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6-11-02

STATE OF FLORIDA  
BOARD OF MEDICINE

Final Order No. DOH-02-1309- FOF-MQA  
FILED DATE - 8/27/02  
Department of Health

By: Dicki P. Karon  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

AP

DOH CASE NOS.: 1998-11893  
1998-13148

DOAH CASE NOS.: 01-4548PL  
01-4549PL

LICENSE NO.: ME0053263

HLH-1105

JOEL K. SHUGAR, M.D.,

Respondent.

**FILED**  
Date 7/6/04

FINAL ORDER

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 Administrative Law Judge's Recommended Order and Exceptions to the Recommended Order, and (copies of which are attached hereto as Exhibits A and B, respectively) in the above-styled cause. Petitioner was represented by Diane Keisling, Contract Attorney, Chief Attorney. Respondent was represented by Brian Newman, 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 the Exceptions to the Conclusions of Law filed by the Petitioner and accepts the exceptions for the reasons stated by the Petitioner.

### 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 with the following amendments:

a. Paragraph 67 of the Recommended Order shall be amended to read: "Because this case is penal in nature, the material allegations set forth in the Administrative Complaint must, generally, be proven by clear and convincing evidence. Department of Banking and Finance v. Osbourne Stern and Company, 670 So. 2d 932 (Fla. 1996). However, Section 458.331(3), Florida Statutes, creates an exception to that general rule in disciplinary action cases against a physician's license where revocation or suspension are not available penalties."

b. Paragraph 68 of the Recommended Order shall be amended to read: "Pursuant to the clear and unambiguous terms of Section 458.331(3), Florida Statutes, and because this case does not involve suspension or revocation of Respondent's license, the burden of proof is on the Petitioner to establish the existence of grounds for disciplinary action by the greater weight of the evidence."

3. There is competent substantial evidence to support the conclusions of law as amended.

DISPOSITION

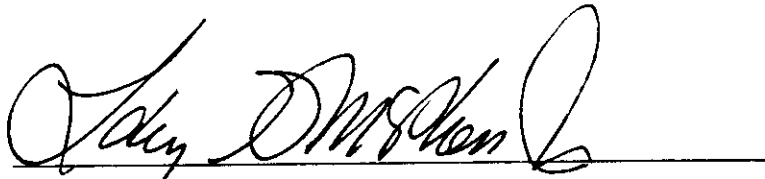
Upon a complete review of the record in this case, the Board determines that the disposition recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that the Administrative Complaints filed in these matters are hereby dismissed.

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

DONE AND ORDERED this 22 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 Joel K. Shugar, M.D., Nature Coast Eyecare Institute, 555 North Byron Butler Parkwat, Perry, Florida 32347; to Gary Shipman, Esquire, Pennington, Moore, et al., Post Office Box 10095, Tallahassee, Florida 32302-2095; to Harry L. Hooper, 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, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265, on or before 5:00 p.m., this 27<sup>th</sup> day of August, 2002.

Mari Boyette