

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

PETITIONER,

vs.

CASE NO.90-07774

NESTOR GARCIA, 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 NESTOR GARCIA, 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 0048998. Respondent's last known address is 9999 N.E. Second Avenue, Suite #208, Shoreview Building, Miami, Florida, 33138-1345.

3. On or about February 27, 1990, Patient #1, a sixty-four (64) year old woman complaining of back and knee pain presented to Respondent.

4. On or about March 15, 1990, Respondent diagnosed Patient #1 as suffering from osteoarthritis and lesions on the spine consistent with osteitis deformans (Paget's disease), a slowly progressive bone disorder.

5. During this office visit, medical records reflect Respondent conducted psychological testing on Patient #1, however Patient #1 was not given psychological testing.

6. Patient #1 was billed for home and office services rendered by Respondent on or about March 27, 1990, however, Patient #1 did not receive medical care from Respondent on or about said date.

7. The medical records for Patient #1 maintained by the Respondent contain material alterations with regard to Respondent's psychiatric work-up of Patient #1 and reveal Respondent reconstructed Patient #1's service ledger and medication administration record.

8. Respondent altered or caused to be altered the following in Patient #1's medical records: a series of service dates; comments that Patient #1 was offended by the questions concerning psychiatric history; a statement that Patient #1 was currently on disability; additional notations concerning psychiatric evaluation stating Patient #1 was combative, doctor shopping, and seeking a miracle cure to Paget's disease; and a statement that Patient #1 was anxious, depressed and irritable; and under diagnostic impressions, the medical records are altered to reflect that

Respondent ruled out mental disturbances related to ~~Pa~~ Paget's disease.

9. Respondent altered or caused to be altered the following medication administrative record of Patient #1; adding 3/27 between the entries of 3/22 and 4/4, and adding three (3) entries for "test" 2 cc. or 3 cc. in 2% Lidocaine.

10. Respondent exploited Patient #1 for financial gain by billing Patient #1's insurance provider for home and office services provided on or about March 27, 1990, that ~~were~~ not performed by Respondent.

11. On or about June, 1990, Patient #1 filed a complaint with the Petitioner; on or about September 11, 1990, Respondent telephoned Patient #1 and used coarse and threatening language in an attempt to intimidate Patient #1 into dropping her complaint with the Petitioner, and Respondent threatened legal action if Patient #1 did not drop her complaint.

12. On or about September 12, 1990, Patient #1 received a letter from Respondent confirming the earlier telephone conversation and repeating Respondent's threats to initiate legal action against Patient #1, thereby, improperly interfering with an investigation or with any disciplinary proceeding.

COUNT ONE

13. Petitioner realleges and incorporates paragraphs one (1) through twelve (12), as if fully set forth herein this Count One.

14. Respondent threatened legal action against Patient #1 for instituting a complaint against Respondent and used ~~coarse~~ and

threatening language to intimidate Patient #1 into dropping her complaint with the Petitioner, thereby, improperly interfering with an investigation or with any disciplinary proceeding.

15. Based on the foregoing, Respondent violated Section 458.331(1)(ii), Florida Statutes, improperly interfering with an investigation or with any disciplinary proceeding.

COUNT TWO

16. Petitioner realleges and incorporates paragraphs one (1) through twelve (12), and fifteen (15), as if fully set forth herein this Count Two.

17. Respondent made deceptive, untrue, or fraudulent representations in the practice of medicine when Respondent fraudulently altered the medical records of Patient by adding: a series of service dates; comments that Patient #1 was offended by the questions concerning psychiatric history; a statement that Patient #1 was currently on disability; additional notations concerning psychiatric evaluation, stating Patient #1 was combative, doctor shopping, and seeking a miracle cure to Paget's disease; and a statement that Patient #1 was anxious, depressed and irritable. Under diagnostic impressions, the medical records were altered to reflect that Respondent ruled out mental disturbances related to Paget's disease. Respondent reconstructed the service ledger and medication administration record. Respondent billed Patient #1's insurance provider for services not rendered on or about March 27, 1990.

18. Based on the foregoing, Respondent violated Section 458.331(1)(k), Florida Statutes, making deceptive, untrue, or fraudulent representations in or related to the practice of medicine or employing a trick or scheme in the practice of medicine.

