

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

STATE OF FLORIDA, DEPARTMENT)
OF PROFESSIONAL REGULATION,)
BOARD OF MEDICAL EXAMINERS,)
)
Petitioner,)
)
vs.) CASE NO. 82-1220
)
DANIEL J. CLARK,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, R. L. Caleen, Jr., held a formal hearing in this case, September 22 and 23, 1982, in Daytona Beach, Florida.

APPEARANCES

For Petitioner: Charles G. Felder, Esquire
Clayton, Duncan, Johnston,
Quincey, Ireland, Felder and Gadd
Post Office Box 1090
Gainesville, Florida 32602

For Respondent: Andrew A. Graham, Esquire
Karen McLendon, Esquire
Reinman, Harrell, Silberhorn,
Moule, & Graham, P.A.
Post Office Drawer 639
Melbourne, Florida 32901

ISSUES PRESENTED

Petitioner Department of Professional Regulation seeks to suspend, revoke, or otherwise discipline respondent's license to practice medicine on charges of professional misconduct violative of Chapter 458 Florida Statutes (1979). The issues for determination are:

1. Whether respondent is guilty of gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, in his treatment of Verdi Hammond Burroughs ("Burroughs") and Charles Kirk ("Kirk") in violation of Section 458.331(1)(t), Florida Statutes (1979);

2. Whether respondent's treatment of Burroughs and Kirk was fraudulent and constituted misrepresentation, and whether the treatment was medically beneficial to the exclusion of other forms of proper medical treatment and was,

therefore, harmful to the patient in violation of Section 458.331(1)(1), Florida Statutes (1979);

3. Whether respondent violated Sections 458.331(1)(1), 458.331(1)(h), Florida Statutes (1979) by failing to fully inform Burroughs and Kirk (in his prescribing and administering Amygdalin [Laetrile]) of alternative methods of treatment for their cancer, and the potential of these methods for cure; whether each patient failed to sign a written release releasing respondent from liability; and whether respondent informed each patient, in writing, that Laetrile has not been approved as a treatment or cure by the Food and Drug Administration of the United States Department of Health and Human Services;

4. Whether respondent's treatment of Burroughs and Kirk, when measured by the prevailing standards of medical practice in the community, would constitute experimentation on a human subject without first obtaining full, informed, and written consent, in violation of Section 458.331(1)(u), Florida Statutes (1979);

5. Whether respondent failed to comply with Sections 458.333 and 458.335, Florida Statutes (1979);

6. Whether metabolic therapy is recognized by a respectable minority of the medical profession as a treatment for cancer.

Background

By an eight-count administrative complaint dated March 31, 1982, petitioner Department of Professional Regulation, Board of Medical Examiners (Department), charged respondent Daniel J. Clark with multiple violations of Chapter 458, Florida Statutes (1979), the "Medical Practice Act." Respondent disputed the charges and requested a Section 120.57(1) hearing. On April 29, 1982, the Department forwarded this case to the Division of Administrative Hearings for assignment of a hearing officer. Hearing was then set for September 22 and 23, 1982.

At hearing, the Department presented the testimony of Evelyn Kuhn, Daniel Clark, Alvin Edward Smith, Tammy Thompson, Brenda Kempton, and Lois Ann White. Petitioner's Exhibit Nos. 1/ 1-5 were received into evidence.

The respondent testified in his own behalf and presented the testimony of Rodrigo Rodriquez, Rebecca Scholz, and Allen Bernsten. Respondent's Exhibit Nos. 1-5 were proffered but not received into evidence.

The parties filed proposed findings of fact and post-hearing briefs by December 1, 1982. Those proposed findings which are incorporated herein are adopted; otherwise they are rejected as unsupported by the evidence or unnecessary to resolution of the issues.

Based on the evidence presented at hearing, the following findings of fact are determined:

FINDINGS OF FACT

I.

Respondent

1. Since 1976, respondent has been licensed to practice medicine in the State of Florida, holding license number ME0026861. (Tr. 269; Prehearing Stipulation)

2. He received a bachelor of science degree from Georgia Southwestern College and a medical degree from Medical College of Georgia. In 1975, he trained for five months with a gynecological oncologist in Americus, Georgia. In 1978, he completed a three year residency program at University Hospital in Jacksonville, Florida. (Tr. 266-268).

