

DEPARTMENT OF PROFESSIONAL REGULATION  
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL  
REGULATION,

Petitioner,

v.

Case No. 9105385

RAFAEL GONZALEZ, M.D.,

Respondent.

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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 Rafael Gonzalez, 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 0027426. Respondent's last known address is 14934 Southwest 58th Street, Miami, Florida 33103

3. Respondent did not possess any certification or specific training in the area of chemical face peel procedures.

4. From on or about October 8, 1990, to on or about May 6, 1991, Respondent worked for Maria Galvis, a chemical face peel

technician, at Promo Face, Incorporated.

5. To obtain injectable Demerol during this period, Respondent wrote prescriptions to patients, who filled the prescriptions, and brought the Demerol to the Respondent's location.

6. Respondent then administered injections of this prescription Demerol to patients prior to the chemical peel procedure.

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

8. During the period of his employment with Ms. Galvis, only Ms. Galvis applied the chemical peel solution to the patients.

9. Respondent did not know the percentage of Phenol in the solution used during the peels.

10. Respondent maintained the patients were not his, however, he prescribed and or injected medication to them, and kept a patient log of names, dates and amounts of Demerol dispensed.

11. Respondent retained prescription issued bottles of Demerol and inject other patients with the medication.

12. A chemical face peel is regarded as a medical procedure and, as such, requires the procedure to be performed or directly supervised by a qualified licensed physician.

13. Respondent, by his lack of experience in performing chemical face peels, was not qualified to supervise Ms. Galvis in the performance of the procedures.

Section 458.331(1)(g), Florida Statutes, 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 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.

COUNT THREE

21. Petitioner realleges and incorporates paragraphs one (1) through fourteen (14), sixteen (16), and nineteen (19), above as if fully set forth herein this Count Three.

22. The Respondent has delegated professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them in that the Respondent: allowed an unlicensed individual to perform chemical face peels or by delegating the procedure to an unlicensed individual when the Respondent did not have the training or expertise to perform the surgery.

23. Based on the foregoing, Respondent has violated Section 458.331(1)(w), Florida Statutes, by delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is

not qualified by training, experience, or licensure to perform them.

COUNT FOUR

24. Petitioner realleges and incorporates paragraphs one (1) through fourteen (14), sixteen (16), nineteen (19) and twenty-two (22), above, as if fully set forth herein this Count Four.

25. Respondent practiced or offered to practice beyond the scope permitted by law or accepted and performed professional responsibilities which he knew he was not competent to perform in that Respondent admitted he did not have any training or expertise in the area of chemical face peels.

26. Based on the preceding allegations, Respondent violated Section 458.331(1)(v), Florida Statutes, in that Respondent practiced or offered to practice beyond the scope permitted by law or accepted and performed professional responsibilities which the licensee knows or has reason to know that he is not competent to perform.

COUNT FIVE

27. Petitioner realleges paragraphs one (1) through fourteen (14), sixteen (16), nineteen (19), twenty-two (22), and twenty-five (25), above as if fully set forth herein this Count Five.

28. Respondent has failed to keep written medical records justifying the course of treatment of the patient when Respondent failed to maintain or keep written medical records for patients to whom he administered, or prescribed medication.

29. Based on the foregoing Respondent has violated section 458.331(a)(m), Florida Statutes by failing 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.

COUNT SIX

30. Petitioner realleges and incorporates paragraphs one (1) through fourteen (14), sixteen (16), nineteen (19), twenty-two (22), twenty-five (25) and twenty-eight (28), above as if fully set forth herein this Count Six.

31. Respondent has prescribed medication which appears on Schedule II in Chapter 893, Florida Statutes for office use when Respondent wrote prescriptions to patients to obtain Demerol, the Demerol was brought to his location and then injected into patients.

32. Based on the foregoing, Respondent has violated Section 458.331(1)(bb), Florida Statutes, by prescribing any medicinal drug appearing on Schedule II in Chapter 893 by the physician for office use.

COUNT SEVEN

33. Petitioner realleges and incorporates paragraphs one (1) through fourteen (14), sixteen (16), nineteen (19), twenty-two (22), twenty-five (25), twenty-eight (28) and thirty-one (31), above, as if fully set forth herein this Count Seven.

