

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS



830 Union Street, Suite 100  
Telephone: (504) 524-6763  
New Orleans, LA 70112-1499

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In the Matter Of	:	No. 88-I-007-C
FRED JOSEPH DUHON, M.D.	:	
(CERTIFICATE NO. 010885),	:	CONSENT
	:	ORDER
Respondent.	:	_____
	:	

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Information was provided to the Louisiana State Board of Medical Examiners ("Board") indicating that Fred Joseph Duhon, M.D. ("Dr. Duhon"), was charged with several violations of statutes governing medical practice in the state of Georgia arising out of, inter alia, allegedly excessive prescriptions for substances designated as controlled under both federal and state laws, including Percodan (oxycodone terephthalate), Percocet (oxycodone hydrochloride), Tylox (oxycodone acetaminophen), Seconal (secobarbital sodium), Tuinal (secobarbital sodium and amobarbital sodium), and Demerol (meperidine hydrochloride) given to seven patients.<sup>1</sup>

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<sup>1</sup>Notice of Hearing "In the Matter of Fred J. Duhon, M.D." (Docket No. 87-2, Composite State Board of Medical Examiners for the State of Georgia, January 8, 1987). A copy of the Notice of Hearing, pp. 1-10 inclusive, is attached hereto as Exhibit "A."

In lieu of formal administrative hearing before the Composite State Board of Medical Examiners for the state of Georgia, Dr. Duhon entered into a consent order with the Georgia Board, effective April 1, 1987.<sup>2</sup> Under the terms of the Georgia Consent Order, Dr. Duhon's license to practice medicine in the state of Georgia was actively suspended for a period of thirty (30) days, and various probationary terms, conditions and restrictions were imposed.<sup>3</sup>

Alternative to the institution of formal investigative and adjudicatory proceedings under the Louisiana Medical Practice Act,<sup>4</sup> the Board determined that the public interest may be properly and adequately served by Dr. Duhon's execution of a consent order by virtue of which the physician's Louisiana license would be placed on probation consistent with the specified terms and conditions imposed by the state of Georgia, together with a requirement that Dr. Duhon notify the Board of any intention to relocate to Louisiana as provided hereunder. As evidence by his subscription hereto, Dr. Duhon has accepted the disposition proposed by the Board in lieu of formal administrative proceedings.

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<sup>2</sup>Consent Order "In the Matter of Fred J. Duhon, M.D." (Docket No. 87-2, Composite State Board of Medical Examiners, State of Georgia, April 1, 1987). A copy of the Consent Order, pp. 1-8 inclusive, is attached hereto as Exhibit "B."

<sup>3</sup>See Exhibit "B." Generally, the probationary terms, conditions and restrictions require Dr. Duhon to refrain from prescribing, administering or dispensing schedule II controlled substances for a period of two (2) years except under specified conditions for patients institutionalized at hospitals or nursing homes. Additionally, continuing medical education requirements are outlined, and recordation proceedings are specified for all controlled substances he prescribes.

<sup>4</sup>LSA-R.S. 37:1261-91. The Board is empowered to suspend, revoke or impose probationary conditions on the license of any physician for "[p]rescribing, dispensing or administering legally controlled substances or any dependency-inducing medication without legitimate justification therefore or in other than a legal or legitimate manner." LSA-R.S. 37:1285A(6). Likewise, the Board is authorized to suspend, revoke or restrict the license of a physician whose license to practice medicine in another state has been restricted by the licensing authority of that state. LSA-R.S. 37:1285A(30).

Recognizing his right to notice of charges specified against him, to have such charges adjudicated pursuant to LSA-R.S. 49:955-58, to be represented therein by legal counsel of his choice, and to a final decision rendered upon written findings of fact and conclusions of law, Dr. Duhon, nonetheless, hereby waives his right to notice and formal adjudication of charges, pursuant to LSA-R.S. 49:959D and acknowledges, accepts and consents to entry of the following orders.

