

By: Sheresa McKown  
Deputy Agency Clerk

STATE OF FLORIDA  
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-05727

DOAH CASE NO.: 05-3165PL

LICENSE NO.: ME0065565

STEVEN W. KINSEY, M.D.,

Respondent.

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

2006 APR 24 P 1:45

CCA  
CWS

FILED

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on April 7, 2006, in Tampa, 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 Ephraim Livingston, Assistant General Counsel. Respondent was present and represented by Albert Peacock, 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 considered the Exceptions filed by the Petitioner and grants the Exception to Paragraph 85 of the Recommended

Order. The Board deletes Paragraph 85 of the Recommended Order and replaces it with the following language:

"The peritoneal dialysis catheter is part of a therapeutic modality to provide peritoneal dialysis and is a foreign body."

#### 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 amendment to Paragraph 85 which is set forth above.

#### RULING ON MOTION TO DECREASE PENALTY

The Board reviewed and considered the Respondent's Motion to Decrease Penalty, and denies the Motion.

#### PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent shall pay an administrative fine in the amount of \$2,500 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 50 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. 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 retained

foreign bodies. Documentation from hospital administrator and chief-of-staff of completion of said lecture shall be provided to the Board's Probationer's Committee.

5. Respondent shall be placed on probation for a period of two (2) years subject to the following terms and conditions:

a. Respondent shall appear before the Probationer's Committee at the first meeting after said probation commences, at the last meeting of the Probationer's Committee preceding termination of probation, quarterly, and at such other times requested by the committee. Respondent shall be noticed by Board staff of the date, time and place of the Board's Probationer's Committee whereat Respondent's appearance is required. Failure of the Respondent to appear as requested or directed shall be considered a violation of the terms of probation, and shall subject the Respondent to disciplinary action. Unless otherwise provided in the Final Order, appearances at the Probationer's Committee shall be made quarterly.

b. Respondent shall not practice except under the indirect supervision of a physician fully licensed under Chapter 458 to be approved by the Board's Probationer's Committee. Absent provision for and compliance with the terms regarding temporary approval of a monitoring physician set forth below, Respondent shall cease practice, and not practice until the Probationer's Committee approves a monitoring physician. Respondent shall have

the monitoring physician present at the first probation appearance before the Probationer's Committee. Prior to approval of the monitoring physician by the committee, the Respondent shall provide to the monitoring physician a copy of the Administrative Complaint and Final Order filed in this case. A failure of the Respondent or the monitoring physician to appear at the scheduled probation meeting shall constitute a violation of the Board's Final Order. Prior to the approval of the monitoring physician by the committee, Respondent shall submit to the committee a current curriculum vitae and description of the current practice of the proposed monitoring physician. Said materials shall be received in the Board office no later than fourteen days before the Respondent's first scheduled probation appearance. The attached definition of a monitoring physician is incorporated herein. The responsibilities of a monitoring physician shall include:

- (1) Submit quarterly reports, in affidavit form, which shall include:
  - A. Brief statement of why physician is on probation.
  - B. Description of probationer's practice.
  - C. Brief statement of probationer's compliance with terms of probation.
  - D. Brief description of probationer's relationship with monitoring physician.

- E. Detail any problems which may have arisen with probationer.
- (2) Be available for consultation with Respondent whenever necessary, at a frequency of at least once per month.
  - (3) Review 10 percent of Respondent's patient records selected on a random basis at least once every month. In order to comply with this responsibility of random review, the monitoring physician shall go to Respondent's office once every month. At that time, the monitoring physician shall be responsible for making the random selection of the records to be reviewed by the monitoring physician.
  - (4) Report to the Board any violations by the probationer of Chapter 456 and 458, Florida Statutes, and the rules promulgated pursuant thereto.

**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 time period of probation shall be tolled.
- (2) The provisions regarding supervision whether direct or indirect by the monitor/supervisor, and required reports from the monitor/supervisor shall be tolled.
- (3) Any provisions regarding community service shall be tolled.
- (4) Any requirements regarding lectures.

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 above, 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.

