

BEFORE THE
LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

<p>-----</p> <p>In The Matter of:</p> <p>RICHARD G. SELLERS, M.D. (Certificate No. 016793)</p> <p style="text-align:right">Respondent</p> <p>-----</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>NO. 91-I-057-X</p> <p>STIPULATION AND AGREEMENT FOR VOLUNTARY RESTRICTION OF LICENSURE</p>
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The above-entitled proceeding was docketed for investigation by the Louisiana State Board of Medical Examiners ("Board"), following receipt of information indicating that Richard G. Sellers, M.D. ("Dr. Sellers") had entered into an agreement with the Florida Department of Professional Regulations, Board of Medicine ("Florida Board"), whereby Dr. Sellers entered a stipulated disposition of an administrative complaint filed against him pursuant to Florida law, arising out of an alleged surgical error.¹ The stipulated disposition was in lieu of formal hearing before the Florida Board on charges of failure to practice medicine without that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.² Under the terms of the stipulation and final order, Dr. Seller agreed, *inter alia*, to payment of a fine, receipt of a reprimand, and various continuing medical education requirements.³

Although Dr. Sellers currently resides and practices medicine in Florida, he retains licensure in the state of Louisiana. Accordingly, the investigation was assigned to John B. Bobear, M.D., Director of Investigations for the Louisiana State Board of Medical Examiners, who has confirmed to his satisfaction that sufficient cause exists for a recommendation to the Board that a formal administrative

¹ See *Department of Professional Regulation v. Richard Graham Sellers, M.D., FINAL ORDER*, License No. ME0053098 (DPR Case No. 90-07113, September 11, 1991), together with attached STIPULATION and ADMINISTRATIVE COMPLAINT in the same proceeding. (Photocopy of all attached hereto) The alleged surgical error was performance of a procedure on the wrong leg of a patient.

² See ADMINISTRATIVE COMPLAINT, supra note 1.

³ See STIPULATION, supra note 1.

complaint be filed against Dr. Sellers pursuant to the Louisiana Medical Practice Act, LSA-R.S. 37:1261 *et seq.*, charging Dr. Sellers with violation of LSA-R.S. 37:1285A(30), which provides: "The refusal of a licensing authority of another state to issue or renew a license, permit or certificate to practice medicine or osteopathy in that state or the revocation, suspension or other restriction imposed on a license, permit, or certificate issued by such licensing authority which provides or restricts practice in that state ..."

Recognizing his right to have any allegation or charge asserted in a formal administrative complaint, pursuant to LSA-R.S. 49:955-58, and to a subsequent adjudication and final decision rendered upon findings of fact and conclusions of law, Dr. Sellers, nonetheless hereby waives his right to formal charges and formal adjudication and, pursuant to LSA-R.S. 49:955D, consents to entry of the order set forth hereinafter.

By his subscription hereto, Dr. Sellers also hereby authorizes the investigating officer designated by the Board with respect hereto to present this Stipulation and Agreement, with the assistance of legal counsel, to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation.

Based upon the information provided, accordingly, and on the recommendation of the investigating officer, the Board has concluded that its responsibility to ensure the health, safety and welfare of the citizens of this state, pursuant to LSA-R.S. 37:1261, will be effectively served by entry of the order set forth hereinafter, by consent.

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. 49:955D;

IT IS STIPULATED AND AGREED that Richard G. Sellers, M.D., shall comply fully with the terms and restrictions imposed in the agreement between the Florida Board and Dr. Sellers as ordered in the September 11, 1991 FINAL ORDER of the Florida Board, as well as any successor agreement or order which may be entered in the future pursuant thereto. A copy of the Florida order is attached hereto and incorporated herein by reference;

IT IS FURTHER STIPULATED AND AGREED that in the event Dr. Sellers should desire to relocate to the state of Louisiana to take up residence for the purpose of practicing medicine, he shall advise the Board, in writing, not less than sixty (60) days prior to such relocation for the purpose of practicing medicine, and further agrees to contact the Board for the purpose of scheduling an informal appearance before the Board for the purpose of discussing his then-current practice intentions and plans;

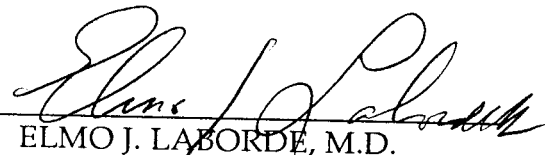
IT IS FURTHER STIPULATED AND AGREED, Dr. Sellers shall keep the Board apprised of his current business address, notifying the Board of any change of business address within no less than thirty (30) days of its occurrence.

