# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/


December 11, 2002

Joseph Robert Mannino, Jr., D.O.
4955 NW 82nd Terrace
Coral Springs, FL 33067

Dear Doctor Mannino:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 11, 2002, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5151 0759
RETURN RECEIPT REQUESTED

Mailed 12/13/02

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 11, 2002, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Joseph Robert Mannino, Jr., D.O., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

Anand G. Garg, M.D.
Secretary

(SEAL)

December 11, 2002
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF *

*

JOSEPH ROBERT MANNINO, JR., D.O. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on December 11, 2002.

Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that Joseph Robert Mannino Jr., M.D., be REPRIMANDED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

Anand G. Garg, M.D.
Secretary

(SEAL)

December 11, 2002
Date

STATE MEDICAL BOARD
OF OHIO

2002 NOV 15 A 7:52

# REPORT AND RECOMMENDATION
# IN THE MATTER OF JOSEPH ROBERT MANNINO JR., D.O.

The Matter of Joseph Robert Mannino Jr., D.O., was heard by R. Gregory Porter, Attorney Hearing Examiner for the State Medical Board of Ohio, on October 30, 2002.

## INTRODUCTION

I. Basis for Hearing

A. On July 10, 2002[1], the State Medical Board of Ohio [Board] notified Joseph Robert Mannino Jr., D.O., that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action upon an October 10, 2001, Final Order Approving Consent Agreement filed by the Florida Board of Osteopathic Medicine [Florida Board] against Dr. Mannino's certificate to practice in that state. The Board further alleged that the Florida Board Final Order Approving Consent Agreement constitutes "'[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,' as that clause is used in R.C. 4731.22(B)(22)." Finally, the Board advised Dr. Mannino of his right to request a hearing in this matter. (State's Exhibit 1A)

B. By document received by the Board on August 9, 2002, Dr. Mannino requested a hearing. (State's Exhibit 1B)

II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Mark A. Michael, Assistant Attorney General.

B. On behalf of the Respondent: Dr. Mannino, having previously been advised of his right to appear at the hearing in person or by representative, did not appear at the hearing, but instead presented his defense in writing.

[1] Note that the notice of opportunity for hearing was erroneously dated July 10, 2001.

## EVIDENCE EXAMINED

I. Testimony Heard

No testimony was presented.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1I: Procedural exhibits.

2. State's Exhibit 2: Certified copies of documents concerning Dr. Mannino maintained by the Florida Department of Health.

B. Presented by the Respondent

Respondent's Exhibit A: Dr. Mannino's written defense.

## SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

1. On March 14, 2001, the State of Florida Department of Health filed an Administrative Complaint against Joseph Robert Mannino Jr., D.O. The Administrative Complaint concerned Dr. Mannino's treatment of a patient while Dr. Mannino was employed by the Cleveland Clinic in Fort Lauderdale, Florida. The allegations made in the Administrative Complaint included the following:

   a. On or about August 7, 1997, Patient B.S., a forty-nine year old male, presented to Dr. Mannino with a complaint of fatigue, and with a low hematocrit level which had been discovered at a health fair. Dr. Mannino ordered a blood work-up and scheduled a follow-up appointment. The medical records did not indicate the date of the follow-up appointment.

   b. On or about November 6, 1997, Patient B.S. saw Dr. Mannino for complaints of right shoulder pain and erectile dysfunction. Dr. Mannino discussed with Patient B.S. the results of the August 7, 1997, tests, which indicated a low iron count. Dr. Mannino ordered additional blood work. The medical records reveal that Dr. Mannino had considered orthopedic and urologic consultations, but do not indicate that such

consultations took place. Further, the medical records "do not indicate a treatment plan was prepared or followed."

c. On or about November 11, 1997, Patient B.S. presented to Dr. Mannino "for unknown reasons." Dr. Mannino discussed the results of the November 6, 1997, tests and prescribed aspirin 500 mg. twice per day. The medical records do not indicate the reason for prescribing aspirin.

d. On or about December 2, 1997, Patient B.S. saw Dr. Mannino "for unknown reasons." Dr. Mannino "performed a complete physical examination and ordered additional blood work-up. This [was] the first documented physical examination. Medical records do not show any findings as a result of the physical examination nor do they show a treatment plan."

e. On or about December 15, 1997, Patient B.S. saw Dr. Mannino for complaints of chest soreness, fever, and cough. Dr. Mannino prescribed Proventil inhaler for bronchospasm, and Ceclor for respiratory infection.

f. On or about January 14, 1998, Patient B.S. saw Dr. Mannino for complaints of difficulty breathing, sleeplessness, and "'hacking.'" Dr. Mannino prescribed Hydramine cough syrup.

g. "On or about January 30, 1998, Patient B.S. presented to a different physician who performed a colonoscopy, a cecum (colon) biopsy, and a polypectomy, which revealed stage C2 carcinoma of the cecum."

h. The conduct described above violated Florida law.

