

STATE OF OHIO  
THE STATE MEDICAL BOARD  
77 SOUTH HIGH STREET  
17TH FLOOR  
COLUMBUS, OHIO 43266-0315

February 15, 1991

Saroja Ranpura, M.D.  
5690 #B Coach Drive West  
Kettering, Ohio 45440

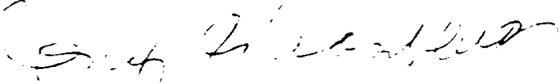
Dear Doctor Ranpura:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on February 13, 1991, including Motions approving and confirming the Findings of Fact and Conclusions of Law of the Hearing Examiner, and adopting an amended Order.

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

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 within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

  
Henry G. Cramblett, M.D.  
Secretary

HGC:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 055 327 498  
RETURN RECEIPT REQUESTED

*Mailed 2/20/91*

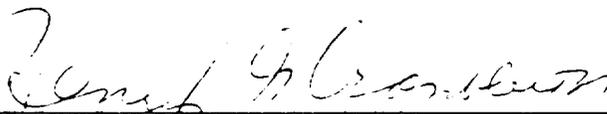
STATE OF OHIO  
STATE MEDICAL BOARD

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on February 13, 1991, including Motions approving and confirming the Findings of Fact and Conclusions of Law of the Hearing Examiner, and adopting an amended Order, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Saroja Ranpura, M.D., 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.

(SEAL)



Henry G. Cramblett, M.D.  
Secretary

2/15/91

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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SAROJA RANPURA, M.D.

★

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 13th day of February, 1991.

Upon the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, 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 for the above date.

It is hereby ORDERED that:

1. The certificate of Sanoja Ranpura, M.D., to practice medicine and surgery in the State of Ohio shall be subject to the following probaionary terms, conditions, and limitations for a period of three (3) years:
  - a. Dr. Ranpura shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
  - b. Dr. Ranpura shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.
  - c. Dr. Ranpura shall appear in person for interviews before the full Board or its designated representative at six (6) month intervals, or as otherwise requested by the Board.
  - d. Dr. Ranpura shall provide a copy of the Board's Findings of Fact (including those of the Florida Board incorporated therein by reference), Conclusions, and Order to all employers and the Chief of Staff at each hospital where she has, applies for, or obtains privileges.

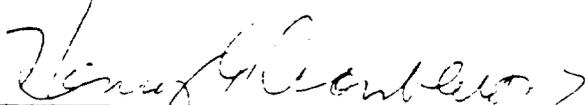
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Saroja Ranpura, M.D.

- e. In the event that Dr. Ranpura should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Ranpura must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.
2. Upon successful completion of probation, Dr. Ranpura's certificate will be fully restored.

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

(SEAL)

  
\_\_\_\_\_  
Henry G. Cramblett, M.D.  
Secretary

2/15/91  
\_\_\_\_\_  
Date

REPORT AND RECOMMENDATION  
IN THE MATTER OF SAROJA L. RANPURA, M.D.

The Matter of Saroja L. Ranpura, M.D., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on November 29, 1990.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter of October 10, 1990 (State's Exhibit #1), the State Medical Board notified Saroja L. Ranpura, M.D., that it proposed to take disciplinary action against her license to practice medicine and surgery in Ohio. The Board alleged that the October, 1989, imposition of probation against Dr. Ranpura's Florida license constituted "the limitation, revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would have also been a violation of this chapter, except for nonpayment of fees", as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(B)(6), Ohio Revised Code. Dr. Ranpura was advised of her right to request a hearing in this Matter.
- B. By letter received by the State Medical Board on October 22, 1990 (State's Exhibit #2), Dr. Ranpura requested a hearing.

II. Appearances

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Lisa A. Sotos, Assistant Attorney General
- B. Having been duly advised of her right to representation, Dr. Ranpura appeared on her own behalf without counsel.

III. Testimony Heard

Dr. Ranpura testified on her own behalf and was cross-examined by the State.

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IV. Exhibits Examined

In addition to State's Exhibits #1 and #2, identified above, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State

1. State's Exhibit #3: October 26, 1990, letter to Dr. Ranpura from the State Medical Board advising that a hearing initially set for November 5, 1990, was postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit #4: October 30, 1990, letter to Dr. Ranpura from the State Medical Board scheduling the hearing for November 29, 1990.
3. State's Exhibit #5: November 27, 1990, notice of the appearance of Lisa A. Sotos, Assistant Attorney General, as counsel for the State Medical Board of Ohio
4. State's Exhibit #6: Certified copies of documents pertaining to disciplinary action by the Florida Board of Medicine, Department of Professional Regulation, against Dr. Ranpura's medical license, including: October 17, 1989, Final Order; August 28, 1989, report of the Florida Hearing Officer; exceptions to the Hearing Officer's findings of fact, filed by Dr. Ranpura's Florida attorney on September 14, 1989; September 25, 1989, response of the Florida Department of Professional Regulation to the Respondent's exceptions; and November 1, 1988, Administrative Complaint.
5. State's Exhibit #7: Certified copy of the transcripts of the Florida proceedings against Dr. Ranpura on May 25, May 26, and May 31, 1989.
6. State's Exhibit #8: November 28, 1990 certification by the Secretary of the State Medical Board of Ohio regarding Dr. Ranpura's Ohio licensure.

B. Presented by the Respondent

- \* 1. Respondent's Exhibit E: Documents pertaining to proceedings in the Florida Circuit Court of Polk County, Probate Division, to determine the competency of patient C.P. to handle her financial affairs, including: April 13, 1987, Petition to Determine Competency; April 20, 1987, Order to Summon Examining Committee; July 30, 1987, Report of Examining Committee; and August 17, 1987, Order of Dismissal. \*(NOTE: THIS EXHIBIT HAS BEEN SEALED TO PRESERVE THE CONFIDENTIALITY OF THE PATIENT'S IDENTITY.)

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2. Respondent's Exhibit G: December 8, 1989, letter to Dr. Ranpura's Florida attorney from the Florida Board of Medicine, Department of Professional Regulation, confirming that Dr. Ranpura's probationary period is tolled due to her present residence and practice in Ohio.

Respondent's Exhibit A, B, C, D, and F were proffered, but not admitted into evidence.

#### FINDINGS OF FACT

1. By an October 17, 1989, Final Order of the Florida Department of Professional Regulation, Board of Medicine, the license of Saroja Ranpura, M.D., to practice medicine in the State of Florida, was placed on probation for a period of three years, subject to various terms and conditions.

This fact is established by State's Exhibit #6.

2. The Florida Board's order of probation was based upon its findings and conclusions, pursuant to a three-day hearing, with regard to Dr. Ranpura's care of a patient identified as C.P. The Florida Board's findings of fact and conclusions of law, as detailed in the report of Hearing Officer Davis included in State's Exhibit #6, are fully incorporated herein by reference. Those findings and conclusions indicate, among other things, that:
  - a. On August 29, 1985, Dr. Ranpura undertook the provision of anesthesia care to patient C.P. in connection with an out-patient laparoscopy.
  - b. In preparing the patient, Dr. Ranpura performed a "blind nasal intubation," which involves placing an endotracheal tube in the patient's throat through the nose, in order to maintain an open airway during later anesthesia administration.
  - c. In placing the endotracheal tube, Dr. Ranpura incorrectly intubated C.P.'s esophagus (passage to stomach), rather than the trachea (passage to lungs).
  - d. Dr. Ranpura failed to timely recognize the improper tube placement. She failed to listen for breath sounds over each lung and over the area of the stomach after intubation, as required by acceptable medical practice to determine proper tube placement. Rather, she relied solely on the movement of the bag attached to the anesthesia machine to ascertain whether the

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tube was properly placed. Checking for inflation and deflation of the breath bag on the anesthesia machine is only part of the procedure for checking placement of an endotracheal tube and is not, by itself, a reliable method of determining proper tube placement.

- e. Dr. Ranpura's improper placement of the endotracheal tube in patient C.P.'s esophagus was evidenced by the following events, which were observed after the commencement of the surgery: the dark color of the patient's blood and the bluish color of her internal organs indicated that the patient was hypoxic (inadequately oxygenated); a sound like a "fog horn" or a "frog croaking", indicating the escape of air captured in C.P.'s stomach as the result of esophageal intubation, was produced when the patient's abdomen was palpated.
- f. After the dark blood and dark organs were noted, Dr. Ranpura inserted a second endotracheal tube through patient C.P.'s mouth. The original nasal tube was left in place during the insertion of the second tube, an unlikely possibility unless one tube was in the patient's esophagus and the other in the trachea. After removal of the nasal tube and connection of the second tube to the anesthesia machine, C.P.'s internal organs turned pink, indicating proper oxygenation, and the surgery was resumed.
- g. The severe and protracted hypoxic episode sustained by patient C.P. from Dr. Ranpura's improper esophageal intubation and her failure to timely recognize such intubation resulted in damage to C.P.'s brain function.
- h. Dr. Ranpura's failure to listen for breath sounds over the lungs and abdomen when she intubated patient C.P. and her intubation of C.P.'s esophagus, rather than the trachea, were found to constitute "failure 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 violation of Section 458.331(1)(t), Florida Statutes.

These facts are established by State's Exhibits #6 and #7.

3. At hearing, Dr. Ranpura denied that she had performed an improper esophageal intubation on patient C.P. She suggested that hospital politics might have played a part in certain unfavorable testimony against her at the Florida hearing. She also highlighted certain testimony which she felt to be either favorable to her or inconsistent with the Florida

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findings; however, each of the points raised appear to have been addressed by the detailed findings and conclusions of the Florida Board. Dr. Ranpura also introduced court documents showing that patient C.P. had been declared competent to handle her financial affairs approximately two years after her surgery.

These facts are established by the testimony of Dr. Ranpura (Tr. at 13-27, 34), State's Exhibits #6 and #7, and Respondent's Exhibit E.

4. At some point between this 1985 incident and the 1989 Florida hearing, Dr. Ranpura returned to practice in Ohio. She spent one year employed as an anesthesiologist at Ohio State University Hospital, and is currently employed at the Veteran's Administration Medical Center in Dayton, Ohio. She has continued to practice in the field of anesthesiology, and has maintained continuing medical education in that field.

These facts are established by the testimony of Dr. Ranpura (Tr. at 35-36).

#### CONCLUSIONS

State's Exhibits #6 and #7 constitute substantial, reliable, and probative evidence that the acts and omissions of Saroja Ranpura, M.D., which resulted in the imposition of probation by the Florida licensing authority, would also have been a violation of Section 4731.22(B)(6), Ohio Revised Code, "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established." Consequently, the three-year probation placed upon Dr. Ranpura's Florida license constitutes "the limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state...or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees", as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(B)(6), Ohio Revised Code.

\* \* \* \* \*

Although this Board may take administrative notice of the extent of the sanction imposed by the Florida licensing authority, it is not bound or limited by that action. It is this Board's prerogative to set and enforce standards for physicians licensed in Ohio. The evidence in this Matter indicates that Dr. Ranpura, an anesthesiologist, failed to follow standard medical procedures to assure proper placement of an endotracheal tube. As a result of Dr. Ranpura's improper tube placement and her failure to recognize and correct

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Report and Recommendation

In the Matter of Saroja Ranpura, M.D.

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it in a timely manner, the patient sustained damage to her brain function. The degree of damage cannot be considered as a valid mitigating factor. This Board may wish to consider in mitigation, however, that the Florida action was based upon a single incident of improper care. Since that incident, which occurred over five years ago, Dr. Ranpura has continued to practice anesthesiology and has completed continuing medical education in that field.