3. Since 1979, he has practiced medicine in Ormond Beach, Florida. Initially, his practice included gynecology, family practice, and general nutrition. He then began to treat cancer patients with metabolic (nutritional) therapy. The purpose of such therapy is to enhance the immunological and biological capacities of a patient--nutritionally, immunologically, and physiologically--in order to improve the patients performance in combating cancer. This cancer treatment includes the administration of Amygdalin (Laetrile), vitamins, herbal teas and detoxifiers, and the application of salves and packs to cause localized hyperthermia. It is not a conventional, orthodox, or widely practiced form of cancer treatment. No other physician in Volusia County uses it. Most accredited medical schools in the United States do not teach it. The American Medical Association (AMA) considers it to be experimental. Eventually, respondent's metabolic treatment of cancer patients began to account for 15 percent to 20 percent of his practice. (Testimony of Clark, Rodriquez; P-3)

II.

Respondent's Treatment of Verdi Hammond Burroughs

4. In October or November 1979, Nelson Murray, a chiropractor, asked respondent to examine Verdi Hammond Burroughs, a patient who had complained to Dr. Murray about a lump in her right breast. (The offices of Dr. Murray and respondent were close together in the same building. And, in the past, Dr. Murray had referred patients to respondent for medical treatment.) (Testimony of Clark, P-3).

5. Respondent, who considered it an "across-the-hall consult," agreed. He went to Dr. Murray's office, examined Ms. Burroughs' right breast, and noted a small lump. He recommended that she have a biopsy or that she see a surgeon for a second opinion, to make sure that the lump was not malignant. (Subsequently, she failed to follow this recommendation.) Although he did not refer her to a particular surgeon, he looked up the names of several who might be willing to operate on her, as she was a Jehovah's Witness. (Since Jehovah's Witnesses object to blood transfusions, many surgeons refuse to operate on them.) (Testimony of Clark, P-3)

6. During this brief examination, respondent did not perform any diagnostic tests other than to manually examine the breast. Although he kept meticulous patient medical records, he did not open a patient record on Ms. Burroughs or have her complete a patient history form. He took no progress notes during the examination. He did not consider her his patient, did not assume responsibility for her treatment, and did not charge her a fee. (Testimony of Clark; P-1, P-3).

7. Respondent had no contact with Ms. Burroughs until Dr. Murray asked him to reexamine her in February, 1980. The circumstances were similar. Respondent examined her in Dr. Murray's office, noted the breast lump was unchanged, made no medical reports, and charged no fee. He recommended that she undergo a laboratory test, including complete blood chemistry, SMAC 22, CBC, and sedimentation rate. For this purpose, he specifically referred her to Dr. Nelson A. Murray, a medical doctor and pathologist in Jacksonville, Florida. (At that time, she lived in Jacksonville, Florida.) He also recommended, again, that she have a biopsy performed--a recommendation which she, again, failed to follow. (Testimony of Clark; P-3).

8. On September 22, 1980, almost eight months later, chiropractor Murray again asked respondent to come to his office and examine Ms. Burroughs right breast. Respondent's subsequent examination revealed that the entire breast was severely inflamed and the nipple was inverted or sloping downward. The breast had the appearance of an inflamed carcinoma. Respondent strongly suggested that she have laboratory tests (the same tests which he had recommended earlier) done as soon as possible and that she arrange to see him immediately thereafter. He, again, told her that she needed a biopsy and gave a preliminary diagnosis of breast cancer. This time, she followed his recommendation. Two days later, she had the complete lab tests done by Dr. Murray, the Jacksonville pathologist. (Testimony of Clark; P-3).

9. Respondent still did not consider Ms. Burroughs his patient or assume any responsibility for her treatment. During this September 22, 1980, examination, he did not open a patient file, take notes, or charge a fee. There is no evidence that Ms. Burroughs-- at that time--believed that she was his patient--or he, her doctor. Nor is there evidence that either party misunderstood or was confused about their relationship or their respective responsibilities. (Testimony of Clark; P-3).

