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BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation filed)
Against:)

DAVID IRA MINKOFF, M.D.)
Certificate No. G-30196)

No: 16-2001-124882

Respondent)

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Division of Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on December 26, 2002

IT IS SO ORDERED November 26, 2002

By: _____


RONALD WENDER, M.D.

Chair - Panel B

Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 JANE ZACK SIMON, State Bar No. 116564
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5544
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7 **BEFORE THE**
8 **DIVISION OF MEDICAL QUALITY**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 16-2001-124882

13 **DAVID IRA MINKOFF, M.D.**
404 Edgewood Avenue
Clearwater, FL 33755

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Physician and Surgeon's Certificate
15 No. G30196

16 Respondent.
17
18

19 In the interest of a prompt and speedy settlement of this matter, consistent with
20 the public interest and the responsibility of the Division of Medical Quality, Medical Board of
21 California (the "Division"), the parties hereby agree to the following Stipulated Settlement and
22 Disciplinary Order which will be submitted to the Division for its approval and adoption as the
23 final disposition of the Accusation.

24 **PARTIES**

25 1. Ron Joseph ("complainant") is the Executive Director of the Medical
26 Board of California (the "Board"). He brought this action solely in his official capacity and is
27 represented in this matter by Bill Lockyer, Attorney General of the State of California, by Jane
28 Zack Simon, Deputy Attorney General.

1
2 9. The admissions made by respondent herein are only for the purposes of
3 this proceeding, or any other proceedings in which the Medical Board or other professional
4 licensing agency is involved, and shall not be admissible in any other criminal or civil
5 proceeding.

6 **CONTINGENCY**

7 10. This stipulation shall be subject to the approval of the Division.
8 Respondent understands and agrees that Board staff and counsel for complainant may
9 communicate directly with the Division regarding this stipulation and settlement, without notice
10 to or participation by respondent or his counsel. Respondent further agrees that he shall not be
11 entitled to view or copy any of the written communications with the Board referred to above. If
12 the Division fails to adopt this stipulation as its decision, the stipulation shall be of no force or
13 effect, it shall be inadmissible in any legal action between the parties, and the Division shall not
14 be disqualified from further action in this matter by virtue of its consideration of this stipulation.

15 11. The parties understand and agree that facsimile copies of this Stipulated
16 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
17 force and effect as the originals.

18 12. In consideration of the foregoing admissions and stipulations, the parties
19 agree that the Division may, without further notice or formal proceeding, issue and enter the
20 following Order:

21 **ORDER**

22 **IT IS HEREBY ORDERED** that Physician and Surgeon's Certificate No.
23 G30196 issued to Respondent, David Ira Minkoff, M.D. is revoked. However, the revocation is
24 stayed and Respondent is placed on probation for five (5) years on the following terms and
25 conditions.

26 Within 15 days after the effective date of this decision the respondent shall
27 provide the Division, or its designee, proof of service that respondent has served a true copy of
28 this decision on the Chief of Staff or the Chief Executive Officer at every hospital where

1 privileges or membership are extended to respondent or at any other facility where respondent
2 engages in the practice of medicine and on the Chief Executive Officer at every insurance carrier
3 where malpractice insurance coverage is extended to respondent.

4 1. **PRESCRIBING PRACTICES COURSE:** Within 60 days of the
5 effective date of this decision, respondent shall, at his own expense, enroll in the University of
6 California at San Diego Physician Assessment and Clinical Education Program ("PACE
7 Program") Physician Prescribing Course.

8 Respondent shall complete the PACE Program no later than six months after his
9 initial enrollment unless the Division or its designee agrees in writing to a later time for
10 completion.

11 If respondent successfully completes the Physician Prescribing Course, he will
12 have the Physician Prescribing Course representatives forward a Certification of Successful
13 Completion of the program to the Division or its designee.

14 2. **EDUCATION COURSE:** Within 90 days of the effective date of this
15 decision, respondent shall submit to the Division or its designee for its prior approval an
16 educational program or course in the area of medical records keeping and documentation.
17 Following the completion of the course, the Division or its designee may administer an
18 examination to test respondent's knowledge of the course. Respondent shall provide proof of
19 attendance to the Division or its designee.

20 3. **CONTROLLED DRUGS- MAINTAIN RECORD:** Respondent shall
21 maintain a record of all controlled substances prescribed, dispensed or administered by
22 Respondent during probation, showing all of the following: 1) the name and address of the
23 patient, 2) the date, 3) the character and quantity of the controlled substances involved, and 4) the
24 indications and diagnoses for which the controlled substance was furnished.

25 Respondent shall keep these records in a separate file or ledger, in chronological
26 order, and shall make them available for inspection and copying by the Division or its designee,
27 upon request. Respondent shall also make the drug log available to his practice monitor.

