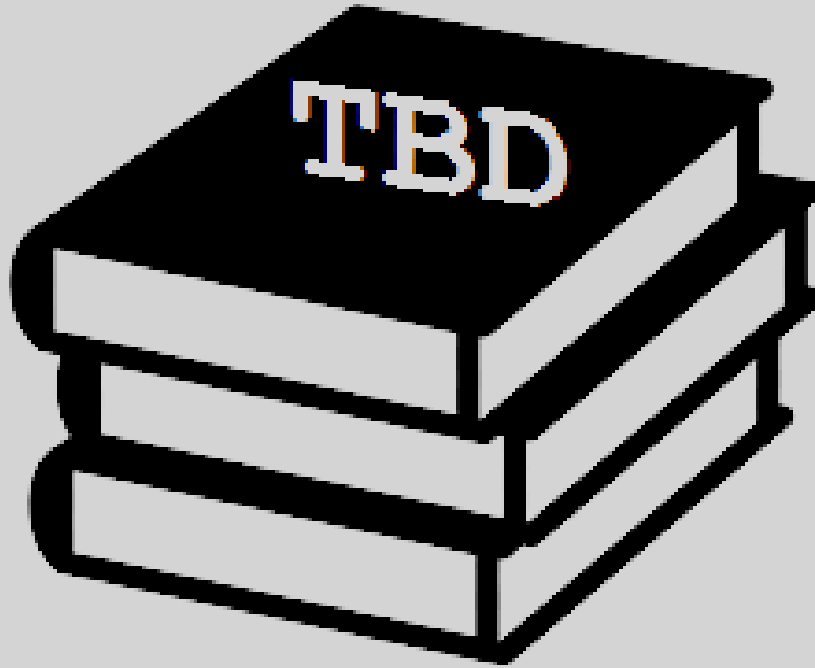


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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,	) AHCA Case No. 1996-0717
	) DOAH Case No. 00-0280 <i>ptm</i>
Petitioner,	)
	)
Vs.	)
	)
LIONEL RESNICK, M.D.,	)
	)
Respondent	)

PETITIONER'S MOTION TO STAY AND FOR RECONSIDERATION

COMES NOW, the Petitioner, by and through undersigned counsel, and files this Motion to Stay and for Reconsideration, and in support thereof states as follows:

1. On February 28, 2000, Respondent served upon Petitioner, via facsimile, Interrogatories and a Request for Production.

2. On March 27, 2000, Petitioner submitted responses to Respondent's Request for Admissions, Request for Production, and Interrogatories. Petitioner's responses to the discovery requests, including the interrogatories were prepared by John Mattox, Assistant to the undersigned counsel, and the certificate of service was signed by the undersigned.

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3. On April 4, 2000, this Honorable Administrative Law Judge convened a telephonic hearing to discuss several outstanding motions filed by Respondent. None of these motions raised the issue of whether the proper party had responded to and/or executed Petitioner's responses to the aforementioned interrogatories.

4. During the discussion of various issues raised by Respondent's multiple motions, Counsel for Respondent additionally asserted that Petitioner's answers to the interrogatories were improper since the Rules of Civil Procedure require an answer by an officer or agent of the Petitioner, the Department of Health.

5. Petitioner argued that Section 20.43(3), Florida Statutes, provides the requisite authority to the Agency for Health Care Administration (AHCA) to answer interrogatories on behalf of the Petitioner. The Department of Health, pursuant to Section 20.43(3), may contract with AHCA to perform the regulatory functions, including prosecutorial services, regarding health care professions, including physicians licensed by the Board of Medicine, for which the Department of Health is responsible.

6. This Administrative Law Judge thereafter directed Petitioner to supply by close of business on April 6, 2000, the name of a Department of Health officer or agent to Counsel for

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Respondent who could supply the information contained in Petitioner's responses to the interrogatories. It is this directive that Petitioner respectfully requests be stayed and reconsidered.

7. As a preliminary matter, it should be noted that the relief directed by this ALJ was provided without written request from Respondent, and without opportunity by Petitioner to provide a written response. Petitioner believes an opportunity should have been afforded to consider Respondent's argument, and to provide the court an appropriate response.

8. Section 1.340(a)(2), Fla.R.Civ.P., provides that interrogatories may be answered: (1) by the party to whom the interrogatories are directed, or (2) if that party is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish the information available to that party (emphasis added).

9. Petitioner respectfully asserts the court's directive is misplaced, and that employees of AHCA, acting as the agent on behalf of Petitioner, the Department of Health, properly answered the interrogatories propounded by Respondent.

10. The Department of Health, has, since its inception, relied on Section 20.43, Florida Statutes, in contracting with the AHCA to supply consumer complaint, investigative, and prosecutorial services required by the Division of Medical

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Quality Assurance and the various boards, including the Board of Medicine. AHCA, prior to July 1, 1997, was directly responsible for these services. The current Interagency Agreement for Consumer Complaint, Investigative and Prosecutorial Services was executed between Petitioner and AHCA on July 1, 1999, and was in full force and effect at all times material hereto. A copy of the Agreement is appended to this Motion as Exhibit 1.

