

STATE OF FLORIDA
BOARD OF MEDICINE

By: Heather Coleman
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2002-31766
LICENSE NO.: ME0050955

LINDA GILBERT WYBLE, M.D.,

Respondent.

FINAL ORDER

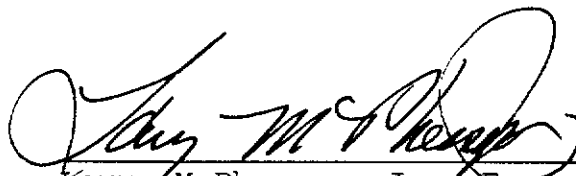
THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on April 3, 2004, in Ft. Lauderdale, Florida, for the purpose of considering a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Consent Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully 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 herein by reference. 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 15 day of April,
2004.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for Elisabeth Tucker, M.D., Chair

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 LINDA
GILBERT WYBLE, M.D., 15705 Rutledge Place, Tampa, Florida 33647;
to James M. Eckhart, Esquire, Kubicki & Draper, PA., 25 West
Flagler Street, Penthouse, Miami, Florida 33130; and by
interoffice delivery to Denise O'Brien and Pamela Page,
Department of Health, 4052 Bald Cypress Way, Bin #C-65,
Tallahassee, Florida 32399-3253 this 14 day of
April, 2004.



Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH CASE NUMBER 2002-31766

LINDA GILBERT WYBLE, M.D.,

Respondent.

CONSENT AGREEMENT

Linda Gilbert Wyble, M.D., referred to as the "Respondent," and the Department of Health, referred to as "Department," stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

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 50955.

2. The Respondent was charged by an Administrative Complaint filed by the Agency and properly served upon the Respondent with violations of Chapter 458, Florida Statutes, and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

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

STIPULATED CONCLUSIONS OF LAW

1. The Respondent admits that, in her capacity as a licensed physician, she 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 violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent admits that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. **FUTURE CONDUCT.** 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. **LETTER OF CONCERN.** Respondent shall receive a Letter of Concern from the Board of Medicine.

3. **ADMINISTRATIVE FINE.** The Board shall impose an administrative fine in the amount of **ten thousand dollars (\$10,000.00)** against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within **THIRTY (30) DAYS** 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 THIRTY (30) DAYS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).**

4. **REIMBURSEMENT OF COSTS.** In addition to the amount of any fine noted above, the Respondent agrees to reimburse the Department for any administrative costs incurred in the investigation, prosecution, and preparation of this case, including costs assessed by the Division of Administrative Hearings, if applicable, and by the Board

of Medicine office. The agreed upon Agency costs to be reimbursed in this case is eight hundred ninety-eight dollars and eighty-five cents (\$898.85). The costs shall be paid by the Respondent to the Board of Medicine within **THIRTY (30) DAYS** of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN THIRTY (30) DAYS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).**

4. **CONTINUING MEDICAL EDUCATION.** Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend **five (5) hours** of Continuing Medical Education (CME) in Risk Management. Respondent shall submit a written plan to the Chairman of the Probationer's Committee for approval prior to the completion of said continuing education hours and course. The Board confers authority on the Chairman of the Probationer's Committee 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 within one (1) year of the entry 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.

5. **LECTURE/SEMINAR.** During the first six (6) months following the filing date of a Final Order in this case, Respondent shall present a one (1) hour lecture/seminar on Wrong Site Surgeries. The lecture/seminar shall be presented to staff of an approved medical facility. Respondent shall submit a written plan to the Board for approval prior to performance of said lecture/seminar. Respondent shall also provide written documentation to the Board that said lecture/seminar has been completed within six (6) months of the filing of the Final Order in this case.

6. **COMMUNITY SERVICE.** During the year following the filing date of a Final Order in this case, Respondent shall perform **twenty-five (25) hours** of community service. Respondent shall submit a written plan for performance and completion of the community service to the Board for approval prior to performance of

said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board quarterly.

7. **MITIGATING FACTORS.** In arriving at this disposition the parties considered the following mitigating factors: Respondent has no prior discipline with the Board, there were no legal restraints on Respondent at the time of the offense.

STANDARD PROVISIONS

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 attached as Exhibit "A" herein.

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. 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.

SIGNED this 13 day of February, 2004.

Linda b. Wyble, MD
Linda Gilbert Wyble, M.D.

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

Sworn to and subscribed before me this 13th day of February, 2004.



