

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-05-0195- S -MQA
FILED DATE - 2-21-05
Department of Health

By: Heather Coleman
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-15550
LICENSE NO.: ME0034955

MICHEL GIMENO, 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 February 4, 2005, in Miami, 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, the Board rejected the Consent Agreement and offered a Counter Consent Agreement which Respondent was given 7 days to accept. By letter dated February 11, 2005, Respondent timely accepted the Board's Counter Consent Agreement. The Counter Consent Agreement incorporates the original Consent Agreement with the following amendment:

1. The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$766.39.

2. The community service requirement set forth in Paragraph 5 of the Stipulated Disposition shall be amended to require 100 hours of community service to be completed within one year from the date the Final Order is filed.

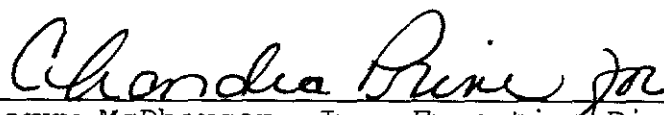
3. Within 3 months from the date the Final Order is filed, Respondent shall undergo an evaluation by the Physicians Resource Network (PRN) and comply with any and all recommendations of PRN.

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

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

DONE AND ORDERED this 18 day of February,
2005.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for Laurie K. Davies, 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 MICHEL GIMENO, M.D., 2531 Landmark Drive, Building E, Suite 207, Clearwater, Florida 33761; and by interoffice delivery to Denise O'Brien and Dana Baird, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 21ST day of February, 2005.


Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2004-15550

MICHEL GIMENO, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through undersigned counsel, files this Administrative Complaint before the Board of Medicine against Respondent, Michel Gimeno, M.D., and in support thereof alleges:

1. 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.

2. At all times material to this Complaint, Respondent was a licensed physician within the state of Florida, having been issued license number ME 34955.

3. Respondent's address of record is 2531 Landmark Drive Building E, Suite 207 Clearwater, FL 33761.

4. At all times material to this Complaint, Respondent was self-employed as a physician.

5. On or about January 13, 2003, Respondent wrote a prescription for one hundred (100) Yohimbine 5.4 milligram tablets for a "Jack Lawson."

6. On or about January 17, 2003, Respondent presented the prescription for "Jack Lawson" to a Publix Pharmacy located in Palm Harbor, Florida.

7. Respondent fraudulently represented to the pharmacy that he was authorized to pick up the medication for "Jack Lawson," the patient for whom the Yohimbine prescription had been written.

8. The pharmacy filled the prescription for one hundred (100) Yohimbine tablets for Respondent on or about January 17, 2003.

9. The pharmacist on duty then called the Pinellas County Sheriff's Office to report the transaction.

10. Yohimbine is a legend drug requiring a prescription in order to be dispensed. Yohimbine may be indicated in the treatment of erectile dysfunction, and has an unknown potential for abuse with a currently accepted, but restricted, medical use in treatment in the United States.

11. During an interview with Pinellas County Detectives and subsequently in a letter to the Department of Health, Subject admitted that

he had written the prescription, that the prescription was indeed fraudulent, and that the medication was intended for him.

COUNT ONE

12. Petitioner realleges and incorporates paragraphs one (1) through eleven (11) as if fully set forth herein.

13. Section 458.331(1)(k), Florida Statutes (2002), provides that making deceptive, untrue or fraudulent representations in or related to the practice of medicine or employing a trick scheme in the practice of medicine constitutes ground for discipline by the Board of Medicine.

14. Respondent fraudulently obtained possession of Yohimbine, a legend drug, by writing a fraudulent prescription for the purpose of obtaining the legend drug for his own personal use.

15. Based on the foregoing, Respondent has violated Section 458.331(1)(k), Florida Statutes (2002), by fraudulently writing prescriptions to obtain legend drugs for his own personal use.

COUNT TWO

16. Petitioner realleges and incorporates paragraphs one (1) through eleven (11) as if fully set forth herein.

17. Section 458.331(1)(q), Florida Statutes (2002), provides that prescribing, dispensing, administering, mixing, or otherwise preparing a

legend drug, including any controlled substance, other than in the course of the physician's professional practice constitutes grounds for disciplinary action by the Board of Medicine.

18. Respondent unlawfully prescribed controlled substances to himself, in violation of Section 458.331(1)(q), Florida Statutes (2002), by prescribing a legend drug to a patient he never examined, and/or to a person who did not exist, for the purpose of obtaining legend drugs through fraudulent means for his own personal consumption.

19. Based on the foregoing, Respondent has violated Section 458.331(1)(q), Florida Statutes (2002), by prescribing a legend drug other than in the course of his professional practice, in order to obtain the drugs for his own personal use.

WHEREFORE, 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 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 15TH day of NOVEMBER, 2004.

