

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,)
)
 PETITIONER,)
)
 vs.)
)
 BRADLEY JOSEPH BROYLES, M.D.,)
)
 RESPONDENT.)
 _____)

CASE NO. 2000-01462

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 Bradley Joseph Broyles, 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 authority 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 0071307. Respondent's last known address is 1614 North Michigan Avenue, Leesburg, Florida.
3. Respondent specializes in psychiatry but is not board-certified.

4. The Physicians Recovery Network (hereinafter referred to as "PRN") is the impaired practitioners program for the Board of Medicine, pursuant to Section 455.707, Florida Statutes. PRN is an independent program that monitors the evaluation, care and treatment of impaired healthcare professionals. PRN oversees random drug screens and provides for the exchange of information between the treatment providers, PRN and the Department, for the protection of the public.

5. Raymond M. Pomm, M.D., a Board certified psychiatrist with added qualifications in addiction psychiatry, is charged with responsibility for the oversight and the monitoring of PRN contracts.

6. Respondent was referred to PRN for evaluation through the licensure process as a result of a history of chemical dependency.

7. On or about April 22, 1996, Respondent presented to Raymond A. Johnson, M.D., an addiction medicine specialist, for evaluation. Dr. Johnson diagnosed Respondent as alcohol dependent in remission and as experiencing generalized anxiety disorder and moods secondary to substance abuse in remission. Dr. Johnson opined that Respondent appeared to be in a relapse pattern although he may not have relapsed yet.

8. Dr. Johnson recommended the following for Respondent:

- a) One PRN meeting per week and at least three AA meetings per week;
- b) Regular random urine drug screenings;
- c) A sponsor; and
- d) Psychotherapy focusing on addictions and family of origin issues.

9. On or about May 25, 1996, Respondent entered into a PRN monitoring contract.

10. The PRN contract included agreement by Respondent that he would: a) submit to random urine, drug or blood screens; b) abstain from any use of drugs or alcohol; c) attend Alcoholics or Narcotics Anonymous meetings two times a week; d) attend a 12-step program of

recovering professionals; e) notify PRN of the use of any drugs or alcohol; and f) withdraw from practice for evaluation at the request of PRN if any problem develops. The contract also provided that if Respondent failed to comply with the contract, PRN may report his noncompliance to the Department.

11. On or about September 12, 1996, the Board of Medicine granted Respondent's application for licensure by endorsement as a physician, with Respondent's license to be subject to a period of five (5) years of probationary terms and conditions, including the following:

- a. You shall not consume, inject or ingest any controlled substances unless prescribed or administered by another practitioner authorized to prescribe controlled substances;
- b. You shall not consume alcohol; and
- c. You shall participate and comply with the Physician's Recovery Network and shall enter into and comply with an after-care contract with PRN.

12. On or about December 19, 1999, Respondent was arrested in Lake County, Florida for Driving Under the Influence, in violation of Section 322.62, Florida Statutes, and Possession of Marijuana, Less than 20 grams, in violation of 893.13, Florida Statutes. He was subsequently only charged with Driving Under the Influence.

13. On or about December 21, 1999, Respondent contacted PRN and advised of his arrest. Bob Fountain, case worker for PRN, instructed Respondent to withdraw from the practice of medicine and to contact Kenneth W. Thompson, M.D., an addiction specialist and the Director of the Florida Recovery Center, for evaluation.

14. On or about January 6, 2000, Respondent was evaluated by Dr. Thompson. Respondent reported that he had relapsed since Thanksgiving of 1999 and had been drinking on a daily basis since that time. Dr. Thompson concluded that Respondent was alcohol dependent and was in relapse.

15. Dr. Thompson recommended that due to the severity of Respondent's relapse while under PRN monitoring, he should enter into a residential program for at least one month before being re-evaluated. Dr. Thompson also recommended that Respondent "refrain from the practice of medicine."

16. On or about January 25, 2000, Mr. Fountain telephoned Respondent who advised him that his insurance company would not pay for the residential treatment. Mr. Fountain told Respondent that PRN could loan him \$2,500.00 through a loan fund to help pay for the treatment. Respondent did not avail himself of that option. Mr. Fountain then presented Respondent with the following options for residential treatment:

- a. Hanley Hazelton (Board approved chemical treatment facility) in West Palm Beach, Florida;
- b. COPAC (Chemical dependency and psychiatric facility) in Brandon, Mississippi; and
- c. Palmetto Addiction Recovery Center in Rayville, Louisiana.

