

**CONSENT AGREEMENT
BETWEEN
ERICA A. SEWELL, D.O.
AND
THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Erica A. Sewell, D.O., and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Sewell enters into this Consent Agreement being fully informed of her rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for any of the enumerated violations.
- B. The Board enters into this Consent Agreement in lieu of further formal proceedings based upon the violation of Section 4731.22(B), Ohio Revised Code, set forth in the Notice of Opportunity for Hearing issued by the Board on July 10, 2002, attached hereto as Exhibit A and incorporated herein by this reference. The Board expressly reserves the right to institute additional formal proceedings based upon any other violations of Chapter 4731 of the Ohio Revised Code whether occurring before or after the effective date of this Consent Agreement.
- C. Dr. Sewell is licensed to practice medicine and surgery in the State of Ohio, License # 34-006191. That license is currently inactive due to Dr. Sewell's failure to renew.
- D. Dr. Sewell states that she is also licensed to practice medicine and surgery in the State of Florida.
- E. Dr. Sewell states that the Florida Board of Osteopathic Medicine [Florida Board] filed a Final Order Approving Consent Agreement on April 5, 2002, in which she was issued an administrative fine in the amount of \$1000.00

and required to reimburse the amount of \$2000.00 for costs of the investigation and preparation of her case. Dr. Sewell was also required to complete 10 hours of Continuing Medical Education [CME] Category I in the area of risk management or record keeping within one year of the filing of the Final Order. This CME was in addition to the CME required for license renewal.

- F. Dr. Sewell admits that she violated R.C. 4731.22(B)(22) as set forth in the Notice of Opportunity for Hearing issued by the Board on July 10, 2002.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Sewell knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

1. Dr. Sewell is hereby **REPRIMANDED** for the conduct set forth in Paragraphs E and F above.

PROBATIONARY CONDITIONS

2. Dr. Sewell's certificate shall be subject to the following **PROBATIONARY** terms, conditions, and limitations for a minimum period of **THREE** years:
 - a. Dr. Sewell shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Dr. Sewell shall provide documentation acceptable to the Board that she successfully completed the 10 hours of CME in the areas of risk management and record keeping ordered by the Florida Board. This documentation shall be submitted to the Board within the one year period ordered by the Florida Board as set forth in paragraph E, above. This CME shall be in addition to the CME required for Dr. Sewell's license renewal in Ohio.
 - c. Dr. Sewell shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the

Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

- d. Dr. Sewell shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement and upon release from probation.

REQUIRED REPORTING BY LICENSEE

- e. Within thirty days of the effective date of this Consent Agreement, Dr. Sewell shall provide a copy of this Consent Agreement to all employers or entities with which she is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where she has privileges or appointments. Further, Dr. Sewell shall provide a copy of this Consent Agreement to all employers or entities with which she contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where she applies for or obtains privileges or appointments. If an appearance is missed or is rescheduled for any reason, the ensuing appearance shall be scheduled based on the appearance date as originally scheduled.
- f. Within thirty days of the effective date of this Consent Agreement, Dr. Sewell shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license. Dr. Sewell further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which she applies for any professional license or for reinstatement of any professional license. Further, Dr. Sewell shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Sewell appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

DURATION/MODIFICATION OF TERMS

Dr. Sewell shall not request termination of the probationary terms of this Consent Agreement for a minimum of three years. Otherwise the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Sewell acknowledges that she has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Sewell hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. Sewell agrees to provide her social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

Erica Sewell D.O.
ERICA A. SEWELL, D.O.

Anand Garg
ANAND G. GARG, M.D.
Secretary

9/24/2002
DATE

Deborah R. Lydon
DEBORAH R. LYDON
Attorney for Dr. Sewell

10/09/02
DATE

Raymond J. Albert
RAYMOND J. ALBERT
Supervising Member

9/23/02
DATE

10/9/02
DATE

Rebecca J. Albers for R. Albers
REBECCA J. ALBERS
Assistant Attorney General

10/9/02
DATE



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, 2002

Erica A. Sewell, D.O.
2801 SW 25th Avenue
Cape Coral, Florida 33914

Dear Doctor Sewell:

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 January 1, 2002, your certificate to practice osteopathic medicine and surgery in Ohio was suspended by operation of law, for non-payment of renewal fees, and has not been reinstated.
- (2) On or about April 5, 2002, 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 \$1,000.00 against you; requiring reimbursement of administrative costs incurred in the investigation and preparation of your case, in the amount of \$2,000.00 and requiring, in addition to your Continuing Medical Education (CME) renewal hours, ten (10) hours of live, lecture format, Category I CME courses in the area of Risk Management or Records keeping.

