

STATE OF FLORIDA
BOARD OF MEDICINE

By: Lillian M. Murchant
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-03514
DOAH CASE NO.: 07-1454PL
LICENSE NO.: ME0068598

EDGAR ZAMORA, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE pursuant to Sections 120.569 and 120.57(1), Florida Statutes, October 6, 2007, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Respondent's Exceptions to the Recommended Order, and Petitioner's Response to Respondent's Exceptions (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner was represented by Diane K. Kiesling, Assistant General Counsel. Respondent was not present and was not represented by counsel at the hearing. The Respondent requested a continuance in this matter and the Board voted to deny the continuance.

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.

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HEARINGS

RULING ON MOTION TO STAY PROCEEDING

The Board reviewed the Respondent's Motion to Stay Proceeding pending the outcome of Respondent's criminal appeal and denied the motion. Florida law does not require a state agency to stay an administrative licensure proceeding until the related criminal proceeding is completed. *Department of Professional Regulation v. P. Gary Stern, M.D.*, 522 So. 2d 77 (Fla. 1st DCA 1988); *The Florida Bar, v. N. Alfred Winn*, 593 So. 2d 1047 (Fla. 1992); *Donald Lee Rife, M.D. v. Department of Professional Regulations*, 638 So. 2d 542 (Fla. 2nd DCA 1994).

RULINGS ON EXCEPTIONS

The Board reviewed the Respondent's Exceptions and the Petitioner's Response to the Respondent's Exceptions and denies the Exceptions as follows:

1. The introductory statement to Respondent's exceptions (pp. 1-5) does not conform to Rule 28-106.217, Florida Administrative Code, because it does not state a specific exception nor does it identify the disputed portion of the Recommended Order (RO) by page number or paragraph or properly cite to the record. In addition pursuant to Section 120.57(1)(k), Florida Statutes, the Board is not required to rule on it because it fails to properly cite to the record. Therefore, for the reasons set above and for those set forth in the Petitioner's Response to Respondent's Exceptions, Respondent's exception is DENIED.

2. Respondent's Exception II.B. is hereby DENIED for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

3. Respondent's Exception II.C., to finding of fact 14 is hereby DENIED for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

4. Respondent's Exception II.C., to finding of fact 15 is hereby DENIED for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

5. Respondent's Exception II.C., to finding of fact 16 is hereby DENIED for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

6. Respondent's Exception II.D., to conclusions of law 20 and 24 is hereby DENIED for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

7. Respondent's Exception II.D., to conclusion of law 25 is hereby DENIED for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

8. Respondent's Exception II.E., to the penalty and paragraph 30 of the RO is hereby DENIED for the reasons set forth in the Petitioner's Response to Respondent's Exceptions. In addition, the record clearly reflects that all the mitigating factors presented by Respondent were already properly weighed by the Administrative Law Judge (ALJ) prior to issuing his RO and

the proposed penalties are within the disciplinary guidelines found in Rule 64B8-8.001(2), Florida Administrative Code.

9. Respondent's Exception II.E., to paragraph 31 of the RO is hereby DENIED for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

10. Respondent's Exception II.F. is hereby DENIED for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and because Respondent failed to properly cite to the record as required by Section 120.57(1)(k), Florida Statutes.

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:

1. Respondent shall pay an administrative fine in the amount of \$5,000 within 30 days from the date this Final Order is filed.

2. Respondent's license to practice medicine in the State of Florida is hereby REVOKED.

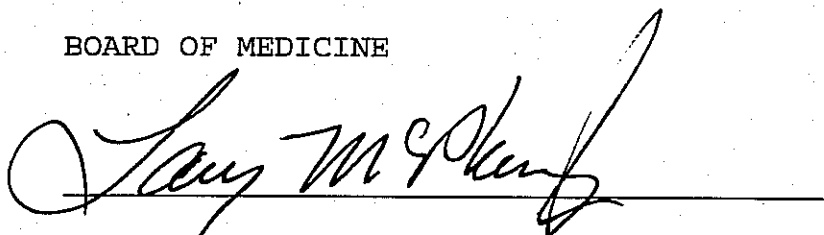
RULING ON MOTION TO ASSESS COSTS

The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$12,299.35. 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 OCTOBER, 2007.

