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10-1-03

By: Heather Coleman

Deputy Agency Clerk

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DIVISION OF
ADMINISTRATIVE
HEARINGS

STATE OF FLORIDA
BOARD OF OSTEOPATHIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

AP

vs.

DOH Case No.: 2001-17443

DOAH Case No.: 03-1615PL

License No.: OS0003793

DAVID LEE VASTOLA, D.O.,

CA-closed

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the BOARD OF OSTEOPATHIC MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on December 6, 2003, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Petitioner's Exceptions to the Recommended Order and Motion To Increase Penalty, Respondent's Exceptions to the Recommended Order, and Petitioner's Response to Respondent's Exceptions to the Recommended Order in the above-styled cause. A copy of the Recommended Order is attached hereto. Petitioner was represented by Richard Shoop, Assistant General Counsel. Respondent was represented by Edwin A. Bayó and Roy R. Watson, II, attorneys-at-law.

Upon review of the Recommended Order, the Exceptions and Response, the other motions and pleadings, 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

1. Petitioner's Exceptions

a. Petitioner's exception to the finding of fact in Paragraph 39 of the Recommended Order is rejected on the basis that there is competent substantial evidence to support the finding of fact at issue.

b. Petitioner's exception to the conclusion of law in the first Paragraph 44 in the Recommended Order is rejected. The Administrative Law Judge's conclusion of law is supported by the evidence in the record as applied to the Administrative Complaint in this record.

2. Respondent's Exceptions

a. Respondent's exception number 1 to the finding of fact in Paragraph 13 of the Recommended Order is accepted. Newly enacted provisions of Section 456.073(5), Florida Statutes, provide authority to the Board to determine whether "a licensee has violated the laws and rules regulating the profession, including a determination of the reasonable standard of care. . . ." Under the narrow facts of this case, the Board finds that Respondent did not fail to adequately document the course of treatment.

b. Respondent' exceptions numbered 2 through 8 and 10 through 15 are rejected on the basis that there is competent

substantial evidence in the record to support the findings of fact at issue.

c. Respondent's exception number 9 to the finding of fact in Paragraph 32 of the Recommended Order is accepted. Newly enacted provisions of Section 456.073(5), Florida Statutes, provide authority to the Board to determine whether "a licensee has violated the laws and rules regulating the profession, including a determination of the reasonable standard of care . . ." The Board finds that, under the facts of this case, Respondent did not deviate from the standard of care by waiting six weeks for the follow-up x-rays.

d. Respondent's exception 16 to Paragraph 43 of conclusions of law is granted based on the Board's ruling on Respondent's first exception that Respondent did not fail to adequately document the course of treatment. Section 456.073(5), Florida Statutes, vests authority in this Board to determine whether an osteopathic physician has violated the laws and rules regulating the profession.

e. Respondent's exception 17 to the second Paragraph 44 of the Recommended Order is granted based on the Board's ruling on Respondent's exception number 9 that Respondent did not deviate from the standard of care in waiting six weeks for follow-up x-rays. Section 456.073(5), Florida Statutes, vests authority in this Board to determine whether an osteopathic

physician has violated the laws and rules regulating the profession.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order at Paragraphs 1-12, 14-27, 29-31, and 33-39 are approved and adopted and incorporated herein by reference.

2. The findings for fact in Paragraph 28 of the Recommended Order are rejected based on the Board's determination, as authorized by Section 456.073(5), Florida Statutes, that the specific facts in this record fail to demonstrate that Respondent practiced below the standard of care when he did not order an MRI or a CT after the February 11 chest x-rays.

3. The findings of fact set forth in Paragraphs 13 and 32 of the Recommended Order are rejected for the reasons set forth in the rulings on Respondent's exceptions.

4. 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 at Paragraphs 40-42, the first Paragraph 44, and Paragraph 45 are approved and adopted and incorporated herein by reference.

3. The conclusions of law set forth in Paragraph 43 and the second Paragraph 44 of the Recommended Order are rejected for the reasons set forth in the rulings on Respondent's exceptions. However, the Board does not find that an osteopathic physician never has to document justification for failing to determine the cause of clinical laboratory tests that are outside normal range, only that under the facts of this case, Respondent's failure to document justification was not a violation of Section 459.018(1)(o), Florida Statutes.

DISPOSITION

In light of the above, the Board finds that based on the record in this case and the Board's rulings rejecting the findings that Respondent had committed the violations alleged in the Administrative Complaint, the Board need not rule on Paragraphs 45-48 and the recommendation in the Recommended Order or on the exceptions which relate to the penalty or on the Motion To Increase Penalty. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that this case shall be, and hereby is DISMISSED.

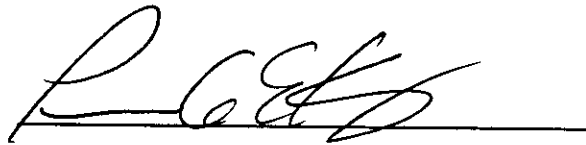
RULING ON MOTION TO ASSESS COSTS

Since the Department did not prevail in this case, the Motion To Assess Costs is DENIED.

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

DONE AND ORDERED this 24th day of December, 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 to David Lee Vastola, D.O., 824 US Highway 1, Suite 230, North Palm Beach, Florida 33408; to Edwin A. Bayo, Esquire, Gray, Harris, P.A., 301

South Bronough Street, Suite 600, Tallahassee, Florida 32301-7721; and Roy R. Watson, II, Esquire, Adams, Coogler, et al., Regions Financial Tower, Suite 1600, 1555 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33402-2069; to Claude B. Arrington, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Richard Shoop, and Pamela Page, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265 this 26th day of December, 2003.

Heather Coleman