The above penalties were imposed based upon your treatment of Patient D. K. during the period 1995 through 1997 in Ft. Myers, Florida, 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 two (2) 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 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.



Mailed 7.11.02

Erica A. Sewell, D.O.

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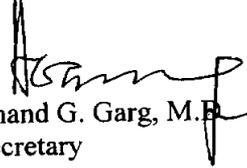
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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 9613
RETURN RECEIPT REQUESTED

Family Health Center
2232 Grand Avenue
Ft. Myers, Florida 33901

CERTIFIED MAIL # 7000 0600 0024 5139 9606
RETURN RECEIPT REQUESTED

Family Health Center
4040 Palm Beach Boulevard POB 1357
Ft. Myers, Florida 33902

CERTIFIED MAIL # 7000 0600 0024 5139 9590
RETURN RECEIPT REQUESTED

By: Dicki R. Kenon
Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF OSTEOPATHIC MEDICINE**

DEPARTMENT OF HEALTH,

Petitioner,
vs.

CASE NO.: 2000-10804
LICENSE NO.: OS 0007062

ERICA SEWELL, D.O.,

Respondent.

FINAL ORDER APPROVING CONSENT AGREEMENT

THIS MATTER came before the Board of Osteopathic Medicine at a duly-noticed public meeting held on March 16, 2002, in Fort Lauderdale, 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 Richard Shoop, Senior Attorney. Respondent was present and represented by Alane Laboda, Esq.

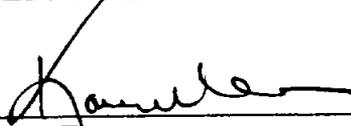
Upon consideration of the Administrative Complaint and the proposed Consent Agreement in this matter, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

1. The proposed Consent Agreement is hereby approved, adopted, and incorporated herein by reference.
2. Respondent will adhere to and abide by all of the terms and conditions of the Consent Agreement and this Order.
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 2 day of April, 2002.

**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 Erica Sewell, D.O., 2801 SW 25th Avenue, Cape Coral, FL 33914, to Respondent's Counsel, Alane Laboda, Henderson, Franklin, Starnes & Holt, 1715 Monroe Street, P.O. Box 280, Fort Myers, FL 33902-0280, 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 _____, 2002.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2000-10804

ERICA SEWELL, D.O.,

Respondent.

CONSENT AGREEMENT

Erica Sewell, 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.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number OS 0007062.

2. Respondent was charged by an Administrative Complaint filed by the Department and properly served upon 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 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 459, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts that gave rise to this case, if proven, would constitute violations of Chapter 459, Florida Statutes.

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

STIPULATED DISPOSITION

1. **FUTURE CONDUCT.** 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, Respondent read Chapters 456, 459, and 893, Florida Statutes, and the Rules of the Board of Osteopathic Medicine, at Chapter 64B15, Florida Administrative Code.

2. **ADMINISTRATIVE FINE.** The Board shall impose an administrative fine in the amount of one thousand dollars (\$1,000.00) against the Respondent. The fine shall be paid by the Respondent to the Board of Osteopathic Medicine within **ONE (1)** year of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE 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 ONE (1) 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 E 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 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 two thousand dollars (\$2,000.00). The costs shall be paid by the Respondent to the Board of Osteopathic Medicine within **ONE (1)** **YEAR** of its imposition by Final Order of the Board. **THE RESPONDENT**

ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS 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 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 (1) 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 E OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS.