PROPOSED ORDER

It is hereby ORDERED that:

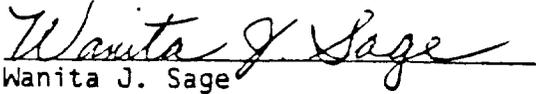
1. The certificate of Saroja Ranpura, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED. Such revocation is stayed subject to the following PROBATIONARY terms, conditions, and limitations for a period of four (4) years:
  - a. Dr. Ranpura shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
  - b. Dr. Ranpura shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.
  - c. Dr. Ranpura shall appear in person for interviews before the full Board or its designated representative at six (6) month intervals, or as otherwise requested by the Board.
  - d. Dr. Ranpura shall provide a copy of the Board's Findings of Fact (including those of the Florida Board incorporated therein by reference), Conclusions, and Order to all employers and the Chief of Staff at each hospital where she has, applies for, or obtains privileges.
  - e. In the event that Dr. Ranpura should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Ranpura must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.
2. If Dr. Ranpura violates probation in any respect, the Board, after giving Dr. Ranpura notice and the opportunity to be heard, may set aside the stay order and impose the revocation of Dr. Ranpura's certificate.

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3. Upon successful completion of probation, Dr. Ranpura's certificate will be fully restored.

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

  
Wanita J. Sage  
Attorney Hearing Examiner

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# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

## EXCERPT FROM THE MINUTES OF FEBRUARY 13, 1991

### REPORTS AND RECOMMENDATIONS

Mr. Albert stated that the Findings and Orders appearing on today's agenda are those in the matters of: David Ferrero, D.P.M.; Nabil N. Ghali, M.D.; Samuel W. Pagano, M.D.; Saroja L. Ranpura, M.D.; and George D. Smith, M.D.

Mr. Albert asked if 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 David Ferrero, D.P.M.; Nabil N. Ghali, M.D.; Samuel W. Pagano, M.D.; Saroja L. Ranpura, M.D.; and George D. Smith, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Ross	- aye
	Dr. Kaplansky	- aye
	Dr. Hom	- aye
	Ms. Rolfes	- aye
	Mr. Albert	- aye

Dr. Hom stated that she did not read the hearing record in the matter of Dr. Pagano, since her practice partner was the State's expert witness and she would be abstaining in that case.

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

All Assistant Attorneys General and all Enforcement Coordinators left the meeting at this time.

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### REPORT AND RECOMMENDATION IN THE MATTER OF SAROJA L. RANPURA, M.D.

Mr. Albert stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and order in the above matter. No objections were voiced by Board Members present.



## STATE MEDICAL BOARD OF OHIO

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EXCERPT FROM THE MINUTES OF FEBRUARY 13, 1991  
IN THE MATTER OF SAROJA L. RANPURA, M.D.

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DR. GRETTER MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF SAROJA L. RANPURA, M.D. DR. STEPHENS SECONDED THE MOTION.

Mr. Albert asked if there were any questions concerning the proposed findings of fact, conclusions, and order in the above matter.

DR. O'DAY MOVED THAT THE PROPOSED ORDER IN THE MATTER OF SAROJA RANPURA, M.D., BE AMENDED AS FOLLOWS:

1. BY SUBSTITUTING THE FOLLOWING FOR THE FIRST PARAGRAPH OF PROVISION 1:

The certificate of Saroja Ranpura, M.D., to practice medicine and surgery in the State of Ohio shall be subject to the following probationary terms, conditions, and limitations for a period of three (3) years:

2. BY DELETING PROVISION 2 AND RENUMBERING THE REMAINING PROVISION ACCORDINGLY.

DR. GRETTER SECONDED THE MOTION.

Ms. Rolfes noted that the motion would delete the proposed stayed revocation and shorten the proposed probation period to correspond with Dr. Ranpura's probation in Florida. Dr. O'Day stated that that was correct.

Ms. Rolfes stated that this case was interesting, and it bothered her inasmuch as there was never any admission by Dr. Ranpura that she made a mistake. Dr. Ranpura attempted to rationalize everything she did. Ms. Rolfes continued that Dr. Ranpura's assertion that the patient was mentally competent to handle her own financial matters after the incident means nothing. The patient was damaged by Dr. Ranpura's actions.

Dr. O'Day stated that somewhere along the line the Board needs to look at punishment imposed and move on from there. Dr. Ranpura has already been on probation in Florida. Dr. O'Day referred to the previous case, noting that Dr. Pagano had already spent a lot of time making up for charges since 1979. Dr. Ranpura's case goes back to 1985. She has apparently practiced good medicine since that time. Dr. O'Day stated that she doesn't see the purpose of a stayed revocation when the Board can attain the same effect by keeping Dr. Ranpura on probation and having her practice monitored. Dr. O'Day added that the Board does not have sufficient reason to revoke Dr. Ranpura's license.

Ms. Rolfes asked Dr. O'Day to add to her motion that Dr. Ranpura must report the conditions of her probation to all of her employers. Dr. O'Day stated that that condition was not changed by her motion. Dr. O'Day added that she didn't believe it



# STATE MEDICAL BOARD OF OHIO

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EXCERPT FROM THE MINUTES OF FEBRUARY 13, 1991  
IN THE MATTER OF SAROJA L. RANPURA, M.D.

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would be fair under the circumstances presented for the Board to be harder on Dr. Ranpura than the Florida Board was.

Dr. Kaplansky asked if the Ohio action would run concurrently with the Florida action. Dr. O'Day stated that it would.

A roll call vote was taken on Dr. O'Day's motion to amend:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Ross	- aye
	Dr. Kaplansky	- aye
	Dr. Hom	- aye
	Ms. Rolfes	- aye

The motion carried.

DR. GRETTER MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER AS AMENDED IN THE MATTER OF SAROJA L. RANPURA, M.D. DR. STEPHENS SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Ross	- aye
	Dr. Kaplansky	- aye
	Dr. Hom	- aye
	Ms. Rolfes	- aye

The motion carried.



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

October 10, 1990

Saroja Ranpura, M.D.  
P.O. Box 28  
Washington Court House, OH 43160

Dear Doctor Ranpura:

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

- (1) On or about October 17, 1989 the Florida Department of Professional Regulation, Board of Medicine, placed your license to practice medicine in the State of Florida on probation for a period of three (3) years with various limitations based upon a Final Order with Findings of Fact and Conclusions of Law which is attached hereto and fully incorporated by reference herein.

This imposition of probation with various limitations on your license to practice medicine in the State of Florida, as alleged in paragraph (1) above, constitutes "the limitation, revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(B)(6), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, 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 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.



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77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

October 10, 1990

Saroja Ranpura, M.D.  
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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, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Henry G. Cramblett, M.D.  
Secretary

HGC:jmb  
Enclosures:

CERTIFIED MAIL #P 569 363 795  
RETURN RECEIPT

FILED

Department of Professional Regulation  
AGENCY CLERK

DEPARTMENT OF PROFESSIONAL REGULATION  
BOARD OF MEDICINE

*Paul Cope*

DEPARTMENT OF PROFESSIONAL  
REGULATION,

CLERK

DATE October 17, 1989

Petitioner,

-vs-

DPR CASE NUMBER: 0063527  
DOAH CASE NUMBER: 86-6103  
LICENSE NUMBER: ME 0039872

SAROJA L. RANPURA,

Respondent.

STATE MEDICAL BOARD  
OF FLORIDA  
JUL 12 1989

FINAL ORDER

This cause came before the Board of Medicine (Board) pursuant to Section 120.57(1)(b)9, Florida Statutes, on October 6, 1989, in Tampa, Florida, for the purpose of considering the Hearing Officer's Recommended Order, Respondent's Exceptions to the Recommended Order, and Petitioner's Response to Respondent's Exceptions (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner, Department of Professional Regulation, was represented by Stephanie A. Daniel, Attorney at Law. Respondent was not present, but was represented by Sidney L. Matthew, Attorney at Law.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. Findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein.

2. There is competent substantial evidence to support the findings of fact.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein.

3. There is competent substantial evidence to support the conclusions of law.

#### RULINGS ON EXCEPTIONS

1. Respondent's Exception No. 1 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

2. Respondent's Exception No. 2 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

3. Respondent's Exception No. 3 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

4. Respondent's Exception No. 4 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

5. Respondent's Exception No. 5 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

6. Respondent's Exception No. 6 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

7. Respondent's Exception No. 7 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

8. Respondent's Exception No. 8 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

9. Respondent's Exception No. 9 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

10. Respondent's Exception No. 10 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

11. Respondent's Exception No. 11 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

12. Respondent's Exception No. 12 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

13. Respondent's Exception No. 13 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

14. Respondent's Exception No. 14 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

15. Respondent's Exception No. 15 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

16. Respondent's Exception No. 16 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

17. Respondent's Exception No. 17 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

18. Respondent's Exception No. 18 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

19. Respondent's Exception No. 19 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

20. Respondent's Exception No. 20 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

21. Respondent's Exception No. 21 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

22. Respondent's Exception No. 22 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

23. Respondent's Exception No. 23 is hereby rejected for the reasons set forth in Petitioner's written Response to Respondent's Exceptions.

24. Respondent's Exception No. 24 is hereby rejected for the reasons set forth in Petitioner's written and oral response to Respondent's Exceptions.

25. On page 15, Respondent's Exceptions state:

Respondent further relies upon and incorporates by reference Respondent's Proposed Findings of Fact, Conclusions of Law and Recommended Order dated July 20, 1989. . . .

The Board rejects this assertion to the extent it is an attempt to preserve for appellate review issues not presented to the Board for review.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Hearing Officer be ACCEPTED and ADOPTED. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that

1. For Respondent's violation of Section 458.331(1)(t), Florida Statutes, Respondent's license to practice medicine in the State of Florida is placed on PROBATION for a period of 3 years, subject to the following terms and conditions:

a. Respondent shall pay an administrative fine in the amount of \$2000.00 to the Executive Director within 90 days of the date this Final Order is filed.

b. Respondent shall comply with all state and federal statutes, rules and regulations pertaining to the practice of medicine, including Chapters 455, 458, and 893, Florida Statutes, and Rules 21M, Florida Administrative Code.

c. Respondent shall appear before the Probation Committee at the first meeting after said probation commences, at the last meeting of the Probation Committee preceding termination of probation, and at such other times requested by the Committee.

d. In the event Respondent leaves the State of Florida for a period of thirty (30) days or more, or otherwise does not engage in the active practice of medicine in Florida, then certain provisions of Respondent's probation (and only those provisions of said probation) shall be tolled as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the State of Florida. Respondent must keep current residence and business addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses. Furthermore, Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of medicine in Florida.

e. In the event that Respondent leaves the active practice of medicine in this state for a period of thirty days or more, the following provisions of his probation shall be tolled:

1. The time period of probation shall be tolled.
2. The provisions regarding preparation of investigative reports detailing compliance with this Stipulation shall be tolled.

f. Respondent shall submit quarterly reports in affidavit form, the contents of which shall be specified by the Board. The reports shall include:

- (1) Brief statement of why physician is on probation.
- (2) Practice location.

