STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LISA GAIL APTAKER, M.D.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 04-0683
	)	
DEPARTMENT OF HEALTH, BOARD OF MEDICINE,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

This matter came on for formal hearing on August 24-25, 2004, in Tallahassee, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Allen R. Grossman, Esquire
Gray, Harris & Robinson, P.A.
301 South Bronough Street, Suite 600
Post Office Box 11189
Tallahassee, Florida 32302-3189

For Respondent: Rosanna Catalano, Esquire
Edward A. Tellechea, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUES

The issue is whether Respondent properly denied Petitioner's application for licensure as a physician by endorsement.

PRELIMINARY STATEMENT

On December 23, 2003, Respondent Department of Health, Board of Medicine (Respondent) issued a Notice of Intent to Deny the application of Petitioner Lisa Gail Aptaker, M.D. (Petitioner) for licensure as a physician by endorsement. Respondent based its denial on the following allegations: (a) Petitioner attempted to obtain a license by misrepresenting or concealing material facts at any time during any phase of the licensing process in violation of Section 458.331(1)(gg), Florida Statutes; (b) Petitioner is unable to practice medicine with reasonable skill and safety due to a mental condition in violation of Section 458.331(1)(s), Florida Statutes; (c) Petitioner failed to comply with Section 456.013(1)(a), Florida Statutes, because she did not update material facts on her application; and (d) Petitioner cannot be issued a license because her New York medical license is under investigation. On or about January 28, 2004, Petitioner requested a formal hearing to contest the denial of her application.

Respondent referred the case to the Division of Administrative Hearings on February 26, 2004. On March 4, 2004,

the parties filed a Joint Response to Initial Order. In a Notice of Hearing dated March 8, 2004, the undersigned scheduled the hearing for April 26, 2004.

On April 13, 2004, Petitioner filed a Motion for Continuance of Hearing. On April 14, 2004, the undersigned issued an Order Denying Motion for Continuance of Hearing.

On April 16, 2004, Petitioner filed a Motion to Toll Proceedings. On April 20, 2004, the undersigned issued an Order Denying Motion to Toll Proceedings.

On April 20, 2004, the parties filed a Joint Motion for Continuance. On April 21, 2004, the undersigned issued an Order Granting Continuance and Re-Scheduling Hearing for June 30 and July 1, 2004.

On June 9, 2004, Respondent filed a Motion to Compel Mental Examination. Petitioner filed a response in opposition to the motion on June 21, 2004.

On June 21, 2004, Petitioner filed a Motion for Continuance. That same day, Respondent filed a response in opposition to the motion.

On June 22, 2004, the undersigned heard oral argument in a telephone conference on the pending motions. During the telephone conference, Respondent withdrew its Motion to Compel Mental Examination. On June 23, 2004, the undersigned issued an

Order Granting Continuance and Re-Scheduling Hearing for August 24-25, 2004.

On July 27, 2004, Petitioner filed an Emergency Motion for Protective Order and Request for Hearing. Respondent filed a response in opposition to the motion on July 28, 2004. An Order dated July 30, 2004, denied the motion.

When the hearing commenced, the undersigned heard oral argument on Respondent's Motion for Costs and Sanctions of Video-Deposition. The undersigned denied Respondent's motion as to imposing sanctions but reserved ruling as to the imposition of costs. The aspect of the motion relating to costs is hereby denied.

During the hearing, Petitioner testified in her own behalf and presented Exhibit Nos. P1-P4 and P6-P22, which were accepted as record evidence. Exhibit Nos. P5 and P23 are not admissible due to a lack of authentication.

Respondent presented the testimony of two witnesses and offered seven exhibits. Respondent's Exhibit Nos. R1 and R3-R7 were accepted as record evidence.

Respondent's Exhibit No. R2 was identified as Petitioner's application file. Petitioner raised numerous objections to various portions of Exhibit No. R2, but pages 417 to 674 were admitted into evidence without objection. During the hearing,

Petitioner's objections relating to a lack of authentication of pages 316-324 in Exhibit No. R2 were overruled.

To the extent that pages in Exhibit No. R2 are duplicates of properly authenticated documents attached to the transcripts of depositions taken in lieu of testimony at hearing, Petitioner's objections as to lack of authentication are hereby overruled. To the extent that pages in Exhibit No. R2 are documents generated by Respondent, its staff, and consultants, Petitioner's objections as to lack of authentication are hereby overruled. Any documents in Exhibit No. R2 generated by Petitioner, or counsel on her behalf, are not inadmissible for lack of authentication.

Documents in Exhibit No. R2 specifically excluded for lack of authentication are as follows: pages 36-189 relating to Petitioner's deposition in civil litigation stemming from Petitioner's practice at Harlem Hospital Center in New York; any documents between pages 190 and 313 that were not generated by the State of New York, Department of Health, and certified as true and correct copies by its Records Custodian; pages 314-315 furnished to Respondent by Long Island College Hospital involving civil litigation in New York; documents involving Petitioner's employment at Long Island College Hospital in pages 361-366; and documents in pages 370-387 that are not attached to

the deposition of the Records Custodian for Columbia University Affiliate at Harlem Hospital Center in New York.

On August 27, 2004, Respondent filed a copy of the deposition in lieu of live testimony of Gloria Whitley. Ms. Whitley is the Director of Human Resources for Columbia University Affiliate at Harlem Hospital Center in New York.

The Transcript of the proceeding was filed on September 8, 2004.

On September 13, 2004, Respondent filed Petitioner's written deposition to accompany her August 3, 2004, Video-Deposition. Petitioner's Video-Deposition is Exhibit No. R7.

On October 14, 2004, Petitioner filed her Proposed Recommended Order. On October 15, 2004, Respondent filed its Proposed Recommended Order.

FINDINGS OF FACT

1. Petitioner is a 36-year-old physician who currently resides in New York City, New York. Petitioner filed the instant application, seeking to be licensed by endorsement as a physician in Florida on June 17, 2003.

2. With her application, Petitioner provided Respondent with all the fees that were necessary to process the application. She also provided a required fingerprint card.

3. Petitioner graduated from high school at The Spence School in New York City, New York, in 1986. She graduated from

college at Brown University in Providence, Rhode Island, in 1990.

