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**STATE OF FLORIDA
BOARD OF DENTISTRY**

Final Order No. DOH-05-1179- FOF-MOA
FILED DATE - 6-30-05
Department of Health

By: Heather Coleman
Deputy Agency Clerk

**DEPARTMENT OF HEALTH,
Petitioner,**

**v.
JACK SABAN, D.D.S.,
Respondent.**

**DOAH Case No.: 04-0045PL
DOH Case Nos.: 2002-02982
License No.: DN 8257**

FINAL ORDER

THIS MATTER came before the Board of Dentistry pursuant to Sections 120.569 and 120.57(1), Florida Statutes on JUNE 24, 2005, at the duly noticed meeting in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order of January 31, 2005 (attached). Respondent was present and represented by Max Price, Esquire. The Department of Health was represented by Deirdre Farrington, Esquire.

Preliminary Findings of Fact

1. The record indicates that the Recommended Order of the Administrative Law Judge was entered on January 31, 2005.
2. The record indicates that Respondent filed exceptions to the Recommended Order with the agency clerk for the Department of Health on February 18, 2005, eighteen days after the entry of the Recommended Order.
3. The record does not indicate that Petitioner's exceptions, although part of the record, were filed with the agency clerk for the Department of Health.

Preliminary Conclusion of Law

4. The Board finds that the Respondent's exceptions were not timely or properly filed, and declines to consider the exceptions, consistent with Section 120.57(1)(k), Florida Statutes and consistent with Section 28-106.103; 28-106.104; 28-106. 217 Florida Administrative Code.

5. The Board finds that the Petitioner's exceptions were not properly filed and declines to consider the exceptions.

Findings of Fact

6. The findings of fact set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

7. Petitioner, by motion and affidavit presented evidence of costs in the amount of twenty -four thousand, one- hundred thirty- one dollars and two cents (\$ 24, 131.02). The Board finds the costs are appropriate.

Conclusions of Law

8. The Board has jurisdiction over this matter pursuant to the provisions of Sections 120.57(1), 120.569 and Chapters 456, 466, Florida Statutes.

9. The conclusions or law set forth in the Recommended Order are consistent with the findings of fact and are approved, adopted, and incorporated herein by reference except as noted below:

- A. The Board hereby strikes paragraphs 19, 20 and 21 of the Recommended Order. The discussion in those paragraphs is superfluous and not material to the Board's consideration of this case as presented in this proceeding. It is not necessary to

reach a conclusion in this proceeding as to whether or not the September 15, 2003 changes to Section 456.073 (5) Florida Statutes, made by Chapter 2003-416 Laws of Florida, apply to violations or alleged violations that occurred prior to September 15, 2003.

10. Respondent is found guilty of violating Sections 466.028 (1) (m) and (n) Florida Statutes. Paragraph 21 of the Amended Administrative Complaint is stricken.

11. Pursuant to Section 456.072(4), Florida Statutes, costs associated with the investigation and prosecution of this matter must be collected. Petitioner's Motion to Assess Costs is GRANTED.

Penalty

12. The Administrative Law Judge's recommended penalty includes, among other things, the imposition of a \$ 7,500.00 fine. The Recommended Order does not contain a specific finding of an aggravating circumstance, although there is evidence in the record that the Respondent has been the subject of previous disciplinary action. The normal guideline penalty in effect at the time of the violations, Section 64B5-13.005 (1), (3), (4) Florida Administrative Code (as amended 12-24-91) for the offenses adjudicated is \$3,000.00 per count or offense. Therefore the Board reduces the fine from \$ 7,500.00 to \$6,000.00. The Respondent shall pay a \$ 6,000.00 fine to the Department of Health Board of Dentistry compliance officer within six-months of the date of this final order.

13. The Recommended Order recommends the Respondent be placed on probation for one year with conditions and that the Respondent be required to attend a course on Dental record-

keeping. The normal guideline penalty in effect at the time of the violations also authorizes the imposition of a reprimand, in addition to the probation. The Board will not impose the probation but will impose a reprimand, as it is within the normal guideline range. The Respondent's license is hereby reprimanded.

14. The Respondent shall complete a six- hour course on Dental record-keeping and provide proof of same to the Department of Health, Board of Dentistry compliance officer within six- months of the date of this final order. The Course must either be approved or accredited by the American Dental Association or must be a program taken from a school that is accredited by the American Dental Association.

15. The Respondent shall pay costs of investigation and prosecution in the amount of \$ 24, 131.02. The costs shall be paid to the Department of Health, Board of Dentistry compliance officer within one (1) year of the date of this final order.

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

DONE and ORDERED this 30th day of June, 2005.

BOARD OF DENTISTRY

Cindy Ritter for
SUE FOSTER,
Executive Director
For **CARL MELZER,, D.D.S.,** Chair
Board of Dentistry.

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE , BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(D), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT OF HEALTH AGENCY CLERK, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

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: Max R. Price, Esquire, Attorney For Respondent, at 6701 Sunset Drive, Suite 104, Miami, Florida 33143 and by hand delivery/ interoffice delivery to Deirdre Farrington, 4052 Bald Cypress Way, Bin C-65, Tallahassee, FL 32399-3265, and Gary L. Asbell, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, this 1ST day of July, 2005.

Heather Coleman
Deputy Agency Clerk

Ritter, Cynthia

From: Foster, Sue
Sent: Wednesday, June 29, 2005 2:06 PM
To: Sanders, Sylvia (MQA); Robison, Helaine
Cc: Ritter, Cynthia
Subject: Delegation of authority

While I am out of the office tomorrow, Thursday, June 30, Cindy Ritter is delegated authority to act on my behalf.