

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,)
BOARD OF MEDICINE,)
)
Petitioner,)
)
vs.) Case No. 01-0531PL
)
RODGER H. STEINEM, P.A.,)
)
Respondent.)
-----)

RECOMMENDED ORDER

On April 19, 2001, a formal administrative hearing in this case was conducted in Jacksonville, Florida, by Don W. Davis, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Eric S. Scott, Esquire
Jennifer Eastridge, Certified Student Intern
Agency for Health Care Administration
Post Office Box 14229
Tallahassee, Florida 32317-4229

For Respondent: No Appearance

STATEMENT OF THE ISSUES

The issues in the case are whether the allegations of the Administrative Complaint filed by the Petitioner are correct and, if so, what penalty should be imposed against the Respondent.

PRELIMINARY STATEMENT

By Administrative Complaint dated August 24, 2000, the Department of Health (Petitioner) alleged that Rodger H. Steinem, P.A. (Respondent), violated Section 458.331(1)(x), Florida Statutes, by his noncompliance with a lawful order previously entered in a disciplinary case by Petitioner, directing Respondent's compliance with certain requirements. Respondent requested a formal hearing. The matter was forwarded to the Division of Administrative Hearings which scheduled and conducted the proceeding.

At the hearing, Petitioner presented the testimony of one witness and had Exhibits numbered 1-8 admitted into evidence. Respondent did not appear and no evidence was presented on his behalf. The Transcript of the hearing was filed on May 10, 2001. Petitioner filed a Proposed Recommended Order which has been reviewed and utilized in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is the state agency charged with regulation of physician assistants in the State of Florida.

2. At all times material to this case, Respondent has been licensed as a physician assistant in the State of Florida, holding License Number PA 0001550. His last known address is 366 Magnolia Street, Atlantic Beach, Florida 32233.

3. On April 30, 1997, a Final Order (Final Order) was entered by Petitioner's Board of Medicine imposing discipline on Respondent's license as a physician assistant. The Final Order was in response to the Recommended Order entered in Division of Administrative Hearings (DOAH) Case Number 96-1559, where the presiding Administrative Law Judge (ALJ) recommended the revocation of Respondent's license for various violations of Section 458.331(1), Florida Statutes.

4. In the Final Order, Petitioner's Board of Medicine elected to impose discipline and adopted the findings of fact and conclusions of law in the Recommended Order. Discipline imposed included a six-month suspension of license and a requirement that Respondent complete the Florida Medical Association's medical records course, along with completing 10 hours of continuing education in the area of medical ethics. Respondent was also formerly reprimanded and ordered to pay an administrative fine of \$5,000 within 30 days.

5. Respondent appealed the Final Order and the First District Court of Appeal granted Respondent's Motion For Stay on May 21, 1997.

6. On February 8, 1999, the First District Court of Appeal issued a per curiam affirmance of the Final Order of Petitioner's Board of Medicine. On June 9, 1999, the Court issued its Mandate.

7. Based upon the terms of discipline in the Final Order, Respondent was to pay a \$5,000 administrative fine by July 9, 1999; complete the Florida Medical Association's medical records course by December 9, 1999; and complete 10 hours of continuing medical education in the area of medical ethics by the same date.

8. Respondent failed to pay the administrative fine by July 9, 1999. He also failed to complete either the medical records course or the 10 hours of continuing education in the area of medical ethics by December 9, 1999.

9. Notification was provided to Respondent by Petitioner's investigator that Respondent had failed to comply with the terms of the Final Order. Subsequent testimony of Petitioner's compliance officer at the final hearing also establishes that Respondent has, to-date, not complied with terms of the final order.

10. Respondent's failure to comply with requirements of the Final Order constitutes a violation of a lawful order of Petitioner's Board of Medicine.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

12. Petitioner, Department of Health, Board of Medicine, is responsible for disciplinary proceedings against physician assistants licensed in Florida. Chapter 464, Florida Statutes.

13. Petitioner has the burden of proving the allegations against the Respondent by clear and convincing evidence.

Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). In this case, the burden has been met.

14. Respondent's behavior in failing to comply with the Final Order of Petitioner's Board of Medicine is deemed a violation of Section 458.331(1)(x), Florida Statutes, which in turn provides that "[v]iolating any provision of this chapter, a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing" is a basis for license discipline.

15. Disciplinary guidelines of Petitioner's Board of Medicine set forth in Rule 64B8-8.001, Florida Administrative Code, provide that a violation of Section 458.331(1)(x), Florida Statutes, subjects a licensee to a range of penalties from reprimand to revocation of licensure, plus an administrative fine of \$250 to \$5,000.

16. Respondent's violation of a prior Final Order and failure to respond or appear in this proceeding underscores his flagrant disregard for entities with authority over his license and supports imposition of the most stringent penalty.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that Petitioner enter a final order against Respondent, finding that Respondent violated Section 458.331(1)(x), Florida Statutes, and revoking Respondent's license as a physician assistant.

DONE AND ENTERED this 7th day of June, 2001, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of June, 2001.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.