STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

August 12, 1994

Ralph Albert Rophie, M.D.
450 Palm Island S.E.
Clearwater, FL 34630

Dear Doctor Rophie:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on August 10, 1994.

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.

Very truly yours,

Carla S. O'Day

Carla S. O'Day, M.D.
Secretary

CSO:em
Enclosures

CERTIFIED MAIL RECEIPT NO. P 741 123 674
RETURN RECEIPT REQUESTED

Mailed 8-12-94

GCU 23-S

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry, approved by the State Medical Board, meeting in regular session on August 10, 1994, constitute a true and complete copy of the Findings, Order and Journal Entry in the matter of Ralph Albert Rophie, 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)

Carla S. O'Day

Carla S. O'Day, M.D.
Secretary

8/10/94
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

RALPH ALBERT ROPHIE, M.D. *

FINDINGS, ORDER AND JOURNAL ENTRY

This matter came on for consideration after a citation letter was mailed to Ralph Albert Rophie, M.D., by the State Medical Board of Ohio on April 14, 1994.

By letter dated April 13, 1994, notice was given to Ralph Albert Rophie, M.D., that the State Medical Board intended to consider disciplinary action regarding his license to practice medicine and surgery in Ohio, and that he was entitled to a hearing if such hearing was requested within thirty (30) days of the mailing of said notice. In accordance with Section 119.09, Ohio Revised Code, said notice was sent via certified mail, return receipt requested, to the last known address of Ralph Albert Rophie, M.D., that being 450 Palm Island S.E., Clearwater, FL, 34630.

No response has been received from Dr. Rophie, and more than thirty days have now elapsed since the mailing of the aforesaid notice.

WHEREFORE, it is hereby ORDERED that for the reasons outlined in the April 13, 1994 letter of notice, which is attached hereto and incorporated herein, accordingly, the license of Ralph Albert Rophie, M.D., to practice medicine and surgery in Ohio be REVOKED.

This ORDER shall become effective IMMEDIATELY.

This ORDER is hereby entered upon the Journal of the State Medical Board of Ohio for the 10th day of August, 1994, and the original thereof shall be kept with said Journal.

Carla S. O'Day

Carla S. O'Day, M.D.
Secretary

(SEAL)

8/10/94
Date

AFFIDAVIT

I, Debra L. Jones, being duly cautioned and sworn, do hereby depose and say:

1) That I am employed by the State Medical Board of Ohio (hereinafter, "The Board");

2) That I serve the Board in the position of Chief, Continuing Medical Education, Records, and Renewal;

3) That in such position I am the responsible custodian of all public licensee records maintained by the Board pertaining to individuals who have received certificates issued pursuant to Chapter 4731., Ohio Revised Code;

4) That I have this day carefully examined the records of the Board pertaining to Ralph Albert Rophie, M.D.;

5) That based on such examination, I have found the last known address of record of Ralph Albert Rophie, M.D., to be:

450 Palm Island S.E.
Clearwater, FL 34630

6) Further, Affiant Sayeth Naught.

Debra L. Jones

Debra L. Jones, Chief
Continuing Medical Education,
Records and Renewal

Sworn to and signed before me, _____,
Notary Public, this _____ day of _____, 19__.

_____
Notary Public

LAUREN LUBOW, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

STATE MEDICAL BOARD OF OHIO

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

April 13, 1994

Ralph Albert Rophie, M.D.
450 Palm Island S.E.
Clearwater, FL 34630

Dear Doctor Rophie:

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 26, 1992, the Florida Board of Medicine issued a Final Order suspending your license to practice medicine in the State of Florida, staying said suspension, and placing your license on probation for three years, subject to certain terms and conditions, for engaging in sexual misconduct in the practice of medicine. A copy of this Final Order is attached hereto and fully incorporated herein.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "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: Sections 4731.22(B)(6)(a) and 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II and IV of the American Medical Association's Principles of Medical Ethics.

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.