However, Respondent did not pursue these options.

17. On or about January 31, 2000, Mr. Fountain again spoke with Respondent who advised that his license renewal period had just ended and that he would not be renewing the license. Mr. Fountain told Respondent that he would notify the Agency of his unwillingness to comply with the recommendations for residential treatment and Respondent stated that he understood.

18. On or about February 1, 2000, PRN sent Respondent a letter advising him that his case was being referred to the Agency for appropriate action based on his unwillingness to comply with the terms of his monitoring contract due to his relapse beginning in November of 1999.

19. On or about February 1, 2000, Dr. Pomm notified the Agency for Health Care Administration that Respondent was in non-compliance with the requirements of PRN. Dr. Pomm also advised that PRN staff had offered Respondent options for treatment, including assistance with a loan from the PRN loan fund to pay for treatment, but that he declined to follow those recommendations. Because of this above-mentioned history, Dr. Pomm considers Respondent to be "an immediate risk to the health, safety and welfare of the public."

20. On or about March 13, 2000, Respondent entered a plea of nolo contendere to the misdemeanor charge of Driving Under the Influence, in violation of Section 322.62, Florida Statutes, and was adjudicated guilty. He was sentenced to eight (8) months probation, a \$565.00 fine, 50 hours of community service, DUI School and any treatment recommended, six (6) month driver's license revocation, and completion of the victim awareness program.

COUNT ONE

21. Petitioner realleges and incorporates paragraphs one (1) through twenty (20), as if fully set forth herein this Count One.

22. Respondent is unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition, due to his history of alcoholism, his failure to comply with the after care provisions of his PRN contract, and his current untreated relapse.

23. Based on the foregoing, Respondent has violated Section 458.331(1)(s), Florida Statutes, by being unable to practice medicine with reasonable skill and safety to patients by

reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

COUNT TWO

24. Petitioner realleges and incorporates paragraphs one (1) through twenty (20) and twenty-two (22), as if fully set forth herein this Count Two.

25. Respondent failed to perform any statutory or legal obligation placed upon a licensed physician, in that Respondent failed to follow the probationary terms of Respondent's licensure established by the Board of Medicine, in that Respondent failed to comply with all the terms of the PRN monitoring contract and failed to follow PRN's recommendation for residential treatment.

26. Based on the foregoing, Respondent has violated Section 458.331(1)(g), Florida Statutes, by failing to perform any statutory or legal obligation placed upon a licensed physician.

COUNT THREE

27. Petitioner realleges and incorporates paragraphs one (1) through twenty (20), twenty-two (22), and twenty-five (25), as if fully set forth herein this Count Three.


28. Respondent was convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine, in that Respondent pled nolo contendere to the misdemeanor charge of Driving Under the Influence, in violation of Section 322.62, Florida Statutes.

29. Based on the foregoing, Respondent has violated Section 458.331(1)(c), Florida Statutes, by being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine.

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.

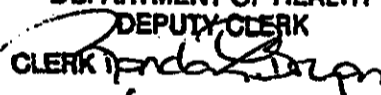
SIGNED this 13th day of June, 2000.

Robert G. Brooks, M.D., Secretary


Kathryn L. Kasprzak
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Kathryn L. Kasprzak
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PCP Members: Ashkar, Winchester, Pardue

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DATE 6-13-00

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,)
BOARD OF MEDICINE,)
)
Petitioner,)
)
vs.) Case No. 00-4776PL)
)
BRADLEY JOSEPH BRYOLES, M.D.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its designated Administrative Law Judge, Diane Cleavinger, held a formal hearing in the above-styled case on February 19, 2001, in Ocala, Florida.

APPEARANCES

For Petitioner: Kim M. Kluck, Esquire
Agency for Health Care Administration
Post Office Box 1449
Tallahassee, Florida 32317-4229

For Respondent: Bradley J. Broyles, M.D., pro se
1614 North Michigan Avenue
Leesburg, Florida 34748-7036

STATEMENT OF THE ISSUE

Whether Respondent's medical license should be suspended, revoked, or otherwise disciplined.

PRELIMINARY STATEMENT

On May 30, 2000, the Department of Health (Department) issued an Emergency Suspension Order suspending Respondent's Bradley Joseph Broyles, medical license to practice medicine. The Emergency Suspension Order was based on allegations that Respondent's failure to comply with the Physician Recovery Network (PRN) in dealing with his chemical dependence impaired his ability to practice medicine with reasonable skill and safety to patients.