4. CONTINUING MEDICAL EDUCATION. Respondent shall attend ten (10) hours of Category I Continuing Medical Education courses in the area of Risk Management or Records Keeping course within one (1) year of the filing of the Final Order of the Board. 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 education course within one (1) year of the Final Order incorporating this Agreement. 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 required for renewal of

licensure. Unless otherwise approved by the Board, said continuing medical education courses shall consist of a live, lecture format.

5. **MITIGATING FACTORS:** Respondent is Certified in Family Practice.

The patient apparently did not suffer permanent injury from the lack of earlier notice of the test results.

As an employee of the Center, Respondent has less control over medical records and staff.

6. 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.

7. Respondent shall appear before the Board at the meeting of the Board where this Agreement is considered. Respondent, in conjunction with the consideration of this Agreement by the Board, shall respond to questions under oath from the Board, Board Staff or Department Staff. Respondent shall be prepared to explain the circumstances involved in this matter and what measures have been taken to prevent a recurrence. However, Respondent shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law.

8. Should this Agreement be rejected, no statement made in furtherance of this Agreement by the Respondent may be used as direct evidence

against the Respondent in any proceeding; however, such statements may be used by the Petitioner for impeachment purposes.

9. Respondent and the Department fully understand that this joint Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board or the Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint.

10. 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.

12. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this matter.

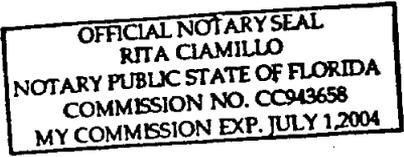
13. This Agreement is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration 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 9 day of January, 2002

Erica Sewell
Erica Sewell, D.O.

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

Sworn to and subscribed before me this 9 day of January, 2002



Rita Ciamillo
NOTARY PUBLIC

APPROVED this 9th day of January, 2002

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

[Signature]

By: Nancy M. Snurkowski
Chief Attorney, Practitioner Regulation

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 set forth in paragraph F, below. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

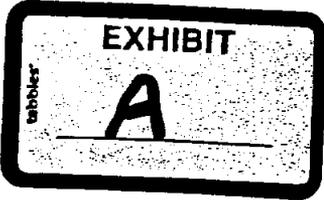
B. COMMUNITY SERVICE AND CONTINUING EDUCATION UNITS. Unless otherwise directed by the consent agreement, any community service requirements, continuing education units/courses must be completed, and documentation of such completion submitted to the Board of Medicine at the address set forth below in paragraph E, **WITHIN ONE YEAR OF THE DATE OF THE FINAL ORDER IMPOSING SUCH REQUIREMENTS.**

C. 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. Furthermore, if the Respondent's license is on probation, the Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of medicine in Florida.

D. COSTS. Pursuant to Section 459.015(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 costs 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 costs directly associated with Respondent's probation.

E. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines, costs and correspondence shall be sent to: **Department of Health, , Board of Osteopathic Medicine, 4052 Bald Cypress Way, Bin # C06, Tallahassee, Florida 32399.**



STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,)
)
) PETITIONER,)
)
) v.)
)
) ERICA SEWELL, D.O.,)
)
) RESPONDENT.)
_____)

CASE NO. 2000-10804

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 Erica Sewell, 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 physician in the state of Florida, having been issued license number OS 007062. Respondent's last known address is 2801 SW 25th Avenue, Cape Coral, Florida 33914.

3. On or about, October 26, 1995, Patient D.K. sought treatment for hypertension at the Family Health Center of S.W. Florida (FHCSW), in Ft. Myers, Florida. The initial information provided by Patient D. K. related a history of schizophrenia and depression for which Patient D.K. received a number of psychoactive medications from Ruth Cooper Clinic. Patient D.K. denied other medical problems. Respondent performed a physical exam, and ordered blood tests and a prescription for hydrochlorothiazide (HCTZ). HCTZ is a diuretic anti-hypertension agent. The progress note was not signed by Respondent.

4. On or about November 2, 1995, Respondent entered a progress note in the records of FHCSW for Patient D.K. That note reports a physical exam but is illegible as to consideration of the results of the blood tests. Respondent continued the HCTZ for blood pressure, and added a prescription for Altace, another anti-hypertension agent. The progress note was not signed by Respondent.