Accordingly, in consideration of the foregoing, and pursuant to the authority vested in the Board by LSA-R.S. 37:1285 and LSA-R.S. 49:955B,

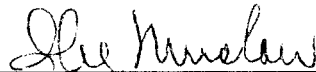
IT IS ORDERED that, until and unless this Order is modified or rescinded by written order of the Board:

- a) Strict adherence to the terms and conditions of the Georgia Consent Order: Dr. Duhon shall strictly adhere to, abide by, and comply with all of the terms, conditions, and restrictions to which he agreed with the Georgia Board to adhere, as evidenced by his subscription to Exhibit "B", attached hereto, effective April 1, 1987 and incorporated herein by reference.
- b) Notification of relocation and personal appearance: Should Dr. Duhon at any time before the expiration of the five (5) year probationary period as evidenced by Exhibit "B", or before April 1, 1992, whichever occurs first, decide to relocate his practice of medicine to the state of Louisiana, he shall, in that instance, provide written notification to the Board at least sixty (60) days prior to his relocation to practice medicine in the state of Louisiana. Dr. Duhon shall also personally appear before the Board prior to the time that he commences the practice of medicine in the state of Louisiana.

IT IS FURTHER ORDERED that any violation of or failure of strict compliance with any of the terms and conditions of the Georgia Consent Order or of the within Consent Order by Dr. Duhon shall be deemed adequate and sufficient cause, upon proof of such violation or failure, for the suspension or revocation of the medical license of Fred Joseph Duhon, M.D. or for such other disciplinary action as the Board deems appropriate, as if such violations were enumerated among the causes provided in LSA-R.S. 37:1285.

New Orleans, Louisiana, this 6 day of Oct,  
1988.

LOUISIANA STATE BOARD OF  
MEDICAL EXAMINERS

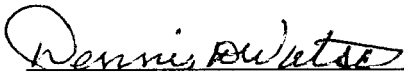


IKE MUSLOW, M.D.  
PRESIDENT

ACKNOWLEDGEMENT AND CONSENT

I, FRED JOSEPH DUHON, M.D., hereby acknowledge,  
approve, accept and consent to entry of the above and  
foregoing Order, this 12 day of September, 1988.

WITNESS:

  
FRED JOSEPH DUHON, M.D.

87-2  
1-8-87  
L. L. Harper

BEFORE THE COMPOSITE STATE BOARD OF MEDICAL EXAMINERS  
STATE OF GEORGIA

IN THE MATTER OF:	)	
	)	Docket No. <u>87-2</u>
FRED J. DUHON, M.D.	)	
License No. 13610	)	AG Hearing No. 92615-86
	)	
Respondent.	)	

TO: Fred J. Duhon, M.D.

NOTICE OF HEARING

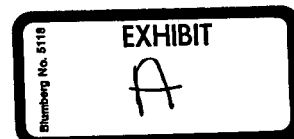
You are hereby notified that the Composite State Board of Medical Examiners, through its appointed representative, will hold a hearing at the offices of the Board, 166 Pryor Street, S.W., Atlanta, Georgia 30303, at 10:00 o'clock, a.m., on the 8th day of April, 1987, for the purpose of hearing charges that, if proven, may result in the suspension, revocation or other sanction of your license to practice medicine in the State of Georgia. You are also notified of the following matters:

LEGAL AUTHORITY FOR HEARING

This hearing will be held under the authority and jurisdiction conferred upon the Composite State Board of Medical Examiners by O.C.G.A. Ch. 43-34, as amended, and in accordance with the Administrative Procedure Act, codified in O.C.G.A. Ch. 50-13, O.C.G.A. § 43-1-19, the Rules and Regulations of the Board and the Rules and Regulations of the Joint Secretary, State Examining Boards.