34. Pursuant to Section 1304.03(b), Code of Federal

Regulations, a Drug Enforcement Administration (DEA) registered individual practitioner is required to keep records of controlled substances in Schedules II, III, IV and V which are dispensed, other than by prescribing or administering in the lawful course of professional practice.

35. Pursuant to Section 1304.04, Code of Federal Regulations, every inventory and other records required to be kept under this part shall be kept by the registrant and be available, for at least two (2) years from the date of such inventory or records, for inspection and copying by authorized employees of the Administration. Each registered individual practitioner required to keep records and institutional practitioner shall maintain inventories and records of controlled substances. Inventories and records of controlled substances listed in Schedules I and II shall be maintained separately from all of the registrant.

36. Pursuant to Section 1304.13, Code of Federal Regulations, every two (2) years following the date on which the initial inventory is taken by a registrant pursuant to Section 1304.12, the registrant shall take a new inventory of all stocks of controlled substances on hand.

37. Respondent is guilty of failing to maintain DEA 222 order forms and failing to maintain a DEA biannual inventory of controlled substances, contrary to Sections 1304.03(b), 1304.04, and 1304.13, Code of Federal Regulations, and thereby Respondent has violated Section 458.331(1)(g), Florida Statutes.

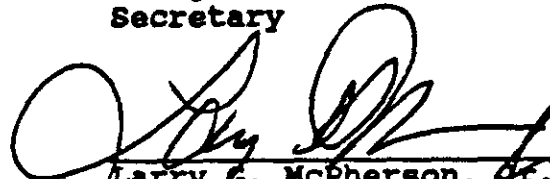
38. Based on the foregoing, Respondent violated Section

458.331(1)(g), Florida Statutes, in that he is guilty of failing 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 15 day of April, 1992.

George Stuart  
Secretary

  
Larry G. McPherson, Jr.  
Chief Medical Attorney

**COUNSEL FOR THE DEPARTMENT:**

Larry G. McPherson, Jr.  
Chief Medical Attorney  
Department of Professional  
Regulation  
1940 North Monroe Street  
Tallahassee, FL 32399-0750  
(904) 488-0062

LGM:PB:pc  
PCP: March '92

**FILED**

Department of Professional Regulation  
AGENCY CLERK



CLERK \_\_\_\_\_

DATE 4-16-92

STATE OF FLORIDA  
DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL  
REGULATION,

Petitioner,

vs.

DOAH CASE NO. 93-1327  
DBPR CASE NO. 91-05385

RAFAEL GONZALEZ, M.D.,

Respondent.

CONSENT AGREEMENT

RAFAEL GONZALEZ, M.D., referred to as the "Respondent," and the Department of Professional Regulation, 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.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 0027426.

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 hereto as Exhibit A.

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

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**STIPULATED CONCLUSIONS OF LAW**

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapter 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, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

**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, the Respondent read Chapters 455, 458, and 893 and the Rules of the Board of Medicine in Section 61 F6, Florida Administrative Code.

2. **FINE.** The Board shall impose an administrative fine in the amount of \$2,500.00 against the Respondent. The fine shall be paid by the Respondent to the Executive Director of the Board within sixty (60) days of its imposition by Final Order of the Board.

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

4. **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 four (4) years. 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 this 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 following obligations and requirements:

A. INDIRECT SUPERVISION. During the period of probation, Respondent's practice shall be undertaken only under the indirect supervision of a Board-approved physician, hereinafter referred to as the "monitor." In this regard, Respondent shall allow the monitor access to Respondent's medical records, calendar, patient logs, or other documents necessary for the monitor to supervise Respondent as detailed below.

B. Respondent shall complete the course, "Protecting Your Medical Practice: Clinical, Legal, and Ethical Issues in Prescribing Abusable Drugs," sponsored by the Florida Medical Association and the University of South Florida, or a Board-approved equivalent, during the first year of probation. In addition, Respondent shall complete the course, "Quality Medical Record Keeping For Health Care Professionals," sponsored by the Florida Medical Association Committee on Clinical Excellence, during the first year of probation. Respondent shall submit a written plan to the Chairman of the Probation Committee for course approval prior to the completion of said courses. In addition,

Respondent shall submit documentation of completion of these courses in his required reports. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board or the Chairman of the Probation Committee, said courses shall consist of a formal live lecture format.

