IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Michael B. Jacobs, M.D.,	:	
Appellant,	:	Case No. 02CVF-11375
vs.	:	JUDGE PFEIFFER
State Medical Board of Ohio,	:	
Appellee.	:	

TERMINATION NO. 10
BY KC

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COMMON PLEAS COURT
FRANKLIN CO., OHIO
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CLERK OF COURTS

DECISION AND ENTRY AFFIRMING THE ORDER OF APPELLEE STATE MEDICAL BOARD OF OHIO

Entered this 23rd day of April, 2003

PFEIFFER, J.

This action comes before the Court upon an appeal filed by Michael B. Jacobs , M.D. ("Appellant") from an Order of the State of Ohio Medical Board (the Ohio Board) reprimanding Appellant and requiring him to complete a course on the prescribing of controlled substance. Appellant was also ordered to report the reprimand to other licensing agencies, employers and hospitals.

The Ohio Board's Order stems from the following facts. In February of 2001, the Florida Board of Medicine (the Florida Board) issued an administrative complaint against Appellant alleging that he had improperly prescribed a drug to a patient and had further failed to refer the patient to a neurologist. The charges were ultimately disposed of when Appellant entered into a Consent Agreement under which he agreed to complete a continuing medical education course prior to being able to resume the practice of medicine in the state of Florida. Appellant further agreed to pay an administrative fine and the costs of the investigation. Appellant did not admit to any of

the allegations contained in the complaint. The Florida Board approved and adopted the Consent Agreement on September 6, 2001. The Florida Board did not report the proceedings to the National Practitioner Data Bank.

Appellant was given notice on March 13, 2002 of the Ohio Board's intent to take action against his certificate to practice medicine in this State based upon the Florida proceedings. Appellant was afforded a hearing on July 8, 2002, and the Hearing Examiner issued a Report and Recommendation on August 1, 2002. The Report found that the Florida Consent Agreement was actionable by the Ohio Board pursuant to R.C. 4743.22(B)(22) and further recommended an indefinite suspension of Appellant's license followed by conditions of reinstatement.

The Ohio Board adopted the Findings of Fact and Conclusions of Law of the Hearing Examiner, but modified the recommended penalty from a suspension to a reprimand with the requirement that Appellant complete a continuing medical education course within six months. The order was issued on September 11, 2002, and this timely appeal followed.

This Court's review of a decision of an administrative agency, such as the Board, is governed by R.C. 119.12. In an administrative appeal filed pursuant to R.C. 119.12, the trial court must review the agency's order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with the law. Univ. of Cincinnati v. Conrad (1980), 63 Ohio St. 2d 108.

Appellant sets forth the following four separate assignments of error:

> 1) The Ohio Board's Order is not supported by reliable, probative and substantial evidence and is contrary to law because the Ohio Board had no authority under R.C. 4731.22(B)(22) to take an action

> based upon the Florida Order because it did not constitute a "limitation" or "suspension" of Dr. Jacobs' Florida Medical license.
>
> 2) The Ohio Board's Order finding a violation of R.C. 4731.22(B)(22) is not supported by reliable, probative and substantial evidence and is contrary to law where it is based upon facts not in the record.
>
> 3) The Ohio Board's Order is contrary to law as the Ohio Board deprived Dr. Jacobs of due process and violated R.C. 119.07 where it failed to notify Dr. Jacobs of its intent to take action based upon the unproven allegations.
>
> 4) The Ohio Board's Order is contrary to law and/or exceeds statutory authority where it compels continuing medical education.

Addressing his first assignment of error, R.C. 4731.22(B) provides in relevant part that:

> The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:
>
> * * *
>
> (22) Any of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice * * *.

In this action, the Ohio Board found the Florida Consent Agreement to constitute a matter falling within the scope of R.C. 4731.22(B)(22). Appellant disagrees arguing

that the Florida Board took no action that would constitute a limitation or suspension of his Florida medical license. Appellant asserts that 42 U.S.C. §11132 requires a state medical board to report to the National Practitioner Data Bank any revocation, suspension, censure, reprimand or restriction or other action, which relates to the physicians competence or professional conduct. Since the Florida Board agreed to not report the Consent Agreement, Appellant asserts that the Ohio Board cannot take action against his Ohio license under R.C. 4731.22(B)(22).

However, the Court finds that the Florida Board failure to report the content of the parties' Consent Agreement to the National Practitioner Data Bank to be of no import. R.C. 4731.22(B)(22) clearly empowers the Ohio Board to limit or suspend a physician's certificate to practice medicine in this State based on the fact that another jurisdiction has limited or suspended the physician's license to practice within that jurisdiction. Nowhere does the statute state that such action can be taken only if the other jurisdiction has reported the physician to the National Practitioner Data Bank.

The Consent Agreement between Appellant and the Florida Board prohibited Appellant from practicing medicine in Florida until completion of a continuing medical education course. Such prohibition was clearly a limitation upon Appellant's license to practice medicine in that state. Thus, R.C. 4731.22(B)(22) authorizes the Ohio Board to limit, revoke, or suspend Appellant's Ohio certificate based upon the Florida action, and his first assignment of error is therefore not well taken.

Appellant's second assignment of error accuses the Ohio Board of relying upon facts not in the evidence while his third assignment of error is a claim of denial of due process based upon a failure of the Ohio Board to notify him of its intent to take action

on the unproven allegations of the Florida administrative complaint. Appellant asserts that the Ohio Board erred in disciplining him based upon unproved allegations.

The record reflects that the Ohio Board did discuss the nature of the allegations contained in the Florida administrative complaint. Importantly, Appellant himself discussed the underlying facts and explained his treatment of the patient at issue. Those facts are irrelevant. The Ohio Board was not required to prove the allegations contained in the Florida administrative complaint before disciplining Appellant. Rather, R.C. 4731.22(B)(22) requires only that it find that another jurisdiction limited Appellant's license for reasons other than nonpayment of fees. Appellant was clearly given notice that the Ohio Board was considering disciplinary action based upon the Florida Consent Agreement. Although Appellant may dispute the allegations contained in the Florida administrative complaint, he cannot dispute the fact that he was prohibited from practicing medicine in the state of Florida until he had completed a continuing medical education course. That restriction on his Florida medical license is the basis for the Ohio Board's Order and is all that is necessary to invoke R.C. 4731.22(B)(22). Thus, Appellant's second and third assignments of error are not well-taken.

Appellant's fourth assignment of error is that the Ohio Board lacks the authority to compel continuing education under the circumstances in this case. The Court finds no merit in Appellant's argument. R.C. 4731.22(B) allows the Ohio Board to place limits on a practitioner's license. The Ohio Board has lawfully limited Appellant's license by requiring him to take a course concerning the prescribing of controlled substance. This is a reasonable limitation considering that Appellant has agreed to take such a course in order to reinstate his Florida medical license.

After review of the record and the arguments of counsel, the Court finds the Order of the Ohio Board to be supported by reliable, probative, and substantial evidence and in accordance with law. Accordingly, the Order is hereby AFFIRMED. Costs to Appellant.