IT IS FURTHER STIPULATED AND AGREED that any violation of or failure of strict compliance with any of the terms, conditions, or restrictions of this Stipulation and Agreement by Dr. Sellers shall, upon proof of such violation or failure, be deemed adequate and sufficient cause, for the suspension and/or revocation of Dr. Sellers' medical license 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.

IT IS FURTHER STIPULATED AND AGREED that this Stipulation and Agreement shall be, and shall be deemed to be, a public record.


New Orleans, Louisiana, this 30th day of January, 1991.

LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS

BY: 
ELMO J. LABORDE, M.D.
PRESIDENT

ACKNOWLEDGMENT AND CONSENT

I, RICHARD G. SELLERS, M.D., hereby acknowledge, approve, accept and consent to entry of the above and foregoing Stipulation and Agreement for Voluntary Restriction of Licensure, this 12th day of December, 1991.


RICHARD G. SELLERS, M.D.

FILED

Department of Professional Regulation
AGENCY CLERK

DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

CLERK

DATE

9-16-91

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

-vs-

RICHARD GRAHAM SELLERS, M.D.,

Respondent.

DPR CASE NUMBER: 90-07113
LICENSE NUMBER: ME 0053098

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on August 3, 1991, in Palm Beach, Florida, for consideration of a Stipulation (attached hereto as Exhibit A) entered into between the parties in the above-styled case. Upon consideration of the Stipulation, the documents submitted in support thereof, the arguments of the parties, and being otherwise advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Stipulation as submitted be and is hereby approved and adopted in toto and incorporated by reference herein. Accordingly, the parties shall adhere to and abide by all of the terms and conditions of the Stipulation.

This Order takes effect upon filing with the Clerk of the Department.

DONE AND ORDERED this 11th day of September, 1991.

BOARD OF MEDICINE



LUIS H. SERENTILL, M.D.
VICE CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to Dr. Richard Sellers c/o Rodney W. Morgan, Esquire, 3333 Henderson Boulevard, Suite 110, Tampa, Florida 33609-2913, and by interoffice delivery to Bruce D. Lamb, Chief Trial Attorney, Department of Professional Regulation, 730 S. Sterling Street, Suite 201, Tampa Florida 33609, at or before 5:00 P.M., this 16th day of September, 1991.



STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

v.

DPR CASE NO. 90-07113

RICHARD GRAHAM SELLERS, M.D.,

Respondent.

STIPULATION

Richard Graham Sellers, M.D., the Respondent, and the Department of Professional Regulation, referred to as Department, stipulate and agree to the following joint Stipulation and to the entry of a Final Order of the Board of Medicine, referred to as Board, incorporating this Stipulation and the agreement in this matter.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 0053098.
2. Respondent was charged by an Administrative Complaint filed by the Department and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit A.
3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint attached hereto as Exhibit A.

STIPULATED CONCLUSIONS OF LAW

1. Respondent, in his capacity as a licensed physician, admits that in such capacity he is subject to the provisions of Chapters 455 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts set forth in the Administrative Complaint, if proven, constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

STIPULATED DISPOSITION

1. Respondent shall not in the future violate Chapters 455, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto.

2. The Board shall impose an administrative fine in the amount of \$1,500.00 against the Respondent. The fine shall be paid by the Respondent to the Executive Director of the Board within 30 days of the imposition by Final Order of the Board.

3. The Respondent shall receive a reprimand from the Board of Medicine.

4. Respondent shall attend 20 hours of Category I Continuing Medical Education courses within one year in the areas of Risk Management (10 hours) and Orthopedic Surgery (10 hours). Respondent shall submit documentation of completion of these continuing medical education courses no later than the end of the year period. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board or the chairman of the Probationer's Committee, said continuing education courses shall consist of a formal live lecture format.

5. It is expressly understood that this Stipulation is subject to the approval of the Board and the Department. In this regarding the foregoing paragraphs (and only the foregoing paragraphs of the Stipulated Facts, Stipulated Conclusions of Law and

Stipulated Disposition) shall have no force and effect unless a Final Order is entered incorporating the terms of this Stipulation, by the Board.

6. Respondent shall appear before the Board at the meeting whereat this Stipulation is considered. Respondent, in conjunction with the consideration of this Stipulation by the Board, shall respond to questions under oath from the Board, Board Staff or Department Staff.

