

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

HOWARD E. GROSS, M.D.,

Respondent.

Final Order No. DOH-01-0895; DOH-MOA
FILED DATE 7/5/01
Department of Health

By: Elisa Floyd
Deputy Agency Clerk

DOH CASE NO.: 1997-10233
DOAH CASE NO.: 00-4048PL
LICENSE NO.: ME0017039

FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on March 31, 2001, in Jacksonville, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order (a copy of which is attached hereto as Exhibit A) in the above-styled cause. Petitioner was represented by Larry G. McPherson, Jr., Chief Attorney. Respondent was not present but was represented by Robert D. Henry, Esquire.

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 with the following exceptions. Paragraphs 32 - 35 of the Recommended Order are rejected by the Board as being logically impossible and unsupported by competent substantial evidence in the record. It is impossible to perform a "wet to wet" connection when one side of the connection is air. Further, it is impossible to expel air bubbles from air; taping on the syringe would have demonstrated there was no liquid in the syringe.

2. There is competent substantial evidence to support remainder of the findings of fact by the Administrative Law Judge.

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, except to the extent that the conclusions of law do not include a finding that Respondent violated Section 458.331(1)(t), Florida Statutes based upon his own acts and omissions. The Board finds that Respondent did violate Section 458.331(1)(t).

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 disposition recommended by the Administrative Law Judge be REJECTED. Finding that there was a violation of section

458.331(1)(t), Florida Statutes, the Board deems the following to be an appropriate penalty.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent shall pay an administrative fine in the amount of \$5,000 to the Board within one year from the date this Final Order is filed.

2. Respondent shall receive a letter of concern from the Board.

3. Within one year from the date this Final Order is filed, Respondent shall document the completion of 5 hours of continuing medical education in the area of risk management.

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

DONE AND ORDERED this 30th day of May, 2001.

BOARD OF MEDICINE

Tanya Williams
TANYA WILLIAMS, BOARD DIRECTOR
For
GASTON ACOSTA-RUA, 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 AGENCY FOR HEALTH CARE ADMINISTRATION 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 Howard E. Gross, M.D.,
80 West Lucerne Circle, Orlando, Florida 32801-3726; to Robert D.
Henry, Esquire, Ringer, Henry & Buckley, P.A., 14 East Washington
Street, Suite 200, Orlando, Florida 328801; to Jeff B. Clark,
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 -
Practitioner Regulation, and Simone Marstiller, Senior Attorney -
Appeals, Agency for Health Care Administration, 2727 Mahan Drive,
Tallahassee, Florida 32308-5403, on or before 5:00 p.m., this _____
day of _____, 2001.

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to **Howard E. Gross, M.D.**, 80 West Lucerne Circle, Orlando FL 32801-3726, **Howard E. Gross, M.D.**, 60 W. Gore St., Orlando FL 32806, **Robert D. Henry, Esq.**, 14 E. Washington St., Ste. 200, Orlando FL 32801, **Jeff B. Clark, Administrative Law Judge**, DOAH, 1230 Apalachee Pkwy., Tallahassee FL 32399-3060, and interoffice delivery to **Nancy M. Snurkowski, Chief – Practitioner Regulation** and **Simone Marstiller, Sr. Atty. – Appeals**, AHCA, 2727 Mahan Dr., Tallahassee FL 32308-5403 at or before 5:00 p.m., this 20th day of June, 2001.

Jane Jordan