BOARD OF MEDICINE



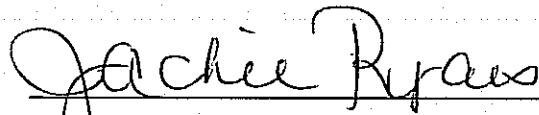
Larry McPherson, Jr., Executive Director
for ROBERT CLINE, M.D., Vice-Chair

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 EDGAR ZAMORA, M.D., 11744 SW 115th Terrace, Miami, Florida 33186-3979; to Benedict P. Kuehne, Esquire, Sale & Kuehne, P.A., Bank America Tower, Suite 3550, 100 Southeast 2nd Street, Miami, Florida 33331-2156; to Larry J. Sartin, 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 19th day of October, 2007.


Deputy Agency Clerk

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Racquel R...*
DATE 8.13.07

**STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2004-03514

EDGAR ZAMORA, M.D.,

Respondent.

**RESPONSE TO RESPONDENT'S EXCEPTIONS TO
RECOMMENDED ORDER; REQUEST TO DISMISS
PROCEEDINGS; ALTERNATE REQUEST TO MITIGATE
RECOMMENDED DISCIPLINE**

COMES NOW the Department of Health (the Department) and files its response to Respondent's Exceptions to Recommended Order; Request to Dismiss Proceedings; Alternate Request to Mitigate Recommended Discipline. All of the filing by Respondent will be construed to be Exceptions although not filed as such.

1. The Respondent's Exceptions do not begin until page five. Prior thereto, Respondent takes no specific exceptions as required by Rule 28-106.217, Florida Administrative Code (FAC), and the Respondent's arguments are not legally cognizable as exceptions.

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2. Respondent's Exception II.A. is comprised of legal argument that was previously made to the Administrative Law Judge (ALJ) regarding whether the correct Administrative Complaint at issue is the Corrected Administrative Complaint or the Amended Administrative Complaint. The ALJ ruled on this issue and the record is clear that the ALJ granted a Motion to Amend the Corrected Administrative Complaint which had the Amended Administrative Complaint attached. From that date forward, all pleadings and discussions were aimed at the Amended Administrative Complaint. Only well after this case was submitted to the ALJ for entry of a Recommended Order did Respondent suddenly discover this new issue that allegedly deprives him of due process. There is ample evidence to support the ALJ's conclusion that the correct administrative complaint in this case is the Amended Administrative Complaint and that Respondent was on notice from as early as April 16, 2007, of this fact. This exception should be denied.

3. Respondent's Exception II.B. should be denied. The ALJ was correct as is clearly supported by the transcript of the pre-hearing conference conducted on April 18, 2007. However, the ALJ denied the Department's motion to strike all the referenced documents and clearly stated that he had "fully considered" them in rendering the Recommended

Order. It is unclear what Respondent wants that has not already been given by the ALJ.

4. Respondent's Exception to Finding of Fact 14 is supported by the Indictment, Verdict, and Affidavit of Dr. Mahoney, all of which are part of the record at DOAH. Therefore, it is supported by competent, substantial evidence.

5. Respondent's next identified Exception is to Finding of Fact 15. It is also supported by the Indictment, Verdict, and Affidavit of Dr. Mahoney, all of which are part of the record at DOAH. Therefore, it is supported by competent, substantial evidence.

6. Respondent also challenges Finding of Fact 16 that the crimes for which Dr. Zamora was convicted were crimes which directly related to the practice of medicine. That finding is supported by the Affidavit of Dr. Mahoney at paragraph 10, which is part of the evidence admitted at DOAH, as well as the Indictment and the remainder of the Affidavit. Therefore, it is supported by competent, substantial evidence.