- (3) Describe current practice (type and composition.)
- (4) Brief statement of compliance with probation terms.
- (5) Describe relationship with monitoring/supervising physician.
- (6) Advise Board of any problems.

g. Respondent shall attend 50 hours of Category I Continuing Medical Education courses during the 3 year probationary term in the area of anesthesia. Respondent shall submit a written plan to the Probationer's Committee for approval prior to completion of said courses. These hours shall be in addition to those hours required for renewal of licensure.

h. During this period of probation, semi-annual investigative reports will be compiled by the Department of Professional Regulation concerning Respondent's compliance with the terms and conditions of probation and the rules and statutes regulating the practice of medicine.

i. Respondent shall pay all costs necessary to comply with the terms of the Final Order issued based on this proceeding. Such costs include, but are not limited to, the cost of preparation of investigative reports detailing compliance with the terms of this proceeding, the cost of analysis of any blood or urine specimens submitted pursuant to the Final Order entered as a result of this proceeding, and administrative costs directly associated with Respondent's probation. See Section 458.331(2), Florida Statutes.

2. For Respondent's violation of Section 458.331(1)(n), Florida Statutes:

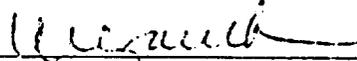
a. Respondent's license to practice medicine is  
REPRIMANDED.

b. Respondent shall pay an administrative fine in the amount of \$500.00 to the Executive Director within 90 days of the date this Final Order is filed.

This order takes effect upon filing with the Clerk of the Department of Professional Regulation.

DONE AND ORDERED this 11 day of October 1989.

BOARD OF MEDICINE

  
\_\_\_\_\_  
MARGARET C.S. SKINNER, M.D.  
VICE CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to Saroja L. Ranpura, M.D., Post Office Box 28, Washington Court House, Ohio 43160 and Sidney L. Matthew, Attorney at Law, 135 South Monroe Street, Suite 100, Tallahassee, Florida 32301, by U.S. Mail to Don W. Davis, Hearing Officer, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550; and by interoffice delivery to David G. Puis, Attorney at Law, Department of Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-0792 at or before 5:00 P.M., this 17 day of October, 1989



STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL )  
REGULATION, BOARD OF MEDICINE, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
SAROJA L. RANPURA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

CASE NO. 88-6103

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Don W. Davis, held a formal hearing in the above-styled case on May 25 and 26, 1989, in Orlando, Florida; and May 31, 1989, in Tallahassee, Florida.

APPEARANCES

For Petitioner: David G. Pius, Esq.  
Department of Professional Regulation  
The Northwood Centre, Suite 60  
1940 N. Monroe St.  
Tallahassee, FL 32399-0750

For Respondent: Sidney L. Matthew, Esq.  
Suite 100  
135 South Monroe St.  
Tallahassee, FL 32302

STATEMENT OF THE ISSUES

The issue for determination is whether Respondent, a licensed physician, committed violations of Chapter 458, Florida Statutes, sufficient to justify the imposition of discipline. 000007

sanctions against her license. The resolution of this issue rests upon a determination of whether Respondent intubated the esophagus of a patient, as opposed to the patient's trachea, in the course of rendering anesthesia care; and whether Respondent then failed to provide a record justifying such a course of medical treatment.

PRELIMINARY STATEMENT

On November 2, 1988, Petitioner issued an Administrative Complaint charging Respondent with failure to practice medicine with the level of care, skill and treatment recognized by a reasonably prudent similar physician as acceptable under similar conditions and circumstances; a violation of Section 458.331(1)(t), Florida Statutes. The Administrative Complaint further alleged that Respondent had failed to keep medical records justifying the course of treatment accorded a patient; a violation of Section 458.331(1)(m), Florida Statutes.

Respondent requested a formal administrative hearing on the charges set forth in the Administrative Complaint. Subsequently, the matter was transferred to the Division Of Administrative Hearings to conduct a formal hearing pursuant to Section 120.57(1), Florida Statutes. A Notice of Final Hearing was issued by Hearing Officer Robert E. Meale on March 16, 1989. Subsequently, Hearing Officer Meale granted the parties' request for a bifurcated hearing due to conflicts in the schedules of major witnesses in the case.

At the hearing, Petitioner presented the testimony of Jean Allen, L.P.N.; Margaret Bloom, R.N.; Norma Masters, R.N.; John

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C. Kruse, M.D.; and David Alan Cross, M.D. Deposition testimony of Frank Snyder, M.D. was also admitted in evidence. Petitioner presented one evidentiary exhibit and one other evidentiary exhibit jointly with Respondent.

In addition to the joint evidentiary exhibit, Respondent presented five other evidentiary exhibits, along with testimony of Deane Briggs, M.D.; Saroja L. Ranpura, M.D.; Roy D. Graham, R.N.; and Gilbert Stone, M.D. Testimony of Graham and Stone were presented by deposition; Stone's was a video taped deposition.

The transcript of the portion of the hearing held in Orlando, Florida, was filed with the Division Of Administrative Hearings on June 14, 1989. The transcript of the portion of the hearing held in Tallahassee, Florida, was filed with the Division Of Administrative Hearings on June 19, 1989. The parties requested and were granted leave to file posthearing submissions more than 10 days after the filing of the transcript, and in accordance with Rule 22I-6.031, Florida Administrative Code, waived provisions of Rule 28-5.402, Florida Administrative Code.

Proposed findings of fact submitted by the parties are addressed in the appendix to this recommended order.

#### FINDINGS OF FACT

1. Respondent is Saroja L. Ranpura, a licensed physician at all times pertinent to these proceedings, holding medical license number ME 0039872. Respondent was licensed in the State of Florida on April 27, 1982. She currently practices medicine in Ohio.

2. Petitioner is the Department of Professional Regulation, Board of Medicine, the state agency charged with the regulation of physicians in the State of Florida.

3. On August 29, 1985, Frank Snyder, M.D., performed a laparoscopy on patient C.P. at Heart of Florida Hospital in Haines City, Florida. This medical procedure was performed on an outpatient basis. As a result, C.P. came into the hospital on the day the surgery was to be performed. She met Respondent, who later provided anesthesia care to her in the course of the laparoscopy. Respondent examined C.P. at that time, prior to the surgery, and noted that C.P. had a small mouth.

4. Later, C.P. was brought into the operating room on a stretcher and moved herself over onto the operating table. Present in the operating room at that time were Jean Allen, L.P.N., Norma Masters, R.N., and Respondent.

5. Respondent proceeded to do an unusual procedure known as a "blind nasal intubation." The procedure requires the placement of an tube in the patient's throat through the nose, as opposed to the mouth, in order to maintain an open airway during later anesthesia administration in the process of surgery. C.P. was sedated, but awake, during this process and was intubated with a minor degree of difficulty.

6. Prior to placement of the endotracheal tube, Respondent had the patient breath pure oxygen through a mask covering the mouth and nose. The preoxygenation process, according to Respondent, provided extra oxygen "as a reservoir and as a

storage" to C.P.'s body tissues. By letting a patient breath 100 percent oxygen for three to four minutes, the resultant saturation permits a margin of four to six minutes for such an intubation to be safely completed without risk of the patient becoming hypoxic.

7. Jean Allen, with almost 25 years of nursing experience in a surgical assistance career where she assists in 400 to 600 operations per year, observed Respondent during the entire intubation process, inclusive of the preoxygenation phase. Accepted medical practice after such an intubation requires that the person placing the tube then listen for breath sounds over each lung and over the area of the stomach. Respondent maintains that she did listen for those breath sounds with the aid of a stethoscope. The anesthesia record completed by Respondent has a notation "BEBS" for bilateral and equal breath sounds which Respondent testified that she heard with the stethoscope prior to administering additional sodium pentothal to the patient and inflating the cuff of the endotracheal tube. This testimony of Respondent is not credited in view of the testimony of Ms. Allen that she observed Respondent during this entire time and that Respondent did not listen for the breath sounds with a stethoscope prior to administering the additional sodium pentothal to the patient. Allen's testimony is also afforded the greater credibility due to her opportunity as a neutral witness to observe the events which transpired and her testimony that although she didn't observe Respondent closely after the additional sodium pentothal was administered, she maintained that she would have

recalled Respondent's use of the stethoscope prior to that point. Notably, it is at that point prior to the administration of the additional sodium pentothal and inflation of the cuff of the endotracheal tube where Respondent maintains she listened for the breath sounds.

4. Respondent, after completion of the placement of the endotracheal tube, administered additional sodium pentothal to the patient without listening for breath sounds; connected the tube to the anesthesia machine; and remarked that "it must be in place, the bag is moving" in reference to the bag on the anesthesia machine which generally inflates as the lungs of the patient deflate. While inflation or deflation of a breath bag on an anesthesia machine is one part of the procedure for checking placement of an endotracheal tube, the expert testimony of John Kruse, M.D., and David Alan Cross, M.D., establishes that this procedure alone is not a reliable method of determining proper tube placement.

5. Frank Snyder, M.D., who had entered the operating room by this time in the sequence of events, did a manual vaginal examination of the patient, left the room, scrubbed his hands and returned. He then donned surgical gloves and gown, moved to the left side of the patient and prepared to proceed with the operation. Ms. Allen took her position at the foot of the table, between the patient's legs with an unobstructed view of Respondent.

6. Dr. Snyder proceeded to make a small incision in the patient's abdomen through which he inserted a hollow, "Verres" needle. Carbon dioxide was then introduced to C.P.'s abdominal

cavity to push the abdominal wall away from the internal organs. Next, a device known as a "trocar" and a "trocar sleeve" was inserted through the incision into the abdomen. The trocar was then withdrawn and a laparoscope was inserted into the sleeve. Built somewhat like a telescope with a built-in light source, the laparoscope permits the surgeon to look inside the abdomen and visually observe the patient's internal organs.

7. During this procedure, Nurse Allen commented that she heard a sound like a fog horn or frogs croaking when she touched the patient's abdomen. Allen's remark is corroborated by Norma Masters and Dr. Snyder. The proof establishes, as corroborated by expert testimony of Dr. Kruse, that such sounds were associated with air, captured in C.P.'s stomach as the result of esophageal intubation, escaping from the stomach when pressure was applied.

8. When Dr. Snyder made his first incision in the patient's abdomen, Allen observed that the blood was dark and Dr. Snyder agreed. Respondent inquired whether it could be venous blood. Snyder indicated he didn't think this was the case. Notably, the dark blood was observed, according to Respondent's medical records at 10:27 a.m. Further, Petitioner's experts, Dr. Kruse and Dr. Cross, based on their review of C.P.'s medical records, determined that the patient was initially intubated at approximately 10:15 a.m. Thus, approximately 12 minutes transpired from the beginning of the intubation process and conclusion of preoxygenation of the patient until the observation of dark blood

at the time of incision.

9. After her inquiry regarding whether the blood could be venous, Respondent further responded that she was giving the patient 50 percent oxygen. She testified that she then increased the oxygen level to 100 percent. While the anesthesia record indicates administration of 100 percent oxygen, there is no time notation when this occurred.

10. Blood again welled up from the incision and Nurse Allen commented that the blood appeared black. The less oxygenated blood becomes, the darker it appears. By this time, Dr. Snyder had inserted the laparoscope in C.P.'s abdomen. He observed that the internal organs were a "blueish color" ; an observation consistent with a decreasing level of oxygen in the patient's blood and an indication that the patient was hypoxic.

11. When the patient's internal organs were discerned to be blue, Respondent asked Dr. Snyder to wait a moment and requested the assistance of Norma Masters, the circulating nurse. Masters came to the head of the operating table and was handed another endotracheal tube by Respondent. Respondent then began the process of intubating the patient with that tube through the mouth. The original nasal tube was left in place during the insertion of the second tube; an unheard of possibility, according to expert testimony, unless one tube was in the patient's esophagus and the other in the trachea. Nurse Allen's testimony establishes that the second tube, inserted via the patient's mouth, became foggy after insertion. The observation by Allen is consistent with expert

testimony and establishes the fog was created by warm moist air from the patient's lungs flowing through the second tube. Respondent's testimony that she placed the second tube at the conclusion of the surgical procedure is not credited in view of the very clear, contradictory testimony of Masters and Allen that the endotracheal tube was replaced contemporaneously with the notation that the blood was dark and the patient's organs "blueish".