11. A review of the Agreement reveals that the Agency, as the agent for Petitioner, handles each and every aspect of the complaint process, from the inception and evaluation of a complaint through the finding of probable cause and prosecution of the matter, if necessary, before the Division of Administrative Hearings, as well as before Circuit Courts, District Courts of Appeal, the various boards, or other tribunals. Such duties clearly include responding to interrogatories propounded by physicians such as Respondent who have elected to contest before the Division charges brought against them.

12. It is clear that AHCA is lawfully and properly acting as Petitioner's agent in regard to each and every aspect of the consumer complaint, investigation, and prosecutorial services for which Petitioner is responsible. Because there has been such a complete assignment of those services by Petitioner to AHCA, there simply does not exist an officer within the

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Petitioner Department who possesses even minimal knowledge regarding the substance of the interrogatories propounded by Respondent.

13. An analysis of this issue should include an examination of the interrogatories in question (a copy is appended as Exhibit 2). It is clear that each and every question is directed to some aspect of the consumer complaint, investigative or prosecutorial services, the responsibility for which clearly lies, in toto, with AHCA and its employees. It is inconceivable that an officer of the Petitioner Department should now be made to respond to interrogatories which address functions not carried out by that agency, and of which the officer would have no knowledge.

14. In the case of Ohio Realty Investment Co., v. Lawyers Title Insurance Corp. of Richmond, Va., the court held that a propounder of interrogatories does not have the right to designate the officer or agent who must answer them. Nor can the court order a corporate party to answer the interrogatories through the officer or agent specified by the propounding party. Petitioner respectfully asserts that Respondent cannot direct that its interrogatories be answered by an officer of the Petitioner Department when there exists a clear agency relationship with the AHCA, as outlined above, which includes

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that specific responsibility, and when AHCA and its employees have the relevant information and knowledge.

15. Petitioner would assert that Respondent's argument regarding appropriate execution of the interrogatories in question is not designed to advance his defense, or to otherwise gain knowledge or assistance in formulating that defense, but is designed to continue the harassment techniques engaged in by Respondent and perpetuated by the filing of multiple motions which have no merit. As a further example of that harassment, Respondent, on April 5, 2000, provided a Notice of Taking Deposition of the Petitioner's corporate representative, to be conducted at his office in Miami at a time designated by the Notice (a copy is appended as Exhibit 3). Such brazen disregard for the ethical practice of law, not to mention the equitable use of this court's resources, should not be tolerated.

WHEREFORE, Petitioner respectfully requests this Honorable Administrative Law Judge to enter an Order relieving Petitioner of the oral order issued on April 4, 2000, requiring Petitioner to furnish the name of an officer of the Department of Health, as the designee for responding to Respondent's interrogatories, and finding that the Agency for Health Care is properly the agent for Petitioner for the purpose of providing responses to those interrogatories.

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Respectfully submitted,



Britt Thomas  
Senior Attorney  
Florida Bar No. 0962899  
Agency for Health Care  
Administration  
Post Office Box 14229  
Tallahassee, Florida 32317  
(850) 487-6367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to Mark L. Pomeranz, Counsel for the Respondent, facsimile (305) 891-5834, 12955 Diacayne Blvd., Suite 202, North Miami, Florida 33181, this 6<sup>th</sup> day of April, 2000.



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**INTERAGENCY AGREEMENT  
FOR  
CONSUMER COMPLAINT, INVESTIGATIVE AND  
PROSECUTORIAL SERVICES**

This Interagency Agreement for Consumer Complaints, Investigative and Prosecutorial Services ("Agreement") is made and entered into between the State of Florida, Department of Health ("Department") and the State of Florida, Agency for Health Care Administration ("Agency"), through their undersigned authorities, effective July 1, 1999.

**RECITALS**

A. The Division of Medical Quality Assurance ("MQA") and regulation of the boards, councils, and professions listed on Attachment "1" hereof within the Division of Medical Quality Assurance ("MQA Boards") were transferred from the Agency to the Department, effective July 1, 1997.

B. The transfer of MQA to the Department included all statutory powers, duties, and functions related to MQA. The transfer also included all of MQA's records, personnel, property, and unexpended balances of appropriations or other funds, except for personnel, property, and unexpended balances of appropriations related to consumer complaints, investigative and prosecutorial services.

C. The Department is authorized pursuant to section 20.43, Florida Statutes, to contract with the Agency for consumer complaint, investigative, and prosecutorial services required by MQA and the MQA Boards ("Contractual Services"). The Agency has the expertise necessary to provide these services and the Department desires to contract with the Agency to obtain the services.

D. The Agency is willing to provide the Contractual Services to the Department and use its personnel, property, and unexpended balances of appropriations related to consumer complaints, investigative and prosecutorial services in accordance with the terms set forth below.