JUDGE BEVERLY Y. PFEIFFER

Copies to:

Eric J. Plinke
John P. Carney
Counsel for Appellant

Rebecca J. Albers
Counsel for Appellee

STATE MEDICAL BOARD OF OHIO
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BEFORE THE STATE MEDICAL BOARD OF OHIO

Michael B Jacobs, M.D.
1645 Stonehill Road
Las Vegas, NV 89156

Appellant,

vs.

State Medical Board of Ohio
77 South High Street, 17th Floor
Columbus, OH 43215-3413,

Appellee.

Case No. 02CVF10 11375

Judge

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
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CLERK OF COURTS

Appeal from the Entry of Order of September 11, 2002 and Mailed October 9, 2002

APPELLANT'S NOTICE OF APPEAL

Pursuant to Ohio Revised Code § 119.12, notice is hereby given that Appellant, Michael B Jacobs, M.D., appeals the State Medical Board of Ohio's Entry of Order September 11, 2002, and mailed October 9, 2002 (copy attached as Exhibit A). The State Medical Board of Ohio Entry Order is not supported by the requisite quantum of reliable, probative, and substantial evidence nor is it in accordance with law.

STATE MEDICAL BOARD OF OHIO
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Respectfully submitted,

Eric J. Plinke (0059463)
John P. Carney (0074436)
PORTER, WRIGHT, MORRIS & ARTHUR, LLP
41 South High Street
Columbus, Ohio 43215-6194
(614) 227-2000 Fax (614) 227-2100
Attorneys for Appellant
Michael B Jacobs, M.D.

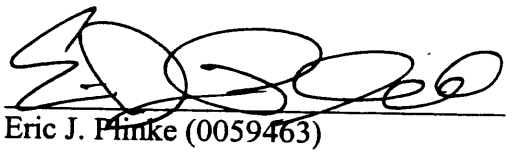
STATE MEDICAL BOARD
OF OHIO

02 OCT 21 PM 1:42

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2002 the foregoing Notice of Appeal was filed via hand delivery with the State Medical Board of Ohio, via hand delivery with the Court of Common Pleas, Franklin County, Ohio, and that a copy was served via ordinary U.S. Mail, postage prepaid, upon:

Kyle C. Wilcox, Esq.
Assistant Attorney General
Health & Human Services Section
Ohio Attorney General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428



Eric J. Plinke (0059463)

State Medical Board of Ohio

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

September 11, 2002

Michael B. Jacobs, M.D.
1645 Stonehill Road
Las Vegas, NV 89156

Dear Doctor Jacobs:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 11, 2002, including motions approving and confirming the Findings of Fact and Conclusions 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 must be taken to the Franklin County Court of Common Pleas.

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5146 2935
RETURN RECEIPT REQUESTED

Cc: 901 Rancho Lane, #205
Las Vegas, NV 89106
CERTIFIED MAIL NO. 7000 0600 0024 5146 2928
RETURN RECEIPT REQUESTED

Eric J. Plinke and John P. Carney, Esqs.
CERTIFIED MAIL NO. 7000 0600 0024 5146 2904
RETURN RECEIPT REQUESTED

Mailed 10/9/02

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 11, 2002 including motions approving and confirming the Findings of Fact and Conclusions 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 Michael B. Jacobs, 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.

Anand G. Garg, M.D.
Secretary

(SEAL)

September 11, 2002
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

MICHAEL B. JACOBS, M.D. *

ENTRY OF ORDER

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

Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the 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 of Ohio for the above date.

It is hereby ORDERED that:

A. **REPRIMAND:** It is hereby ORDERED that Michael B. Jacobs, M.D., be reprimanded.

B. **CONTROLLED SUBSTANCES PRESCRIBING COURSE**: Within six (6) months, Dr. Jacobs shall provide acceptable documentation of successful completion of the Florida course, *Clinical, Legal & Ethical Issues in Prescribing Abusable Drugs*, or a course dealing with the prescribing of controlled substances. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

C. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Dr. Jacobs shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Jacobs shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

D. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, Dr. Jacobs shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Jacobs shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Jacobs shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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

Anand G. Garg, M.D.
Secretary

(SEAL)

September 11, 2002
Date

STATE MEDICAL BOARD
OF OHIO

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REPORT AND RECOMMENDATION
IN THE MATTER OF MICHAEL B. JACOBS, M.D.

The Matter of Michael B. Jacobs, M.D., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on July 8, 2002.

INTRODUCTION

I. Basis for Hearing

A. By letter dated March 13, 2002, the State Medical Board of Ohio [Board] notified Michael B. Jacobs, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on prior action against Dr. Jacobs by the Florida Board of Medicine.

The Board further alleged that the action of the Florida Board of Medicine constitutes "'[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,' as that clause is used in R.C. 4731.22(B)(22)."

Accordingly, the Board advised Dr. Jacobs of his right to request a hearing in this matter. (State's Exhibit 1A).

B. On April 12, 2002, Dr. Jacobs submitted a written hearing request. (State's Exhibit 1B).

II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers, Assistant Attorney General.

B. On behalf of the Respondent: Eric J. Plinke and John P. Carney, Esqs.

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EVIDENCE EXAMINED

I. Testimony Heard

No testimony was presented.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1K: Procedural exhibits.

2. State's Exhibit 2: Certified copies of documents regarding Dr. Jacobs maintained by the Florida Board of Medicine. (Note: pages numbered by the Attorney Hearing Examiner post-hearing).

B. Presented by the Respondent

1. Respondent's Exhibit A: Excerpts from the Florida Board of Medicine's Subject Matter Index.

2. Respondent's Exhibit B: Transcript of the August 4, 2001, Florida Board of Medicine meeting as pertaining to Dr. Jacobs.

3. Respondent's Exhibit C: Copy of a March 18, 2002, letter to Dr. Jacobs from a Compliance Officer with the Florida Department of Health.

4. Respondent's Exhibit D: Statement of Respondent.

5. Respondent's Exhibit E: Dr. Jacobs' curriculum vitae.

SUMMARY OF THE EVIDENCE

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

1. In 1976, Michael B. Jacobs, M.D., received a doctoral degree with "emphases in Kinesiology, Exercise Physiology and Neurosciences with dissertation in Neurophysiology" from the University of Toledo in Toledo, Ohio. In 1987, Dr. Jacobs received a medical degree from the Medical College of Ohio in Toledo. Thereafter, he completed an

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internship in internal medicine at the Allegheny General Hospital in Pittsburgh, Pennsylvania. In 1990, Dr. Jacobs completed a residency in internal medicine at the Medical College of Ohio. (Respondent's Exhibit [Resp. Ex.] E).

Dr. Jacobs practiced internal medicine in Jacksonville, Florida, from 1990 through 1999. In 2000, he accepted a position as a lead hospitalist in Las Vegas, Nevada. In his curriculum vitae, Dr. Jacobs advises that he is licensed to practice medicine in Nevada. He does not mention his licensure in the states of Ohio or Florida. (Resp. Ex. E).