C. RESPONSIBILITIES OF THE MONITORING PHYSICIAN. The Monitor shall:

i. Review Respondent's active patient log at least once a month at the Respondent's office for the purpose of ascertaining that Respondent does not violate probationary terms previously outlined.

ii. Review all of Respondent's records.

iii. Submit reports to the Board on a semiannual basis, and each of which shall include:

a) A brief statement of why Respondent is on probation.

b) A description of Respondent's practice (type and composition).

c) A statement addressing Respondent's compliance with the terms of probation.

d) A brief description of the monitor's relationship with the Respondent.

e) A statement advising the Board of any problems which have arisen.

f) A summary of the dates the monitor went to Respondent's office, the number of records reviewed, and the overall quality of the records reviewed.

iv. Maintain contact with the Respondent on a frequency of at least once per month. In the event that the monitor is not timely contacted by the Respondent, then the monitor shall immediately report this fact to the Board, in writing.

v. Respondent's monitor shall appear before the Probation Committee at the first meeting of said committee following commencement of the probation and at such other times as directed by the Committee. It shall be Respondent's responsibility to ensure the appearance of his monitor to appear as requested or directed. If the approved monitor fails to appear as requested or directed by the Probation Committee, the Respondent shall immediately cease practicing medicine until such time as the approved monitor or alternate monitor appears before the Probation Committee.

5. QUALITY ASSURANCE CONSULTATION. Respondent shall engage, at his expense, an independent, certified risk manager to review his current medical practice prior to the Board's consideration of this Agreement. This consultant shall ascertain whether Respondent is now practicing within the limits of his training and with regard for the public health and safety. This consultant will prepare a report addressing Respondent's practice. Respondent shall submit this report to the Board with documentation that demonstrates his compliance with any suggestions enumerated by the consultant.

6. It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regarding the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless a Final Order is entered incorporating the terms of this Agreement, by the Board.

7. 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 Department Staff.

8. Should this Agreement be rejected, no statement made in furtherance of this 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.

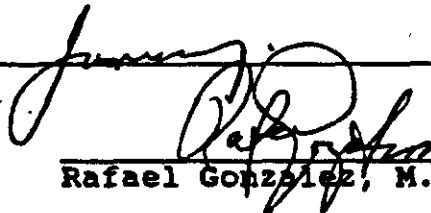
9. Respondent and the Department fully understand that this joint Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint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

10. 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.

11. 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 Department in connection with this matter.

12. 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 26 day of January, 1994.

  
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Rafael Gonzalez, M.D.

Sworn to and subscribed before me  
this 26 day of January, 1994.

[Signature]  
Notary Public

My Commission Expires:



APPROVED this 2 day of February, 1994.

George Stuart  
Secretary

[Signature]  
BY: Larry G. McPherson, Jr.  
Chief Medical Attorney

AP/hh  
A:GONZALEZ.CON  
12-22-93

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
BOARD OF MEDICINE

Final Order No. BPR-94-00002228

Date: 9-20-94

FILED BY AGENCY CLERK  
Dept. of Business and Professional Regulation  
Sarah Wachman, Agency Clerk

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,

Petitioner,

By: Brandon J. Moore

v.

DBPR CASE NUMBER: 91-05385  
LICENSE NUMBER: 0027426

RAFAEL J. GONZALEZ, M.D.,

Respondent.

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on April 9, 1994, in Ft, Lauderdale, Florida, for consideration of a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in the above-styled case. 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 of the terms and conditions of the Consent Agreement.



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

DONE AND ORDERED this 9 day April, 1994.

BOARD OF MEDICINE



EDWARD A. DAUER, M.D.  
CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by certified U.S. Mail to Rafael Gonzalez, M.D., 5770 S.W. 156th Court, Miami, Florida 33193 and 2238 N.W. 7th Street Miami, Florida 33125, Irving J. Whitman, Esquire, Suite 200, Dadeland West, 10651 North Kendall Drive, Miami, Florida 33176 and by interoffice delivery to Larry G. McPherson, Jr., Chief Medical Attorney, Department of Business and Professional Regulation, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, at or before 5:00 P.M., this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

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MARM M. HARRIS, Ph.D.  
Executive Director