

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,)
)
 PETITIONER,)
)
 v.) CASE NO. 1997-07009
)
 HARISH J. PATEL, M.D.,)
)
 RESPONDENT.)
_____)

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 Harish J. Patel, 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 0061113. Respondent's last known address is 5649-49 Street N, St. Petersburg, Florida.
3. Respondent is in the private practice of neurology and is not board certified.

4. Patient P.P. presented to Respondent's office on October 19, 1995, following a referral by his primary care physician. Patient reported a numbness in both legs, groin, interior thighs, calf muscles, and feet. The numbness had begun a week before with no history of back pain or a precipitating injury.

5. Respondent's examination of Patient P.P. revealed decreased light touch and pinprick sensation in both lower extremities, and lower extremity weakness. Position sense was also found to be altered. Respondent indicated no history of lower back pain or radicular (nerve) pain.

6. Respondent diagnosed Patient P.P. with L1-L2-L3-L4-L5 radiculoneuropathies (an abnormal and usually degenerative state of the nervous system, nerves or nerve roots of the first through the fifth lumbar vertebra) with leg numbness. Respondent's notes also contain the statement "rule out disc disease." Respondent ordered an MRI and x-rays of the lumbar spine, laboratory studies, an EMG (electromyogram), and a nerve conduction study. He instructed Respondent to wear a lumbar spine belt and prescribed pain and anti-inflammatory medication Respondent also prescribed a walker to stabilize Patient's gait although Respondent's records reflect that examination revealed a normal gait.

7. On or about October 23, 1995, Patient P.P. returned to Respondent's office for the nerve conduction study and the EMG.

8. On or about November 2, 1995, Patient P.P. returned to Respondent's office. Respondent concluded that the MRI and nerve conduction study supported his original diagnosis and indicated lumbosacral radiculopathies (disease of the roots of spinal nerves in the lumbar vertebrae and the sacral). Respondent recommended continuing the medications prescribed and

added a prescription for Motrin. Back exercises were prescribed and a follow-up visit was scheduled for four weeks.

9. Respondent did not adequately assess the patient's symptoms and the requested work up was inappropriate.

10. Respondent's diagnosis was inappropriate and could not explain the patient's condition. The presence of sensory impairment involving both lower extremities from groin down suggested spinal cord pathology above the lumbar region and it was not reasonable for Respondent to not pursue a diagnosis other than bilateral radiculopathies. In addition, the initial evaluation shows an important and significant contradiction with the patient's gait described as normal, and then recommending a walker to stabilize gait. The Respondent's failure to properly and timely diagnose the patient's condition and failure to properly treat the patient's condition are significant departures from the acceptable standard of care and constitute gross malpractice.

11. On or about November 14, 1995, Patient P.P. presented to the hospital incapable of walking on his own due to increased weakness and sensory loss in both lower extremities. In addition, P.P. reported the recent onset of weakness involving the upper extremities.

12. A neurosurgical consultation was obtained and Patient P.P. was found to have partial paralysis of the lower limbs as well as weakness of the intrinsic muscles of the hands. A myelogram was performed disclosing severe cervical spondylosis (disease of the vertebrae of the neck) with spinal cord compression at C5-6 (cervical vertebrae 5 and 6).

13. On or about November 15, 1995, surgery was performed on Patient P.P. in an attempt to relieve his symptoms.

14. Although P.P. has improved since surgery, he continues to have numbness in his hands and lower body, his gait is spastic and he continues to have residual spinal cord disease.

15. Based on Patient P.P.'s presence of sensory impairment involving both lower extremities from the groin down, a reasonably prudent similar physician would have explored the possibility of spinal cord pathology above the lumbar region and would have ordered appropriate tests, or obtained other appropriate referrals for further evaluation.

COUNT ONE

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

17. Respondent's records fail to justify the course of treatment or reasons for continuing his course of treatment for lumbosacral radiculopathies in light of the patient's condition, by failing to include a differential diagnosis of the possibility of spinal cord pathology above the lumbar region and by failing to adequately monitor the patient's progress and reevaluate his original conclusions.

18. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes, by failing to keep written medical records justifying the course of treatment of the patient, by failing to include a differential diagnosis of the possibility of spinal cord pathology above the lumbar region.

COUNT TWO

19. Petitioner realleges and incorporates paragraphs one (1) through fifteen (15) and paragraph seventeen (17), as if fully set forth herein this Count Two.

20. Respondent has practiced medicine below the appropriate standard of care, in that Respondent failed to include in the patient's differential diagnosis the possibility of spinal cord

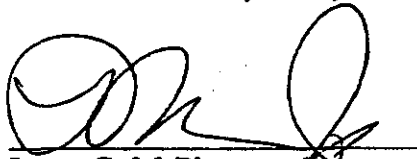
pathology above the lumbar region, failed to order or perform adequate tests to determine an appropriate diagnosis, or obtain appropriate referrals for an adequate evaluation of spinal cord compression.

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

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 as provided for in Section 455.624(4), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 16 day of August, 1999.

Robert G. Brooks, M.D., Secretary.


Larry G. McPherson, Jr.
Chief Medical Attorney

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Stephanie Q. Dinn
DATE 8/17/99

COUNSEL FOR DEPARTMENT:

Larry G. McPherson, Jr.
Chief Medical Attorney
Agency for Health Care Administration
P. O. Box 14229
Tallahassee, Florida 32317-4229
Florida Bar # 788643
CLG/clg
PCP: August 11, 1999
PCP Members: Skinner, Glotfelty, Cherney

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

vs.

CASE NO. 1997-07009

HARISH J. PATEL, M.D.,

Respondent.