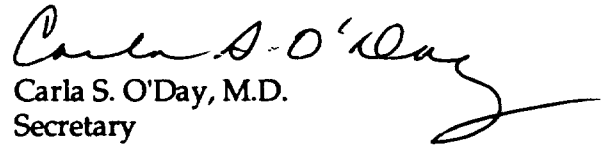
Mailed 4/14/94

April 13, 1994

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,



Carla S. O'Day, M.D.
Secretary

CSO:jmb

Enclosures:

CERTIFIED MAIL #P 348 885 290
RETURN RECEIPT REQUESTED

FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Lawton Chiles, *Governor* George Stuart, *Secretary*

CERTIFICATION

I, Brandon L. Moore, Deputy Agency Clerk and Custodian of Records, HEREBY certify the following to be true and correct as on file with the Florida Department of Business and Professional Regulation.

Attached is a true and correct copy of the Final Order and Recommended Order issued in case number 91-07703, as maintained by the Department of Business and Professional Regulation. The attached is a regularly received and retained record of the Florida Department of Business and Professional Regulation vs. Ralph A. Rophie, and is received and retained in the ordinary course of business of the Florida Department of Business and Professional Regulation;

As the Deputy Agency Clerk and Custodian of Records, I am the keeper of the seal and certify that the seal affixed to this document is the true seal for the Florida Department of Business and Professional Regulation.

Brandon L. Moore

Brandon L. Moore
Deputy Agency Clerk

DIVISION OF REGULATION
AGENCY CLERK
NORTHWOOD CENTRE • 1940 NORTH MONROE STREET • TALLAHASSEE, FLORIDA 32399-0782
Telephone (904) 921-0342 • Fax (904) 487-9622

Personally appeared before me, the undersigned authority, Brandon L. Moore, Department Deputy Agency Clerk and Custodian of Records, Department of Business and Professional Regulation, Division of Regulation, who being sworn, says that the fixed seal is the official seal of the Department of Business and Professional Regulation, a state agency.

Brandon L. Moore

Brandon L. Moore
Deputy Agency Clerk

STATE OF FLORIDA
COUNTY OF LEON

Before me, personally appeared, Brandon L. Moore, whose identity is personally known to me as Department Deputy Agency Clerk, and who, acknowledges that her signature appears above.

Sworn and Subscribed to, before me this 20th day of January, 1994.

Pamela F. Clayton
Notary Public-State of Florida

PAMELA F. CLAYTON
MY COMMISSION # CC291458 EXPIRES
June 2, 1997
BONDED THRU TROY FAIN INSURANCE, INC.

PAMELA F. CLAYTON
Type or Print Name

2

FILED
Department of Professional Regulation
AGENCY CLERK
CLERK D. Wilson
DATE 10-29-92

DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL REGULATION,

Petitioner,

-vs-

RALPH A. ROPHIE, M.D.,

Respondent.

DPR CASE NUMBER: 9107703
DOAH CASE NUMBER: 92-0025
LICENSE NUMBER: ME 0056805

FINAL ORDER

This cause came before the Board of Medicine (Board) pursuant to Section 120.57(1)(b)10, Florida Statutes, on October 2, 1992, in Miami, 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 Larry G. McPherson Jr., Chief Medical Attorney. Respondent was present and represented by Bruce Marger, 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.

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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

Respondent's exceptions to the Hearing Officer's use of testimony given by Daniel J. Sprehe, M.D. is REJECTED. The Hearing Officer accepted Dr. Sprehe's testimony at the formal hearing and Respondent failed to avail himself of the opportunity provided by the Hearing Officer to submit a post-hearing cross-examination of the witness.

Respondent's other two exceptions are related to the admissibility of evidence and testimony and are REJECTED. The Board adopts the rulings of the Hearing Officer on those matters.

PENALTY

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

IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent shall pay an administrative fine in the amount of $5,000.00 to the Board of Medicine, Department of Professional Regulation, within 30 days of the date this Final Order is filed.

