

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2007-30345
LICENSE NO.: ME0052952

MARK STEVEN WILLNER, 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 August 15, 2009, in Jacksonville, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises,

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

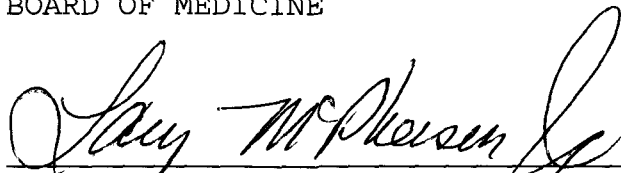
The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$6,222.77.

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 27 day of AUGUST, 2009.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
For Fred Bearison, M.D., Chair

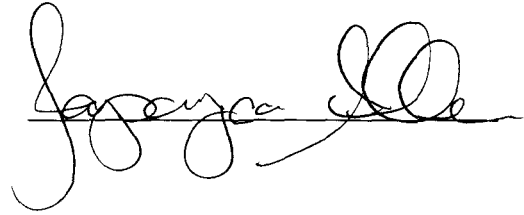
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to MARK STEVEN WILLNER, M.D., 3820 Windmill Lakes Road, Weston, Florida 33332; and 555 SW 148th Avenue, Sunrise, Florida 33325; to Gregory Chaires, Esquire, Chaires, Brooderson & Guerrero, 283 Cranes Roost Boulevard, Suite 165, Altamonte Springs, Florida 32701; and by interoffice delivery to Ephraim Livingston,

Department of Health, 4052 Bald Cypress Way, Bin #C-65,

Tallahassee, Florida 32399-3253 this 28 day of

August, 2009.



Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

DOH Case No. 2007-30345

v.

MARK STEVEN WILLNER, M.D.,

Respondent,

SETTLEMENT AGREEMENT

Mark S. Willner, M.D., referred to as the "Respondent," and the Department of Health, referred to as "Department" stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is a state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 52952.

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 459, 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. **Fine** - The Board of Medicine shall impose an administrative fine of seven thousand five hundred dollars (\$7,500.00), 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-days (30) from the date of filing of the Final Order accepting this Agreement. 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.

3. Reimbursement Of Costs - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any administrative costs incurred in the investigation and 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 is five thousand eight hundred twenty-nine dollars and eighty-seven cents (\$5,829.87), but shall not exceed six thousand eight hundred twenty-nine dollars and eighty-seven cents (\$6,829.87). 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-

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days (30) from the date of filing of the Final Order in this cause. Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

1. **Community Service** - Respondent shall perform fifty (50) hours of community service, within one year of the date of filing of the Final Order. Community Service shall be defined as the delivery of medical services directly to patients, or the delivery of other volunteer services in the community, without fee or cost to the patient or the entity, for the good of the people of the State of Florida. Community service shall be performed outside the physician's regular practice setting. Respondent shall submit a written plan for performance and completion of the community service to the Probation Committee for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board as required by the Probation Committee.

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5. Continuing Medical Education - Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend three (3) hours of Continuing Medical Education (CME) in the detoxification of chemically dependent patients. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical course within one (1) year of the date of filing of the Final Order in this matter. All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

6. Continuing Medical Education - "Risk Management" - Respondent shall complete five (5) hours of Continuing Medical Education in "Risk Management" within one (1) year of the date of filing of the Final Order. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). However, the Board has approved five (5) hours of risk management continuing education for attending the first day of a full Board of Medicine meeting.

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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.

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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

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attorney's fees or costs from the Department and the Board in connection with this matter.

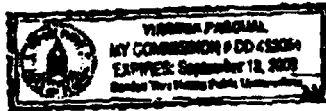
9. Waiver of further procedural steps - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

SIGNED this 28th day of April, 2009.

[Handwritten Signature]
Mark S. Willner, M.D.

Before me, personally appeared Mark S. Willner, whose identity is known to me by Florida Devers License (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 28th day of April, 2009.