12. After removal of the nasal tube and connection of the second tube to the anesthesia machine, Respondent manually squeezed the anesthesia bag to ventilate the patient. Dr. Snyderle observed that the organs were turning pink again, and continued the procedure without further incident. After finishing the procedure, Snyderle went out of the operating room, sat at a desk across the hall and began to write his orders.

13. Following the procedure, the patient was wheeled to the recovery room, a short distance away. Nurses Allen and Masters did not see C.P. open her eyes during this process. Respondent's assertion that the patient opened her eyes and was responsive to commands is corroborated only by Dr. Snyderle. However, while he noted in his operative report and his deposition that C.P. was awake following the operation, Snyderle's observation is not credited in view of other proof establishing that his back was to the patient as she was wheeled past and that he assumed an awake state in the patient because Respondent was speaking to C.P. In view of the foregoing, Respondent's testimony that the patient was awake or responsive to commands following the surgery is not credited.

14. After the patient was removed approximately 15 feet away to the recovery room, Respondent maintains that she informed Margaret Bloom, R.N., who was on duty there, that the patient's endotracheal tube was not to be removed, although she omitted telling Bloom about the dark blood incident. Bloom, who is also a certified registered nurse anesthetist, maintains that Respondent told her nothing about C.P.'s condition; instead, she went rapidly to the rest room in the lounge area. Bloom, left in the recovery room with the patient, then proceeded to hook up appropriate monitors and oxygen to the patient's endotracheal tube and began the process of monitoring C.P.'s vital signs. Bloom places the time of C.P.'s arrival time in the recovery room at approximately 11:05 a.m.

15. The patient was not responsive to Bloom's spoken commands when brought to the recovery room. The patient appeared well oxygenated to Bloom; a judgement she made based on her observation of the color of C.P.'s lips and fingernails, since C.P. is a black female. Bloom rated C.P.'s circulation at twenty to fifty percent of preanesthetic pressure and determined the patient to be totally unconscious. Respondent returned to the recovery room at this time, told Bloom that she had done an "awake intubation" on the patient and that the tube should remain in place until Bloom determined that the patient was ready for it to be removed. Respondent then left the recovery room.

16. As the result of blood tinged mucus filling the patient's endotracheal tube, Bloom removed the tube after the

patient registered breathing difficulties and attempts by Bloom to suction the mucus failed. She replaced that tube with a device known as an oral pharyngeal airway which goes in the patient's mouth and curves down the throat, holding the tongue forward. The device does not reach to the lungs. Shortly thereafter the patient began making glutteral noises and Bloom placed a venturi mask on the patient. The mask controlled the percentage of oxygen going to the patient, estimated by Bloom to be sixty to one hundred percent oxygen. The patient's breathing improved.

17. Bloom completed replacement of the endotracheal tube with the airway device and mask shortly before Respondent again returned to the recovery room. Respondent, upset at Bloom's action in removing the endotracheal tube, proceeded to replace the oral airway device with a nasal tube. At 11:20 a.m., Bloom noted in her records that the patient's state of consciousness was unchanged. Later the patient made moaning sounds and was responsive to pain stimulation at approximately 12:20 p.m.

18. Respondent concedes that C.P. suffered an hypoxic event at some point which resulted in damaged brain function. It is Respondent's position that such event occurred in the recovery room as the result of laryngospasm, occasioned by Bloom's removal of the endotracheal tube. Allen and Masters working in the operating room a short distance away testified that the sounds they heard emanating from the area of the recovery room were not the type of noise they associated with laryngospasm. Bloom, trained to recognize laryngospasm, testified that C.P. did not have such

a spasm. The expert testimony of David Cross, M.D., based on a study of arterial blood gases of C.P. following the surgery, establishes that the patient suffered an hypoxic episode too severe and too protracted to have been the result of a possible laryngospasm in the recovery room and that, in his expert opinion, she did not have a recovery room laryngospasm.

19. Respondent's defense that C.P.'s survival of such a lengthy esophageal intubation in the operating room is an impossibility, is not persuasive. The opinion of Respondent's expert, Dr. Gilbert Stone, that no esophageal intubation occurred in the operating room is predicated on his belief that the tube was not changed during the surgery. Dr. Stone conceded that replacement of the tube during surgery at the time the dark blood was noticed with resultant improvement in the patient's condition permits a conclusion that esophageal intubation was the cause of the hypoxia. Testimony of Petitioner's experts, Dr. Cross and Dr. Kruse, are consistent in their conclusions that C.P. was esophageally intubated by Respondent, although they differ in their reasons for C.P.'s survival of the event. The opinion of these experts, coupled with the eye witness testimony of Allen and Masters, further support a finding of Respondent's esophageal intubation of the patient in the operating room and that she failed to recognize such intubation in a timely manner as a reasonable and prudent physician should have.

20. The expert opinion testimony of Dr. Cross establishes that C.P. was intubated in her esophagus and survived

as a result of oxygen, going into her stomach under pressure, being forced back up her esophagus into the pharynx and then drawn by negative pressure into the lungs. This resulted in a effect similar to, but not as efficient as, the technique known as apneic oxygenation. The technique, once used to provide marginally adequate oxygen levels to maintain a patient's neurological and cardiac status, has fell into disfavor since patients suffered from respiratory acidosis due to the buildup of carbon dioxide in the lungs. Cross also pointed out that the heart can function for a much longer period of time without adequate oxygen than is possible for the brain. Cross's testimony provides an explanation for C.P.'s neurological damage without similar cardiac impairment. Cross also noted that the preoxygenation process which C.P. initially underwent after entering the operating room added to the time she was able to undergo oxygen deprivation before the onset of tissue damage.

21. Respondent notes the discovery of a tumor in C.P.'s throat some months later as a possible contributor to the patient's hypoxic event during surgery. Another of Respondent's experts, Dr. Deane Briggs, an otolaryngologist specializing in diseases of the ears, nose and throat, treated C.P. in October of 1985, following the August, 1985 surgery. He discovered the existence of a sub-glottic tumor in the patient's throat. However, the existence of the tumor at the time of the initial surgery is not established. Testimony of anesthesiologist experts, including Respondent's own expert, Dr. Stone, do not support a finding that the tumor, if it

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existed, had any effect during the operation. Further, Dr. Briggs' opinion that Respondent probably intubated the patient's right stem bronchus, as opposed to the esophagus, and that neurological damage therefore occurred in the recovery room is not credited in view of the conflict of this testimony with that of other witnesses and expert opinions.

22. A finding that C.P.'s neurological impairment following surgery may have been exacerbated by a possible laryngospasm in the recovery room is relevant only with regard to mitigation of the severity of penalty to be imposed for Respondent's misconduct. Respondent's esophageal intubation of the patient in the operating room, and the resultant hypoxic event are established by clear and convincing evidence. The fact that C.P. suffered brain damage is undisputed by the parties. The proof clearly and convincingly establishes that the severe and protracted hypoxic episode sustained by the patient resulted not from a possible mild recovery room laryngospasm, but from Respondent's esophageal intubation of that patient in the operating room.

23. It is concluded with respect to treatment of C.P., 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.

24. Respondent failed to keep medical records which justified her course of treatment of the patient, C.P. This finding is based upon the testimony of Dr. Cross that Respondent's

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medical records did not justify her course of treatment, as well as the testimony of Respondent's expert, Dr. Stone. While testifying that he did not believe Respondent had intubated the patient's esophagus, Stone also acknowledged that Respondent's records would be inadequate if such had indeed occurred.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter. Section 120.57(1), Florida Statutes.

2. Section 458.331(2), Florida Statutes, authorizes Petitioner to take various disciplinary actions against a licensed physician, including revocation or suspension of licensure; restriction of practice; imposition of an administrative fine up to \$5,000; placement of licensure status on probation; or reprimand or censure of the licensee.

3. The imposition of such disciplinary action is permitted for violation of Section 458.331(1)(m), Florida Statutes, which reads:

(m) Failing to keep written medical records justifying 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.

4. Disciplinary action is also permitted for violation of Section 458.331(1)(t), Florida Statutes, which reads in pertinent part as follows:

Gross or repeated malpractice or the failure 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.

5. Respondent is charged in the Administrative Complaint filed in this case with performance below the acceptable level of skill and treatment in violation of Section 458.331(1)(t), Florida Statutes, by intubation of the patient's esophagus while attempting a tracheal intubation and failing to recognize that error. The complaint further alleges that Respondent failed to keep medical records justifying the course of treatment in violation of Section 458.331(1)(m), Florida Statutes.

7. Petitioner bears the burden of proof of the charges set forth in the Administrative Complaint. Proof that Respondent has committed those violations must be clear and convincing. Ferris v. Turlington, 510 So.2d 292 (Fla. 1987).

8. The proof clearly and convincingly establishes that when Respondent intubated her patient, C.P., she failed to listen for breath sounds over the patient's lungs and abdomen. Further, the proof clearly and convincingly established that Respondent intubated the patient's esophagus rather than the trachea; and that a reasonably prudent anesthesiologist would have listened for such breath sounds and would not have relied solely on the movement of the bag attached to the anesthesia machine to ascertain whether the tube was properly placed. Respondent is guilty of violation of 458.331(1)(t), Florida Statutes.

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9. Respondent's subsequent failure to record the esophageal intubation or provide justification for such an intubation on the medical chart is also proven by clear and convincing evidence. Such conduct constitutes failure to keep medical records justifying the course of treatment of patient C.P., a violation of Section 458.331(1)(m), Florida Statutes, as charged in the administrative complaint.

10. Rule 21M-20.001, Florida Administrative Code, provides a recommended penalty for violation of Section 458.331(1)(t), Florida Statutes, ranging from a two year term of probation to revocation of licensure and imposition of an administrative fine from \$250 to \$5,000. For violation of Section 458.331(1)(m), Florida Statutes, the penalty recommended by the rule ranges from a reprimand to two years suspension of licensure followed by probation and an administrative fine from \$250 to \$5,000.

#### RECOMMENDATION

Based on the foregoing, it is hereby

RECOMMENDED that a Final Order be entered for Respondent's violation of Section 458.331(1)(t), Florida Statutes, placing Respondent's license on probation for a period of three years upon terms and conditions to be determined by the Board of Medicine, including, but not limited to, a condition requiring Respondent's participation in appropriate continuing medical education courses; and imposing an administrative fine of \$2,000.

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IT IS FURTHER RECOMMENDED that such Final Order impose a penalty for Respondent's violation of Section 458.331(1)(m), Florida Statutes, of an administrative fine of \$500 and a letter of reprimand.

DONE AND ENTERED this 28<sup>th</sup> day of August, 1989, in Tallahassee, Leon County, Florida.

Don W. Davis

DON W. DAVIS  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Fl 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative  
Hearings this 28<sup>th</sup> day of  
August, 1989.

Copies furnished:

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Dorothy Faircloth  
Executive Director  
Board of Medicine  
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STATE OF FLORIDA  
BOARD OF MEDICINE

*Rec'd  
9/14/89  
DJ*

DEPARTMENT OF PROFESSIONAL  
REGULATION, BOARD OF MEDICINE,

Petitioner

-vs-

DOAH Case No. 88-6103  
DPR Case No. 0063527

SAROJA L. RANPURA,

Respondent.