COUNT THREE

19. Petitioner realleges and incorporates paragraphs one (1) through twelve (12), fifteen (15), and eighteen (18), as if fully set forth herein this Count Three.

20. Respondent exercised influence on Patient #1 in such a manner as to exploit her for financial gain when Respondent billed Patient #1's insurance provider for services not rendered on or about March 27, 1990.

21. Based on the foregoing, Respondent violated Section 458.331(1)(n), Florida Statutes, exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee.

COUNT FOUR

22. Petitioner realleges and incorporates paragraphs one (1), through twelve (12), fifteen (15), eighteen (18), and twenty-one (21) as if fully set forth herein this Count Four.

23. Respondent made or filed a report with the licensee knew to be false when Respondent billed Patient #1's insurance provider for services not rendered, and/or when Respondent altered Patient #1's medical records.

29. Based on the foregoing Respondent violated section 458.331(1)(h) Florida Statutes by making or filing a report with the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a licensed physician.

COUNT FIVE

30. Petitioner realleges and incorporates paragraphs one (1), through twelve (12), fifteen (15), eighteen (18), twenty-one (21) and twenty-nine (29) as if fully set forth herein this Count Five.

31. Respondent inappropriately prescribed, dispensed, administered, mixed, or prepared legend drugs, when Respondent prescribed or administered the anti-depressant medication when Patient #1 was not found to have these problems.

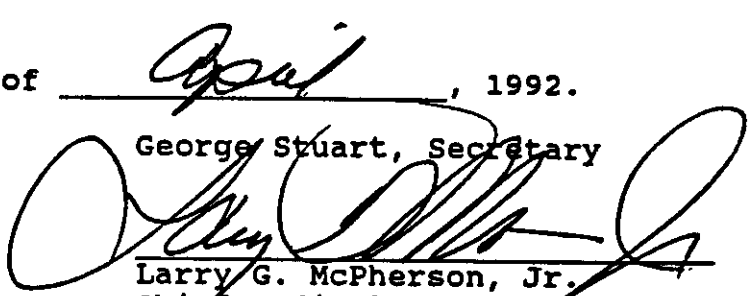
32. Based on the foregoing, Respondent violated section 458.331(q) Florida Statutes by prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substances, other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled 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 15 day of April, 1992.

George Stuart, Secretary


Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:
Larry G. McPherson, Jr.
Chief Medical Attorney
Department of Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0750
Florida Bar #788643
LAQP/GP
PCP: March 12, 1992
Murray, Basisht, and Rodriguez

FILED

Department of Professional Regulation
AGENCY CLERK


CLERK

DATE 4-16-92

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

PETITIONER,

vs.

CASE NOS. 91-03492 & 90-15906

NESTOR GARCIA, 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 NESTOR GARCIA, 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 0048998. Respondent's last known address is 9999 N.E. Second Avenue, Suite #208, Shoreview Building, Miami, Florida, 33138-1345.
3. On or about Monday, February 11, 1991, Petitioner's Secretary signed an Order of Emergency Suspension of the Respondent's license; said Order was filed on February 13, 1991.

4. The Suspension Order found that Respondent was "unable to practice medicine with reasonable skill and safety to patients by reason of illness, drugs, narcotics or as a result of any mental or physical condition" and immediately suspended his license to practice medicine.

5. On or about Wednesday, February 20, 1991, Respondent advised his attorney that the attorney could accept service of the Emergency Suspension Order on Respondent's behalf.

6. Respondent's attorney was hand-served with the Emergency Suspension Order on Monday, February 25, 1991.

7. On or about February 27, 1991, Respondent practiced medicine including but not limited to the following person:

<u>Patient</u>	<u>Diagnosis</u>	<u>Date</u>
#1	cardiac Dysrhythmias	2-27-91

8. Respondent practiced medicine in violation of a lawfully issued order of the Department which suspended his license to practice.

COUNT ONE

9. Petitioner realleges and incorporates by reference paragraphs one (1) through eight (8), as if fully set forth herein this Count One.

