

STATE OF FLORIDA  
BOARD OF MEDICINE

By: Sally Bailey  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-13447  
DOAH CASE NO.: 06-0184PL  
LICENSE NO.: ME0073441

DAVID ANDREW NICKER, M.D.,

Respondent.

FINAL ORDER

2006 SEP - 5 11:53  
FILED  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on August 12, 2006, in St. Petersburg Beach, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Exceptions to the Recommended Order, and Response to Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner was represented by Ephraim Livingston, Assistant General Counsel. Respondent was represented by Ralph Martinez, Esquire. Pursuant to Section 456.073(9), Florida Statutes, the parents of patient T.F., addressed the Board at the hearing as the complainants.

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 the Petitioner's Exceptions and the Respondent's Response to Petitioner's Exceptions and accepts in part and rejects in part the exception to Paragraph 33 of the Recommended Order. Pursuant to Section 456.073(5), Florida Statutes, the Board finds that Respondent's actions in regard to assessing T.F.'s temperature was not within the standard of care. However, given the totality of the circumstances encountered by Respondent, the Board finds that his overall care of T.F. met the standard of care and any shortcomings regarding his assessment of T.F.'s temperature did not warrant discipline.

Petitioner's proposed substitute language for paragraph 33 as set forth in its exceptions was rejected and Board substituted its own language for paragraph 33 as follows:

"Although Dr. Nicker was unaware that T.F.'s temperature had not been taken when he initially examined him, Dr. Nicker did attempt to assess T.F.'s temperature by feeling the patient. Based on his experience and training, he believed that T.F. did not have a significantly elevated temperature at that time. The standard of care requires that objective vital signs under these circumstances are critical and should be taken and documented. That notwithstanding, the totality of Dr. Nicker's care is felt to meet the standard of care under the circumstances presented."

The Board denied the exception to Paragraph 34 of the Recommended Order because it did not believe that the suggested amendments to paragraph 34 of the Recommended Order were inaccurate in regards to the standard of care given the scenario encountered by Respondent when treating patient T.F.

## 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 and as amended above in regard to paragraph 33 are approved and adopted and incorporated herein by reference.

DISPOSITION

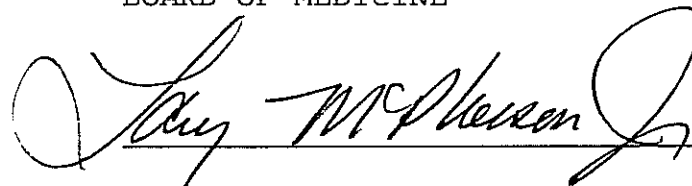
Upon a complete review of the record in this case, the Board determines that the disposition recommended by the Administrative Law Judge be ACCEPTED.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Administrative Complaint filed in the matter is hereby DISMISSED.

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 DAVID ANDREW NICKER, M.D., 10503 Greensprings Drive, Tampa, Florida 33626; to Ralph Martinez, Esquire, McEwen, Martinez, et al., 108 East Central Boulevard, P.O. Box 753, Orlando, Florida 32802-0763; 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 John Terrel, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265 this 31<sup>st</sup> day of August, 2006.

Rachel Brown

**Deputy Agency Clerk**