On June 13, 2000, the Department filed an Administrative Complaint against Respondent alleging that Respondent violated Section 458.331(1)(a), (g), and (s), Florida Statutes. Specifically, the complaint alleged that Respondent's medical license should be disciplined because he was convicted of a crime which directly relates to the ability to practice medicine because he failed to perform a statutory or legal obligation placed upon him, in that Respondent failed to follow the probationary terms of his licensure by not complying with all the terms of his PRN monitoring contract and not following PRN's recommendation for residential treatment; and by being unable to practice medicine with reasonable skill and safety to patients because of chemical dependency.

On November 29, 2000, Respondent filed an Election of Rights, disputing the allegations of the Administrative

Complaint and requesting a formal hearing. The case was forwarded to the Division of Administrative Hearings.

At the hearing, Petitioner presented the testimony of two witnesses and offered four exhibits into evidence. Respondent testified in his own behalf and presented the testimony of four witnesses. Additionally, Respondent offered two exhibits into evidence.

After the hearing Petitioner and Respondent filed Proposed Recommended Orders on March 20, 2001 and March 27, 2001, respectively. Respondent also filed an Amended Proposed Recommended Order on March 28, 2001.

FINDINGS OF FACT

1. Respondent is a licensed physician in the State of Florida, holding license No. ME 0071307.
2. Respondent specializes in psychiatry. However, he is not Board-certified in psychiatry.
3. Prior to licensure, Respondent had a history of heavy drinking in medical school; an alcohol overdose resulted in a hospitalization in Tampa, Florida, followed by a ten week intensive outpatient program.
4. In 1996, Respondent applied to the Board of Medicine for licensure as a physician in the State of Florida. During the licensure application process, the Board became aware of

Respondent's history of alcohol and drug abuse and referred him to PRN for an evaluation.

5. PRN is the impaired practitioners program for the Board of Medicine. It was created pursuant to Section 456.076, Florida Statutes. PRN is an independent program that monitors the evaluation, care, and treatment of impaired health care professionals. PRN oversees therapy and treatment and provides for the exchange of information between the treatment providers, PRN and the Department. PRN also refers impaired practitioners to treatment providers or treatment programs which have been approved by the Department. The purpose of PRN is to protect the public from physicians who have an impairment that is likely to interfere with the competent provision of medical services. PRN does not provide medical services.

6. Chemical dependency is a disease for which there is no cure. It can be placed in remission by practicing a program of recovery and/or exercising a great deal of self-discipline. Remission is not easy to achieve or maintain and is the sole responsibility of the licensee to maintain. A program of recovery involves a support network of individuals who understand the disease and can offer support. Such support includes recognizing the signs and symptoms of potential relapse and confronting the individual about such relapse behavior. Relapse behavior is any behavior which a person uses to

rationalize the use of a chemical, to avoid situations that might prevent use of a chemical and /or engage in situations which either directly or indirectly lead to the use of a chemical. Relapse behavior is often very subtle and insidious. The type of confrontation can range from very gentle to very intense, depending on a recovery program's philosophy.

7. The PRN recovery program is more stringent than other impaired practitioner programs because of the potential consequences of relapse on the health, safety, and welfare of the public. In addition, PRN support groups are for professionals and are run by a facilitator who is trained to observe the type of behavioral patterns that are exhibited in an individual with an impending relapse. The PRN program tends to follow an intense confrontational philosophy. PRN's method of monitoring yields an extremely high rate of success. However, PRN also has failures in its monitoring.

8. The minimal length of a standard PRN contract for an individual with a chemical dependency problem is five years. Statistics have shown the five-year term to be the most effective length of monitoring in order to guarantee the best prognosis possible. The longer the contract, the lower the risk of relapse. After five years, the risk of relapse is somewhere between five and ten percent.

9. The conditions of a standard PRN contract include having a primary care physician, attendance at a professional support group, urine monitoring, and attendance at a recovery self-help group like AA. However, PRN does not require a self-help group which utilizes the spiritual or religious components of AA. There are alternative self-help groups available to Respondent which do not include such components.

