

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

vs.

CASE NO. 0103920

ERNESTO M. NATIVIDAD, 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 Ernesto M. Natividad, 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 455, 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 ME 0047142. Respondent's last known address is 1601 S.W. 27th Avenue, #1105, Ocala, Florida 32674.

FACTS PERTAINING TO PATIENT #1

3. Between on or about June 15, 1988, and on or about September 13, 1988, Patient #1 visited Respondent on approximately fifteen (15) occasions with a complaint of severe headaches.

4. Respondent's physical examination of Patient #1 during said visits was cursory and unsubstantial, and Respondent ordered no diagnostic tests for Patient #1.

5. In connection with said visits Respondent prescribed for Patient #1 approximately 150 Tylox tablets, approximately 30 Percocet tablets, approximately 30 Tranxene capsules, approximately 30 Preludin tablets, approximately 30 Placidyl tablets, approximately 60 Tylenol #3 tablets and approximately 30 Tylenol #4 tablets.

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

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

8. Tranxene is a legend drug as defined by Section 465.003(7), Florida Statutes, which contains chlorzepate, a controlled substance listed in Scheduled IV of Chapter 893, Florida Statutes.

9. Preludin is a legend drug as defined by Section 465.003(7), Florida Statutes, which contains phemetrazine, a controlled substance listed in Scheduled II of Chapter 893, Florida Statutes.

10. Placidyl is a legend drug as defined by Section 465.003(7), Florida Statutes, which contains ethchlorvynol, a controlled substance listed in Scheduled IV of Chapter 893, Florida Statutes.

11. Tylenol #3 and Tylenol #4 are legend drugs as defined by Section 465.003(7), Florida Statutes, which contain codine, a controlled substance listed in schedule III of chapter 893, Florida Statutes.

12. Respondent failed to establish the cause of Patient #1's headaches.

13. Respondent's medical records do not justify the prescriptions issued by Respondent as treatment for said condition.

14. At all times relevant hereto, Patient #1's weight was approximately 125 pounds, which weight was within the normal range for a person of Patient #1's height of 5'4", and which weight would not justify the prescribing of Preludin and Placidyl as treatment for obesity.

FACTS PERTAINING TO PATIENT #2

15. Between on or about June 22, 1987, and on or about August 22, 1988, Patient #2 visited Respondent on approximately 25 occasions. Patient #2's initial complaint was a backache of approximately three (3) weeks duration.

16. Respondent's physical examination of Patient #2 on his initial visit was cursory and did not focus on Patient #2's complaint of back pain.

17. After initially diagnosing Patient #2 as having lower back pain, Respondent subsequently diagnosed Patient #2 as having osteoarthritis on or about July 27, 1987. The accepted treatment for osteoarthritis is for the patient to take aspirin and, if indicated, muscle relaxant drugs.

18. Upon each of Patient #2's said visits to Respondent, Respondent prescribed Percodan tablets for Patient #2, for a total of approximately 1,710 Percodan tablets.

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

20. During said time period when Respondent continuously prescribed Percodan tablets for Patient #2, Respondent did not further examine Patient #2, nor did Respondent order diagnostic studies of Patient #2.

FACTS PERTAINING TO PATIENT #3

21. Between on or about April 20, 1988, and on or about July 5, 1988, Patient #3 visited Respondent on approximately eight (8) occasions with a complaint of being overweight.

22. Respondent's physical examination of Patient #3 upon the initial visit was cursory and unsubstantative, and Respondent ordered no diagnostic studies, nor did Respondent perform further examinations of Patient #3 in subsequent visits.

23. Respondent's written medical records for Patient #3 indicate that Respondent diagnosed Patient #3 as being overweight, but Respondent made no determination as to the cause

of said obesity nor did Respondent advise Patient #3 regarding diet and exercise.

24. In connection with Patient #3's said eight (8) visits to Respondent, Respondent prescribed for Patient #3 104 Dexedrine Spansule capsules, 30 Preludin tablets, 10 Demerol tablets, and 60 Percodan tablets.

25. Dexedrine Spansule is a legend drug as defined by Section 465.003(7), Florida Statutes, which contains dextroamphetamine, a controlled substance listed in Scheduled II of Chapter 893, Florida Statutes.

26. Demerol is a legend drug as defined by Section 465.003(7), Florida Statutes, which contains meperidine, a controlled substance listed in Scheduled II of Chapter 893, Florida Statutes.

27. Respondent prescribed Percodan tablets as a result of Patient #3's complaint of pain in a healed stab wound from the Vietnam War; however, Respondent prescribed said medication without investigation or examination of the wound area or Patient #3.

28. Respondent failed to adequately assess Patient #3's condition and complaint of obesity, and Respondent's prescription of Schedule II controlled substances over a three (3) month period for Patient #3 was not medically justified.

