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Final Order No. DOH-06-1587-~~FOI~~-MOA
FILED DATE - 5/2/06
Department of Health
By: *Lilli Bailes*
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-05244
DOAH CASE NO.: 05-1982PL
LICENSE NO.: ACN 144

JOSE A. GUTIERREZ, M.D.,

Respondent,

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on August 11, 2006, in St. Petersburg Beach, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Exceptions to the Recommended Order, and (copies of which are attached hereto as Exhibits A and B, respectively) in the above-styled cause. Petitioner was represented by Robert Swanson, Assistant General Counsel. Respondent was not present and was not represented by counsel at the hearing.

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.

RULINGS ON EXCEPTIONS

The Board reviewed and considered the Petitioner's Amended Exceptions to Conclusions of Law and Motion to Increase Penalty

to the Recommended Order and voted to accept the Petitioner's Exceptions for the reasons set forth therein.

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:

a. Paragraph 29 of the Recommended Order is amended to read as follows:

"29. There are two counts in the Administrative Complaint that arise from the similar, but not identical, facts and circumstances. However, these actions are two separate violations of the Medical Practice Act and shall be so treated for the purposes of the recommended penalty."

b. Paragraph 44 of the Recommended Order is amended to read as follows:

"44. Consideration of the aggravating and mitigating factors indicates that the appropriate penalty imposed in this case should be premised on the totality of the circumstances, including the aggravating factor that the Respondent knowingly violated the Medical Practice Act and the

aggravating factor that the Respondent continued to practice medicine when the Respondent knew that his license was not valid, coupled with Petitioner proving both violations alleged in the Administrative Complaint."

3. The Board hereby finds that the above-stated substitute conclusions of law are as or more reasonable than those that are modified for the reasons set forth in the Petitioner's Amended Exceptions.

4. There is competent substantial evidence to support the conclusions of law as amended by the Board.

PENALTY

Upon a complete review of the record in this case, the Board determines that the disposition recommended by the Administrative Law Judge be REJECTED. The Board's rejection of the recommended penalty is based on the findings in the amended conclusions of law set forth in paragraph 44 wherein the Board finds two knowing violations of the medical practice act and the Respondent's continued practice even though he knew that his license was not valid at the time.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that:

1. Respondent shall pay an administrative fine in the amount of \$5,000.00 to the Board within 30 days from the date this Final Order is filed.

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

RULING ON MOTION TO ASSESS COSTS

The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$40,023.27. Said costs are to be paid within 30 days from the date this Final Order is filed.

(NOTE: SEE RULE 64B8-8.0011, FLORIDA ADMINISTRATIVE CODE. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE RULE SETS FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

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

DONE AND ORDERED this 30 day of AUGUST,

2006.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for MAMMEN P. ZACHARIAH, 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 JOSE A. GUTIERREZ, M.D., 819 Thacker Avenue, Kissimmee, Florida 34741; to George Indest, III, Esquire, The Health Law Firm, 220 East Central Parkway, Suite 2030, Altamonte Springs, Florida 32701; to William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to John Terrel, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265 this 31 day of August, 2006.



Deputy Agency Clerk

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