RESPONDENT'S EXCEPTIONS TO FINDINGS OF FACT  
CONTAINED IN RECOMMENDED ORDER DATED AUGUST 28, 1989

Respondent, by undersigned counsel, files the following exceptions to the Findings of Fact contained in the Recommended Order dated August 28, 1989. Respondent does not object to Findings of Fact numbered 1 through 4 inclusive. However, Respondent objects to Findings of Fact numbered 5 through 24 inclusive on the grounds that from a review of the complete record, these Findings of Fact are not based on competent substantial record evidence. Respondent further takes exception to Conclusions of Law numbered 8 and 9 inclusive and to the recommendation on the grounds that the legal conclusions are contrary to established statutory and case law and constitutes an erroneous application of the correct legal standards to the competent substantial record evidence in the case. Moreover, as to the findings of fact, Respondent asserts the following additional exceptions based on the following reasons:

APPENDIX

The following constitutes my specific rulings, in accordance with Section 120.59, Florida Statutes, on findings of fact submitted by the parties.

Petitioner's Proposed Findings.

- 1.-28. Accepted.
- 29. Unnecessary to result.
- 30.-31. Accepted.
- 32.-34. Adopted by reference.
- 35.-61. Adopted in substance.
- 62. Unnecessary to result.
- 63.-68. Adopted in substance.
- 69.-87. Adopted by reference.

Respondent's Proposed Findings.

- 1.-3. Rejected, not supported by the evidence.
- 4.-5. Rejected, not supported by the evidence,  
Further, proposed findings that records  
were adequate constitute legal conclusions.
- 6. Rejected, not supported by the evidence.

1. Finding Number 5. There is no record evidence that the intubation of Patient C.P. involved a "minor degree of difficulty." In fact the intubation was uneventful.

2. Finding Number 6. Preoxygenation of a patient allows less than a "margin of 4 to 6 minutes" prior to the onset of hypoxia. In fact, the testimony of Dr. Briggs (R-Vol. II at 249) and Dr. Stone (Stone at p. 38) confirm that preoxygenation only allows a couple of minutes margin.

3. Finding Number 7. Jean Allen did not observe Respondent "during the entire intubation process". Allen testified that "later on she may have" used a stethoscope on the stomach and chest (R-Vol. I at 50). Allen later testified that she was not watching Dr. Ranpura during the entire surgery because she had other duties. (R-Vol. I at 75, 80). The findings are also erroneous by claiming that Respondent listened for breath sounds only prior to the administration of the additional sodium pentothal. In fact Respondent testified (R-Vol. II at 303-305) that she listened to the breath sounds over the chest and abdomen after the second sodium pentothal was administered. (R-Vol. II at 303). At that time neither Nurse Masters nor Nurse Allen were paying attention and did not see it. (R-Vol. II at 304-305)

4. Finding Number 4. This finding is clearly erroneous since Dr. Ranpura did listen to bilateral equal breath sounds over the chest and abdomen. (R-Vol. III at 303-305) Further, observing the bag moving on the anesthesia machine is one

indicator of determining proper tube placement according to all of the experts who testified in the case.

5. Finding Number 5. It is contrary to the record evidence that Nurse Allen had a "unobstructed view of Respondent" at the surgical table. Nurse Masters testified that there was a drape placed during the surgery. (R-Vol. I at 181) Dr. Snyder testified that he could not see Dr. Ranpura because there was an anesthesia screen at the patient's head which separated his visual field. (Snyder at 19). The Respondent confirmed that she could not see past the anesthesia drape. (R-Vol. II at 307) Allen's testimony that she had a "unobstructed view" of Respondent is clearly erroneous since three witnesses contradict her and are all consistent. This finding of fact contains no discussion of why the hearing officer credits the testimony of Allen and discredits three other consistent witnesses on the identical fact.

6. Finding Number 6. This finding is directly contrary to the other findings of fact that an esophagael intubation took place. If an esophagael intubation took place, the carbon dioxide would not have been able to "push the abdominal wall away from the internal organs." Instead, the air going into the stomach would have distended the bowel and prevented visual obstruction of the pelvic organs. This was confirmed by the testimony of Dr. Stone (Stone at 32) and Dr. Kruse (R-Vol. II at 25) and Dr. Cross (R-Vol. III at 113). Preoxygenation only

provides a couple of minutes margin of safety not four to six minutes. (R-Volume III at 116.)

7. Finding Number 7. Dr. Snyder did not corroborate "foghorn or frog" noises during the surgical procedure. Dr. Snyder did not hear any froglike sounds himself during the surgery. (Snyder at 22) The Respondent had an ear piece in her ear and there is no testimony that Respondent was told about any foghorn or frog noises during the surgery. Further, the testimony of Dr. Stone was that such noises, if they occurred, was most likely due to air escaping around the cuff of a tube in the trachea or from the insufflation of carbon monoxide gas during laparoscopy. (Stone at 40-41).

8. Finding Number 8. This finding erroneously fails to state that Dr. Ranpura had an earpiece attached to a stethoscope for the purpose of listening for breath sounds during the entire surgery. The finding erroneously states that only twelve minutes elapsed between initial intubation and the dark blood incident contrary to the testimony of Dr. Stone (Stone at 39), Dr. Briggs (R-Vol. II at 249), Dr. Kruse (R-Vol. III at 41), and Dr. Cross (R-Vol. III at 123). (Twenty Minutes)

9. Finding Number 9. The anesthesia record clearly shows that the administration of 100% oxygen occurred at 10:27. (Joint Exhibit 1)

10. Finding Number 10. Dr. Snyder observed that the internal organs were dark through the laparoscope. This

observation does not mean that the patient is hypoxic but rather cyanotic which simply means a deprivation of oxygen for a short period of time. There was no evidence of a "decreasing" level of oxygen in the patient's blood at that time. In fact after 100% oxygen was given to the patient, the organs pinked up rapidly indicating that there was minimal deprivation of oxygen. Otherwise the organs would not have pinked up rapidly but would rather have remained a dark color which then would have indicated that the patient may have been hypoxic.

11. Finding Number 11. The Recommended Order erroneously asserts that Respondent received another endotracheal tube from Nurse Masters and began to intubate the patient with that tube through the mouth. In fact, Dr. Ranpura never received the second endotracheal tube from Nurse Masters but simply asked Nurse Masters to hold the tube. Instead of inserting a second endotracheal tube in the mouth, Dr. Ranpura instead adjusted the original nasal endotracheal tube. (R-Vol. II at 315) The Order also erroneously asserts that Nurse Allen was in a position to see the second tube "become foggy". Nurse Allen was blocked by the field of vision from the anesthesia drape. (R-Vol II at 314) It is impossible that Nurse Allen could have visualized the nasal endotracheal tube becoming foggy since she was not in a position to witness the alleged event. Moreover, the expert testimony of Dr. Stone (Stone at p. 39), Dr. Briggs (R-Vol. II at 248) and even the Petitioner's experts, Dr. Cross (R-Vol. III at

94) and Dr. Kruse (R-Vol. III at 41), all confirm that it is impossible that two tubes could have been placed into the patient simultaneously both because of the difficulty of the procedure and the length of time that such a procedure would take is at variant with the testimony in the instant case. The Order is also erroneous in making a finding that the second endotracheal tube was placed in the middle of the surgery at the time that the blood was noted to be dark and the organs bluish rather than at the conclusion of the surgery. The expert testimony of Dr. Stone and Dr. Briggs is clear and convincing that if an esophageal intubation actually took place, the patient would not have survived and would have suffered severe consequences including heart attack and brain damage beyond that suffered by Patient C.P. It is noteworthy that Patient C.P. was determined to be competent to handle her financial affairs (Respondent's Exhibit 1) which is at variance with the theories advanced by Petitioner's experts.

12. Finding No. 12. The Order erroneously asserts that Dr. Ranpura connected a second endotracheal tube to the anesthesia machine which caused the organs to pink up rapidly. This is in direct contradiction to Dr. Briggs testimony (R-Vol. II at 251) who testified that the clinical picture was more consistent with the placing of the tube in the right stem bronchus which resulted in a short term deprivation of oxygen causing the organ to turn blue for a short period of time. As noted by Dr. Stone and Dr.

Briggs, if the organs had been deprived of oxygen for a lengthy period of time, it would have been impossible for the organs to have pinked up rapidly which occurred in the case at bar. Moreover, it is clear that a nasal endotracheal tube was left in the patient at the time the patient entered the recovery room. The Order suggests that the patient had an oral endotracheal tube in place at that time rather than a nasal endotracheal tube.

13. Finding Number 13. The Order erroneously asserts that Patient C.P. did not open her eyes from the conclusion of the surgical procedure until she was wheeled into the recovery room. This assertion is directly contrary to that of the surgeon who clearly testified that he saw the patient open her eyes and that the patient was "awake and stable" upon leaving the operating room. (Snydle at p. 23-24) Dr. Snydle testified that not only were Patient C.P.'s eyes open, she was also making moaning sounds. (Snydle at p. 24) The Order erroneously fails to credit Dr. Snydle's testimony since Dr. Snydle clearly testified and placed in his operative report that Patient C.P.'s eyes were open and she was "awake and stable upon leaving the operating room." (Snydle at p. 24) Further, Snydle's testimony on these points are corroborated by Dr. Ranpura.

14. Finding Number 14. The Order erroneously implied that Respondent had a duty to advise the recovery room nurse about the dark blood incident. Dr. Stone clearly testified, without contradiction, that passing this information along to the

recovery room nurse was not significant in the treatment of the patient in the recovery room by Nurse Bloom. In fact nothing that Nurse Bloom was obligated to do in the recovery room would have changed in the event Dr. Ranpura had shared this information with her. It is clear, however, that Nurse Bloom contradicted a direct command of Dr. Ranpura not to remove the nasal endotracheal tube from the patient in the recovery room. Nurse Bloom testified that Dr. Ranpura firmly told her this and that she violated a direct order of the doctor. (R-Vol. I at 125-130, 147-149)

15. Finding Number 15. The Order erroneously asserts that the patient was not responsive to Bloom's spoken command when brought to the recovery room. This is directly contrary to Surgeon Snyder's testimony (Snyder at p. 24) and Dr. Ranpura's testimony (R-Vol. II at 317). The Order also erroneously states that Respondent told Nurse Bloom not to remove the endotracheal tube after returning to the recovery room from the lounge area. In fact Dr. Ranpura told Nurse Bloom not to remove the tube before Dr. Ranpura departed for the lounge area. (R-Vol. II at 317)

16. Finding Number 16. The Order erroneously asserts the sole reason for Nurse Bloom removing the endotracheal tube was the filling of the tube with blood tinged mucous. In fact, Patient C.P. suffered a laryngospasm which is confirmed by the testimony of Dr. Ranpura (R-Vol. II at 319) and Roy Graham

(Graham at p. 19) and Nurse Masters (R-Vol. I at 177). The Order also erroneously implies that Nurse Bloom properly treated the condition. In fact, Roy Graham testified that Nurse Bloom did not perform any treatment for the laryngospasm that he witnessed. (Graham at p. 17)

17. Finding Number 17. The Order erroneously states that Patient C.P. made moaning sounds at approximately 12:20 p.m. In fact Nurse Masters testified that the patient was having a laryngospasm and causing belling sounds which greatly concerned her. (R-Vol. I at 177) Indeed Nurse Masters testified that almost the whole time C.P. was in the recovery room, she was hollering and making noises. (R-Vol. I at 179) Moreover, Dr. Snyder testified that Patient C.P. was making moaning sounds at the time she was first wheeled into the recovery room. (Snyder at p. 24) Further, Roy Graham testified that Patient C.P. was making loud noises at the time she was experiencing the moderate laryngospasm. (Graham at p. 19)