10. Between the February, ,1980 and September 22, 1980, examinations, respondent did not contact Ms. Burroughs and did not discuss her condition with chiropractor Murray. Between the November, 1979 and the September, 1980, examinations, respondent did not order or perform any further diagnostic tests on Ms. Burroughs and did not attempt to check with her to see if she had followed his recommendations. Neither did he expressly inform her that he was not her doctor. The Department contends that his failure to take these actions violates a generally accepted standard of medical care. (Testimony of Clark; P-3)

11. This contention, however, is unsubstantiated. The evidence does not demonstrate that the generally accepted standard of medical care required respondent to take such actions. Conversely, it has not been specifically shown how, and in what ways, respondent's treatment of Ms. Burroughs between November, 1979 and September, 1980, fell below an acceptable standard of medical care. 2/

12. Ms. Burroughs became respondent's patient on October 7, 1980, when she came to his office for medical treatment. He performed a complete work up,

physical examination, and medical history, and reviewed the results of the lab blood tests. He concluded that her condition was essentially normal except for her right breast, which was severely inflamed and the nipple retracted. In addition, the lymph nodes under her right armpit' were palpable and enlarged. His initial impression was that she had inflammatory carcinoma (cancer) of the right breast with lymph gland involvement. He then scheduled her for a biopsy, which was necessary before he could determine the type of cancer involved. (Testimony of Clark; P-3)

13. The biopsy was performed on October 9, 1980 by Dr. Kluger, a St. Augustine physician. It indicated an inflamatory intraductal adenocarcinoma of the breast, primary. Dr. Kluger, who felt that surgery was inadvisable because of the lymph node involvement, subsequently recommended to respondent that Ms. Burroughs undergo radiation and chemotherapy. (Testimony of Clark; P-1, P-3).

14. During the October 7, 1980, office visit, respondent explained to Ms. Burroughs the alternative methods of cancer treatment, including their potential for cure. The methods discussed included surgery, radiation, chemotherapy, and metabolic therapy. She refused to undergo radiation or surgical treatment, explaining that her husband died of lung cancer after receiving surgery, radiation, and chemotherapy. She agreed however, to consider chemotherapy in conjunction with metabolic therapy. He explained to her that metabolic therapy was not a treatment against the cancer, per se, but that it would help "build up her body to where her own immune system would help her fight the cancer." (P-1). She agreed to accept this treatment--chemotherapy with metabolic therapy--then signed four separate affidavits on forms provided by respondent. The affidavits acknowledged her consent to the ordering and administration of Laetrile. Respondent, however, did not inform Ms. Burroughs in writing (by these affidavits or any other documents), that Laetrile has not been approved as a treatment or cure by the Food and Drug Administration of the United States Department of Health and Human Services. She also did not sign a written release, releasing him from any liability from the administration of Laetrile. (Testimony of Clark; P-1, P-3)

15. During the October 7, 1980, visitation--after the affidavits were signed--respondent began treating her with metabolic therapy, consisting of Laetrile I.V., Vitamin C, B Vitamins, B-15, B-12, and crude liver injections. Metabolic therapy was commenced without obtaining her prior written consent. (Testimony of Clark; P-1).

16. Several days later, on October 13, 1980, respondent began treating her with small doses of chemotherapy in conjunction with the metabolic therapy. The chemotherapy treatment plan was based on a phone call to Dr. Donald Cole, a New York oncologist. Respondent described the type and extent of Ms. Burroughs cancer and Dr. Cole recommended small 100 milligram doses of 5-FU twice weekly, two to five milligrams of Laetrile twice weekly, and 50 milligrams of Cytosin PO orally. Respondent administered this regimen until he discontinued chemotherapy at the end of November, 1980. (Testimony of Clark; P-3).

17. These doses and intervals of chemotherapy did not conform to the manufacturers' recommended doses contained in the Physicians Desk Reference, a standard reference used by practicing physicians. The doses administered by respondent were lower than those normally used in chemotherapy and are considered to be in the research or experimental stage. (Testimony of Clark, Smith).

18. Chemotherapy and metabolic therapy are incompatible-- they work at cross-purposes. Chemotherapy drugs are strong immunosuppressants. They are toxic and intended to poison cancer cells; 3/ their effect is to suppress the body's immunological system. In contrast, the purpose of metabolic therapy is to enhance that same immunological system. (Tr. 215-216). For this reason, the use of chemotherapy is not included within the protocols for metabolic therapy found in International Protocols in Cancer Management. 4/ Respondent concedes that this publication is authoritative and contains the standard protocols for metabolic therapy. (Testimony of Rodriquez, Clark).

