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3-18-02

STATE OF FLORIDA  
BOARD OF MEDICINE

Final Order No. DOH-02-1224-FoF-MQA  
FILED DATE - 8/12/02  
Department of Health

By: Victor P. Keenan  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,  
Petitioner,

AT

vs.

DOH CASE NO.: 2000-05307  
DOAH CASE NO.: 01-33299PL  
LICENSE NO.: ME0050478

MARC STEVEN SCHNEIDER, M.D.,  
Respondent.

01-3212  
DSM-CWS

FILED  
AUG 13 AM 10:59  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on June 7, 2002, in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Exceptions to the Recommended Order, and Response to Exceptions (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner was represented by Ephraim Livingston, Senior Attorney. Respondent was present and represented by Carol A. Lanfri, 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. The Board notes that the Recommended Order in this matter contains a paragraph numbering which appears to jump from paragraph 39 to paragraph 47.

RULINGS ON EXCEPTIONS

The Board reviewed and considered the Respondent's exceptions and rejected the exceptions on the grounds that they are based on an

evidentiary argument and attack a legal conclusion over which the Board does not have substantive jurisdiction pursuant to the holding in Barfield v. Department of Health, 805 So. 2d 1008 (Fla. 1<sup>st</sup> DCA 2002). However, the Board accepts the Respondent's exception to Paragraph 58 of the Recommended Order as set forth in Respondent's exceptions as not being properly characterized as a Conclusion of Law. The occurrence or non-occurrence of patient harm is not an element of a violation of Section 458.331(1)(t), F.S., but constitutes an aggravating or mitigating factor. Further, the Administrative Complaint did not allege patient harm.

#### 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 as amended above.

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 modified on the grounds that appropriate continuing medical

education in this case would be medical ethics and risk management. These areas of continuing medical education will be satisfied as set forth below.

1. Respondent shall pay an administrative fine in the amount of \$5,000 to the Board.

2. Respondent shall document the completion of 9 hours of continuing medical education (CME) as follows: 5 hours in the area of risk management and 4 hours in the area of medical ethics. The CME shall be completed within one year from the date this Final Order is filed. These hours shall be in addition to those hours required for biennial renewal of licensure. Unless otherwise approved by the Board or the Chairperson of the Probationer's Committee, said continuing education courses shall consist of a formal live lecture format.

3. Within one (1) year from the date this Final Order is filed, Respondent shall document the completion of 20 hours of community service. Community service shall consist of the delivery of medical services directly to patients, without fee or cost to the patient, for the good of the people of the State of Florida. Affidavits detailing the completion of community service requirements shall be filed with the Board's Probationer's Committee.

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

(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.)

#### RULING ON MOTION TO ASSESS COSTS

The Board considered the Petitioner's Motion to Assess Fees in this matter and according to its statutory mandate set forth in

\$456.072(4), Florida Statutes, costs in the amount of \$19,057.49 shall be submitted to the Board within one year from the date this Final Order is filed.

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

DONE AND ORDERED this 9 day of August, 2002.

BOARD OF MEDICINE



LARRY G. MCPHERSON, JR., EXECUTIVE DIRECTOR  
For  
GUSTAVO LEON, M.D.  
CHAIR-ELECT

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 Marc Steven Schneider, M.D., 12751 S. Cleveland Avenue, Suite 102, Fort Myers, Florida 33907;

to Carol A. Lanfri, Esquire, FPIC, 1000 Riverside Avenue, Suite 800,  
Jacksonville, Florida 32204; to Daniel Manry, 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 13<sup>th</sup> day of August, 2002.

Maria Reyes