HEARING OFFICER

Pursuant to the provisions of O.C.G.A. Ch. 50-13, the Composite State Board of Medical Examiners hereby



appoints Wayne B. Mangum as hearing officer for the above-styled matter. All motions and responses directed to the Board with regard to this hearing should be addressed to the hearing officer and filed with the Joint-Secretary, with copies served upon counsel for the Board.

#### RIGHTS OF RESPONDENT

You have the following rights in connection with this hearing:

- (1) To respond and to present evidence on any relevant issue;
- (2) to be represented by counsel at your expense;
- (3) to subpoena witnesses and documentary evidence through the Board and the Joint Secretary;
- (4) such other rights as are conferred by the Rules and Regulations of the Board and the Rules and Regulations of the Joint Secretary, State Examining Boards.

#### REQUIREMENT OF ANSWER

An Answer to this Notice of Hearing must be filed within fourteen (14) days after service of this Notice. A copy of the Answer must be served upon the counsel for the Board.

#### STATUTES AND RULES INVOLVED

Sanction of the Respondent's license is sought pursuant to the following provisions of O.C.G.A. § 43-34-37:

"(a) The board shall have authority to refuse to grant a license to an applicant or to discipline a physician licensed under this chapter or any antecedent law upon a finding by the board that the licensee or applicant has:

(7) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimal standards of acceptable and prevailing medical practice and shall also include, but not be limited to, the prescribing or use of drugs, treatment, or diagnostic procedures which are detrimental to the patient as determined by the minimal standards of acceptable and prevailing medical practice or by rule of the board;

\* \* \*

(10) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which law, rule, or regulation relates to or in part regulates the practice of medicine, when the licensee or applicant knows or should know that such action is violative of such law, rule, or regulation; or violated a lawful order of the board, previously entered by the board in a disciplinary hearing . . . ."

O.C.G.A. § 43-1-19 provides that a state examining board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:

"(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title.

\* \* \*

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the state examining board regulating the business or profession licensed under this title, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by



the board in a disciplinary hearing, consent decree, or license reinstatement."

Respondent is also alleged to have violated O.C.G.A. § 16-13-41(f), which statute relates to or in part regulates the practice of medicine, and reads as follows:

"No person shall prescribe or order the dispensing of a controlled substance, except a registered practitioner who is:

- (1) Licensed or otherwise authorized by this state to prescribe controlled substances;
- (2) Acting in the usual course of his professional practice; and
- (3) Prescribing or ordering such controlled substances for a legitimate medical purpose."

Respondent is also alleged to have violated Board Rule 360-2-.09, effective January 4, 1983, which relates to or in part regulates the practice of medicine, and provides in pertinent part as follows:

"The Board has the authority to refuse to grant a license to an applicant, or to discipline a physician licensed in Georgia if that physician has engaged in unprofessional conduct. For the purpose of the implementation and enforcement of this rule, unprofessional conduct is defined as, but not limited to, participating in or aiding the following:

(d) Not maintaining appropriate records whenever Schedule II drugs are prescribed. Appropriate records, at a minimum, shall contain the following:

1. The patient's name and address;
2. The date, drug name, drug quantity, and diagnosis for all Schedule II prescriptions;
3. Records concerning the patient history.

(e) Prescribing drugs for a habitual drug user in the absence of substantial medical justification;

(f) Any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing medical practice. Guidelines to be used by the Board in defining such standards may include, but are not restricted to:

1. Diagnosis. Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.
2. Treatment. Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.
3. Records. Maintenance of records to furnish documentary evidence of the course

of the patient's medical evaluation,  
treatment and response."

MATTERS ASSERTED

1.

The Respondent is licensed to practice medicine in the State of Georgia and was so licensed at all times relevant to the matters asserted herein.

CONDUCT INVOLVED

The following underlying conduct supports the allegations that Respondent has violated the statutes and rules cited above.

1.

Respondent's repeated prescribing of controlled substances over relatively short intervals of time and in excessive quantity.

2.

Respondent's failure to record the drug and/or quantity prescribed on patient chart.

3.

Respondent's repeated prescribing of controlled substances to patients without any office visits.