Stephanie Pupello
NOTARY PUBLIC

My Commission Expires: July 27, 2004

APPROVED this 24th day of February, 2004.

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

By: Wings S. Benton
Wings S. Benton
Deputy General Counsel
Department of Health

EXHIBIT B

STANDARD TERMS APPLICABLE TO CONSENT AGREEMENTS

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

A. PAYMENT OF FINES. Unless otherwise directed by the Consent Agreement, all fines shall be paid by check or money order and sent to the Board address 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. COMMUNITY SERVICE AND CONTINUING EDUCATION UNITS. Unless otherwise directed by the Consent Agreement, all community service requirements, continuing education units/courses must be completed, and documentation of such completion submitted to the Board of Medicine at the address set forth below in paragraph E, WITHIN ONE YEAR OF THE DATE OF THE FINAL ORDER.

C. ADDRESSES. 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/costs shall be sent to Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, FL 32314-6320. ATTN: Medical Compliance Officer. All reports, correspondence and inquiries must be sent to Department of Health, HMQAMS/Client Services/Bin C01, 4052 Bald Cypress Way, Tallahassee, FL 32399-3251, ATTN: Medical Compliance Officer.

3. Respondent's address of record is 15705 Rutledge Place, Tampa, Florida 33647.

4. Respondent is board certified in anesthesiology by the American Board of Anesthesiology.

5. At all times material to this Complaint, Respondent was Director of Anesthesiology at Ambulatory Surgery Center in Tampa, Florida.

6. On or about December 10, 2002, Patient P.B., a seventy-four year-old female, presented to Ambulatory Surgery Center for cataract extraction surgery on her left eye. Prior to surgery, Patient P.B. signed a consent form consenting to the cataract extraction with intraocular lens implant of the left eye.

7. Respondent was scheduled to perform the peribulbar block on Patient P.B.'s left eye prior to the cataract extraction procedure. A peribulbar block is an anesthetic procedure performed via injection prior to ophthalmic surgery.

8. At or around 9:08 a.m., Respondent entered the eye block area and prepared and performed the peribulbar block on Patient P.B.'s right eye.

9. Just before Patient P.B. was to be taken to the operating room for the cataract extraction on her left eye an operating room nurse reviewed the written consent and realized that Respondent performed the peribulbar block on the wrong site, the right eye. At this time, Patient P.B. was informed of the mistake and the cataract extraction procedure to be performed on Patient P.B.'s left eye was cancelled and rescheduled for a later date.

10. Patient P.B. recovered from the right eye peribulbar block without complication.

COUNT ONE

11. Petitioner re-alleges and incorporates paragraphs one (1) through ten (10) as if fully set forth herein this Count One.

12. Section 456.072(1)(aa), Florida Statutes (2002), provides that performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition constitutes grounds for disciplinary action by the Board of Medicine.

13. Respondent performed a wrong-site procedure in that on or about December 10, 2002, Respondent performed a peribulbar block on Patient P.B.'s right eye, rather than on the intended left eye.

14. Based on the foregoing, Respondent violated Section 456.072(1)(aa), Florida Statutes (2002), by performing a wrong-site procedure.

COUNT TWO

15. Petitioner re-alleges and incorporates paragraphs one (1)³ through ten (10) as if fully set forth herein this Count Two.

16. Section 458.331(1)(p), Florida Statutes (2002), provides that performing professional services which have not been duly authorized by the patient or client, or his or her legal representative, except as provided in Section 743.064, 766.103, or 768.13 of the Florida Statutes, constitutes grounds for disciplinary action by the Board of Medicine.

17. Respondent performed professional services, which had not been duly authorized by the patient or client, or his legal representative, in that Respondent performed a right eye peribulbar

block on Patient P.B., which had not been authorized in the consent form, rather than the left eye peribulbar block.

18. Based on the foregoing, Respondent violated Section 458.331(1)(p), Florida Statutes (2002), by performing professional services which had not been duly authorized by the patient or client, or his or her legal representative.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 1 day of December, 2003.

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

Joy L. Doss

Joy L. Doss
Assistant General Counsel
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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Heather Coleman
DATE 12/2/03

jld

Reviewed and approved by: om (initials) 7/24/03 (date)

PCP: 11/21/2003

PCP Members: El-Bahri, Patrowicz, Dydes

Wyble, DOH Case No. 2002-31766

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.