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Final Order No. DOH-08-0555-FOF-MQA
FILED DATE - 3-27-08
Department of Health

By: Rachael Ben
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF OSTEOPATHIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2006-06863

License No.: OS 4478

BARRY J. KAPLAN, D.O.,

Respondent.

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FINAL ORDER

This matter appeared before the Board of Osteopathic Medicine at a duly-noticed public meeting on February 23, 2008, in Ft. Lauderdale, Florida, for consideration of the Administrative Law Judge's Recommended Order, Respondent's Exceptions to the Recommended Order, Petitioner's Exceptions to the Recommended Order, Petitioner's Response to Respondent's Exceptions, and Respondent's Response to Petitioner's Exceptions (copies of which are attached hereto as Exhibits A, B, C, and D respectively) in the above-styled cause. in the above-styled cause. Petitioner was represented by Blake Hunter, Assistant General Counsel. Respondent was present and represented by counsel, Thomas E. Dukes 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. Respondent's Exceptions to Paragraphs 3, 6, 7, 8, 10, 14, 16, 17, 18, 22, 23, 29, 30, 40, 41, 50, and 52 are REJECTED as the Administrative Law Judge's findings of fact in these paragraphs are based on competent substantial evidence.

2. Respondent's Exception to Paragraph 13 is ACCEPTED in part and REJECTED in

part. The sentence, "Patient B.C. had no recollection that the Respondent had suggested that she seek the opinion of a plastic surgeon." is stricken as it is not based on competent substantial evidence. The rest of the paragraph is based on competent substantial evidence and shall remain.

3. Respondent's Exception to Paragraph 51 is ACCEPTED in part and REJECTED in part. The phrase "There has been no effort towards rehabilitation;" shall be stricken as it is not based on competent substantial evidence. The remainder of the paragraph is based on competent substantial evidence and shall remain.

4. Respondent withdrew his Exceptions to Paragraphs 24, 31, and 32.

5. Petitioner's Exception to Paragraph 47 is ACCEPTED for the reasons set forth in Petitioner's Exceptions to the Recommended Order, and the paragraph is stricken.

6. Petitioner's Exception to the Recommended Penalty is REJECTED.

FINDINGS OF FACT

1. The remaining 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 459, Florida Statutes.

2. The remaining 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 penalty recommended by the Administrative Law Judge be MODIFIED, and shall be as follows:

1. A Reprimand.
2. Respondent shall be assessed an administrative fine of \$6,500.00 to be paid in 1 year from the date of the Final Order.
3. Based upon the Respondent's prior discipline relating to prior breast surgeries set forth in the Motion for Official Recognition, which was granted in the Order granting Official Recognition, and the potential harm to patients, the Respondent's practice shall be restricted from performing cosmetic surgery involving any type of incision into the human body, until such time as Respondent demonstrates competency in cosmetic surgery by obtaining Board certification through a Board certified through American Board of Medical Specialties, or American Osteopathic Association.
4. Based upon the Respondent's prior discipline set forth in the Motion for Official Recognition, which was granted in the Order granting Official Recognition and the potential harm to patients, Respondent's license shall be suspended for one (1) year, with 6 months stayed.
5. Based upon Respondent's issues related to documentation as related in Paragraph's 13 and 14, Respondent shall complete the Nova Southeastern medical records course within one (1) year of the Final Order.
6. Respondent shall be placed on three (3) year probation, with terms of probation to be set upon appearance in front of the Board after suspension.
7. The requirement for the patient reimbursement is stricken as it is not a part of the disciplinary guidelines set forth in Rule 64B15-19.001 and 64B15-19.002, Florida Administrative Code.

RULING ON AMENDED MOTION TO ASSESS COSTS

Upon review of the Petitioner's Amended Motion to Assess Costs and the Respondent's

Objections thereto, costs are assessed at \$38,291.93. Said costs are to be paid by the end of Respondent's probationary period.

MOTION FOR STAY

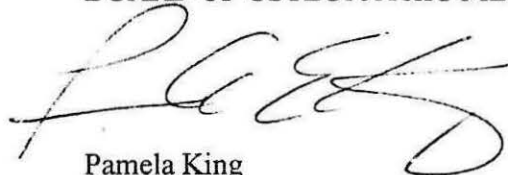
At the hearing upon this matter, Respondent made ore tenus Motion for Stay pending an Appeal. Upon argument of the parties and being otherwise advised of the premises, IT IS HEREBY ORDERED AND ADJUDGED:

Respondent's ore tenus Motion for Stay is hereby **DENIED**.

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

DONE AND ORDERED this 25 day of March, 2008.

BOARD OF OSTEOPATHIC MEDICINE



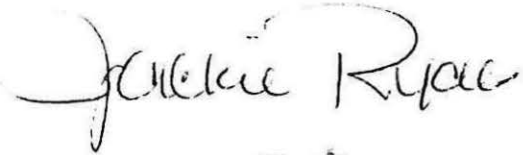
Pamela King
Executive Director *on behalf of*
Richard Rodriguez, D.O., CHAIR

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 has been furnished by U.S. Mail to **Barry J. Kaplan, D.O.**, 480 North Orlando Avenue, Suite 118, Winter Park, Florida 32789; **Thomas Dukes, Esq.**, P.O. Box 753, Orlando, Florida 32802; and by interoffice mail to **Michael T. Flury**, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; **Blake Hunter**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265 this 27th day of March, 2008.



Deputy Agency Clerk