4. Petitioner attended medical school at The Albert Einstein College of Medicine of Yeshiva University (AECM) in the Bronx, New York. While Petitioner was a student at AECM, she became involved in a personal relationship with a male colleague, another medical student.

5. In December 1994, AECM charged Petitioner with student misconduct involving the termination of the relationship with the male colleague and suspended her from medical school. On February 8, 1995, the Supreme Court of the State of New York, in and for Bronx County, ordered AECM to reinstate Petitioner as a student. The Court concluded that AECM, in accordance with its procedures and after a new hearing, could determine in June 1995 whether Petitioner should be permitted to graduate in light of the events of December 1994 and Petitioner's emotional stability in June 1995. Petitioner graduated from AECM in 1995 with special distinction for research in obstetrics and gynecology.

6. In June 1996, Petitioner successfully completed a year of post-graduate medical training in internal medicine at Yale-New Haven Hospital, which was affiliated with Yale University School of Medicine. During the course of her year at Yale University, Petitioner decided to specialize in obstetrics and gynecology instead of internal medicine.

7. In June 1998, Petitioner completed two years of training in obstetrics and gynecology at the New York City Health and Hospitals Corporation, Lincoln Medical and Mental Health Center (Lincoln Hospital). During the first year, Lincoln Hospital was affiliated with the New York Medical College, Medical Education Consortium. During the second year, Lincoln Hospital was affiliated with the Joan and Sanford I. Weill Medical College of Cornell University.

8. While working as a resident at Lincoln Hospital, Petitioner became involved in a personal relationship with a boyfriend. On September 8, 1996, Petitioner had a heated argument with the boyfriend on a New York City street that led to her arrest on charges of harassment in the second degree and aggravated harassment in the second degree. Subsequently, the criminal charges were dismissed and the court records were sealed in June 2000.

9. Petitioner subsequently married a physician with a practice in New Jersey. Because her husband was practicing medicine in New Jersey, Petitioner transferred to the University of Medicine and Dentistry of New Jersey, Robert Wood Johnson Medical School (UMDNJ), for her third year of training in obstetrics and gynecology.

10. At UMDNJ, one of Petitioner's supervisors questioned whether she had completed all the goals for a third-year

resident. UMDNJ also advised Petitioner that it would not have a fourth-year position for her to fill. As a result of these issues, Petitioner was placed in a remediation program so that the faculty could properly evaluate Petitioner's performance.

11. Petitioner had a "personality conflict" with the chairman of UMDNJ's obstetrics and gynecology department, Dr. Robert Knupple, who wanted her to repeat her third-year training. According to Petitioner, the personality conflict was due in part to her tardiness and schedule changes. Despite these problems, Petitioner completed her training at UMDNJ in June 1999.

12. Between September 1993 and May 1998, Petitioner successfully completed the United States Licensing Examination. She completed Step I in two attempts, Step II in two attempts, and Step III on her first attempt. Petitioner was licensed to practice medicine in the State of New York in June 1999. At the time of the hearing in the instant case, Petitioner's New York medical license was valid and no formal charges had been filed against Petitioner by the New York State Department of Health, Office of Professional Medical Conduct.

13. Petitioner subsequently transferred to St. Michael's Medical Center (St. Michael's), which was affiliated with Seton Hall University, School of Graduate Medical Education (Seton Hall). Petitioner's marriage was dissolving while she was

working as Chief Resident in obstetrics and gynecology at St. Michael's. Her ex-husband's sister worked in St. Michael's emergency room, resulting in personal difficulties that caused Petitioner to become isolated and withdrawn. The circumstances of Petitioner's marital problems had an adverse impact on her relationship with the chairman and the staff of her department at St. Michael's/Seton Hall.

14. The chairman ultimately referred Petitioner to the Physicians' Health Program of the Medical Society of New Jersey for a psychiatric evaluation. The evaluation found Petitioner to be free of any DSM-IV diagnosis for psychoactive substance use disorder and psychiatric diagnosis. Petitioner completed her work at Seton Hall on June 30, 2000.

15. Sometime during 2000, Petitioner applied for a medical license in Florida. During the application process, Respondent's staff requested the chairmen or program directors of Lincoln Hospital's, UMDNJ's, and St. Michael's departments of obstetrics and gynecology to provide evaluations of Petitioner.

16. In June 2000, the Lincoln Hospital evaluation rated Petitioner as "poor" in regard to her professional relationship with colleagues. Lincoln Hospital's overall evaluation recommended Petitioner as qualified and competent.

17. In July 2000, UMDNJ provided an evaluation, rating Petitioner as "poor" in the following areas: (a) professional

relationships with colleagues and teaching staff; (b) professional character as it related to diagnostic/clinical ability and fitness for clinical practice; and (c) personal character as it related to motivation, initiative, responsibility, and integrity. In regard to an overall evaluation, UMDNJ recommended Petitioner with some reservation.

18. Petitioner's department chairman at St. Michael's/ Seton Hall initially filled out a form recommending her with reservation. After Petitioner underwent the two-day psychiatric evaluation, the chairman recommended Petitioner without reservation.

19. In processing Petitioner's 2000 application, Respondent's staff discovered information relating to Petitioner's arrest during the time that Petitioner was training at Lincoln Hospital. Petitioner had not disclosed the 1996 arrest record because she thought all records related to the alleged incident with her then boyfriend were sealed. Petitioner subsequently withdrew her application for medical licensure in Florida.

20. In October 2000, Petitioner accepted a faculty position with Columbia University, College of Physicians & Surgeons (Columbia University). Because Columbia University was affiliated with Harlem Hospital Center (Harlem Hospital), Petitioner was appointed to its medical staff as an attending

physician. Petitioner's duties included academic and clinical responsibilities.

21. At Harlem Hospital, Petitioner ran the rotation program for physician's assistant students. She worked in the hospital's labor and delivery unit and performed surgeries such as Caesarean sections. She also took care of patients on the gynecology floor.

22. Harlem Hospital operates several outpatient clinics. Petitioner worked at one of the clinics, where she saw patients and performed some medical procedures.

23. While Petitioner was working at Harlem Hospital, she enrolled in a two-year graduate program in public health at Columbia University. Petitioner's schedule at Harlem Hospital was arranged so that she could attend graduate classes. She received the degree of Masters in Public Health in March 2004.