19. Ms. Burroughs chemotherapy stopped at the end of November, 1980, but her metabolic therapy continued. By March, 1981, her right arm was beginning to swell because of enlarging lymph nodes. On the March 2, 1981, office visit, respondent told her that Laetrile was not stopping the cancer, and discussed restarting chemotherapy. He increased her Vitamin C, and began administering herbal cleaners and botanical medicines containing red clover, chapparral, myrr, goldenseal, yellow dot, juniper berries, yuva, ursaberries, conch grass, and dandelion. Respondent categorizes these medicines as blood purifiers, lymph purifiers, liver cleaners, and kidney cleaners. (P-3).

20. By June, 1981, respondent believed the cancer had metastasized to Ms. Burroughs' right lung. During office visits in early June, he rubbed herbal ointment or liniment, Vitamins E and F, into her rib cage area. He also prescribed herbal packs and poultices to cause localized hyperthermia (heat increase). He prescribed dark and yellow herbal salves and instructed her to apply them to her right breast and underarm area, explaining that they would draw out and break down the cancer tumor. (Testimony of Clark, Kuhn; P-3).

21. These salves--strong and painful--caused pieces of gray tissue to fall off her breast and underarm area. Respondent reacted by encouraging her, telling her that the salves were breaking down the cancerous tumor. (He now admits, however, that the herbal ointments and salves would have been ineffective in treating the cancer which had metastasized to her lungs.) He also prescribed a tea which tasted like black pepper. She forced herself to swallow it because he had told her that it would break up the cancer in her body. This representation was also untrue. (Testimony of Clark, Kuhn, Smith.)

22. In administering metabolic therapy to Ms. Burroughs, respondent also prescribed whole-body hyperthermia for the purpose of stimulating her immune system. This required her to totally submerge herself in bath water which was as hot as she could tolerate. According to the standardized protocols for metabolic therapy, as stated in International Protocols in Cancer Management, such "whole-body hyperthermia, while successful in some cases, is dangerous and considered experimental." (Tr. 320, Testimony of Clark).

23. Respondent's metabolic and chemotherapeutic treatment of Ms. Burroughs failed to conform to the standard of care recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. It fell below the prevailing and generally accepted standard of care recognized by his peers in the medical community:

a.) After the diagnosis, respondent made an improper and incomplete staging 5/ of the disease by failing to take a liver scan, which would have revealed the existence (or nonexistence) of liver lesion. Cancer of the liver is deadly and must be dealt with immediately. (Tr. 89-92).

b.) After he diagnosed Ms. Burroughs breast cancer, he failed to prescribe surgery or a combination of surgery and radiation therapy, treatment methods which likely would have been beneficial and controlled the disease. (Surgery, such as a radical mastectomy, does not cause a significant loss of blood, so blood transfusions--something Ms. Burroughs opposed--could have been avoided.) If necessary, chemotherapy--using conventional doses--could also have been administered. The chemotherapy and metabolic therapy which respondent provided Ms. Burroughs was probably worthless. The herbal salves and teas which he prescribed were incapable of drawing out or breaking up the cancerous tumor.

c.) When Ms. Burroughs' cancer was diagnosed, it was in an advanced and complicated stage. Under such circumstances, a general practitioner (such as respondent) should have referred her to or obtained a consult from an oncologist, a specialist in the treatment of cancer. Respondent did neither. (Testimony of Smith).

24. Metabolic therapy is not approved or recognized as acceptable for cancer treatment by a respectable minority of the medical profession. This finding is based on the opinion of Alvin Edward Smith, MD., board certified in oncology and internal medicine, and a Fellow of the American College of Physicians. He has treated cancer patients since 1978. His opinion on this issue is considered more credible than the contrary opinion of Rodrigo Rodriquez, M.D., who practices medicine in Tijuana, Mexico, who is not licensed to practice medicine in the United States, and who--other than acting as a guest resident at Kings County Hospital in Brooklyn, New York--has never practiced medicine in the United States. (Testimony of Smith, Rodriquez).

III.

Respondent's Treatment of Charles Kirk

25. Charles Kirk became respondent's patient on August 13, 1980, and died shortly thereafter on September 9, 1980. Mr. Kirk, a 77-year-old male, was having great difficulty swallowing food and had a history of recurring choriocarcinoma of the larynx or throat. Surgery had been performed on him several times, and his larynx (voice-box) had been removed. Respondent explained to him the alternative methods of treatment, including surgery, chemotherapy, radiation, and metabolic therapy. Mr. Kirk opposed further surgery and objected to chemotherapy and radiation. He requested Laetrile. After he signed an affidavit provided by respondent (the same form which had been provided Ms. Burroughs), respondent ordered Laetrile. (Testimony of Clark; P-2).

