

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-11974
DOAH CASE NO.: 05-2648PL
LICENSE NO.: ME0076902

JAMES P. WEINER, 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 June 2, 2006, in Orlando, 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 John Terrel, Assistant General Counsel. Respondent was present and was represented by Sean Ellsworth, 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.

RULINGS ON EXCEPTIONS

The Board reviewed and considered the Respondent's Exceptions and the Petitioner's Response to the Respondent's Exceptions and denied the Exceptions.

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DIVISION OF
ADMINISTRATIVE
HEARINGS

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.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be REJECTED. The Board finds mitigating circumstances in this matter; specifically: this is a first-time offense for this physician; Respondent has demonstrated a distinguished medical career; Respondent is Board-certified; and has a demonstrated a distinguished medical career.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent shall pay an administrative fine in the amount of \$1,000 to the Board within 30 days from the date this Final Order is filed.

2. Within one (1) year from the date this Final Order is filed, Respondent shall document the completion of 25 hours of community service. Community service shall be provided without fee or cost to the person or entity benefitting from the service, for the good of the people of the State of Florida. A community service plan must be pre-approved by the Board's Probationer's Committee. Affidavits detailing the completion of community service requirements shall be filed with the Board's Probationer's Committee.

3. Respondent shall document the completion of 5 hours of continuing medical education (CME) in the area of risk management within one year from the date this Final Order is filed. These hours shall be in addition to those hours required for biennial renewal of licensure. Unless otherwise approved by the Board or the Chairperson of the Probationer's Committee, said continuing education courses shall consist of a formal live lecture format.

4. Respondent shall be and is hereby issued a letter of concern by the Board.

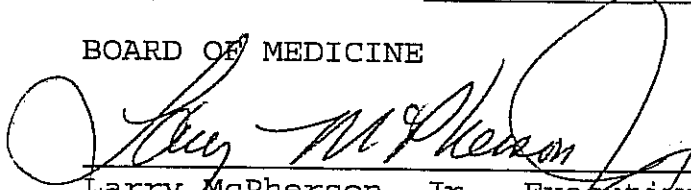
RULING ON MOTION TO ASSESS COSTS

The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$12,379.89. Said costs are to be paid within 30 days from the date this Final Order is filed.

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

DONE AND ORDERED this 19 day of JUNE, 2006.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for MAMMEN P. ZACHARIAH, M.D., Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

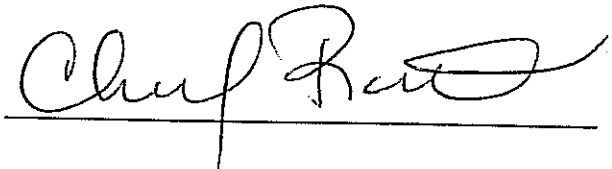
A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK 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 JAMES P. WEINER, M.D., 12700 Creekside Lane, #301, Ft. Myers, Florida 33919; to Sean Ellsworth, Esquire, 404 Washington Avenue, Suite 750, Miami Beach, Florida 33139; to Susan B. Harrell, 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 Dana Baird, Department of Health, 4052 Bald Cypress Way, Bin #C-

65, Tallahassee, Florida 32399-3265 this 30th day of

June, 2006.

A handwritten signature in cursive script, appearing to read "Chaf Raut", written over a horizontal line.

Deputy Agency Clerk

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