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STATE OF FLORIDA
BOARD OF DENTISTRY

Final Order No. DOH-07-1532-~~FOF~~MOA
FILED DATE - 7.19.07
Department of Health
By: *[Signature]*
Dentistry Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH Case No.: 2004-38265
DOAH Case No.: 06-1503PL
License No.: DN 5473

JOHN DRIGGERS, D.M.D.,

Respondent.

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FINAL ORDER

THIS CAUSE came before the BOARD OF DENTISTRY (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on June 22, 2007, 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 Wayne Mitchell, Assistant General Counsel. Respondent was present and represented by George F. Indest, III, Esq.

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

1. The Board reviewed the Respondent's exceptions and denied each of the exceptions because Respondent failed to clearly identify the disputed portion of the recommended order by page or paragraph number and did not include appropriate and specific citations to the record.

2. The Board reviewed the Respondent's exception that the Administrative Law Judge failed to state a legal basis for the exclusion of Respondent's Exhibit 14 which was deposition

testimony of Ms. Rogers. The Board denied the exception for each of the following reasons:

- a. The exception is not an exception to a particular finding of fact or conclusion of law in the recommended order;
- b. The exception is to the admissibility of evidence which is not in the substantive jurisdiction of the Board; and/or
- c. The Administrative Law Judge's basis for exclusion of the deposition is found on page 447 line 12 through line 16 of the hearing transcript.

3. The Board reviewed the Respondent's exception that the Administrative Law Judge failed to state a legal basis for disregarding the deposition testimony of Raymond Pomm, M.D. The Board denied the exception for each of the following reasons:

- a. The exception is not an exception to a particular finding of fact or conclusion of law in the recommended order;
- b. The exception is to the admissibility of evidence which is not in the substantive jurisdiction of the Board; and/or
- c. Page 3 of the Recommended Order indicates that Dr. Pomm's deposition (which was Petitioner's Exhibit 2) was admitted into evidence. There was no evidence to rebut the presumption that all evidence and testimony admitted into evidence by the Administrative Law Judge was considered.

4. The Board reviewed the Respondent's exception to the Administrative Law Judge's reliance on what Respondent alleges are improperly noticed depositions of Dr. Chacko. The Board denied the exception for each of the following reasons:

- a. The exception is not an exception to a particular finding of fact or conclusion of law in the recommended order; and/or

- b. The exception is to the admissibility of evidence which is not in the substantive jurisdiction of the Board.

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 disposition recommended by the Administrative Law Judge be ACCEPTED.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Respondent's license to practice dentistry in the State of Florida is hereby SUSPENDED until Respondent undergoes a new PRN evaluation and complies with PRN recommendations. Respondent shall also be issued a written Reprimand.

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 \$49,489. Said costs are to be paid within 6 months 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 July, 2007.

BOARD OF DENTISTRY



Sue Foster
Executive Director *on behalf of*
Eva Ackley, D.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 FLORIDA 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 has been furnished by U.S. Mail to **JOHN DRIGGERS, D.M.D., c/o GEORGE F. INDEST, III, Esq., The Health Law Firm, 220 East Central Pkwy, Ste. 2030, Altamonte Springs, FL 32701**; by interoffice mail to Joy A. Tootle, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; **Wayne Mitchell**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265 this 18th day of July, 2007.



Deputy Agency Clerk