24. Columbia University contracted with Harlem Hospital to provide it with medical services. At all times relevant here, Dr. Stephen Matseoane was either the Director of Service or the Chairman of the Obstetric and Gynecology Department providing the contracted services.

25. In May or June of 2002, Petitioner applied for a faculty position at Long Island College Hospital (LICH).

26. On June 24, 2002, Petitioner and Dr. Barbara Lanzara scrubbed on a cesarean section. As a result of a complication,

the patient began bleeding excessively. Petitioner was not feeling well and left the operating room to get some water and to call Dr. Matseoane for assistance.

27. Petitioner drank three cups of water while she waited for Dr. Matseaone to return her call. She then returned to the operating room.

28. A memorandum dated July 11, 2002, from Dr. Matseoane to Petitioner stated as follows:

> On June 25, 2002, you left the operating room while a cesarean section was proceeding and Dr. Lanzara, the principal surgeon was left unassisted. Your explanation that you felt "sick" because of heat in the operating room is unacceptable. The patient was bleeding excessively and Dr. Lanzara needed your continuing assistance until further help became available. Leaving the operating room especially in the presence of complications is a callous disregarad [sic] for the patient's safety and will not be tolerated.

Gloria Whitley, Human Resources Director for Columbia University Affiliate of Harlem Hospital received a copy of the memorandum on July 16, 2002.

29. Petitioner signed a contract for employment at LICH on July 27, 2002. The contract provided for Petitioner to begin working at LICH on September 1, 2002.

30. Dr. Gail Blakely was Petitioner's supervisor at the Harlem Hospital clinic. Petitioner did not approve of some of the changes initiated by Dr. Blakely, a relatively new attending

physician. Among other matters, Petitioner did not approve of the way Dr. Blakely organized the charts in the clinic.

31. On August 2, 2002, Dr. Matseoane informed Petitioner that the issues between Dr. Blakely and her were no longer tolerable. Dr. Matseoane then told Petitioner that she had until August 5, 2002, to resign her position with the Harlem Hospital clinic, to which she was assigned and where Dr. Blakely was her supervisor, and transfer to another Harlem Hospital clinic or he would report her alleged misconduct to the New York State Department of Health, Office of Professional Medical Conduct.

32. Petitioner argued that she had more seniority than Dr. Blakely, who had personality conflict problems with several other staff members. Petitioner argued that it did not make sense for her to transfer to another clinic because she was seeing patients at her assigned clinic and because she was already planning to take another position at another hospital in the near future. Petitioner refused to accept Dr. Matseoane's suggestion that she transfer to another clinic.

33. A memorandum dated August 2, 2002, from Dr. Matseoane to Petitioner stated as follows:

> Pursuant to the discussion we had on August 2, 2002, I expect your letter of resignation from the Department of Obstetrics and Gynecology no later than

> August 5, 2002. Your resignation will be effective August 31, 2002.
>
> During this period, if any form of harassment occurs against Dr. Blakely, it will be reported to the State.

Dr. Matseoane sent Ms. Whitley a copy of the memorandum.

34. Ms. Whitley's duties require her to conduct an investigation when one staff member makes a complaint against another staff member. It is a function of Ms. Whitley's job to know who is hired or fired, or who resigns from the staff. As the Human Resources Director, Ms. Whitely is not responsible for hiring medical staff, but she is always involved in Columbia University Affiliate of Harlem Hospital's decisions to terminate an employee who is involved in an altercation with another staff member.

35. Ms. Whitley was aware that Dr. Blakely and/or Dr. Matseoane had complained about Petitioner's behavior towards Dr. Blakely. She was also aware that Dr. Matseoane met with Petitioner on August 2, 2002, and that the conflict between Petitioner and Dr. Blakely was the motivating force behind Dr. Matseoane's August 2, 2002, memorandum.

36. On or about August 4, 2002, a discussion between Dr. Blakely and Petitioner became very heated. Immediately after the heated argument between Dr. Blakely and Petitioner, Dr. Blakely made contact with Felix Davenport, an officer with

the New York City Hospital Police. Officer Davenport then proceeded with Dr. Blakely to the elevator doors, intending to escort her safely to the first floor of the building. When the elevator doors opened, Petitioner was standing inside. Officer Davenport and Dr. Blakely entered the elevator.

37. When Officer Davenport, Dr. Blakely, and Petitioner arrived at the first floor, Officer Davenport asked Petitioner if he could talk to her about what happened with Dr. Blakely on that day and other days. Petitioner responded that Dr. Blakely actually was harassing her and refused to discuss the matter further. Officer Davenport subsequently wrote an incident report. He also verbally advised Dr. Matseoane about the incident.

38. When Ms. Whitley received a copy of Officer Davenport's report, she told Petitioner that she was to leave the premises. Ms. Whitley wanted to prevent further arguments in front of patients.

39. Petitioner subsequently filed a complaint against Dr. Blakely at the local police precinct. Petitioner filed the complaint because she felt personally threatened.

40. In a letter dated August 5, 2002, Petitioner's counsel advised Dr. Matseoane that she had not done anything to warrant his threats to report her to the State unless she resigned from the clinic. The letter stated that Petitioner hoped to take

another position with another hospital by September 1, 2002, and that she would resign after securing the other position. Ms. Whitley received a copy of this letter.

41. On August 9, 2002,Ms. Whitley sent the Harlem Hospital Police a photograph of Petitioner together with a memorandum, which stated as follows:

> Per our conversation, please be advised that Dr. Aptaker is not allowed on the premises until after her hearing takes place. You will be informed as to that date shortly.

Ms. Whitley does not send, and the Harlem Hospital Police do not receive, instructions like the one contained in Ms. Whitley's memorandum unless an employee or staff member has been asked to resign or terminated under adverse circumstances. Employees who voluntarily resign usually just turn in their hospital identification and no further action is taken.

42. In this case, Ms. Whitley wrote the memorandum based on her understanding as Human Resources Director that Dr. Matseoane had asked Petitioner to resign her privileges at Harlem Hospital. Ms. Whitley wrote the memorandum with the sanction of Petitioner's superiors.

43. Ms. Whitley began looking into the allegations against Petitioner. However, she never had a chance to complete the investigation or conduct a hearing.

44. In a letter dated August 12, 2002, Petitioner resigned her position with Columbia University/Harlem Hospital effective August 13, 2002. Petitioner wrote the August 13, 2002, date in by hand in a space left blank for that purpose and in the presence of Ms. Whitley.

