

12-31-03

Final Order No. DOH-04-0445-FOF-MQA
FILED DATE - 5-4-04
Department of Health

By: Heather Coleman
Deputy Agency Clerk

TATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH Case No.: 1999-50250
DOAH Case No.: 03-1952PL
License No.: ME30449

mmp-clos

THOMAS PATRICK TREVISANI, M.D.,

Respondent.

FILED
MAY -5 11:31
DEPARTMENT OF HEALTH
BOARD OF MEDICINE

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, for the purpose of considering the Administrative Law Judge's Recommended Order, Petitioner's Exceptions to Recommended Order, and Respondent's Response to Petitioner's Exceptions (copies of which are attached hereto as Exhibits A, B, and C, respectively) on April 2, 2004 in Fort Lauderdale, Florida. Petitioner was represented by John E. Terrell, Assistant General Counsel. Respondent did not personally appear but was represented by Bruce Lamb, Esquire and Michael R. Lowe, 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 made the following determination:

PETITIONER'S EXCEPTIONS

1. The Board accepts Petitioner's exceptions to paragraph 14 found in paragraph 2 to petitioner's exceptions to the findings

of fact of the recommended order.

2. The Board accepts Petitioner's exceptions to paragraph 25 found in paragraph 3 to petitioner's exceptions to the findings of fact of the recommended order.

3. The Board accepts Petitioner's exceptions to paragraph 62 found in paragraphs 1, 2, and 3 to petitioner's exceptions to the conclusions of law of the recommended order.

4. The Board accepts Petitioner's exceptions to paragraph 70 found in paragraph 8 to petitioner's exceptions to the conclusions of law of the recommended order.

5. The Board accepts the Petitioner's exceptions to paragraph 71 found in paragraph 9 to petitioner's exceptions to the conclusions of law of the recommended order.

6. The Board rejects Petitioner's exceptions to paragraph 72 found in paragraph 10 to petitioner's exceptions to the conclusions of law of the recommended order.

7. The Board accepts in part and rejects in part Petitioner's exceptions to paragraph 73 found in paragraph 11 to petitioner's exceptions to the conclusions of law of the recommended order. Petitioner's proposed substitute language for paragraph 73 of the recommended order is rejected and replaced with substitute language as set forth below in the conclusions of law.

FINDINGS OF FACT

1. Footnote 6 in paragraph 14 of the Recommended Order is hereby rejected for the reasons stated in paragraph 2 of the petitioner's exceptions to the findings of fact and replaced with the following:

There is only one possible explanation for the absence of the preoperative note dictated by Dr. Trevisani on February 3, 1997: the dictation was transcribed and filed, but later removed from the chart by persons unknown for reasons unknown.

2. Footnote 9 in paragraph 25 of the Recommended Order is hereby rejected for the reasons stated in paragraph 3 of the petitioner's exceptions to the findings of fact and replaced with the following:

Although the matter is not entirely free from doubt, there is evidence in the record to the effect that it is more likely than not that Respondent did prepare an adequate operative report, but that the report, for reasons unknown, was removed from the chart by an unknown person for an unknown reason.

3. With the exception of the findings rejected as set forth above, the findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

4. There is competent substantial evidence to support the findings of fact as set forth in paragraphs 1 and 2 above and those set forth in the Recommended Order and approved and adopted and incorporated by reference.

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. Paragraphs 55 through 61 of the conclusions of law set forth in the Recommended Order are hereby approved and adopted and incorporated herein by reference.

3. Paragraph 62 of the recommended order is hereby rejected and substituted with the following:

The subject amendments to Section 456.073(5), Florida Statutes (2002), are not applicable. The amendments address substantive rights of a licensee rather than matters of procedure. Therefore, the amendments to Section 456.073(5), Florida Statutes, are not applicable to the case at bar.

4. Paragraphs 63 through 69 of the conclusions of law set forth in the Recommended Order are hereby approved and adopted and incorporated herein by reference.

5. Paragraph 70 of the recommended order is hereby rejected and substituted with the following:

Directing attention first to the allegation in subparagraph (a) of paragraph 16, there is no ambiguity in the allegation that Respondent failed to keep written medical records that justify the course of treatment of patient F.V. by failing to properly document Patient F.V.'s pre-operative consultation. The pre-operative report has not been produced for review by any experts or by this Court. Respondent failed to keep or maintain a pre-operative consultation report and his oral assertions to the contrary do not satisfy the statutory and regulatory requirement to "keep written medical records."

6. Paragraph 71 of the recommended order is hereby rejected and substituted with the following:

Subparagraph (a) of Paragraph 16 alleges that Respondent failed to keep written medical records by failing to properly document Patient F.V.'s pre-operative consultation. The greater weight of the evidence is to the effect that promptly following Respondent's pre-operative consultation with Patient F.V., he dictated an adequate pre-operative consultation note. That note is presently missing from the patient's chart. Respondent failed to maintain, possess and produce a pre-operative consultation report for Patient F.V. Petitioner has proven that Respondent failed to keep written medical records concerning patient F.V.'s pre-operative consultation and has proven a violation of Section 456.072(1)(m), Florida Statutes.

7. Paragraph 72 of the conclusions of law set forth in the Recommended Order are hereby approved and adopted and incorporated herein by reference.

