

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-02-1302-FOIMQA

FILED DATE - 8/27/02

Department of Health

By: Vicki R. Karon
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

CASE NOS.: 2001-03035
2001-08505
LICENSE NO.: ME0060971

GUIDO GIORDANO SPANGHER, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(2), Florida Statutes, on August 2, 2002, in Orlando, Florida, for consideration of the Administrative Complaint (attached hereto as Exhibit A) in the above-styled cause. At the hearing, Petitioner was represented by Ephraim Livingston, Senior Prosecuting Attorney. Respondent was present and represented by Jay Adams, Esquire. The facts are not in dispute.

Upon consideration, it is ORDERED:

1. The allegations of fact set forth in the Administrative Complaint are approved and adopted and incorporated herein by reference as the findings of fact by the Board.

2. The conclusions of law alleged and set forth in the Administrative Complaint are approved and adopted and incorporated herein by reference as the conclusions of law by the Board.

3. The violations set forth warrant disciplinary action by the Board. THEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED:

1. Respondent shall pay an administrative fine in the amount of \$1,500 to the Board within 30 days from the date this Final Order is filed.

2. Respondent shall pay the costs associated with this case in the amount of \$885.79. Said costs shall be paid within 30 days from the date this Final Order is filed.

3. Respondent's license to practice medicine in the State of Florida is hereby SUSPENDED until such time as he demonstrates that he has complied with all requirements in South Dakota. Prior to seeking reinstatement of licensure in Florida, Respondent must appear before the Board with a favorable recommendation from the Physicians Recovery Network (PRN) and demonstrate the ability to practice medicine with skill and safety. Respondent shall be required to remain in compliance with any contract required by PRN.

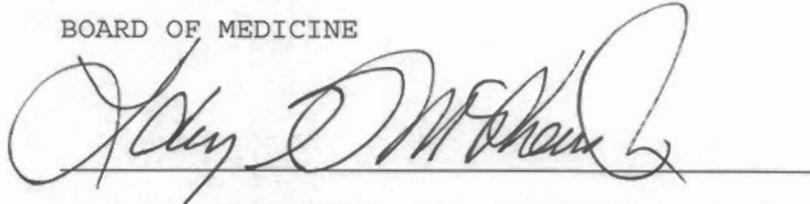
4. Upon reinstatement, Respondent shall be placed on probation for a period of two (2) years with indirect supervision and with any conditions the Board deems appropriate at the time of reinstatement.

(NOTE: SEE ATTACHMENT "A" FOR STANDARD TERMS APPLICABLE TO ALL FINAL ORDERS. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE STANDARD TERMS SET FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

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

DONE AND ORDERED this 22 day of AUGUST, 2002.

BOARD OF MEDICINE



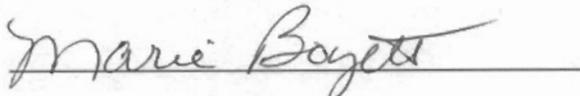
LARRY G. MCPHERSON, JR., EXECUTIVE DIRECTOR
For
ZACHARIAH P. ZACHARIAH, M.D.
CHAIRMAN

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. 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 DEPARTMENT OF HEALTH 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.

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 Guido Giordano Spangher, M.D., 1825 Davenport Street, Sturgis, South Dakota 57785; to Jay Adams, Esquire, P.O. Box 11300, Tallahassee, Florida 32302; and by interoffice delivery to Nancy M. Snurkowski, Chief Medical Attorney, and Lisa Pease, Senior Attorney - Appeals, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265, on or before 5:00 p.m., this 27th day of August, 2002.



**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

**CASE NOS.: 2001-03035
2001-08505**

GUIDO GIORDANO SPANGHER, M.D.

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, the Department of Health, by and through the Agency for Health Care Administration, and for its Complaint against the Respondent, Guido Giordano Spangher, M.D., states the following:

PARTIES

1. The Department of Health is the state agency charged with regulating the practice of medicine under Florida Law.
2. The Respondent was issued license number ME 0060971 on September 27, 1991 and is board certified in psychiatry. Respondent's last known address is 1825 Davenport Street, Sturgis, South Dakota 57785.

GENERAL ALLEGATIONS

3. At all times material to this Complaint, the Respondent was a licensed physician within the State of Florida.

4. On or about December 18, 2000, the South Dakota State Board of Medical Examiners (the Board) entered an order accepting voluntary surrender of Respondent's South Dakota license and which indefinitely revoked the Respondent's South Dakota medical license.

4. The order was made pursuant to the Board's finding that the Respondent suffers from chemical dependency.

5. On or about March 19, 2001, the Respondent pled guilty in the Circuit Court, Seventh Judicial Circuit for the State of South Dakota to the offense of obtaining possession of controlled substance by theft, misrepresentation, forgery or fraud in violation of South Dakota law.