(State's Exhibit [St. Ex.] 2 at 14-18)

2. On June 13, 2001, Dr. Mannino executed a Consent Agreement with the State of Florida Department of Health, Board of Osteopathic Medicine [Florida Board]. In the section of the Consent Agreement entitled "Stipulated Facts," Dr. Mannino acknowledged that he was a licensed osteopathic physician in the State of Florida; that he had been charged with violations of Florida law by an Administrative Complaint, and that he had been properly served with same; and that he "neither admits nor denies the allegations of fact contained in the Administrative Complaint." (St. Ex. 2 at 5-11)

In the section of the Consent Agreement entitled "Stipulated Conclusions of Law," Dr. Mannino admitted, among other things, "that the facts set forth in the Administrative Complaint, if proven, would constitute" violations of Florida law; and that the Stipulated Disposition set forth in the Consent Agreement was "fair, appropriate, and acceptable" to him. (St. Ex. 2 at 6)

The section of the Consent Agreement entitled "Stipulated Disposition" included the following:

a. Dr. Mannino was to pay a fine in the amount of $5,000.00.

b. Dr. Mannino was to reimburse the Florida Board for its costs of investigating, preparing, and prosecuting his case, in the amount of $1,817.65.

c. In addition to the Continuing Medical Education [CME] required for the renewal of his Florida certificate, Dr. Mannino was required to complete five hours of CME on the subject of risk management, and five hours of CME on the subject of "Medical Records," or equivalent courses as approved by the Florida Board.

d. Dr. Mannino was issued a "Letter of Concern" by the Florida Board.

e. Dr. Mannino was to have a Quality Assurance Consultation. The Consent Agreement stated:

> An independent, certified risk manager will review [Dr. Mannino's] current practice prior to the [Florida] Board's consideration of this Agreement. Specifically, this independent consultant shall review the testing protocols and follow-up procedures utilized in [Dr. Mannino's] practice. This consultant will prepare a report addressing [Dr. Mannino's] practice. This report will include suggested improvements of the quality assurance of [Dr. Mannino's] practice. [Dr. Mannino] will submit this report, as well as documentation that demonstrates his compliance with the suggestions enumerated in the report, to the [Florida] Board for consideration in conjunction with this Agreement. [Dr. Mannino] shall bear the cost of such consultation and any necessary or appropriate follow-up consultation.

(St. Ex. 2 at 7-10)

3. On October 10, 2001, the Florida Board filed a Final Order Approving Consent Agreement [Final Order], adopting the Consent Agreement previously executed by Dr. Mannino. The Final Order further stated that Dr. Mannino would have six months from the effective date of the Final Order to obtain the quality assurance consultation and submit the report. (St. Ex. 2 at 3-4)

4. In an October 22, 2002, letter, Dr. Mannino addressed the Board concerning the Florida Board matter. That letter stated, in part, as follows:

> A patient sued the Cleveland Clinic Florida, and I was also named in the suit, as I had seen the patient while an employee of the Clinic. The case was settled and I was never deposed. I do not know the details of the case. I have no court documents.
>
> Approximately six months later, following review of my involvement in the above-mentioned case, the Florida Board of Osteopathic Medicine disciplined me, requiring specific CME in risk management and medical record keeping. I have completed all stated stipulations. As indicated [in an attached letter], my Florida license is now clear.
>
> I think it pertinent to add, that in 30 years of practice this is my only incident.