2. On February 13, 2001, the Florida Department of Health issued an Administrative Complaint in *Department of Health v. Michael Bernard Jacobs, M.D.* The allegations against Dr. Jacobs set forth in the Administrative Complaint include the following:

    3. Respondent is board certified in internal medicine.

    4. Butorphanol tartrate (brand name Stadol) is a legend drug as defined by [Florida Statutes]. Stadol is a narcotic analgesic used as a pain relief medication and can be administered intravenously, intermuscularly [sic], or through nasal spray.

    5. On or about August 31, 1992, Patient R.P., a thirty-five (35) year old female, presented to Respondent following a referral for chest pain, dyspepsia (upset stomach), and various aches and pains. Patient R.P. told Respondent she had a history of migraine headaches.

    6. During the course of treatment of Patient R.P., Patient R.P. complained frequently of chronic headaches and Respondent prescribed Stadol for her to relieve the pain associated with these headaches.

    7. On or about September 12, 1992, Respondent prescribed Stadol nasal spray #3 for Patient R.P., with six (6) refills.

    8. In 1994, Respondent prescribed Stadol nasal spray #3 for Patient R.P. on or about the following dates: June 15 (no refill); September 7 (one (1) refill); September 21 (no refill); and October 6 (no refill).

    9. In 1995, Respondent prescribed Stadol nasal spray #3 for Patient R.P. on or about the following dates: March 29 (two (2) refills); April 11 (no refill); April 28 (two (2) refills); May 4, 1995 (two (2) refills); May 17 (three (3) refills); May 31 (three (3) refills); July 10 (four (4) refills); September 6 (four (4) refills); September 18 (no refill); October 3 (no refill); and October 9 (no refill, and later that day again with one (1) refill).

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10. In 1996, Respondent prescribed Stadol nasal spray #3 for Patient R.P. on or about the following dates: unknown date in January 1996 (three (3) refills); March 13 (no refill); April 22 (four (4) refills); and May 14 (no refill).

11. On or about April 22, 1996, Patient R.P. altered Respondent's written prescription for Stadol nasal spray #3 from four (4) refills to twenty-four (24) refills.

12. After prescribing Stadol for Patient R.P. on or about May 14, 1996, Respondent learned Patient R.P. had altered her previous prescription. Respondent wrote a letter to Patient R.P. notifying her that Respondent would terminate further medical care for Patient R.P. based on the altered prescriptions. Mail records show this letter was not received by Patient R.P. until June 26, 1996.

13. On or about May 16, 1996, Patient R.P. presented to Respondent and Respondent confronted her about the prescription alteration. Written medical records show Respondent told Patient R.P. that Respondent thought she needed help for possible addiction.

14. On or about October 28, 1996, Respondent again prescribed Stadol nasal spray #3 for Patient R.P. with one (1) refill.

15. During the course of treatment of Patient R.P., Respondent did not refer Patient R.P. to a neurologist for an evaluation to determine the cause of her chronic headaches.

16. Respondent did not document in the medical records of Patient R.P. a referral to a neurologist for an evaluation of her chronic headaches.

17. During the course of treatment of Patient R.P., Respondent did not order tests such as a computed axial tomography (CAT) scan of the brain, and/or a radiographic evaluation of Patient R.P.'s head and/or neck for the purpose of determining the cause of her chronic headaches.

* * *

19. During the course of treatment of Patient R.P., Respondent did not diagnose the cause of Patient R.P.'s chronic headaches

* * *

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21. The medical records maintained by Respondent for Patient R.P. contain no information such as a neurological or radiographic evaluation that would justify prescribing Stadol for a four-year period.

(St. Ex. 2 at 20-22).

The Administrative Complaint further alleged that Dr. Jacobs' conduct constitutes, among other things, "committing gross or repeated malpractice or * * * failure to practice 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." (St. Ex. 2 at 23-25).

3. On May 15, 2001, Dr. Jacobs signed a Consent Agreement in *Department of Health v. Michael Bernard Jacobs, M.D.* (St. Ex. 2 at 5-12). The Consent Agreement was based on the February 13, 2001, Administrative Complaint. In a section of the Consent Agreement entitled "Stipulated Facts," it is noted that Dr. Jacobs neither admitted nor denied the allegations contained in the Administrative Complaint. Moreover, there are no Stipulations of Fact or Conclusions of Law specifically finding the allegations to be true. (St. Ex. 2 at 6).

Nevertheless, in the Stipulated Facts section, the Consent Agreement provides as follows:

> [Dr. Jacobs] acknowledges the following corrections to the Administrative Complaint:
>
> (a) Paragraphs 7 and 14 should be deleted because Respondent did not prescribe Stadol to the patient on or about September 12, 1992, or on or about October 28, 1996.
>
> (b) Paragraphs 15, 16, 23(A), and 25(A) should be amended to note Respondent documented in the patient's medical records the fact that he discussed a referral to a neurologist with the patient on December 19, 1995, January 4, 1996, January 24, 1996, and January 29, 1996.

(St. Ex. 2 at 6).

The Consent Agreement required Dr. Jacobs to complete a University of South Florida course entitled "Clinical, Legal, and Ethical Issues in Prescribing Abusable Drugs" prior to his recommencement of practice in the State of Florida. The Consent Agreement also required Dr. Jacobs to complete four hours of Category I Continuing Medical Education in the area of managing and diagnosing the causes of headaches. Finally, the Consent Agreement imposed an administrative fine in the amount of $5,000.00, and required

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Dr. Jacobs to reimburse administrative costs incurred in the investigation and preparation of the case in the amount of $2,622.76. (St. Ex. 2 at 7-9).

4. On August 4, 2001, the Florida Board of Medicine met to consider the Consent Agreement in *Department of Health v. Michael Bernard Jacobs, M.D.* On September 6, 2001, the Florida Board of Medicine filed a Final Order approving and adopting the Consent Agreement. (St. Ex. 2 at 3-4; Resp. Ex. B).

5. In a letter dated March 18, 2002, a compliance officer with the Florida Board of Medicine provided Dr. Jacobs with "a summary of the current status of [his] compliance with the requirements imposed by the [Florida Board of Medicine's] Final Order." The letter noted that Dr. Jacobs had paid the fine and costs, and that Dr. Jacobs had completed the four hours of Category I Continuing Medical Education in the area of managing and diagnosing the causes of headaches.

   Finally, the letter noted that Dr. Jacobs would be required to complete the prescribing course prior to being allowed to resume the practice of medicine in the State of Florida. Nevertheless, the letter further noted that that obligation "should not impact" Dr. Jacobs since Dr. Jacobs had no intention of returning to practice in Florida. (Resp. Ex. C).