6. Following the Plea, the South Dakota Court suspended imposition of sentence and placed the Respondent on eight years probation with conditions.

7. On or about September 28, 2001, the Board reinstated the Respondent's South Dakota License placing it on suspension for five years.

8. The Board stayed the five year suspension during a five year probation, with conditions.

9. The action of the Board constitutes action against the Respondent's South Dakota license.

10. The South Dakota State Board of Medical and Osteopathic Examiners is licensing authority for the State of South Dakota for practice of medicine.

11. On or about April 23, 2001, the Respondent voluntarily submitted surrender of his New York license to practice medicine in response to disciplinary action against his New York License by the State of New York.

12. On or about May 8, 2001, the New York State Board for Professional Medical Conduct issued an order accepting the surrender of the Respondent's license.

13. The New York State Board for Professional Medical Conduct is the licensing authority for the State of New York.

14. The Respondent's surrender of his license in response to disciplinary action constitutes action against his license.

COUNT I - ACTION AGAINST RESPONDENT'S LICENSE

15. Petitioner realleges and incorporates paragraphs one (1) through fourteen (14), as if fully set forth herein this Count One.

16. Respondent had a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, in that Respondent had his South Dakota, license revoked, suspended or place on probation and/or he surrendered his New York license in response or anticipation of disciplinary action.

17. Based on the foregoing, Respondent violated Section 458.331(1)(b), Florida Statutes, by having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions. The

licensing authority's acceptance of a physician's relinquishment of a license, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of administrative charges against the physician's license, shall be construed as action against the physician's license.

COUNT TWO- CRIME RELATED TO THE PRACTICE OF MEDICINE

18. Petitioner realleges and incorporates paragraphs one (1) through fourteen (14), as if fully set forth herein this Count Two.

19. The Respondent was convicted or found guilty of, or entered 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 the Respondent pled guilty to the offense of obtaining possession of a controlled substance by theft, misrepresentation, or fraud in violation of South Dakota law.

20. Based upon the forgoing, Respondent 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.

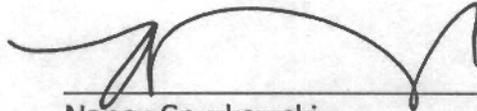
WHEREFORE, based upon the foregoing, the Petitioner asks that, in order to protect the health and safety of the People of the State of Florida, the Respondent be found responsible for the violations alleged, and that one or more of the following disciplines be entered against the Respondent:

- (A) Permanent revocation of the Respondent's license;
- (B) Suspension of the Respondent's license for a period of time;

- (C) Restriction of the Respondent's practice;
- (D) Imposition of an administrative fine;
- (E) Issuance of a reprimand;
- (F) Placement of the Respondent on probation, with appropriate conditions;
- (G) Assessment of the costs for investigation and prosecution of this case; and,
- (H) Such other and further relief as is appropriate.

SIGNED this 13th day of May, 2002

John Agwunobi, M.D., M.B.A., Secretary
Department of Health



Nancy Snurkowski
Chief Attorney, Practitioner Regulation

COUNSEL FOR DEPARTMENT:

James W. Earl
Senior Attorney
Agency for Health Care Administration
P.O. Box 14229
Tallahassee, Florida 32317-4229
850-488-2207
Florida Bar No.: 0139513
JWE
PCP: May 10, 2002
PCP Members: ASHKAR, EL SANADI AND BEEBE

FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK *Vicki R. Kerson*

DATE 5/14/02

ATTACHMENT A
STANDARD TERMS APPLICABLE TO ALL FINAL ORDERS

The following are the standard terms applicable to all Final Orders, including supervision and monitoring provisions applicable to licensees on probation.

A. COMPLIANCE WITH STATE AND FEDERAL LAWS AND RULES.

Respondent shall comply with all state and federal statutes, rules and regulations pertaining to the practice of medicine, including Chapters 456, 458, 893, Florida Statutes, and Rule Chapter 64B8, Florida Administrative Code. If Respondent is subject to criminal probation, Respondent shall comply with all terms and conditions of said criminal probation.

B. PAYMENT OF FINES AND COSTS. Unless otherwise directed by Final Order, all fines and costs shall be paid by check or money order made payable to the Board and sent to DOH/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, WITHIN 30 DAYS OF THE FILING OF THE FINAL ORDER. The Board/Compliance office does NOT have the authority to change the terms of payment of any fine imposed by the Board.

C. ADDRESSES. Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Compliance Office, in writing, within 10 days of

any changes of those addresses. Furthermore, if the Respondent's license is on probation, the Respondent shall notify the Compliance Office within 10 days in the event that Respondent leaves the active practice of medicine in Florida.

