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8-5-03

By: Heather Coleman  
Deputy Agency Clerk

STATE OF FLORIDA  
BOARD OF OSTEOPATHIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

AT

vs.

DOH CASE NO.: 2000-14334  
DOAH CASE NO.: 02-4826PL  
LICENSE NO.: OS 004450

FILED  
03-SEP-25 PM 12:42  
DEPARTMENT OF HEALTH

ARTHUR T. MAGRANN, III, D.O.,

Respondent.

CSN-CWS

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FINAL ORDER

THIS CAUSE came before the BOARD OF OSTEOPATHIC MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on September 6, 2003, in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Respondent's Exceptions to Proposed Recommended Order, and Petitioner's 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 Richard Shoop, Senior Attorney. Respondent was represented by Paul Watson Lambert, Esquire and Lisa Shearer Nelson, Esquire but Ms. Nelson did not make an appearance at the hearing.

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.

### MOTION FOR CONTINUANCE

On August 20, 2003, Respondent submitted a written request to the Board office requesting that this matter be placed on the Board's agenda for the December 5-6, 2003 Board meeting rather than the September 5-6, 2003 meeting. Respondent's attorney asserted that he had received Petitioner's motion to assess costs on August 18, 2003 without an affidavit supporting the cost, and therefore, he would be unable to file his response until such affidavit was received. Respondent's legal counsel opined that such delays would render it impossible for the Board to properly consider his opposition to Respondent's Motion to Assess Costs and the party's exceptions and response to exceptions. In support of his request Respondent agreed to waive the Section 120.569(1)(1) 90 day deadline for bringing a recommended order to the Board.

Upon receipt of Respondent's request, the Board office was able to ascertain that Respondent's attorney received the cost affidavit by facsimile transmission on August 20, 2003 and that the Petitioner would not agree to waive the Section 120.569(1)(1) 90 day deadline.

Respondent's request was presented to the Board Chair on August 21, 2003 and at such time the Chair denied Respondent's request on the grounds that there remained sufficient time for the parties to file their respective pleadings and for a complete

and thorough review of such pleadings by the Board prior to the Board meeting scheduled for September 5-6, 2003 and because the Petitioner did not agree to waive the Section 120.569(1)(1) 90 day deadline.

#### RULINGS ON EXCEPTIONS

The Board reviewed and considered the Exceptions filed by the Respondent in this matter and REJECTED Respondent's Exception in toto.

#### 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 modification set forth above.

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

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 459, 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 REJECTED. The Board cites to the following to justify departure from the recommended penalty:

The Board cites to evidence presented in lines 15-20, page 29, and lines 17-21, page 87, both found in Volume I of the hearing transcript, to demonstrate that Respondent took advantage of a patient and exploited her sexually when the patient was extremely mentally, emotionally and physically vulnerable.

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED AND ADJUDGED that

1. The Respondent shall undergo an in-depth psychological evaluation coordinated through the Professional's Recovery Network (PRN) from a psychiatrist, psychologist or other licensed psychotherapist experienced in the treatment of boundary violations/sexual misconduct. The licensee shall supply a copy of this order to the evaluator. The evaluation must contain evidence that the evaluator knows of the reason for referral. The evaluator must specifically advise this Board that the licensee is presently able to engage in the safe practice of medicine or recommend the conditions under which safe practice could be obtained. The Board reserves the right to impose terms of probation and other reasonable conditions when the Respondent appears before the Board to demonstrate the ability to engage in the safe practice of medicine.

2. If PRN recommends that Respondent enter into monitoring, treatment, or other such contract, the Respondent shall enter into said contract and comply with all its terms. The Respondent shall provide the Board with a copy of the PRN contract and execute a release authorizing PRN to release information and medical records (including psychiatric records and records relating to treatment) to the Board as needed to monitor the progress of the Respondent. The Director of PRN shall report to the Board any instance of noncompliance, any problems that may occur with Respondent, and any violations of Chapter 456 or 459, Florida Statutes, or any other relevant statute, within thirty (30) days of the occurrence.

3. The Respondent shall provide the Board with a copy of the PRN evaluation and contract (if required by PRN) by November 5, 2003 and appear before the Board with a representative from PRN at the December 5-6, 2003 Board meeting in Orlando, Florida. In the event PRN is unable to complete Respondent's evaluation within the above-referenced deadlines, Respondent shall submit his evaluation to the Board immediately thereafter and appear before the Board at the next regularly scheduled Board meeting.

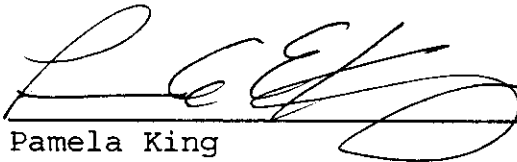
4. Respondent shall not examine or treat any female patients outside the physical presence of a female Florida licensed healthcare practitioner.

RULING ON MOTION TO ASSESS COSTS

The Board hereby reserves jurisdiction to rule on  
Petitioner's Motion to Access cost until such time when the  
Division of Administrative Hearings issues a recommended order or  
the parties enter into a consent agreement on the cost issue.

DONE AND ORDERED this 22 day of September,  
2003.

BOARD OF OSTEOPATHIC MEDICINE



Pamela King  
Executive Director

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: Arthur T. Magrann, III, D.O., 2414 Bee Ridge Road, Sarasota, Florida 34239; Paul Watson Lambert, Esquire, 1203 Governor Square Boulevard, Tallahassee, Florida 32311; Lisa Shearer Nelson, Esquire, 433 North Magnolia Drive, Tallahassee, Florida 32308; Carolyn S. Holifield, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Richard Shoop, Esquire and Pamela Page, Esquire, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265 this 24 day of September, 2003.

Erica L. Prine