45. On August 12, 2002, Petitioner signed an addendum to her resignation letter. The addendum stated that Columbia University had discussed certain matters with Petitioner's attorney regarding her resignation. It addressed the following issues: (a) Petitioner's tuition stipend; (b) Petitioner's employment compensation for the month of August 2002 and consideration for another four months of salary; (c) financial reimbursement for conferences to which Petitioner was committed; (d) provision of good personal and professional references and/or forms upon future request; and (e) the ability to review all personal and professional files at any time.

46. The final two paragraphs of the resignation addendum stated as follows:

> 6) The removal of all letters and/or memos from my files that are not honest, and are not representative of my personal and professional performance at HHC. Basically, upon my personal review as of approximately one week ago there were no negative documents in my file and this is the way my file should remain. In addition, there is no basis to make any negative reports to any medical or government agencies; such reports would be deemed false.

> 7) Access to my office and any other facilities in the institution to remove any personal items and complete the transition I am making on this voluntary resignation and my leaving to my new position.

A hand-written note at the bottom of the resignation addendum states that "[t]hese matters will be under discussion between the attorneys, but my resignation remains effective as . . . ."

47. Petitioner worked at LICH for one year beginning September 1, 2002. However, in April 2003, Petitioner interviewed for a position with the University of Miami, School of Medicine, Department of Obstetrics and Gynecology, in Miami, Florida. She submitted her resignation to LICH in May 2003 to be effective August 31, 2003.

48. Petitioner filed the instant application on June 23, 2003, in preparation for assuming a position at the University of Miami. The following day, the New York State Department of Health, Office of Professional Medical Conduct, sent Petitioner a letter informing her that she was being investigated regarding the medical care of her patient, S.R.

49. On August 18, 2003, Petitioner appeared for an interview before an investigative committee of the New York State Department of Health, Office of Professional Medical Conduct. The interview involved the care of S.R. at Harlem Hospital plus additional behavioral issues. Counsel accompanied Petitioner during the interview.

50. As part of the application process, Respondent sent Petitioner a letter requiring her appearance before Respondent's Credentials Committee (the Committee) on September 13, 2003. Respondent's letter indicated that Petitioner's appearance was for the purpose of discussing Petitioner's suspension from medical school, her arrest in 1996, a less than favorable evaluation from UMDNJ, a less than favorable evaluation from St. Michael's, and Petitioner's medical malpractice cases.

51. Petitioner appeared at the September 13, 2003, meeting as required. The Committee members expressed their concerns about Petitioner's past history of problems with personal relationships and how such problems might affect her professional practice in the future.

52. In her sworn response to the Committee's concerns, Petitioner repeatedly stated that she had not had "any problems at all" since the incidents with the two gentlemen in 1994 and 1996 and the New Jersey mental examination in 2000. Petitioner told the committee that she had been in a serious relationship for two and a-half years and had not had any sort of problem at all with anyone.

53. In response to a Committee member's concern that Petitioner was always going to have to deal with personal circumstances for the rest of her life, Petitioner stated as follows:

> And I think I've been able to deal with that now. I appreciate your bringing up this concern. There have difficulties with my relationship that I've had for two-and-a-half years and they've been dealt with without any interventions whatsoever in my professional life.

54. The Committee initially considered a motion to approve Petitioner's license contingent upon a Professionals Resource Network (PRN) evaluation and clarification from LICH regarding whether Petitioner's privileges at LICH were restricted in any manner. Ultimately, the Committee requested and Petitioner agreed to undergo a PRN evaluation. Petitioner also agreed to waive the ninety-day time frame imposed by Section 120.60(1), Florida Statutes. The Committee then voted to table Petitioner's application.

55. PRN is the statutorily mandated consultant to Respondent on issues of physician impairment. Dr. Raymond Pomm is the Medical Director of PRN. He first met Petitioner at the September 13, 2003, Committee meeting.

56. Dr. Pomm gave Petitioner three pairs of evaluators from which to choose, each pair consisting of a psychologist and a psychiatrist. Petitioner selected Dr. Larry Harmon to conduct her psychological evaluation and Dr. Eva Ritvo to conduct her psychiatric evaluation.

57. On September 17, 2003, Petitioner completed a full day of psychological testing in Dr. Harmon's office. The psychological testing included, but was not limited to, the following: (a) the Minnesota Multi-Phasic Personality Inventory (MMPI); (b) the Wonderlic Personnel Test; (c) the Physician Self-Understanding Leadership Skills Enhancement Survey (P.U.L.S.E.); (d) the Millon Clinical Multiaxial Inventory-III (Millon); and (e) Practitioner Feedback Questionnaire.

58. After Petitioner completed the testing, she initially gave Dr. Harmon permission to call her most recent physician-supervisors. The calls were to be made using the guise that Petitioner was participating in a leadership program for which he needed to gather information. This method of gathering information is considered acceptable and ethical because it preserves the anonymity and integrity of the physician being evaluated.

59. On September 18, 2003, Petitioner went to meet with Dr. Ritvo, the psychiatrist. Upon her arrival, Petitioner realized that Dr. Ritvo's office was affiliated with the University of Miami, where Petitioner had accepted an offer of employment. Petitioner was concerned that she would be entered into the psychiatric patient database at the University of Miami, School of Medicine, and declined to undertake an evaluation with Dr. Ritvo.

60. On September 18, 2003, Petitioner faxed Dr. Harmon a note stating that she rescinded any and all releases that she had signed the day before. The effect of the note prohibited Dr. Harmon from sharing any information with PRN and Dr. Ritvo. The note specifically rescinded her authorization to obtain references from anyone at her previous places of employment.

61. Later on September 18, 2003, Petitioner amended her note to allow Dr. Harmon to exchange information with PRN, but forbade his contact with her supervising physicians.

62. Dr. Harmon's written evaluation is dated September 22, 2003. According to the report, Dr. Harmon was unable to reach any conclusions because Petitioner did not allow him to obtain collateral confirmation of Petitioner's self-report from current or recent supervisors. However, the report does note that Petitioner claimed to have had a extremely positive professional and personal experiences for the past three years. She did not inform him of any difficulties with interpersonal relationships after 2000.

