

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE
ADMINISTRATION,

PETITIONER,

vs.

CASE NO. 94-00171

DAVID RALPH MOSS, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Agency for Health Care Administration, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against David Ralph Moss, 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 20.42, 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 0045122. Respondent's last known address is 4230 Tideview Drive, Jacksonville, Florida 32250-1804.

3. Respondent is not Board certified, his specialty is psychiatry.

4. Respondent wrote approximately three hundred forty seven (347) prescription for Patient #1, [REDACTED] Patient #2

and Patient #3, [REDACTED] during the time from on or about February 4, 1990, and on or about October 29, 1992.

5. Respondent's prescriptions for Patients #1, #2, and #3, included approximately two hundred eighty (280) prescriptions for controlled substances, including but not limited to, propoxyphene hydrochloride, acetaminophen with codeine, propoxyphene napsylate, Fiorinal with codeine, Lortab, Hycotuss, Kwelcof, lorazepam and Cylert.

6. Propoxyphene hydrochloride is a legend drug as defined by Section 465.003(7), Florida Statutes, and is a Schedule IV controlled substance as listed in Chapter 893, Florida Statutes.

7. Acetaminophen with codeine is a legend drug as defined by Section 465.003(7), Florida Statute, and contains codeine phosphate, a Schedule III controlled substance as listed in Chapter 893, Florida Statutes.

8. Propoxyphene napsylate is a legend drug as defined by Section 465.003(7), Florida Statute, and is a Schedule IV controlled substance as listed in Chapter 893, Florida Statutes.

9. Fiorinal with codeine is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains butalbital and codeine phosphate, which are Schedule III controlled substances as listed in Chapter 893, Florida Statutes.

10. Lortab is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains hydrocodone bitartrate, a Schedule III controlled substance as listed in Chapter 893, Florida Statutes.

11. Hycotuss is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains hydrocodone bitartrate, a Schedule III controlled substance as listed in Chapter 893, Florida Statutes.

12. Kwelcof is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains hydrocodone bitartrate, a Schedule III controlled substance as listed in Chapter 893, Florida Statutes.

13. Lorazepam is a legend drug as defined by Section 465.003(7), Florida Statutes, and is a Schedule IV controlled substance as listed in Chapter 893, Florida Statutes.

14. Cylert is a legend drug as defined by Section 465.003(7), Florida Statutes, and contains pemoline, a Schedule IV controlled substance as listed in Chapter 893, Florida Statutes.

15. Respondent did not document Patient #1, #2 or #3's prescriptions, and did not maintain any medical records for Patients #1, #2 or #3 for any examinations or diagnoses.

16. Respondent admitted that Patients #1, #2 and #3 were not under his care, and that he wrote prescriptions under their names for non-legitimate uses by Patient #1 to satisfy her drug dependency, and himself.

17. On or about December 22, 1993, Respondent voluntarily enrolled in an impairment program through the Physicians Recovery Network.

Count One

18. Petitioner realleges and incorporates paragraphs one (1) through seventeen (17) as if fully set forth herein this Count One.

19. Respondent is guilty of 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 hospitalization, in that Respondent prescribed medication, including controlled substances, to Patient #1, #2 and #3 without documenting said prescriptions and without maintaining any medical records.

20. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes, and is guilty of 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 hospitalization.

Count Two

21. Petitioner realleges and incorporates paragraphs one (1) through seventeen (17) and nineteen (19) as if fully set forth herein this Count Two.

22. Respondent is guilty of 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, in that Respondent prescribed

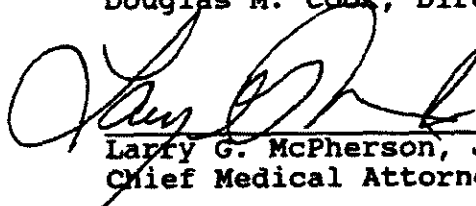
controlled substances to Patient #1, #2 and #3, [REDACTED] without a justified diagnosis, and for Respondent's and Patient #1's non-medical use.