8. Paragraph 73 of the recommended order is hereby rejected and substituted with the following:

And, finally attention is directed to sub-paragraph (c) of paragraph 16 and paragraph 17, which allege that Respondent failed to keep written medical records that justify the course of treatment of Patient F.V. The Petitioner has proven that Respondent has violated Section 456.072(1)(m), Florida Statutes (1996) by failing to keep medical records for Patient F.V.

9. The Board hereby finds that the aforementioned conclusions of law substituting those rejected from the recommended order are as reasonable or more reasonable than those they replace for the reasons stated in the exceptions accepted by the Board.

10. There is competent substantial evidence to support the conclusions of law as modified above.

PENALTY

Based on the foregoing and a complete review of the record, the Respondent has been found to be in violation of Section 458.331(1)(m), Florida Statutes.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent's license to practice medicine in the State of Florida is placed on probation for a period of two (2) years subject to the following terms and conditions:

a. Respondent shall appear before the Probationer's Committee at the first meeting after said probation commences, at the last meeting of the Probationer's Committee preceding termination of probation, quarterly, and at such other times requested by the committee. Respondent shall be noticed by Board staff of the date, time and place of the Board's Probationer's Committee whereat Respondent's appearance is required. Failure of the Respondent to appear as requested or directed shall be considered a violation of the terms of probation, and shall subject the Respondent to disciplinary action. Unless otherwise provided in the Final Order, appearances at the Probationer's Committee shall be made quarterly.

b. Respondent shall not practice except under the indirect

supervision of a physician fully licensed under Chapter 458 to be approved by the Board's Probationer's Committee. Absent provision for and compliance with the terms regarding temporary approval of a monitoring physician set forth below, Respondent shall cease practice and not practice until the Probationer's Committee approves a monitoring physician. Respondent shall have the monitoring physician present at the first probation appearance before the Probationer's Committee. Prior to approval of the monitoring physician by the committee, the Respondent shall provide to the monitoring physician a copy of the Administrative Complaint and Final Order filed in this case. A failure of the Respondent or the monitoring physician to appear at the scheduled probation meeting shall constitute a violation of the Board's Final Order. Prior to the approval of the monitoring physician by the committee, Respondent shall submit to the committee a current curriculum vitae and description of the current practice of the proposed monitoring physician. Said materials shall be received in the Board office no later than fourteen days before the Respondent's first scheduled probation appearance. The attached definition of a monitoring physician is incorporated herein. The responsibilities of a monitoring physician shall include:

(1) Submit quarterly reports, in affidavit form, which shall include:

- A. Brief statement of why physician is on probation.
- B. Description of probationer's practice.
- C. Brief statement of probationer's compliance with terms

of probation.

D. Brief description of probationer's relationship with monitoring physician.

E. Detail any problems which may have arisen with probationer.

(2) Be available for consultation with Respondent whenever necessary, at a frequency of at least once per month.

(3) Review 25 percent of Respondent's patient records selected on a random basis at least once every month. In order to comply with this responsibility of random review, the monitoring physician shall go to Respondent's office once every month. At that time, the monitoring physician shall be responsible for making the random selection of the records to be reviewed by the monitoring physician.

(4) Report to the Board any violations by the probationer of Chapter 456 and 458, Florida Statutes, and the rules promulgated pursuant thereto.

2. Respondent shall pay an administrative fine in the amount of \$5,000 to the Board within 30 days from the date this Final Order is filed.

3. Respondent shall document completion of the medical records course sponsored by the Florida Medical Association (FMA) within one (1) year from the date this Final Order is filed.

4. Respondent shall be and hereby is REPRIMANDED by the Board.

RULING ON PETITIONER'S MOTION TO ASSESS COSTS

Pursuant to Petitioner's Motion To Assess Costs In

Accordance With Section 456.072, F.S., Respondent shall pay the costs associated with this case in the amount of \$6,500.00.¹

Said costs shall be paid within 180 days from the date this Final Order is filed.

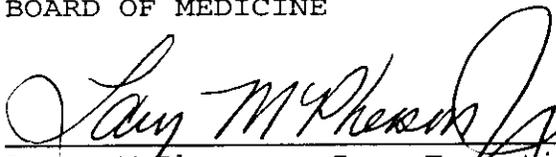
(NOTE: SEE ATTACHMENT "A" FOR STANDARD TERMS APPLICABLE TO ALL FINAL ORDERS. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE STANDARD TERMS SET FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

RULING ON RESPONDENT'S MOTION FOR STAY OF PENALTY

Upon completion of consideration of the recommended order in this matter, Respondent's legal counsel made an ore tenus motion for stay of the penalty in anticipation of an appeal of the final order. Upon consideration of the motion and being duly advised on the premises, the Board granted the motion and stayed the penalty throughout the pendency of all review proceedings in Florida courts until a mandate issues. If Respondent fails to file a timely notice of appeal, the stay shall be automatically lifted upon the 31st day after the filing of this final order

DONE AND ORDERED this 3 day of MAY,
2004.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for Elisabeth Tucker, 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 THOMAS PATRICK TREVISANI, M.D., 1320 Bridgeport Drive, Winter Park, Florida 32789; to William F. Sutton, Esquire, Ruden, McClosky, et al., 111 North Orange Avenue, Suite 1750, Orlando, Florida 32801; to Bruce D. Lamb, Esquire, Ruden McClosky, et al., 401 East Jackson Street, 27th Floor, Tampa, Florida 33602; to Michael M. Parrish, 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 #C65, Tallahassee, Florida 32399-3265 this 4 day of May, 2004.

Erica L. Perine
Deputy Agency Clerk