E. This Agreement includes services for all boards and professions created or transferred by the Legislature and assigned to the Department of



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Health Division of Medical Quality Assurance, including boards and professions created or transferred after July 1, 1997. Contractual Services to be provided for any boards or professions created or transferred to the Department after the effective date of this Agreement will be subject to an agreement between the parties if such services will create a need for additional Agency resources.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **TERM.** This Agreement shall be effective from July 1, 1999 and continue until the statutory authorization is changed or the parties otherwise mutually agree to terminate this Agreement. The parties agree to meet at least annually to prepare and execute any necessary modifications to the Agreement.

2. **PAYMENT.** Payment to the Agency under this Agreement shall be made quarterly by the Department from the Medical Quality Assurance Trust Fund. Payments for Contractual Services shall be based upon quarterly invoices as follows:

a. **Quarterly Invoices.** The Department shall pay the Agency for Contractual Services based upon invoices submitted by the Agency at the end of each quarter. These quarterly invoices shall reflect the total salaries and benefits, operating capital outlay, expenses, administrative overhead (indirect costs including costs for Infrastructure Positions as defined below) and total other personal services cost incurred by each individual unit, consisting of the Consumer Services Unit, the Investigative Services unit, and the Prosecutorial Unit. In addition, quarterly invoices shall reflect all direct costs incurred on behalf of the MQA Boards and shall detail the amount incurred for each MQA Board. Any unexpended advances shall be returned to the Department at the end of this Agreement. The Agency shall make available and allow the independent audit and review by the Department of said expenditures.

b. **Infrastructure Positions.** Infrastructure positions ("Infrastructure Positions") are those Agency positions that are not specifically assigned to a unit devoted to the performance of Contractual

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Services, but that provide services or support related to the Contractual Services. Charges for Infrastructure Positions shall be reflected on the Agency's quarterly invoices under this Agreement in accordance with the Agency's approved allocation plan for such indirect costs.

c. New Positions. To the extent that new positions or duties are added to this Agreement by mutual consent of the parties, funds shall be advanced by the parties and may include funds for furniture and computerization.

3. ALLOCATION METHOD. The parties hereto agree to provide their respective input and analysis required by the allocation method attached as Attachment "2" hereof.

4. CONTRACTUAL SERVICES. The Agency shall provide the Contractual Services as particularized below:

a. Consumer Complaints. The Agency shall make available and dedicate all of the full time equivalent positions ("FTEs") listed on the organizational chart attached hereto as Attachment "3" known as the "Consumer Services Unit" within the Agency's Bureau of Consumer and Investigative Services for the performance of services required by MQA or the MQA Boards related to consumer complaints.

i. SERVICES. The services performed by the Consumer Services Unit shall include, but not be limited to, the tasks and responsibilities established by, or necessary to comply with, Section 455.621, Florida Statutes. These services include actions necessary to determine legal sufficiency of new complaints, issue summary disciplinary sanctions as permitted by law, and provide reports to the Department as outlined below.

ii. REPORTS. The Consumer Services Unit shall compile and maintain statistics, notices, and information regarding its activities as reasonably requested by the Department. This shall include, but not be limited to, compliance with the hospital reporting requirements of sections 458.337 and 459.016, Florida Statutes; complainant notification required by Section 455.621(9), Florida Statutes; and the quarterly provision of statistics and information to the Director of Medical Quality Assurance of the Department on or before August 1, November 1, February 1, and May 1, for

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inclusion in the Department's annual report to the President of the Senate and Speaker of the House of Representatives required by section 455.644, Florida Statutes.

b. Investigative Services. The Agency shall make available and dedicate all of the FTEs listed on the organizational chart attached hereto as Composite Attachment "4" known as the "Investigative Services Unit" within its Bureau of Consumer and Investigative Services for the performance of investigative services required by MQA or the MQA Boards.

i. SERVICES. The services performed by the Investigative Services unit shall include, but not be limited to, the tasks and responsibilities established by, or necessary to comply with, Sections 455.611, 455.617, 455.634, 455.637, 455.651, 455.681, and 455.621, Florida Statutes. These services include, but are not limited to, actions necessary to investigate complaints and conduct inspections as required by law, issue summary disciplinary sanctions as permitted by law, and provide reports to the Department as outlined below.

ii. REPORTS. The Investigative Services Unit shall compile and maintain statistics and information regarding its activities as requested by the Department. This shall include, but not be limited to, providing quarterly statistics and information to the Director of Medical Quality Assurance of the Department on or before August 1, November 1, February 1, and May 1, for inclusion in the Department's annual report to the President of the Senate and Speaker of the House of Representatives required by section 455.644, Florida Statutes.

c. Prosecutorial Services. The Agency shall make available and dedicate all FTEs within its General Counsel's Office listed on the organizational charts attached as Composite Attachment "5" for the performance of prosecutorial services ("Prosecution Unit") required by MQA or MQA Boards.

i. SERVICES. The services performed by the Prosecution Unit shall include, but not be limited to: the review and evaluation of legally sufficient complaints; the presentation of cases to probable cause panels or the Department for a determination of probable cause; the representation of the Department in all proceedings required to prosecute disciplinary cases