(Respondent's Exhibit [Resp. Ex.] A) Dr. Mannino attached a copy of an August 16, 2002, letter to him from the Florida Board that states that Dr. Mannino had completed all of the requirements of the Florida Board order, and that his "Florida licensure status in now reflected as Clear." (Resp. Ex. A)

## FINDINGS OF FACT

On October 10, 2001, the Florida Board of Osteopathic Medicine [Florida Board] filed a Final Order Approving Consent Agreement [Final Order] against Joseph Robert Mannino Jr., D.O., imposing an administrative fine in the amount of $5,000.00; requiring reimbursement of administrative costs incurred in the investigation and preparation of his case in the amount of $1,817.65; and further requiring, in addition to the Continuing Education [CME] required for license renewal, five hours of CME in risk management, and five hours of CME in medical records, or equivalent courses as approved by the Florida Board. Moreover, the Florida Board issued a Letter of Concern to Dr. Mannino.

Finally, Dr. Mannino was required to obtain, at his expense, a Quality Assurance Consultation of his current practice by an independent, certified risk manager. The consultant was to review the testing protocols and follow-up procedures utilized in Dr. Mannino's practice. Further, the consultant was to prepare a report, which was to include suggested improvements of the quality assurance of Dr. Mannino's practice. Finally, Dr. Mannino was to submit this report, along with documentation of his compliance with the suggestions of the consultant, to the Florida Board within six months of the effective date of the Final Order. Dr. Mannino provided evidence that he has fulfilled all of the requirements of the Final Order.

The Florida Board action was based upon an Administrative Complaint that concerned Dr. Mannino's treatment of Patient B.S. at the Cleveland Clinic in Ft. Lauderdale, Florida, from August 1997 through January 1998. However, Dr. Mannino neither admitted nor denied those allegations, and the Florida Board made no findings concerning those allegations.

## CONCLUSIONS OF LAW

The Florida Board Final Order Approving Consent Agreement concerning Joseph Robert Mannino Jr., M.D., as set forth in the Findings of Fact, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

* * * * *

The evidence indicates that Dr. Mannino had been accused in Florida of providing substandard care to a single patient. Nevertheless, in his Consent Agreement, Dr. Mannino neither admitted or denied those allegations. Further, in the Final Order Approving Consent Agreement, the Florida Board made no findings concerning that allegation. Finally, Dr. Mannino provided evidence that he has completed the requirements of the Florida Board order.

## PROPOSED ORDER

It is hereby ORDERED that Joseph Robert Mannino Jr., M.D., be REPRIMANDED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

R. Gregory Porter
Attorney Hearing Examiner

# State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/


EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 11, 2002

REPORTS AND RECOMMENDATIONS

Dr. Somani announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Somani asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Wallace C. Adamson, M.D.; Robin Rae Adamson, P.A.; Brijesh Arya, M.D.; John A. Frenz, M.D.; Jitander N. Kalia, M.D.; Anthony W. Kitchen, M.D.; Joseph Robert Mannino, Jr., D.O.; Kenneth N. Michaelis, L.M.T.; Gary R. Rochon, M.D.; and Michael Carmen Staschak, M.D. A roll call was taken:

| | | |
|---|---|---|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Bhati | - aye |
| | Dr. Buchan | - aye |
| | Dr. Somani | - aye |
| | Ms. Sloan | - aye |
| | Dr. Davidson | - aye |
| | Dr. Agresta | - aye |
| | Dr. Garg | - aye |
| | Dr. Steinbergh | - aye |
| | Mr. Browning | - aye |

Dr. Garg advised that he has not read the materials in the matters of Wallace Adamson, M.D., Robin Rae Adamson, P.A., and Jitander N. Kalia, M.D.

Dr. Somani asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

| | | |
|---|---|---|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |

| | |
|---|---|
| Dr. Talmage | - aye |
| Dr. Bhati | - aye |
| Dr. Buchan | - aye |
| Dr. Somani | - aye |
| Ms. Sloan | - aye |
| Dr. Davidson | - aye |
| Dr. Agresta | - aye |
| Dr. Garg | - aye |
| Dr. Steinbergh | - aye |
| Mr. Browning | - aye |

Dr. Somani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Somani stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

.....

JOSEPH ROBERT MANNINO, JR., D.O.

.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JOSEPH ROBERT MANNINO, JR., D.O. DR. BUCHAN SECONDED THE MOTION.**

.....

A vote was taken on Dr. Steinbergh's motion to approve and confirm:

| | | |
|---|---|---|
| Vote: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Bhati | - aye |
| | Dr. Buchan | - aye |
| | Mr. Browning | - aye |

| | |
|---|---|
| Ms. Sloan | - aye |
| Dr. Davidson | - aye |
| Dr. Agresta | - aye |
| Dr. Garg | - abstain |
| Dr. Steinbergh | - aye |

The motion carried.

# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/


July 10, 2001

Joseph R. Mannino, Jr., D.O.
AKA J. Robert Mannino, Jr., D.O.
4955 NW 82 Terrace
Coral Springs, Florida 33067

Dear Doctor Mannino:

In accordance with R. C. Chapter 119., you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

(1) On or about October 10, 2001, the Florida Board of Osteopathic Medicine (hereinafter the "Florida Board") filed a Final Order Approving Consent Agreement imposing an administrative fine in the amount of $5,000 against you; requiring reimbursement of administrative costs incurred in the investigation and preparation of your case in the amount of $1,817.65, and requiring, in addition to your Continuing Education (CME) renewal hours, ten (10) hours of CME consisting of five (5) hours of CME in risk management, or an equivalent course, as well as five (5) hours of CME in medical records, or an equivalent course.

Further, the above Final Order issued you a Letter of Concern and, prior to the Florida Board's consideration of the above Consent Agreement, required, at your expense, a Quality Assurance Consultation of your current practice by an independent, certified risk manager. The consultant was to specifically review the testing protocols and follow-up procedures utilized in your practice with a report, to include suggested improvements of quality assurance of your practice, to be submitted to you. Subsequently you were required to submit this report, as well as documentation of your compliance with those suggestions by the Consultant, to the Florida Board at the time of their consideration of the above Consent Agreement.

The above penalties were imposed based upon your treatment of Patient B. S. at the Cleveland Clinic, Ft. Lauderdale, Florida, during the period 1997 through 1998, as more fully set forth in the Florida Board Final Order Approving Consent Agreement (with attached Administrative Complaint and the proposed Consent Agreement), a copy of which is attached hereto and incorporated herein.

The Florida Board Final Order Approving Consent Agreement, as alleged in paragraph one (1) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or

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reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in R. C. 4731.22(B)(22).

Pursuant to R. C. Chapter 119., you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, R. C. 4731.22(L), effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5139 9637
RETURN RECEIPT REQUESTED

2390 Bob Phillips Road
Bartow, Florida 33830

CERTIFIED MAIL # 7000 0600 0024 5139 9620
RETURN RECEIPT REQUESTED

Final Order No. DOH-01-1677-S-MQA
FILED DATE - 10/10/01
Department of Health
By: Vicki R. Kenon
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF OSTEOPATHIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

JOSEPH R. MANNINO, D.O.,

Respondent.

CASE NO.: 2000-04895
LICENSE NO.: OS 0006812

## FINAL ORDER APPROVING CONSENT AGREEMENT

THIS MATTER came before the Board of Osteopathic Medicine at a duly-noticed public meeting held on September 22, 2001, in Tampa, Florida, pursuant to Section 120.57(4), Florida Statutes, for consideration of the Administrative Complaint (attached hereto as Exhibit A) and the proposed Consent Agreement (attached hereto as Exhibit B) entered into between the parties in the above styled case. Petitioner was represented by Larry McPherson, Senior Board Counsel. Respondent was present and represented by Paul R. Regensdorf, Esq.

Upon consideration of the Administrative Complaint and the proposed Consent Agreement in this matter, and being otherwise fully advised in the premises, it is hereby

**ORDERED AND ADJUDGED**:

1. The proposed Consent Agreement is hereby approved, adopted, and incorporated herein by reference. Paragraph 6 of the Stipulated Disposition Section is amended to reflect that Respondent shall have six (6) months from the effective date of this Order to obtain the quality assurance consultation and submit the report.

2. Respondent will adhere to and abide by all of the terms and conditions of the Consent Agreement.

3. This Order shall be placed in and become a part of Respondent's official records and shall become effective upon filing with the Clerk of the Department of Health.

**DONE AND ORDERED** this 8th day of October, 2001.

**BOARD OF OSTEOPATHIC MEDICINE**

Karen Eaton
Executive Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U. S. Mail to Joseph Mannino, D.O., 4955 Northwest 82nd Terrace, Coral Springs, FL 33067, to Respondent's Counsel, Paul R. Regensdorf, 350 Las Olas Blvd., Suite 1600, Fort Lauderdale, FL 33301-4200, and by hand delivery/United States Mail to the Clerk, Department of Health and its Counsel, 4052 Bald Cypress Way, Bin A02, Tallahassee, Florida 32399-1703, this _____ day of _____, 2001.