63. Dr. Harmon's report contains supplemental information in an addendum. This information indicates that Dr. Harmon had to prod Petitioner to provide details about her suspension from medical school in 1994 and her arrest in 1996. After considerable probing about her more recent relationships, Petitioner stated that she had had excellent professional and

personal experiences since 2000. It is apparent from the report that Petitioner did not tell Dr. Harmon about any relationship difficulties after she underwent the psychiatric evaluation at St. Michael's/Seton Hall in 2000.

64. Dr. Harmon's supplemental information indicates that Petitioner appeared to minimize her own contribution to negative events that happened to her. Additionally, she appeared to have little insight into the cause of her current difficulties. In general, Petitioner minimized the impact that her behavior has had on others, expressing surprise that the medical school suspended her and not her boyfriend and that the police would arrest her for having a heated discussion on the street. In fact, after probing, Petitioner denied that her behavior has ever been inappropriate or that anything she has ever done could have contributed to her problems during training other than selecting the wrong relationships. She specifically denied having any behavior or academic problems at Columbia University. She denied that she had ever been fired or asked to resign from any job and that she had ever consulted any attorney for any reasons associated with workplace issues.

65. In reviewing Petitioner's insight and judgment, Dr. Harmon concluded that her judgment appeared to be currently fair to poor, although poor by history. Dr. Harmon apparently

reached this conclusion based on Petitioner's report that she had no problems in the last two or three years.

66. The MMPI is an objective true/false personality inventory and measure of symptomology consisting of 567 questions. The test measures personality psychopathology, family adjustment, socialization, somatic complaints, depression, anxiety, and other mental health concerns.

67. Petitioner answered questions on the MMPI in a way that undermined the validity of the test. She responded to the test items by claiming to be unrealistically virtuous. In other words, she depicted herself the way she wished other people to view her instead of providing a realistic depiction.

68. The Wonderlic Personnel Test examines basic cognitive function. On this test, Petitioner demonstrated that she did not have anything wrong with her intellect or her ability to use her intellect.

69. The Millon is a 175-item psychological questionnaire that measures the following: (a) clinical personality patterns such as antisocial or dependent; (b) severe personality pathology such as paranoid or borderline; (c) clinical syndromes such as anxiety or alcohol dependence; (d) severe symptoms such as thought disorder or major depression; and (e) validity indicators including disclosure, desirability and debasement.

Once again, Petitioner's responses compromised the validity of the test. Her responses suggested an effort to present a socially acceptable appearance or a resistance to admitting personal shortcomings. Petitioner's responses on the Millon suggested compulsive personality patterns, histrionic traits, and narcissistic features.

70. The Practitioner Credibility Questionnaire--Self-Assessment Version is a non-clinical questionnaire. On this questionnaire, Petitioner denied that she had exhibited any disruptive behaviors in the past two years, including but not limited to, the following: (a) inappropriate disruptive communications; (b) disruptive behaviors regarding medical care; (c) disruptive behavior towards policies and procedures; (d) disruptive interpersonal behaviors; and (e) any other disruptive professional behaviors.

71. The P.U.L.S.E. is a non-clinical, self-report questionnaire of work behavior, which either motivates other team members to do their best work or disrupts their ability to do their best work. As to the questions relating to motivating behaviors, Petitioner reported that she "sometime less frequently" shows up on time for commitments. Otherwise, Petitioner reported that "definitely more frequently than average" responds when asked for help, spots and solves problems, takes charge when necessary, gives helpful and

constructive advice, helps out when work needs to be done, and works collaboratively with other departments.

72. As to questions on the P.U.L.S.E. involving disruptive behaviors, Petitioner denied any and all common disruptive workplace behaviors. She indicated that she "never" does them.

73. As to questions on the P.U.L.S.E. involving disruptive impact on others, Petitioner denied any and all common disruptive reactions in others. Instead, Petitioner indicated that she "never" produces common negative reactions in others in the workplace.

74. After Petitioner refused to undergo an evaluation by Dr. Ritvo, Dr. Pomm provided her with the names of additional psychiatrists that could perform the evaluation. Petitioner selected Dr. Richard Seely.

75. Dr. Seely evaluated Petitioner on September 25, 2003. His evaluation results were very different from Dr. Harmon's results. Dr. Seely found nothing wrong with Petitioner. His report states that Petitioner appeared to be open, honest, and ready to take responsibility for her past behaviors. During the evaluation, Petitioner emphasized that she had learned from her past mistakes. However, it is apparent from the report that Petitioner did not disclose any relationship problems after she underwent the psychiatric evaluation at St. Michael's in 2000.

76. Additionally, Petitioner told Dr. Seely she was not currently involved in a significant romantic relationship, although she was dating. This statement is contrary to Petitioner's statement to the Committee on September 13, 2003, when she repeatedly asserted that she had been in a serious relationship for two and a-half years.

77. Dr. Seely's report incorporated Dr. Harmon's report. He concluded that Petitioner did not suffer from any emotional or characterological deficit that would diminish her capacity to meet accepted standards for the practice of medicine.

78. On October 4, 2003, Respondent held a regularly scheduled meeting at which it reviewed the report of the Committee, including the PRN report. Petitioner was not provided notice of this meeting and was not in attendance when her evaluation was discussed.

79. On October 4, 2003, Dr. Pomm provided Respondent with a written and oral report of several issues that arose during PRN's evaluation of Petitioner. Dr. Pomm's written report observed that none of Petitioner's three evaluations performed over the course of time by experts in the field had rendered a diagnosis. Dr. Pomm's written report did not recommend requiring Petitioner to enter a PRN monitoring contract as a condition of being licensed. Dr. Pomm stated in sworn testimony

on October 4, 2003, that he believed Petitioner could practice medicine with reasonable skill and safety.

80. Respondent refused to accept the conclusion that Petitioner was able to practice medication with reasonable skill and safety. Respondent once again tabled Petitioner's application, directing PRN to go back and get additional collaborative information about Petitioner by completing a survey of people that she worked with in the last three years.

81. Dr. Pomm relayed Respondent's request for collaborative information to Petitioner and Dr. Seely. The three of them agreed to have Dr. Seely gather the information. Petitioner then provided the required contact information.

