

2-27-01

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-02-0669- For-MQA
FILED DATE - 5/6/02
Department of Health
By: Vicki R. P. [Signature]
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2000-00502
DOAH CASE NO.: 00-3455PL
LICENSE NO.: ME0071706

ZAFAR S. SHAH, M.D.,

Respondent.

WRC-CLOS

FINAL ORDER ON REMAND

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on April 5, 2002, in Ft. Lauderdale, Florida, for the purpose of considering the First District Court of Appeal Order on Remand, which requires the Board to enter a new Final Order which either accepts the penalty recommended by the Administrative Law Judge, or reimpose the increased penalty stating, with particularity, the reasons for increasing the penalty. This matter originally came before the Board on March 31, 2001, in Jacksonville, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and the Petitioner's Motion to Clarify Penalty (copies of which are attached hereto as Exhibits A and B, respectively). At the current hearing on the Order on Remand, Petitioner was represented by Ephraim Livingston, Senior

Attorney. Respondent was not present nor was he represented counsel at the hearing. The Board considered the Petitioner's Motion to Clarify and Aggravate Penalty and the Response to the Petitioner's Motion to Clarify and Aggravate Penalty (copies of which are attached hereto as Exhibits C and D, respectively) in the above-styled cause

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

3. There is competent substantial evidence to support the conclusions of law.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be REJECTED. The Board bases its decision on the following factors:

1. The penalty recommended by the Administrative Law Judge falls below the range of penalties for two of the three violations found. In light of no mitigating circumstances found by the Administrative Law Judge, there is no basis for deviation from the recommended range.

2. In addition, the Board finds the following aggravating circumstances in this case:

a. Respondent exposed the patient to injury or potential injury, physical or otherwise in that patient J.V. experienced actual psychological injury as a result of Respondent's misconduct. After Respondent engaged patient J.V. in sexual misconduct, she felt weird, felt violated, was unable to concentrate, unable to sleep, and experienced confusion over what had happened. (11/08/00 transcript pp. 45, 49, 52-53, 191; 11/09/00 transcript p. 83). After conferring with another health care professional, patient J.V. called the hotline at Sunrise Domestic Violence and Sexual Assault Center (Sunrise) in Dade City and requested counseling. (11/08/00 transcript pp. 51-53, 184). An outreach counselor thereafter provided counseling to patient J.V., and then referred her to a sexual assault counselor. (11/08/00 transcript pp. 52-53; 11/09/00 transcript pp. 79, 86). Patient J.V. attended additional counseling sessions sponsored by Sunrise. (transcript pp. 53, 194-196). Respondent's sexual misconduct contributed to patient J.V.'s inability to continue her studies at a local community college. (transcript pp. 26-27, 154-155, 187 & 190).

b. Respondent exposed the patient to injury or potential injury, physical or otherwise in that Respondent did not wash his hands prior

to using an ungloved hand and finger to manipulate patient J.V.'s genitals and vagina. (transcript pp. 37, 40, 41, 49, 179, 185, 191). Proper hygiene and appropriate infection control are elemental to the practice of medicine. By failing to either use gloves or wash his hands or both, Respondent exposed patient J.V. to potential infection in her genitals.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that

Respondent's license to practice medicine in the State of Florida is hereby REVOKED.

(NOTE: SEE "ATTACHMENT A" FOR STANDARD TERMS APPLICABLE TO ALL FINAL ORDERS. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE STANDARD TERMS SET FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THE FINAL ORDER.)

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 1 day of MAY, 2002.

BOARD OF MEDICINE



LARRY G. MCPHERSON, JR., BOARD DIRECTOR
For
ZACHARIAH P. ZACHARIAH, M.D.
CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Zafar S. Shah, M.D., 2921 Ramada Drive, #397, Tampa, Florida 33613; to Jack D. Hoogewind, Esquire, 33283 Cortez Boulevard, Dade City, Florida 33523; to William R. Cave, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Nancy M. Snurkowski, Chief Medical Attorney, and Lisa Pease, Senior Attorney - Appeals, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, on or before 5:00 p.m., this 6th day of may, 2002.

Kim Webb