6. In a written statement to the Board, Dr. Jacobs advised, in part, as follows:

   > As soon as I realized that the patient was altering my prescriptions to obtain additional medication I terminated the physician-patient relationship. Prior to realizing that the patient was altering my prescriptions and abusing the pain medicine I had prescribed, I had counseled the patient regarding the addictive nature of pain medication and documented those sessions.

   (Resp. Ex. D). Dr. Jacobs also noted that he had never had any actions against his license in the past, and that he prides himself "on being extremely conscientious regarding the care [he] provide[s] to [his] patients." (Resp. Ex. D).

FINDINGS OF FACT

On September 6, 2001, the Florida Board of Medicine issued a Final Order pertaining to Michael B. Jacobs, M.D. The Final Order approved and adopted a Consent Agreement between Dr. Jacobs and the Florida Board of Medicine. In the Consent Agreement, the Florida Board of Medicine and Dr. Jacobs agreed that Dr. Jacobs would not be permitted to resume the practice of medicine in Florida until he had completed a course entitled "Clinical, Legal, and Ethical Issues in Prescribing Abusable Drugs." The Consent Agreement also required that Dr. Jacobs pay an administrative fine in the amount of $5,000.00, and administrative costs of $2,622.76. In addition,

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the Consent Agreement required that Dr. Jacobs complete four hours of Category I Continuing Medical Education in the area of managing and diagnosing the causes of headaches.

LEGAL ARGUMENT

At hearing, Counsel for Dr. Jacobs argued that, in approving the Consent Agreement signed by Dr. Jacobs, the Florida Board of Medicine had intended to enter an order "that would have no impact whatsoever on Dr. Jacobs". This argument is not supported by the record. The penalties imposed by the Florida Board of Medicine include a prohibition against practicing medicine in the State of Florida until Dr. Jacobs completes a course on prescribing, a requirement that Dr. Jacobs complete Continuing Medical Education, and requirements that Dr. Jacobs pay over $7,600.00 in fines and administrative costs. Accordingly, the argument of Dr. Jacobs' counsel is not persuasive. (Hearing Transcript at 5-6, 12-13).

Counsel for Dr. Jacobs also argued that the Florida Board of Medicine's action against Dr. Jacobs is not actionable by this Board. Counsel for Dr. Jacobs supported his argument by stating that Section 4731.22(B)(22), Ohio Revised Code, provides that the Board may act based on the action of another state only when the other state imposes one or more of the following penalties:

> the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand.

R.C. 4731.22(B)(22). Counsel for Dr. Jacobs further argued that the penalties imposed by the Florida Board of Medicine were of "obligation" rather than limitation. Therefore, the action of the Florida Board of Medicine is not actionable under Section 4731.22(B)(22), Ohio Revised Code, because the penalties imposed by the Florida Board of Medicine are not included in the actionable penalties listed in that statute. (Hearing Transcript at 5-6, 12-13; Resp. Ex. A).

Nevertheless, the Final Order of the Florida Board of Medicine provides that Dr. Jacobs may not resume the practice of medicine in the State of Florida unless he first completes a course entitled Clinical, Legal & Ethical Issues in Prescribing Abusable Drugs. The penalty is, at least, a limitation on Dr. Jacobs' license to practice in that state, and might even be considered by some to constitute a suspension of his license. Accordingly, the Respondent's argument is not persuasive.

CONCLUSIONS OF LAW

The Florida Board of Medicine's Final Order in the matter of Michael B. Jacobs, M.D., as set forth in the Findings of Fact, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and

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surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

PROPOSED ORDER

It is hereby ORDERED that:

A. **SUSPENSION OF CERTIFICATE**: The certificate of Michael B. Jacobs, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time.

B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Dr. Jacobs's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration**: Dr. Jacobs shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.

2. **Controlled Substances Prescribing Course**: At the time he submits his application for reinstatement or restoration, Dr. Jacobs shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

3. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. Jacobs has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

C. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Dr. Jacobs shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Jacobs shall provide a copy of this Order to all

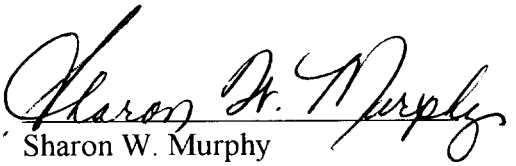
STATE MEDICAL BOARD
OF OHIO

2002 AUG -1 A 10: 34

employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

D. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, Dr. Jacobs shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Jacobs shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Jacobs shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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



Sharon W. Murphy
Attorney Hearing Examiner

State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 11, 2002

REPORTS AND RECOMMENDATIONS

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

Dr. Somani asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Cardiology, Inc.; Michael B. Jacobs, M.D.; Michael J. O'Brien, D.O.; Jessica A. Ross, M.D.; Laurece D. Sherman, C.T., M.T.; Henry C. Veldenz, M.D.; Jeffrey W. Winholt, M.D.; and the Franklin County Court of Common Pleas' July 16, 2002 Judgment Entry and Remand Order and the Board's Order of April 5, 2000 in the matter of Deleno H. Webb, III, M.D. A roll call was taken:

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

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye

Dr. Buchan	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Dr. Somani	- aye

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

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

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

.....

MICHAEL B. JACOBS, M.D.

Dr. Somani directed the Board's attention to the matter of Michael B. Jacobs, M.D. He advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

Dr. Somani advised that a Motion to Reopen the Hearing Record for the Admission of Additional Evidence was filed on behalf of Dr. Jacobs, but was not filed in a timely manner. In addition, the Assistant Attorney General has filed a Memorandum in Opposition to the Motion to Reopen the Record, citing the following bases: the motion was not filed in a timely manner; the proposed additional evidence is not newly discovered material evidence since it could have been discovered with reasonable diligence prior to hearing; and the additional evidence is not material evidence since it contains information that already exists in the hearing record. Dr.Somani asked whether there is a motion from the Board to reopen the record for the admission of additional evidence. There was not.

Dr. Somani continued that a request to address the Board has been timely filed on behalf of Dr. Jacobs. Five minutes would be allowed for that address.

Dr. Jacobs thanked the Board for the opportunity to present his case. He stated that he has strong Ohio roots. He went to high school, undergraduate school, and graduate school in Ohio. He got his M.D. degree at the Medical College of Ohio, and he did his internship and residency at the Medical College of Ohio.

He moved to Jacksonville, Florida in 1990, where he practiced internal medicine until December 1999, when he moved to Las Vegas, Nevada because he had an opportunity to do clinical research, medical school teaching and private practice.

Dr. Jacobs advised that he became aware in April 1999 that there was an investigation by the Florida Agency of Health Care Administration regarding care that he provided to a patient with chronic pain and chronic headaches. He responded with a letter refuting those allegations. Dr. Jacobs stated that this lady came to him in 1992, complaining of multiple pain complaints, including headaches. From 1992 to 1994 numerous therapies were attempted. It was in 1994 that Stadol was found to be effective for her headaches. Stadol at that time was not a controlled substance. He worked with the patient for the next year or so to try to get her to come down on the Stadol usage. They thought they were making progress. In 1996 it was found that a prescription he had written with four refills had been altered to show 24 refills. Reviewing other pharmacy records, he found other discrepancies. He terminated the patient/doctor relationship in May 1996. The patient filed a lawsuit against him in August 1998, which was subsequently dismissed.