10. A professional support group and a trained facilitator is required due to the very complex and difficult management problems posed by physicians. The professional support groups have individuals who are newly in recovery and others who have been in recovery for five, ten, and fifteen years. Those professionals who have a number of years of recovery are very beneficial to the group since they have experienced similar problems in terms of balancing family needs, extreme requirements of medical practice, financial issues that go along with being a physician, and other aspects of being a physician that are not generally experienced by the general population. Such a physician support group works for the majority of physicians in PRN with a chemical dependence. However, the evidence did not show that participation in a professional support group is a necessity or beneficial to all of PRN's chemically dependent physicians. In particular, the necessity of participation of Respondent in such a group was not clear.

Indeed, Respondent's participation in such a group appears to have been detrimental to his recovery because the primary underpinnings of Respondent's alcohol dependence are in Respondent's ongoing difficulty in dealing with various forms of severe familial inflicted trauma he experienced in his adolescence.

11. The goals of PRN's monitoring contract are to stay sober, to stay in recovery, and to get one's life back in order including family life and the practice of medicine. The difference between the PRN program and other programs is the ongoing nature of the communications with the primary health care physician, the monitoring of prescription medications, the monitoring of physical and psychiatric problems, and the random urine monitoring system.

12. PRN referred Respondent to Raymond Johnson, M.D., for evaluation of Respondent's possible chemical impairment.

13. Around April 22, 1996, Dr. Johnson evaluated Respondent and diagnosed him as being alcohol dependent, in remission. Remission is defined as having not used a chemical. Dr. Johnson noted that Respondent was in a relapse pattern, although he may not have relapsed yet. A relapse pattern consists of behaviors exhibited by a chemically dependent person which indicate that the person either has or will begin to abuse substances.

14. Dr. Johnson recommended that PRN monitor Respondent with the following conditions: One PRN meeting per week and at least three AA meetings per week; regular random urine drug screenings; a sponsor; and psychotherapy focusing on addictions and family of origin issues. Dr. Johnson felt that Respondent needed psychotherapy due to his lack of insight into his rebelliousness during his teen years and due to his difficulty in identifying relapse patterns.

15. On May 25, 1996, Respondent executed a lifetime monitoring contract with PRN which included the following conditions: a) submit to random urine, drug, or blood screens; (b) abstain from any use of drugs or alcohol; (c) attend AA or NA meetings two times a week; (d) attend a 12-step program of recovering professionals; (e) notify PRN of the use of any drugs or alcohol; (f) and withdraw from practice for evaluation at the request of PRN if a problem develops. The contract was based in part on Dr. Johnson's recommendations. However, the evidence did not demonstrate that the recommendation for psychotherapy was implemented by either Respondent, PRN, or the Board. In Respondent's case the lack of focused psychotherapy would prove to be a problem. However, it remains Respondent's responsibility to seek whatever help he needs in order to maintain his sobriety.

16. Because of Respondent's participation in PRN, on September 12, 1996, the Board of Medicine granted Respondent's application for licensure by endorsement as a physician with Respondent's license to be subject to a period of five years of probationary terms and conditions, including the following:

- 1) You shall not consume, inject, or ingest any controlled substances unless prescribed or administered by another practitioner authorized to prescribe controlled substances.
- 2) Your [sic] shall not consume alcohol; and
- 3) You shall participate and comply with the Physician's Recovery Network and shall enter into a and comply with an after-care contract with PRN.

17. At some point after licensure, Respondent became disillusioned with the professional support group, the group's confrontational style, the demands of PRN staff which Respondent perceived as threatening, and attendance at AA which Respondent felt violated his religious freedom. As Respondent's participation in his PRN program became more erratic Respondent began to relapse; a classic pattern of relapse. However, even with his dissatisfaction with PRN and his underlying psychological difficulty, it was Respondent's sole responsibility to maintain his sobriety.

18. In late November 1999, Respondent, in violation of the terms of his licensure, began to drink alcohol. Respondent sometimes consumed up to 12 beers a day. Petitioner consumed

the alcohol even though he was being monitored by PRN and in treatment under his PRN contract. There was no evidence that Respondent's relapse had an adverse impact on his provision of psychiatric services at the correctional institution where he was employed.

19. On December 19, 1999, over three years into his PRN contract, Respondent was arrested and charged with Driving Under the Influence (DUI). Respondent's blood alcohol level was 0.21. Such a level while driving demonstrates that Respondent has an alcohol dependence problem and that Respondent has developed a tolerance to alcohol. Respondent subsequently pled guilty to the charge of misdemeanor DUI. He was sentenced to eight month's probation, a \$565.00 fine, 50 hours of community service, DUI School, six month's driver's license revocation, and completion of the victim awareness program. Respondent successfully completed his sentence.