5. On or about March 22, 1996, respondent examined and treated Patient D.K. The progress note is only partially legible and is not signed by Respondent. Respondent notes Patient D.K. is non-compliant as to blood pressure care. Respondent advised Patient D.K. that Patient D.K. must take the medications as ordered and gave refills for the existing prescriptions and added another prescription which appears to be Potassium Chloride.

6. On or about May 8, 1996, Respondent renewed the prescriptions. The progress note for that date does not report a physical exam.

7. On or about September 17, 1996, Respondent saw Patient D.K. who reported a persistent cough without post nasal drip. Respondent discontinued the Altace because of the cough, and increased the HCTZ. Respondent signed the care note for this date.

8. On or about October 11, 1996, Respondent saw Patient D.K. who reported the cough had improved, but complained of sleep disturbance. Respondent added a prescription for Norvasc, while continuing the HCTZ. Norvasc is a calcium antagonist used to treat hypertension. Norvasc is extensively metabolized by the liver, and is to be used with caution in patients with liver impairment. Respondent signed the care note for this date.

9. On or about November 5, 1996, Respondent saw Patient D.K. for follow up on the blood pressure. Respondent continued the HCTZ and Norvasc, added an order for Potassium chloride and planned to see Patient D.K. again in two months. Respondent signed the care note for this date.

10. On or about February 7, 1997, Respondent saw Patient D.K. who reported a single episode of head pain, with pressure and ringing ears the week before that had apparently resolved spontaneously. Respondent found the blood pressure to be under good control, continued the medications and planned to see Patient D.K. again in two months. Respondent signed this care note.

11. On or about April 7, 1997, Respondent saw Patient D.K. who requested referrals for an eye exam and for liver function tests. Patient D. K. reported the use of

Niacin for control of Patient D.K.'s bipolar disorder. Respondent complied with the requests, continued the medications and planned for follow up in three months.

12. Niacin is a non-prescription vitamin of the B-complex group. The Physicians Desk Reference (1996), warns that persons taking drugs for high blood pressure should contact a physician before taking niacin because of possible interactions. The warning adds: "Do not take niacin unless recommended by and taken under the supervision of a physician if you have any of the following conditions: ...impaired liver function."

13. Laboratory tests performed April 8, 1997, showed results significantly outside normal limits for liver function. An initialed note on the photocopy of the test results indicated Respondent saw the results on April 11, 1997, and wanted Patient D.K. to come in for repeat liver function testing.

14. Respondent entered a care note on April 14, 1997, documenting an attempt to call Patient D.K., and that a card was sent.

15. On or about July 7, 1997, Respondent saw Patient D.K. This visit was apparently limited to review of a lacerated finger. Respondent did not document consideration of or discussion of the abnormal liver function test, but planned a follow up for one week for removal of stitches. Respondent signed this care note.

16. On or about July 11, 1997, Patient D.K. returned to FHCSW for suture removal. Respondent did not sign this care note.

~~17. On or about July 31, 1997, Respondent saw Patient D.K. This visit seems to have been limited to a request for referral to a doctor in Canada for Patient D.K.'s~~

schizophrenia and inspection of the previously lacerated finger. No mention was made of the abnormal liver function tests. Respondent signed this care note.

18. On or about August 20, 1997, Respondent saw Patient D.K. This visit seems to have been limited to discussion of a possible doctor in Canada for schizophrenia, and Patient D.K.'s concern about herpes. No physical exam was performed. No mention was made of the abnormal liver function tests. Respondent signed this care note.

19. On or about September 12, 1997, Respondent went to the Emergency Department of Lee Memorial Hospital in Ft. Myers, Florida with a history of abdominal pain for 3-4 weeks, weight gain, distended abdomen with pain across the upper abdomen and itching all over. Physical exam revealed an obese male with jaundice. Liver function tests were substantially outside normal limits. Ultrasound revealed a fatty, nodular liver, ascites (fluid in the abdominal cavity), distended gallbladder, filled with sludge. The pancreas was not seen on ultrasound. Patient D.K. was hospitalized for eight days with Biliary Pancreatitis, Chronic Parenchymal Liver Disease, Ascites and Portal Hypertension. Approximately two liters of fluid were surgically drained from his abdomen.