Dr. Jacobs stated that he had not heard anything from the State of Florida until February 2001, after he'd already moved to Nevada. At that time he learned of an administrative complaint from Florida. Dr. Jacobs stated that, at this point, he will not argue the relative merits of the case, but had he been in Florida at the time, he would have participated vigorously in the formal hearing process. Since he was in Nevada with a busy new practice and had medical school commitments, it made it very difficult to go back to Florida to fight this case. His course of action at that time seemed to be appropriate. He negotiated a settlement to "make it go away." The fine and reimbursement costs were negotiated down, and the CME requirement for headache management was allowed as a retroactive course that he had previously taken. Also required was completion of a University of South Florida drug course, which is given once a year in Tampa, Florida. The requirement that the course be completed before returning to private practice in Florida was done as an accommodation to him because he never intended to return to Florida. He did not want some uncompleted requirement precluding his ability to practice elsewhere. Dr. Jacobs referred to the transcript of the August 4, 2001 Florida Board meeting, noting that the minutes illuminate Florida's intent on this issue. Also, the final order of the Florida Board emphasizes that these courses were CME in nature. This was neither a suspension nor a probation of his license. It was an accommodation because of the difficulty of fulfilling the CME obligation, which, according to Florida, had no substitute. Had he been practicing in Florida at that time, he would have been able to continue practicing and fulfill the CME obligation in a timely manner.

Dr. Jacobs stated that, ironically, what the Hearing Examiner finds objectionable was written in that way to try to accommodate him and his practice in Nevada. He thought that Florida was doing him a favor as they negotiated that finding. A suspension would mean a report to the National Practitioners Data Bank (NPDB). A reprimand requires his contacting every hospital at which he has privileges, health plans, and the state boards. Dr. Jacobs asked that the Board reflect on the true nature of what transpired in Florida and be proportionate in its findings as to the gravity of this case.

Dr. Somani asked whether the Assistant Attorney General wished to respond.

Ms. Albers stated that she believes the Hearing Examiner did an excellent job in setting forth the evidence that was submitted in this case. Despite what Dr. Jacobs says, he was required to complete the University of South Florida course entitled *Clinical, Legal and Ethical Issues in Prescribing Abusable Drugs* prior to his recommencement of practice in the State of Florida. He was also required to complete four hours of Category 1 C.M.E., he was fined $5,000 and he was required to pay $2,622.76 in administrative costs in the investigation of his case. This clearly is an action by the Florida Board. Ms. Albers concluded that the Hearing Examiner's Proposed Order is appropriate in this case.

MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MICHAEL B. JACOBS, M.D. DR. STEINBERGH SECONDED THE MOTION.

Dr. Somani stated that he would now entertain discussion in the above matter.

Dr. Talmage stated that the Proposed Order seems like a fairly harsh punishment for a single episode, unless this were shown to be the tip of the iceberg, and there is nothing that he's read to show that it is. This is one patient who had relief from an agent. The objection of no neurologic consult, no CT scan and that sort of thing sounds rather hollow to him. Dr. Talmage stated that if patients are medicated with something that's appropriate and are successful in getting rid of their headaches, then consults and scans are not always necessary. Dr. Talmage stated that it seems excessive to suspend Dr. Jacobs from practice. To require that he have the course dealing with prescribing of controlled substances does seem logical. Dr. Talmage stated that he's not quite sure how to accomplish that. He asked whether the Board could reprimand Dr. Jacobs and require him to complete a course.

Dr. Steinbergh stated that it could.

Dr. Talmage stated that that would be his suggestion. The Board should reprimand on the basis of one case and require that a course be taken, or stay a suspension and require the course to be taken within the next six months or the suspension will be activated.

Dr. Steinbergh stated that what Dr. Jacobs did in this particular case, and for which he was, in fact, given an action on his license, regardless of what he calls it, he couldn't practice in Florida until he accomplished those terms, he really overprescribed this particular product. Although Stadol was not listed as a controlled substance until October 1997, she believes that Dr. Jacobs recognized that Stadol did have a potential for abuse because he, in fact, stated in the record that he had "counseled the patient regarding the addictive nature of pain medication and documented those sessions." Dr. Steinbergh stated that she felt that the actions of the Florida Board were appropriate. Dr. Jacobs did not properly evaluate this patient for headaches; he treated the patient in an ongoing way that would clearly be addicting to this patient. Dr. Steinbergh stated that she has real concerns about that issue. Dr. Steinbergh noted that the Florida Board required Dr. Jacobs to do certain things or he couldn't practice. That, in fact, is an action on

Dr. Jacobs' license.

Dr. Steinbergh suggested that the Board reprimand Dr. Jacobs and require documentation that he has fulfilled his obligation to his Florida license and that he has an unencumbered license in Florida. Therefore, he would not be suspended. He would, in fact, be required to report to employers and hospitals, etc., because this is, in fact, an action on his Ohio license.

Mr. Dilling asked Dr. Steinbergh to clarify whether or not she is basing her opinions on the Ohio record or the Florida Order.

Dr. Steinbergh stated that she's basing her proposal on the Ohio hearing record.

Dr. Egner stated that she does believe that it is appropriate for Ohio to have looked into this physician's prescribing for this patient. She added that she believes that Dr. Jacobs does have an action on his Florida license. As far as the findings of fact go, the Board has Dr. Jacobs' statement from today, and also the statement that he has submitted.

Dr. Egner continued that, if she looks at what Dr. Jacobs did with this patient and asks whether it is appropriate prescribing, she would say that the answer is no. It was inappropriate prescribing for the patient. Dr. Jacobs stated that he dismissed the patient in May 1996, and then wrote prescriptions for the patient in October 1996. Dr. Egner stated that that was not appropriate care.

Dr. Bhati stated that when Dr. Jacobs went to Nevada, he didn't report on his C.V. that he has Florida and Ohio licenses.

Dr. Talmage stated that mention was made of prescribing after dismissing the patient, but the Ohio Report and Recommendation says that, as part of his consent agreement, Dr. Jacobs asked that that portion of his Florida record be deleted because he did not prescribe Stadol to the patient in October 1996. Part of his consent agreement stipulated that that charge would be removed.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF MICHAEL B. JACOBS, M.D., BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

A. **REPRIMAND:** It is hereby ORDERED that Michael B. Jacobs, M.D., be reprimanded.

B. **CONTROLLED SUBSTANCES PRESCRIBING COURSE**: Within six (6) months, Dr. Jacobs shall provide acceptable documentation of successful completion of the Florida course, *Clinical, Legal & Ethical Issues in Prescribing Abusable Drugs*, or a course dealing with the prescribing of controlled

substances. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

C. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Dr. Jacobs shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Jacobs shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

D. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, Dr. Jacobs shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Jacobs shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Jacobs shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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

DR. TALMAGE SECONDED THE MOTION.