[Handwritten Signature]
NOTARY PUBLIC

My Commission Expires:

APPROVED this 4th day of April ²⁰⁰⁹ May, 2009.

Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

[Handwritten Signature]

By: David G. Pius, Esquire
Senior Attorney
Department of Health

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2007-30345

MARK STEVEN WILLNER, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through undersigned counsel, files this Administrative Complaint before the Board of Medicine against Respondent, Mark Steven Willner, 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 52952.

3. Respondent's address of record is 555 S.W. 148th Avenue, Sunrise, Florida 33325.

Qb.C.h

4. At all times material to this Complaint, Respondent engaged in the practice of medicine, specializing in psychiatry, at Treatment Solutions of South Florida.

5. On or about June 7, 2007, Patient K.M., a seventy-one year old male, was admitted to Treatment Solutions of South Florida.

6. Prior to his admission to Treatment Solutions, K.M. had been taking prescribed Klonopin for approximately ten (10) years to treat anxiety.

7. Klonopin is the brand name for clonazepam, a type of drug known as a benzodiazepine. It is prescribed to treat anxiety. According to Section 893.03(4), Florida Statutes, clonazepam is a Schedule IV controlled substance that has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States. Abuse of clonazepam may lead to limited physical or psychological dependence relative to the substances in Schedule III.

8. K.M.'s medical records from Treatment Solutions do not reflect a history of significant impairment, distress, tolerance, withdrawal, loss of control of use, continued use despite harm, compulsive use, euphoric reward, or craving of Klonopin. Neither do the medical records reflect a

history of K.M. mixing alcohol with Klonopin or taking more Klonopin than prescribed.

9. The Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) is a handbook for mental health professionals that lists different categories of mental disorders and the criteria for diagnosing them. Many mental health professionals use this book to help communicate a patient's diagnosis after an evaluation. The DSM-IV organizes each psychiatric diagnosis into five levels (axes) relating to different aspects of disorder or disability. Many hospitals, clinics, and insurance companies require a 'five axis' DSM diagnosis of the patients that are seen. Axis I is the clinical disorder; common Axis I disorders include, among other disorders, depression and anxiety disorders.

10. K.M.'s medical records from Treatment Solutions reflect that on or about June 7, 2007, K.M. was diagnosed as having a DSM-IV-TR Axis I benzodiazepine (Klonopin) dependency.

11. Axis I benzodiazepine dependency is commonly interpreted as an addiction to benzodiazepines such as Klonopin.

12. K.M.'s medical records from Treatment Solutions do not contain a medical history justifying the diagnosis of Axis I benzodiazepine dependency.

13. K.M.'s medical records from Treatment Solutions contain a passing mention that K.M. was motivated to stop using Klonopin. They do not, however, contain any information as to why he wanted to stop taking it.

14. On or about June 7, 2007, Respondent recorded a treatment plan for K.M. which included admitting him to Treatment Solutions for benzodiazepine detoxification.

15. On or about June 7, 2007, Respondent ordered benzodiazepine detoxification for K.M. which included abrupt discontinuation of Klonopin and decreasing doses of lorazepam over the next five days.

16. Lorazepam (also known by its brand name Ativan or Temesta) is a benzodiazepine drug with short to medium duration of action. Like Klonopin, it is also a Schedule IV controlled substance and is prescribed to treat anxiety.

17. There is no indication in the medical records that Respondent examined K.M. throughout the detoxification.

18. From on or about June 7, 2007, through June 10, 2007, K.M. suffered from sleeplessness and anxiety which is consistent with benzodiazepine withdrawal.

19. On June 11, 2007, K.M. expressed a desire to leave the facility. K.M. was discharged that same day without being examined by Respondent or meeting with Respondent.

20. On or about June 12, 2007, K.M. was taken to Florida Medical Center (FMC) by ambulance, having suffered symptoms of a seizure.