COUNT ONE

20. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19), as if fully set forth herein this Count One.

~~21. Respondent failed to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being~~

acceptable under similar conditions and circumstances in one or more of the following ways:

- a. Respondent failed to warn Patient D.K. of the risk associated with use of Niacin supplements while taking blood pressure medication;
- b. Respondent failed to advise Patient D.K. of test results from April 7, 1997, that showed abnormal liver function;
- c. Respondent failed to warn Patient D.K. of the risk associated with use of Niacin supplements in patients with abnormal liver function;
- d. Respondent failed to obtain repeat liver function tests after April 7, 1997, despite seeing Patient D.K. four times over the next four months.

22. Based on the foregoing, Respondent violated Section 459.015(1)(x) Florida Statutes by failing to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT TWO

23. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19) and paragraph twenty-one (21) as if fully set forth herein this Count Two.

24. Respondent failed to keep legible medical records that justify the course of treatment of the patient in one or more of the following ways:

-
- a. Respondent failed to document warning Patient D.K. of the risk associated with use of Niacin supplements while taking blood pressure medication;

- b. Respondent failed to document advising Patient D.K. of test results from April 7, 1997, that showed abnormal liver function;
- c. Respondent failed to document warning Patient D.K. of the risk associated with use of Niacin supplements in patients with abnormal liver function;
- d. Respondent failed to document reasons for not obtaining repeat liver function tests after April 7, 1997, despite seeing Patient D.K. four times over the next four months.

25. Based on the foregoing, Respondent violated Section 459.015(1)(o) Florida Statutes by failing to keep medical records that justify the course of treatment of Patient M.F, 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 as provided for in Section 456.072(4), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 22nd day of October, 2001.

John O. Agwunobi, M.D., M.B.A.
Secretary



Nancy Snurkowski
Chief Attorney, Practitioner Regulation

COUNSEL FOR DEPARTMENT:

Bruce A. Campbell
Senior Attorney
Agency for Health Care Administration
P. O. Box 14229
Tallahassee, Florida 32317-4229
Florida Bar #191163

bac

PCP: October 12, 2001

PCP Members: Robert Hand, D.O., Ronald Kaufman, D.O.

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Vicki R. Kenon*
DATE 10/22/01



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, 2002

Erica A. Sewell, D.O.
2801 SW 25th Avenue
Cape Coral, Florida 33914

Dear Doctor Sewell:

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 January 1, 2002, your certificate to practice osteopathic medicine and surgery in Ohio was suspended by operation of law, for non-payment of renewal fees, and has not been reinstated.
- (2) On or about April 5, 2002, 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 \$1,000.00 against you; requiring reimbursement of administrative costs incurred in the investigation and preparation of your case, in the amount of \$2,000.00 and requiring, in addition to your Continuing Medical Education (CME) renewal hours, ten (10) hours of live, lecture format, Category I CME courses in the area of Risk Management or Records keeping.

The above penalties were imposed based upon your treatment of Patient D. K. during the period 1995 through 1997 in Ft. Myers, Florida, 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 two (2) 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 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.

Mailed 7.11.02

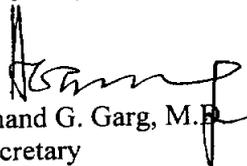
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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 9613
RETURN RECEIPT REQUESTED

Family Health Center
2232 Grand Avenue
Ft. Myers, Florida 33901

CERTIFIED MAIL # 7000 0600 0024 5139 9606
RETURN RECEIPT REQUESTED

Family Health Center
4040 Palm Beach Boulevard POB 1357
Ft. Myers, Florida 33902

CERTIFIED MAIL # 7000 0600 0024 5139 9590
RETURN RECEIPT REQUESTED

By: Debi R. Kenon
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF OSTEOPATHIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,
vs.

CASE NO.: 2000-10804
LICENSE NO.: OS 0007062

ERICA SEWELL, D.O.,

Respondent.