7. Should this Stipulation be rejected, no statement made in furtherance of this Stipulation by the Respondent may be used as direct evidence against the Respondent in any proceeding. However, such statements may be used by the Petitioner for impeachment purposes.

8. Respondent and the Department fully understand that this joint Stipulation and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against the Respondent for acts or admissions not specifically set forth in the Administrative Complaint attached as Exhibit "A" herein.

9. Upon the Board's adoption of this Stipulation, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the joint Stipulation of facts, conclusions of law and imposition of discipline, and the Final Order of the Board incorporating said Stipulation.

10. Upon the Board's adoption of this Stipulation, the parties hereby agree that each party will bear his own attorney's fees and costs resulting from prosecution and/or defense of this proceeding. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this disciplinary proceeding.

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

PETITIONER,

vs.

CASE NO. 9007113

RICHARD GRAHAM SELLERS, M.D.

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Professional Regulation, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against RICHARD GRAHAM SELLERS, M.D., hereinafter referred to as "Respondent," and alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.30, Florida Statutes; Chapter 455, Florida Statutes; and Chapter 458, Florida Statutes.

2. Respondent is and has been at all times material hereto a licensed physician in the State of Florida, having been issued license number ME 0053098. Respondent's last known address is 3006 West Azeele Street, Tampa, Florida, 33609-3139.

3. From on or about February 7, 1989, to on or about September 26, 1990, Respondent provided medical care and treatment to Patient #1 for conditions including, but not limited to, osteochondritis dissecans, left talus, (a inflammation of the left

ankle bone).

4. On or about May 1, 1990, Patient #1's mother signed a consent form authorizing Respondent to perform on Patient #1 a debridement of osteochondritis dissecans of the left talus, (removal of damaged tissue).

5. On or about May 4, 1990, upon arrival to the operating room, Patient #1's right leg was prepared for surgery.

6. On or about May 4, 1990, Respondent began operating on Patient #1's right leg and, on opening Patient #1's right ankle bone, Respondent failed to observe any lesion. At that time, Respondent realized he was operating on the wrong leg.

7. After realizing his mistake, Respondent placed the necessary screws and closed the wound, completing an arthrotomy on the right ankle, with medial malleolar osteotomy and internal fixation on Patient #1.

8. Respondent, after completing the procedure on the right leg, spoke with Patient #1's parents, who advised Respondent to perform the procedure on the left leg of Patient #1.

9. Respondent then operated on Patient #1's left leg without complications.

COUNT ONE

10. Petitioner realleges and incorporates paragraphs one (1) through nine (9), as if fully set forth herein this Count One.

11. Respondent failed to practice medicine with that

level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, in that Respondent began operating on Patient #1's right ankle when the procedure was supposed to be performed on Patient #1's left ankle.

12. Based on the foregoing, Respondent violated Section 458.331(1)(t), by being guilty of gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT TWO

13. Petitioner realleges and incorporates paragraphs one (1) through nine (9), and eleven (11), as if fully set forth herein this Count Two.

14. Respondent performed professional services which were not duly authorized by the patient or client, or legal representative, in that Respondent operated on Patient #1's right ankle, but Patient #1's mother signed a consent form for surgery only on Patient #1's left ankle.

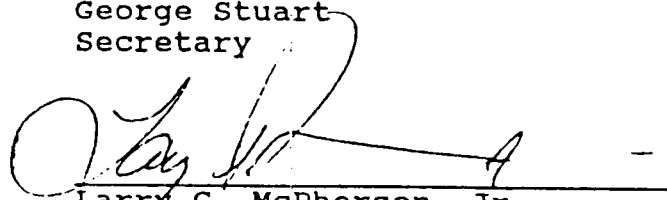
15. Based on the foregoing, Respondent violated Section 458.331(1)(p), by performing professional services which have not been duly authorized by the patient or client, or his legal representative, except as provided in s. 743.064, s. 768.13, or s. 766.103.

WHEREFORE, the Petitioner respectfully requests the

Board of Medicine enter an Order imposing one or more of the following penalties: revocation or suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, and/or any other relief that the Board deems appropriate.

SIGNED this 16 day of MAY, 1991.

George Stuart
Secretary


Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Larry McPherson, Jr.
Chief Medical Attorney
Department of Professional
Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0750
Bar #788643
CJR/bg/tc
PCP: May 4, 1991
Vitale, Ashkar and Skinner

FILED

Department of Professional Regulation
AGENCY CLERK



CLERK

DATE

5-16-91