82. In a letter dated November 5, 2003, Dr. Seely advised Dr. Pomm that he had made the necessary inquiries by telephone on November 3-4, 2003. First, Dr. Seely spoke with Dr. Carlos Benito, the Acting Program Director at UMDNJ. Dr. Benito confirmed that Dr. Robert Knupple, the former Program Director with whom Petitioner had past difficulties, was no longer affiliated with UMDNJ.

83. Next, Dr. Seely spoke with Dr. Robert DiBenedetto, the Acting Program Director of the obstetric and gynecology residency program at Seton Hall. Dr. DiBenedetto had never met Petitioner but noted that her file reflected a resident who was average in performance. One note in the file stated that her

performance was marginal. Another file note indicated that she lacked flexibility.

84. Dr. DiBenedetto felt compelled to inform Dr. Seely that Seton Hall had received an inquiry from the New York State Department of Health on September 4, 2003. In response to that inquiry, Seton Hall had sent the entire contents of Petitioner's file to the Department of Health.

85. Dr. Seely spoke with two of Petitioner's colleagues at Harlem Hospital, Dr. Joseph Bobrow and Dr. James Ryan. He also spoke with Dr. Glendon Henry, Harlem Hospital's Medical Director. Dr. Stephen Matseoane, Chairman of the Department of Obstetrics and Gynecology, was on vacation and therefore not available to speak to Dr. Seely.

86. Dr. Bobrow stated that Petitioner was a good doctor who had good character and integrity. He stated that he trusted Petitioner and would gladly practice with her.

87. Dr. Henry remembered Petitioner through he did not practice with her. Initially, Dr. Henry stated that no problems or complaints came across his desk during the nearly two years that Petitioner was at Harlem Hospital. Dr. Henry then stated that Petitioner did have a personal difficulty with someone on the obstetric and gynecology staff but could not say whose fault it was.

88. Dr. Ryan confirmed his understanding that Petitioner left Harlem Hospital due to a conflict with a newly arrived attending physician who was in a position of authority over Petitioner. Dr. Ryan agreed with Dr. Henry that Petitioner could not be faulted for the conflict. According to Dr. Ryan, the remaining staff continued to have significant animosity toward the newly arrived attending physician after Petitioner left Harlem Hospital.

89. Dr. Pomm provided Respondent with a supplemental written report dated November 6, 2003. Dr. Pomm's report incorporated Dr. Seely's November 5, 2003, report. Dr. Pomm stated that based on the previous evaluations and collaborative information, Petitioner did not need monitoring as condition of being licensed.

90. Petitioner appeared before an investigative committee of the New York State Department of Health, Office of Professional Medical Conduct, for the second time on November 10, 2003.

91. Subsequent to Dr. Pomm's submission of his supplemental written report to Respondent, Respondent scheduled Petitioner's application for further consideration at Respondent's meeting on December 6, 2003. Petitioner received notice that she was required to attend the meeting.

92. While Dr. Pomm was flying to the December 2003 meeting, his office received an anonymous facsimile transmission that included negative information about Petitioner. The information consisted of the following: (a) incident reports created by Officer Davenport, Harlem Hospital Police; (b) memoranda written by Dr. Gail Blakley, who initiated the Harlem Hospital Police reports; and (c) documentation from the New York State Department of Health, Office of Professional Medical Conduct, regarding appearances before its investigative committee.

93. Dr. Pomm requested that these materials be forwarded to him at the meeting. Dr. Pomm could not determine the truth or validity of the information on such short notice. Dr. Pomm knew he needed an opportunity to validate the information and incorporate it in his evaluation of Petitioner.

94. Dr. Pomm informed Petitioner about his receipt of the information. He provided copies to Petitioner immediately prior to her appearance before Respondent in December 2003.

95. When Dr. Pomm appeared before Respondent on December 6, 2003, he testified that he had come once again prepared to say that there was no reason for Petitioner not to be licensed in Florida. He stated that he had not had an opportunity to thoroughly review the recently received documents or to discuss them with Petitioner. In response to a specific

question, Dr. Pomm told Respondent that the evaluators did not have the documents in question when they completed their reports. Dr. Pomm also stated that consideration of the documents would be essential to completing an evaluation of Petitioner. Dr. Pomm declined to make any further comments on the matter.

96. Petitioner was not represented by counsel at the December 6, 2003, meeting. She admitted that she was aware of the investigation in New York when she appeared before Respondent in October 2003 and denied having any problems after 2000.

97. Petitioner requested an opportunity to review the documents and to seek counsel. She requested an opportunity to withdraw her application. Respondent denied both requests.

98. On December 6, 2003, Respondent initially considered a motion to table Petitioner's application again. Ultimately, Respondent voted to deny Petitioner's application. The Notice of Intent to Deny is dated December 23, 2003.

99. On January 24, 2004, Petitioner appeared before the Committee. She requested that the Committee place a stay on the denial of her application pending a completion of the investigation. The Committee denied her request.

100. Dr. Pomm is a board-certified psychiatrist who has been practicing medicine since 1981. As an expert in

psychiatry, Dr. Pomm regularly relies on the evaluation of other psychiatrists and psychologists to form opinions.

101. Dr. Pomm's testimony during the hearing is credited here. First, he discussed Dr. Harmon's determination that Petitioner's responses on the Millon test showed compulsive personality patterns, histrionic traits, and narcissistic features. According to Dr. Pomm, individuals with these characteristics tend to be demanding, attention-seeking, emotionally charged, self-serving with a significant degree of self-righteous indignation, lacking compassion for others, and lacking insight into their behavior, or worse, deceiving.

102. Dr. Pomm stated that the characteristics demonstrated by Petitioner on the Millon could negatively interfere with patient care. It was especially significant to Dr. Pomm that Petitioner demonstrated these traits on the Millon because a degree of pathology could still be detected even though Petitioner's obvious efforts to present herself in a socially acceptable way compromised the validity of the test.

103. Second, Dr. Pomm considered Petitioner's inconsistent responses during her interview with Dr. Harmon. For instance, Dr. Harmon was unable to elicit details about Petitioner's arrest in 1996 without considerable probing and Petitioner's responses to questions about the arrest changed as she provided more details.

104. Third, Dr. Pomm testified that Petitioner's history demonstrates a pattern of poor decisions despite negative consequences. According to Dr. Pomm, Petitioner does not understand her behavior's impact on others, which critically affects her ability to practice medicine with reasonable skill and safety.

