

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

Final Order No. AHCA-95-00391 Date 3-8-95

AGENCY FOR HEALTH CARE
ADMINISTRATION, BOARD OF
MEDICINE,

Petitioner,

v.

JEROME F. BERGHEIM, M.D.,

Respondent.

FILED
Agency for Health Care Administration
AGENCY CLERK
R.S. Power, Agency Clerk
By: Brandon R. Moore
Deputy Agency Clerk

CASE NUMBERS: 92-14755
93-13821
93-13311
LICENSE NUMBER: ME 0012829

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on February 10, 1995 in Tampa, Florida, for consideration of a Consent Agreement 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, the Board rejected the Consent Agreement. The parties came thereafter orally offered a revised Consent Agreement, which was accepted without objection by the parties.

IT IS HEREBY ORDERED AND ADJUDGED that the revised Consent Agreement as submitted herein be and is hereby approved and adopted in toto and incorporated by reference herein. Accordingly, the parties shall adhere to and abide by the terms and conditions of the revised consent agreement as follows:

STIPULATED FACTS

1. Jerome F. Bergheim, 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.

2. At all times material hereto, Respondent was a licensed psychiatrist in the State of Florida having been issued license number ME 0012829.

3. Respondent was charged by an Administrative Complaint of Case Number 92-14755 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 Complaint is attached hereto as Exhibit A.

4. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint of Case Number 92-14755.

5. It is agreed between the parties that this stipulation shall be dispositive of AHCA Case Numbers 93-13821 and 93-13311.

STIPULATED CONCLUSIONS OF LAW

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

2. Respondent admits that the facts set forth in the attached

Administrative Complaint, if proven, would constitute violations of Chapters 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent admits that the facts set forth in the Investigative Reports of AHCA Case Numbers 93-13821 and 93-13311 , if proven, would constitute violations of Chapter 458, Florida Statutes.

4. Respondent hereby waives a finding of probable cause in AHCA Case Numbers 93-13821 and 93-13311 so that the Board of Medicine may take final agency action. The Respondent understands that the waiver of probable cause in this matter operates to make this matter a public record, regardless of the Board's action of the Consent Agreement. The Respondent waives confidentiality in this case and authorizes the Board to review the case materials, including all records included in the case, in conjunction with the consideration of this Consent Agreement.

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 59R, Florida Administrative Code.

2. **FINE.** The Board shall impose an administrative fine in the amount of \$3,000.00 against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within ninety (90) days of its imposition by Final Order of the Board.

3. 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 (1) year. 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. To this end, during the period of probation, Respondent shall comply with the following obligations and requirements:

A. OBLIGATIONS. During the period of probation, Respondent's license shall be restricted as follows:

i. Respondent shall undergo an evaluation by the Florida Physicians Recovery Network (PRN) so as to determine whether a problem exists that would necessitate the need for Respondent to participate in and comply with the Florida Physicians Recovery Network (PRN). Respondent shall enter into an after care contract with the PRN and shall cause the PRN to send to the Board a copy of the after care contract with the PRN. Respondent shall execute a release form so as to authorize the PRN to release information to the Board of Medicine as needed for the Board to monitor Respondent's progress in the PRN's program.

ii. Respondent shall cause the director of the Physicians Recovery Network (PRN) to report to the Board any problems that may occur with Respondent and any violations of

Chapter 458, Florida Statutes. Respondent shall cause the director of the PRN to make such a report within thirty (30) days of the occurrence of any problems, or violations of Chapter 458, Florida Statutes.

iii. Within one (1) year of the filing of the Final Order incorporating the terms of this Agreement, Respondent shall attend twenty (20) hours of Category I Continuing Medical Education, ten (10) hours of which shall consist of Psychiatric Ethics involving boundaries and ten (10) hours in Risk Management. Respondent shall submit a written plan to the Chairman of the Board for approval prior to the completion of said continuing education hours. The Board confers authority on the Chairman of the Board to approve or disapprove said continuing education hours. In addition, 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 these medical courses within one (1) year of the entry 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 previously provided 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 courses shall consist of a formal, live lecture format.

iv. Respondent shall appear before the Probation

Committee of the Board of Medicine at the first Committee meeting after probation commences; at the last meeting of the Committee preceding scheduled termination of the probation; and at such other times as requested by the Committee. Respondent shall be noticed by the Board staff of the date, time, and place of the Committee meeting whereat Respondent's appearance is required. Failure of Respondent to appear as requested or directed shall be considered a violation of the terms of this Agreement, and shall subject the Respondent to disciplinary action.

