

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-02-1271- FOF-MQA
FILED DATE - 8/23/02
Department of Health

By: Vicki R. Keron
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

00-4048PL Rem-Closed

vs.

DOH CASE NO.: 1997-10233

DOAH CASE NO.: ~~2001-2074~~

LICENSE NO.: ME0017039

HOWARD E. GROSS, M.D.,

Respondent.

FILED
02 AUG 28 PM 3:19
DIVISION OF
ADMINISTRATIVE
HEARINGS

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 August 2, 2002, in Orlando, Florida, for the purpose of considering the Fifth District Court of Appeal Order on Remand, which requires the Board to enter a new Final Order. The Board's Final Order in this matter was filed on June 20, 2001. 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 (a copy of which is attached hereto as Exhibit A). At the current hearing on the Order on Remand, Petitioner was represented by Ephraim Livingston, Senior Attorney. Respondent was not present but was represented by counsel at the hearing. The Board considered the Fifth District Court of Appeal's Order on Remand. Although the Board disagrees with the findings of the District Court, the Board agrees to enter the Final Order in compliance with the legal obligation placed upon it by statute. Accordingly,

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.

DISPOSITION

Upon a complete review of the record in this case, the Board determines that the disposition recommended by the Administrative Law Judge be ACCEPTED

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Administrative Complaint is hereby DISMISSED.

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

DONE AND ORDERED this 23 day of AUGUST, 2002.

BOARD OF MEDICINE



LARRY G. MCPHERSON, JR., EXECUTIVE 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 Howard E. Gross, M.D., 8612 South Bay Drive, Orlando, Florida 32819; to Robert D. Henry and Martin D. Buckley, Esquire, Ringer, Henry & Buckley, Post Office Box 4922, Orlando, Florida 32801-4922; 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 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 23d day of August, 2002.

Franklin D. Cook