CONSENT AGREEMENT

Harish J. Patel, M.D., referred to as the "Respondent," and the Department of Health referred to as the "Department," by and through the Agency for Health Care Administration, stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as the "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, Chapter 456, 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.

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STIPULATED FACTS

1. At all times material hereto, the Respondent was a licensed physician in the State of Florida having been issued license number ME 0061113.
2. The Respondent was charged by an Administrative Complaint filed by the Department and properly served upon the Respondent with a violation 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. The Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 456 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.
2. The Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute a violation 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. The Respondent shall not in the future violate Chapters 456, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, the Respondent shall read Chapters 456, 458, 893 and the Rules of the Board of Medicine, at Section 64B8, Florida Administrative Code.

2. FINE/PROSECUTORY COSTS. The Board shall impose an administrative fine in the amount of five thousand dollars (\$5,000.00) against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within six (6) months of its imposition by Final Order of the Board. Cost of Prosecution, in the amount of two thousand sixty-five dollars and seventy-three cents (\$2,065.73), shall also be paid within one (1) year of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINES IS HIS 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 NINETY SIX (6) MONTHS 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. IF THE RESPONDENT SUBMITS THE FINE VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, THE RETURN RECEIPT SHALL CONSTITUTE WRITTEN CONFIRMATION. (SEE EXHIBIT C,**

PARAGRAPH E OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).

3. CONTINUING MEDICAL EDUCATION. Within one (1) year of the date of the filing of a Final Order in this cause, Respondent shall attend ten (10) hours of Continuing Medical Education (CME), two (2) of which must be in *evaluating diseases of the spinal cord*. Respondent shall submit a written plan to the Chairman of the Board for approval prior to the completion of said continuing education hours and course. The Board confers authority on the Chairman of the Board to approve or disapprove said continuing education hours or course. 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 this medical course(s) within one (1) year 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 course 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, or a Board-approved equivalent, within one (1) year of its imposition by Final Order of the Board.

Exhibit B

STANDARD PROVISIONS

This Consent Agreement shall be governed by the attached "Standard Terms Applicable to Consent Agreements", Exhibit C, which is incorporated as if fully set forth herein.

1. It is expressly understood that this Agreement is subject to the approval of the Board and the Department. 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.

2. Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

3. 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.

4. 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.

5. Upon the Board's adoption of this Agreement, the parties hereby agree that each party will bear their 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.

6. 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.

Exhibit C

STANDARD TERMS APPLICABLE TO CONSENT AGREEMENTS

The following are the standard terms applicable to all Consent Agreements.

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 as set forth in paragraph E, below. The Board office does not have the authority to change terms of payment of any fine imposed by the Board.

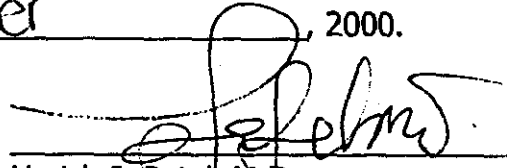
B. **CONTINUING EDUCATION UNITS.** Unless other wise directed by the Consent Agreement, all continuing education units/courses must be completed, and documentation of such completion submitted to the Board of Medicine at the address set forth below in paragraph E, **WITHIN SIX (6) MONTHS OF THE DATE OF THE FINAL ORDER.**

C. **ADDRESSES.** The Respondent must keep current residence and practice addresses on file with the Board. The 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 the 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 cost 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 cost directly associated with the Respondent's probation.

E. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines, reports, correspondence and inquires shall be sent to: **Board of Medicine, 4052 Bald Cypress Way, Bin # C03, Tallahassee, Florida 32300-1753, Attn: Final Order Compliance Officer.**

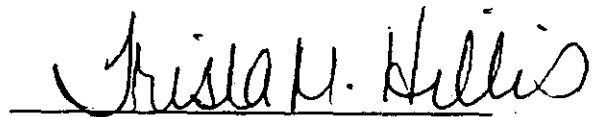
SIGNED this 12th day of December, 2000.


Harish J. Patel, M.D.

Before me, personally appeared Harish J. Patel, whose identity is known to me by FLN P340330563860 (type of identification) and who, under oath, acknowledges that his signature appears above.

Sworn to and subscribed before me this 12th day of December, 2000.





NOTARY PUBLIC

My Commission Expires:

APPROVED this 4th day of January, 2001, 2000.

Department of Health

Robert G. Brooks, M.D., Secretary

By: 
Kathryn L. Kasprzak
Chief Medical Attorney
Practitioner Regulation

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Final Order No. DOH-01-0622-5-MOA
FILED DATE - 5/3/01
Department of Health
By: Vicki A. Keenan
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

CASE NO.: 1997-07009
LICENSE NO.: ME0061113

HARISH J. PATEL, 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 March 30, 2001, in Jacksonville, Florida, for consideration of a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in the above-styled cause. Upon consideration of the Consent Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise advised in the premises,

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

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

DONE AND ORDERED this 17th day of April, 2001.

BOARD OF MEDICINE



TANYA WILLIAMS, BOARD DIRECTOR

For

GASTON ACOSTA-RUA, 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 Harish J. Patel, M.D., 5649 49th Street, St. Petersburg, Florida 33709; to Christopher Schulte, Esquire, 100 W. Kennedy Boulevard, Suite 800, P.O. Box 1772, Tampa, Florida 33602; and by interoffice delivery to Nancy M. Snurkowski, Chief - Practitioner Regulation, and Simone Marstiller, Senior Attorney - Appeals, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, on or before 5:00 p.m., this _____ day of _____, 2001.