10. Respondent practiced medicine when his license to practice medicine had been suspended.

11. Based on the preceding allegations, Respondent violated Section 458.327(1)(b), Florida Statutes, and thus has violated Section 458.331(1)(x), Florida Statutes, by violating any provision of this chapter, a rule of the board or department, or a lawful

Section 458.331(1)(x), Florida Statutes, by violating any provision of this chapter, a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

COUNT TWO

12. Petitioner realleges and incorporates by reference paragraphs one (1) through eight (8) and ten (10) as if fully set forth herein this Count Two.

13. Respondent practiced medicine in violation of a lawfully issued order of the Department which immediately suspended his license.

14. Based on the preceding allegation, Respondent has violated Section 458.331(1)(x), Florida Statutes, by continuing to practice medicine in violation of any provision of this chapter, a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

FACTS REGARDING DRUG POSSESSION

15. On or about May 29, 1990, Respondent obtained Demerol, a Schedule II controlled substance from a pharmacy in Miami, Florida, while on leave from a drug treatment program.

16. Demerol is a legend drug as defined by Section 465.003(7), Fla. Stat. and contains meperidine, a controlled

substance listed in Schedule II of Chapter 893, Fla. Stat., and has a high degree for abuse.

17. Respondent failed to maintain a complete and accurate record of each controlled substance as required by Title 21, C.F.R., Section 1304.21 (a).

18. Title 21, C.F.R., Section 1304.21(a), provides that:

[E]very registrant required to keep records... shall maintain on a current basis a complete and accurate record of each such substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him, except that no registrant shall be required to maintain a perpetual inventory.

19. Section 893.07(1)(b), Florida Statutes, provides that:

[E]very person who engages in the manufacture, compounding, mixing, cultivating, growing, or by any other process producing or preparing, or in the dispensing, importation, or as a wholesaler, distribution, of controlled substances shall...maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold, delivered, or otherwise dispensed of by him...

20. The substance under the control of Respondent included Demerol.

21. Title 21, C.F.R., Section 1304.04(g), requires that:

Each registered individual practitioner required to keep records and institutional practitioner shall maintain inventories and records of controlled substances in the manner prescribed in paragraph (f) of this section.

22. Title 21, C.F.R., Section 1304.04 (f) provides:

Each registered manufacturer, distributor, importer, exporter, narcotic treatment program and compounder for narcotic treatment program shall maintain inventories and records of controlled substances as follows:

1) Inventories and records of controlled substances listed in Schedules I and II shall be maintained separately from all of the records of the registrant; and

2) Inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the registrant or in such form that the information required is readily retrievable for the ordinary business records of the registrant.

23. Section 893.07(4)(a), Florida Statutes, provides that:

"[e]very inventory or record required by this including prescription records, shall be maintained...[s]eparately from all other records of the registrant."

24. Respondent failed to record the exact finished form of controlled substances, on DEA Forms 222, as required by Title 21, C.F.R., Section 1305.06(c).

25. Title 21 C.F.R., Section 1305.06(c), lists the following as its procedure for executing order forms:

An item shall consist of one or more commercial or bulk containers of the same finished or bulk form and quantity of the same substance; a separate item shall be made for each commercial or bulk container of different finished or bulk form, quantity or substance. For each item the form shall show the name of the article ordered, the finished or bulk form of the article...the number of units or volume of each bulk container... the number of commercial or bulk containers ordered, and the name and quantity per unit of the controlled substance or substances contained in the article may be included at the discretion of the purchaser.

26. Section 893.06(1) Florida Statutes, provides that:

Controlled substances in Schedules I and II shall be distributed by a duly licensed manufacturer, distributor, or wholesaler to a duly licensed manufacturer, wholesaler, distributor, practitioner, pharmacy,...hospital, or laboratory only pursuant to an order form. I shall be deemed a compliance with this subsection if the parties of the transaction have

complied with federal law respecting the use of order forms.

27. The inspection revealed that the Respondent did not take a biennial inventory of controlled substances as required by Title 21, C.F.R., Section 1304.13.

28. Title 21, C.F.R., Section 1304.13, provides:

Every 2 years following the date on which the initial inventory is taken by a registrant...the registrant shall take a new inventory of all stocks of controlled substances on hand. The biennial inventory may be taken (a) on the day of the year on which the initial inventory may be taken or (b) on the registrant's regular general physical inventory date, if any, which is nearest to, and does not vary by more than 6 months from the biennial date that would otherwise apply.