Dr. Steinbergh asked what would happen if Dr. Jacobs did not complete an approved course in the six-month period.

Mr. Dilling stated that he would be in violation of the Board Order, and violating a Board Order is grounds for discipline.

Dr. Steinbergh stated that she wants to reiterate; when Dr. Jacobs started prescribing Stadol, even though it was not a controlled substance, the dangers of prescribing this drug were clear to prescribing physicians. Patients were becoming addicted. Dr. Jacobs, in fact, recognized that by stating in the record that he had counseled the patient regarding the addictive nature of pain medication. She stated that there is no doubt in

her mind that Dr. Jacobs needs a course on controlled substance prescribing.

A vote was taken on Dr. Steinbergh's motion to amend:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

DR. TALMAGE MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF MICHAEL B. JACOBS, M.D. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

State Medical Board of Ohio

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March 13, 2002

Michael B. Jacobs, M.D.
1645 Stonehill Road
Las Vegas, Nevada 89156

Dear Doctor Jacobs:

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

(1) On or about September 6, 2001, the Florida Board of Medicine (hereinafter the "Florida Board") filed a Final Order, which approved and adopted an incorporated Consent Agreement. The Consent Agreement required that you complete a course entitled Clinical, Legal & Ethical Issues in Prescribing Abusable Drugs prior to resuming the practice of medicine. The Consent Agreement also imposed an administrative fine in the amount of $5,000.00, a reimbursement of administrative costs of $2,622.76, and four (4) hours of Category I Continuing Medical Education in the area of managing and diagnosing the causes of headaches. Attached hereto and incorporated herein is a copy of the Florida Board Final Order, including the Administrative Complaint attached as Exhibit A.

The Florida Board Final Order, as alleged in paragraph one (1) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in R.C. 4731.22(B)(22).

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

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

Mailed 3.14.02

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 0258
RETURN RECEIPT REQUESTED

901 Rancho Lane, #205
Las Vegas, Nevada 89106

CERTIFIED MAIL # 7000 0600 0024 5140 0241
RETURN RECEIPT REQUESTED

24

Final Order No. DOH-01-1511-S -MQA
FILED DATE 9/6/01
Department of Health
By: [signature]
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

CASE NO.: 1999-52109
LICENSE NO.: ME0056736

MICHAEL BERNARD JACOBS, M.D.,

Respondent.

_____/

FINAL ORDER

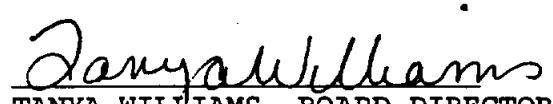
THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on August 4, 2001, in Tallahassee, Florida, for consideration of a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in the above-styled cause. Upon consideration of the Consent Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Consent Agreement as submitted be and is hereby approved and adopted in toto and incorporated by reference herein. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Consent Agreement.

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

DONE AND ORDERED this 29th day of August, 2001.

BOARD OF MEDICINE



TANYA WILLIAMS, BOARD DIRECTOR
For
GASTON ACOSTA-RUA, M.D.
CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Michael Bernard Jacobs, M.D., 1645 Stonehill Road, Las Vegas, Nevada 89156; to Charles T. Shad, Esquire, 1000 First Union Tower, 225 Water Street, Jacksonville, Florida 32202-4458; and by interoffice delivery to Nancy M. Snurkowski, Chief - Practitioner Regulation, and Simone Marstiller, Senior Attorney - Appeals, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, on or before 5:00 p.m., this _____ day of _____, 2001.

_____

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 1999-52109
DOAH Case No. 01-1297PL

MICHAEL BERNARD JACOBS, M.D.,

Respondent.

_____/

CONSENT AGREEMENT

Michael Bernard Jacobs, M.D. (Respondent) and the Department of Health (Department) stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine (Board) incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43 and Chapters 456 and 458, Florida Statutes. Pursuant to the provisions of Section 20.43(3)(g), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 0056736.

2. Respondent was charged by an Administrative Complaint filed by the Department and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

4. Petitioner acknowledges the following corrections to the Administrative Complaint:

(a) Paragraph 7 and 14 should be deleted because Respondent did not prescribe Stadol to the patient on or about September 12, 1992 or on or about October 28, 1996.

(b) Paragraphs 15, 16, 23(a) and 25(a) should be amended to note Respondent documented in the patient's medical records the fact that he discussed a referral to a neurologist with the patient on December 19, 1995, January 4, 1996, January 24, 1996 and January 29, 1996.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 456 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

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

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

STIPULATED DISPOSITION

1. FUTURE CONDUCT. Respondent shall not in the future violate Chapters 456, 458 or 893, Florida Statutes, or the rules promulgated thereunder. Prior to signing this agreement, Respondent read Chapters 456, 458, and 893, Florida Statutes, and the Rules of the Board of Medicine, at Section 64B-8, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of five thousand ($5,000.00) dollars against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within **one hundred eighty (180) days** of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND THE RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN 180 DAYS OF THE FILING OF THE FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE**

BOARD. (SEE EXHIBIT B, PARAGRAPH E OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS).

3. REIMBURSEMENT OF COSTS. In addition to the amount of any fine noted above, the Respondent agrees to reimburse the Department for any administrative costs incurred in the investigation and preparation of these cases, including costs assessed by the Division of Administrative Hearings, if applicable, and by the Board of Medicine office. The agreed upon Agency cost to be reimbursed in this case is two thousand six hundred twenty two dollars and seventy six cents ($2,622.76). The costs shall be paid by the Respondent to the Board of Medicine within **one hundred eighty (180) days** of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN 180 DAYS OF THE FILING OF THE FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B, PARAGRAPH E OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS).**

4. USF DRUG COURSE. The Respondent shall complete the University of South Florida drug course (Clinical, Legal & Ethical Issues in Prescribing Abusable Drugs) prior to practicing medicine again in the state of Florida.

5. CONTINUING MEDICAL EDUCATION. At the time this agreement is considered by the Board, Respondent shall demonstrate completion of four (4) hours of Category I Continuing Medical Education—in the area of managing and diagnosing the causes of headaches—during the one hundred eighty (180) days immediately preceding the date of the Board meeting. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board of the Chairman of the Probation Committee, the courses shall consist of a formal live lecture format.

6. STANDARD PROVISIONS. This Agreement shall be governed by the attached Exhibit B, "Standard Terms Applicable to Consent Agreements," which is incorporated as if fully set forth herein.

7. It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless a Final Order incorporating the terms of this Agreement is entered by the Board.

8. Respondent shall appear before the Board at the meeting of the Board where this Agreement is considered. Respondent, in conjunction with the consideration of this Agreement by the Board, shall respond to questions under oath from the Board, Board staff or Department staff. Respondent shall be prepared to explain the circumstances involved in this matter and what measures have been taken to prevent a

recurrence. However, Respondent shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law.