4.

Respondent's issuance of several prescriptions for controlled substances at one visit.

5.

Respondent's repeated prescribing of Schedule II controlled substances in absence of substantial medical justification.

6.

Respondent's failure to take an appropriate medical history and/or failure to conduct other than a cursory physical examination prior to prescribing controlled substances.

7.

Respondent's prescribing of controlled substances on every or nearly every patient visit.

8.

Respondent's continued prescribing of Schedule III and IV controlled substances without substantial medical justification to patients who were previously prescribed Schedule II controlled substances after Respondent became aware of a Board investigation.

#### DRUGS

1.

Percodan, Percocet and Tylox [tradename medications containing oxycodone, a Schedule II controlled substance under O.C.G.A. § 16-13-26(1)(A)(x)].

2.

Seconal [tradename medication containing secobarbital, a Schedule II controlled substance under O.C.G.A. § 16-13-24(4)(B)].

3.

Tuinal [tradename medication containing amobarbital and secobarbital, Schedule II controlled substances under O.C.G.A. § 16-13-24(4)(A) and (B)].

4.

Demerol and Mepergan Fortis [tradename medications containing meperidine, a Schedule II controlled substance under O.C.G.A. § 16-13-26(2)(N)]. Mepergan Fortis also contains promethazine, a dangerous drug under O.C.G.A. § 16-13-71(b)(787).

PATIENTS

(Patient name to be supplied to Respondent upon written request.)

A.A. \_\_\_\_\_  
R.A. \_\_\_\_\_  
B.B. \_\_\_\_\_  
C.B. I \_\_\_\_\_  
C.B. II \_\_\_\_\_  
E.B. \_\_\_\_\_  
J.B. I \_\_\_\_\_  
J.B. II \_\_\_\_\_  
L.B. \_\_\_\_\_  
O.B. \_\_\_\_\_  
P.B. \_\_\_\_\_  
R.B. \_\_\_\_\_  
S.B. \_\_\_\_\_  
V.B. \_\_\_\_\_  
D.D. \_\_\_\_\_  
K.D. \_\_\_\_\_  
B.H. \_\_\_\_\_  
D.J. \_\_\_\_\_

J.M. I \_\_\_\_\_  
J.M. II \_\_\_\_\_  
R.P. \_\_\_\_\_  
S.P. \_\_\_\_\_  
R.R. \_\_\_\_\_  
M.S. \_\_\_\_\_  
L.W. \_\_\_\_\_  
M.W. \_\_\_\_\_  
R.W. \_\_\_\_\_

Resolution of the foregoing issues will determine whether sufficient grounds exist for the imposition of sanctions upon the Respondent's license to practice medicine in the State of Georgia, under O.C.G.A. § 43-34-37(b) and/or § 43-1-19(d).

This Notice of Hearing is signed and attested by the Joint Secretary of the State Examining Boards, on behalf of the Composite State Board of Medical Examiners.

This 8th day of January, 1987.

COMPOSITE STATE BOARD OF MEDICAL  
EXAMINERS

DONALD L. BRANYON, JR., M.D.  
President

(BOARD SEAL)

William G. Miller  
WILLIAM G. MILLER, JR.  
Joint Secretary  
State Examining Boards

Counsel:

MARK H. COHEN  
Assistant Attorney General  
132 State Judicial Building  
Atlanta, Georgia 30334  
Telephone: (404) 656-3337

87-2  
4-3-87  
L. Harper

BEFORE THE COMPOSITE STATE BOARD OF MEDICAL EXAMINERS  
STATE OF GEORGIA

IN THE MATTER OF:

FRED J. DUHON, M.D.,  
License No. 13610

Respondent.

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DOCKET NO. 87-2

AG FILE NO. 64CB-CA-92615-86

CONSENT ORDER

By agreement of the Composite State Board of Medical Examiners and Fred J. Duhon, Respondent, the following disposition of this matter is entered pursuant to the provisions of the Georgia Administrative Procedure Act, codified as O.C.G.A. § 50-13-13(a)(4).