20. On December 21, 1999, Respondent contacted PRN and advised that he had been arrested for DUI. PRN staff instructed Respondent to withdraw from practice and get evaluated, as per his monitoring contract conditions. Respondent had already voluntarily withdrawn from practice. However, he did not voluntarily withdraw from practice until his drinking came to the attention of law enforcement. Respondent knew that

attention from law enforcement would cause his drinking to come to the attention of PRN and the Board.

21. On or about January 6, 2000, Kenneth Thompson, M.D., evaluated Respondent. Dr. Thompson is certified by the American Society of Addiction Medicine and is employed as a clinical associate professor. He is the medical director of the Florida Recovery Center in the Impaired Professional Program at the University of Florida. The program provides primary care to patients with addictive disorders. The program is approved by the Department.

22. On the date of the evaluation, Respondent reported to Dr. Thompson a history of heavy drinking in medical school; an alcohol overdose which resulted in a hospitalization in Tampa, Florida, followed by a ten-week intensive outpatient program; and, most recently, a relapse during Thanksgiving of 1999, when he returned to drinking of up to a 12-pack of beer per day. Dr. Thompson concluded that Respondent was alcohol dependent and in relapse. He recommended Respondent withdraw from the practice of medicine and enter residential treatment. Respondent did not mention any trauma he had suffered during his younger years. His failure to mention such trauma was, in part, due to his denial of such trauma. The ability to maintain denial is high in a chemically dependent person.

23. Dr. Thompson's recommendation that Respondent be involved with a residential or an intensive treatment program was based on the facts that Respondent has a high risk of relapsing since he was under monitoring by PRN when he returned to drinking; that Respondent's personality styling lent him to being resistive to treatment; and that Respondent needs to be involved in a strong peer group. In addition, Respondent's history of a prior hospitalization which failed, a prior outpatient program which failed, a monitoring program which failed, a DUI and a relapse, necessitated residential treatment. Residential treatment is the most intense form of program available and the only one not yet tried by Respondent.

24. At the time of Respondent's evaluation in January 2000, both Dr. Pomm, the medical director of PRN and Dr. Thompson concluded that Respondent was unable to practice medicine with reasonable skill and safety to patients. When a practitioner is unable to practice medicine with reasonable skill and safety to patients, that person is either impaired or his or her impairment is in question. The danger of allowing a suspect individual to practice, without knowing more information about the individual's addiction, puts the health, safety, and welfare of the public at an unacceptable level of risk. The determination by Dr. Pomm and Dr. Thompson was based on the following reasons: Respondent had relapsed again after a

chronic history of recovery; various attempts at recovery, treatment, and relapse; lack of a documented history of sobriety; and Respondent's high risk for continued relapse since he was not currently in treatment.

25. On January 8, 2000, per Dr. Thompson's recommendation Respondent went to Shands Hospital's Vista treatment facility for an initial evaluation and admission to the Professional's Residential Program. The program is approved by the Department. Respondent was willing to comply with the residential treatment recommended by Dr. Thompson. Respondent was not willing to comply with any of the recommendations regarding participation in a physicians support group.

26. Respondent did not enter the residential treatment program at Vista. He simply could not afford the hefty fee charged by Vista for its program. The same financial barrier applied to other residential treatment facilities approved by the Department. PRN did offer a small loan to Respondent to help pay for the cost of residential placement. However, the loan was inadequate to meet the huge cost of residential treatment.

27. In February of 2000, Respondent's contract with PRN was voided and Respondent's case was turned over to the Department with a recommendation of an emergency suspension order.

28. On or about February 20, 2000, Respondent began treatment at CATS. CATS is a non-PRN approved outpatient program in Tavares, Florida. Bud Stalter is the owner and director of CATS. Mr. Stalter does not hold a four-year or advanced degree, but does have many years of experience in the drug addiction recovery field. He is well thought of in the addiction recovery field and has dedicated his life to that field. Mr. Stalter personally counsels Respondent and provides treatment to Respondent for free. Even without a degree, Mr. Stalter is well qualified to operate an addiction recovery program.

29. The CATS program deals with a variety of counseling issues such as co-dependency, marriage counseling, stress management, anger management, domestic violence, and abusive trauma in addition to chemical dependency. It employs a non-confrontational therapeutic method and tries to treat all of a person's problems which contribute to relapse or continued addiction. There are no medical physicians involved in Respondent's treatment. The program does employ random drug testing. However, the evidence did not show that the drugs CATS tests for are the same as the drugs tested for by PRN.

