

# LOUISIANA STATE BOARD OF MEDICAL EXAMINERS



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New Orleans, LA 70112-1499

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	:	No. 89-A-012
<b>In The Matter Of</b>	:	
	:	
<b>ROBERT E. BURNETTE, M.D.</b>	:	
(Certificate No. 013951),	:	
	:	<b>DECISION</b>
<i>Respondent.</i>	:	_____

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An administrative hearing was convened before the Louisiana State Board of Medical Examiners ("Board") on July 21, 1989, to adjudicate alleged violations of the Louisiana Medical Practice Act<sup>1</sup> by Robert Eugene Burnette, M.D.<sup>2</sup> A quorum of the Board was present.<sup>3</sup> Dr. Burnette was present, appearing on his own behalf, without legal counsel.

Upon consideration of the evidence admitted, and the arguments and representations of counsel, pursuant to La. Rev. Stat. § 49:958, the Board renders the following findings of fact, conclusions of law and order.

## Findings of Fact

1. Respondent, Robert E. Burnette, M.D., at all times material to the facts and matters set forth herein, was a physician duly licensed by the Board to practice medicine in the state of Louisiana. Dr. Burnette, currently 47 years of age, is Board-certified in clinical and anatomic pathology and has been practicing medicine in that field for some 17 years, primarily at hospitals in New Orleans, Louisiana.

<sup>1</sup>LA. REV. STAT. ANN. §§ 37:1261-1292 (West 1988 & Supp. 1989).

<sup>2</sup>By Administrative Complaint filed May 13, 1989, Respondent was charged with "[k]nowingly performing [an] act which, in any way, assists an unlicensed person to practice medicine, or having professional connection with or lending one's name to an illegal practitioner." LA. REV. STAT. ANN. § 37:1285(A)(18) (West 1988).

<sup>3</sup>The hearing panel comprised Drs. Bordelon, Laborde, Hackett, LaNasa and Kaplan. Drs. Muslow and Nunnally took no part in the hearing, consideration or decision of this case.

2. On July 1, 1988, Respondent entered into a written agreement with "Inter-Mar Medical, Inc. (C. Galan, M.D.)" ("Inter-Mar"),<sup>4</sup> an entity apparently engaged in providing, through contracts with shipping companies, medical services and treatment to merchant seamen while present in Louisiana. Such medical services—including cholera and yellow fever immunizations, validation of immunization records and examination, diagnosis and treatment of medical conditions—were principally provided by Carlos Galan, M.D., an individual reportedly holding a medical degree from the University of Rome, Italy. Dr. Galan, however, is not now, nor has he ever been, licensed by the Board to engage in the practice of medicine in the state of Louisiana.

3. The agreement between Dr. Burnette and Dr. Galan designated Respondent as Medical Director of the Inter-Mar clinic with Dr. Galan as his "assistant," and provided, *inter alia*, that all onboard medical services would be provided by Dr. Galan or the Inter-Mar clinic subject only to prior notice to and approval by Dr. Burnette.<sup>5</sup>

4. The relationship contemplated by the Inter-Mar Agreement did, in fact, go forward, with the effect of enabling Dr. Galan, an unlicensed physician, to engage in the practice of medicine in this state at least during the following eight months. The evidence of record herein, thus, specifically documents numerous instances in which Dr. Galan undertook to conduct physical examinations of, order pathology and radiology testing and consultations, render medical diagnoses, and prescribe treatment, including medications, for a substantial number of seamen seen at the Inter-Mar clinic.<sup>6</sup> Records of such examinations, diagnoses and prescribed treatments were signed by Dr. Galan in Dr. Burnette's name and later cosigned by Dr. Burnette, though generally Respondent did not see or examine the patients.

5. Dr. Burnette does not deny or dispute these facts, and indeed expressly acknowledged in his testimony that he "knew that Dr. Galan did not have a license."<sup>7</sup> In his defense, Dr. Burnette suggests only that in entering into the subject relationship, Dr. Galan had assured him that the Board had not objected to the clinic operation and that he further understood that other licensed physicians had preceded him in the role of Medical Director with Inter-Mar, both of which he sought to treat as precedent establishing the lawfulness of the relationship.

6. The evidence is nonetheless clear and convincing, and indeed undisputed, but that Dr. Burnette's relationship with Dr. Galan, and acts performed in the course of such relationship, in fact enabled Dr. Galan to practice medicine in this state, though unlicensed to do so.

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<sup>4</sup>Agreement, Inter-Mar Medical, Inc. (C. Galan, M.D.) and Dr. Robert Burnette, M.D. (July 1, 1988), Bd. Exh. No. 2 [hereinafter referenced as Inter-Mar Agreement]. Inter-Mar appears to have alternatively been designated as "International Marine Medical, Inc."