18. Finding Number 18. The Order erroneously fails to assert Respondent's alternate position that Patient C.P.'s brain injury may have occurred during surgery by the placement of the endotracheal tube in the right main stem bronchus. (Vol. II at p. 250) The Order further erroneously asserts that Nurse Masters heard noises from the recovery room which were not those of a laryngospasm. In fact Nurse Masters was impeached on this point with her deposition where she testified that Patient C.P. was

having a laryngospasm and that the noises were worrisome. (R-Vol. I at 177) The Order also erroneously asserts that Patient C.P. had no laryngospasm in the recovery room which is directly contrary to the testimony of Dr. Ranpura (R-Vol. II at 320-349) and Roy Graham (Graham at p. 19), both of whom are more expert at diagnosing and treating laryngospasm than Bloom. The Order further erroneously credits the expert testimony of Dr. Cross that the patient did not have a laryngospasm based on his study of arterial blood gases following surgery. In fact Dr. Cross testified that the medical report showing metabolic acidosis is not consistent with a finding of deprivation of oxygen for twenty minutes in C.P. (R-Vol. III at 123) These reports are inconsistent with Dr. Cross' opinion unless Dr. Cross is correct that oxygen regurgitated up the esophagus and down the windpipe which is impossible according to Petitioner's other expert witness, Dr. Kruse. (R-Vol. III at 41) In addition to Petitioner's own expert Dr. Kruse, this "impossible" theory of Dr. Cross was also contradicted by Respondent's experts Dr. Stone and Dr. Briggs. (R-Vol. II at 288) Further, Dr. Stone contradicted Dr. Cross by testifying that the blood gases taken from C.P. were not consistent with an esophagael intubation (Stone at p. 145) which was the theory of Dr. Cross. In summary, Dr. Cross' testimony is contrary to Petitioner's own expert witness, Dr. Kruse and Respondent's two expert witnesses, Dr. Stone and Dr. Briggs.

19. Finding Number 19. The Order erroneously asserts that Dr. Stone's opinion is only based on the theory that a single tube was used during surgery. In fact, Dr. Stone's opinion is based on the blood gases taken from C.P. (Stone at p. 45) and the fact that C.P. would not have survived had she been intubated in the esophagus. (Stone at p. 39) In fact Stone relied on the entire clinical picture for his opinion that an esophagael intubation did not take place. This included a review of the heart rate and blood pressure (Stone at p. 29), the absence of bowel distention (Stone at p. 32), the rapid pinking up of blood (Stone at p. 34) and the impossibility of the theory that oxygen could regurgitate up the esophagus and ventilate the patient. (Stone at p. 40) The Order also erroneously states that the testimony of Petitioner's experts, Dr. Cross and Dr. Kruse, are consistent. They are not. In fact Dr. Kruse states that Dr. Cross' opinion on apneic oxygenation is impossible and that he would disagree with any expert who testified that way. (R-Vol. III at 41) Dr. Briggs also testified that this theory of apneic oxygenation is impossible. (R-Vol. II at 288) Dr. Stone confirmed it. (Stone at p. 35) Dr. Kruse also testified directly contrary to Dr. Cross in stating that Patient C.P. received no oxygen between the initial intubation and the exchange of tubes in the middle of the procedure. (R-Vol. III at 41, 42) Dr. Kruse and Dr. Cross also directly conflict on the issue of whether Dr. Ranpura's medical records were adequate.

Dr. Kruse flatly states that the records were within standard practice. (R-Vol. III at 31, 32) Dr. Kruse disagrees. (R-Vol. III at 86) The Order also erroneously credits the testimony of Nurse Allen that she was able to see Dr. Ranpura exchange tubes during the middle of the surgery. The anesthesia screen clearly blocked Allen's view. (Snydle at p. 19)

20. Finding Number 20. The Order erroneously credits the expert testimony of Dr. Cross on the apneic oxygenation theory. Petitioner's own expert Dr. Kruse testified this is impossible. (R-Vol. III at 41-42) Dr. Briggs confirmed that it was impossible. (R-Vol. II at 288) Dr. Stone confirmed that the patient would not be able to survive such a condition. (Stone at p. 47) The Order also erroneously credits Cross' testimony that the preoxygenation process explained why Patient C.P. did not suffer greater tissue damage and likely die from a fifteen to twenty minute deprivation of oxygen. This is directly contrary to the testimony of Dr. Stone, (Stone at 42-45), Dr. Briggs (R-Vol. II at 249, 251) and Dr. Kruse (R-Vol. III at 36). The Order erroneously credits Dr. Cross' testimony that C.P. would not have suffered a heart attack by being deprived of oxygen for fifteen to twenty minutes. Petitioner's own expert Dr. Kruse directly disagreed, (R-Vol. III at 38) so did Dr. Briggs, (R-Vol. II at 251) and Dr. Stone (Stone at p. 29).

21. Finding Number 21. The Order erroneously states that the existence of the tumor at the time of the initial surgery is

not established. Dr. Briggs who treated Patient C.P. testified that it was likely that the tumor was present at C.P.'s surgery on August 29, 1985. (R-Vol. II at 246) Dr. Stone confirmed Dr. Brigg's opinion that the tumor contributed to an obstruction in the airway. (Stone at p. 48) The Order also erroneously asserts that Dr. Briggs' opinion that C.P.'s damage occurred in the recovery room conflicts with other expert opinion is wrong. Dr. Kruse testified that if C.P. did have a laryngospasm in the recovery room, his opinion would change. (R-Vol. III at 46) Further Dr. Stone testified consistently with Dr. Briggs that C.P. suffered brain damage in the recovery room. (Stone at p. 74-78) In fact these expert opinions are consistent with Dr. Briggs' opinion contrary to the Order.

22. Finding Number 22. The Order erroneously asserts that even if C.P. had a laryngospasm in the recovery room, that finding would only go to damages. In fact the testimony of Dr. Briggs, Dr. Stone and Dr. Kruse all consistently state that a laryngospasm in the recovery room may have been the cause of C.P.'s brain damage. The Order fails to state that C.P. was determined to be mentally competent to judge her financial affairs. Thus the Order erroneously presumed that Patient C.P. suffered brain damage far worse than the record reflects. Moreover, the existence of a laryngospasm in recovery room is significant in determining when the injury occurred as demonstrated by the expert testimony. The Order erroneously

states that the esophagael intubation is established by clear and convincing evidence. Respondent's experts, Dr. Stone and Dr. Briggs are consistent in their opinion that the injuries to Patient C.P. were not caused by Dr. Ranpura. The expert testimony of Petitioner's expert, Dr. Kruse is directly contrary to that of Petitioner's expert, Dr. Cross. All of the experts agree on one proposition and that is Dr. Cross' opinion of "apneic oxygenation" is impossible. Dr. Briggs testified that it was impossible that the patient was esophagaelly intubated. Dr. Stone confirmed it. The medical records also support the opinion of Dr. Stone and Dr. Briggs since it is not possible for Patient C.P. to have survived such an event.

23. Finding Number 23. The Order erroneously concludes that Respondent did not practice proper medicine despite all of the foregoing evidence to the contrary.

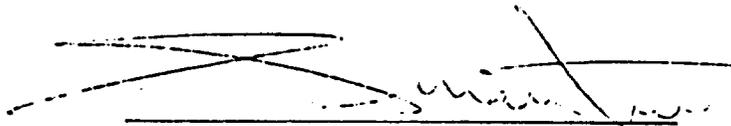
24. Finding Number 24. The Order erroneously determines that Respondent failed to keep proper medical records despite Petitioner's own expert Dr. Kruse who testified that Respondent's medical records were adequate (R-Vol. III at 32) and that he totally disagreed with Count II of the Administrative Complaint (R-Vol. III at 33) and that he would refuse to testify in support of that count. (R-Vol. III at 34) Moreover, the Order erroneously states that Dr. Stone supports the conclusion that Respondent's medical records were improper. Dr. Stone in fact testified that Dr. Ranpura's records were acceptable and within

standard practice. (Stone at 23)

Respondent further excepts to each of the conclusions of law contained in the recommended Order as being in violation of Azima v. Department of Professional Regulation, 473 So.2d 461 (Fla. 1st DCA 1985). Respondent further relies upon and incorporates by reference Respondent's Proposed Findings of Fact, Conclusions of Law and Recommended Order dated July 20, 1989, a copy of which is attached hereto and made a part hereof by reference.

Respectfully submitted this 14<sup>th</sup> day of September, 1989.

I hereby certify that a copy of the foregoing has been furnished by hand delivery on the aforementioned date to David Pius, Esquire, 1940 North Monroe, Suite 60, Tallahassee, Florida 32399-0792.



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STATE OF FLORIDA  
DEPARTMENT OF PROFESSIONAL REGULATION  
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL  
REGULATION,

Petitioner.

DOAH CASE NO. 88-6103  
DPR CASE NO. 0063527

v.

SARAJOA L. RANPURA,

Respondent.

PETITIONER'S RESPONSE TO RESPONDENT'S  
EXCEPTIONS TO HEARING OFFICER'S  
RECOMMENDED ORDER

COMES NOW the Petitioner, the Department of Professional Regulation, and submits the following response to the Exceptions to the Hearing Officer's Recommended Order filed by Respondent on September 14, 1989.

In responding to Respondent's exceptions, Petitioner's numbered paragraphs will correspond on a paragraph by paragraph basis to Respondent's numbered exceptions. References to the transcript of the Formal Hearing shall be R- and the volume and page number. References to depositions shall be indicated by the name of the person being deposed and the page number. References to Petitioner's Proposed Recommended Order shall be PPRO and the paragraph number.

1. . (FINDING No. 5) Respondent objects to the Finding that the intubation of C.P. was accomplished with "minor difficulty" and maintains that the intubation was uneventful. The Respondent is incorrect and competent substantial evidence exists to support the Hearing Officer's Finding. In his

deposition, at pages 38 and 39, Dr. Snyder stated that the Respondent experienced "difficulty" in intubating C.P. because ". . . the patient was not fully asleep."

2. (FINDING No. 6) Despite the fact that Competent substantial evidence exists to support it, Respondent objects to the Finding that preoxygenation permits a margin of "four to six minutes" within which to safely complete an intubation without risk of the patient becoming hypoxic. Contrary to Respondent's assertion that preoxygenation provides a margin of less than four to six minutes, the testimony of Dr. Kruse, (R-Vol III at 13), was that preoxygenation gives a margin of "four, five, six minutes" in which to do an intubation. The portions of the record cited by Respondent's counsel in the Exception do not address pre-oxygenation at all.

3. (FINDING No. 7) Respondent takes exception to the Finding that Nurse Jean Allen was able to observe the Respondent during the "entire intubation process" and Respondent did not listen for breath sounds at that time. There is competent substantial evidence to support the Hearing Officer's Finding. The critical time period at issue is from the time C.P. was placed on the table until the administration of a second dose of sodium pentothal. Nurse Allen testified that while Respondent may have used a stethoscope at a later time, she did not do so when the patient was intubated or immediately afterward, i.e. prior to the administration of the additional medication. (R-Vol I at 52). Further, Respondent's testimony is that she listened for breath sounds at the time of, or prior to, giving the patient

additional sodium pentothal and securing the endotracheal tube. (R-Vol II at 303). During the period of time stated, Nurse Allen testified that her attention was directed towards Respondent. It was only after the second dose of pentothal was given that Allen turned her attention to other duties. (R-Vol I at 52-53).

