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Final Order No. DOH-05-1326-S -MOA
FILED DATE - 8-22-05
Department of Health

STATE OF FLORIDA
BOARD OF MEDICINE

By: Heather Coleman
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2002-31696
LICENSE NO.: ME0012885

JAY D. ELLENBY, 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 August 5, 2005, in Jacksonville, 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 with the following clarification:

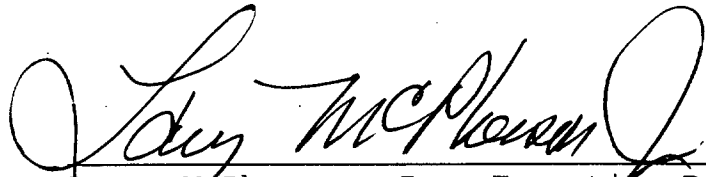
The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$4,268.52.

Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Consent Agreement as clarified above.

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

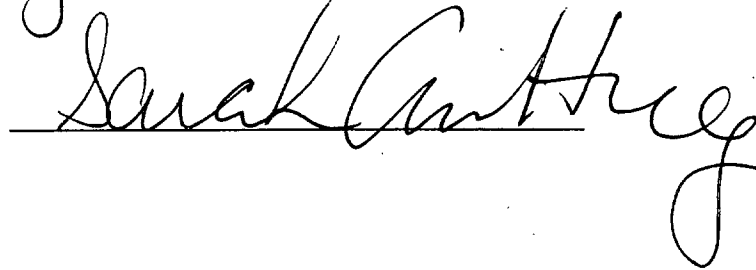
DONE AND ORDERED this 19 day of AUGUST, 2005.

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 JAY D. ELLENBY, M.D., 2954-B Aventura Boulevard, Suite 114, Aventura, Florida 33180; to Norman S. Klein, Esquire, 3325 Hollywood Boulevard, Suite 500, Hollywood, Florida 33021; 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 22 day of August, 2005.



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Deputy Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH

PRACTITIONER REGULATION
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DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2002-31696

JAY D. ELLENBY, M.D.,

Respondent.

_____ /

CONSENT AGREEMENT

Jay D. Ellenby, 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 12885.

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 five thousand dollars (\$5,000) 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 is actual costs but not to exceed five thousand dollars (\$5,000.00). 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. **Continuing Medical Education** - Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend the below listed Continuing Medical Education (CME). 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 date of filing 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 provided previously 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.

a) **Records Course** - Respondent shall complete the course, "Quality Medical Record Keeping for Health Care Professionals," sponsored by the Florida Medical Association, or a Board-approved equivalent, within one year of the date of filing of the Final Order.

b) **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 date of 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, Florida Statutes, 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.

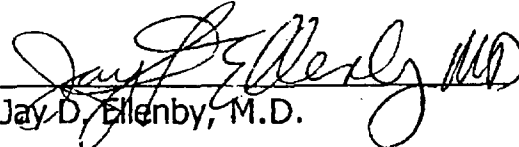
11. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction 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 14 day of June, 2005.

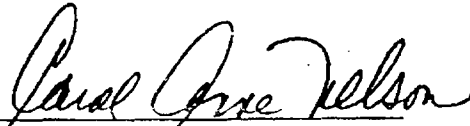

Jay D. Ellenby, M.D.

Before me, personally appeared JAY D. ELLENBY, whose identity is known to me by N/A (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 14th day of June, 2005.



My Commission Expires:


NOTARY PUBLIC

APPROVED this 29th day of June, 2005.

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

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

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2002-31696

JAY D. ELLENBY, M.D.,

RESPONDENT.

AMENDED ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Health, and files this Administrative Complaint before the Board of Medicine against Respondent, Jay D. Ellenby, 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 medical doctor within the state of Florida having been issued license number ME 12885.

3. Respondent's address of record is 2954-B, Aventura Boulevard, Suite 114, Aventura, Florida 33180.

4. Respondent is board certified in plastic surgery.

5. In 1993, Patient V.R. and Respondent met as a result of a mutual interest in developing a line of skin care products. That same year, Patient V.R. and the Respondent began a relationship that included sexual relations. The sexual relationship continued for approximately seven years.