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1 4. **PRACTICE MONITOR:** Within thirty (30) days of the effective date
2 of this decision, respondent shall submit to the Division or its designee for its prior approval a
3 plan of practice in which respondent's practice shall be monitored by another physician in
4 respondent's field of practice, who shall provide periodic reports to the Division or its designee.
5 The practice monitor shall review respondent's controlled substance records as described in
6 paragraph 17 of this Stipulation, and shall include in his/her report to the Division a statement
7 whether respondent's prescribing appears to have been appropriate.

8 If the monitor resigns or is no longer available, respondent shall, within fifteen
9 (15) days, move to have new monitor appointed, through nomination by respondent and
10 approval by the Division or its designee. Respondent shall pay all costs associated with the
11 monitor.

12 5. **SUPERVISION OF PHYSICIAN ASSISTANTS** During probation,
13 respondent is prohibited from supervising physician assistants.

14 6. **OBEY ALL LAWS** Respondent shall obey all federal, state and local
15 laws, all rules governing the practice of medicine in California, and remain in full compliance
16 with any court ordered criminal probation, payments and other orders.

17 7. **QUARTERLY REPORTS** Respondent shall submit quarterly
18 declarations under penalty of perjury on forms provided by the Division, stating whether there
19 has been compliance with all the conditions of probation.

20 8. **PROBATION SURVEILLANCE PROGRAM COMPLIANCE**
21 Respondent shall comply with the Division's probation surveillance program. Respondent shall,
22 at all times, keep the Division informed of his business and residence addresses which shall both
23 serve as addresses of record. Changes of such addresses shall be immediately communicated in
24 writing to the Division. Under no circumstances shall a post office box serve as an address of
25 record, except as allowed by Business and Professions Code section 2021(b).

26 Respondent shall, at all times, maintain a current and renewed physician's and
27 surgeon's license.

28 Respondent shall also immediately inform the Division, in writing, of any travel

1 to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more
2 than thirty (30) days.

3 9. **INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS**
4 **DESIGNATED PHYSICIAN(S)** Respondent shall appear in person for interviews with the
5 Division, its designee or its designated physician(s) upon request at various intervals and with
6 reasonable notice.

7 10. **TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR**
8 **IN-STATE NON-PRACTICE** In the event respondent should leave California to reside or to
9 practice outside the State or for any reason should respondent stop practicing medicine in
10 California, respondent shall notify the Division or its designee in writing within ten (10) days of
11 the dates of departure and return or the dates of non-practice within California. Non-practice is
12 defined as any period of time exceeding thirty (30) days in which respondent is not engaging in
13 any activities defined in Sections 2051 and 2052 of the Business and Professions Code. All time
14 spent in an intensive training program approved by the Division or its designee shall be
15 considered as time spent in the practice of medicine. A Board-ordered suspension of practice
16 shall not be considered as a period of non-practice. Periods of temporary or permanent residence
17 or practice outside California or of non-practice within California, as defined in this condition,
18 will not apply to the reduction of the probationary order.

19 11. **COMPLETION OF PROBATION** Upon successful completion of
20 probation, respondent's certificate shall be fully restored.

21 12. **VIOLATION OF PROBATION** If respondent violates probation in any
22 respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke
23 probation and carry out the disciplinary order that was stayed. If an accusation or petition to
24 revoke probation is filed against respondent during probation, the Division shall have continuing
25 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
26 is final.

27 13. **COST RECOVERY** The respondent is hereby ordered to reimburse the
28 Division the amount of \$300.00 (three hundred dollars) within ninety (90) days of the effective

1 date of this decision for its investigative and prosecution costs. Failure to reimburse the
2 Division's cost of investigation and prosecution shall constitute a violation of the probation order,
3 unless the Division agrees in writing to payment by an installment plan because of financial
4 hardship. The filing of bankruptcy by the respondent shall not relieve the respondent of his
5 responsibility to reimburse the Division for its investigative and prosecution costs.

6 14. **PROBATION COSTS** Respondent shall pay the costs associated with
7 probation monitoring each and every year of probation, as designated by the Division, which are
8 currently set at \$2,488.00, but may be adjusted on an annual basis. Such costs shall be payable
9 to the Division of Medical Quality and delivered to the designated probation surveillance
10 monitor no later than January 31 of each calendar year. Failure to pay costs within 30 days of the
11 due date shall constitute a violation of probation.

12 15. **LICENSE SURRENDER** Following the effective date of this decision,
13 if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
14 the terms and conditions of probation, respondent may voluntarily tender his certificate to the
15 Board. The Division reserves the right to evaluate the respondent's request and to exercise its
16 discretion whether to grant the request, or to take any other action deemed appropriate and
17 reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent
18 will not longer be subject to the terms and conditions of probation.