4. (FINDING No. 4) Respondent takes exception to the Finding that she did not listen for breath sounds. Respondent's argument seems to be based on a suggested reassessment of the weight that should or should not be given to testimony considered by the Hearing Officer. It is unquestionably the province of the Hearing Officer to assess the credibility of witnesses and determine the weight to be placed on their testimony. It is simply not proper for the Board to reweigh this testimony.

Respondent also objects to the Hearing Officer's Finding that it is not sufficient to check the proper placement of an endotracheal tube by merely observing the motion of the rebreather bag. As to this issue the Hearing Officer's recitation of the testimony presented was correct. While the movement of the bag may be one part of the procedure to check the placement of the endotracheal tube, it is not at all a reliable method. (R-Vol III 10, 73-74). Because competent substantial evidence exists to support the Finding, this Exception should be rejected.

5. (FINDING No. 5) Respondent takes exception to the Finding that Nurse Allen had an unobstructed view of Respondent. Competent substantial evidence exists, however, to support this

Finding of Fact. Although there may have been an anesthesia screen in place, Nurse Allen testified she was able to observe the Respondent while Allen was standing at the foot of the table looking up towards the head of the patient. (R-Vol I at 54). Even the Respondent stated that she herself was able to see over the screen to watch the surgeon make his incision when she stood up at the head of the table. (R-Vol II at 307-308). Allen's statement that she was able to see the Respondent is, therefore, consistent with the testimony of others and the Board should not reweigh the credibility of this witness.

6. (FINDING No. 6) This Exception asserts that, had C.P. been esophageally intubated, air going into the stomach would have distended the bowel to the point that the abdominal wall would not have been pushed away from the internal organs when carbon dioxide was introduced into C.P.'s abdomen. Competent substantial evidence, however, based on the testimony presented, supports the Hearing Officer's Finding and does not support Respondent's assertion. Respondent incorrectly relates the testimony of Dr. Kruse and Dr. Cross who, in actuality, stated that the distention might not be noticeable. (R-Vol III at 25, 113).

Respondent again raises the issue of preoxygenation although that is not discussed in this particular Finding. Nevertheless, the issue of the effectiveness of preoxygenation has been discussed above in paragraph two (2) and need not be repeated here. Further, the portion of the record cited by Respondent's attorney deals more with the length of time a

patient can go without oxygen and deals only tangentially with the effect of preoxygenation. There is, therefore, no valid basis for the Exception.

7. (FINDING No. 7) Respondent objects to the Hearing Officer's Finding that Nurse Allen's remark regarding "fog-horn" or "frog" like sounds was corroborated by the surgeon, Dr. Frank Snyder. The Hearing Officer correctly stated that Allen's remark regarding "fog-horn" sounds was corroborated by Dr. Snyder. (Snyder deposition at 22). Competent substantial evidence thus exists to support the Finding of Fact.

Respondent also objects to the portion of the Finding stating that the sound was caused by air, present in C.P.'s stomach due to an esophageal intubation, escaping from the patient's stomach when pressure was applied. As to Respondent's assertion regarding the source of the "fog-horn" noises, contrary to what the Exception states, Respondent's expert, Dr. J. Gilbert Stone, absolutely did not testify that he thought there was one "most likely" cause. What he did say was that he felt the source was either the possible leakage of air from around the cuff of the endotracheal tube or from carbon dioxide escaping from the abdomen. He did concede, however, the noise could also be the sound of air being forced out of the stomach as a result of an esophageal intubation. Because he did not believe the patient had been esophageally intubated, however, he did not believe air being forced from the stomach was the source of the noise. (Stone deposition at 40-41). Competent substantial evidence presented shows that the Finding is correct. Nurse

Allen stated that she has heard the sound of carbon dioxide escaping from the abdomen during laparoscopies and that the sound she heard and described was not that sound. (R-Vol I at 65-66). Dr. Kruse also testified that he had never heard a sound that could be described as "frog-like" noises coming from a patient's abdomen during the introduction of carbon dioxide as part of a laparoscopy. He did state, however, that he has heard such noises when forcing air out of a patient's stomach. (R-Vol III at 24-25).

8. (FINDING No. 8) The assertion of Respondent's counsel that the Respondent had an earpiece attached to a stethoscope for the purpose of listening to breath sounds is without foundation in the record. There was no testimony presented that the precordial stethoscope Respondent stated she had in place was for that purpose. This portion of the Exception should thus be rejected.

Respondent also objects to the Hearing Officer's Finding that twelve (12) minutes elapsed between the beginning of the intubation process and the notation that the blood coming from the patient's incision was dark. Respondent's counsel, however, cites to portions of the record that do not address the length of time between C.P.'s intubation and the dark blood incident. Competent substantial evidence exists to support this Finding in that all three anesthesiology experts agreed that C.P. was intubated at 10:15 a.m., (R-Vol III at 12-13, 71; Stone deposition at 29), and the Respondent noted that the dark blood incident occurred at 10:27 a.m. (Joint Exhibit 1). Simple math

reveals that twelve (12) minutes elapsed, just as the Hearing Officer stated. This portion of the Exception should also be rejected.

9. (FINDING No. 9) Respondent takes exception to the Finding that there is no notation as to the time when the patient was placed on 100% oxygen. Contrary to Respondent's assertion that the Anesthesia Record shows 100% oxygen was administered at 10:27 a.m., there is competent substantial evidence to support the Hearing Officer's Finding of Fact. The anesthesia record is annotated "10:27 AM-blood dark". The next line indicates "100% O2" but there is no time noted. It is impossible from the anesthesia record to determine whether or not the time notation of 10:27 is supposed to refer to the 100% oxygen as well as the "blood dark" or not. The Hearing Officer's Finding, therefore, is correct.

10. (FINDING No. 10) Respondent objects to the Finding that patient C.P. was hypoxic, and attempts to draw a significant distinction between the terms hypoxic and cyanotic. Respondent's argument, however, is simply not based on the record and should be rejected. There was no testimony or evidence presented which would support the argument of the Respondent that cyanosis refers to a brief deprivation of oxygen while hypoxia refers to a more protracted deprivation. This portion of the Exception should thus be rejected.

Respondent also objects to the Finding that there was a "decreasing level of oxygen" in the patient's blood. There was competent substantial evidence to support this Finding by virtue

of the fact that Nurse Allen testified that C.P.'s blood appeared dark, and shortly later appeared black. (R-Vol I at 56, 59). Expert testimony revealed that as blood becomes less oxygenated it becomes darker. (R-Vol III at 21). The Hearing Officer's Finding is thus correct.

Finally, Respondent asserts that if there was more than a minimal deprivation of oxygen the patient's organs would not have "pinked up" rapidly. This assertion, however, is in direct conflict to the testimony presented and should be rejected. Dr. Kruse testified that he would expect the organs to regain their color rapidly, notwithstanding a protracted hypoxic episode. (R-Vol III at 20). The Hearing Officer found this testimony to be credible and the Board should not reweigh it.

11. (FINDING No. 11) Respondent objects to the Finding that she replaced the nasal endotracheal tube when the patient's organs were discerned to be blue. The determination of whether Respondent replaced the endotracheal tube or merely adjusted it, and the point during the operation at which the action took place, must be derived from the conflicting testimony of the Respondent and Nurses Allen and Masters. The Findings of the Hearing Officer necessarily involve his assessment of the credibility of the witnesses. Again Respondent improperly suggests the Board reassess the credibility of the witnesses. The Hearing Officer, after observing the demeanor of the witnesses and assessing their credibility, resolved the issues of fact as reflected in his Recommended Order. The Hearing Officer was in the unique position to consider all the evidence as it was

presented and as it fit together. The Hearing Officer specifically discredited the testimony of the Respondent as to this Finding and it is not the province of the Board to reweigh the testimony.

Respondent further objects again to the Finding that Nurse Allen was able to observe the Respondent, and more particularly this time, to observe the second endotracheal tube. The question of whether or not Allen was able to see the Respondent's actions and the tube over the anesthesia drape, and why the Exception should be rejected, has been discussed in paragraph five (5) and need not be repeated here.

Respondent also apparently objects to the Finding that the original endotracheal tube was left in place while the second tube was inserted. Respondent, however, as stated in the Exception, bases the objection on the belief that ". . . two tubes could not be placed simultaneously because of the difficulty of the procedure and the length of time that such a procedure would take . . ." There was no testimony to that effect presented. In fact, Dr. Kruse pointed out that sometimes a patient will have an esophageal airway inserted by a rescue squad and later have an endotracheal tube inserted in the trachea, without removing the esophageal tube, upon arrival at the hospital. Dr. Kruse testified that it was not a difficult procedure and that ". . . you can teach nurses and paramedics how to do that kind of thing." (R-Vol. III at 48-49). The Hearing Officer's Finding, therefore, is supported by Competent substantial evidence.

As part of this Exception Respondent also objects to the Finding that the endotracheal tube was changed in the middle of the surgical procedure and not at the end as Respondent stated. Respondent also argues that the patient could not have survived an esophageal intubation, thus one did not take place. The basis of this Finding is, once again, the weighing of the testimony of the witnesses and determining credibility and the weight to be given to the testimony of the various experts. As pointed out several times above, it is the exclusive province of the Hearing Officer to evaluate and weigh the testimony and evidence as it is presented. The Board is without authority to substitute its judgment for that of the Hearing Officer and should not do so here.

Finally, Respondent asserts that the Hearing Officer should have addressed the fact that C.P. was later found by a Circuit Court to be competent to handle her financial affairs. This assertion is without validity and irrelevant and should thus not be accepted. Respondent submitted an exhibit which essentially indicated that, some two (2) years after the operation, C.P. was found to be competent to handle her own financial affairs. While the Hearing Officer admitted the exhibit subject to a determination that it was probative and relevant after he heard all of the evidence, (R-Vol II at 204-207), there was absolutely no testimony as to what exactly the determination of competency involved or its possible significance. Further, there was no testimony that any connection exists between C.P.'s competency and the question of

whether or not C.P. was esophageally intubated. The mere fact that C.P. was found competent to manage her financial affairs, whatever that may mean, is insufficient to overcome the competent substantial evidence that the Respondent did perform an esophageal intubation and fail to recognize that fact. This portion of the Exception should, therefore, also be rejected.

12. (FINDING No. 12) Respondent objects to the Finding that the patient's organs turned pink after the patient was connected to the anesthesia machine following the replacement of the endotracheal tube. Respondent's argument is apparently the same as in paragraph ten (10), i.e. if the organs turned pink then the patient must not have been without oxygen for a significant period of time. This argument has already been addressed above and need not be readdressed here.

Respondent also incorrectly alleges that the patient was taken to the Recovery Room with a nasoendotracheal tube in place. This assertion is in direct conflict with the testimony presented by Nurses Allen and Masters, (R-Vol I at 61, 163-164), and even with the Respondent's own testimony. (R-Vol II at 316). The Exception should thus be rejected.

13. (FINDING No. 13) Respondent misstates the Finding in that the Hearing Officer focused on whether the patient was "awake and stable" rather than on whether or not she opened her eyes. As before, the Hearing Officer was required to assess conflicting testimony which is his exclusive province. Competent substantial evidence exists to support his Finding and it should not be disturbed. In addition, the testimony of Dr. Kruse

clearly indicated that even if C.P. had opened her eyes it would not mean she had not suffered neurological damage. (R-Vol III at 22).

