

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, )  
BOARD OF MEDICINE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 01-0665PL  
 )  
GHULAM MOHAMMED, M.D., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Notice was provided and on November 13-16, 2001, a formal hearing was held in this case. The hearing location was the Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes. Charles C. Adams was the Administrative Law Judge.

APPEARANCES

For Petitioner: Kim Kluck, Esquire  
Agency for Health Care Administration  
Fort Knox Building II, Suite 1100  
2729 Fort Knox Boulevard, Mail Stop 39-A  
Tallahassee, Florida 32308-6287

For Respondent: John W. Black, Esquire  
2155 Delta Boulevard, Suite 210-A  
Tallahassee, Florida 33602

STATEMENT OF THE ISSUE

Is Respondent subject to discipline for his actions in relation to Patient J.N.?

PRELIMINARY STATEMENT

On January 22, 2001, an Administrative Complaint was filed by the State of Florida, Department of Health against Ghulam Mohammed, M.D., Case Numbers 1999-60445 and 2000-05509. In addition to allegations concerning Patient J.N., the Administrative Complaint alleged impropriety in relation to Patient K.C.<sup>1</sup>

When provided an opportunity to elect his rights, Respondent disputed the factual allegations in the Administrative Complaint and sought a formal hearing. The case was forwarded to the Division of Administrative Hearings to conduct the formal hearing. The hearing took place on the dates described.

In its case, Petitioner presented the testimony of Patient J.N., Thomas Hicks, M.D., Geraldine Lundy, R.N., Patient J.N.'s husband, and Patient J.F., a "Williams Rule" witness.<sup>2</sup> Petitioner's Exhibits 1 and 2 were admitted. Respondent testified in his own behalf. Donna Marie Schippers, M.D., Khalil Afsh, M.D., Wendi Brannen, C.N.A., Sharon Buford, Sandi Mazza, Willie Ann Dickey, Mildred Kelly, charge nurse, Tiffane Padgett, R.N., Deborah Mills, Amy

Millinor, and Robin Gray, L.P.N., testified for Respondent. Respondent's Exhibits 2 through 6 were denied admission. Respondent's Exhibit 7 was admitted. Respondent's Exhibit 8 was denied admission. Respondent's Exhibits 9 through 14 were admitted. Ruling was reserved on the admission of Respondent's Exhibit 1. It is a verified complaint in an action in the Circuit Court of the Third Judicial Circuit, in and for Taylor County, Florida, Case Number 2001-64CA, Civil Action 01-64CA, naming Patient J.N. as Plaintiff and Ghulam Mohammed, M.D., as Defendant. Having considered argument, Respondent's Exhibit 1 is admitted in accordance with Section 90.608(1), Florida Statutes.

Upon request official recognition was made of Rules 64B8-8.001 and 64B8-9.008, Florida Administrative Code.

Consistent with a Pre-hearing Order, the parties submitted a Joint Pre-hearing Stipulation. Through that submission the parties agreed to admit Joint Exhibits 1 through 4, certain patient records. Joint Exhibits 2 and 4 were later withdrawn. Joint Exhibits 1 and 3 remain. During the hearing the parties agreed to the admission of Joint Exhibit 3A. Moreover, the parties stipulated to certain facts and Respondent was deemed by order to have admitted certain facts propounded by Petitioner through discovery. Those

agreed facts and facts deemed admitted are available for fact finding in the Recommended Order.

The hearing Transcript was filed on December 7, 2001. The parties were allowed until January 4, 2002, to submit proposed recommended orders and associated argument. The parties timely filed proposed recommended orders. In addition, Petitioner submitted written argument. All of these submissions have been considered in preparing the Recommended Order.

#### FINDINGS OF FACT

##### Stipulated Facts and Admitted Facts:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.42, Florida Statutes, Chapter 456, 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 No. ME0063587.

3. Respondent rendered medical care and treatment to Patient J.N.

##### Additional Facts:

4. As of October 15, 1999, Patient J.N. had been Respondent's long-standing patient. On that date she came to Respondent's office in Perry, Florida, without an appointment.

Her principal purpose for the visit was to ascertain whether she was pregnant. Although J.N. had no appointment, she was seen by Wendy Brannen, C.N.A., who worked in Respondent's office. Ms. Brannen administered a pregnancy test. The results were negative. On the subject of the pregnancy test, J.N. had commented to Ms. Brannen that if the results were negative from the pregnancy test, that J.N. was interested in obtaining diet pills to address weight gain not attributable to pregnancy. Her weight on this visit, as confirmed by a weigh-in, was not extraordinary.

5. When Ms. Brannen had concluded her preliminary patient work-up concerning J.N.'s blood pressure, pulse, respiration and temperature, J.N. was taken to Examining Room 5 within the office and left there. The door was open to the examining room and remained open during the time J.N. was there.

6. On October 15, 1999, Respondent saw J.N. in Examining Room 5. While in the room he explained that the results of the pregnancy test that had been administered on that day were negative. He told J.N. that she was not gaining weight. J.N. asked Respondent about diet pills. Respondent told J.N. that she did not need diet pills, that she was not over weight. He also mentioned an existing moratorium from the Board of Medicine on the prescription of diet pills.

7. Contrary to the allegations in the Administrative Complaint, the evidence was insufficient to prove that Respondent "pulled J.N. by the arm and started kissing her and then took her left hand and pressed it against his penis" or that Respondent in any other manner engaged in conduct with sexual overtones directed to Patient J.N. on the date in question. This determination is made having in mind the full hearing record, to include the "Williams Rule" evidence from Patient J.F., who had been under Respondent's care in the past.

#### CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties in this case in accordance with Sections 120.569, 120.57(1), and 456.073(5), Florida Statutes.

9. Through the Administrative Complaint Petitioner accuses Respondent, in Count I, of violating Section 458.331(1)(j), Florida Statutes, by exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. Count II to the Administrative Complaint accuses Respondent of violating the express prohibition against sexual misconduct that is stated in Section 458.329, Florida Statutes, and Rule 64B8-9.008, Florida Administrative Code, as violations of those provisions

demonstrate a violation of Section 458.331(1)(x), Florida Statutes. Both Counts pertain to Respondent's involvement with Patients K.C. and J.N.

10. Petitioner bears the burden to prove the allegations made by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The term clear and convincing evidence is defined in Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

11. Petitioner has failed in its proof. No proof was presented concerning the Patient K.C. The proof concerning the allegations pertaining to J.N. was not clear and convincing.

#### RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That a final order be entered which dismisses the Administrative Complaint.

DONE AND ENTERED this 6th day of February, 2002, in  
Tallahassee, Leon County, Florida.

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CHARLES C. ADAMS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of February, 2002.

ENDNOTES

1/ Allegations pertaining to the Patient K.C. were not pursued through Petitioner's proof at hearing.

2/ This testimony was allowed following a proffer. The testimony was considered in accordance with Sections 90.404(2) and 120.57(1), Florida Statutes and court cases cited by counsel in written pleadings and in oral argument. The proffer, the oral argument and ruling concerning use of the "Williams Rule" evidence presented and the hearing testimony by J.F. following her proffered testimony is set forth in the final hearing transcript, forwarded with this Recommended Order. The J.F. testimony concerning a collateral incident to that associated with the Patient J.N. in the present case was allowed under the factors described as a similar plan, common scheme or design.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.