

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

Final Order No. DOH-98-1211 Date 11-10-98
FILED
Department of Health
Angela Hall, AGENCY CLERK
By: Stephanie J. D. 2
Deputy Agency Clerk

vs.

CASE NO.: 96-06870
LICENSE NO.: ME0045757

FRANCIS KEVIN BUTLER, 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 October 2, 1998, 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, the Board offered amendments to the Consent Agreement which amendments were accepted without objection by the parties. The amendments are as follows:

1. The fine set forth is paragraph 2 of the Stipulated Disposition shall be paid within three (3) months of the imposition by Final Order.
2. The Continuing Medical Education set forth in paragraph 3 of the Stipulated Disposition shall reflect that said education be "in

the area of treatment of psychiatric disorders with controlled substances or psychotropic drugs.

3. Paragraph 4 of the Stipulated Disposition is clarified to state that the required medical records course is sponsored solely by the Florida Medical Association. Said course must be completed within one year from the date the Final Order is filed.

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

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 6 day of November, 1998.

BOARD OF MEDICINE



JOHN W. GLOTFELTY, M.D.
CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Francis Kevin Butler, M.D., 4023 N. Armenia Avenue, Suite 470, Tampa, Florida 33607; to William B. Taylor, IV, Esquire, Post Office Box 1531, Tampa, Florida 33601-1531, 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 _____, 1998.

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

DEPARTMENT OF HEALTH,

Petitioner,

v.

AHCA Case No. 96-06780

FRANCIS KEVIN BUTLER, M.D.

Respondent.

_____ /

CONSENT AGREEMENT

Francis Kevin Butler, M.D., referred to as the "Respondent," and the Department of Health, through and by 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 0045757.
2. Respondent neither admits nor denies the allegations of fact contained in the Amended Administrative Complaint. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

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.
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 61F6, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of four thousand (\$4,000) against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within ^{Ninety} ~~SIXTY~~ ³ ~~DAYS~~ of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS 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 OFFICE WITHIN ⁹⁰~~60~~ 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. (SEE EXHIBIT B, PARAGRAPH 1 OF THIS CONSENT AGREEMENT
FOR BOARD ADDRESS AND STANDARD TERMS).

3. CONTINUING EDUCATION. Respondent shall complete forty (40) hours of continuing education credits hours in the treatment of psychiatric diseases with controlled substances. 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 to the Compliance Officer of the Board of Medicine. Unless otherwise approved by the Board or the Chairman of the Probation Committee, said courses shall consist of a formal live lecture format.

4. RECORDS COURSE. Respondent shall complete the course, "Quality Medical Record Keeping for Health Care Professionals," sponsored by the Florida Medical Association ~~and the~~ University of South Florida within ONE YEAR of the issuance of the Final Order in this case.

5. 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.

6. 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.

7. 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.

8. 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, or in the investigative file in this case.

9. 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.

10. 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.

11. 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 29th day of June, 1998.

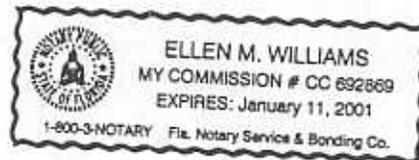
Francis Kevin Butler
Francis Kevin Butler, M.D.

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

Sworn to and subscribed before me this 29th day of June, 1998.

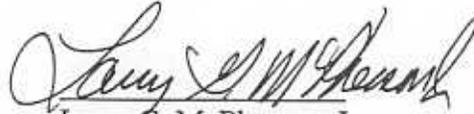
Ellen M. Williams
NOTARY PUBLIC

My Commission Expires: January 11, 2001



APPROVED this 8 day of July, 1998.

James T. Howell
Secretary



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, Department of Health, Medical Quality Assurance, 2020 Capital Circle SE, Bin # C-03, Tallahassee, Florida 32399-3253, Attn: Final Order Compliance Officer.**

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,)
)
 PETITIONER,)
)
 v.)
)
 FRANCIS KEVIN BUTLER, M.D.,)
)
 RESPONDENT.)
 _____)

CASE NO. 96-06870

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Health, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against Francis Kevin Butler, M.D., hereinafter referred to as "Respondent," and alleges:

1. Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes. Pursuant to the provisions of Section 20.43(3), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

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 0045757. Respondent's last known address is 4023 N. Armenia Avenue, Suite 470, Tampa, FL 33607.

3. Respondent area of specialty is psychiatry.

4. On or about July 18, 1995, patient C.C.-B., a fifty-three (53) year old female, presented to Behavioral Healthcare Options, Inc. and was seen by Dr. Debra Barnett, a psychiatrist.

5. In or around July, 1995, through September, 1995, both Dr. Debra Barnett and Respondent practiced psychiatry Behavioral Healthcare Options, Inc.

6. On or about July 18, 1995, Dr. Barnett examined patient C.C.-B., diagnosed her as a manic depressive with Axis I bipolar depressed, and noted in her medical records that patient C.C.-B. had been on lithium carbonate 300 mg, twice per day.

7. Lithium carbonate is a legend drug as defined by Section 465.003(7), Florida Statutes, used for the treatment of manic depressive illness.

8. In her medical records for her July 18, 1995, appointment with patient C.C.-B., Dr. Barnett noted that her short-term goals in the treatment plan for patient C.C.-B. were to obtain the lithium level.