26. Respondent then referred him to a general surgeon for the placing of a gastrostomy feeding tube, a device which would enable him to swallow food and liquids. The tube was successfully placed surgically, after which respondent began administering Laetrile to him as part of metabolic therapy. The treatment was brief, only nine or ten days. On September 26, 1980, Mr. Kirk died. (Testimony of Clark; P-2).

27. Mr. Kirk's condition, when he first became respondent's patient, was essentially irreversible; he was in the final stages of a fatal cancer. (Testimony of Clark, Smith; P-2).

28. Respondent administered Laetrile to Mr. Kirk without first obtaining from him a release of liability and without informing him, in writing, that Laetrile has not been approved as a treatment or cure by the Food and Drug

Administration of the United States Department of Health and Human Services.
(Testimony of Clark.)

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. 120.57(1), Fla. Stat. (1981).

30. Section 458.331(1), Florida Statutes (1979), 6/ empowers the Board of Medical Examiners to revoke, suspend, or take other disciplinary action against a licensed medical doctor for:

(h) Failing to perform any statutory or legal obligation placed upon a licensed physician.

* * *

(l) Making deceptive, untrue, or fraudulent representations in the practice of medicine or employing a trick or scheme in the practice of medicine when such scheme or trick fails to conform to the generally prevailing standards of treatment in the medical community.

* * *

(t) Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the provisions of s. 768.45 when enforcing this paragraph.

(u) Performing any procedure or prescribing any therapy which, by the prevailing standards of medical practice in the community, would constitute experimentation on a human subject, without first obtaining full, informed, and written consent.

31. Section 458.331(4), requires a physician who prescribes or administers Laetrile to "inform the patient in writing that amygdalin (Laetrile) has not been proved as a treatment or cure by the Food and Drug Administration of the United States Department of Health, Education, and Welfare." A patient to request the administration of Laetrile must "sign a written release, releasing the physician . . . from any liability therefor." Id.

32. License revocation proceedings, such as this, are penal in nature. The prosecuting agency must prove its charges by clear and convincing evidence-- by evidence as substantial as the consequences. See, Reid v. Florida Real Estate Commission, 188 So.2d 846 (Fla. 2d DCA 1966); Walker v. State, 322 So.2d 612 (Fla. 2d DCA 1975); Bowling v. Dept. of Insurance, 394 So.2d 165, 172 (Fla. 1st DCA 1981)

33. Applying this standard, it is concluded that:

a) Respondent violated Section 458.331(1)(h), by failing to inform Ms. Burroughs and Mr. Kirk, in writing, that Laetrile has not been approved as a treatment or cure by the Food and Drug Administration of the United States Department of Health and Human Services;

b) Respondent violated Section 458.331(1)(1), by making false representations to Ms. Burroughs that the herbal tea and salves were breaking down her cancerous tumor;

c) Respondent violated Section 455.331(1)(t), by failing to practice medicine with that level of treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. Specifically, he improperly staged Ms. Burroughs' disease; he failed to prescribe a combination of surgery, radiation, and chemotherapy which probably would have successfully controlled her disease; he failed to refer her to, or obtain a consult from, a qualified oncologist; and he administered metabolic therapy, a form of cancer treatment not generally accepted by the medical profession. In *Balder v. Rogers*, 81 So.2d658 (Fla. 1954), the court held that a licensed physician could deviate from the generally accepted medical standard if the treatment used was approved by a "respectable minority of the medical profession." *Id.* at 660. Here, however, the evidence has not established that metabolic therapy meets this judicial standard. Moreover, respondent deviated from the principles of metabolic therapy by simultaneously administering chemotherapy, and by prescribing whole-body hyperthermia to Ms. Burroughs.

d) Respondent violated Section 458.331(1)(u), by treating Ms. Burroughs with metabolic therapy--a form of cancer treatment which is, at best, experimental in nature--without first obtaining her written consent.

34. All other charges brought by the agency are unsupported by the evidence.

Penalty. There is no evidence that respondent has committed other disciplinary infractions or that his misconduct stemmed from an intentional or reckless disregard for the health of his patients. Neither does the evidence establish that he is incapable of safely engaging in the practice of medicine. Under such circumstances, an appropriate penalty would be to suspend his medical license for one year.