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before the Division of Administrative Hearings, Circuit Courts, District Courts of Appeal, the MQA Boards, or other tribunals. The Prosecution Unit shall also provide any legal services necessary to assist the Consumer Services Unit or Investigative Services Unit in the performance of their duties under this Agreement.

ii. REPORTS. The Prosecution Unit shall compile and maintain statistics and information regarding its activities as reasonably requested by the Department. This shall include, but not be limited to, providing quarterly statistics and information to the Director of Medical Quality Assurance of the Department on or before August 1, November 1, February 1, and May 1, for inclusion in the Department's annual report to the President of the Senate and Speaker of the House of Representatives required by section 455.644, Florida Statutes. Additionally, litigation status reports shall be maintained on all pending administrative complaints and a report on the status of these cases shall be presented by the Prosecution Unit to the respective MQA Boards at each of their regular meetings if requested by the respective MQA Boards or the Department. These reports shall provide information detailing the number of complaints received, number of presentations to the probable cause panel, number of cases dismissed for lack of probable cause or otherwise, an aging report on all pending cases updated since the last board meeting, and such other information and statistics as the respective MQA Boards may reasonably require.

### iii. EMERGENCY ACTIONS.

A. Notification & Emergency Investigation. Upon identification of a case that appears to warrant emergency action, the Prosecution Unit shall immediately notify the General Counsels of the Department and the Agency. The Prosecution Unit shall thereafter coordinate with the Investigative Services Unit to expeditiously obtain information sufficient to determine whether an emergency order is warranted.

B. Emergency Orders of Restriction and Suspension of License. When evidence and materials sufficient to justify an emergency order have been gathered by the Agency, the Agency shall present a draft proposed order and a summary of the facts to the General Counsels of the

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Agency and the Department. The General Counsel of the Department or his designee shall then present the proposed order and summary of facts to the Secretary of the Department or his designee for a determination of whether the entry of an emergency order is appropriate. Emergency orders shall be executed by the Secretary of the Department or his designee. The Agency shall notify the licensee and the complainant as appropriate and represent the Department in upholding the emergency order and in subsequent proceedings relating to the case.

#### iv. PROCESSING LEGALLY SUFFICIENT COMPLAINTS TO THE PROBABLE CAUSE PANEL.

A. Case Processing. The Agency shall use all of its skill, talents and available resources to complete the report of its initial investigative findings and recommendations concerning the existence of probable cause within 180 days from the date the complaint is received as anticipated under Section 455.621, F.S. The parties agree that completion of recommendations regarding the existence of probable cause, under section 455.621, Florida Statutes, occurs when a proposed administrative complaint or closing order has been prepared. Any investigative report and recommendation not completed within 180 days from receipt of the complaint must be explained to the joint MQA quality improvement and assurance committee of the Department and Agency and in the quarterly reports required under this Agreement.

B. Multiple Complaints. The Agency and Department recognize the need to evaluate patterns of practice and conduct and to identify potentially dangerous health care practitioners. In this regard, the Agency shall use all of its skill, talents and available resources to identify, consolidate and prosecute multiple complaints, claims and reports related to the same health care practitioner when appropriate and when such can be accomplished without undue delay.

v. PROSECUTION OF CASES. The Agency and the Department recognize the need for expeditious resolution of administrative complaints filed against Florida's health care practitioners. A fair and speedy process serves the interests of the public and licensees. Toward that end, the Agency shall use all of its skill, talents and available resources to have administrative complaints before the appropriate licensing board for

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final agency action in less than one year from the filing of the administrative complaint. In addition, in cases pending before the Division of Administrative Hearings, the agency will not agree to continuances or waive statutory time periods unless doing so is in the best interests of the Department and prosecution of the case. To facilitate prosecution, the Prosecution Unit is delegated the Department's power to select and contract with expert witnesses approved by the various MQA Boards, provided that any expert witness contract in excess of \$10,000 shall be subject to review and prior approval of the Department's General Counsel.

vii. CONSENT ORDERS AND SETTLEMENTS. The Secretary or his designee shall have the opportunity to approve or reject all consent agreements and stipulated settlements of pending administrative complaints against health care practitioners prior to presentation to the respective MQA board. The Prosecution Unit shall present the proposed settlement to the General Counsel of the Department or his designee for review and presentation to the Secretary of the Department or his designee.

viii. APPELLATE PROCEEDINGS. Attorneys within the Prosecution Unit shall represent MQA and the MQA Boards in all appeals arising from actions prosecuted under or related to this Agreement. The Department's General Counsel shall be provided a monthly status report of all such appeals and shall have an opportunity to approve all appeals initiated by the Agency on behalf of the Department.

ix. COMPLAINTS AGAINST BOARD OR COUNCIL MEMBERS. The Consumer Services Unit shall immediately notify the General Counsels of the Department and the Agency of any complaints filed against members of the MQA Boards or Councils.

x. DUTIES OF DEPARTMENT CLERK. The Department's agency clerk or deputy agency clerk shall index the final orders and prepare the record for appeal in all MQA cases.

xi. MEDIATION. The Offices of General Counsel for both the Agency and the Department shall cooperate in establishing appropriate mediation procedures under chapter 455, Florida Statutes, for disciplinary cases under this Agreement.