30. The CATS program does not provide professional self-help groups. Again the need for such a peer group was not established by the evidence. The evidence did show that a

professional peer group is generally a good idea and beneficial to most chemically dependant physicians. The CATS program does provide a twelve-step support group. Respondent attends AA at CATS.

31. PRN's professional support groups are conducted by facilitators who are trained to identify relapse behaviors such as individuals not going to meetings as often, lacking insight into the impact of their disease, making poor decisions, and displaying increasing amounts of anger, defensiveness, projection, denial, and rationalization. The importance and effectiveness of these PRN group facilitators is punctuated by the fact that after Respondent had been confronted several times by a facilitator regarding his relapse behavior, Respondent did indeed relapse. However another type of group with a trained facilitator such as the one at CATS could have provided the same oversight as PRN's professional support group.

32. On or about October 23, 2000, Respondent was re-evaluated by Dr. Thompson at which time Respondent reported that he was involved in the CATS program, had been attending some AA meetings, and had not had any alcohol or other substances since December of 1999. Based on the standard which Dr. Thompson used in monitoring health care professionals, he could not find any clear evidence that Respondent had maintained his sobriety since December of 1999 or that he had been monitored in an acceptable

manner. The standard used by Dr. Thompson requires attending weekly, monitored PRN group meetings with a counselor who is known by either Dr. Thompson or PRN, and drug screens which are the type that would pick up atypical drugs, such as benzodiaties or the more obscure opiates, that a physician might abuse. There was no evidence that Respondent requested that PRN investigate or review the CATS program to see if it could become a Departmentally approved treatment program for Respondent or that some of the provisions of Respondents monitoring contract be waived because such provisions did not benefit continuation of Respondent's remission. Likewise no such evidence was submitted at the hearing. Therefore, no findings of fact can be made regarding substitution of the CATS for parts of the PRN program can be made.

33. Dr. Thompson also determined that Respondent's narcissistic features were adversely affecting his ability to recover from chemical addiction because of the greater level of resistance, the lack of insight into his behavior, and the tendency to think that he should be treated differently. A number of narcissistic features are present in Respondent's personality such as his tendency to project or blame other outside causes, entities, the Department, the PRN authority, and life circumstances for his current predicament. In addition, Respondent does not think that he should have to be treated in

the same manner or placed under the same restraints as other people.

34. Respondent's attempt to determine his treatment needs is gauged toward directing only those things that he's willing to do. Respondent has chosen a treatment program in which his treatment providers have considerably less medical and psychiatric experience than himself, which offers a completely non-confrontational therapeutic environment, in which he develops and directs his plan of recovery. In addition, the CATS program does not have a five-year contract with Respondent. CATS and Respondent have a one-year agreement for monitoring. After that year has elapsed, Respondent's participation is purely optional and he can continue to be monitored by CATS for "as long as he likes." However, Respondent has benefited more from the CATS program than from the program under his PRN contract. Again the evidence was insufficient to determine whether the CATS program could be substituted for the usual PRN program. The goal is to maintain remission and different programs may well work for different individuals if those programs can create the paper trail necessary to document continued remission.

35. The treatment plan developed by Respondent and CATS is not familiar to PRN. The evidence showed that neither PRN or the Board reviewed the CATS program or the random drug testing

CATS employed. The evidence did not show that PRN, the Board, or Respondent attempted to have the CATS program reviewed to see if it did meet PRN requirements. According to Mr. Stalter, Respondent's recovery plan has already been changed several times to accommodate Respondent's life situation. Indeed, the CATS program and gentler counseling are working for Respondent at this time. However, Respondent has also relapsed several times in the past. Clearly, Respondent needs to be actively monitored for licensure purposes.

36. As of the date of the hearing, no current information was available to the Department experts as to what monitoring Respondent was receiving. Respondent's history shows that he is at a very high risk of relapse due to the fact that he is very early in recovery, and he has a chronic history of relapse. He has not complied with his PRN contract. Given this history, there is no reason to believe that Respondent will not repeat his history of relapse under CATS. Continued PRN monitoring is necessary. However, there is no reason to believe at this point that the CATS program cannot be substituted for parts of the PRN program or that the peer support group requirement might be adjusted given Respondent's need for greater therapy regarding his earlier trauma.