23. Based on the foregoing, Respondent violated Section 458.331(1)(g), Florida Statutes, and is guilty of 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.

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an Order imposing one or more of the following penalties: permanent 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 16 day of December, 1994.

Douglas M. Cook, Director


Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR AGENCY:

Larry G. McPherson, Jr.
Chief Medical Attorney
Agency for Health Care Administration
1940 North Monroe Street
Tallahassee, Florida 32399-0792
Florida Bar #788643
WFW/kjh
PCP: December 12, 1994
Katims, Diblan, Finwick

FILED
AGENCY FOR
HEALTH CARE ADMINISTRATION
DEPUTY CLERK
CLERK Brandon J. Moore
DATE 12-19-94

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

AGENCY FOR HEALTH
CARE ADMINISTRATION,

Petitioner,

v.

AHCA CASE NO. 94-00171

DAVID R. MOSS, M.D.,

Respondent.

CONSENT AGREEMENT

DAVID R. MOSS, 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 material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 0045122.

2. Respondent was charged by an Administrative Complaint 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.

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

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, and the jurisdiction of the Agency 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, Respondent has read Chapters 455, 458 and 893, Florida Statutes, and the Rules of the Board of Medicine, at Rule 59R, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of one thousand, five hundred dollars (\$1,500.00) against the Respondent. The fine shall be paid by the Respondent to the Executive Director of the Board within six (6) months 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 five (5) years.

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

i. INDIRECT SUPERVISION. Respondent shall practice 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 records (office and hospital), calendar, patient logs or other documents necessary for the monitor to supervise Respondent as detailed below.

ii. Respondent shall not prescribe any controlled substances until Respondent appears before the Board and demonstrates to its satisfaction that Respondent may prescribe with reasonable skill and safety to patients. Said demonstration shall include, but not be limited to, successful compliance with all terms of this Consent Agreement for a period of at least two years. This provision does not preclude Respondent from ordering and/or administering controlled substances in a licensed hospital setting.

iii. Upon Respondent's successful demonstration as outlined in Stipulated Disposition, paragraph 4, ii., Respondent may prescribe Schedule II, III, IV, V controlled substances only in compliance with the restrictions set forth below:

a. Respondent shall utilize sequentially numbered triplicate prescriptions.

b. Respondent shall immediately provide one copy of each prescription to the monitor/supervisor.

c. Respondent shall provide one copy of each prescription to the Agency's investigator within one month after issuing said prescription.

B. OBLIGATIONS/REQUIREMENTS OF PROBATION. During the period of probation, Respondent shall comply with the following obligations and requirements:

i. 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.

ii. 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.

iii. Respondent shall be responsible for ensuring that the monitor submits all required reports.

iv. Respondent shall remain under contract with the Physicians Recovery Network (PRN) and comply with all recommendations of PRN.

C. RESPONSIBILITIES OF THE MONITORING PHYSICIAN.

The Monitor shall:

i. Review twenty-five percent (25%) of Respondent's active patient records (office and hospital) at least once a month, for the purpose of ascertaining whether Respondent is practicing medicine with an acceptable level of care, skill, and treatment to his patients; whether Respondent is prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including controlled substances, appropriately; and whether Respondent's written medical records justify the course of treatment ordered for his patients. The monitor shall go to Respondent's office or hospital once every month and shall review Respondent's calendar or patient log and shall select the records to be reviewed.

ii. Review of all of Respondent's patient records for patients treated with controlled substances. In this regard, Respondent shall maintain a log documenting all such patients.

iii. Submit reports on a semiannual basis, in affidavit form, 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.

vi. 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 Respondent, then the monitor shall immediately report this fact in writing to the Board.

vii. 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.

D. REPORTS FROM RESPONDENT. The Respondent shall submit semiannual reports, in affidavit form, the contents of which may be further specified by the Board, but 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 description of the relationship with monitoring physician.