COUNT ONE

29. Petitioner realleges and incorporates paragraphs one (1) through twenty-eight (28) as if fully stated herein.

30. Respondent prescribed legend drugs, including controlled substances, other than in the course of the physician's practice, and inappropriately or in excessive or inappropriate quantities, in that: (a) Respondent prescribed Tylox tablets, Percocet tablets, Tranxene capsules, Preludin tablets, and Placidyl tablets, for Patient #1, when said medications were not justified by patient #1's condition or complaint; (b) Respondent prescribed Percodan tablets for Patient #2 on each of approximately twenty-five visits, when Respondent had diagnosed Patient #2 as having osteoarthritis, which medication is inappropriate for said condition, and which quantity of said medication of approximately 1,710 tablets was inappropriate when Respondent failed to further examine Patient #2 or to order diagnostic studies of Patient #2; and (c) Respondent prescribed Dexedrine Spansule capsules, Preludin tablets, Demerol tablets, and Percodan tablets for Patient #3, which medications were inappropriate either as pain medication when Respondent failed to investigate or examine Patient #3's complaint of pain in a healed stab wound, or as medication for weight control when prescribed by Respondent continuously over a period of three (3) months.

31. Based on the foregoing, Respondent violated Section 458.331(1)(q), 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. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend

drugs, including all controlled substance, 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.

COUNT TWO

32. Petitioner realleges and incorporates paragraphs one (1) through twenty-eight (28), and thirty (30), as if fully stated herein.

33. 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, in that Respondent: (a) performed a cursory and unsubstantial examination of Patient #1 without diagnostic tests, and prescribed medications containing controlled substances for Patient #1 without establishing the need therefore; (b) continuously prescribed medication containing a controlled substance for Patient #2 following a cursory initial examination without subsequent examinations or diagnostic studies and which treatment was inappropriate for Patient #2's condition as diagnosed by Respondent; and (c) prescribed medications containing controlled substances for Patient #3 following an initial cursory examination without ordering diagnostic studies or performing subsequent examinations, and without adequate assessment of Patient #3's complaints of obesity and pain in a healed stab wound.

34. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes, in that he is guilty of 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. As used in this paragraph, "gross malpractice" or "the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician under similar conditions and circumstances," shall not be construed so as to require more than one instance, event, or act.

COUNT THREE

35. Petitioner realleges and incorporates paragraphs one (1) through twenty-eight (28), thirty (30), and thirty-three (33), as if fully stated herein.

36. Respondent failed 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; in that: (a) Respondent's written medical records for Patient #1 failed to justify a course of treatment consisting of prescriptions for Tylox tablets, Percocet tablets, Tranxene capsules, Preludin tablets, and Placidyl tablets, when Respondent's examination of Patient #1 was cursory and unsubstantial and without diagnostic tests, and when Respondent failed to establish the cause of Patient #1's headaches, and Patient #1's weight was not so excessive as to justify the prescription of Preludin and Placidyl for weight control; (b) Respondent's written medical records for Patient #2 failed to justify a course of treatment consisting

of the prescription of approximately 1,710 Percodan tablets for Patient #2, when Respondent performed only a cursory initial examination of Patient #2 which did not focus on the complaint of backache, when Respondent failed to order diagnostic studies of Patient #2, and when the acceptable treatment for Patient #2's condition of osteoarthritis as diagnosed by Respondent would be aspirin and, if indicated, muscle relaxant drugs; (c) Respondent's written medical records for Patient #3 failed to justify a course of treatment consisting of Dexedrine Spansule capsules, Preludin tablets, Demerol tablets, and Percodan tablets, when Respondent's initial examination of Patient #3 was cursory and unsubstantative, and Respondent performed no further examinations nor ordered diagnostic studies of Patient #3, and when Respondent made no determination as to the cause of Patient #3's obesity, and prescribed Percodan for pain in a healed stab wound without investigation or examination of Patient #3.

37. Based on the foregoing, Respondent violated Section 458.331(1)(n), Florida Statutes (1985), subsequently changed to Section 458.331(1)(m), Florida Statutes (1987), by failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results, and test results, records of drugs prescribed, dispensed, or administered, and reports of consultations and hospitalizations.

WHEREFORE, Petitioner respectfully requests the Board of Medicine to 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 19th day of April, 1990.

LARRY GONZALEZ, Secretary



BY: STEPHANIE A. DANIEL
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Larry G. McPherson
Senior Attorney
Department of Professional
Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792
FL. Bar No. 0788643

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Department of Professional Regulation
AGENCY CLERK


CLERK _____

DATE 4-19-90

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

DOAH CASE NO.: 90-004010
DPR CASE NO.: 0103920

vs.

ERNESTO M. NATIVIDAD, M.D.,

Respondent.