14. (FINDING No. 14) This Exception objects to the Finding that Respondent omitted telling Margaret Bloom, the Recovery Room Nurse, about the dark blood incident in surgery when the patient was brought to the Recovery Room. Once again the Respondent suggests the Board substitute its assessment of the testimony for that of the Hearing Officer. As noted previously, such a suggestion is simply not proper in the face of competent substantial evidence such as the testimony of Nurse Bloom here. (R-Vol I at 110-111).

15. (FINDING No. 15) The Respondent's objection to the Finding that the patient was not responsive to spoken commands upon arrival in the Recovery Room, and the determination of when the Respondent told Nurse Bloom that the endotracheal tube should remain in place is again based on the assertion that testimony of the witnesses favorable to the Respondent should be given more credit than testimony which is damaging. The Hearing Officer's Finding is based on competent substantial evidence and his assessment of the credibility of the witnesses should be accepted.

16. (FINDING No. 16) Respondent uses this Exception to make the argument that the patient suffered a laryngospasm in the Recovery Room. Competent substantial evidence exists to support the Hearing Officer's Finding and this Exception should thus be rejected. Contrary to the assertion of Respondents counsel, the

only individual who maintains that C.P. suffered a laryngospasm in the Recovery Room is the Respondent. (PPRO at para. 62-64).

17. (FINDING No. 17) Respondent objects to the Finding that C.P. "made moaning sounds and was responsive to pain stimulation at approximately 12:20 p.m." Respondent, however, focuses too narrowly on the Finding. While it is true that the patient was making some noises prior to 12:20, it was at the time indicated that she was noted to be responsive to painful stimuli. (Recovery Room Record from Joint Exhibit 1). Thus, competent substantial evidence supports the Hearing Officer's Finding that the patient made moaning noises and responded to pain at 12:20 p.m.

18. (FINDING No. 18) In this Exception Respondent makes several allegations in reference to the Finding that Nurses Allen and Masters did not hear noises associated with those of a patient having a laryngospasm coming from the Recovery Room, and that the patient C.P. did not suffer a laryngospasm in the Recovery Room. Respondent initially argues that the Hearing Officer should have asserted "Respondent's alternative position" that the patient was intubated in the right main-stem bronchus. The Hearing Officer, however, is under no obligation to assert an alternative position he does not adopt. Further, he specifically rejected the theory of a bronchial intubation in Finding of Fact number twenty one (21). As stated before, the Board should not substitute its judgment for that of the Hearing Officer when his decision is based on the weight to be accorded any given witnesses testimony and opinion.

Respondent also states that Nurse Masters heard noises coming from the Recovery Room that she associated with a laryngospasm. Respondent mischaracterizes Masters' testimony, (R-Vol I at page 177), and ignores the fact that when given an opportunity to explain her answer on re-direct, (R-Vol I at 187-188), she stated that Respondent's attorney referred to a laryngospasm to describe the event associated with the noises, but that Masters did not believe the noises were those of a patient in laryngospasm, nor was she of the opinion that the patient suffered a laryngospasm in the Recovery Room. This portion of the Exception should thus be rejected.

Respondent further overstates the testimony of Roy Graham, who is a Certified Registered Nurse Anesthetist, by at least implying that Graham agrees with Respondent's assertion that C.P. suffered a laryngospasm in the Recovery Room. In reality, Graham stated that the patient was possibly having a mild laryngospasm. (Graham depo at 16, 19). Graham also testified that even if C.P. had been suffering a mild laryngospasm there would be enough of an opening in the trachea to permit a relatively normal exchange of oxygen. (Graham depo at 25). Respondent also fails to note that Graham later testified that he felt the cause of C.P.'s condition was an esophageal intubation in the operating room (Graham depo at 27-28). This portion of the Exception should also be rejected.

Finally, Respondent objects to the Finding based on the expert testimony of Dr. David Cross. Once again the Respondent asks the Board to weigh the testimony presented by the various

experts and substitute its judgment for that of the Hearing Officer. That argument has been addressed repeatedly and need not be readdressed here. Competent substantial evidence exists to support this Finding, and the Exception should be rejected.

19. (FINDING No. 19) Respondent again makes multiple objections to the Finding. Initially, Respondent takes exception to the portion of the Finding that states that Respondent's expert, Dr. J. Gilbert Stone, predicated his opinion that C.P. was not esophageally intubated on his belief that the endotracheal tube was not changed during the surgery. Respondent maintains that the opinion was formed based on Stone's review of several factors. Regardless of what the Respondent may say about the basis of Stone's opinion, Dr. Stone conceded that if the Respondent replaced the endotracheal tube when dark blood was noticed and the patient's condition improved afterwards, then an esophageal intubation was indeed the possible cause of C.P.'s hypoxia. (Stone depo at 67). Competent substantial evidence thus exists to support that portion of the Finding.

Respondent's next objection is apparently the result of misreading the Finding. The Hearing Officer only stated that the Department's experts' testimony was consistent in their conclusion that C.P. was esophageally intubated. The Finding goes on to note that they differ in their reasons for the patient's survival. There is certainly competent substantial evidence to support the Finding that both Dr. Cross and Dr. Kruse agree that C.P. was esophageally intubated by the Respondent. (R-Vol III at 31, 89).

Respondent notes that Dr. Cross and Dr. Kruse disagree on the adequacy of Respondent's medical records. While that may be true, it is not part of this particular Finding and should be rejected as being irrelevant.

Finally, Respondent again argues as to whether or not Nurse Allen was able to observe the Respondent during the operation. This argument has been made previously in paragraphs five (5) and eleven (11), and has been addressed in those paragraphs. There is competent substantial evidence to support this Finding, and the Exception should, therefore, be rejected.

20. (FINDING No. 20) The Respondent objects to the Finding that the patient was able to survive due to preoxygenation and an effect similar to a technique known as apneic oxygenation. The thrust of Respondent's argument is merely that the Hearing Officer should have chosen to credit testimony favorable to the Respondent over testimony disadvantageous to her. As noted previously the Hearing Officer is charged with the responsibility to weigh the evidence and his decision should not be disturbed given the fact that competent and substantial testimony from Dr. Cross supports the Finding. (R-Vol III at 94-100).

21. (FINDING No. 21) Respondent objects to the Finding that the existence of a tumor in the patient's throat at the time of surgery was not established, and that even if there was a tumor it did not have an effect during the operation. Respondent maintains that Dr. Dean Briggs testified it was likely that the tumor was present prior to the surgery. In actual fact, when Dr.

Briggs was asked if it was merely possible the tumor was present he testified that he could not state that with a hundred percent certainty, and that it was "possible" it was a little polyp that was scraped during the intubation and, as a result, enlarged. (R-Vol II at 245-246). He later stated that he could not make a determination as to whether it existed before or after, although he felt it was a "distinct possibility" it existed before, but not at the size he later found it to be two months after the surgery. Respondent also mischaracterizes the testimony of Dr. Gilbert Stone in that Stone clearly stated that he did not feel the tumor was a factor at all during the operation itself. (Stone depo. at 89-90). The Exception should, therefore, be rejected.

Respondent objects to the portion of the Finding that rejects Dr. Briggs' opinion that the patient was intubated in the right main-stem bronchus because it conflicts with the testimony of other witnesses and expert opinions. Because Dr. Briggs felt the patient was intubated in the bronchus, and because the patient undeniably suffered a neurological insult, his theory is that the insult must have occurred in the Recovery Room, not during the operation. The portion of that theory that conflicts with opinions and testimony of other witnesses is whether the patient was intubated in the esophagus or the bronchus. Competent substantial evidence in the form of expert testimony exists to support the Hearing Officer's Finding, (R-Vol III at 31, 89), and that testimony should not be re-evaluated or re-weighted by the Board.

22. (FINDING No. 22) Respondent takes exception to the Finding that any laryngospasm that may have occurred in the Recovery Room is not relevant to the determination as to whether or not Respondent intubated the patient's esophagus. The Exception also touches on the determination of C.P.'s competency in 1987, the degree of neurological impairment, and the theory of apneic oxygenation. All of these issues have been addressed previously in the Respondent's Exceptions and this Response. And once again the issue centers on the Respondent's urging that the testimony and evidence be re-weighed so as to accept the testimony most favorable to the Respondent. As noted above, it is not the province of the Board to re-weigh and re-evaluate the testimony.

23. (FINDING No. 23) The Exception to the Finding that Respondent did not practice medicine with the requisite care, skill, and treatment is without validity. Competent substantial evidence presented to the Hearing Officer by the way of testimony and evidence supports this Finding and it should be accepted by the Board. As stated repeatedly above, the determination of whether Respondent practiced properly must be derived from the conflicting testimony of both the fact witnesses and the expert witnesses. As was stated previously, the Findings of the Hearing Officer necessarily involve his assessment of the credibility of the witnesses and the weight to be given their testimony. Although Respondent suggests the Board reassess the credibility of the witnesses, it was the Hearing Officer, who, after observing the demeanor of the witnesses and assessing their

credibility, resolved the issues of fact as reflected in his Recommended Order. He was in the unique position to consider all the evidence as it was presented and it is not the province of the Board to reweigh the testimony.

24. (FINDING No. 24) Respondent objects to the Finding that her medical records were inadequate. As above, the Hearing Officer considered the conflicting opinions of the expert witnesses and made a determination as to which opinions were most valid. That determination was based on competent substantial testimony, which included that of Respondent's expert, Dr. Gilbert Stone. It was his testimony that if the Respondent had intubated the patient's esophagus, then failing to note that in the medical record would change his opinion as to the sufficiency of the medical records, and he would no longer maintain they justified the course of treatment. (Stone depo at 77-78). This portion of the Exception should thus be rejected.

Finally, Respondent takes exception to each of the conclusions of law as being violative of Azima v. Department of Regulation, 473 So. 2d 461 (sic) (Fla. 1st DCA 1985). The Azima case is found at page 761 of volume 473. A detailed review of the case, however, does not provide any clue at all as to how the case before the Board relates to any decisions made in Azima. That case dealt with a physician who was found to have practiced below the standard of care and who appealed the determination because testimony was provided by other physicians who practiced in the same geographic area as Dr. Azima. The court affirmed the Final Order. If Respondent is simply relying on the general

language that stated the Azima decision was based on competent substantial evidence, then Petitioner would point out that the arguments above indicate that sufficient competent substantial evidence exists to support each of the Findings of Fact on which the conclusions of law are based. There is no explanation by the Respondent as to why any given conclusion should be rejected.

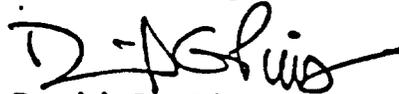
#### CONCLUSION

The issue of credibility is clearly within the purview of the Hearing Officer. To the extent that it was necessary to address credibility the Hearing Officer has done so in responding to the proposed orders of the parties (See appendix to Recommended Order).

Accordingly, the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Penalty should be adopted by the Board as its Findings of Fact, Conclusions of Law and Penalty.

WHEREFORE Petitioner moves this Board to issue an order rejecting Respondent's exceptions and adopting the Hearing Officer's Recommended Order as the Board's order in this proceeding.

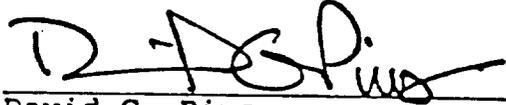
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been furnished by U.S. Mail this 25<sup>th</sup> day of September, 1989 to Sidney L. Matthew, Esq., P.O. Box 154, Tallahassee, Florida 32301.

A handwritten signature in black ink, appearing to read "D. G. Pius", written over a horizontal line.

David G. Pius  
Senior Attorney

DGP/me