_____

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF OSTEOPATHIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

v. DOH CASE NUMBER 2000-04895

JOSEPH R. MANNINO, JR., D.O.,

Respondent.
_____/

CONSENT AGREEMENT

JOSEPH R. MANNINO, JR., D.O., 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 Osteopathic Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of osteopathic medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes, and Chapter 459, Florida Statutes. Pursuant to the provisions 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.



Exhibit B

## STIPULATED FACTS

1. At all times material hereto, the Respondent was a licensed osteopathic physician in the State of Florida having been issued license number OS 0006812.

2. The Respondent was charged by an Administrative Complaint filed by the Agency and properly served upon the Respondent with violations of Chapter 459, 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 his capacity as a licensed osteopathic physician, he is subject to the provisions of Chapters 456 and 459, Florida Statutes, and the jurisdiction of the Agency and the Board.

2. The Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute violations of Chapter 459, 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, 459 and 893, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, the Respondent shall read Chapters 456, 459, 893 and the Rules of the Board of Osteopathic Medicine, at Section 64B15, Florida Administrative Code.

2. **FINE.** The Board shall impose an administrative fine in the amount of $5000.00 against the Respondent. The fine shall be paid by the Respondent to the Board of Osteopathic Medicine within **1 year** 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. (SEE EXHIBIT B OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).**

3. **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 Osteopathic Medicine office. The agreed upon Agency cost to be reimbursed in this case is **$1,817.65**. The Respondent shall pay the costs to the Board of Osteopathic Medicine within **one year** 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 ONE YEAR 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, PARAGRAPH D OF THIS CONSENT AGREEMENT FOR COSTS).**

4. **CONTINUING MEDICAL EDUCATION**. Within one (1) year of the date of the filing of a Final Order in this cause, Respondent shall attend and complete five (5) additional hours of Continuing Medical Education in risk management or an equivalent course subject approved by the Board and five (5) hours in Medical Records or an equivalent course subject approved by the Board. Respondent shall submit a written plan to the Chairman of the Board for approval prior to the completion of said continuing education hours and course. The Board confers authority on the Chairman of the Board 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 Final Order in this matter. All such documentation shall be sent to the Board of Osteopathic 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 education course shall consist of a formal, live lecture format.

5. LETTER OF CONCERN: Respondent shall be issued a Letter of Concern by the Board of Medicine.

6. QUALITY ASSURANCE CONSULTATION. An independent, certified risk manager will review Respondent's current practice prior to the Board's consideration of this Agreement. Specifically, this independent consultant shall review the testing protocols and follow-up procedures utilized in Respondent's practice. This consultant will prepare a report addressing Respondent's practice. This report will include suggested improvements of the quality assurance of Respondent's practice. Respondent will submit this report, as well as documentation that demonstrates his compliance with the suggestions enumerated in the report, to the Board for consideration in conjunction with the Agreement. Respondent shall bear the cost of such consultation and any necessary or appropriate follow-up consultation.

## STANDARD PROVISIONS

1. It is expressly understood that this Agreement is subject to the approval of the Board and the Agency. 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 Agency 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. Upon the Board's adoption of this Agreement, the parties hereby agree that the Respondent will bear the attorney's fees and costs resulting from prosecution of this matter. Respondent waives the right to seek any attorney's fees or costs from the Agency 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 June, 2001.

Joseph R Mannino Jr DO
Joseph R. Mannino, Jr., D.O.

Before me, personally appeared Joseph R. Mannino, Jr, D.O., whose identity is known to me by D/L M550-436-41-166-0 (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 13th day of June, 2001.

NOTARY PUBLIC

JOAN THOMSON
MY COMMISSION # CC 913714
EXPIRES: March 28, 2004
Bonded Thru Notary Public Underwriters

My Commission Expires:

APPROVED this _____ day of _____, 2001.