29. Title C.F.R., Section 1304.24(d), requires that:

Each person registered or authorized... to dispense or conduct research with controlled substances and required to keep records...shall maintain records with the following information for each controlled substance...[t]he number of units or volume of such finished form dispensed, including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed, and the written or typewritten name or initials of the administered substance on behalf of the dispenser.

30. Respondent did not have in his possession the Drug Enforcement Administration form (DEA 222) for injectable Demerol, and there were no correct narcotics logs for this drug.

COUNT THREE

31. Petitioner realleges and incorporates by reference paragraphs (1) one through eight (8), ten (10) and thirteen as if fully set forth herein this Count Three.


32. Respondent failed to perform any statutory or legal obligation placed upon a licensed physician when he failed to maintain the DEA Form 222 for the injectable Demerol he obtained.

33. Based upon the preceding allegations, Respondent has violated section 458.331(1)(g), Fla. Stat. in that he has failed to perform any Statutory or legal obligation placed upon a licensed physician.

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 2 day of March, 1992.

George Stuart, Secretary


Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Larry G. McPherson, Jr.
Chief Medical Attorney
Department of Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0750
Florida Bar #788643
LAQP/TWK/kss
PCP: December 5, 1991
Burt, Campbell, and Basisht

FILED

Department of Professional Regulation
AGENCY CLERK



CLERK _____

DATE 3-3-92

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**AGENCY FOR HEALTH
CARE ADMINISTRATION,**

Petitioner,

v.

**DOAH CASE NOS. 96-0362, 96-0363
AHCA CASE NOS. 90-07774, 91-03492,
90-15906**

NESTOR GARCIA, M.D.,

Respondent.

CONSENT AGREEMENT

Nestor Garcia, M.D., referred to as the "Respondent," and the Agency for Health Care Administration, referred to as "Agency," 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.

STIPULATED FACTS

1. At all times hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 0048998.
2. Respondent was charged by Administrative Complaints filed by the Agency 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 Complaints addressing allegations regarding activities which occurred during 1990 and 1991 are attached hereto as Composite Exhibit A.

3. Respondent admits the allegations of fact contained in the Administrative Complaints 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 455 and 458, Florida Statutes, as alleged in the Administrative Complaints.

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

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

STIPULATED DISPOSITION

1. FUTURE CONDUCT. Respondent shall not in the future violate Chapters 455, 458, and 893, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, Respondent read Chapters 455, 458, and 893, Florida Statutes, and the Rules of the Board of Medicine, at Section 59R, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of five thousand dollars (\$5,000.00) against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within **180** days of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE HIS/HER 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'S OFFICE WITHIN 180 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. SUCH WRITTEN CONFIRMATION WILL NOT BE UNREASONABLY WITHHELD. (SEE EXHIBIT B, PARAGRAPH 1 OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).

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

4. **COMMUNITY SERVICE.** Effective on the date of the filing of the Final Order incorporating the terms of this Agreement, Respondent shall perform fifty (50) hours of community service within one year, at a rate of at least 5 hours per month until complete. Community service shall consist of the delivery of medical services directly to patients, without fee or cost to the patient, for the good of the people of the State of Florida. Such community service shall be performed outside the Respondent'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 quarterly.

5. **PROBATION.** Effective on the date of the filing of the Final Order incorporating the terms of this Agreement, Respondent's license to practice medicine shall be placed on probation for a period of one additional year to be added to his current term of probation. The

purpose of probation is not to prevent the Respondent from practicing medicine. Rather, probation is a supervised educational experience designed by the Board to make the Respondent aware of certain obligations to his patients and the profession and to insure Respondent's continued compliance with the high standards of the profession through interaction with another physician in the appropriate field of expertise. To this end, during the period of probation, Respondent shall comply with the obligations and requirements of his current probation.

A. STANDARD PROVISIONS. Respondent's probation shall be governed by the attached "provisions regarding monitoring/supervising physicians," Exhibit B, which is incorporated as if fully set forth herein.

6. WITHDRAWAL FROM MEDICAID PROGRAM. Effective on the date of the filing of the Final Order incorporating the terms of this Agreement, Respondent shall withdraw from the Medicaid program for a period of one year. During this time, Respondent may submit no claims from reimbursement to Medicaid for any patients for whom he provides medical services.