STIPULATION

Ernesto M. Natividad, M.D., referred to as Respondent, and the Department of Professional Regulation, referred to as Department, stipulate and agree to the following joint Stipulation and Final Order of the Board of Medicine, referred to as Board, incorporating this Stipulation and agreement in this case.

STIPULATED FACTS

1. At all times material to this matter, Respondent was a licensed physician in the State of Florida having been issued license number ME 0047142.
2. Respondent was charged by an Administrative Complaint filed by the Department and properly served upon 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 and incorporated by reference as Exhibit A.
3. Respondent neither admits nor denies the allegations

of fact contained in the Administrative Complaint attached as Exhibit A.

4. Respondent does not currently reside or practice in the State of Florida.

STIPULATED CONCLUSIONS OF LAW

1. Respondent, in his capacity as a licensed physician, admits that in such capacity he is subject to the provisions of Chapters 455 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts set forth in the Administrative Complaint, attached hereto as Exhibit "A", if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

STIPULATED DISPOSITION

1. Respondent shall not in the future violate Chapters 455, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto.

2. The Board shall impose an administrative fine in the amount of \$2,000.00 against the Respondent. The fine shall be paid by the Respondent to the Executive Director of the Board within thirty (30) days of its imposition by Final Order of the Board.

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

4. Respondent shall attend forty-five (45) hours of

Category I Continuing Medical Education courses prior to reentering the practice of Medicine in the State of Florida, as follows:

i. The course entitled "Clinical, Legal and Ethical Issues in Prescribing Abusable Drugs:", offered by the University of South Florida College of Medicine or an equivalent twenty (20) hours in the prescribing of controlled substances,

ii. Five (5) hours in risk management,

iii. Twenty (20) hours concerning clinical diagnosis as designated by the Board.

Respondent shall submit a written plan to the Probationers' Committee for approval prior to completion of said courses. The Probationer's Committee may allow the Respondent to substitute course work at an accredited medical school for the above continuing education requirements. Such substitutions must be approved by the Probationer's Committee. Continuing Education hours shall be in addition to those hours required for renewal of licensure.

5. 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 two 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, 458, and 893, Florida Statutes,

and Rule 21M, Florida Administrative Code.

B. Respondent shall appear before the Board's designated probationer's committee prior to reentering the practice of Medicine in the State of Florida, at the last meeting of the Board's designated probationer's committee preceding termination of probation, and at such other times as requested by the Board's 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. Until such time as the Respondent returns to the active practice of Medicine in the State of Florida, certain provisions of Respondent's probation (and only those provisions of said probation) shall be tolled as enumerated below 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.

D. For any period time that the Respondent is not engaged in the active practice of Medicine in the State of Florida, the following provisions of his probation shall be tolled:

- i. The time period of probation shall be tolled.
- ii. The provisions regarding supervision whether direct or indirect by another physician, included in paragraph 5F below.

iii. The provisions regarding preparation of investigative reports detailing compliance with this Stipulation shall be tolled. See paragraph 6 below.

E. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Probationers' Committee may require Respondent to appear before the Probationers' Committee and demonstrate his ability to practice medicine with skill and safety to patients prior to resuming the practice of medicine in this State.

F. Respondent shall not practice except under the indirect supervision of a physician fully licensed under Chapter 458, Florida Statutes, approved by the Board's Probationer's Committee. Respondent shall have the proposed monitoring physician with him at his first probation appearance before the Board's Probationer's Committee. Prior to approval of the monitoring physician by the committee, the Respondent shall provide to the monitoring physician a copy of the Administrative Complaint and Final Order filed in this case. A failure of the Respondent or the monitoring physician to appear at the scheduled probationer's committee meeting shall constitute a violation of the Board's Final Order. Prior to the approval of the monitoring physician by the committee, Respondent shall submit to the committee a current curriculum vitae and description of the current practice from the proposed monitoring 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 monitoring physicians are incorporated herein as part of the terms and conditions of this Stipulation. The responsibilities of the monitoring physician shall include:

i. Respondent's monitoring physician shall appear before the probationer's committee at Respondent's first probation appearance, and at such other times as directed by the committee. It shall be Respondent's responsibility to ensure the appearance of his monitoring physician as requested or directed. Failure of the monitoring physician to appear as requested or directed shall constitute a violation of the terms of this Stipulation and shall subject the physician to disciplinary action.

ii. Respondent's monitoring physician shall submit reports on a quarterly basis, in affidavit form, which shall include:

a. A brief statement of why physician is on probation.

b. A description of probationer's practice.

c. A brief statement of probationer's compliance with terms of probation.

d. A brief description of probationer's relationship with monitoring physician.

e. A description of any problems which may have arisen with probationer.