19 **ACCEPTANCE**

20 I have carefully read the above Stipulated Settlement and Disciplinary Order and
21 have fully discussed it with my attorney, Michael A. O'Flaherty. I understand the stipulation and
22 the effect it will have on my Physician and Surgeon's Certificate. I enter into this Stipulated
23 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
24 bound by the Decision and Order of the Division of Medical Quality, Medical Board of
25 California.

26 ///

27 ///


28 ///

1 DATED: 31 OCT 2002

2
3 
4 **DAVID IRA MINKOFF, M.D.**
5 Respondent

6 I have read and fully discussed with Respondent David Ira Minkoff, M.D. the
7 terms and conditions and other matters contained in the above Stipulated Settlement and
8 Disciplinary Order. I approve its form and content.

9 DATED: 11-5-02

10
11 
12 **MICHAEL A. O'FLAHERTY**
13 Fonda & Fraser, LLP
14 Attorney for Respondent

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16 ///

17 ///

18 **ENDORSEMENT**

19 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
20 submitted for consideration by the Division of Medical Quality, Medical Board of California.

21 DATED: 11/6/02

22
23 **BILL LOCKYER, Attorney General**
24 of the State of California


25 
26 **JANE ZACK SIMON**
27 Deputy Attorney General
28 Attorneys for Complainant

EXHIBIT A

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 30 2002
BY: M. G. Smith ANALYST

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

Case No. 16-2001-124882

ACCUSATION

Respondent.

PARTIES

2. On or about July 11, 1975, Physician and Surgeon's Certificate No. G30196 was issued by the Board to David Ira Minkoff, M.D. (hereinafter "respondent"). Said certificate is current with an expiration date of June 30, 2002.

1.

JURISDICTION

1
2 - 3. This accusation is brought before the Division of Medical Quality of the
3 Medical Board of California, Department of Consumer Affairs (hereinafter the "Division"),
4 under the authority of the following sections of the California Business and Professions Code
5 (hereinafter "Code") and/or other relevant statutory enactment:

6 A. Section 2227 of the Code provides in part that the Board may revoke,
7 suspend for a period of not to exceed one year, or place on probation, the license of any
8 licensee who has been found guilty under the Medical Practice Act, and may recover the
9 costs of probation monitoring if probation is imposed.

10 B. Section 125.3 of the Code provides, in part, that the Board may request the
11 administrative law judge to direct any licentiate found to have committed a violation or
12 violations of the licensing act, to pay the Board a sum not to exceed the reasonable costs
13 of the investigation and enforcement of the case.

14 C. Section 2305 of the Code provides, in part, that the revocation, suspension, or
15 other discipline, restriction or limitation imposed by another state upon a license to
16 practice medicine issued by that state, that would have been grounds for discipline in
17 California under the Medical Practice Act, constitutes grounds for discipline for
18 unprofessional conduct.

19 D. Section 141 of the Code provides:

20 "(a) For any licensee holding a license issued by a board under the
21 jurisdiction of a department, a disciplinary action taken by another state, by any agency of
22 the federal government, or by another country for any act substantially related to the
23 practice regulated by the California license, may be ground for disciplinary action by the
24 respective state licensing board. A certified copy of the record of the disciplinary action
25 taken against the licensee by another state, an agency of the federal government, or by
26 another country shall be conclusive evidence of the events related therein.

27 "(b) Nothing in this section shall preclude a board from applying a specific

1 statutory provision in the licensing act administered by the board that provides for
2 discipline based upon a disciplinary action taken against the licensee by another state, an
3 agency of the federal government, or another country."

4 E. Section 14124.12(a) of the Welfare & Institutions Code provides in
5 pertinent part that upon written notice of the Medical Board of California a physician and
6 surgeon's medical license has been placed on probation as a result of a disciplinary action,
7 no Medi-Cal claim for the type of surgical service or invasive procedure giving rise to the
8 probationary order and performed on or after the effective date of said probationary order
9 or during the period of probation shall be reimbursed, except upon a prior determination
10 that compelling circumstances warrant the continuance of reimbursement during the
11 probationary period for procedures other than those giving rise to the probationary order.

12 4. Respondent is subject to discipline within the meaning of section 141 and is
13 guilty of unprofessional conduct within the meaning of section 2305 as more particularly set forth
14 hereinbelow.