9. In her medical records for her July 18, 1995, appointment with patient C.C.-B., Dr. Barnett noted that she had ordered a lithium level lab test.

10. Lithium level tests are necessary to monitor the content of lithium in a patient's blood and avoid thereby lithium toxicity in a patient.

11. Lithium toxicity may result in some of the following toxic reactions in a patient: hand tremor, ataxia (disorder in muscular coordination), slurred speech, dizziness, vertigo, anorexia, nausea, vomiting, fatigue, weight loss, hypotension.

12. After July 18, 1995, Dr. Barnett did not see, treat or consult patient C.C.-B.

13. On or about August 1, 1995, presented to Behavioral Healthcare Options, Inc., and was seen by Respondent.

14. In his medical records for his August 1, 1995, appointment with patient C.C.-B. Respondent noted that patient C.C.-B. had been on lithium carbonate, 300 mg, three times per day. He also noted that he had prescribed patient C.C.-B. to continue lithium carbonate. Until on or about August 24, 1995, patient C.C.-B. was on lithium carbonate, 300 mg, three times per day.

15. On or about August 1, 1995, Respondent did not order a lithium blood level for patient C.C.-B.,

16. Petitioner has subpoenaed and received patient C.C.-B.'s medical records from Respondent.

17. Petitioner has also subpoenaed and received patient C.C.-B.'s medical records from Dr. Debra Barnett.

18. Respondent's medical records package for patient C.C.-B. is identical with Dr. Debra Barnett's medical records package for patient C.C.-B. In fact, both have the same custodian of records who is the custodian of records for Behavioral Healthcare Options, Inc.

19. On or about August 10, 1995, patient C.C.-B. returned to Respondent's office and Respondent prescribed 90 tablets of lithium carbonate, 300 mg. Respondent noted in his medical records that he ordered no lab testing for patient C.C.-B. on or about August 10, 1995.

20. On or about August 24, 1995, patient C.C.-B. returned to Respondent's office with complaints of lithium toxicity, including difficulty in walking, hand tremor, and slurred speech. Respondent noted in his medical records that he had assessed that patient C.C.-B. had lithium toxicity and that he had instructed her to stop taking the lithium carbonate and resume it on August 26, twice per day. Respondent also noted in his medical records that he had ordered no lab testing on or about August 24, 1995.

21. On or about September 5, 1995, patient C.C.-B. returned to Respondent's office. Respondent noted in his medical records that patient still had tremor, ataxia, and was confused. Respondent's noted also that his assessment of patient C.C.-B. was the same as during the previous appointment, which was lithium toxicity.

22. On or about September 5, 1995, Respondent did not order a lithium blood level test for patient C.C.-B.

COUNT ONE

23. Petitioner realleges and incorporates paragraphs one (1) through twenty-two (22), as if fully set forth herein this Count One.

24. Respondent failed to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances in regard to patient C.C.-B. in that, during his treatment of patient C.C.-B., Respondent failed to appropriately monitor patient's intake of lithium carbonate; failed to prescribe the dosage of lithium carbonate appropriate for patient C.C.-B.; failed to monitor patient's lithium blood level; failed to order a lithium blood level test; failed to prevent lithium toxicity in patient C.C.-B.; and failed to prevent in patient C.C.-B. the adverse reactions following lithium toxicity.

25. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes, in that he failed to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT TWO

26. Petitioner realleges and incorporates paragraphs one (1) through twenty-two (22) and paragraph twenty-four (24) as if fully set forth herein this Count Two.

27. Respondent failed to keep appropriate medical records for patient C.C.-B. in that Respondent, as a treater of patient C.C.-B. subsequent to Dr. Barnett; failed to record in his medical records for patient C.C.-B. whether the lithium blood level test ordered by Dr. Barnett had been taken by the patient; failed to record whether the results, if any, of such test had been reported by the lab; failed to record the reason why the results, if any, of such test had not been reported; failed to justify his continued prescription of lithium carbonate to patient C.C.-B. without appropriate monitoring of the lithium blood level; and failed to justify his continued prescription of lithium carbonate to patient C.C.-B. without ordering a lithium blood level test.

28. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes, in that Respondent failed to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify 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 THREE

29. Petitioner realleges and incorporates paragraphs one (1) through twenty-two (22), paragraph twenty-four (24), and paragraph twenty-seven (27) as if fully set forth herein this Count Three.

30. During his treatment of patient C.C.-B., Respondent has prescribed lithium carbonate, a legend drug, inappropriately in that Respondent's prescribing of lithium carbonate resulted in lithium toxicity and adverse toxic reactions in patient C.C.-B.

31. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes, in that Respondent prescribed, administered, mixed, or otherwise prepared 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 or her intent.

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, the assessment of costs related to the investigation and prosecution of this case, other than costs associated with an attorney's time, as provided for in Section 455.624(3), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 2 day of February, 1998.

James T. Howell, M.D., Secretary

FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK Rena Combs

DATE 2/3/98



Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Larry G. McPherson, Jr.
Chief Medical Attorney
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Tallahassee, Florida 32317-4229
Florida Bar # 788643
RPC/ve
PCP: January 29, 1998
PCP Members: Skinner, Dauer, Rodriguez