7. It is expressly understood that this Agreement is subject to the approval of the Board and the Agency. 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.

8. Respondent shall appear before the Board at the meeting of the Board where this Agreement is considered. Respondent, in conjunction with the consideration of this Agreement by the Board, shall respond to questions under oath from the Board, Board Staff or Agency Staff. Respondent shall be prepared to explain the circumstances involved in this matter and what measures have been taken to prevent a recurrence.

9. Should this Agreement be rejected, no statement made in furtherance of the Agreement 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 purposes.

10. Respondent and the Agency fully understand that this joint Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Agency against the Respondent for acts or omissions not specifically set forth in the Administrative Complaints attached as Composite Exhibit A herein.

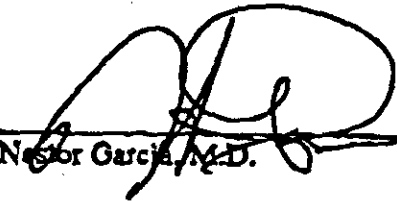
11. Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

12. Upon the Board's adoption of this Agreement, the parties hereby agree that each party will bear his own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Agency in connection with this matter.

13. 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.

SIGNED this _____ day of _____, 1996.


Nestor Garcia, M.D.

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

Sworn to and subscribed before me this _____ day of _____, 1996.

NOTARY PUBLIC

My Commission Expires:

APPROVED this 7 day of December, 1996.

Douglas M. Cook
Director

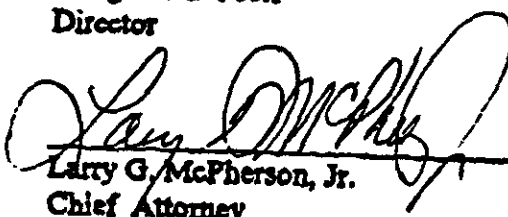

By: Larry G. McPherson, Jr.
Chief Attorney
Medical Section

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 set forth in paragraph E, below. The Board office does not have the authority to change the 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. 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. Furthermore, if the Respondent's license is on probation, the Respondent shall notify the Board within ten (10) days in the event that 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 costs 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 costs directly associated with Respondent's probation.

E. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines, reports, correspondence and inquiries shall be sent to: **Board of Medicine, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, Attn: Final Order Compliance Officer.**

F. PROBATION TERMS. If probation was imposed by the Final Order of the Board, the following provisions are applicable.

1. DEFINITIONS:

a. INDIRECT SUPERVISION is supervision by a monitoring physician (monitor) whose responsibilities are set by the Board. Indirect supervision does not require that the monitor practice on the same premises as the Respondent, however, the monitor shall practice within a reasonable geographic proximity to Respondent, which shall be within 20 miles unless otherwise provided by the Board and shall be readily available for consultation. The monitor shall be Board-certified in the Respondent's specialty area unless otherwise provided by the Board.

b. DIRECT SUPERVISION is supervision by a supervising physician (supervisor) whose responsibilities are set by the Board. Direct supervision requires that the supervisor and Respondent work in the same office. The supervising physician shall be board-certified in the Respondent's specialty area unless otherwise provided by the Board.

c. PROBATION COMMITTEE or "committee" are members of the Board of Medicine designated by the Chairman of the Board to serve as the Probation Committee.

2. REQUIRED SUPERVISION.

a. If the terms of the consent agreement include indirect monitoring of the licensee's practice (MONITORING) or direct monitoring of the licensee's practice (SUPERVISION), the Respondent shall not practice medicine without an approved monitor/supervisor, as specified by the Consent Agreement, unless otherwise ordered by the Board.

b. The monitor/supervisor must be a licensee under Chapter 458, Florida Statutes, in good standing and without restriction or limitation on his license. In addition, the Board or Committee may reject any proposed monitor/supervisor on the basis that he has previously been subject to any disciplinary action against his medical license in this or any other jurisdiction, is currently under investigation, or is the subject of a pending disciplinary action. The monitor/supervisor must be actively engaged in the same or similar specialty area unless otherwise provided by the Board or Committee and be practicing within a reasonable distance of the Respondent's practice, a distance of no more than twenty (20) miles unless otherwise specifically provided for in the consent agreement. The Board or Committee may also reject any proposed monitor/supervisor for good cause shown.