15 **FIRST CAUSE FOR DISCIPLINE**

16 (Discipline, Restriction, or Limitation Imposed by Another State)

17 5. On or about September 5, 2001 the State of Florida Board of Medicine issued a
18 Final Order disciplining respondent's license to practice medicine in Florida. Respondent's
19 Florida medical license was suspended for one year, with the suspension stayed, and respondent
20 was placed on probation for 2 years subject to certain terms and conditions of probation. The
21 basis for the Florida Board of Medicine action was that on or about November, 20, 1995,
22 respondent, an emergency room physician, received a telephone call advising him that a patient
23 respondent had never seen was sleepless and in need of rest and needed medication. Respondent,
24 without seeing the patient or obtaining any medical history, telephoned in a prescription for ten
25 vials of liquid Valium. Several days later, on or about November 29, 1995, respondent received
26 another telephone call about the same patient, and he telephoned in another prescription, this time
27 for Chloral Hydrate, again without having seen the patient or obtained any medical history. On

1 December 5, 1995, respondent received a telephone call notifying him that the patient was ill and
2 required medical attention. Respondent directed the caller to take the patient to the nearest
3 emergency room. The patient died.

4 Attached as Exhibit A and incorporated by reference is a true and correct copy of
5 the Final Order of the State of Florida Board of Medicine in "Department of Health vs. David Ira
6 Minkoff, M.D."

7 6. The discipline imposed by the State of Florida Board of Medicine constitutes
8 a violation of section 141 and constitutes unprofessional conduct within the meaning of Code
9 section 2305.

10 **PRAYER**

11 **WHEREFORE**, the complainant requests that a hearing be held on the matters
12 herein alleged, and that following the hearing, the Division issue a decision:

- 13 1. Revoking or suspending Physician and Surgeon's Certificate Number
14 G30196, heretofore issued to respondent David Ira Minkoff, M.D.;
- 15 2. Revoking, suspending or denying approval of the respondent's authority to
16 supervise physician assistants, pursuant to Code section 3527;
- 17 3. Ordering respondent to pay the Division the actual and reasonable costs of
18 the investigation and enforcement of this case and to pay the costs of probation monitoring upon
19 order of the Division; and
- 20 4. Taking such other and further action as the Division deems necessary and
21 proper.

22 DATED: February 20, 2002

23 
24 RONALD JOSEPH
25 Executive Director
26 Medical Board of California
27 Department of Consumer Affairs
State of California

Complainant

Exhibit A

**STATE OF FLORIDA
BOARD OF MEDICINE**

Final Order No. DOH-01-1502-FOF-MOA

FILED DATE: 10/5/01

Department of Health

By: [Signature]
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 1997-15802

DOAH CASE NO.: 00-0023

LICENSE NO.: ME0056777

DAVID IRA MINKOFF, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on August 3, 2001, in Tallahassee, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Exceptions to the Recommended Order, and Response to Exceptions (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner was represented by Larry G. McPherson, Jr., Chief Attorney. Respondent was present and represented by Bruce D. Lamb, Esquire.

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.

RULINGS ON EXCEPTIONS

The Board reviewed and considered the exceptions filed by the Respondent and rejected the exceptions for the reasons set forth in the Petitioner's response.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.
2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
3. There is competent substantial evidence to support the conclusions of law.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent shall pay an administrative fine in the amount of \$10,000 to the Board.

2. Respondent's license to practice medicine in the State of Florida is hereby suspended for a period of one year.

3. Following the one year suspension set forth above, Respondent shall be placed on probation for a period of two (2) 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 456, 458, 893, Florida Statutes, and Rule 64B8, Florida Administrative Code.

b. Respondent shall appear before the Probationer's Committee at the first meeting after said probation commences, at the last meeting of the Probationer's 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 Probationer's Committee 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 probation, and shall subject the Respondent to disciplinary action.

c. In the event the Respondent leaves the State of Florida for a period of thirty 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 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.
- (3) The provisions preparation of investigative reports detailing compliance with this Stipulation.
- (4) The community service requirements detailed below.

e. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Probationer's Committee may require Respondent to appear before the Probationer's Committee and demonstrate the 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 direct supervision of a physician fully licensed under Chapter 458 who has been approved by the Probationer's Committee. The supervisory physician shall share offices with Respondent. Absent provision for

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

- (A) Submit quarterly reports, in affidavit form, which shall include:
 - (1) Brief statement of why physician is on probation.
 - (2) Description of probationer's practice.
 - (3) Brief statement of probationer's compliance with terms of probation.

