

7-23-04

Final Order No. DOH-05-0079- FoFMOA
FILED DATE - 2-1-05
Department of Health

(C)

STATE OF FLORIDA
BOARD OF DENTISTRY

By: Heather Coleman
Deputy Agency Clerk

DEPARTMENT OF HEALTH,
Petitioner,

DOAH Case No.: 04-0079PL
DOH Case Nos.: 2001-09251
2001-13096
2002-02461
2001-20532

SBH
CWS

v.

JAMES MICHAEL D'AMICO, D.D.S.,
Respondent.

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FINAL ORDER

THIS MATTER came before the Board of Dentistry pursuant to Sections 120.569 and 120.57(1), Florida Statutes on January 7, 2005, at the duly noticed meeting in Plantation, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order of July 23, 2004 (attached). Respondent was represented throughout the DOAH process by Joseph Harrison. Respondent was represented at this hearing for entry of final order by Stephen Slepik, who was present at the hearing. The Department of Health was represented by Dean Bunton, who was present at the hearing. The Board was represented by Diane Guillemette.

Preliminary Findings of Fact

1. The Recommended Order of the Administrative Law Judge was entered on July 23, 2004.
2. Respondent filed exceptions to the Recommended Order on August 10, 2004, eighteen days after the entry of the Recommended Order.
3. Section 120.57(1)(k), Florida Statutes states "The agency shall allow each party 15 days in which to submit written exceptions to the recommended order."

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Preliminary Conclusion of Law

4. The Board finds that the exceptions were untimely, and declines to consider the exceptions, consistent with Section 120.57(1)(k).

Findings of Fact

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

6. Petitioner, by motion and affidavit presented evidence of costs in the amount of Six Thousand Six Hundred Fifty Eight Dollars and Sixty Three Cents \$6,658.63.

7. At hearing, Respondent verbally requested a stay of revocation pending appeal in this matter.

8. Petitioner verbally opposed the Respondent's request for a stay.

Conclusions of Law

9. The Board has jurisdiction over this matter pursuant to the provisions of Section 120.57 and Chapter 466, Florida Statutes.

10. The conclusions or law set forth in the Recommended Order are consistent with the findings and are approved, adopted, and incorporated herein by reference.

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

12. Bases on the facts, the Board finds that continuing dental practice by the Respondent constitutes a probable danger to the health, safety or welfare of the state, therefore the Respondent's oral motion for stay of revocation is DENIED.

Penalty

13. The Administrative Law Judge's recommended penalty; that Dr. D'Amico's license be revoked, is approved, adopted, and incorporated in this Final Order of the Board.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the

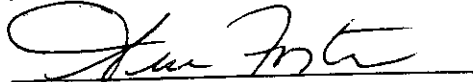
14. Respondent's license is REVOKED.

15. The costs of Six Thousand Six Hundred Fifty Eight Dollars and Sixty Three Cents (\$6,658.63) and shall be paid within thirty (30) days.

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

DONE and ORDERED this 31 day of January, 2005.

BOARD OF DENTISTRY



SUE FOSTER,
Executive Director
For **CARL MELZER,** Chair
Board of Dentistry.

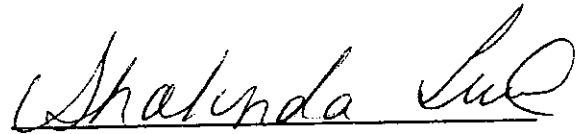
NOTICE OF RIGHT TO APPEAL

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'S CLERK OF AGENCY PROCEEDINGS, 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: Stephen Marc Slepín, Esq., Slepín & Slepín, 1026 East Park Avenue Tallahassee, FL 32301, James Michael D'Amico, D.D.S., 4311 Avenue Cannes, Lutz, FL 33558 and by hand delivery/ interoffice delivery to Dean Bunton, 4052 Bald Cypress Way, Bin C-65, Tallahassee, FL 32399-3265, and Diane L. Guillemette, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, this 25th day of February, 2005.



Deputy Agency Clerk