B. REPORTS FROM RESPONDENT. The Respondent shall submit quarterly reports to the Board in affidavit form which shall include:

- i. A brief statement of why Respondent 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 statement advising the Board of any problems which have arisen.
- vi. A statement addressing compliance with any restrictions or requirements imposed.

The Board may further specify requirements for the contents of these reports.

C. RESTRICTIONS DURING PROBATION. During the period of

probation, Respondent's license shall be restricted as follows:

i. TREATMENT MONITOR. Respondent shall install a surveillance system which includes a surveillance camera linked to a television monitor and video recorder. No female patient may be treated without video surveillance by a live, contemporaneous female health care practitioner licensed by the Agency for Health Care Administration. The Respondent shall obtain an informed written consent from each female patient who is monitored and no female patient shall be treated without prior written consent and said video surveillance. The television must be monitored by a Board-approved licensed health care practitioner, hereinafter referred to as the "Treatment Monitor." The "Treatment Monitor" shall be a person who retains a current professional license issued by the Agency for Health Care Administration, and the "Treatment Monitor" shall not have been the subject of discipline by the appropriate regulatory board. The name of the licensed health care practitioner must be submitted to the Agency for Health Care Administration prior to the Respondent seeing any further female patients. The Treatment Monitor shall immediately report any irregularities observed during such taped sessions to the Physician's Recovery Network (PRN) Monitoring Psychiatrist. The Treatment Monitor shall maintain the security of these tapes and provide access to these tapes to the PRN Monitoring Psychiatrist.

D. RESPONSIBILITIES OF THE MONITORS

The Treatment Monitor shall:

i. During the period of probation, live and

concurrent, view the television monitor and video record all sessions involving female patients.

ii. The monitor shall indicate in writing the date, time, and file number for each female patient who is monitored, and such writing shall be incorporated contemporaneously in the patient's record.

iii. Submit logs of all female patients and videotapes to the PRN Monitoring Psychiatrist upon request.

The PRN Monitoring Psychiatrist shall:

i. A psychiatrist, approved by the Physicians Recovery Network (PRN), shall go to the Respondent's office once a week and review female patient charts and video tapes thereof. 25% of these charts and video tapes, on a random basis, shall be reviewed each quarter.

ii. The PRN Monitoring Psychiatrist shall make routine reports to the PRN pursuant to the terms of the contract with Respondent.

iii. The PRN Monitoring Psychiatrist shall report to the Agency for Health Care Administration any causes for concern in Respondent's ability to practice medicine with skill and safety.

E. **STANDARD PROVISIONS.** Respondent's probation shall be governed by the attached "Standard Terms Applicable to Consent Agreements," Exhibit B, which is incorporated as if fully set forth herein.

4. **COMPUTATION OF TIME.** For the purposes of computation of any time requirements, time begins with the filing of the Final

Order of the Board of Medicine, and, if appropriate, the filing of the Order of the Board reinstating the license of the Respondent.

5. Any variance from the probationary terms outlined above or a failure on the part of Respondent to comply with the aforementioned terms shall result in the immediate suspension of Respondent's license to practice medicine in the State of Florida via an Emergency Suspension Order issued by the Board of Medicine. The Respondent's patient records shall be subject to random inspection by the Probation Committee to insure compliance with the aforementioned terms.

6. 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.

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 Agency staff whereby he demonstrates what actions have been taken in his medical practice to insure that this type of episode does not reoccur.

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

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

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

DONE AND ORDERED this 1st day March, 1995.