- (4) Brief description of probationer's relationship with supervising physician.
- (5) Detail any problems which may have arisen with probationer.
- (B) Review 50 percent of Respondent's patient records selected on a random basis at least once every month.
- (C) Receive and review copies of all Schedule controlled substances in order to determine the appropriateness of Respondent's prescribing of controlled substances.
- (D) Report to the Board any violation by the probationer of Chapter 456 and 458, Florida Statutes, and the rules promulgated pursuant thereto.

g. The Board shall confer authority on the Chairperson of the Board's Probationer's Committee to temporarily approve Respondent's supervisory/monitoring physician. In order to obtain this temporary approval, Respondent shall submit to the Chairperson of the Probationer's Committee the name and curriculum vitae of the proposed supervising/monitoring physician. This information shall be furnished to the Chairperson 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 (850) 488-9325, or may be sent by overnight mail to the Board of Medicine, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253. In order to provide time for Respondent's proposed supervisory/monitoring physician to be

approved or disapproved by the Chairperson of the Probationer's Committee, Respondent shall be allowed to practice medicine while approval is being sought, but only for a period of five working days after Respondent receives the Final Order. If Respondent's supervising/monitoring physician has not been approved during that time frame, then Respondent shall cease practicing until such time as the supervising/monitoring physician is temporarily approved. In the event that the proposed monitoring/supervising physician is not approved, then Respondent shall cease practicing immediately. Should Respondent's monitoring/supervising physician be approved, said approval shall only remain in effect until the next meeting of the Probationer's 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 supervising/monitoring physician who shall be approved by Probationer's 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 which Respondent's monitoring/supervising 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 supervising 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/supervising physician. Respondent shall not practice unless Respondent is under the supervision of either the approved supervising/monitoring 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 probationary terms.
- (5) Describe relationship with monitoring/supervising physician.
- (6) Advise Board of any problems.

j. During the period of suspension, Respondent shall attend the USF drug course, the FMA medical records course and document the completion of five (5) hours of risk management Category I Continuing Medical Education. Respondent shall submit a written plan to the Chairperson of the Probationer's Committee for approval prior to the completion of said courses. The Board confers authority on the Chairperson of the Probationer's Committee to approve or disapprove said continuing education courses. In addition, Respondent shall submit documentation of completion of these continuing medical

education courses in each report. These hours shall be in addition to those hours required for biennial renewal of licensure. Unless otherwise approved by the Board or the Chairperson of the Probationer's Committee, said continuing education courses shall consist of a formal live lecture format.

k. During the probationary period Respondent shall perform 50 hours of community service at a rate of 25 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 outside the physician's regular practice setting. Respondent shall submit a written plan for performance and completion of the community service to the Probationer's Committee for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board quarterly.

l. Respondent understands that during this period of probation, semi-annual investigative reports will be compiled with the Department of Health concerning compliance with the terms and conditions of probation and the rules and statutes regulating the practice of medicine.

m. Respondent shall comply with the terms and conditions of any criminal probation.

n. Respondent shall pay all costs necessary to comply with the terms of the Final Order issued based on this proceeding. Such costs

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

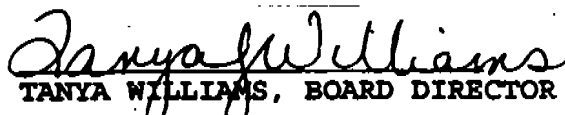
RULING ON MOTION TO STAY SUSPENSION

The Board considered the Respondent's oral Motion to Stay the suspension required by this Final Order and determined that a stay of the suspension is GRANTED provided Respondent complies with the terms of probation set forth in Paragraph 3 above.

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

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 HEALTH 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 Final Order has been provided by U.S. Mail to David Ira Minkoff, M.D., 129 Garden Avenue North, Clearwater, Florida 33755; to Bruce Lamb, Esquire, Ruden, McClosky, et al., 401 East Jackson Street, 27th Floor, Tampa, Florida 33602; to William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Nancy M. Snurkowski, Chief Medical Attorney, 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
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)	
MEDICINE,)	
)	
Petitioner,)	
)	
vs.)	Case No. 00-0023
)	
DAVID IRA MINKOFF, M.D.,)	
)	
Respondent.)	
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RECOMMENDED ORDER

On December 11, 2000, and March 1, 2001, a formal administrative hearing in this case was held in Largo, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ephraim D. Livingston, Esquire
John E. Terrel, Esquire
Agency for Health Care Administration
Post Office Box 14229
Tallahassee, Florida 32317-4229

For Respondent: Bruce D. Lamb, Esquire
J. Travis Godwin, Esquire
Ruden, McCloskey, Smith,
Schuster & Russell, P.A.
401 East Jackson Street, 27th Floor
Tampa, Florida 33602

STATEMENT OF THE ISSUE

The issue in the case is whether the allegations set forth in the Administrative Complaint filed against the Respondent are correct and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On December 16, 1999, the Department of Health, Board of Medicine (Petitioner), filed an Administrative Complaint against David Minkoff, M.D. (Respondent), alleging that he acted inappropriately in prescribing medication for an individual with whom he had no professional medical relationship. The Respondent filed a request for formal hearing. The request was forwarded to the Division of Administrative Hearings. At the request of the parties, the matter was scheduled for hearing on July 17 through 19, 2000. The hearing was continued and rescheduled for December 11 through 12, 2000, at the request of the parties who asserted that settlement was imminent. The hearing commenced on December 11, 2000, settlement efforts apparently concluding unsuccessfully.