Robert G. Brooks, M.D., Secretary

7/6/01
Nancy M. Snurkowski,
for Chief Attorney, Practitioner Regulation

NMS/dw

**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 other wise 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, reports, correspondence and inquires shall be sent to: **Board of Osteopathic Medicine, 2020 Capital Circle SE, Bin # 03, Tallahassee, Florida 32399-3253, Attn: Final Order Compliance Officer.**

STATE OF FLORIDA
DEPARTMENT OF HEALTH

| | | |
|---|---|---|
| DEPARTMENT OF HEALTH,<br><br>PETITIONER,<br><br>v.<br><br>JOSEPH MANNINO, D.O.,<br><br>RESPONDENT. | ) | CASE NO. 2000-04895 |

## ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Health, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Osteopathic Medicine against Joseph Mannino, D.O., hereinafter referred to as "Respondent," and alleges:

1. Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of osteopathic medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes, and Chapter 459, Florida Statutes. Pursuant to the provisions 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 osteopathic physician in the state of Florida, having been issued license number OS

Exhibit A.

006812. Respondent's last known address is Cleveland Clinic, Oakland Park Blvd, Ft. Lauderdale, FL 33308.

3. On or about August 7, 1997, Patient B.S., a forty-nine (49) year old male, presented to Respondent, at the Cleveland Clinic in Ft. Lauderdale, with complaints of low hematocrit levels, which were discovered at a medical "fair", along with fatigue. Respondent ordered blood work-up and scheduled a follow-up appointment, however, medical records do not show a date of appointment.

4. On or about November 6, 1997, Patient B.S. presented to Respondent with complaints of right shoulder pain and erectile dysfunction. Respondent discussed Patient B.S.'s laboratory results of the August 7th tests including lack of iron in his blood and ordered additional blood work. Medical records note Respondent considered an orthopedic and urology consultation however, records do not indicate such a consultation taking place. Medical records do not indicate a treatment plan was prepared or followed.

5. On or about November 11, 1997, Patient B.S. presented to Respondent for unknown reasons. Respondent discussed the laboratory results of the November 6th tests and prescribed aspirin 500 mg twice a day. Medical records do not give any reason for prescribing the aspirin.

6. On or about December 2, 1997, Patient B.S. presented to Respondent for unknown reasons at which time Respondent performed a complete physical examination and ordered additional blood work-up. This is the first documented

physical examination. Medical records do not show any findings as a result of the physical examination nor do they show a treatment plan.

7. On or about December 15, 1997, Patient B.S. presented to Respondent with complaints of chest soreness, fever, and cough. Respondent prescribed proventil inhaler (for relief of bronchospasm) and ceclor (respiratory infection).

8. On or about January 14, 1998, Patient B.S. presented to Respondent with complaints of difficulty in breathing, sleeplessness, and "hacking". Respondent prescribed hyradmine syrup (cough syrup). Medical records do not show that Respondent had any further contact with Patient B.S.

9. On or about January 30, 1998, Patient B.S. presented to a different physician who performed a colonoscopy, a cecum (colon) biopsy, and a polypectomy, which revealed stage C2 carcinoma of the cecum.

## COUNT ONE

10. Petitioner realleges and incorporates paragraphs one (1) through nine (9), as if fully set forth herein this Count One.

11. Respondent failed to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent physician as being acceptable under similar conditions and circumstances, by one or more of the following:

a. Failing to appropriately assess Patient B.S.'s complaints;
b. Failing to consider an alternative diagnosis for Patient B.S. bearing in mind Patient B.S.'s age and anemic condition;and/ or
c. Failing to perform appropriate diagnostic testing such as colonoscopy, a sigmoidoscopy, or a barium enema.

12. Based on the foregoing, Respondent violated Section 459.015(1)(x), Florida Statues, by gross or repeated malpractice or the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances.

## COUNT TWO

13. Petitioner realleges and incorporates paragraphs one (1) through nine (9) and paragraph eleven (11) as if fully set forth herein this Count Two.

14. Respondent failed to keep legible and adequate written medical records justifying the course of treatment for Patient B.S.

15. Based on the foregoing, Respondent violated Section 459.015(1)(o), Florida Statues, by failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed osteopathic physician or the osteopathic physician extender and supervising osteopathic physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and 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 the Board of Osteopathic 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, other than costs associated with an attorney's time, as provided for in Section 456.072(4), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 13th day of March, 2001.

Robert G. Brooks, M.D., Secretary

Nancy M. Snurkowski
Chief Attorney, Practitioner Regulation

COUNSEL FOR DEPARTMENT:

Linton Eason
Senior Attorney
Agency for Health Care Administration
P. O. Box 14229
Tallahassee, Florida 32317-4229
Florida Bar # 0044423
LE/pe
PCP: March 9, 2001
PCP Members: Hand, Kaufman

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Vicki R. Kenon
DATE 3/14/01