

12-18-02

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-03-0234- FoF.MQA
FILED DATE - 3/12/03
Department of Health

By: Vicki F. Kenon
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH Case No.: 2000-15723
DOAH Case No.: 02-2969PL
License No.: ME0030598

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ROBERT H. FIER, M.D.,

Respondent.

REM-CUSD

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on February 7, 2003, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Respondent's Exceptions to the Recommended Order, and Petitioner's Response to Respondent's Exceptions (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. At the meeting, and on the record, the Board retained jurisdiction to rule on the issue of costs at its next conference call meeting scheduled for March 5, 2003. Petitioner was represented by Ephraim Livingston, Senior Attorney. Respondent was not present but 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 filed by Respondent and denied the exceptions. There is competent substantial evidence in the record to support the findings and conclusions of the Administrative Law Judge.

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.

PENALTY

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

IT IS HEREBY ORDERED AND ADJUDGED that

Respondent shall pay an administrative fine in the amount of \$10,000 to the Board within 90 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.)

RULING ON MOTION TO ASSESS COSTS

The Board, at its meeting held on March 5, 2003, by telephone conference call, considered the Petitioner's Motion to Assess Costs and the Respondent's Objection to the Motion to Assess Costs in this matter. The Board rejects the assertion by the Administrative Law Judge that the Division of Administrative Hearings has jurisdiction over costs associated with the prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board of Medicine is delegated the responsibility to assess costs. In accordance with the statutory provisions of Section 456.072(4), Florida Statutes, Respondent shall pay the costs associated with this case in the amount of \$8,689.97.

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

DONE AND ORDERED this 11TH day of MARCH, 2003.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for Raghavendra Vijayanagar, 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 ROBERT H. FIER, M.D., 1441 E. Ocean Boulevard, Stuart, Florida 34996; to Brian Newman, Esquire, Pennington Law Firm, 215 South Monroe Street, 2nd Floor, Tallahassee, Florida 32301; to Robert E. Meale, 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 12th day of March, 2003.

