

B-8-02

Final Order No. DOH-05-0550-~~FOF~~-MQA
FILED DATE - 4-15-05
Department of Health

STATE OF FLORIDA
BOARD OF MEDICINE

By: Heather Coleman
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 1999-58907
DOAH CASE NO.: 02-1228PL
LICENSE NO.: ME0015595

DWD
CWS

J. ANTONIO ALDRETE, M.D.,

Respondent.

AP

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DEPARTMENT OF HEALTH
STATE OF FLORIDA
FILED

AMENDED 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 February 5, 2005, in Miami, Florida, upon the Order on Remand from the First District Court of Appeal. The Board considered the Administrative Law Judge's Recommended Order, Exceptions to the Recommended Order, Response to Exceptions to the Recommended Order, Motion for Remand to DOAH, Motion to Increase Penalty and Amended Motion to Assess Costs (copies of which are attached hereto as Exhibits A, B, C, D, E, and F, respectively) in the above-styled cause at its meeting held on October 4, 2002. At the February 5, 2005, meeting, Petitioner was represented by Denise O'Brien, Assistant General Counsel. Respondent was

represented by Kenneth Metzger, Esquire, and Lisa Nelson, Esquire.

Upon review of the Court's Order on Remand, 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 Exceptions filed by the Respondent, and the Petitioner's Response to the Exceptions and denied the exceptions. Respondent filed "General Exceptions" addressed to the qualifications of Petitioner's expert witness and to reliance on excluded evidence. The Board does not have jurisdiction to rule on these exceptions. As to Respondent's exceptions to paragraphs 9, 13, 16, 17, and 22, the exceptions are denied on the grounds that the findings are based on competent substantial evidence. To the extent that these exceptions raise evidentiary issues, they are denied on the grounds that the Board does not have substantive jurisdiction over the Florida Code of Evidence. The exception to paragraph 23, of the Recommended Order is granted. Respondent's exception to paragraph 26 of the Recommended Order is denied on the

grounds that the Administrative Complaint adequately notified Respondent of the charges against him.

MOTION TO STRIKE FINAL ORDER

Respondent moved to strike Final Order No. DOH-02-1278 filed August 26, 2002, on the grounds that the Final Order was not part of the record from the Division of Administrative Hearings. The motion to strike was granted.

RULING ON MOTION FOR REMAND TO DOAH

The Board reviewed the Respondent's Motion for Remand to the Division of Administrative Hearings and denied the motion.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference with the following amendments.

a. The last sentence of paragraph 21 of the Recommended Order stating "Respondent failed to meet the Standard of Care in treating J.S. when he left her in the treatment room with only a licensed practical nurse (LPN) with no specific training in resuscitation or dealing with potential complications arising from the procedure" is stricken.

b. Paragraph 23 of the Recommended Order is stricken.

2. There is competent substantial evidence to support the findings of fact as amended.

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.

PENALTY

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

1. Respondent's license to practice medicine shall be suspended for a period of one year. In the event that Respondent's license expires during the period that the license is suspended, this action shall not relieve the Respondent of the responsibility to renew the license at the end of each licensure period. If the Respondent fails to renew the license at the end of any licensure period, all normal conditions and

consequences imposed by statute or rule of the Board for failure to timely and properly renew a license shall apply. Renewal of a suspended license during the period of suspension shall not affect the suspension of the license and the suspension shall continue in effect until the occurrence of the events or conditions which terminate the period of suspension stated herein. Prior to reinstatement, Respondent must provide documentation of continuing medical education (CME) required for renewal.

2. Respondent shall document the completion of 20 hours of continuing medical education (CME) in the area of out-patient resuscitation including the requirement for ACLS certification if Respondent is not ACLS certified 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 provided by the Board or the Chairperson of the Probation Committee, said continuing education courses shall be consist of a formal live lecture format.

RULING ON MOTION TO ASSESS COSTS

Pursuant to the First District Court's Order, the Board reviewed the Petitioner's Motion to Assess Costs and imposes the

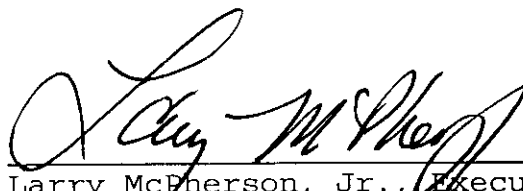
costs associated with this case in the amount of \$7,265.66.
Said costs are to be paid within 30 days from the date this
Final Order is filed.

(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 THIS FINAL ORDER.)

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

DONE AND ORDERED this 23 day of FEBRUARY,
2005.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for Laurie K. Davies, 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 J. ANTONIO ALDRETE, M.D., 938 Summit Place, Birmingham, Alabama 35243; to Kenneth Metzger, Esquire, Fowler, White, et al., 101 North Monroe Street, Suite 1090, Tallahassee, Florida 32301; to Don W. Davis, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Denise O'Brien, and Dana Baird, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265 this 15 day of april, 2005.

Erin W. Sims

Deputy Agency Clerk