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4-22-04

Final Order No. DOH-04-0662-FOF-MQA
FILED DATE - 6-18-04
Department of Health

By: Heather Coleman
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

A. ALEXANDER JACOBY, M.D.,

Petitioner,

AP

vs.

DOAH Case No.: 03-4433

BOARD OF MEDICINE,

Respondent.

MMP-CWS

FILED
2004 JUN 21 P 1:03
DEPARTMENT OF HEALTH
TAMPA, FLORIDA

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on June 5, 2004, in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Petitioner's Exceptions to the Recommended Order, and Respondent's Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner was represented by Edward A. Tellechea, Senior Assistant Attorney General. Respondent was represented by Wilson Jerry Foster, 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.

EXCEPTIONS

1. Petitioner's exception to paragraph 14 of the Recommended Order is hereby accepted in part insofar as it stands

for the proposition that Florida administrative agencies do indeed have the authority to allow withdrawal of applications.

2. Petitioner's exceptions to the Recommended Order are hereby rejected in all other respects.

3. Respondent's exceptions to paragraph 16 of the Recommended Order is hereby accepted.

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 paragraphs 13 and 15 of the Recommended Order are hereby accepted, adopted and incorporated herein by reference.

3. The conclusion of law set forth paragraph 16 of the Recommended Order is hereby rejected and substituted with following language:

In Section 458.301, F.S., Florida's legislature has charged the Board with ensuring that every physician practicing in this state meets minimum requirements

for safe practice. Section 458.331(1), F.S., outlines the acts which constitute grounds for denial of a license or disciplinary action against a physician. Specifically, Section 458.331(1)(b), F.S., gives the Board discretion to choose whether or not it will deny an applicant if he has had his medical license disciplined in another state. The Board's disciplinary guidelines in Rule 64B8-8.001, F.A.C., recommend as the minimum penalty for a Section 458.331(1)(b), F.S., violation "denial of the license until the license is unencumbered in the jurisdiction in which disciplinary action was originally taken, and an administrative fine ranging from \$1,000.00 to \$5,000.00." In this case, the Board has chosen to deny the application based on several aggravating factors and policy considerations. The action taken against Petitioner's New York medical license stems from him failing to repay his student loans which clearly demonstrates poor financial judgment. Florida law aims to protect patients from insurance scams, billing fraud, and unscrupulous doctors by requiring physicians to demonstrate financial responsibility pursuant to Section 458.320, F.S. The Board should not give a doctor with financially "poor judgment" and a history

of mishandling government money, the opportunity to work with patients who primarily receive government based healthcare funding. Additionally, Petitioner has not satisfied the 3 year probationary requirement the New York Department of Health has imposed against his license. Instead, Petitioner is avoiding the New York discipline of his medical license by trying to work as a physician in Florida. Petitioner did not attempt to repay his student loans for 18 years and only settled with the U.S. government after New York disciplined his license. Additionally, Petitioner did not provide any evidence of rehabilitation, mitigation, or satisfactory completion with regard to the New York discipline. Petitioner never offered an explanation for why he did not pay his student loans at final hearing nor before the Credentials Committee on September 13, 2003 when he was asked. Florida's legislature has imposed harsh consequences for health care practitioners who default on student loans in Section 456.072(1)(k), F.S. Granting Petitioner a certificate would be indirectly subverting the policy of this state and creating a haven for people who avoid their legal obligations in other states.

4. The conclusion of law set forth paragraph 14 of the Recommended Order is hereby accepted insofar it concludes that there was no error in the denial of Petitioner's request to withdraw his application but it is rejected as to the finding that the Board is without the authority to allow the Petitioner to withdraw his application.

5. The above stated conclusions of law substituting those rejected by the Board are as or more reasonable than those set forth in the Recommended Order.

6. There is competent substantial evidence to support the conclusions of law.

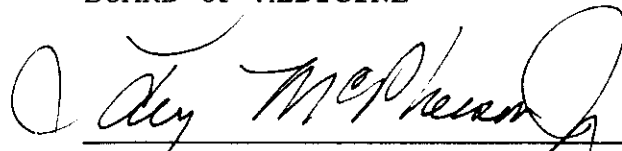
DISPOSITION

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

IT IS HEREBY ORDERED AND ADJUDGED that Petitioner's application for temporary certificate to practice in an area of critical need as an allopathic physician is hereby **DENIED**.

DONE AND ORDERED this 17th 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 copy of the foregoing has been sent via U.S. Mail to Petitioner's legal counsel, Wilson Jerry Foster, Esq., 1342 Timberlane Rd., Ste. 102A, Tallahassee, Florida 32312-1775 and to Michael M. Parrish, Administrative Law Judge, The Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, on this 18th day of June, 2004

Erica L. Perine
Deputy Agency Clerk