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xii. RULE CHALLENGES. Should the Department desire to challenge any MQA Board rule as provided in chapter 455, Florida Statutes, the Department shall be responsible for conducting such challenge with attorneys other than under this Agreement. The Agency is encouraged to bring rulemaking issues to the attention of the Department.

xiii. UNLICENSED ACTIVITIES. The Department shall be responsible for coordinating all unlicensed activity abatement programs or prosecutions relating to the unlicensed practice of a profession regulated by MQA. The Agency shall continue to provide complaint analysis and investigative services in cases involving allegations of unlicensed activity to the extent deemed necessary by the parties to this Agreement. The Department shall coordinate and prosecute all unlicensed cases through its Office of Unlicensed Activity.

xiv. EXAMINATION CHALLENGES. The Department's General Counsel's Office shall be solely responsible for providing legal services for MQA examination challenges.

5. DELEGATION OF AUTHORITY. The Department hereby delegates to the Agency all of the Department's authority required to carry out the Agency's responsibilities under this Agreement. Specifically, but without limitation, the Department delegates to the Agency the authority to execute administrative complaints, closing orders, cease and desist orders, and orders to produce records. This authority shall not be further delegated by the Agency without the written consent of the Department. This delegation does not relinquish or otherwise limit the Department's ability or authority to exercise such powers.

In carrying out its responsibilities under this Agreement, the Agency shall be responsible for implementing the disciplinary policies established by the various MQA Boards and the Department. The Agency shall seek the advice and confer with the Department and MQA Boards on all questions of disciplinary policy or interpretation. The Department and MQA Boards shall promptly advise the Agency of any changes in disciplinary policy or interpretation, which may affect the administration of this Agreement.

6. STYLE OF CASES, PLEADINGS & PROCESS. The parties agree that the Agency, in performing under this Agreement, is acting on behalf of the Department. Therefore, the parties agree that, to the extent

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necessary to avoid confusion, the style of all cases, pleadings, orders, subpoenas or other documents used in the regulation of the professions under this Agreement shall reflect that the Agency is acting on behalf of the Department. In addition, to the extent necessary, notices of substitutions of parties shall be filed in pending actions in which MQA is a party.

**7. PERSONNEL.**

a. **Staff.** All Agency personnel in the Consumer Services Unit, Investigative Services Unit, Prosecution Unit (collectively "Agency Staff") are listed by position and classification in the organizational charts attached hereto as Attachment "3", Composite Attachment "1", and Composite Attachment "5". All listed staff shall be dedicated solely to the performance of this Agreement. Changes in the numbers or classifications of these positions shall be coordinated with the Department prior to such changes and in no event shall changes be made that would negatively impact the ability of the Agency to perform under this Agreement or have the effect of increasing the amount due to the Agency beyond the amount appropriated by the legislature for Contractual Services unless the parties expressly agree to such changes and agree to seek additional appropriations. Should any of these designated positions become vacant the Agency shall use its best efforts to fill the position(s) expeditiously.

b. **Designated Infrastructure Positions.** The Infrastructure Positions mentioned in paragraph 2b above include, but are not limited to, the positions listed on Attachment "6" hereof. The positions listed on Attachment "6" were part of the original transfer of MQA to the Agency and should be included with Agency Staff if personnel related to consumer complaints, investigative and prosecutorial services are subsequently transferred to the Department.

c. **Travel.** All travel on behalf of MQA, the MQA Boards, or in the performance of this Agreement must comply with Department travel policies, and, with the exception of in-state travel directly related to meetings of the MQA Boards and their respective panels and committees, hearings and proceedings, depositions and witness interviews, and meetings with experts related to the Contractual Services, must be pre-approved by MQA.

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8. ACCESS TO RECORDS, CONFIDENTIALITY. The Agency, while acting on behalf of the Department under this Agreement, and the Department, shall have access to all records, documents and information required for performance or generated under this Agreement, and both agree to protect from disclosure any document, record, or information that is exempt from public records disclosure, or that is otherwise confidential under chapter 455, Florida Statutes, any of the MQA Board practice acts, or other applicable law.

9. DATA MANAGEMENT SYSTEM. Performance under this Agreement requires that the Agency use the Department's three computer data management systems: The Professional Regulation Administration Enforcement System (PRAES), the Breakthrough to Exceptional Services and Technology (BEST) and the Case Management System (CMS). The Department shall own all imaged documents or automated information. However, the Agency shall have complete access to all systems in order to comply with its responsibilities under this Agreement. The Department and the Agency shall maintain the confidentiality of information and data on such system or systems. The Agency shall obtain necessary training from the Department (and the Department will make sufficient training available to the Agency) to perform its data input and extraction services. Because of the critical role of the three systems to the Agency's performance under this Agreement, the Department and the Agency shall use best efforts to identify any problems or deficiencies in the data management system and assist in efforts to improve the data management system. Any problems or deficiencies shall be presented promptly to MQA in writing. MQA shall likewise address the problem or deficiency promptly. The Department and Agency shall each provide computer assistance to its own personnel unless agreed to subsequently in writing between the Director of the Agency and Secretary of the Department.