37. Undoubtedly, Respondent violated Section 458.331(1)(c), Florida Statutes, by being convicted of DUI which

under the facts of this case affects Respondent's ability to practice medicine.

38. Additionally, Respondent violated Section 458.331(1)(g), Florida Statutes, by failing to perform the conditions of his licensure because he failed to comply with all the terms of his PRN monitoring contract and failed to remain sober and free from alcohol. However, Respondent was unable to pay for the treatment recommended by Dr. Thompson. Moreover, Respondent did seek out alternative treatment which at this point appears to be more beneficial to Respondent because it is addressing the underlying cause of his chemical dependence and self medication. Additionally, no direct harm occurred to any patient of Respondent. Respondent did recognize his need to withdraw from practice until he was back in control of his behavior. Based on these factors, it is not appropriate to revoke Respondent's license. However, it is appropriate to continue the conditions of Respondent's license and add that Respondent must participate in a PRN program unless and until a CATS or other CATS-type program becomes a Departmentally approved treatment program and that Respondent not practice until such time as he obtains such approval or enters into a standard PRN monitoring program. Failure of Respondent to participate in either an approved CATS program or a PRN program should result in revocation of Respondent's license.

CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

40. Pursuant to Section 458.331(2), Florida Statutes, the Board of Medicine is empowered to revoke, suspend, or otherwise discipline the license of a physician for the following violations of Section 458.331, Florida Statutes:

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine.

(g) Failing to perform any statutory or legal obligation placed upon a licensed physician.

(s) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

41. Disciplinary licensing proceedings are penal in nature. State ex. rel. Vining v. Florida Real Estate Commission, 281 So. 2d 487 (Fla. 1973). In this disciplinary licensing proceeding, Petitioner must prove the alleged violations of Section 458.331(1)(t), Florida Statutes, by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1st DCA 1987).

42. The offense of the misdemeanor DUI is not a crime which, as a matter of law, endangers the public welfare. Board of Nursing. V. Cheryl Ann Wasconis, DOAH Case No. 98-1091 (Recommended Order issued September 8, 1998). The Wasconis case, found that DUI is an offense which, depending on the surrounding circumstances and Respondent's history, may or may not evidence an impaired practitioner or represent a danger to the public. Judge Kendrick found that Respondent's conviction did not relate to the practice of nursing or the ability to practice nursing because there was no proof that Respondent had a history of alcohol or drug abuse or that this was not an isolated incident.

43. Unlike Wasconis, the history of alcohol and drug abuse is clearly present in Respondent's case. Respondent admitted he had a history of heavy drinking in medical school; an alcohol overdose which resulted in a hospitalization; almost daily use of marijuana in medical school; a two-week alcohol-related hospitalization in Tampa, Florida, followed by a ten-week intensive outpatient program, and, most recently, a relapse in Thanksgiving of 1999, when he returned to drinking up to a twelve-pack of beer per day. The need for restrictions on Respondent's medical license is clear.

44. Additionally, the absence of patient injury or harm is not the dispositive factor in determining whether a physician is

able to practice medicine with reasonable skill and safety to patients. Major v. Department of Professional Regulation, Board of Medicine, 531 So. 2d 411 (3rd DCA 1988). In the Major case, a physician was charged with a violation of Section 458.331(1)(s), Florida Statutes, by being unable to practice medicine with reasonable skill and safety due to her use of alcohol and drugs and attendant arrest for public intoxication. The Appellant in Major was arrested for public intoxication while she was on probation with the Board of Medicine for past drug and alcohol problems. At the time of arrest, the Appellant's blood alcohol level was 0.235. The evidence at hearing revealed that the Appellant had an extensive history of alcohol and drug abuse, including marijuana.

45. The district court of appeal agreed with the Board and found that given Respondent's documented history of alcohol and drug abuse, the arrest was not an isolated incident which the Board was required to view as professionally irrelevant. Id. at p. 413. The district court acknowledged Respondent's sincere and commendable progress toward rehabilitation; however, the court determined that the Board of Medicine was entitled to conclude that the Appellant had "not yet fully recovered from her alcohol and drug dependence, that she is still unable to practice medicine due to her use of alcohol or drugs, and that she must remain on probation for an additional period of time

with more restrictive conditions." Id. at pp. 413-414. The Major court agreed with the Board of Medicine's conclusion of law regarding the Appellant's ability to practice medicine with reasonable skill and safety and affirmed the Board's extension of the Appellant's probation by three years and the imposition of additional probationary conditioning. Id. at p. 413.