D. COMPLIANCE ADDRESS. Unless otherwise directed, all reports, correspondence and inquiries shall be sent to: DOH, Client Services Unit, 4052 Bald Cypress Way, Bin #C01, Tallahassee, Florida 32399-3251, Attn: Medical Compliance Officer.

E. CONTINUITY OF PRACTICE

1. TOLLING PROVISIONS. In the event the Respondent leaves the State of Florida for a period of 30 days or more or otherwise does not or may not engage in the active practice of medicine in the State of Florida, then certain provisions of the requirements in the Final Order shall be tolled and shall remain in a tolled status until Respondent returns to the active practice of medicine in the State of Florida. Respondent shall notify the Compliance Officer 10 days prior to his/her return to practice in the State of Florida.

Unless otherwise set forth in the Final Order, the following requirements and only the following requirements shall be tolled until the Respondent returns to active practice:

- a. The time period of probation shall be tolled.
- b. The provisions regarding supervision whether direct

or indirect by the monitor/supervisor, and required reports from the monitor/supervisor shall be tolled.

c. The requirement for quality assurance review of Respondent's practice shall be tolled.

d. Any provisions regarding community service shall be tolled.

e. Any requirements regarding lectures on the subject of wrong-site surgery.

2. ACTIVE PRACTICE. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Respondent may be required to appear before the Board and demonstrate the ability to practice medicine with reasonable skill and safety to patients prior to resuming the practice of medicine in the State of Florida.

F. COMMUNITY SERVICE AND CONTINUING EDUCATION UNITS. Unless otherwise directed by Final Order, all community service requirements, continuing education units/courses must be completed, and documentation of such completion submitted to DOH/Client Services, at the address set forth in paragraph D., WITHIN ONE YEAR OF THE DATE OF THE FINAL ORDER.

1. DEFINITION OF COMMUNITY SERVICE. "Community service" shall be defined as the delivery of medical services directly to patients, or the delivery of other volunteer services to an entity which is exempt

from federal taxation under 26 U.S.C. s. 501(c)(3), without fee or cost to the patient or the entity, for the good of the people of the State of Florida.

Community service shall be performed outside the physician's regular practice setting.

2. CONTINUING EDUCATION. Continuing education imposed by Final Order shall be in addition to those hours required for biennial renewal of licensure. Unless otherwise approved by the Board or the Chairperson of the Probation Committee, said continuing education courses shall consist of a formal live lecture format.

G. PROBATION TERMS. If probation was imposed by the Final Order, the following provisions are applicable.

1. DEFINITIONS:

a. INDIRECT SUPERVISION is supervision by a monitoring physician (monitor), as set forth in the Final Order, 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 approved by the Board and shall be readily available for consultation. The monitor shall be board-certified in the Respondent's specialty

area unless otherwise approved by the Board or its designee.

b. DIRECT SUPERVISION is supervision by a supervising physician (supervisor), as set forth in the Final Order, whose responsibilities are set by the Board. Direct supervision requires that the supervisor and Respondent work in the same office. The supervisor shall be board-certified in the Respondent's specialty area unless otherwise approved by the Board or its designee.

c. PROBATION COMMITTEE or "Committee" are members of the Board of Medicine designated by the Chair of the Board to serve as the Probation Committee.

2. REQUIRED SUPERVISION.

a. If the terms of the Final Order include indirect monitoring of the licensee's practice (monitoring) or direct monitoring of the licensee's practice (supervision), the Respondent shall not practice medicine without an approved monitor/supervisor, as specified by the Final Order, unless otherwise ordered by the Board.

b. The monitor/supervisor must be licensed under Chapter 458, Florida Statutes, in good standing, and without restriction or limitation on his/her license.

In addition, the Board or Committee may reject any proposed monitor/supervisor on the basis that he/she 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 approved by the Board or Committee and be practicing within a reasonable distance of the Respondent's practice, a distance of no more than 20 miles unless otherwise specifically provided for in the Final Order. The monitor/supervisor must not be a relative or employee of the Respondent. The Board, Committee or designee may also reject any proposed monitor/supervisor for good cause shown.