FINDINGS OF FACT

1.

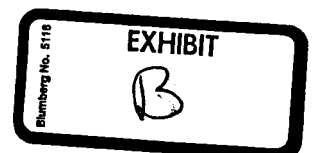
The Respondent is licensed to practice medicine in the State of Georgia, and was so licensed at all times/relevant to the matters stated herein.

2.

The Respondent does not contest the Matters Asserted in the Notice of Hearing issued by the Board on January 8, 1987.

3.

The Respondent waives any further findings of fact with respect to the above matter. However, the Respondent shall be allowed to submit a statement in explanation and mitigation of



the matters stated herein for consideration by the Board prior to its review of this Consent Order.

#### CONCLUSIONS OF LAW

The Respondent's conduct constitutes sufficient grounds for the imposition of sanctions upon his license to practice medicine in the State of Georgia under O.C.G.A. Ch. 43-34. The Respondent hereby waives any further conclusions of law with respect to the above-styled matter.

#### ORDER

The Composite State Board of Medical Examiners, having considered the particular facts and circumstances of this case, hereby orders, and the Respondent hereby agrees, that the following sanctions shall be imposed upon his license to practice medicine in the State of Georgia:

1.

The Respondent's license to practice medicine in the State of Georgia shall stand suspended, for a period of one year from the effective date of this Consent Order. Provided, however, that all but thirty (30) days of said suspension is hereby stayed, and may be served on probation, under the terms and conditions outlined below. The thirty (30) day period of actual suspension shall be served commencing thirty (30) days from the effective date of this Consent Order. During any period of actual suspension, the Respondent shall not engage in the practice of medicine. If the Respondent shall so engage, his license shall be revoked, upon substantiation thereof.



2.

For a period of two (2) years from the effective date of this Consent Order, the Respondent shall not prescribe, administer, or dispense, in the course of his office practice, any controlled substances. With respect to Schedule II controlled substances, the Respondent shall not prescribe, administer, or dispense, in the course of his office practice, any Schedule II controlled substance for a period of three (3) years from the effective date of this Consent Order. It is hereby understood that the Respondent may write orders for any controlled substances on institutionalized patient's charts, in connection with the Respondent's hospital or nursing home practice. The Respondent's prescribing practices with respect to controlled substances shall continue to be closely monitored throughout the probationary period. At the end of a period of two (2) years from the effective date of this Consent Order, or at the completion of the drug abuse/pharmacology continuing education requirement contained below, whichever is earlier, the Respondent shall be eligible to petition the Board for reinstatement of office prescribing privileges with respect to controlled substances contained in Schedules III, IV, and V. At the end of a period of three (3) years from the effective date of this Consent Order, or at the completion of the entire continuing education requirement contained below, whichever is earlier, the Respondent shall be eligible to petition the Board for reinstatement of office prescribing privileges with respect to Schedule II controlled substances.

3.

Commencing after the suspension period outlined above, the Respondent's license shall be placed on probation for a period of four (4) additional years, for a total of five (5) years, with the following terms and conditions of probation:

(a) During the period of probation, Respondent shall personally maintain an accurate log of all controlled substance drugs prescribed or administered in conjunction with his hospital or nursing home practice, including date, drug, strength, dosage, patient name and reason for prescribing or diagnosis. If the Respondent's office prescribing privileges are reinstated, he shall personally maintain the same log for controlled substances prescribed, dispensed, or administered in his office. Respondent also agrees to comply in all respects to Board Rule, 360-2-.09.

(b) The Respondent shall submit to the Board for its approval a program of continuing education consisting of 200 hours, at least 100 hours to be in the area of drug abuse and/or pharmacology, which the Respondent shall complete within three years of the effective date of this Consent Order, and provide documentation thereof to the Board.