21. At FMC, a neurological consultation determined that K.M. was undergoing withdrawal from Klonopin.

22. K.M. was admitted to FMC for telemetry.

23. K.M. was discharged from FMC on June 14, 2007 with a diagnosis of probable Klonopin-related pre-syncope and seizure disorder, a history of chronic myelocytic leukemia, prostate cancer treatment, anxiety neurosis and psychosis, and hypertension.

24. A reasonably prudent similar health care provider would have correctly diagnosed K.M. with a physiological dependence to, or would have documented evidence of addiction to/dependency on, Klonopin rather than diagnosing an addiction requiring detoxification.

25. Given that K.M. was not addicted to Klonopin, a reasonably prudent similar health care provider would have documented alternate justification for detoxification.

26. A reasonably prudent similar health care provider would have detoxified K.M. by utilizing a gradual tapering off of K.M.'s Klonopin rather than an abrupt discontinuation of the medication.

27. A reasonably prudent similar health care provider, in addition to a gradual tapering off of K.M.'s Klonopin, would have detoxified K.M. using a medication with a longer-lasting half-life more similar to Klonopin, such as diazepam (Valium), rather than lorazepam, and would also have added a seizure medication to the regimen.

28. A reasonably prudent similar health care provider would have ordered detoxification for a longer time period than five (5) days and would have made arrangements for the detoxification to continue under the care of K.M.'s primary psychiatrist or other practitioner.

29. A reasonably prudent similar health care provider would have counseled K.M. that further withdrawal symptoms could occur if he decided to leave the facility and would have made recommendations about what to do if the symptoms continued.

COUNT ONE

30. Petitioner re-alleges and incorporates paragraphs 1-29 as if fully restated herein.

31. Section 458.331(1)(t), Florida Statutes (2006), provides that committing medical malpractice constitutes grounds for disciplinary action by the Board of Medicine. Medical malpractice is defined in Section 456.50, Florida Statutes, as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. For purposes of Section 458.331(1)(t), the Board shall give great weight to the provisions of Section 766.102, which provides that the prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

32. Respondent committed medical malpractice in one or more of the following ways:

a. by incorrectly diagnosing K.M. as having an addiction requiring detoxification rather than as having a physiological dependence, or alternatively, by failing to document evidence of addiction to/dependency on Klonopin;

b. by ordering K.M. undergo detoxification without appropriate justification;

c. by abruptly discontinuing K.M.'s Klonopin during the detoxification, rather than engaging in a more gradual tapering off of the medication;

d. by detoxifying K.M. using lorazepam rather than a longer-acting medication such as diazepam and by failing to prescribe a seizure medication for K.M.;

e. by failing to order a detoxification for a longer time period than five days

f. by failing to examine K.M. during detoxification;

g. by failing to make arrangements for detoxification to continue under the care of K.M.'s primary psychiatrist or other practitioner.

h. by failing to counsel K.M. that further withdrawal could occur if he decided to leave the facility, and making recommendations about what to do if the symptoms continued.

33. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2006), by committing medical malpractice.

COUNT TWO

34. Petitioner re-alleges and incorporates paragraphs 1-29 as if fully restated herein.

35. Section 458.331(1)(m), Florida Statutes (2006), provides that failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify 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 constitutes grounds for disciplinary action by the Board of Medicine.

36. Respondent failed to keep medical records that justify the course of treatment of K.M. in one or more of the following ways:

- a. by failing to justify Respondent's diagnosis of Axis I benzodiazepine dependency;
- b. by failing to justify detoxification.

37. Based on the foregoing, Respondent has violated Section 458.331(1)(m), Florida Statutes (2006), by failing to keep medical records that justify the course of treatment of the patient.

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

SIGNED this 2 day of September, 2008.

Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General



David G. Pius
Assistant General Counsel
Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 0651486
(850) 245-4640 (telephone)
(850) 245-4681 (facsimile)

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Raquel B*
DATE: 9.2.08

DGP/das

PCP Members: El-Bahri, Farmer + Long
PCP: August 29, 2008

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NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition any other discipline imposed.

PATIENT INDEX