At the December 11, 2000, hearing, the Petitioner indicated its intention to introduce deposition testimony of the Respondent into the record. The deposition was taken for use in a separate but related case. Different legal counsel represented the Respondent during the deposition than in this administrative case.

The Respondent objected to the introduction of the deposition on the grounds that the deposition was sealed under the terms of a Protective Order issued by a Circuit Court with jurisdiction over the separate case. The Petitioner stated that it was aware of the Protective Order that restricted the use of the deposition and had filed a motion in the Circuit Court a few days prior to the administrative hearing to have the Protective Order set aside for purposes of the administrative hearing. The Protective Order was apparently issued in the interests of protecting the religious freedom of certain individuals involved in the related case. As of December 11, 2000, no action on the motion had been taken. In order to permit the deposition issue to be resolved, the hearing was recessed after taking the testimony of witnesses present.

Subsequently, the Petitioner informed the Administrative Law Judge that the Circuit Court had resolved the issue and that the Petitioner was ready to proceed. The matter was resolved, at the direction of the Circuit Court, by redacting portions of the deposition that related to religious issues. The redactions were jointly made by counsel representing the Respondent in the separate case and by counsel for the Petitioner. The hearing was then scheduled to resume on March 1, 2001, at which time the deposition was admitted.

During the proceeding, the Petitioner presented the testimony of three witnesses and had Exhibits numbered 1-7 admitted into evidence. The Respondent had Exhibit numbered 1 admitted into evidence. Two documents were admitted as Administrative Law Judge's exhibits.

A Transcript of the hearing was filed on March 22, 2001. Both parties filed Proposed Recommended Orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Respondent is a licensed physician in Florida, holding license number ME0056777.

2. According to the Respondent's curriculum vitae, he graduated Magna Cum Laude in 1974 from the University of Wisconsin Medical School and has apparently practiced since, primarily in pediatrics, infectious diseases, and emergency medicine.

3. At all times material to this case, the Respondent worked as an emergency room physician at the Columbia HCA Hospital in New Port Richey, Florida. A private company providing emergency room physicians to the hospital employed the Respondent.

4. Patient L. M. was a 36-year-old female living in Clearwater, Florida.

5. Patient L. M. was apparently involved with a religious organization and resided at a facility operated by the organization.

6. On or about November 20, 1995, the Respondent received a telephone call from a person or persons at the facility who reported that a resident was sleepless and in need of rest. The caller(s) requested that the Respondent prescribe medication for the patient.

7. Although the Respondent is unable to specifically recall the identity of the caller, he believes he spoke with "Janice Johnson," "David Haughton," or "Alain Kartuzinski," or a combination thereof.

8. The Respondent acknowledges that he was likely advised during the call that the resident was Patient L. M., but the identity of the patient does not appear to have been significant to him at the time, and he has no specific recollection of being told of her identity.

9. Based on the telephone call, the Respondent telephoned in a prescription for ten vials of liquid Valium, 5mg per vial, to an Eckerd's pharmacy he often used. The prescription was called in for issuance to a person identified as "David Haughton."

10. On or about November 29, 1995, the Respondent received another telephone call from a person or persons at the facility

who reported that the resident continued to be sleepless. The call suggested that the Valium had not been administered to the patient. The caller requested the Respondent prescribe something in a liquid form because the resident could not swallow a pill.

11. Although the Respondent is unable to specifically identify the caller, he again believes he spoke with "Janice Johnson," "David Haughton," or "Alain Kartuzinski," or a combination thereof.

12. Based on the telephone call, the Respondent called in a prescription to the same pharmacy as on November 20, this time for a medication identified as "Chloral Hydrate 500" to be issued in the name of Patient L. M. He believed the Chloral Hydrate was a liquid medication.

13. The Respondent did not know Patient L. M. and never met her.

14. The Respondent performed no physical examination of Patient L. M. and, other than what others told him, had no personal knowledge of her condition.

15. The Respondent obtained no medical history for Patient L. M. from the patient or from anyone in a position to know the patient's medical history.

16. The Respondent performed no tests and made no independent diagnosis of any medical problems experienced by Patient L. M.

17. The Respondent failed to document any reason for providing medication to Patient L. M.

18. The Respondent failed to document any reason for providing the medication at issue in this case to any person involved in the situation including "David Haughton."

19. A reasonably prudent physician would not prescribe medication including Valium and Chloral Hydrate without establishing a proper patient-physician relationship, including a physical examination, obtaining a medical history, and ascertaining the appropriateness of the medication for the patient's condition.