46. The Major case is strikingly similar to the present case in that Respondent's medical license was subject to probationary conditions due to a history of alcohol and drug abuse; he was arrested and charged with an alcohol-related crime during that probationary period; no patient injury or harm was inflicted by Respondent; Respondent has made commendable steps toward rehabilitation; and the Board's consultant has concluded that Respondent needs to remain under monitoring with more restrictive conditions. The similar facts of the present case warrant a result similar to that in the Major case--an extension of probation with additional probationary conditions.

47. Respondent's alcohol dependence is well documented and constitutes sufficient basis upon which to find that the DUI conviction was related to his ability to practice medicine.

48. The disciplinary guidelines of the Board of Medicine, found at Rule 59R-8.001, Florida Administrative Code, provide a range of penalties for violation of the provisions of Section 458.331, Florida Statutes.

(c) From probation to revocation or denial of the license and an administrative fine ranging from \$1,000.00 to \$10,000.00

(g) For any offense not specifically listed herein, based upon the severity of the offense and the potential for patient harm, from a reprimand to revocation or offense and the potential for patient harm, from a reprimand to revocation or denial and an administrative fine from \$1,000.00 to \$10,000.00.

(s) From probation to denial or indefinite suspension until licensee is able to demonstrate ability to practice with reasonable skill and safety followed by probation, and an administrative fine.

49. In this case, the Department is not seeking a revocation or suspension of Respondent's license. The relief which the Department has requested is that Respondent's license be placed back on five year's probation with the conditions that he shall not consume alcohol; and that he shall participate and comply with PRN; and shall enter into and comply with an after-care contract with PRN. These conditions are reasonable with the addition that Respondent be given the opportunity to have the CATS program approved by the Department as a treatment provider and to substitute parts of that program for his PRN program.


RECOMMENDATION

Based upon the findings of fact and conclusions of law, it is

RECOMMENDED:

That the Department of Health, Board of Medicine, issue a final order imposing a reprimand; an administrative fine of \$1,000.00; and placing Respondent's license on five years' probation with the following conditions: 1) that Respondent shall not consume, inject, or ingest any controlled substances unless prescribed or administered by another practitioner authorized to prescribe controlled substances; 2) that Respondent shall not consume alcohol; and 3) that Respondent shall participate and comply with the Physician's Recovery Network unless or until a CATS or other CATS type program becomes a Departmentally approved treatment program; that Respondent not practice until such time as he obtains a such approval or enters into a standard PRN monitoring program; and that failure of Respondent to participate in either an approved CATS program or a PRN program shall result in revocation of Respondent's license.

DONE AND ENTERED this 15th day of May, 2001, in
Tallahassee, Leon County, Florida.


DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of May, 2001.

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6/24/01

Final Order No. DOH-01-0943-FOF-MOA
FILED DATE - 6/24/01
Department of Health

STATE OF FLORIDA
BOARD OF MEDICINE

By: Vicki R. Kenan
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2000-01462
DOAH CASE NO.: 00-4476PL
LICENSE NO.: ME0071307

BRADLEY JOSEPH BROYLES, M.D.,

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on June 1, 2001, in Dania, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order (a copy of which is attached hereto as Exhibit A) in the above-styled cause. Petitioner was represented by Larry G. McPherson, Jr., Chief Attorney. Respondent was present but was not represented by counsel at the hearing.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

3. There is competent substantial evidence to support the conclusions of law.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent shall pay an administrative fine in the amount of \$1,000 to the Board.

2. Respondent shall receive a REPRIMAND.

3. Respondent shall be placed on probation for a period of five (5) years subject to the following terms and conditions:

a. Respondent shall not consume, inject or ingest any controlled substances unless prescribed or administered by another practitioner authorized to prescribe controlled substances.

b. Respondent shall not consume any alcohol.


c. Respondent shall enter into and comply with a standard Physicians Recovery Network (PRN) monitoring contract and he may not

practice medicine until he is approved to do so by PRN. Failure of Respondent to enter into a PRN contract within 3 months from the date this Final Order is filed shall result in revocation of licensure.

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

DONE AND ORDERED this 20th day of June, 2001.

BOARD OF MEDICINE


TANYA WILLIAMS, BOARD DIRECTOR
FOR
GASTON ACOSTA-RUA, M.D.
CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE AGENCY FOR HEALTH CARE ADMINISTRATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.