

8-8-02

Final Order No. DOH-02-1655- S-MQA
FILED DATE - 10/30/02
Department of Health

STATE OF FLORIDA
BOARD OF MEDICINE

By: Wicki R. Kanon
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH Case No.: 1999-57795
1994-12341
DOAH Case No.: 01-4406PL
License No.: ME0036360

LARRY DEE THOMAS,

Respondent.

DMK-CWS

CA 110V-1 P11 2-14

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on October 4, 2002, in Miami, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A and B, respectively) in the above-styled cause. Petitioner was represented by Kim Kluck, Senior Attorney. Respondent was present and was represented by Romualdo C. Marquinez, 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.

RULINGS ON EXCEPTIONS

The Board reviewed and considered the Petitioner's Exceptions to the Recommended Order and denies the exception to Paragraph 19 of the Recommended Order on the grounds that it is

not material. The Board grants the exception to Paragraphs 84 and 85 of the Recommended Order in that it finds that the Administrative Law Judge does not have the authority to grant a Motion to Dismiss in a case in which there is no final order authority. The purview of the Administrative Law Judge is limited to a recommendation to the Board of dismissal of the Administrative Complaint.

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.

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,

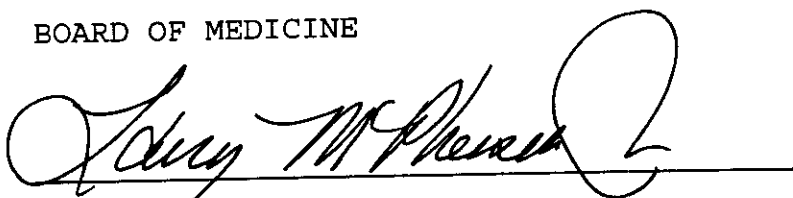
IT IS HEREBY ORDERED AND ADJUDGED that the Administrative Complaint filed in this matter is hereby DISMISSED.

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

DONE AND ORDERED this 27 day of OCTOBER,

2002.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for Zachariah P. Zachariah, M.D., Chair

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 LARRY DEE THOMAS, 575 E. Central Avenue, Winter Haven, Florida 33881; to William R. Huseman, Esquire, Romualdo C. Marquinez, Esquire, Huseman, Marquinez & Schlegal, P.A., 6320 St. Augustine Road,

Building 12, Jacksonville, Florida 32217; to Daniel M. Kilbride,
Administrative Law Judge, Division of Administrative Hearings,
The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida
32399-3060; and by interoffice delivery to Ephraim Livingston,
and Pamela Page, Department of Health, 4052 Bald Cypress Way, Bin
#C-65, Tallahassee, Florida 32399-3265 this 29 day of
October, 2002.

Thomas M. Kilbride