

By: Theresa McKern
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH Case No.: 2004-11965
DOAH Case No.: 05-3156PL
License No.: ME0066779

WALTER INKYUN CHOUNG, M.D.,

Respondent.

FILED
2006 APR 24 A 11:29
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on April 8, 2006, in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, (a copy of which is attached hereto as Exhibit A) in the above-styled cause. Petitioner was represented by Ephraim Livingston, Assistant General Counsel. Respondent was present and was represented by Bruce D. Lamb, Esquire, 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.

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.

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

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 rejects the penalty recommended by the Administrative Law Judge for the following reason:

As stated in the hearing record, under the vast majority of cases for the second violation of similar offenses, the Board, in the past has not customarily imposed a term of probation. Rather, the Board imposes larger fines and reprimands.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent shall pay an administrative fine in the amount of \$15,000 to the Board within 30 days from the date this Final Order is filed.

2. Within one (1) year from the date the Final Order is filed, Respondent shall document the completion of 150 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. Within one (1) year from the date this Final Order is filed, Respondent shall present a one hour lecture to the entire medical staff of the hospital at which he maintains staff privileges. The lecture shall address the subject of wrong-site surgery. Documentation from hospital administrator and chief-of-staff of completion of said lecture shall be provided to the Board's Probationer's Committee.

4. Respondent shall submit to a Quality Assurance review of his medical practice to be performed by a licensed risk manager and provide the Board's Probation Committee with the quality assurance report within 6 months from the date of entry of the Final Order. In addition, the Respondent shall comply with any and all recommendations made by the risk manager and shall document compliance with said recommendations by submitting a follow-up report completed by the licensed risk manager that verifies Respondent's compliance with all prior recommendations. The follow-up report shall be filed with the Board's Probation

Committee within 30 days from the date of submission of the quality assurance report.

5. 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 \$7,999.93. Said costs are to be paid within 30 days from the date this Final Order is filed.

THE FOLLOWING TERMS ARE APPLICABLE TO THIS FINAL ORDER.

1. PAYMENT OF FINES AND COSTS. Unless otherwise directed by Final Order, all fines and costs shall be paid by check or money order made payable to the Board and sent to DOH/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, WITHIN 30 DAYS OF THE FILING OF THE FINAL ORDER. The Board/Compliance office does NOT have the authority to change the terms of payment of any fine imposed by the Board.

2. ADDRESSES. Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Compliance Office, in writing, within 10 days of any changes of those addresses. Furthermore, if the Respondent's license is on probation, the Respondent shall notify the Compliance Office within 10 days in the event that Respondent leaves the active practice of medicine in Florida.

3. COMPLIANCE ADDRESS. Unless otherwise directed, all reports, correspondence and inquiries shall be sent to: DOH, Client Services Unit, 4052 Bald Cypress Way, Bin #C01, Tallahassee, Florida 32399-3251, Attn: Medical Compliance Officer.

4. CONTINUITY OF PRACTICE

a. TOLLING PROVISIONS. In the event the Respondent leaves the State of Florida for a period of 30 days or more or otherwise does not or may not engage in the active practice of medicine in the State of Florida, then certain provisions of the requirements in the Final Order shall be tolled and shall remain in a tolled status until Respondent returns to the active practice of medicine in the State of Florida.

Respondent shall notify the Compliance Officer 10 days prior to his/her return to practice in the State of Florida. Unless otherwise set forth in the Final Order, the following requirements and only the following requirements shall be tolled until the Respondent returns to active practice:

- (1) The requirement for quality assurance review of Respondent's practice shall be tolled.

(2) Any provisions regarding community service shall be tolled.

(3) Any requirements regarding lectures on the subject of wrong-site surgery.

b. ACTIVE PRACTICE. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Respondent may be required to appear before the Board and demonstrate the ability to practice medicine with reasonable skill and safety to patients prior to resuming the practice of medicine in the State of Florida.

5. COMMUNITY SERVICE AND CONTINUING EDUCATION UNITS.

Unless otherwise directed by Final Order, all community service requirements, continuing education units/courses must be completed, and documentation of such completion submitted to DOH/Client Services, at the address set forth in paragraph 3., **WITHIN ONE YEAR OF THE DATE OF THE FINAL ORDER.**

a. DEFINITION OF COMMUNITY SERVICE. "Community service" shall be defined as the delivery of medical services directly to patients, or the delivery of other volunteer services to an entity which is exempt from federal taxation under 26 U.S.C. s. 501(c)(3), without fee or cost to the patient or the entity, for the good

of the people of the State of Florida. Community service shall be performed outside the physician's regular practice setting.

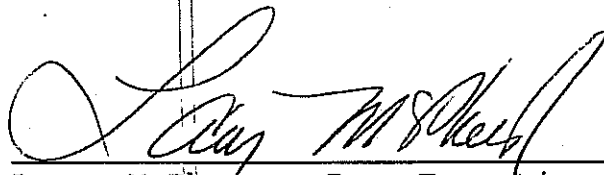
b. CONTINUING EDUCATION. Continuing education imposed by Final Order shall be in addition to those hours required for biennial renewal of licensure. Unless otherwise approved by the Board or the Chairperson of the Probation Committee, said continuing education courses shall consist of a formal live lecture format.

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

DONE AND ORDERED this 18 day of APRIL,

2006.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for Mammen P. Zachariah, M.D., Chair

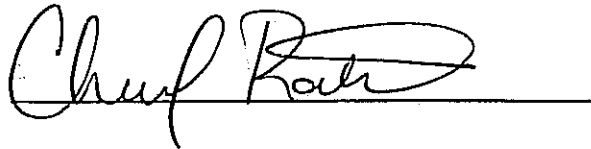
NOTICE OF RIGHT TO JUDICIAL REVIEW

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 WALTER INKYUN CHOUNG, M.D., Nature Coast Orthopaedics, P.O. Box 640580, Beverly Hills, Florida 34464-0580; to Bruce D. Lamb, Esquire, Ruden, McCloskey, et al., 401 E. Jackson Street, Tampa, Florida 33602-5841; to Charles C. Adams, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to John Terrel and Wings Benton, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265 this 19th day of April, 2005.



Deputy Agency Clerk