2. Respondent's license to practice medicine in the State of Florida is SUSPENDED for a period of 2 years. Said suspension shall be stayed in lieu of a probationary period of three years. Upon successful completion of the three year probationary period the suspension shall be set aside.

3. 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 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.

b. 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, quarterly, and at such other times requested by the Committee. Respondent shall be noticed by Board staff of the date, time and place of the Board's Probation Committee meeting whereat Respondent's appearance is required. Failure of the Respondent to appear as requested or directed shall be considered a violation of the terms of this Order, and shall subject the Respondent to disciplinary action.

c. 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 the State of 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.

d. 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 the probation shall be tolled:

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

(2) The provisions regarding supervision whether direct or indirect by another physician, included in paragraphs f. through h. below

(3) The provisions regarding preparation of investigative reports detailing compliance with this Order. See paragraph o. below.

e. 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 in this State.

f. Respondent shall not practice except under the indirect supervision of a physician fully licensed under Chapter 458 who has been approved by the Board or its Probation Committee.

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Absent provision for and compliance with the terms regarding temporary approval of a monitoring physician, as provided below, Respondent shall cease practice and not practice until the Probation Committee or the Board approves a monitoring physician. Respondent shall have the monitoring physician with Respondent at the first probation appearance before the Probation Committee. Prior to approval of the monitoring physician by the Committee, the Respondent shall provide to the monitoring physician a copy of the Administrative Complaint and Final Order filed in this case. Failure of the Respondent or the monitoring physician to appear at the scheduled Probation Committee meeting shall constitute a violation of this Order. Prior to the approval of the monitoring physician by the Committee, Respondent shall submit to the Committee a current curriculum vitae and a description of the current practice from the proposed monitoring physician. Said materials shall be received by the Board office no later than fourteen days before Respondent's first scheduled probation appearance. The attached definition of a monitoring physician is incorporated herein. The responsibilities of the monitoring physician shall include:

(1) Submit quarterly reports, in affidavit form, which shall include:

a. Brief statement of why physician is on probation.
b. Description of probationer's practice.
c. Brief statement of probationer's compliance with terms of probation.
d. Brief description of probationer's relationship with monitoring physician.
e. Detail any problems which may have arisen with probationer.

Respondent shall be responsible for ensuring that the monitoring physician submits the required reports.

(2) Be available for consultation with Respondent whenever necessary, at a frequency of at least once per week.

(3) Review 25% percent of Respondent's patient records selected on a random basis at least once every month/two weeks. In order to comply with this responsibility of random review, the monitoring physician shall go to Respondent's office once every month/two weeks. At that time, the monitoring physician shall be responsible for making the random selection of the records to be reviewed by the monitoring physician.

(4) Report to the Board any violations by the probationer of Chapter 455 and 458, Florida Statutes, and the rules promulgated pursuant thereto.

g. The Board shall confer authority on the Chairman of the Board's Probation Committee to <u>temporarily</u> approve Respondent's supervisory/monitoring physician. In order to obtain this temporary approval, Respondent shall submit to the Chairman of the Probation Committee the name and curriculum vitae of the proposed supervisory/monitoring physician. This information shall be furnished to the Chairman of the Probationer's Committee by way of the Board of Medicine's Executive Director, within 48 hours after Respondent receives the Final Order in this matter. This information may be faxed to the Board of Medicine at (904) 487-9622 or may be sent by overnight mail or hand delivery to the Board of Medicine at the Department of Professional Regulation, 1940 North Monroe Street, Suite 60, Tallahassee, Florida 32399-0750. In order to provide time for Respondent's proposed supervisory/monitoring physician to be approved or disapproved by the Chairman of the Probation Committee, Respondent shall be allowed to practice medicine while approval is being sought, but

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only for a period of five working days after Respondent receives the Order. If Respondent's supervisory/monitoring physician has not been approved during that time frame, then Respondent shall cease practicing until such time as the supervisory/monitoring physician is temporarily approved. In the event that the proposed supervisory/monitoring physician is not approved, then Respondent shall cease practicing immediately. Should Respondent's supervisory/monitoring physician be approved, said approval shall only remain in effect until the next meeting of the Board or the Probation Committee. Absent said approval, Respondent shall not practice medicine until a monitoring/supervising physician is approved.