10. POLICY AND QUALITY IMPROVEMENT AND ASSURANCE. The Department and Agency agree that continued improvement of Medical Quality Assurance complaint, investigative, and prosecutorial services is a common goal. Both parties recognize that the Florida Legislature has mandated that investigations be completed expeditiously and indicated that disciplinary proceedings should be completed expeditiously. Both parties shall cooperate in addressing needed budget amendments, legislation, and policy development to meet these challenges and achieve their common goal of continued improvement and

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adherence to statutory directives. To this end, and in order to assure consistent policy and efforts:

a. A joint MQA quality improvement and assurance committee of the Department and Agency is hereby created. The Secretary and the Director shall be members of the committee and shall each appoint 6 additional members to the committee for a total of 14 members. The committee shall meet at least quarterly to assess the performance of services under this Agreement. The committee shall make recommendations to improve the disciplinary case process whenever necessary.

- i. The Joint Committee shall track data necessary to monitor the performance under this Agreement.
- ii. Based upon the data gathered and reviewed, the Joint Committee shall establish performance standards and goals expected under this Agreement.
- iii. The parties shall work together to implement the recommendations and meet the standards and goals established by the Joint Committee.

b. All written policies, procedures, suggested innovations and improvements relating to the Contractual Services shall be communicated to the Department through the Joint Committee and the Director of MQA.

c. All preparation for any budget amendment or Legislative Budget Request related to regulation of the MQA Boards, the Contractual Services, or Agency Staff shall be coordinated with the Director of MQA.

d. All legislative proposals, bill analyses, lobbying efforts or comments and position statements that relate to or affect the staff designated under this Agreement or the Contractual Services or regulation of the professions under MQA shall be coordinated between the legislative planning offices of the Department and the Agency.

11. **PUBLIC INFORMATION.** The Department's public information office shall have the lead for all press releases and public relations

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communications regarding the activities of MQA, the MQA Boards, and the Department's statutory obligations and initiatives. Such press releases and communications regarding the Contractual Services under this Agreement shall be coordinated between the Department's and Agency's communications offices. All MQA Board newsletters shall be produced and distributed by the Department. The Agency shall provide information and assist the Department as requested by the Department.

### 12. MISCELLANEOUS.

a. Availability of Funds. If this Agreement, any renewal hereof, or any term, performance or payment hereunder, extends beyond the fiscal year beginning July 1, 1999, it is agreed that the performance and payment under this Agreement are contingent upon an annual appropriation by the Legislature, in accordance with Section 287.0582, Florida Statutes.

b. Documentation. The Agency shall maintain a file, available for inspection by the Department or its designee, containing documentation of all costs incurred in connection with this Agreement. The file shall be maintained for a minimum period of three (3) years after completion of the Contractual Services.

c. Public Records. The Agency agrees to comply with the requirements of section 119.07, Florida Statutes, to make available for inspection and copying any public record made or received in conjunction with this Agreement, and to protect from disclosure any documents or other records exempt from the requirements of that section.

d. Availability of Work Product. All finished or unfinished documents and other work products prepared by or for MQA, the MQA Boards, or the Department under this Agreement shall be made available to and for the exclusive use of those entities after the termination of this Agreement.

e. Captions. The captions and headings contained in this Agreement are for the convenience of the parties only and do not in any way modify, amplify, or give additional notice of the provisions hereof.

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f. Contract Managers. The contract managers are:

For the Department: Gloria Henderson, MQA Director's Office, Northwood Center, Tallahassee, Florida. Telephone number (850) 488-7176.

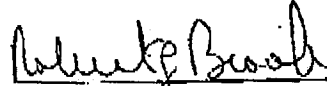
For the Agency: Larry McPherson, Chief Medical Attorney, 1580 Waldo Palmer Lane, Tallahassee, Florida 32308. Telephone number (850) 488-4478.

The primary communications between the parties regarding the performance or payment under this Agreement shall be through the contract managers. However, the parties shall encourage communication between the designated staff, the MQA Boards, MQA and their respective General Counsels, communication personnel, legislative planning offices, and the Department's Secretary and the Agency's Director in carrying out the provisions of this Agreement.

g. Entire Agreement. This Agreement represents the entire Agreement between the parties regarding the subject matter herof and supersedes all previous communications or understandings between the parties on this subject, whether written or oral. Any changes to the terms or requirements of this Agreement shall be valid only when in writing and signed by both parties.

ENTERED INTO AND AGREED between the parties hereto by their undersigned authorities, effective the 1ST day of JULY, 1999.

State of Florida,  
Department of Health

By:  By:  
Robert G. Brooks, M.D.  
Secretary

State of Florida,  
Agency for Health Care  
Administration

  
Ruben King-Shaw, Jr.  
Director

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**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

**DEPARTMENT OF HEALTH,  
BOARD OF MEDICINE,**

Petitioner,

Case No.: 1996-07717

vs.