20. As set forth herein, the Respondent's actions in this case were below the acceptable standard of care and constitute a failure to practice medicine with the level of care, skill, and treatment recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

21. At about 7:30 p.m., on December 5, 1995, the Respondent, working as an emergency room physician at Columbia HCA Hospital in New Port Richey, Florida, received a telephone call from Janice Johnson about Patient L. M.

22. Ms. Johnson reported that Patient L. M. was ill and required medical attention. The Respondent advised Ms. Johnson to take Patient L. M. to the closest emergency room.

23. At about 9:30 p.m., Ms. Johnson delivered Patient L. M. to the New Port Richey Columbia HCA Hospital emergency room.

24. Upon arrival, Patient L. M. was in cardiac arrest and respiratory arrest, and her pupils were unresponsive.

25. Attempts to resuscitate the patient were unsuccessful, and she was declared dead approximately 15 minutes after her arrival.

26. By autopsy on December 6, 1995, the immediate cause of death was identified as thromboembolus of the left main pulmonary artery, due to thrombosis of the left popliteal vein, due to bed rest and severe dehydration.

27. For reasons unknown, an amended autopsy report dated February 16, 2000, identified the immediate cause of death as pulmonary thromboembolus due to thrombotic occlusion of left popliteal vein with traumatic hemorrhage of left popliteal area.

28. There was no evidence that any trace of the medications identified herein were present or detectable upon examination of the body of the deceased.

29. There was no evidence presented at the hearing that the medications prescribed by the Respondent were administered to Patient L. M.

30. There was no evidence that the medications prescribed by the Respondent were responsible for or contributed to the death of Patient L. M.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Subsection 120.57(1), Florida Statutes.

32. The Petitioner has the burden of proving by clear and convincing evidence the allegations against the Respondent. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). In this case, the burden has been met as to inappropriate prescribing of medication.

33. The evidence establishes that the Respondent failed to practice medicine with the level of care, skill, and treatment recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

34. Section 458.331, Florida Statutes, sets forth the grounds for disciplinary action by the Board of Medicine against a licensed physician.

35. Subsection 458.331(1)(g), Florida Statutes, prohibits "[p]rescribing, dispensing, administering, mixing, or otherwise

preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice."

36. Pursuant to Subsection 893.03(4), Florida Statutes, Valium (identified as Diazepam) and Chloral Hydrate are "Schedule IV Controlled Substances."

37. The evidence establishes that on November 20, 1995, the Respondent prescribed Valium to "David Haughton" with whom the Respondent had no professional medical relationship.

38. The evidence establishes that on November 29, 1995, the Respondent prescribed Chloral Hydrate to Patient L. M. with whom the Respondent had no professional medical relationship.

39. Subsection 458.331(1)(k), Florida Statutes, prohibits "[m]aking deceptive, untrue, or fraudulent representations in or related to the practice of medicine"

40. The evidence establishes that on November 20, 1995, the Respondent called in a prescription for Valium and identified the patient as "David Haughton" although the Respondent was aware that the medication was intended for administration to Patient L. M.

41. Subsection 458.331(1)(m), Florida Statutes, requires that medical records identifying the licensed physician responsible and which "justify the course of treatment of the patient, including, but not limited to, patient histories;

examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations" be maintained.

42. The evidence establishes that the Respondent kept no records justifying any course of treatment related to the prescriptions at issue in this proceeding.

43. Subsection 458.331(1)(t), Florida Statutes, provides that discipline is warranted for "the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances."

44. The prescribing of medication as set forth herein constitutes a violation of Subsection 458.331(1)(t), Florida Statutes.

45. At the hearing, the Petitioner presented testimony about an automobile accident involving Patient L. M. on November 18, 1995. Although the patient was not injured in the accident, based on her bizarre behavior at the scene of the accident she was taken by paramedics to Morton Plant Hospital for psychiatric evaluation. After her arrival at the hospital, she apparently left with persons allegedly affiliated with the religious organization with whom she lived.

46. There is no evidence that the Respondent was involved in the accident, in the post-accident treatment or evaluation of

her condition at Morton Plant Hospital, or in her departure from the hospital. Although the Respondent acknowledges that he was likely informed of the patient's identity during the initial November 20, 1995, request for medication, it appears not to have been a significant factor in his decision to call the prescription into the pharmacy.

47. Presumably the evidence related to the automobile accident was intended to suggest that the Respondent should not have prescribed medication for this particular patient given her behavior at the accident site. Although the circumstances might have been unusual, the disciplinary statute indicates that no medication should be prescribed to any person with whom the prescribing physician has no professional medical relationship.