BOARD OF MEDICINE

Mary Kathryn Garrett M.D.
MARY KATHRYN GARRETT, M.D.
VICE-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 Jerome F. Bergheim, M.D., 4700-G Sheridan Street, Hollywood, Florida 33021-3485, Jeffrey I. Orseck, Esquire, Orseck Plaza, 1111 East Broward Boulevard, Ft. Lauderdale, Florida 33301, and by interoffice delivery to Larry G. McPherson, Jr., Chief Medical Attorney, Agency for Health Care Administration, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, at or before 5:00 P.M., this _____ day of _____, 1995.

MARM M. HARRIS, Ed.D.
Executive Director

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

PETITIONER,

vs.

CASE NO. 92-14755

JEROME F. BERGHEIM, 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 JEROME F. BERGHEIM, 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 0012829. Respondent's last known address is 4700-G Sheridan Street, Hollywood, Florida 33021-3485.

3. Respondent's area of practice is psychiatry. Respondent is board certified in psychiatry and neurology.

4. Section 458.329, Florida Statutes, defines sexual misconduct in the practice of medicine as follows: The physician-

patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine means violation of the physician-patient relationship through which the physician uses said relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

5. During the period of or about July, 1990, to on or about August, 1992, Patient #1, a twenty-nine (29) year-old female, was treated by Respondent following injuries sustained by a fall.

6. On or about June 4, 1992, Patient #1 presented to Respondent at his office for treatment. When she arose from a couch to leave, Respondent held her by the shoulders, turned her body towards his and kissed Patient #1 on the mouth. Patient #1 left the office immediately after this incident.

7. On or about July 2, 1992, Patient #1 telephoned Respondent to schedule an appointment at which time Respondent advised her that the only time available was 5:30 PM. When Patient #1 subsequently presented to Respondent at his office as scheduled that evening, the office staff were leaving upon her arrival as it was a holiday weekend.

8. As Patient #1 was walking out of Respondent's office, Respondent held her by the shoulders, turned her body towards his and kissed her on the mouth. Patient #1 pulled herself away and left the building immediately.

9. Respondent's embracing and kissing of Patient #1 constitute attempts to engage Patient #1 in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient in violation of Section 458.329, Florida Statutes.

10. On or about June 4, 1992, and, again, on or about July 2, 1992, Respondent exercised his influence within the patient-physician relationship in an attempt to engage Patient #1 in sexual activity.

COUNT ONE

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

12. Respondent violated a provision of Chapter 458, the Medical Practice Act, in that Respondent's alleged unsolicited advances on Patient #1 within the context of the patient-physician relationship constitute attempts to engage Patient #1 in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient in violation of Section 458.329, Florida Statutes.

13. Based on the preceding allegations, Respondent violated Section 458.331(1)(x), Florida Statutes, 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 by violating Section 458.329, Florida Statutes.

COUNT TWO

14. Petitioner realleges and incorporates paragraphs one (1) through ten (10) and twelve (12) as if fully set forth herein this Count Two.

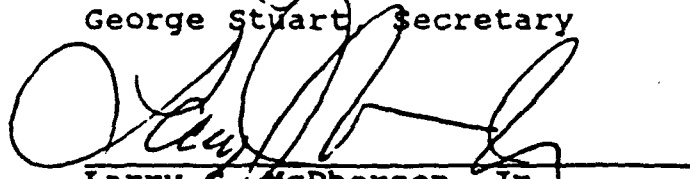
15. Respondent is guilty of exercising influence within a patient-physician relationship for purposes of engaging Patient #1 in sexual activity in that, on or about June 4, 1992, and, again, on or about July 2, 1992, Respondent exercised his influence within the patient-physician relationship in an attempt to engage Patient #1 in sexual activity.

16. Based on the preceding allegations, Respondent violated Section 458.331(1)(j), Florida Statutes, in that Respondent is guilty of exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his 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 7 day of May, 1993.

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
RCP/rb
PCP: April 16, 1993
Rodriguez, Murray and Slade

FILED

Department of Professional Regulation -

DEPUTY CLERK

CLERK Rodriguez

DATE 5-10-93