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



Robert E. Fricke
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 230560
(850) 414-8126
(850) 414-1991 FAX

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Heather Coleman
DATE 11-15-04

ref

Reviewed and approved by: mm (initials) 8/12/04 (date)

PCP: November 12, 2004

PCP Members: Gustavo Leon, M.D. (Chairperson), Peter Larnelas, M.D., and John Beek

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.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2004-15550

MICHEL GIMENO, M.D.

Respondent.

CONSENT AGREEMENT

Michel Gimeno, 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 a state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 34955.

2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules adopted 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 for purposes of these proceedings only.

STIPULATED CONCLUSIONS OF LAW

1. 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. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

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

STIPULATED DISPOSITION

1. **Letter Of Concern** - Respondent shall receive a Letter of Concern from the Board of Medicine.

2. **Fine** - The Board of Medicine shall impose an administrative fine of ten thousand dollars (10,000.00) against the license of Respondent, to be paid by

Respondent to the Department of Health, HMQAMS/Client Services, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer, within thirty-days (30) of the Final Order accepting this Agreement. All fines shall be paid by check or money order. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

3. **Reimbursement Of Costs** - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any administrative costs incurred in the investigation and preparation of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. The agreed upon amount of Department costs to be paid in this case shall not exceed one thousand eight hundred dollars (\$1,800.00). Respondent will pay costs to the Department of Health,

HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer within thirty-days (30) from the entry of the Final Order in this cause. Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS/HER 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 WITHIN 45 DAYS OF THE FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. **Drug Course** - Respondent shall complete the course, "Protecting Your Medical Practice, Clinical, Legal and Ethical Issues in Prescribing Abusable Drugs," sponsored by the Florida Medical Association and the University of South Florida, or a Board-approved equivalent, within one year of the filing of the Final Order.

5. **Community Service** - Respondent shall perform fifty (50) hours of community service, within one year of the filing of the Final Order. Community Service shall be defined as the delivery of medical services directly to patients, or the delivery of other volunteer services in the community, 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. Respondent shall submit a written plan for performance and completion of the community service to the Probation Committee for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board as required by the Probation Committee.

STANDARD PROVISIONS

6. **Appearance**: Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

7. **No force or effect until final order** - 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 the Board enters a Final Order incorporating the terms of this Agreement.

8. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.

9. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 458 or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice medicine. Prior to signing this agreement, the Respondent shall read

Chapters 456, 458 and 893 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

10. **Violation of terms considered** - It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 458, Florida Statutes.

11. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. 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. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this 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.

12. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board

and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

13. **Waiver of attorney's fees and costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, the parties 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 and the Board in connection with this matter.

14. **Waiver of further procedural steps** - 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.

SIGNED this 12/10 day of 12/10/04, 2004.

[Signature]
Michel Gimeno, M.D.

State of Florida

County of PINELLAS

Before me, personally appeared Michel Gimeno, M.D., whose identity is known to me by Florida Driver License (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 12/10 day of 12/10/04, 2004.

[Signature]
NOTARY PUBLIC

My Commission Expires:



Sharon R. Manchester
My Commission DD007440
Expires March 08, 2005

APPROVED this ^{17th} ~~12/10~~ day of ^{December} ~~12/10/04~~, 2004.
WSB WSB

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

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

Coleman, Heather

From: Watkins, Samuel
Sent: Friday, February 18, 2005 12:22 PM
To: Coleman, Heather
Subject: FW: Delegation of Authority

Thanks,
Sam

From: McPherson, Larry
Sent: Thursday, February 17, 2005 1:53 PM
To: Baker, Joe Jr; Coble, Dan; Droz, Danna; Erlich, Donna; Foster, Sue; Gee, Lucy; Gray, Melinda; Hentz, James; Howerton, Kaye; Jones, Amy M; King, Pamela E; List, Crystal A; Orcutt, Diane; Prine, Chandra; Sanders, Sylvia (MQA)
Cc: Dr Avila; Dr Coto; Dr McCoy; Dr. Barrau; Dr. Davies; Dr. El Sanadi; Dr. Farmer; Dr. Ondra; Dr. Patrowicz; Dr. Tucker; Dr. Vijay; John Beebe; Monique Long; Ron Dyches; Alls, Wendy; Alphin, Lynda; Austin, Cheryl; Brutton, Tiffany; Davis, Bettye; Davis, Joanne (MQA-Tallahassee); Denson, Angela; Dickens, Karrell D; Gilley, Carmelette; Graham, Cheryl; Harmon, Aaron; Henderson, Lakeisha; Hills, Tangela; Jackson, Tiana; Johnson, Vera M; Kodaj, Jo Ann; Kress, Elizabeth; Langston, Ashley; McBride, Martha; Morss, Shirley B; Nelson, Gloria J; Oliver, Cynthia; Randolph, Camela; Smiley, Cheryl; Watkins, Samuel; Welch, Jessica M; Williams, Horace; Willis, Gwyn
Subject: Delegation of Authority

Citizens,

During my absence from the office on the afternoon of February 17 and all day on February 18, 2005, Executive Director authority is delegated to Chandra Prine: 245-4135.

Larry McPherson
Executive director
Board of medicine