9. Should this Agreement be rejected, no statement made in furtherance of this Agreement by the Respondent may be used as direct evidence against the Respondent in any proceeding; however, such statements may be used by the Petitioner for impeachment purposes.

10. Respondent and the Department fully understand that this joint Agreement and subsequent Final Order incorporating it will in no way preclude additional proceedings by the Board and/or the Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

11. Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating this Agreement.

12. Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, each party will bear his own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this matter.

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

should this joint Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

SIGNED this 15 day of MAY, 2001.

Michael Bernard Jacobs, M.D.

STATE OF Nevada
COUNTY OF Clark

Before me, personally appeared Michael B. Jacobs, whose identity is known to me by personal (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 15 day of MAY, 2001.

Diane Mihalko
NOTARY PUBLIC

My Commission Expires:

DIANE MIHALKO
NOTARY PUBLIC - STATE OF NEVADA
APPOINTMENT NO. 01-67646-1
MY APPT. EXPIRES 03-15-2005

APPROVED this 15 day of MAY, 2001.

Robert G. Brooks, M.D.
Secretary, Department of Health

6/22/01

By: Nancy M. Snurkowski
Chief Attorney—Practitioner Regulation

DV/lrm

EXHIBIT B
STANDARD TERMS APPLICABLE TO CONSENT AGREEMENTS

The following are the standard terms applicable to all consent agreements, including supervision and monitoring provisions applicable to licensees on probation.

A. PAYMENT OF FINES. Unless otherwise directed by the Consent Agreement, all fines shall be paid by check or money order and sent to the Board address set forth in paragraph E, below. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

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

C. ADDRESSES. Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of those addresses. Furthermore, if the Respondent's license is on probation, the Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of medicine in Florida.

D. COSTS. Pursuant to Section 458.331(2), Florida Statutes, the Respondent shall pay all costs necessary to comply with the terms of this Consent Agreement. Such costs include, but are not limited to, the costs of preparation of Investigative Reports detailing compliance with the terms of the Consent Agreement,

obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative costs directly associated with Respondent's probation.

E. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines, reports, correspondence and inquiries shall be sent to: **Board of Medicine, Client Services Unit, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253, Attn: Medical Compliance Officer.**

F. PROBATION TERMS. If probation was imposed by the Final Order of the Board, the following provisions are applicable.

1. DEFINITIONS:

a. INDIRECT SUPERVISION is supervision by a monitoring physician (monitor), physicians assistant, respiratory care practitioner, as set forth in the Consent Agreement, whose responsibilities are set by the Board. Indirect supervision does not require that the monitor practice on the same premises as the Respondent, however, the monitor shall practice within a reasonable geographic proximity to Respondent, which shall be within 20 miles unless otherwise provided by the Board and shall be readily available for consultation. The monitor shall be Board-certified in the Respondent's specialty area unless otherwise provided by the Board.

b. DIRECT SUPERVISION is supervision by a supervising physician (supervisor), physicians assistant, respiratory care practitioner, as set forth in the Consent Agreement, whose responsibilities are set by the Board. Direct supervision requires that the supervisor and Respondent work in the same office. The supervisor

shall be board-certified in the Respondent's specialty area unless otherwise provided by the Board.

c. PROBATION COMMITTEE or "committee" are members of the Board of Medicine designated by the Chairman of the Board to serve as the Probation Committee.

2. REQUIRED SUPERVISION.

a. If the terms of the consent agreement include indirect monitoring of the licensee's practice (Monitoring) or direct monitoring of the licensees practice (Supervision), the Respondent shall not practice medicine without an approved monitor/supervisor, as specified by the Consent Agreement, unless otherwise ordered by the Board.

b. The monitor/supervisor must be a licensee under Chapter 458, Florida Statutes, in good standing and without restriction or limitation on his license. In addition, the Board or Committee may reject any proposed monitor/supervisor on the basis that he has previously been subject to any disciplinary action against his medical license in this or any other jurisdiction, is currently under investigation, or is the subject of a pending disciplinary action. The monitor/supervisor must be actively engaged in the same or similar specialty area unless otherwise provided by the Board or Committee and be practicing within a reasonable distance of the Respondent's practice, a distance of no more than twenty (20) miles unless otherwise specifically provided for in the consent agreement. The Board or Committee may also reject any proposed monitor/supervisor for good cause shown.

c. MECHANISM FOR APPROVAL OF MONITOR/SUPERVISOR:

(1) TEMPORARY APPROVAL. The Board confers authority on the Chairman of the Board's Probation Committee to temporarily approve Respondent's monitor/supervisor. To obtain this temporary approval, Respondent shall submit to the Chairman of the Probation Committee the name and curriculum vitae of the proposed monitor/supervisor at the time this agreement is considered by the Board. **Once a Final Order adopting this Agreement is filed, Respondent shall not practice medicine without an approved monitor/supervisor. Temporary approval shall only remain in effect until the next meeting of the Probation Committee.**

(2) FORMAL APPROVAL. Respondent shall have the monitor/supervisor with him at his first probation appearance before the Probation Committee. Prior to consideration of the monitor/supervisor by the Committee, the Respondent shall provide to the monitor/supervisor a copy of the Administrative Complaint and Final Order in this case. Respondent shall submit a current curriculum vitae and a description of current practice from the proposed monitor/supervisor to the Board office no later than fourteen days before the Respondent's first scheduled probation appearance. Respondent's monitor/supervisor shall also appear before the Probation Committee at such other times as directed by the Committee. It shall be Respondent's responsibility to ensure that the appearance of his monitor/supervisor as directed. Failure of the monitor/supervisor to appear as directed shall constitute a violation of the terms of this Stipulation and shall subject the Respondent to disciplinary action.

d. CHANGE IN MONITOR/SUPERVISOR. In the event that Respondent's monitor/supervisor is unable or unwilling to fulfill his responsibilities as a monitor/supervisor as described above, then the Respondent shall immediately advise the Board of this fact. Respondent shall immediately submit to the Chairman of the Board's Probation Committee the name of a temporary monitor/supervisor for consideration. Respondent shall not practice pending approval of this temporary monitor/supervisor by the Chairman of the Probation Committee. Furthermore, Respondent shall make arrangements with his temporary monitor/supervisor to appear before the Probation Committee at its next regularly scheduled meeting for consideration of the monitor/supervisor by the Committee. Respondent shall only practice under the auspices of the temporary monitor/supervisor (approved by the Chairman) until the next regularly scheduled meeting of the Probation Committee whereat the issue of the Committee's approval of the Respondent's new monitor/supervisor shall be addressed.

3. CONTINUITY OF PRACTICE

a. TOLLING PROVISIONS. In the event the Respondent leaves the State of Florida for a period of thirty days or more or otherwise does not or may not engage in the active practice of medicine in the State of Florida, then certain provisions of Respondent's probation (and only those provisions of the 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:

(1) The time period of probation shall be tolled.

(2) The provisions regarding supervision whether direct or indirect by the monitor/supervisor, and required reports from the monitor/supervisor shall be tolled.

