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STATE OF FLORIDA
BOARD OF MEDICINE

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DEPARTMENT OF HEALTH
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DATE 6-27-07

DEPARTMENT OF HEALTH,

2007 JUN 28 P 1:58

Petitioner,

vs.

DOH Case No.: 2005-57892
DOAH Case No.: 2006-3707PL
License No.: ME0044240

DIVISION OF
ADMINISTRATIVE
HEARINGS

RICHARD B. EDISON, M.D.,

Respondent.

ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on June 1, 2007, 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 Patricia Nelson, Assistant General Counsel. Respondent was present and was represented by Lewis W. Harper, 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 hereby REMANDS this case to the Division of Administrative Hearings for the reasons set forth below:

1. The Board approved the Petitioner's exception to paragraph 85 of the Recommended Order to the extent that it

agrees that the record does contain evidence that lidocaine is a legend drug. In paragraph 85 of the Recommended Order, Judge Hart asserts that the Department failed to prove that the Respondent violated Section 458.331(1)(q), Florida Statutes, because it failed to present any evidence that lidocaine or Robinol are legend drugs. Petitioner's Exhibit 1 however does contain such evidence.

Petitioner's Exhibit 1 contains Petitioner's First Request for Admissions and the Respondent's response to the request. Admission number 16 reads as follows:

16. Lidocaine is a legend drug primarily used for anesthesia purposes and is often included in injections indicated for production of local or regional anesthesia by infiltration techniques such as percutaneous injection and intravenous regional anesthesia by peripheral nerve block techniques.

Respondent admits to the inquiry. Given that the request for the admission and the response constitute evidence that was admitted by Judge Hart, the Board believes that Judge Hart inadvertently missed the evidence in the record that clearly demonstrates that lidocaine is a legend drug.

In its exception to paragraph 85 of the Recommended Order the Petitioner also urged the Board to, on the basis of Petitioner's Exhibit 1, make a finding that lidocaine is a legend drug and find that the Respondent did indeed violate

Section 458.331(1)(q), Florida Statutes. The Board declined to do so because it lacks the authority to make such a factual finding. *Strickland v. Florida A&M University*, 799 So.2d 276 (Fla. 1st DCA 2001) (The weighing of evidence and judging of the credibility of witnesses by an administrative law judge are solely the prerogative of the administrative law judge as finder of fact, particularly in a proceeding where an allegation is ultimately a question of fact not infused with policy considerations.) Instead it voted to remand the matter to Judge Hart to provide her the opportunity make a ruling based on the abovementioned evidence set forth in Petitioner's Exhibit 1.

2. The Board approved in part Petitioner's exception to page 38 of the Recommended Order. The Administrative Complaint in this matter charged the Respondent with violating Section 458.331(1)(m), Florida Statutes, by:

- a. failing to document Patient P.L.'s weight in the record;
- b. failing to document any reason for administering 70 cc or 700 mg of lidocaine;
- c. failing to document the dosing amounts of the infusion of the Diprivan or whether any type of pump was used.

The Board agrees with the Petitioner that it appears that the ALJ failed to rule on whether the Respondent failed to document

any reason for administering 70 cc or 700 mg of lidocaine. The Board however declined to make such a finding itself and chose rather to allow the ALJ to do so on remand.


3. The Board reviewed the Respondent's exceptions to the Recommended Order and was prepared to rule upon them but given the fact that the Board already voted to remand the matter back to the ALJ for further findings, the parties and the Board agreed that it was unnecessary and probably premature to rule on Respondent's exception and allowed him the opportunity to resubmit amended exceptions upon the issuance of a Recommended Order on remand.

WHEREFORE, based on the foregoing, this matter is hereby REMANDED to the Division of Administrative Hearings and the Board respectfully requests that the Administrative Law Judge in this matter make findings as to whether lidocaine is a legend drug and if so, whether the Respondent is in violation of Section 458.331(1)(q), Florida Statutes, and whether Respondent violated Section 458.331(1)(q), Florida Statutes, by failing to document any reason for administering 70 cc or 700 mg of lidocaine to patient P.L.

DONE AND ORDERED this 26 day of JUNE,

2007.

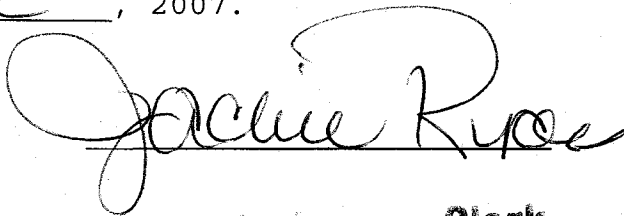
BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for H. Frank Farmer, Jr., M.D., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by U.S. Mail to RICHARD B. EDISON, M.D., 3109 Stirling Road, Suite 100, Fort Lauderdale, Florida 33312; to George K. Brew and Lewis W. Harper, Esquire, Brew & Harper, 6817 Southpoint Parkway, Jacksonville, Florida 32216; to Patricia M. Hart, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Ephraim Livingston, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265 this 27th day of June, 2007.



Deputy Agency Clerk