is one of a few professionals allowed by the State of Florida to prescribe, administer and dispense

controlled substances, drugs which have a high potential for abuse. The actions of the Respondent resulting in his criminal convictions constitute a breach of that trust and confidence which the people, through the Legislature, have placed in him.

14. Respondent's conduct shows a lack of honesty, integrity, judgment, and an unwillingness to abide by the laws of the state of Florida which affects Respondent's ability to practice medicine and directly relates to his ability to practice medicine.

15. Based upon the forgoing, Respondent violated Section 458.331(1)(c), Florida Statutes, by being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine.

COUNT TWO – FAILURE TO REPORT CRIME

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

17. The Respondent failed to report to the Board of Medicine in writing within 30 days after the Respondent was convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime within in any jurisdiction by failing to report one or more of the following:

- A. He entered a plea of guilty and was adjudicated guilty of the charges of possession of drug paraphernalia with intent to use in the Eleventh Judicial Circuit in and for Dade County, Florida on or about June 6, 2001; and/or,

B. He entered a plea of guilty and was adjudicated guilty of the charges of possession of cannabis of 20 grams or less on or about June 6, 2001, in the Eleventh Judicial Circuit and for Dade County, Florida.

18. The Respondent failed to report to the Board of Medicine in writing by October 1, 1999, that he was, prior to the enactment of Section 456.072(1)(w), Florida Statutes, convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime within in any jurisdiction by failing to report in writing that he entered a plea of nolo contendere to the charges of possession of cocaine, unlawful possession of cannabis and use or possession of drug paraphernalia on or about September 11, 1992, in the Eleventh Judicial Circuit in and for Dade County, Florida.

19. Based upon the forgoing, the Respondent violated Section 456.072(1)(w), Florida Statutes, by failing to report to the Board of Medicine in writing within thirty (30) days after he was convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction and/or failed to report such convictions, findings, adjudications, and pleas entered into prior to the enactment of Section 456.072(1)(w), Florida Statutes, on or before October 1, 1999.

COUNT THREE - PROFILING VIOLATION

20. Petitioner realleges and incorporates paragraphs one (1) through ten (10), as if fully set forth herein this Count Three.

21. Section 456.072(1)(v), Florida Statutes, requires a physician to comply with the requirements for profiling including providing initial information, timely

updating information, and by prohibiting the physician from making misleading, untrue, deceptive, or fraudulent representations on a profile.

22. The Respondent failed to comply with the requirements for profiling and credentialing in one or more of the following ways:

- A. Failing to update his profile in a timely fashion to include that he entered a plea of guilty and was adjudicated guilty of the charges of possession of drug paraphernalia with intent to use in the Eleventh Judicial Circuit in and for Dade County, Florida on or about June 6, 2001;
- B. Failing to update his profile in a timely fashion to include that he entered a plea of guilty and was adjudicated guilty of the charges of possession of cannabis of 20 grams or less on or about June 6, 2001, in the Eleventh Judicial Circuit and for Dade County, Florida; and/or,
- C. Failing to disclose on his initial profile or to update in a timely fashion his profile to include that he entered a plea of nolo contendere to the charges of possession of cocaine, unlawful possession of cannabis and use or possession of drug paraphernalia on or about September 11, 1992, in the Eleventh Judicial Circuit in and for Dade County, Florida.

23. Based upon the forgoing, the Respondent violated Section 456.072(1)(v), Florida Statutes, by failing to comply with the requirements for profiling and

credentialing, including, but not limited to, failing to provide initial information, failing to timely provide updated information, or making misleading, untrue, deceptive, or fraudulent representations on a profile, credentialing, or initial renewal licensure application.

COSTS

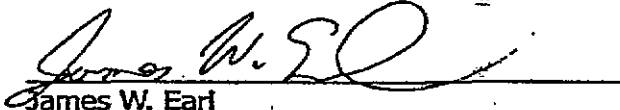
24. Petitioner has incurred costs related to the investigation and prosecution of this matter.

25. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter on a respondent in addition to any other discipline imposed.

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an Order assessing the administrative e costs related to the investigation and prosecution of this case as provided for in Section 456.072(4), Florida Statutes and 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 and/or any other relief that the Board deems appropriate.

SIGNED this 7th day of October, 2002

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



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Assistant General Counsel
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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Vicki R. Kenon*
DATE 11/16/02

Reviewed and Approved by: *DKK* (Initials) 11/7/02 (Date)

JWE/cab

PCP: October 18, 2002

PCP Members: Georges El-Bahri, MD – chair; Laurie Davies, MD; Gil Rodriguez

Jose Carlos Lopez, M.D.
2002-07253