h. In view of the need for ongoing and continuous monitoring or supervision, Respondent shall also submit the curriculum vitae and name of an alternate supervisory/monitoring physician to be approved by the Board or its Probation Committee. Such physician shall be licensed pursuant to Chapter 458, Florida Statutes, and shall have the same duties and responsibilities as specified for Respondent's monitoring/supervising physician, during those periods of time when Respondent's monitoring/supervisory physician is temporarily unable to provide supervision. Prior to practicing under the indirect supervision of the alternate monitoring physician or the direct supervision of the alternate supervisory physician, Respondent shall so advise the Board in writing. Respondent shall further advise the Board in writing of the period of time during which Respondent shall practice under the supervision of the alternate

monitoring/supervisory physician. Respondent shall not practice unless he is under the supervision of either the approved monitoring/supervisory physician or the approved alternate.

i. 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/supervisory physician.
(6) Advise Board of any problems.

j. Respondent shall attend 20 hours of Category I Continuing Medical Education courses per year in the areas of medical ethics and risk management. Respondent shall submit a written plan to the Chairman of the Probation Committee for approval prior to completion of said courses. The Board confers authority on the Chairman of the Probation Committee to approve or disapprove said continuing education courses. In addition, Respondent shall submit documentation of these continuing medical education courses in his quarterly/semiannual reports. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board or the Chairman of the Probation Committee, said continuing education courses shall consist of a formal live lecture format.

k. Respondent shall see a psychiatrist approved by the Board or Probation Committee in accordance with requirements set forth by the Physicians' Recovery Network (PRN) for evaluations and treatment.

l. Respondent shall participate and comply with the Physicians' Recovery Network. Respondent shall enter into an after care contract with the Physicians' Recovery Network and shall cause the medical director of the Network to send the Board a copy of that after care contract. Respondent shall comply with all of the conditions of his after care contract with the Florida Medical Foundation's Physicians' Recovery Network. Respondent shall execute a release for the Physicians' Recovery Network to authorize the Network to release information and medical records (including psychiatric records and records relating to treatment for drug dependence and alcoholism) to the Board as needed to monitor the progress of Respondent in the Network's program. Respondent shall cause the director of the Physicians' Recovery Network to report to the Board any problems that may occur with Respondent and any violations of Chapter 458, Florida Statutes, that occur. Respondent shall cause the director to make such a report within 30 days of the occurrence of any problems, or violations of chapter 458, Florida Statutes.

m. Respondent shall not examine or treat any female patients without a female employee who is a health care professional licensed by the Department of Professional Regulation present in the room.

n. During the next 36 months Respondent shall perform 120 hours of community service at a rate of 40 hours per year. Community service shall consist of the delivery of medical services directly to patients without fee or cost to the patient for the good of the people of the State of Florida. Such

community service shall be performed for the County Health Department in the county where Respondent practices.

o. 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.

p. Respondent shall pay all costs necessary to comply with the terms of the 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 Order, the cost of analysis of any blood or urine specimens submitted pursuant to the Order entered as a result of this proceeding, and administrative costs directly associated with Respondent's probation. See Section 458.331(2), Florida Statutes. Within the first year of his probation, Respondent shall read the book Sexual Boundaries by Peter Rutter and submit an affidavit to the Board's Probation Committee stating that he has read the book.

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

DONE AND ORDERED this 26th day of October, 1992.