FINAL ORDER APPROVING CONSENT AGREEMENT

THIS MATTER came before the Board of Osteopathic Medicine at a duly-noticed public meeting held on March 16, 2002, in Fort Lauderdale, 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 Richard Shoop, Senior Attorney. Respondent was present and represented by Alane Laboda, Esq.

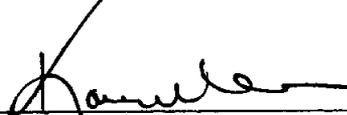
Upon consideration of the Administrative Complaint and the proposed Consent Agreement in this matter, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

1. The proposed Consent Agreement is hereby approved, adopted, and incorporated herein by reference.
2. Respondent will adhere to and abide by all of the terms and conditions of the Consent Agreement and this Order.
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 2 day of April, 2002.

**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 Erica Sewell, D.O., 2801 SW 25th Avenue, Cape Coral, FL 33914, to Respondent's Counsel, Alane Laboda, Henderson, Franklin, Starnes & Holt, 1715 Monroe Street, P.O. Box 280, Fort Myers, FL 33902-0280, 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 _____, 2002.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2000-10804

ERICA SEWELL, D.O.,

Respondent.

_____ /

CONSENT AGREEMENT

Erica Sewell, 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.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number OS 0007062.

2. Respondent was charged by an Administrative Complaint filed by the Department and properly served upon 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 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 459, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts that gave rise to this case, if proven, would constitute violations of Chapter 459, Florida Statutes.

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

STIPULATED DISPOSITION

1. **FUTURE CONDUCT.** 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, Respondent read Chapters 456, 459, and 893, Florida Statutes, and the Rules of the Board of Osteopathic Medicine, at Chapter 64B15, Florida Administrative Code.

2. **ADMINISTRATIVE FINE.** The Board shall impose an administrative fine in the amount of one thousand dollars (\$1,000.00) against the Respondent. The fine shall be paid by the Respondent to the Board of Osteopathic Medicine within **ONE (1)** year of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE 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 ONE (1) 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 E 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 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 two thousand dollars (\$2,000.00). The costs shall be paid by the Respondent to the Board of Osteopathic Medicine within **ONE (1)** **YEAR** of its imposition by Final Order of the Board. **THE RESPONDENT**

ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS 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 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 (1) 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 E OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS.

4. **CONTINUING MEDICAL EDUCATION.** Respondent shall attend ten (10) hours of Category I Continuing Medical Education courses in the area of Risk Management or Records Keeping course within one (1) year of the filing of the Final Order of the Board. 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 education course within one (1) year of the Final Order incorporating this Agreement. 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 required for renewal of

licensure. Unless otherwise approved by the Board, said continuing medical education courses shall consist of a live, lecture format.

5. **MITIGATING FACTORS:** Respondent is Certified in Family Practice.

The patient apparently did not suffer permanent injury from the lack of earlier notice of the test results.

As an employee of the Center, Respondent has less control over medical records and staff.

6. 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.

7. Respondent shall appear before the Board at the meeting of the Board where this Agreement is considered. Respondent, in conjunction with the consideration of this Agreement by the Board, shall respond to questions under oath from the Board, Board Staff or Department Staff. Respondent shall be prepared to explain the circumstances involved in this matter and what measures have been taken to prevent a recurrence. However, Respondent shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law.

8. Should this Agreement be rejected, no statement made in furtherance of this Agreement by the Respondent may be used as direct evidence

against the Respondent in any proceeding; however, such statements may be used by the Petitioner for impeachment purposes.

9. Respondent and the Department fully understand that this joint Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board or the Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint.

10. 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.

12. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this matter.

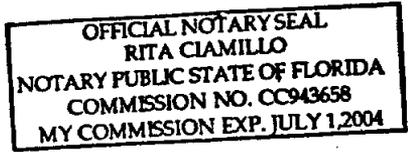
13. This Agreement is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration 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 9 day of January, 2002

Erica Sewell
Erica Sewell, D.O.