6. PROBATION TERMS. If probation was imposed by the Final Order, the following provisions are applicable.

1. DEFINITIONS:

a. INDIRECT SUPERVISION is supervision by a monitoring physician (monitor), as set forth in the Final Order, whose responsibilities are set by the Board. Indirect supervision does not require that the monitor practice

on the same premises as the Respondent. However, the monitor shall practice within a reasonable geographic proximity to Respondent, which shall be within 20 miles unless otherwise approved by the Board and shall be readily available for consultation. The monitor shall be board-certified in the Respondent's specialty area unless otherwise approved by the Board or its designee.

b. PROBATION COMMITTEE or "Committee" are members of the Board of Medicine designated by the Chair of the Board to serve as the Probation Committee.

2. REQUIRED SUPERVISION.

a. If the terms of the Final Order include indirect monitoring of the licensee's practice (monitoring) or direct monitoring of the licensee's practice (supervision), the Respondent shall not practice medicine without an approved monitor/supervisor, as specified by the Final Order, unless otherwise ordered by the Board.

b. The monitor/supervisor must be licensed under Chapter 458, Florida Statutes, in good standing, and without restriction or limitation on his/her license. In addition, the Board or Committee may reject any proposed monitor/supervisor on the basis that he/she has previously been subject to any disciplinary action

against his/her medical license in this or any other jurisdiction, is currently under investigation, or is the subject of a pending disciplinary action. The monitor/supervisor must be actively engaged in the same or similar specialty area unless otherwise approved by the Board or Committee and be practicing within a reasonable distance of the Respondent's practice, a distance of no more than 20 miles unless otherwise specifically provided for in the Final Order. The monitor/supervisor must not be a relative or employee of the Respondent. The Board, Committee or designee may also reject any proposed monitor/supervisor for good cause shown.

3. TEMPORARY APPROVAL. The Board confers authority on the Chair of the Probation Committee to temporarily approve Respondent's monitor/supervisor. To obtain this temporary approval, Respondent shall submit to the Compliance Officer the name and curriculum vitae of the proposed monitor/supervisor. This information shall be furnished to the Chair of the Probation Committee by way of the Compliance Officer, within 48 hours after Respondent receives the Final Order in this matter. This information may be faxed to the Compliance Officer at (850) 414-0864, or may be sent by overnight mail to

the Compliance address as set forth in paragraph D. above. In order to provide time for Respondent's proposed supervisory/monitoring physician to be approved or disapproved by the Chair of the Probation Committee, Respondent shall be allowed to practice medicine while approval is being sought, but only for a period of five working days after Respondent receives the Final Order. If Respondent's supervising/monitoring physician has not been approved during that time frame, then Respondent shall cease practicing until such time as the supervising/monitoring physician is temporarily approved. In the event that the proposed monitoring/supervising physician is not approved, then Respondent shall cease practicing immediately. Should Respondent's monitoring/supervising physician be approved, said approval shall only remain in effect until the next meeting of the Probationer's Committee. Absent said approval, Respondent shall not practice medicine until a monitoring/supervising physician is approved. Temporary approval shall only remain in effect until the next meeting of the Probation Committee.

4. FORMAL APPROVAL. Respondent shall have the monitor/supervisor with him/her at the first probation appearance before the Probation Committee. Prior to consideration of the monitor/supervisor by the Committee, the Respondent shall provide the monitor/supervisor a copy of the Administrative Complaint and the Final Order in this case. Respondent shall submit a current curriculum vitae, a description of current practice, and a letter agreeing to serve from the proposed monitor/supervisor to the Compliance Officer no later than fourteen days before the Respondent's first scheduled probation appearance. Respondent's monitor/supervisor shall also appear before the Probation Committee at such times as directed by the Committee. It shall be the Respondent's responsibility to ensure the appearance of his/her monitor/supervisor as directed. Failure of the monitor/supervisor to appear as directed shall constitute a violation of the terms of the Final Order and may subject the Respondent to additional disciplinary action.

