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2-26-04

FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK *Heather Coleman*

DATE 6-18-04

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

AP

vs.

DOH Case No.: 1997-10367
1997-17509
1998-12056
1998-12059

DOAH Case No.: 03-1954PL
License No.: ME000051546

FILED
2004 JUN 21 P 1:02
DEPARTMENT OF HEALTH
CLERK

ROBERT H. HUNSAKER, M.D.,

Respondent.

MMP-LWS

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FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on June 4, 2004, in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Petitioner's Exceptions to the Recommended Order, (copies of which are attached hereto as Exhibits A and B) in the above-styled cause. Petitioner was represented by Joy Tootle, Assistant General Counsel. Respondent was present and was represented by Andrew Cotzin, 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.

RULING ON EXCEPTIONS

The Board reviewed the Petitioner's exceptions and accepted the exceptions.

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 with the following amendments:

paragraphs 49 to 51 of the Recommended Order should be deleted and paragraph 48 should be restated to read as follows:

By operation of the new legislation enacted during the 2003 session of the Florida legislature, effective September 15, 2003, "(t)he determination of whether or not a licensee has violated the laws and rules regulating the profession, including a determination of the reasonable standard of care, is a conclusion of law to be determined by the board ... and is not a finding of fact to be determined by an administrative law judge." See Chapter 2003-416, Laws of Florida, at Section 20 (amending Section 456.073(5), Florida Statutes (2002)). The said amendment addresses 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 cases at bar. This conclusion of law is as or more reasonable than that of the

administrative law judge.

3. There is competent substantial evidence to support the conclusions of law as amended.

DISPOSITION

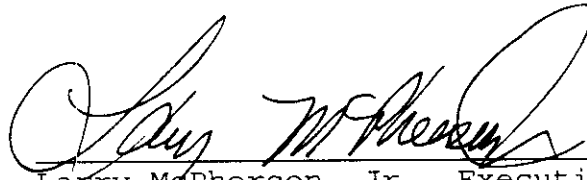
Upon a complete review of the record in this case, the Board determines that the disposition recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that the Administrative Complaint filed in this cause is hereby DISMISSED.

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

DONE AND ORDERED this 17 day of JUNE, 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 ROBERT H. HUNSAKER, M.D., 104 Crandon Boulevard, Suite 327, Key Biscayne, Florida 33147; to Andrew Cotzin, Esquire, Broad & Cassel, P.A., One Financial Plaza, Suite 2700, Ft. Lauderdale, Florida 33394; 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 Denise O'Brien and Pamela Page, Department of Health, 4052 Bald Cypress Way, Bin #C65, Tallahassee, Florida 32399-3265 this 18 day of June, 2004.

Erica S. Peris

Deputy Agency Clerk