105. Fourth, Dr. Pomm considered the contrast between the evaluations of Dr. Harmon and Dr. Seely. In the evaluation with Dr. Seely, Petitioner's level of responsibility, accountability and openness to evaluation was markedly greater. Dr. Pomm opined that the contrast shows that Petitioner presented herself to Dr. Seely in a way that serves her best, as she did in the MMPI examination. Dr. Pomm concluded that something was going on that neither Dr. Harmon nor Dr. Seely described by diagnosis.

106. Additionally, Dr. Pomm was of the opinion that Petitioner had taken an active role to prevent the evaluators from being able to create a diagnostic impression. Dr. Pomm stated that one needs the cooperation of the individual being evaluated in order to conduct a mental examination and that PRN did not receive Petitioner's full cooperation.

107. At the hearing, Dr. Pomm testified that he could not advocate for Petitioner's licensure because he did not have a valid evaluation. Dr. Pomm was no longer willing to rely on Dr. Harmon's and Dr. Seely's evaluations because they had been

unaware that Petitioner was under investigation by the New York State Department of Health. Dr. Pomm opined that the evaluators were

> evaluating the impact [Petitioner] has on patient care, and if there is something consistent with her history and her potential psychopathology, and this becomes an example of that, that could be the basis for either further questioning regarding that, actual formulation and potential recommendations.

108. Dr. Pomm changed his opinion because the negative information he subsequently reviewed had not been validated and incorporated into the evaluation. He also changed his opinion based on his viewing of Petitioner's videotape deposition in this case.

109. Dr. Pomm described his concerns about Petitioner's videotape deposition as follows:

> The fact that she came to a videotape deposition with sunglasses and a hat and a scarf partly around her mouth and at first refused to look at the camera, that has nothing to do with her dress; in fact, just the refusal to look at the camera was of some concern. I have to start wondering, why is she refusing to look at the camera, what are we hiding?
>
> * * *
>
> I have to add in also responses to the questions, which appear to be resistant, defensive, and not forthcoming . . . . I had visions of Dr. Harmon [sic] kind of report, the immense type of probing. . . . I saw an individual who saw a psychiatrist

> sometime ago and appeared to do well . . . . Now we go to a videotape, and I'm seeing things that are reflective of what Dr. Harmon alluded to in terms of the need to probe and not being forthcoming and the difficulty getting information.
>
> Now I have to take into my mind what the psychological testing said in terms of attempting to put on the best face, given the situation, so I have to wonder why the inconsistency over time, given the different evaluators and the different situations, we're seeing this. It causes obviously a big red flag in my head to see this type of inconsistency.

110. Petitioner's behavior, appearance, and eye contact during the videotape deposition were in stark contrast to what Dr. Pomm observed of her when he first met her September 2003. Dr. Pomm found Petitioner's inconsistent behaviors alarming. In fact, he described her behavior during the videotape deposition as something "out of the realm of normal." Essentially, Petitioner impeded Respondent's ability to perform a proper, complete, and valid mental evaluation so that it was impossible to assess whether she is able to practice medicine with reasonable skill and safety.

111. Question 29 on the application completed by Petitioner on June 17, 2003, asks for a "yes" or "no" answer to the following:

> Have you ever had any staff privileges denied, suspended, revoked, modified, restricted, placed on probation, asked to resign or asked to take a temporary leave of

absence or otherwise acted against by any facility?

Petitioner answered "no" to this question on her June 17, 2003, application.

112. During the hearing, Petitioner maintained that she would still answer "no" to Question 29. Petitioner's answers to Question 29 were incorrect and misrepresented or concealed information that was relevant to Petitioner's consideration of her application.

113. The greater weight of the evidence indicates that Petitioner was asked to resign her position at her assigned clinic and transfer to another clinic on or about August 2, 2003. When Petitioner refused this request, Dr. Matseoane requested Petitioner's resignation from Columbia University/Harlem Hospital. At the very least, Petitioner's privileges as an attending physician at Harlem Hospital were suspended, restricted, or otherwise acted against on or before August 9, 2002, when Ms. Whitley advised the Harlem Hospital Police that Petitioner was no longer allowed on the premises pending a hearing.

114. Question 30 on the application completed by Petitioner on June 17, 2003, asks for a "yes" or "no" answer to the following:

> Have you ever been asked, or allowed to resign from any facility in lieu of disciplinary action or during any pending investigations into your practice?

Petitioner answered "no" to this question on her application.

115. During the hearing, Petitioner stated that "no" was still the correct answer to Question 30. Petitioner's answers to Question 30 were incorrect and misrepresented or concealed information that was relevant to Respondent's consideration of her application.

116. The greater weight of the evidence indicates that Dr. Matseoane asked Petitioner to resign from Harlem Hospital or he would report her misconduct to the New York State Department of Health, Office of Professional Medical Conduct. Petitioner actually resigned before Ms. Whitley completed her investigation.

117. Question 36 of the application completed by Petitioner on June 17, 2003, asks for a "yes" or "no" answer to the following:

> Have you ever been notified to appear before any licensing agency for a hearing on a complaint of any nature including, but not limited to, a charge or violation of the Medical Practice act, unprofessional or unethical conduct?

Petitioner answered "no" to Question 36 on her application.

118. During the hearing, Petitioner continued to maintain that "no" was the correct answer to Question 36. Petitioner's answers to Question 36 were correct under one reasonable interpretation of the words "for a hearing on a complaint."

119. It is true that Petitioner was never formally charged and noticed to appear for a formal hearing before the New York State Department of Health, Office of Professional Medical Conduct. Instead, the New York licensing agency was conducting an investigation about Petitioner's care of a patient and issues involving her interpersonal relationships. Petitioner was given notice and the opportunity to appear with counsel for a formal investigative interview on two occasions.

120. Petitioner failed to inform Respondent about the New York investigation until she was confronted at Respondent's December 2003 meeting. At that time, Petitioner stated as follows:

> I'm looking at question 36, and if I were to fill out the application as of now, I just recently had these meetings with the OPMC in New York, I would have checked off "yes," but I do understand that now, as far as updating the Board and whatever the Board can do as far as --it was not intentional and nothing was being, as was told, concealed.
>
> * * *
>
> I honestly didn't know that this required and update.