**LIONEL RESNICK, M.D.,**

Respondent.

**RESPONDENT'S INTERROGATORIES TO PETITIONER**

Respondent, LIONEL RESNICK, M.D., by and through undersigned counsel, and pursuant to Rule 1.340, Florida Rules of Civil Procedure, propounds the following Interrogatories to Petitioner, DEPARTMENT OF HEALTH, BOARD OF MEDICINE, consisting of twenty four questions, to be answered by writing and under oath within the time and in the manner prescribed by said rules of civil procedure.

Please Insert your answers in the space provided following each Interrogatory. If additional space is needed, so indicate in the space provided and prepare your answer on a separate paper and attach.

Before making your answer to the following interrogatories, please make such inquiry of your agents, servants, employees, and/or attorneys as will enable you to make full and complete answers to the following Interrogatories in accordance with the Florida Rules of Civil Procedure.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that a true and correct copy of the foregoing was forwarded by facsimile this 28th day of February, 2000 to Britt L. Thomas, Esq., Department Of Health, Board Of Medicine at (850) 488-7723, and to The Honorable Patricia H. Malono, Administrative Judge at (850) 971-6847.

LAW OFFICES OF  
POMERANZ & LANDSMAN  
12955 Biscayne Boulevard  
Suite 202  
North Miami, Florida 33181  
(305) 891-5058

By:   
Mark L. Pomeranz, Esquire





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7. Explain in detail, whether it was necessary and/or a requirement that the position of Chief of the Mt. Sinai Retrovirology Lab required the person to be a practicing physician, for example could the person have been a Chemist, a Pharmacist, a Nurse, an accountant, a school teacher, etc. Be certain to set forth the educational requirements, if any that were required of the Chief of the Mt. Sinai Retrovirology Lab at all times relevant to the underlying facts of this case (and set forth by date, the relevant time period).
  
8. Explain in detail, the basis of how Respondent's work in the position of Chief of the Mt. Sinai Retrovirology Lab, at all times relevant to the underlying facts of this matter, involved the practice of medicine by Respondent.
  
9. Explain in detail, the basis of how Respondent's work in the position of Chief of the Mt. Sinai Retrovirology Lab, at all times relevant to the underlying facts of this matter, involved the ability to practice medicine of Respondent.

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10. List those presently on the Florida Board of Medicine and those who were on the Florida Board of Medicine in January 1996.

11. Explain how those who make up the Probable Cause Panel for the Board of Medicine are related, if at all, to those on the Florida Board of Medicine.

12. List who was on the Probable Cause Panel for the Board Of Medicine when it met on January 10, 1996 to consider the facts involved in Case No.: 94-17844.

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13. Explain why the Probable Cause Panel for the Board Of Medicine, that met on January 10, 1996 did not find Dr. Resnick to be a danger and thus prevent him from continuing to practice medicine.
  
14. Explain why the Probable Cause Panel for the Board of Medicine, that met on January 10, 1996 provided a mere letter of guidance to Dr. Resnick for him to utilize in his continued practice of medicine.
  
15. Set forth whether or not Dr. Resnick had a practice of medicine separate and apart from his work as Chief of the Mt. Sinai Retrovirology Lab, and if so, please set forth the location of such practice of medicine, the name of the practice and any other information the Board Of Medicine has regarding such practice.

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16. Set forth whether or not Dr. Resnick continued to practice medicine for at least five years following the underlying facts and at least three years after the letter of guidance issued in response to the facts of case number 94-17844. Please set forth whether the Board Of Medicine was aware of Dr. Resnick's practice of medicine during that time period, how it was aware of it, and whether during that time period the Board of Medicine ever warned the public, something to the effect that an "emergency" situation existed, wherein Dr. Resnick was a danger to the public? Or warned the public something to the effect that the conduct of Dr. Resnick in his role as Chief of the Mt. Sinai Retrovirology Lab in the first part of the 1990's, directly related to his ability to practice medicine and/or to his practice of medicine, at any time prior to September, 1999.

17. Set forth any information the Petitioner has, if any, regarding the alleged "plea agreement" mentioned in numbers 11 and 12 of the Administrative Complaint and explain how it relates and/or discusses Respondent's practice of medicine.

18. Set forth and explain any information the Petitioner has, if any, regarding what the United States Attorney for the Southern District of Florida (as set forth in number 12 of the Administrative Complaint) stated about Dr. Resnick's practice and ability to practice medicine at the time a Final Judgment was allegedly entered pursuant to number 11 of the Administrative Complaint.



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22. List all documents, reports or other material which support the allegation that Respondent violated Section 458.331(1)(c), Florida Statutes and that the crime allegedly committed directly relates to the practice of medicine or to the ability to practice medicine, and the basis for their determinations.
  
  
  
  
  
  
  
  
  
  
23. List any and all other documents, evidence, exhibits, recordings, of any kind or nature, that Petitioner has in its possession, custody or control with regard to the investigation and prosecution of RESPONDENT.
  