RECOMMENDATION

Based on the foregoing, it is

RECOMMENDED:

That respondent's license to practice medicine be suspended for one year, for violating Section 458.331(1)(h), (1), (t), (u), Florida Statutes (1979).

DONE AND RECOMMENDED this 9th day of March, 1983, in Tallahassee, Florida.

R. L. CALEEN, JR.
Hearing Officer
Division of Administrative Hearings
The Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32301
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of March, 1983.

ENDNOTES

- 1/ Petitioner's exhibits will be referred to as "P-___"; pages in the transcript of hearing will be referred to as "Tr.-___."
- 2/ Dr. Alvin Smith, the Department's expert witness, testified only that "the diagnosis was delayed by several months," and that this delay breached the acceptable standard of medical care. But this general assertion, standing alone, is insufficient to support a finding that respondent's treatment of Ms. Burroughs between November, 1979 and September, 1980, was improper.
- 3/ "Cytotoxic," by definition, means cell (cyto) poisoning (toxic).
- 4/ Robert W. Bradford, Michael L. Culbert, and Henry W. Allen, International Protocols For Individualized, Integrated Metabolic Programs in Cancer Management (The Robert W. Bradford Foundation, a Trust, 1981).
- 5/ "Staging" is the process of determining the extent of the disease, whether it is localized or disseminated. It is an essential prerequisite to developing an appropriate treatment plan.
- 6/ New Section 458.331(1), Florida Statutes (1981).

COPIES FURNISHED:

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=====
AGENCY FINAL ORDER
=====

BEFORE THE BOARD OF MEDICAL EXAMINERS

DEPARTMENT OF PROFESSIONAL
REGULATION, BOARD OF MEDICAL
EXAMINERS,

Petitioner,

vs.

DOAH CASE NO. 82-1220

DANIEL J. CLARK, M.D.
License No. 26861

Respondent
_____/

FINAL ORDER OF
THE BOARD OF MEDICAL EXAMINERS

This matter came before the Board of Medical Examiners (Board hereinafter) on August 13, 1983, in Tampa, Florida, for the purpose of considering the Respondent's Motion for Reconsideration filed in the above-styled matter. The Petitioner was represented by Joseph W. Lawrence, II, Esquire. The Respondent was represented by Steven Kern. 1/ After review of the Motion for Reconsideration, the argument of the parties, and being otherwise fully advised in the premises, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. In an Order rendered April 21, 1983, the Board revoked the Respondent's Florida medical license based upon the facts found by the hearing officer in his recommended order. At the time of the Board's consideration of the recommended order, the Respondent had not timely submitted any exceptions thereto.

2. Respondent has filed a motion for reconsideration with the Board asking that the Board reconsider their decision in the above-styled matter. The motion was originally denied by the Board at its June, 1983 meeting because the Respondent had appealed the Board's final order and the District Court had not relinquished jurisdiction.

3. Respondent's motion alleges two basic grounds for reconsideration. First, the Board's findings of fact are inherently inconsistent. Second, the decision impinges on an individual's freedom of choice in medical treatment. The Board finds these arguments to be without merit. There is competent, substantial evidence to support the Board's findings and the issue of freedom of choice has never been an issue in this case.

4. The Respondent's motion and argument in support thereof offers no information in mitigation which would support a finding that the Board's original decision in this matter was improper.

CONCLUSIONS OF LAW

5. The Board's decision of April 21, 1983, revoking Respondent's Florida medical license was proper and correct and it is concluded that Respondent has made no showing that the decision was made through fraud, collusion, deceit or mistake.

6. There is competent, substantial evidence to support the Board's findings and conclusions.

THEREFORE it is ORDERED AND ADJUDGED that the Respondent's motion for reconsideration be and hereby is DENIED. This Order becomes effective the date of filing.

DONE AND ORDERED this 13th day of September, 1983.

Raul Valdes-Fauli, Jr. Esquire
Chairman, Board of Medical
Examiners

ENDNOTE

1/ Although Mr. Kern is not licensed to practice law in the State of Florida and was never admitted by the hearing officer as a qualified representative in the above-referenced matter, the Board allowed Mr. Kern to appear since the Petitioner did not object.

cc: All Counsel of Record
Daniel J. Clark, M.D.