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

Sworn to and subscribed before me this 9 day of January, 2002



Rita Ciamillo
NOTARY PUBLIC

APPROVED this 9th day of January, 2002

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

[Signature]
By: Nancy M. Snurkowski
Chief Attorney, Practitioner Regulation

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 set forth in paragraph F, below. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

B. COMMUNITY SERVICE AND CONTINUING EDUCATION UNITS. Unless otherwise directed by the consent agreement, any 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 IMPOSING SUCH REQUIREMENTS.**

C. 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. Furthermore, if the Respondent's license is on probation, the Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of medicine in Florida.

D. COSTS. Pursuant to Section 459.015(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 costs 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 costs directly associated with Respondent's probation.

E. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines, costs and correspondence shall be sent to: **Department of Health, , Board of Osteopathic Medicine, 4052 Bald Cypress Way, Bin # C06, Tallahassee, Florida 32399.**

2. Respondent is and has been at all times material hereto a licensed physician in the state of Florida, having been issued license number OS 007062. Respondent's last known address is 2801 SW 25th Avenue, Cape Coral, Florida 33914.

3. On or about, October 26, 1995, Patient D.K. sought treatment for hypertension at the Family Health Center of S.W. Florida (FHCSW), in Ft. Myers, Florida. The initial information provided by Patient D. K. related a history of schizophrenia and depression for which Patient D.K. received a number of psychoactive medications from Ruth Cooper Clinic. Patient D.K. denied other medical problems. Respondent performed a physical exam, and ordered blood tests and a prescription for hydrochlorothiazide (HCTZ). HCTZ is a diuretic anti-hypertension agent. The progress note was not signed by Respondent.

4. On or about November 2, 1995, Respondent entered a progress note in the records of FHCSW for Patient D.K. That note reports a physical exam but is illegible as to consideration of the results of the blood tests. Respondent continued the HCTZ for blood pressure, and added a prescription for Altace, another anti-hypertension agent. The progress note was not signed by Respondent.

5. On or about March 22, 1996, respondent examined and treated Patient D.K. The progress note is only partially legible and is not signed by Respondent. Respondent notes Patient D.K. is non-compliant as to blood pressure care. Respondent advised Patient D.K. that Patient D.K. must take the medications as ordered and gave refills for the existing prescriptions and added another prescription which appears to be Potassium Chloride.

6. On or about May 8, 1996, Respondent renewed the prescriptions. The progress note for that date does not report a physical exam.

7. On or about September 17, 1996, Respondent saw Patient D.K. who reported a persistent cough without post nasal drip. Respondent discontinued the Altace because of the cough, and increased the HCTZ. Respondent signed the care note for this date.

8. On or about October 11, 1996, Respondent saw Patient D.K. who reported the cough had improved, but complained of sleep disturbance. Respondent added a prescription for Norvasc, while continuing the HCTZ. Norvasc is a calcium antagonist used to treat hypertension. Norvasc is extensively metabolized by the liver, and is to be used with caution in patients with liver impairment. Respondent signed the care note for this date.

9. On or about November 5, 1996, Respondent saw Patient D.K. for follow up on the blood pressure. Respondent continued the HCTZ and Norvasc, added an order for Potassium chloride and planned to see Patient D.K. again in two months. Respondent signed the care note for this date.

10. On or about February 7, 1997, Respondent saw Patient D.K. who reported a single episode of head pain, with pressure and ringing ears the week before that had apparently resolved spontaneously. Respondent found the blood pressure to be under good control, continued the medications and planned to see Patient D.K. again in two months. Respondent signed this care note.

11. On or about April 7, 1997, Respondent saw Patient D.K. who requested referrals for an eye exam and for liver function tests. Patient D. K. reported the use of

Niacin for control of Patient D.K.'s bipolar disorder. Respondent complied with the requests, continued the medications and planned for follow up in three months.

12. Niacin is a non-prescription vitamin of the B-complex group. The Physicians Desk Reference (1996), warns that persons taking drugs for high blood pressure should contact a physician before taking niacin because of possible interactions. The warning adds: "Do not take niacin unless recommended by and taken under the supervision of a physician if you have any of the following conditions: ...impaired liver function."

13. Laboratory tests performed April 8, 1997, showed results significantly outside normal limits for liver function. An initialed note on the photocopy of the test results indicated Respondent saw the results on April 11, 1997, and wanted Patient D.K. to come in for repeat liver function testing.