3. TEMPORARY APPROVAL. The Board confers authority on the Chair of the Probation Committee to temporarily approve Respondent's monitor/supervisor. To obtain this temporary approval, Respondent shall submit to the Compliance Officer the name and curriculum vitae of the proposed monitor/supervisor. This information shall be furnished to the Chair of the Probation Committee by way of the Compliance Officer, within 48

hours after Respondent receives the Final Order in this matter. This information may be faxed to the Compliance Officer at (850) 414-0864, or may be sent by overnight mail to the Compliance address as set forth in paragraph D. above. In order to provide time for Respondent's proposed supervisory/monitoring physician to be approved or disapproved by the Chair of the Probation Committee, Respondent shall be allowed to practice medicine while approval is being sought, but only for a period of five working days after Respondent receives the Final Order. If Respondent's supervising/monitoring physician has not been approved during that time frame, then Respondent shall cease practicing until such time as the supervising/monitoring physician is temporarily approved. In the event that the proposed monitoring/supervising physician is not approved, then Respondent shall cease practicing immediately. Should Respondent's monitoring/supervising physician be approved, said approval shall only remain in effect until the next meeting of the Probationer's Committee. Absent said approval, Respondent shall not practice medicine until a monitoring/supervising physician is approved. Temporary approval shall only remain in

effect until the next meeting of the Probation Committee.

4. FORMAL APPROVAL. Respondent shall have the monitor/supervisor with him/her at the first probation appearance before the Probation Committee. Prior to consideration of the monitor/supervisor by the Committee, the Respondent shall provide the monitor/supervisor a copy of the Administrative Complaint and the Final Order in this case.

Respondent shall submit a current curriculum vitae, a description of current practice, and a letter agreeing to serve from the proposed monitor/supervisor to the Compliance Officer no later than fourteen days before the Respondent's first scheduled probation appearance. Respondent's monitor/supervisor shall also appear before the Probation Committee at such times as directed by the Committee. It shall be the Respondent's responsibility to ensure the appearance of his/her monitor/supervisor as directed. Failure of the monitor/supervisor to appear as directed shall constitute a violation of the terms of the Final Order and may subject the Respondent to additional disciplinary action.

5. CHANGE IN MONITOR/SUPERVISOR. In the event that

Respondent's monitor/supervisor is unable or unwilling to fulfill his/her responsibilities as a monitor/supervisor as described above, the Respondent shall immediately advise the Compliance Office of this fact. Respondent shall immediately submit to the Compliance Office the name of a temporary monitor/supervisor for consideration. Respondent shall not practice pending approval of this temporary monitor/supervisor by the Chair of the Probation Committee. Furthermore, Respondent shall make arrangements with his/her 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 supervision of the temporary monitor/supervisor (approved by the Chair) 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.

6. REPORTS.

a. If directed by Final Order, probation reports, in affidavit form, shall be submitted by the Respondent and shall contain the following:

- (1) Brief statement of why physician is on probation.
- (2) Practice location.
- (3) Describe current practice (type and composition).
- (4) Brief statement of compliance with probationary terms.
- (5) Describe relationship with monitoring/supervising physician.
- (6) Advise Compliance Officer of any problems including office incident reports filed; loss or restriction of hospital staff privileges; loss or restriction of DEA registration; or any Medicare/Medicaid program exclusions, restrictions or limitations.

b. MONITOR/SUPERVISOR REPORTS. If directed by Final Order, monitor/supervisor reports, in affidavit form shall include the following:

- (1) Brief statement of why physician is on probation.
- (2) Description of probationer's practice.
- (3) Brief statement of probationer's compliance with terms of probation.
- (4) Brief description of probationer's relationship with monitoring physician.
- (5) Detail any problems which may have arisen with probationer.

7. INVESTIGATIVE REPORTS. Respondent understands that during the period of probation, at a minimum, semi-annual investigative reports will be compiled with the Department of Health concerning compliance with the terms and conditions of probation and the rules and statutes regulating the practice of medicine.

8. COSTS OF COMPLIANCE. Respondent shall pay all costs necessary to comply with the terms of the Final Order. Such costs include, but are not limited to, the costs of preparation of the investigative reports detailing compliance with the terms of the Final Order, the cost of analysis of any blood or urine specimens submitted pursuant to the Final Order, and administrative costs directly associated with Respondent's probation. See Section 458.331(2), Florida Statutes.

H. SUSPENSION. In the event that a Respondent's license expires during the period that the license is suspended, this action shall not relieve the Respondent of the responsibility to renew the license at the end of each licensure period. If the Respondent fails to renew the license at the end of any licensure period, all normal conditions and consequences imposed by statute or rule of the Board for failure to timely and properly renew a license shall apply. Renewal of

a suspended license during the period of suspension shall not affect the suspension of the license and the suspension shall continue until all requirements for reinstatement have been met.

- I. RETURN OF LICENSE. Any Final Order which suspends a license, revokes a license, or accepts a Respondent's offer to voluntarily relinquish his/her license shall require the Respondent to return the license to the Department within 30 days from the date the Final Order is filed. This shall not apply to instances where the Board or a court has granted the Respondent a stay of the suspension.