BOARD OF MEDICINE

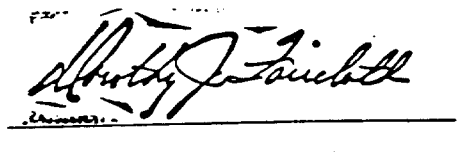
ZACHARIAH P. ZACHARIAH, M.D.
CHAIRMAN

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 Ralph A. Rophie, M.D., 1106 Druid Road, Suite 101, Clearwater, Florida 34616-3800 and Bruce Marger, Esquire, 360 Central Avenue, Suite 1500, Post Office Box 3542, St. Petersburg, Florida 33731-3542, by U.S. Mail to K. N. Ayers, Hearing Officer, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550; and by interoffice delivery to Larry G. McPherson, Jr., Chief Medical Attorney, Department of Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-0792 at or before 5:00 P.M., this 29th day of October, 1992



OctOrders/Rophie

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL REGULATION, BOARD OF MEDICINE, Petitioner, vs. RALPH ALBERT ROPHIE, Respondent.	)	CASE NO. 92-0025

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, K. N. Ayers, held a formal hearing in the above-styled case on June 5, 1992, at Clearwater, Florida.

APPEARANCES

For Petitioner: Arthur B. Skafidas, Esquire
Department of Professional Regulation
1940 North Monroe Street
Northwood Centre, Suite 60
Tallahassee, Florida 32399-0792

For Respondent: Bruce Marger, Esquire
Audrey Rauchway, Esquire
P.O. Box 3452
St. Petersburg, Florida 33731-3452

STATEMENT OF THE ISSUES

Whether Respondent exercised influence within the physician-patient relationship for purposes of engaging the patient in sexual activity thereby violating provisions of Chapter 458, Florida Statutes.

PRELIMINARY STATEMENT

By Administrative Complaint filed December 2, 1991, the Department of Professional Regulation, Petitioner, seeks to revoke, suspend, or otherwise discipline the license of Ralph Albert Rophie, Respondent, as a medical doctor. As grounds therefore it is alleged that on or about January 24, 1991 and February 4, 1991 Respondent engaged in sexual intercourse with Patient #1 in Respondent's home and thereby committed sexual misconduct in the practice of medicine in violation of Section 458.329 and 458.331(1)(j) and (x), Florida Statutes. Respondent requested an administrative hearing to challenge these charges, and these proceedings followed.

At the hearing Petitioner called 3 witnesses. Respondent called 5 witnesses, including himself, and 13 exhibits were offered into evidence. All were admitted except Exhibit 12 to which objection was sustained.

Proposed findings have been submitted by the parties. Treatment accorded those proposed findings is contained in the Appendix attached hereto and made a part hereof. Having fully considered all evidence presented I submit the following.

FINDINGS OF FACT

1. At all time relevant hereto Ralph A. Rophie, Respondent, was licensed as a medical doctor by the Florida Board of Medicine, having been issued license #ME0056805, pursuant to Chapter 20.30, Florida Statutes.

2. The Department of Professional Regulation is the state agency charged with the duty of investigating complaints

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and preferring charges, if indicated, against licensees coming under the aegis of the Department of Professional Regulation.

3. From on or about March 30, 1990 until on or about May 28, 1991 Respondent rendered medical services to Patient #1 (hereafter referred to as Patient) and had a patient-physician relationship with her.

4. On or about January 24, 1991 and February 4, 1991 Respondent engaged in sexual intercourse with Patient at Respondent's home.

5. Prior to becoming a patient of Respondent, Patient was a patient of Dr. Greengold another family practitioner who shared offices with Respondent. During Dr. Greengold's absence Patient saw Respondent, who was filling in for Dr. Greengold, and thereafter she requested her records be transferred to Respondent.

6. Patient found Respondent to be a caring physician with whom she was comfortable and pleased with his treatment as her physician. At the time she changed her records to Respondent Patient was pregnant with her second child and saw Respondent for non-pregnancy related illnesses such as flu, tonsillitis, back problems and urinary tract infections.

7. During this time Patient was having marital problems which she mentioned to Respondent. On subsequent visits Respondent asked her about her marital problems and offered support to her.

8. Patient recommended her parents, her in-laws and several friends to become patients of Respondent. Both of her

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parents and in-laws became patients of Respondent and remained patients of Respondent after the complaint herein involved was filed. Patient's father died during this period but her mother remained a patient of Respondent until she was told Respondent had impregnated Patient and suggested Patient abort. Patient miscarried the fetus. The parents of Patient's husband remain patients of Respondent.