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

vii. A statement addressing compliance with any restrictions or requirements imposed.

E. 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.

5. RESTRICTION. Respondent shall be permanently restricted in that Respondent shall not prescribe, dispense, administer, mix or otherwise prepare legend drugs, including all controlled substances, to family members (by blood or by marriage).

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. Respondent shall be prepared to explain the circumstances involved in this matter and what measures have been taken to prevent a recurrence.

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 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 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.

SIGNED this 28th day of AUGUST, 1995.


David R. Moss, M.D.

Before me, personally appeared David R. Moss, whose identity is known to me by personal knowledge (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 28th day of August, 1995.


NOTARY PUBLIC

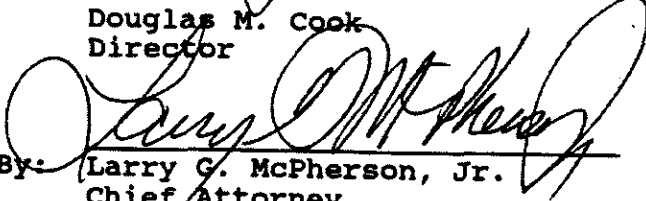
My Commission Expires:



Notary Public, State of Florida
BARBARA C. MORRISON
My Comm. Exp. Jan. 30, 1997
Comm. No. CC 248169

APPROVED this 31 day of August, 1995.

Douglas M. Cook
Director


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

PROVISIONS REGARDING MONITORING/SUPERVISING PHYSICIANS

Provisions governing physicians ordered to work under supervision of monitoring or supervising physician.

I. 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.

II. STANDARD TERMS.

A. REQUIRED SUPERVISION.

1. The Respondent shall not practice medicine without an approved monitor/supervisor, as specified by the Consent Agreement, unless otherwise ordered by the Board.

2. 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/her 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. The Board or Committee may also reject any proposed monitor/supervisor for good cause shown.

B. 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.

a. 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.

b. 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 Agreement and shall subject the Respondent to disciplinary action.

3. 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.

C. CONTINUITY OF PRACTICE

1. 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.

a. The time period of probation shall be tolled.

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

c. The provisions regarding preparation of investigative reports detailing compliance with this Agreement shall be tolled.

2. ADDRESSES. Respondent must keep current residence and business addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses. Furthermore, Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of medicine in Florida.

3. 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.

D. COSTS. 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, and the Board's administrative costs directly associated with Respondent's probation.

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

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

AGENCY FOR HEALTH CARE
ADMINISTRATION, BOARD OF
MEDICINE,

Petitioner,

v.

DAVID R. MOSS, M.D.,

Respondent.

Final Order No. AHCA-95-01680 Date 11-17-95

FILED

Agency for Health Care Administration

AGENCY CLERK

R.S. Power, Agency Clerk

By: Theresa C. Cook
Deputy Agency Clerk

CASE NUMBER: 94-00171
LICENSE NUMBER: ME 0045122

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on October 7, 1995 in Orlando, 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, the Board rejected the Consent Agreement proposed and offered an amendment at the hearing, which amendment was accepted without objection by the parties.

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 with the following amendments:

1. Paragraph 4.B.iv. shall be amended to reflect that for a period of at least five (5) years, and as long as necessary to practice with reasonable skill and safety, Respondent shall enter

into a contract with the Physicians Recovery Network (PRN) and comply with any and all recommendations of PRN.

2. If Respondent's practice setting changes from structured or with any change in the setting, the Respondent shall appear before the Board prior to the change.

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

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

DONE AND ORDERED this 14th day November, 1995.

BOARD OF MEDICINE

Gary E. Winchester M.D.
GARY E. WINCHESTER, 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 David R. Moss, M.D., 4230 Tideview Drive, Jacksonville, Florida 32250-1804, Scott Mitchell, Esquire, LESTER & MITCHELL, P.A., 218 E. Ashley Street, Jacksonville, Florida 32202 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