14. Respondent entered a care note on April 14, 1997, documenting an attempt to call Patient D.K., and that a card was sent.

15. On or about July 7, 1997, Respondent saw Patient D.K. This visit was apparently limited to review of a lacerated finger. Respondent did not document consideration of or discussion of the abnormal liver function test, but planned a follow up for one week for removal of stitches. Respondent signed this care note.

16. On or about July 11, 1997, Patient D.K. returned to FHCSW for suture removal. Respondent did not sign this care note.

17. On or about July 31, 1997, Respondent saw Patient D.K. This visit seems to have been limited to a request for referral to a doctor in Canada for Patient D.K.'s

schizophrenia and inspection of the previously lacerated finger. No mention was made of the abnormal liver function tests. Respondent signed this care note.

18. On or about August 20, 1997, Respondent saw Patient D.K. This visit seems to have been limited to discussion of a possible doctor in Canada for schizophrenia, and Patient D.K.'s concern about herpes. No physical exam was performed. No mention was made of the abnormal liver function tests. Respondent signed this care note.

19. On or about September 12, 1997, Respondent went to the Emergency Department of Lee Memorial Hospital in Ft. Myers, Florida with a history of abdominal pain for 3-4 weeks, weight gain, distended abdomen with pain across the upper abdomen and itching all over. Physical exam revealed an obese male with jaundice. Liver function tests were substantially outside normal limits. Ultrasound revealed a fatty, nodular liver, ascites (fluid in the abdominal cavity), distended gallbladder, filled with sludge. The pancreas was not seen on ultrasound. Patient D.K. was hospitalized for eight days with Biliary Pancreatitis, Chronic Parenchymal Liver Disease, Ascites and Portal Hypertension. Approximately two liters of fluid were surgically drained from his abdomen.

COUNT ONE

20. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19), as if fully set forth herein this Count One.

21. ~~Respondent failed to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being~~

acceptable under similar conditions and circumstances in one or more of the following ways:

- a. Respondent failed to warn Patient D.K. of the risk associated with use of Niacin supplements while taking blood pressure medication;
- b. Respondent failed to advise Patient D.K. of test results from April 7, 1997, that showed abnormal liver function;
- c. Respondent failed to warn Patient D.K. of the risk associated with use of Niacin supplements in patients with abnormal liver function;
- d. Respondent failed to obtain repeat liver function tests after April 7, 1997, despite seeing Patient D.K. four times over the next four months.

22. Based on the foregoing, Respondent violated Section 459.015(1)(x) Florida Statutes by failing to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT TWO

23. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19) and paragraph twenty-one (21) as if fully set forth herein this Count Two.

24. Respondent failed to keep legible medical records that justify the course of treatment of the patient in one or more of the following ways:

-
- a. Respondent failed to document warning Patient D.K. of the risk associated with use of Niacin supplements while taking blood pressure medication;

- b. Respondent failed to document advising Patient D.K. of test results from April 7, 1997, that showed abnormal liver function;
- c. Respondent failed to document warning Patient D.K. of the risk associated with use of Niacin supplements in patients with abnormal liver function;
- d. Respondent failed to document reasons for not obtaining repeat liver function tests after April 7, 1997, despite seeing Patient D.K. four times over the next four months.

25. Based on the foregoing, Respondent violated Section 459.015(1)(o) Florida Statutes by failing to keep medical records that justify the course of treatment of Patient M.F, 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 as provided for in Section 456.072(4), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 22nd day of October, 2001.

John O. Agwunobi, M.D., M.B.A.
Secretary



Nancy Snurkowski
Chief Attorney, Practitioner Regulation

COUNSEL FOR DEPARTMENT:

Bruce A. Campbell
Senior Attorney
Agency for Health Care Administration
P. O. Box 14229
Tallahassee, Florida 32317-4229
Florida Bar #191163
bac
PCP: October 12, 2001
PCP Members: Robert Hand, D.O., Ronald Kaufman, D.O.

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Victoria Kenon*
DATE 10/22/01