<sup>5</sup>Inter-Mar Agreement, Bd. Exh. No. 2.

<sup>6</sup>See Bd. Exh. No. 3 (*en globo*).

<sup>7</sup>Transcript of Hearing 11 (Jul. 21, 1989), *In the Matter of Robert E. Burnette, M.D.*, No. 89-A-012 (La. State Bd. Med. Exam.).

### Conclusions of Law

Based on the foregoing findings of fact, the Board concludes, as a matter of law, that:

1. We appreciate Dr. Burnette's principal legal response here to suggest—without denying the operative facts, his actual knowledge that Dr. Galan was unlicensed, or that he enabled Dr. Galan to practice medicine—that he nonetheless was not aware that the relationship was not in violation of the law. Whether meant to suggest a requirement of specific intent or a defense of ignorance of the law, we cannot and do not accept the suggestion.

2. Failure to know what the law provides is not only not a cognizable defense,<sup>8</sup> but in the case of a physician, and the important responsibilities he assumes by undertaking to practice his profession, particularly culpable. All persons subject to the law must be conclusively and irrebuttably presumed to know what the law says. Were it otherwise, the rule of law would be impotent; for no matter how grievous the crime or violation, enforcement of the law would be circumvented solely by an accused's usually unchallengeable assertion of a subjective ignorance of the law's command. This principle obtains particular force in the context of the Medical Practice Act, which is fundamentally animated by a purpose to safeguard the public health, welfare and safety against the unprofessional, improper, unauthorized and unqualified practice of medicine. La. Rev. Stat. § 37:1261. As a result, we have consistently held, and hereby reaffirm, that either argued or actual ignorance of the fact that actions or conduct are proscribed by the law does not vitiate lawful grounds under the Medical Practice Act for sanctions against medical licensure.

3. Dr. Burnette entered into a relationship with an individual, Carlos Galan, M.D., a person not licensed to practice medicine in the state of Louisiana, and in the course of such relationship, knowingly granted authority and lent his name and licensure authority to Dr. Galan, performed acts, and otherwise assisted and enabled Dr. Galan to practice medicine without a license. Lawful cause therefore exists for the suspension or revocation of Respondent's license to practice medicine in the state of Louisiana, pursuant to La. Rev. Stat. § 37:1286(A)(18).

### Decision

Considering the foregoing,

**IT IS ORDERED** that the license of Robert E. Burnette, M.D., to practice medicine in the state of Louisiana, as evidenced by Certificate No. 013951, be, and the same is hereby **SUSPENDED** for a period of six (6) months from the date hereof.

**IT IS FURTHER ORDERED** that the foregoing order of suspension shall itself be stayed and suspended and Dr. Burnette's license shall be placed **ON PROBATION** for a period of two (2) years from the date hereof; *provided, however*, that Dr. Burnette shall, during the term of such probation accept and strictly comply with the following probationary terms and conditions:

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<sup>8</sup>See *In Re Wilkes*, 403 So.2d 35 (La. 1981).

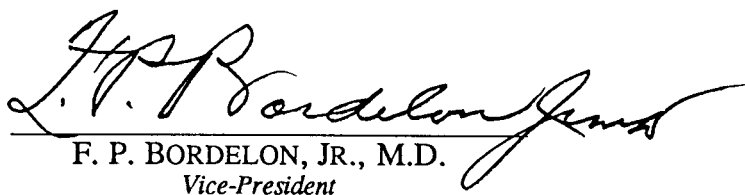
1. *Payment of Fine.* Dr. Burnette shall, prior to expiration of the period of probation ordered herein, pay to the Board a fine in the amount of Two Thousand and No/Dollars (\$2,000.00); and

2. *Compliance with Medical Practice Act.* Dr. Burnette shall remain in strict compliance in all respects with the provisions of the Medical Practice Act.

**IT IS FURTHER ORDERED** that should Dr. Burnette fail to comply with and satisfy the conditions of probation set forth above, the suspension ordered hereinabove shall thereby become executory and effective immediately, and any such violation shall also be deemed just cause for the suspension or revocation of the medical licensure of Robert E. Burnette, M.D., or for such other disciplinary action as the Board deems appropriate, as if such violation were enumerated among the causes provided by La. Rev. Stat. § 37:1285(A).

New Orleans, Louisiana, this 6<sup>th</sup> day of December, 1989.

LOUISIANA STATE BOARD OF  
MEDICAL EXAMINERS

By:   
F. P. BORDELON, JR., M.D.  
Vice-President