7. Respondent excepts to Conclusions of Law 20 and 24 that this case is properly to be considered pursuant to the Amended Administrative Complaint. For the reasons stated above, Respondent is wrong because this case has proceeded pursuant to the Amended Administrative

Complaint since April 16, 2007. Respondent knew it and conducted himself accordingly until well after the record had closed.

8. Respondent excepts to Conclusion of Law 25 by asserting that convictions of Health Care Fraud and Conspiracy to Commit Health Care Fraud are not crimes directly related to the practice of medicine, but instead "relate to business matters involving billing for Medicare and insurance reimbursement." Such a position is directly contrary to the position this Board has taken in interpreting this same statute, Section 458.331(1)(c), Florida Statutes, a statute within its substantive jurisdiction. In fact, this Board revoked one of Dr. Zamora's co-conspirator's, Dr. Garrido, for the same crimes. To change its interpretation of this statute now would make no sense. Respondent argues that the only issue is whether Respondent practiced within the standard of care. Quality of medical practice is not the issue. If it was, this would not be a conviction case; it would be a standard of care case. The two have no relationship to each other. This exception should be rejected.

9. Finally, Respondent takes exception to the recommended penalty of revocation and a \$5,000.00 fine. The ALJ quoted the penalty guideline and clearly was within them.

10. Respondent excepts to paragraph 30 by arguing the Respondent was only paid less than \$10,000 for the time he worked at this fraudulent clinic. The ALJ already rejected this statement. The Sentencing documents that were clearly credited by the ALJ ordered the Respondent to pay restitution in the amount of \$221,726.96. This amount is far above that stated by Respondent.

11. Respondent argues that the ALJ failed to consider all the evidence he produced for "mitigation." Clearly the ALJ stated that he had fully considered it. Apparently he just did not credit it to the extent that the Respondent wanted it credited. This was the same mitigation evidence offered in the Federal Court asking for a sentence of home confinement. That judge did not find it persuasive and instead sentenced Respondent to 27 months in federal prison to be followed by 2 years of federal probation and \$221,724.94 in restitution. The Department believes that the evidence should not persuade this Board any more than it did the ALJ or the Federal Judge. This exception to the recommended penalty should be rejected and the license of Respondent should be revoked and a fine of \$5,000.00 should be imposed.

12. Respondent excepts to the recommended penalty of \$5,000.00 fine. The Department believes this exception should be denied for the same reasons stated above.

13. Even though the final "Exception to Recommendation" does not comply with Rule 28-106.217; Florida Administrative Code (FAC), the Department responds by stating that the entire recommended order is completely supported by competent, substantial evidence, is in complete compliance with this Board's interpretation of its substantive law in Section 458.331(1)(c), Florida Statutes, and recommends an appropriate penalty. The exception should be rejected and the complaint should not be dismissed.

Respectfully submitted this 13th day of August, 2007.

Diane K. Kiesling

Diane K. Kiesling,
Assistant General Counsel
DOH Prosecution Services Unit
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Tallahassee, Florida 32399-3265
Florida Bar #0233285
850.245.4640
850.245.4681 FAX

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the Response to Respondent's Exceptions to Recommended Order; Request to Dismiss Proceedings; Alternate Request to Mitigate Recommended Discipline has been furnished to Benedict P. Kuehne, Esquire, 100 S.E. 2nd Street, Suite 3550, Miami, Florida 33131-2154, by postage-paid U.S. Mail, Hand-Delivery, E-mail ben.kuehne@sk-lawyers.com, Facsimile Transmission at Facsimile (305) 535-2881, and/or Over-Night Mail, this 13th day of August, 2007.

Diane K. Kiesling

Diane K. Kiesling
Assistant General Counsel