9. When Patient gave birth to her second child Respondent visited Patient (as a friend and not as her physician) while making his rounds at Morton Plant Hospital.

10. Following the birth of this child in November, 1990 Patient saw Respondent numerous times and, although the baby was under the care of a pediatrician, in December, 1990 the baby appeared quite ill and she took the baby to Respondent who determined the baby was febrile. He contacted her pediatrician and had him meet Patient with the baby at the emergency room at the hospital.

11. In late December, 1990 Patient was suffering post partum abdominal pains and was seen by Respondent for this malady. Respondent conducted an abdominal examination by partially undressing Patient without a nurse present. Patient thought this procedure unusual but, having complete confidence in Respondent, gave it little further thought.

12. During an office visit in January, 1991 Respondent kissed and caressed Patient. He also inquired into her marital problems in a manner sympathetic to Patient by expressing unhappiness with the lack of communication between her

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and her husband which appeared to be the primary problem. At the time Patient was contemplating divorce and discussed this with Respondent.

13. Patient is a very competitive person who is successful in selling organs to churches and other organizations and in playing the organ professionally. She works at a pace which puts her under considerable stress causing some emotional problems. This no doubt led to her reliance on Respondent for consolation and to her falling in love with him.

14. Although Respondent contends Patient descended on him unexpectedly on January 24, 1991, Patient's testimony that he had caressed and kissed her during an office visit on January 23, 1992 and telephoned her on January 24 to invite her to his home is deemed more credible. When she called him on her car phone after finishing choir practice January 24 he readily provided his home address. At this time Respondent was a bachelor and lived alone. Shortly after Patient arrived at his home Respondent led her into his bedroom where they engaged in sexual intercourse.

15. Patient next visited Respondent's office on January 30, 1991 for a follow-up visit for a urinary tract infection. During this visit Respondent expressed his affection for her.

16. Patient's next visit to Respondent's office was February 4, 1991. During this visit Respondent put his hand under Patient's shirt and kissed her. Thinking Respondent was attempting to engage her in sex in the office Patient said they should keep that out of the office. Respondent told her he

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wanted to see her again and that evening, February 4, 1991, Patient again came to Respondent's home and they engaged in sex.

17. Shortly after this incident, Respondent told Patient that they had no future together because of their religious differences. Yet during her office visits in subsequent months Respondent continued to evince an interest in having sex with Patient.

18. Patient wrote Respondent letters on November 8, 1990 (which accompanied a gift for his new office) and on March 4, 1991 (Exhibit 6), and April 5, 1991 (Exhibit 7) in which she expressed her love for him and her willingness to fight for his love. On October 7, 1991 (Exhibit 9) Patient again wrote a letter to Respondent expressing her disappointment that they had not been able to establish a solid relationship and of her hurt when, around March, 1991, while she was carrying his child he poked her belly with his pen and said "get rid of it." Patient subsequently had a miscarriage which she referred to in this letter.

18. Respondent admitted the sexual intercourse with Patient, but contended that she is the one who initiated the sex. He testified that, although he realized physicians should not engage in sexual intercourse with ongoing patients in the office he thought that such conduct outside the office was not necessarily wrong, depending on the circumstances.

19. Respondent has been practicing medicine for approximately three years, is board certified in family practice, is well liked by his patients, and is well respected by his

colleagues as demonstrated by his election to several hospital committees and as an officer on the board in family practice.

CONCLUSIONS OF LAW

The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

Section 458.331(1), Florida Statutes, provides in pertinent part:

> (1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:
>
> * * *
>
> (j) Exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his physician.
>
> * * *
>
> (x) Violating any provision of this chapter... .

Section 458.329, Florida Statutes, provides:

> The physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine means violation of the physician-patient relationship through which the physician uses said relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

In determining the effect to be given the statutory presumption cited above, the Florida Evidence Code is applicable. Section 90.301(2), Florida Statutes provides:

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> Except for presumptions that are conclusive under the law from which they arise, a presumption is rebuttable.