c. MECHANISM FOR APPROVAL OF MONITOR/SUPERVISOR:

(1). TEMPORARY APPROVAL. The Board confers authority on the Chairman of the Board's Probation Committee to temporarily approve Respondent's monitor/supervisor. To obtain this temporary approval, Respondent shall submit to the Chairman of the Probation Committee the name and curriculum vitae of the proposed monitor/supervisor at the time this agreement is considered by the Board. **Once a Final Order**

adopting this Agreement is filed, Respondent shall not practice medicine without an approved monitor/supervisor. Temporary approval shall only remain in effect until the next meeting of the Probation Committee.

(2). FORMAL APPROVAL. Respondent shall have the monitor/supervisor with him at his first probation appearance before the Probation Committee. Prior to consideration of the monitor/supervisor by the Committee, the Respondent shall provide to the monitor/supervisor a copy of the Administrative Complaint and Final Order in this case. Respondent shall submit a current curriculum vitae and a description of current practice from the proposed monitor/supervisor to the Board office no later than fourteen days before the Respondent's first scheduled probation appearance. Respondent's monitor/supervisor shall also appear before the Probation Committee at such other times as directed by the Committee. It shall be Respondent's responsibility to ensure that the appearance of his monitor/supervisor as directed. Failure of the monitor/supervisor to appear as directed shall constitute a violation of the terms of this Stipulation and shall subject the Respondent to disciplinary action.

d. CHANGE IN MONITOR/SUPERVISOR. In the event that Respondent's monitor/supervisor is unable or unwilling to fulfill his responsibilities as a monitor/supervisor as described above, then the Respondent shall immediately advise the Board of this fact. Respondent shall immediately submit to the Chairman of the Board's Probation Committee the name of a temporary monitor/supervisor for consideration. Respondent shall not practice pending approval of this temporary monitor/supervisor by the Chairman of the Probation Committee. Furthermore, Respondent shall make arrangements with his temporary monitor/supervisor to appear before the Probation Committee at its next regularly scheduled

meeting for consideration of the monitor/supervisor by the Committee. Respondent shall only practice under the auspices of the temporary monitor/supervisor (approved by the Chairman) until the next regularly scheduled meeting of the Probation Committee whereat the issue of the Committee's approval of the Respondent's new monitor/supervisor shall be addressed.

3. CONTINUITY OF PRACTICE

a. TOLLING PROVISIONS. 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, then certain provisions of Respondent's probation (and only those provisions of the 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:

(1). The time period of probation shall be tolled.

(2). The provisions regarding supervision whether direct or indirect by another physician, and required reports from the monitor/supervisor shall be tolled.

(3). The provisions regarding preparation of investigative reports detailing compliance with this Stipulation shall be tolled.

(4). Any provisions regarding community service shall be tolled.

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

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. AHCA-96-001382 Date 12/24/96

FILED

Agency for Health Care Administration

AGENCY CLERK

R.S. Power, Agency Clerk

By: Randa S. Bryan
Deputy Agency Clerk

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

CASE NO.: 90-07774
90-15906
91-03492
LICENSE NO.: ME0048998

NESTOR GARCIA, 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 December 6, 1996, in Tampa, Florida, for consideration of a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in the above-styled cause. Upon consideration of the Consent Agreement, 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 Consent Agreement 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 the terms and conditions of the Consent Agreement.

This Final Order shall take effect upon being filed with the Clerk of the Agency for Health Care Administration.

DONE AND ORDERED this 24 day of December, 1996.

BOARD OF MEDICINE

M. Kathryn Garrett M.D.

M. KATHRYN GARRETT, M.D.
CHAIRPERSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by certified mail to Nestor Garcia, M.D., 11501 North West 2nd Avenue, Miami, Florida 33168; to Christopher Carver, Esquire, 201 South Biscayne Boulevard, Suite 900, Miami, Florida 33131; and by interoffice delivery to Larry G. McPherson, Jr., Chief Attorney, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, on or before 5:00 p.m., this _____ day of _____, 1996.