(c) The Respondent shall permit the inspection of his office, hospital, or nursing home records and any required logs during the period of probation by a representative of the Composite State Board of Medical Examiners at any reasonable time designated by the Composite State Board of Medical Examiners or its representative. The Respondent shall have the right to be present during such inspection of records, and the rights of privacy and confidentiality of patients shall be maintained. The Respondent shall also make himself available, upon reasonable notice, for personal interviews with the Medical Coordinator of the Board.

(d) In the event the Respondent should leave Georgia to reside or practice outside of Georgia for periods longer than thirty (30) consecutive days, the Respondent shall notify the Board in writing of the dates of departure and return. Periods of residency or practice outside of Georgia will not apply to the reduction of the Respondent's probationary period. The Respondent shall advise the Board of any change in his residence and/or office address.

(e) If the Respondent shall fail to abide by all State and Federal laws relating to drugs OR regulating the practice of medicine, the Rules

and Regulations of the Composite State Board of Medical Examiners, or the terms of this Consent Order and probation, OR if it should appear from monitoring reports submitted to the Board that the Respondent is unable to practice medicine with reasonable skill and safety to patients, the Respondent's license shall be subject to revocation, upon substantiation thereof, and shall not be subject to restoration. Summary suspension of the Respondent's license, pending any such proceeding, may be ordered pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-18(c)(1), or any other statute authorizing such emergency action.

(f) The Composite State Board of Medical Examiners shall review and evaluate the practice of the Respondent at the end of the probationary period. It is hereby understood that after this evaluation, the Board shall have the right to restore all rights and privileges incident to the license of the Respondent, but may also extend or modify the terms of probation, if extension or modification is warranted by evidence presented to the Board.

4.

In addition to the sanctions contained herein, the Respondent shall pay a fine of \$2,500.00 at the following

intervals: \$1,000.00 within thirty (30) days of the effective date of this Consent Order, followed by three remaining payments of \$500.00 each made every thirty (30) days thereafter for three months.

5.

In addition to and in conjunction with any other sanction contained herein, this Consent Order and dissemination thereof shall serve as a public reprimand to the Respondent for his conduct.

6.

Approval of this Consent Order by the Composite State Board of Medical Examiners shall in no way be construed as condoning the Respondent's conduct, and shall not be construed as a waiver of any of the lawful rights possessed by the Board. This Consent Order shall not become effective until approved by the Composite State Board of Medical Examiners.

7.

Respondent, Fred J. Duhon, M.D., acknowledges that he is represented by counsel in this matter, that he has read this Consent Order and has discussed it with counsel. Respondent understands that he has the right to a hearing in this matter, and Respondent freely, knowingly and voluntarily waives such right by entering into this Consent Order. Respondent understands that this Consent Order will not become effective until approved by the Composite State Board of Medical Examiners. Respondent further understands and agrees that the Board shall have the authority to review the investigative file

and all relevant evidence in considering this Consent Order. Respondent further understands that this Consent Order, once approved, shall constitute a public record which may be disseminated as a disciplinary action of the Board. If this Consent Order is not approved, it shall not constitute an admission against interest in this proceeding, or prejudice the ability of the Board to adjudicate this matter. Respondent consents to the terms and sanctions contained herein.

Effective, this 1st day of April, 1987.

COMPOSITE STATE BOARD OF MEDICAL EXAMINERS

BY: Donald L. Branyon, M.D.  
DONALD L. BRANYON, JR., M.D.  
President

(BOARD SEAL)

ATTEST: William G. Miller, Jr.  
WILLIAM G. MILLER, JR.  
Joint Secretary  
State Examining Boards

Consented to:

Fred J. Duhon, M.D.  
FRED J. DUHON, M.D.  
Respondent

Sworn to and subscribed  
before me, this 9 day  
of March, 1987.

Dennis D. Watson  
NOTARY PUBLIC

My commission expires: 6-14-87

Dennis D. Watson  
DENNIS D. WATSON  
Attorney for Respondent