Since the statute does not make the presumption that a patient is incapable of giving informed consent conclusive, the presumption is rebuttal. Rebuttal presumptions are classified in Section 90.302 as either:

> (1) A presumption affecting the burden of producing evidence and requiring the trier of fact to assume the existence of the presumed fact, unless credible evidence sufficient to sustain a finding of nonexistence of the presumed fact is introduced, in which event, the existence or nonexistence of the presumed fact shall be determined from the evidence without regard to the presumption, or
>
> (2) A presumption affecting the burden of proof that imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact.

Section 90.303, provides:

> In a civil action or proceeding, unless otherwise provided by statute a presumption established primarily to facilitate the determination of the particular action in which the presumption is applied, rather than to implement public policy, is a presumption affecting the burden of producing evidence.

Section 90.304, provides:

> In civil actions, all rebuttal presumptions which are not defined in s. 90.303 are presumptions affecting the burden of proof.

The statutory presumption contained in s. 458.331(1)(j) involves a public policy further expressed in s. 458.329 above quoted and, therefore, is the type of presumption described in s. 90.304, viz., a statutory presumption affecting the burden of proof. As stated in the court in <u>Department of Agriculture and Consumer Services v. Bonnano</u>, 568 So.2d 24, 31 (Fla. 1990):

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> When a presumption shifts the burden of proof, the presumption remains in effect even after evidence rebutting the presumption has been introduced and the jury must decide if the evidence is sufficient to overcome the presumption. (citation omitted.) Presumptions which shift the burden of proof in civil proceedings are primarily expressions of public policy.

In Bonnano the court cited with approved Caldwell v. Division of Retirement, 372 So.2d 438 (Fla. 1979), which involved a statutory presumption that the disability occasioned to a firefighter, who suffered a heartattack while on duty, was incurred in the line of duty. In Caldwell the court stated at 372 So.2d 441:

> The statutory presumption is the expression of a strong public policy which does not vanish when the other party submits evidence. Where the evidence is conflicting, the quantum of proof is balanced and the presumption should prevail. This does not foreclose the employer from overcoming the presumption. However, if there is evidence supporting the presumption the employer can overcome the presumption only by clear and convincing evidence.

From the evidence presented it is clear that Respondent developed and encouraged a relationship with Patient both personal and intimate. By encouraging Patient to discuss her marital problems and supporting her position, further dependence upon the physician was fostered. Hugging and caressing Patient in the office setting encouraged Patient to fall in love with the physician and seek a permanent relationship.

Following the January 24 sexual episode when the patient next returned for an office visit Respondent continued sexual advances in the office. Although Respondent denies any

intimate contact with Patient in the office the testimony of Patient is deemed more credible in this regard.

In these proceedings, Petitioner has the burden of proving the allegations by clear and convincing evidence. Ferris v. Turlington, 510 So.2d 292 (Fla. 1987). Petitioner has met this burden.

Petitioner's expert witness, a forensic psychiatrist, opined that, other than by being raped, a physician could never have sexual relations with a patient without committing sexual misconduct as defined in s. 458.329. While I do not subscribe to this position insofar as it creates an irrebuttable presumption of sexual misconduct, this testimony is further evidence of the strong public policy behind such proscription.

Respondent contends that Patient was the moving force and instigator of the sexual activities in which he participated. While the fact that Respondent is a professional with an apparent bright future which would make him a very eligible batchelor and matrimonially attractive, this fact does not rebut the evidence that Respondent encouraged Patient to "fall" for him. The evidence submitted by Respondent is insufficient to overcome the presumption of sexual misconduct presented through the testimony of Patient. From the foregoing, it is concluded that Respondent violated the provisions of Section 458.331(1)(j) and (x) as alleged.

Section 458.331(2) provides that if any person is found guilty of any of the grounds set forth in subsection (1) the board may revoke or suspend the license, restrict practice, issue

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a reprimand, and impose an administrative fine not to exceed $5,000 for each count or separate offense.