121. Under the circumstances of this case, Petitioner was obligated to update her application and to inform Respondent about the New York investigation. Petitioner knew or should have known that she could only be licensed by endorsement in Florida if the New York licensing agency resolved all issues in her favor.

CONCLUSIONS OF LAW

122. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2004).

123. It is the general rule in administrative proceedings that applicants have the burden of presenting evidence of their fitness for licensure. See Dept. of Banking and Finance v. Osborne Stern Co., 670 So. 2d 932, 934 (Fla. 1996) and Florida Dept. of Transportation v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981). An agency has the burden of presenting evidence that applicants are unfit for licensure because the have violated certain statutes. See Osborn Stern Co., 670 So. 2d at 934.

124. Section 458.331(3), Florida Statutes (2003), states as follows:

> (3) In any administrative action against a physician which does not involve revocation or suspension of license, the division shall have the burden, by the greater weight of the evidence, to establish

> the existence of grounds for disciplinary action. The division shall establish grounds for revocation or suspension of license by clear and convincing evidence.

125. Section 456.013, Florida Statutes (2003), states as follows in relevant part:

> (1)(a) Any person desiring to be licensed in a profession within the jurisdiction of the department shall apply to the department in writing to take the licensure examination. The application shall be made on a form prepared and furnished by the department. . . . The form shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department.
>
> * * *
>
> (3)(a) The board, or the department when there is no board, may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of this chapter or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete, and the time period in which the licensure application must be granted or denied shall be tolled until 15 days after the receipt of the final results of the investigation or prosecution.

126. Section 458.313, Florida Statutes (2003), states as follows in relevant part:

> (6) The department shall not issue a license by endorsement to any applicant who is under investigation in any jurisdiction for an act or offense which would constitute an violation of this chapter until such time as the investigation is complete, at which time the provision of s. 458.331 shall apply. . . . When the board finds that an individual has committed an act or offense in any jurisdiction which would constitute the basis for disciplining a physician pursuant to s. 458.331, the board may enter an order imposing one or more of the terms set forth in subsection (7).
>
> (7) When the board determines that any applicant for licensure by endorsement has failed to meet, to the board's satisfaction, each of the appropriate requirements set forth in this section, it may enter an order requiring one or more of the following terms:
>
> (a) Refusal to certify to the department an application for licensure, certification, or registration . . .

127. Section 458.331, Florida Statutes (2003), states as follows in pertinent part:

> (1) The following acts constitute ground for denial of a license or disciplinary action, as specified in s. 456.072(2):
>
> * * *
>
> (s) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.
>
> * * *

> (gg) Misrepresenting or concealing a material fact at any time during any phase of a licensing or disciplinary process or procedure.
>
> * * *
>
> (2) The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violation any provision of subsection (1) of the section or who is found guilty of violation any provision of 456.072(1).

128. Respondent properly denied Petitioner's application because she knowingly misrepresented and concealed material facts on her licensure application, in her subsequent oral statements to Respondent, and during her PRN evaluations. Her answers to Questions 29 and 30 on the application concealed the adverse circumstances surrounding her resignation from Harlem Hospital. Her oral statements to Respondent concealed the truth about her continued difficulties with personal and/or professional relationships, her resignation at Columbia University/Harlem Hospital, and the on-going investigation in New York. Petitioner misrepresented and concealed information regarding her personal/professional relationships after 2000 and the New York investigation during her PRN evaluations. The greater weight of the evidence indicates that Petitioner is guilty of violating Section 458.331(1)(gg), Florida Statutes (2003). See also §§ 456.072 and 458.331(2), Fla. Stat. (2003).

129. According to Dr. Pomm, Petitioner does not understand her behavior's impact on others, which critically affects her ability to practice medicine with reasonable skill and safety. Dr. Pomm concluded that something was going on that neither Dr. Harmon nor Dr. Seely described by diagnosis because Petitioner impeded Respondent's ability to receive a proper, complete, and valid mental evaluation. Therefore, it was impossible to assess whether she is able to practice medicine with reasonable skill and safety.

130. The facts of this case show that Respondent had good reason to be concerned about Petitioner's mental condition. Respondent was justified in denying Petitioner's application due to her lack of cooperation and deliberate misrepresentations during the PRN evaluations, which were necessary in order for Respondent to determine her ability to practice medicine with reasonable skill pursuant to Section 458.331(1)(s), Florida Statutes (2003).

131. The greater weight of the evidence indicates that Respondent properly refused to certify Petitioner's application to the Department of Health pursuant to Section 458.313(6), Florida Statutes (2003). That statute allows Respondent to consider an applicant's misconduct in <u>any</u> jurisdiction which would constitute the basis for disciplining a physician pursuant to Section 458.331, Florida Statutes (2003). Petitioner

violated Section 458.331(1)(gg), Florida Statutes (2003), in the instant jurisdiction, and therefore, is not entitled to licensure.

132. Petitioner is under investigation in New York for issues related to patient care and her behavior. However, Respondent did not present evidence that the New York investigation involved "an action that would constitute a violation of this chapter or the professional practice acts administered by the department and the boards." See § 456.013(3)(a), Fla. Stat. (2003).

133. Respondent properly denied Petitioner's application pursuant to Section 456.013(1)(a), Florida Statutes (2003), because she failed to supplement or update it after learning about the New York investigation. The New York investigation constituted a material change in circumstances. If Petitioner had disclosed the investigation in a timely manner, Respondent could have incorporated validated information about the investigation into its PRN evaluations.

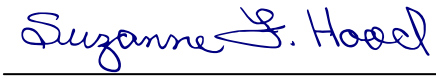
RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That Respondent enter a final order denying Petitioner's application for licensure by endorsement.

DONE AND ENTERED this 18th day of November, 2004, in Tallahassee, Leon County, Florida.



SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of November, 2004.

COPIES FURNISHED:

Rosanna M. Catalano, Esquire
Edward A. Tellechea, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

Allen Grossman, Esquire
Gray, Harris & Robinson, P.A.
301 South Bronough Street, Suite 600
Post Office Box 11189
Tallahassee, Florida 32302-3189

Larry McPherson, Executive Director
Board of Medicine
Department of Health
4052 Bald Cypress Way
Tallahassee, Florida 32399-1701

R. S. Power, Agency Clerk
Department of Health
4052 Bald Cypress Way
Tallahassee, Florida 32399-1701

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.