6. During the course of their relationship, Respondent began to treat and perform surgeries and other cosmetic procedures for Patient V.R.

7. Between February 1994 and May 1999, Respondent performed numerous procedures for Patient V.R., including: February 23, 1994, an excision of lesions on her chest and left foot; May 17, 1994, the following surgical procedures: coronal lift, revision lower lid blepharoplasty, revision right post-auricular depression, revision left nasal tip depression with fascia graft following surgery by another plastic surgeon six months earlier; September 14, 1994, revision of upper lid blepharoplasty scars; November 14, 1994, a revision of right lateral upper lid scar, revision of bilateral lower lid blepharoplasty and revision of tempororhytidectomy; January 10, 1995, a suction assisted lipectomy (total 800 cc) of her abdomen, hips, waist and

thighs; March 30, 1995, a suction assisted lipectomy (total 300 cc) of her abdomen, thighs, and neck; September 27, 1995, an excision of lesions on Patient V.R.'s left axilla, right flank and right lateral chest; April 16, 1996, repair of abdominal incisional hernia, liposuction, and further revision of temporal rhytidectomy; June 26, 1996, excision of an abdominal scar; November 26, 1996, revision of left lateral abdominal scar, bilateral mild thigh lift and liposuction; June 12, 1997, suction assisted lipectomy of her proximal aspects of the lateral, anterior and medial thighs; October 6, 1998, revision of an abdominal scar and suction assisted lipectomy of her thighs, upper abdomen, hips, waist, back and upper arms; and May 14, 1999, revision rhytidectomy and abdominoplasty scar revision.

8. Between February 1994 and May 1999, Respondent prescribed certain medications for Patient V.R. On or about September 9, 1996, the Respondent prescribed Zoloft but did not document the prescription or adequately justify it in Patient V.R.'s medical records.

9. Zoloft contains sertraline hydrochloride, which is a selective serotonin reuptake inhibitor and is used in the treatment of depression. Respondent prescribed Zoloft for V.R. until around December of 2001.

10. On or about March 6, 1997, the Respondent prescribed Diazepam for Patient V.R.

11. Diazepam is a schedule IV controlled substance listed in Chapter 893, Florida Statutes, and is indicated for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. Respondent did not document the prescription or adequately justify it in Patient V.R.'s medical records.

12. In January of 2001, Patient V.R. attempted suicide.

13. In April of 2001, Patient V.R. moved to California where she began treatment with a local psychiatrist. The Respondent traveled to California on several occasions in 2001 and continued to prescribe medications for Patient V.R. after she had moved to California.

14. On or about October 19, 2001, the Respondent prescribed Alprazolam for Patient V.R. Respondent did not document the prescription or adequately justify it in Patient V.R.'s medical records.

15. Alprazolam is a schedule IV controlled substance listed in Chapter 893, Florida Statutes, which is indicated for the short-term relief of symptoms of anxiety. The abuse of Alprazolam can lead to physical and psychological dependence.

16. Section 458.331(1)(m), Florida Statutes, provides that a physician may be disciplined by the Board of Medicine for failing to keep legible medical records that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

17. Respondent failed to keep written medical records justifying the course of treatment of Patient V.R., in that Respondent failed to document the medications which he prescribed for Patient V.R. and/or failed to adequately justify the medications prescribed.

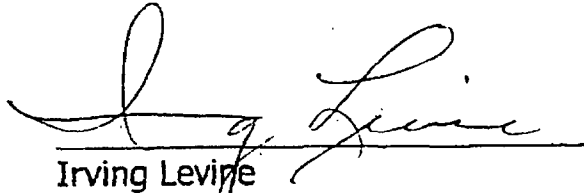
18. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes, by failing to keep legible medical records that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

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 29th day of April, 2005.

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



Irving Levine
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 0822957
(850) 414-8126
(850) 414-1989 FAX

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Heather Coleman
DATE 4-29-05

Reviewed and approved by: cy (initials) 2/15/05 (date)

PCP: April 22, 2005

PCP Members: El-Bahri, Patrowicz, Dyches

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.