Disciplinary guidelines in Rule 21M-20.001, Florida Administrative Code, provide for violation of s. 458.331(1)(j) a recommended penalty of from one (1) year suspension to revocation and an administrative fine from $250 to $5,000.

Although Respondent was charged with violations of subsections of 458.331(1)(j) and (x) both of these violations were the result of the one act, viz. sexual intercourse with a patient. Accordingly, Respondent should receive punishment for only one violation and not two.

Based upon his age and single status at the time of the misconduct, his limited practice time, his reputation with his patients and with his peers, it is

RECOMMENDED that the Board of Medicine enter a Final Order finding Ralph Albert Rophie guilty of exercising influence within a physician/patient relationship for the purposes of engaging the patient in sexual activity; that his license to practice medicine in this state be suspended for period of two years; and that he be given an administrative fine of $5,000.

It is further RECOMMENDED that the suspension be stayed for a probationary period of three years under such terms and conditions as the Board deems appropriate; and, at the expiration of the 3-year probationary period, unless the stay is sooner vacated, the suspension be set aside and Respondent restored to good standing with the Florida Board of Medicine.

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DONE and ENTERED this 10th day of July, 1992, at Tallahassee, Florida.

K. N. AYERS
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of July, 1992.

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

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STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL REGULATION,

PETITIONER,

vs. CASE NO. 9107703

RALPH ALBERT ROPHIE, M.D.

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Professional Regulation, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against RALPH ALBERT ROPHIE, M.D., hereinafter referred to as "Respondent," and alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.30, Florida Statutes; Chapter 455, Florida Statutes; and Chapter 458, Florida Statutes.

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 0056805. Respondent's last known address is 1106 Druid Road, Suite 101, Clearwater, Florida, 34616-3800.

3. From on or about March 30,1990 until on or about May 28,1991, Respondent rendered medical services to Patient #1 and had a patient- physician relationship with her.

4. On or about January 24, 1991, Respondent engaged in sexual intercourse with Patient #1 in Respondent's home.

5. On or about February 4, 1990, Respondent engaged in sexual intercourse with Patient #1 for a second time in Respondent's home.

6. During the two aforementioned dates (January 24, 1990, and February 4, 1990), Respondent saw Patient #1 not for the purpose of conducting an examination of the patient, but for sexual activity outside the scope of generally accepted examination or treatment of the patient.

7. Section 453.329, Florida Statutes, defines sexual misconduct in the practice of medicine as the following: The physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine means violation of the physician-patient relationship through which the physician uses said relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

COUNT ONE

8. Petitioner realleges and incorporates paragraphs one (1) through seven (7) as fully set forth herein this Count One.

9. Respondent exercised influence within a patient-physician relationship for purposes of engaging Patient #1 in sexual activity.

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10. Based on the foregoing, Respondent violated Section 458.331 (1) (j), Florida Statutes, in that Respondent exercised influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A Patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his physician.

COUNT TWO

11. Petitioner realleges and incorporates paragraphs one (1) through seven (7) and nine (9) as fully set forth herein this Count Two.

12. Respondent violated a section of Chapter 458, Florida Statutes, when he engaged in sexual activity with Patient #1 and thereby engaged in sexual misconduct contrary to Section 458.329, Florida Statutes.

13. Based on the foregoing, Respondent violated Section 458.331 (1) (x), Florida Statutes, by violating any provision of this chapter, a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an Order imposing one or more of the following penalties: 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, and/or any other relief that the Board deems appropriate.

SIGNED this 30 day of November, 1991.

George Stuart, Secretary

Larry G. McPherson, Jr.
Chief Medical Attorney

FILED
Department of Professional Regulation
AGENCY CLERK

CLERK

DATE 12-2-91

COUNSEL FOR DEPARTMENT:

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CJR/tc
PCP: November 19, 1991
Ashkar, Skinner, and McEwen

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