  
  
  
  
  
  
  
  
  
24. Do you intend to call any expert witnesses at the trial in this case? If so, state as to each such witness, the name, business address and telephone number of the witness, the witness's qualifications as an expert, the subject matter upon which the witness is expected to testify, the substance of the facts and opinions to which the witness is expected to testify, and a summary of the grounds for each opinion.

By: \_\_\_\_\_  
AFFIANT

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STATE OF FLORIDA            )  
  )        SS  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, well known to me to be or having produced \_\_\_\_\_ as identification, who, after being first duly sworn under oath, deposes and says that the foregoing Answers to Interrogatories are true and correct to the best of \_\_\_\_\_ knowledge and that \_\_\_\_\_ has read the foregoing Answers to Interrogatories and knows the contents thereof.

SUBSCRIBED AND SWORN before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

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STATE OF FLORIDA )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, well known to me to be or having produced \_\_\_\_\_ as identification, who, after being first duly sworn under oath, deposes and says that the foregoing Answers to Interrogatories are true and correct to the best of \_\_\_\_\_ knowledge and that \_\_\_\_\_ has read the foregoing Answers to Interrogatories and knows the contents thereof.

SUBSCRIBED AND SWORN before me this \_\_\_\_\_ day of \_\_\_\_\_,

2000.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: .

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STATE OF FLORIDA  
DEPARTMENT OF HEALTH

CASE NO.: 1996-07717

FLORIDA BAR NO.: 0622508

DEPARTMENT OF HEALTH,

Petitioner,

v.

LIONEL RESNICK, M.D.,

Respondent.

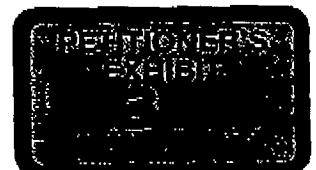
**NOTICE OF TAKING DEPOSITION**

TO: Britt L. Thomas, Esq.  
Department of Health  
Board of Medicine

**PLEASE TAKE NOTICE** that on Friday, April 14th, 2000, at 10:00 a.m. at the Law Offices of Pomeranz & Landsman, 12955 Biscayne Boulevard, Suite 202, North Miami, Florida 33181, the law offices of Pomeranz & Landsman, will take the deposition of the corporate representative of Department of Health with the most knowledge of the matters and issues raised in the subject case, upon oral examination before a notary public or officer authorized by law to take depositions in the State of Florida.

The oral examinations will continue from day to day until completed. These depositions are being taken for the purpose of discovery, for use at Trial, or for such other purposes as are permitted under the applicable Statutes or the Rules of the Court.

**I HEREBY CERTIFY**, that a true and correct copy of the foregoing Notice of



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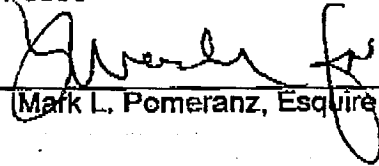
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Taking Deposition was sent by facsimile transmission at (850)488-7723 to the above-named addressee on the \_\_\_\_ day of April, 2000.

**POMERANZ & LANDSMAN**  
12955 Biscayne Boulevard  
Suite 202  
North Miami, FL 33181  
(305) 891-5858

By:



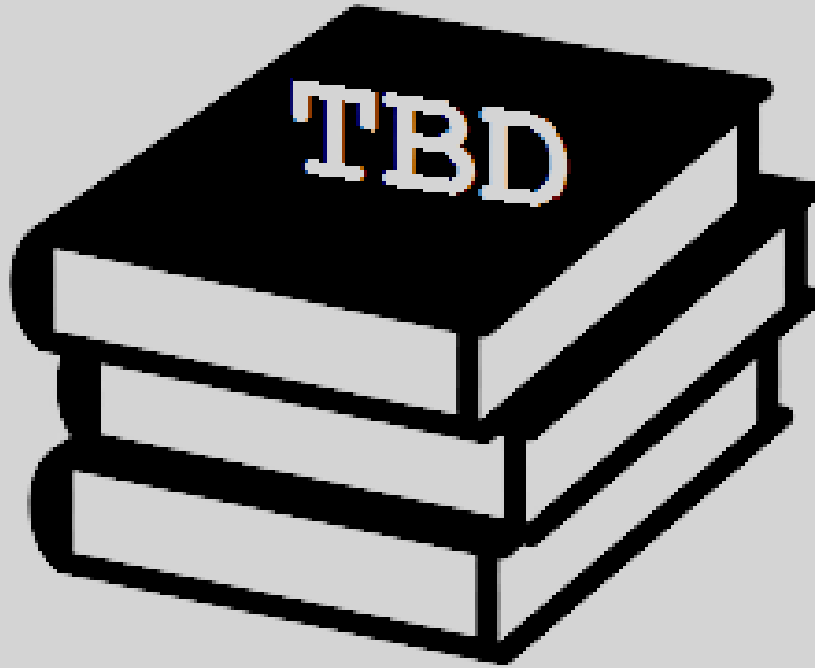
Mark L. Pomeranz, Esquire

cc: H. Allen Benowitz Court Reporters via facsimile

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