48. It should be noted that the Respondent raised objections to copies of prescriptions introduced by the Petitioner during case presentation based on lack of authentication. The witness who testified to the documents (the Eckerd's store manager) was not the records custodian and had no independent information related to the prescriptions. The findings of fact set forth herein and related to two prescriptions at issue are based, not on the documents or the testimony of the store manager, but on the subsequently admitted deposition testimony of the Respondent.

49. As to the deposition, after the submission of the Proposed Recommended Orders, the Respondent filed a Notice of Additional Authority again asserting that the Respondent's Fifth Amendment right against self-incrimination had been violated by the admission of the deposition testimony. The issue had been raised previously in the Respondent's Motion in Limine and had been denied prior to the hearing.

50. The Respondent asserts that the waiver of the Fifth Amendment right against self-incrimination must be "voluntary and a knowing intelligent act done with sufficient awareness of relevant circumstances and likely consequences" and apparently suggests that his decision to sit for deposition was not a "voluntary and knowing intelligent act."

51. According to the deposition, the Respondent was represented by legal counsel during the deposition, though not the same counsel representing him in this case. The attorney representing the Respondent in the separate case participated in preparation of the redacted transcript that was admitted into the record of this case.

52. Given the involvement of counsel at all stages of this legal proceeding and the fact that the Respondent, a physician for more than 25 years, asserts that his actions in this case were outside his normal prescription practice, it is simply inconceivable that the Respondent's decision to sit for the

deposition was as ill-informed and as unknowing as the Respondent now suggests. The Respondent's deposition testimony was admitted and forms the basis for the Findings of Fact set forth herein.

53. Subsection 458.331(2) Florida Statutes, provides as follows:

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), including conduct that would constitute a substantial violation of subsection (1) which occurred prior to licensure, it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or certification with restrictions, to the department an application for licensure, certification, or registration.

(b) Revocation or suspension of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed \$10,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the physician on probation for a period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the physician to submit to treatment, to attend continuing education courses, to submit to reexamination, or to work under the supervision of another physician.

(g) Issuance of a letter of concern.

(h) Corrective action.

(i) Refund of fees billed to and collected from the patient.

(j) Imposition of an administrative fine in accordance with s. 381.0261 for violations regarding patient rights.

In determining what action is appropriate, the board must first consider what sanctions are necessary to protect the public or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the physician. All costs associated with compliance with orders issued under this subsection are the obligation of the physician.

54. Rule 61F6-20.001, Florida Administrative Code, was in effect at the time of the violations established herein, and provides guidelines for the determination of appropriate discipline imposed upon a violation of the statute. (Current guidelines are set forth at Rule 64B-8.8001, Florida Administrative Code.)

55. As set forth at Rule 61F6-20.001, Florida Administrative Code, the purpose for the imposition of discipline is "to punish the applicants or licensees for violations and to deter them from future violations; to offer opportunities for rehabilitation, when appropriate; and to deter other applicants or licensees from violations."

56. For a violation of Subsection 458.331(1)(q), Florida Statutes, the rule provides a penalty range of one-year

probation to revocation of licensure, and an administrative fine of \$250 to \$5,000.

57. For a violation of Subsection 458.331(1)(k), Florida Statutes, the rule provides a penalty range of probation to revocation of licensure, and an administrative fine of \$250 to \$5,000.

58. For a violation of Subsection 458.331(1)(m), Florida Statutes, the rule provides a penalty range of reprimand to two years suspension followed by probation and an administrative fine of \$250 to \$5,000.

59. For a violation of Subsection 458.331(1)(t), Florida Statutes, the rule provides a penalty range of two years' probation to revocation of licensure and an administrative fine of \$250 to \$5,000.

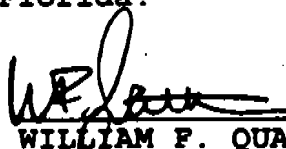
60. Rule 61F6-20.001(3), Florida Administrative Code, provides for application of aggravating and mitigating circumstances that permit the Board of Medicine to deviate from the potential penalties set forth in the rule. In this case, there is no evidence that the Respondent has been involved in any prior disciplinary proceedings. While the patient outcome in this case was tragic, there is no evidence that the medications prescribed by the Respondent affected the outcome. On the other hand, the risk of exposure to the public from the practice of prescribing medication without personal knowledge of

the patient is great. Further, had the Respondent performed a medical evaluation to determine the cause of the alleged "sleeplessness," it is possible that the patient outcome could have been different. Given the great range of penalties possible under the guidelines, no deviation from the rule guidelines is required.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department of Health, Board of Medicine, enter a final order suspending the Respondent's licensure for a period of one year to be followed by a two-year probationary period and imposing an administrative fine of \$10,000.

DONE AND ENTERED this 29th day of May, 2001, in Tallahassee, Leon County, Florida.


WILLIAM F. QUATTLEBAUM
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of May, 2001.