5. CHANGE IN MONITOR/SUPERVISOR. In the event that Respondent's monitor/supervisor is unable or unwilling to fulfill his/her responsibilities as a

monitor/supervisor as described above, the Respondent shall immediately advise the Compliance Office of this fact. Respondent shall immediately submit to the Compliance Office the name of a temporary monitor/supervisor for consideration. Respondent shall not practice pending approval of this temporary monitor/supervisor by the Chair of the Probation Committee. Furthermore, Respondent shall make arrangements with his/her temporary monitor/supervisor to appear before the Probation Committee at its next regularly scheduled meeting for consideration of the monitor/supervisor by the Committee. Respondent shall only practice under the supervision of the temporary monitor/supervisor (approved by the Chair) until the next regularly scheduled meeting of the Probation Committee whereat the issue of the Committee's approval of the Respondent's new monitor/supervisor shall be addressed.

**6. REPORTS.**

a. If directed by Final Order, probation reports, in affidavit form, shall be submitted by the Respondent and shall contain the following:

- (1) Brief statement of why physician is on probation.
- (2) Practice location.

- (3) Describe current practice (type and composition).
- (4) Brief statement of compliance with probationary terms.
- (5) Describe relationship with monitoring/supervising physician.
- (6) Advise Compliance Officer of any problems including office incident reports filed; loss or restriction of hospital staff privileges; loss or restriction of DEA registration; or any Medicare/Medicaid program exclusions, restrictions or limitations.

b. MONITOR/SUPERVISOR REPORTS. If directed by Final Order, monitor/supervisor reports, in affidavit form shall include the following:

- (1) Brief statement of why physician is on probation.
- (2) Description of probationer's practice.
- (3) Brief statement of probationer's compliance with terms of probation.
- (4) Brief description of probationer's relationship with monitoring physician.
- (5) Detail any problems which may have arisen with probationer.

7. INVESTIGATIVE REPORTS. Respondent understands that during the period of probation, at a minimum, semi-

annual investigative reports will be compiled with the Department of Health concerning compliance with the terms and conditions of probation and the rules and statutes regulating the practice of medicine.

8. COSTS OF COMPLIANCE. Respondent shall pay all costs necessary to comply with the terms of the Final Order. Such costs include, but are not limited to, the costs of preparation of the investigative reports detailing compliance with the terms of the Final Order, the cost of analysis of any blood or urine specimens submitted pursuant to the Final Order, and administrative costs directly associated with Respondent's probation. See Section 458.331(2), Florida Statutes.

9. SUPERVISION OF PHYSICIAN ASSISTANTS AND/OR ANESTHESIOLOGIST ASSISTANTS. Respondent is required to notify, in writing, any physician assistant and/or anesthesiologist assistant which the Probationer supervises, of his or her probationary status. A copy of said written notification(s) shall be submitted to the Board's Compliance Officer within 10 days of entry of the Final Order.



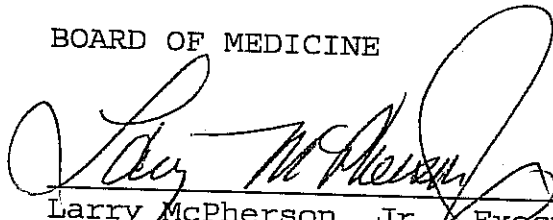
RULING ON CORRECTED MOTION TO ASSESS COSTS

The Board reviewed the Petitioner's Corrected Motion to Assess Costs and imposes the costs associated with this case in the amount of \$5,562.32. 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 18 day of APRIL, 2006.

BOARD OF MEDICINE



Larry McPherson, Jr. Executive Director  
for MARK S. AVILA, M.D., Vice-Chair

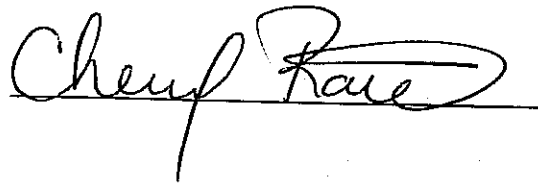
NOTICE OF RIGHT TO JUDICIAL REVIEW

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 STEVEN W.

KINSEY, M.D., 806 East 6<sup>th</sup> Street, Panama City, Florida 32401; to Albert Peacock, Esquire, 8554 Congressional Drive, Tallahassee, Florida 32312; 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 19<sup>th</sup> day of April, 2006.

A handwritten signature in cursive script, reading "Cheryl Rane", written over a horizontal line.

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