(3) The provisions regarding preparation of investigative reports detailing compliance with this Stipulation shall be tolled.

(4) Any provisions regarding community service shall be tolled.

b. ACTIVE PRACTICE. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Probation Committee may require Respondent to appear before the Probation Committee and demonstrate his ability to practice medicine with skill and safety to patients prior to resuming the practice of medicine or respiratory therapy in this State.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH, PETITIONER, v. MICHAEL BERNARD JACOBS, M.D. RESPONDENT.	)	CASE NO. 1999-52109

ADMINISTRATIVE COMPLAINT

COMES NOW the Department of Health (Petitioner), and files this Administrative Complaint before the Board of Medicine (the Board) against Michael Bernard Jacobs, M.D. (Respondent), and alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine under to Section 20.43 and Chapters 456 and 458, Florida Statutes. Under Section 20.43(3)(g), Florida Statutes, Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

2. Respondent is and has been at all times material hereto a licensed physician in the state of Florida, having been issued license number ME 0056736. Respondent's last known address is 836 Prudential Drive, Suite 1400, Jacksonville, Florida 32207.

3. Respondent is board certified in internal medicine.

4. Butorphanol tartrate (brand name Stadol) is a legend drug as defined by Section 465.003(7), Florida Statutes (1995). Stadol is a narcotic analgesic used as a pain relief medication and can be administered intravenously, intermuscularly, or through nasal spray.

5. On or about August 31, 1992, Patient R.P., a thirty-five (35) year old female, presented to Respondent following a referral for chest pain, dyspepsia (upset stomach), and various aches and pains. Patient R.P. told Respondent she had a history of migrane headaches.

6. During the course of treatment of Patient R.P., Patient R.P. complained frequently of chronic headaches and Respondent prescribed Stadol for her to relieve the pain associated with these headaches.

7. On or about September 12, 1992, Respondent prescribed Stadol nasal spray #3 for Patient R.P., with six (6) refills.

8. In 1994, Respondent prescribed Stadol nasal spray #3 for Patient R.P. on or about the following dates: June 15 (no refill); September 7 (one (1) refill); September 21 (no refill); and October 6 (no refill).

9. In 1995, Respondent prescribed Stadol nasal spray #3 for Patient R.P. on or about the following dates: March 29 (two (2) refills); April 11 (no refill); April 28 (two (2) refills); May 4, 1995 (two (2) refills); May 17 (three (3) refills); May 31 (three (3) refills); July 10 (four (4) refills); September 6 (four (4) refills); September 18 (no refill);

October 3 (no refill); and October 9 (no refill, and later that day again with one (1) refill).

10. In 1996, Respondent prescribed Stadol nasal spray #3 for Patient R.P. on or about the following dates: unknown date in January 1996 (three (3) refills); March 13 (no refill); April 22 (four (4) refills); and May 14 (no refill).

11. On or about April 22, 1996, Patient R.P. altered Respondent's written prescription for Stadol nasal spray #3 from four (4) refills to twenty-four (24) refills.

12. After prescribing Stadol for Patient R.P. on or about May 14, 1996, Respondent learned Patient R.P. had altered her previous prescription. Respondent wrote a letter to Patient R.P. notifying her that Respondent would terminate further medical care for Patient R.P. based on the altered prescription. Mail records show this letter was not received by Patient R.P. until June 26, 1996.

13. On or about May 16, 1996 patient R.P. presented to Respondent and Respondent confronted her about the prescription alteration. Written medical records show Respondent told Patient R.P. that Respondent thought she needed help for possible addiction.

14. On or about October 28, 1996, Respondent again prescribed Stadol nasal spray #3 for Patient R.P. with one (1) refill.

15. During the course of treatment of Patient R.P., Respondent did not refer Patient R.P. to a neurologist for an evaluation to determine the cause of her chronic headaches.

16. Respondent did not document in the medical records of Patient R.P. a referral to a neurologist for an evaluation of her chronic headaches.

17. During the course of treatment of Patient R.P., Respondent did not order tests such as a computed axial tomography (CAT) scan of the brain, and/or a radiographic evaluation of Patient R.P.'s head and/or neck for the purpose of determining the cause of her chronic headaches.

18. Respondent did not document in the medical records of Patient R.P. an order for a CAT scan and/or radiographic evaluation of her head and/or neck for the purpose of determining the cause of her chronic headaches.

19. During the course of treatment of Patient R.P., Respondent did not diagnose the cause of Patient R.P.'s chronic headaches.

20. During the course of treatment of Patient R.P., Respondent did not document in Patient R.P.'s medical records a diagnosis for her chronic headaches.

21. The medical records maintained by Respondent for Patient R.P. contain no information such as a neurological or radiographic evaluation that would justify prescribing Stadol for a four-year period.

COUNT ONE

22. Petitioner realleges and incorporates paragraphs one (1) through twenty-one (21), as if fully set forth herein this Count One.

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

acceptable under similar conditions and circumstances, in that Respondent failed to do one or more of the following:

(a) refer Patient R.P. to a neurologist for an evaluation to determine the cause of Patient R.P.'s chronic headaches;

(b) order tests such as a CAT scan of Patient R.P.'s brain and/or a radiographic evaluation of Patient R.P.'s head and/or neck for the purpose of determining the cause of her chronic headaches; or

(c) Diagnose the cause of Patient R.P.'s chronic headaches.

24. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes, by committing gross or repeated malpractice or by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT TWO

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

26. Respondent failed to keep written medical records justifying the course of treatment of Patient R.P., in that Respondent failed to do one or more of the following:

(a) Document in Patient R.P.'s medical records a referral to a neurologist for an evaluation to determine the cause of her chronic headaches;

(b) Document in Patient R.P.'s medical records an order for a CAT scan and/or a radiographic evaluation of her head and/or neck for the purpose of determining the cause of her chronic headaches; or

(c) Document in Patient R.P.'s medical records a diagnosis for her chronic headaches.

27. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (1995), by 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.

COUNT THREE

28. Petitioner realleges and incorporates paragraphs one (1) through twenty-one (21), paragraph twenty-three (23), and paragraph twenty-six (26), as if fully set forth herein this Count Three.

29. Respondent prescribed a legend drug other than in the course of the physician's professional practice, in that Respondent prescribed Stadol to Patient R.P. in inappropriate and excessive numbers.

30. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes, by prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be

legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

WHEREFORE, Petitioner respectfully requests the Board enter an order imposing one or more of the following penalties: permanent revocation or suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, the assessment of costs related to the investigation and prosecution of this case as provided for in Section 456.072(4), Florida Statutes (2000), and/or any other relief the Board deems appropriate.

SIGNED this 13th day of February, 2001.

Robert G. Brooks, M.D., Secretary

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Vicki R. Kenon
DATE 2/14/01

Kathryn L. Kasprzak
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

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KLK/DV/csg
PCP: February 9, 2001
PCP Members: Ashkar, Leon, Rodriguez