Respondent shall be responsible for ensuring that the monitoring physician submits the required reports.

iii. Respondent's monitoring physician shall review twenty (20) percent of Respondent's patient records on a random basis at least once every month, for the purpose of ascertaining whether Respondent is meeting the standard of care and prescribing appropriately.

iv. Respondent's monitoring physician shall review all of Respondent's patient records for patients treated with controlled substances.

v. The monitoring physician shall report to the Board any violations by the probationer of Chapters 455 and 458, Florida Statutes, and the rules promulgated pursuant thereto.

vi. The monitoring physician shall receive and review copies of all controlled substance prescriptions.

G. In the event that the Respondent's monitoring physician is unable or unwilling to fulfill his responsibilities as a monitoring physician, as specified above, then the

Respondent shall immediately advise the Board of this fact. Respondent shall further submit to the Chairman of the Board's Probationer's Committee the name of a temporary monitoring physician for approval. Prior to the approval of the monitoring physician by the committee, Respondent shall submit to the committee a current curriculum vitae and a description of the current practice from the proposed monitoring physician. Said materials shall be received in the Board office no later than fourteen days before Respondent's first scheduled probation appearance. The Respondent shall not practice pending approval of this temporary monitoring physician by the Chairman of the Probationer's Committee. Furthermore, Respondent shall make arrangements with his temporary monitoring physician to appear before the Probationer's Committee at its next regularly scheduled meeting, for approval of the monitoring physician by the Committee. Failure to appear by the monitoring physician as directed shall constitute a violation of the Board's Final Order. Respondent shall only practice under the auspices of the temporary monitoring 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 monitoring physician shall be addressed.

H. The Board confers authority on the Chairman the Board's Probationer's Committee to approve a temporary monitoring physician. Respondent shall submit to the Chairman the name and

curriculum vitae of the proposed monitoring physician, in order to facilitate said approval. Said approval shall only remain in effect until the next meeting of the Probationer's Committee.

I. 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 the physician is on probation.

ii. A description of practice location.

iii. A description of current practice (type and composition).

iv. A brief statement of compliance with probationary terms.

v. A description of his relationship with the monitoring physician.

J. Respondent may prescribe Schedule II, III, IV and V controlled substances with the restrictions set forth below:

i. Respondent shall utilize sequentially numbered triplicate prescriptions blanks in the prescribing of schedule II through V controlled substances.

ii. Respondent shall immediately provide one copy of each prescription for Schedule II through V controlled substances to his monitoring physician.

iii. Respondent shall maintain one copy of each prescription for Schedule II through V controlled

substances in his medical record for the patient.

6. Respondent shall pay all costs necessary to comply with the terms of the Final Order issued based on this Stipulation. Such costs include, but are not limited to, the cost of preparation of semi-annual investigative reports detailing compliance with the terms of this Stipulation, and the Board's administrative costs directly associated with Respondent's probation. See Section 458.331(2), Florida Statutes.

7. 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.

8. 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.

9. Should this Stipulation be rejected, no statement made in furtherance of this Stipulation, by the Respondent may be used as direct evidence against the Respondent in any proceeding, however, such statements may be used by the Petitioner for impeachment.

10. 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 Administrative Complaint attached as Exhibit "A" herein.

11. 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.

12. 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.

SIGNED this ____ day of _____, 1990.

ERNESTO M. NATIVIDAD, M.D.

Sworn to and subscribed
before me this ____ day
of _____, 1990.

NOTARY PUBLIC

My Commission Expires:

APPROVED this _____ day of _____, 1990.

Larry Gonzalez
Secretary

By: Stephanie A. Daniel
Chief Medical
Attorney

DOAH #
90-4810

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DEPARTMENT OF PROFESSIONAL REGULATION
REGULATION AGENCY CLERK

BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

CLERK

Shel Cope

Petitioner,

DATE

12-19-90

-vs-

DPR CASE NUMBER: 0103920
LICENSE NUMBER: ME 0047142

ERNESTO M. NATIVIDAD,

Respondent.

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on December 1, 1990, in Kissimmee, 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,

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

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

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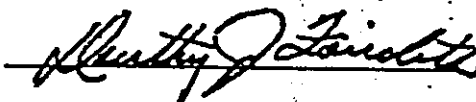
DONE AND ORDERED this 14 day of December, 1990.

BOARD OF MEDICINE


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to Ernesto M Natividad, M.D., 1601 S.W. 27th Avenue, #1105, Ocala, Florida 32674 and Frederick E. Landt, III, Attorney at Law, Landt, Appleget & Weichens, Post Office Box 2045, Ocala, Florida 32678, and by interoffice delivery to Bruce D. Lamb, Attorney at Law, Department of Professional Regulation, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, at or before 5:00 P.M., this 14th day of December, 1990.



Orders/NatividadE