

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF	)	
MEDICINE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 07-1454PL
	)	
EDGAR ZAMORA, M.D.,	)	
	)	
Respondent.	)	
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RECOMMENDED ORDER

This case came before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, on a factual record stipulated to by the parties.

APPEARANCES

For Petitioner: Diane K. Kiesling  
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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent, Edgar Zamora, M.D., committed a violation of Chapter 458, Florida

Statutes (2005), as alleged in an Amended Administrative Complaint issued by Petitioner, the Department of Health and, if so, what disciplinary action should be taken against his license to practice medicine in the State of Florida.

PRELIMINARY STATEMENT

On or about May 26, 2006, the Department of Health issued an Administrative Complaint in DOH Case No. 2004-03514 against Edgar Zamora, M.D., an individual licensed to practice medicine in Florida, in which it alleged that Respondent had committed a violation of Section 458.331(1)(c), Florida Statutes (2005). On June 21, 2006, the Department of Health issued a Corrected Administrative Complaint alleging the same statutory violation.

Respondent, through counsel, filed an Election of Rights form on July 14, 2006, in which he disputed the allegations of fact contained in the Corrected Administrative Complaint and requested a formal administrative hearing pursuant to Section 120.569(2)(a), Florida Statutes (2006).

Pursuant to an Order issued by the Board of Medicine on October 16, 2006, the matter was filed with the Division of Administrative Hearings on March 28, 2007, with a request that an administrative law judge be assigned the case to conduct proceedings pursuant to Section 120.57(1), Florida Statutes (2006). The matter was designated DOAH Case Number 07-1454PL and was assigned to the undersigned.

The final hearing was scheduled by a Notice of Hearing by Video Teleconference entered April 4, 2007, for May 25, 2007.

On April 4, 2007, a Motion to Amend Administrative Complaint was filed. That Motion was granted by Order entered April 16, 2007.

Following the scheduling of the final hearing, the parties filed a number of motions which ultimately led to a pre-hearing conference, held by telephone. Those motions include Petitioner's Motion for Pre-Hearing Conference, Respondent's Unopposed Motion for Continuance of May 25, 2007 Video Teleconference Hearing, Respondent's Motion for Stay of Proceedings Pending Outcome of Federal Appeal, and Petitioner's Response to Motion for Stay of Proceedings Pending Outcome of Federal Appeal and Petitioner's Request for a Telephonic Hearing on the Merits of the Case.

The pre-hearing conference was conducted on April 18, 2007. During the pre-hearing conference, which effectively granted Petitioner's Motion for Pre-Hearing Conference, Respondent's Motion for Stay of Proceedings Pending Outcome of Federal Appeal was denied. It was agreed, however, that the final hearing would be cancelled and that the matter would proceed to resolution upon a stipulated record. Exactly how the matter would proceed was to be agreed to by the parties and reported to the undersigned.

Following the pre-hearing conference, an Order Canceling Hearing was entered. In addition to canceling the May 25, 2007, hearing, the parties were ordered to "advise the undersigned in writing no later than May 1, 2007, as to the status of this matter."

On May 1, 2007, Petitioner filed a Joint Response to Scheduling Order. Petitioner reported the following:

1. The parties agree that the attached certified copies of the Indictment, Jury Verdict of Conviction, and Sentencing in the case of 04-20059CR-JORDAN in the United States District Court, Southern District of Florida, are admissible without more in the above-styled cause.

2. The parties agree that this case can be heard without a formal hearing. The parties have further agreed that either affidavits or deposition of experts as needed will be filed on June 5, 2007.

3. Petitioner is authorized to file this response by Respondent.

Respondent did not file a response to the Joint Response to Scheduling Order or otherwise indicate disagreement with Petitioner's representations.

Petitioner filed certified copies of the Indictment, Jury Verdict of Conviction, and Sentencing in the case of 06-20059CR-JORDAN in the United States District Court, Southern District of Florida.

On May 2, 2007, a Scheduling Order was entered. Pursuant to this Order, the Indictment, Conviction, and Sentence were admitted as evidence. Additionally, the parties were given until June 5, 2007, to file either affidavits or depositions of experts (addressing the issue of whether the crime for which Respondent was convicted was a crime which directly related to the practice of medicine or to the ability to practice medicine), and to June 15, 2007, to file proposed recommended orders.

Consistent with the agreement of the parties and the Scheduling Order, on June 5, 2007, Petitioner filed an Affidavit of John P. Mahoney, M.D. (hereinafter referred to as "Dr. Mahoney's Affidavit"). Dr. Mahoney's Affidavit is hereby admitted as evidence. No affidavit or deposition has been filed by Respondent.

On June 15, 2007, a Friday, in conformance with the Scheduling Order, Petitioner filed Petitioner's Proposed Recommended Order. Respondent did not file Respondent's Proposed Recommended Order until 8:13 a.m., Monday, June 18, 2007. That same day, Petitioner filed a Motion to Strike Respondent's Proposed Recommended Order arguing that it had been prejudiced "by Respondent's late filing because it [gave] the Respondent the opportunity to review Petitioner's proposed recommended order and include responses to it in Respondent's

proposed recommended order." As an alternative to striking Respondent's Proposed Recommended Order, Petitioner requested that it not be considered in preparing this Recommended Order.

On June 19, 2007, Respondent filed Respondent's Response in Opposition to Motion to Strike Respondent's Proposed Recommended Order, or Alternative Motion to Permit Filing One-Day Out of Time. Counsel for Respondent represented that he had prepared the proposed recommended order on Thursday, June 14, 2007, and that, due to his absence from the office the next day, it was not filed until June 18, 2007. Counsel also represented that he had not reviewed Petitioner's Proposed Recommended Order or even been aware of it at the time Respondent proposal was filed.

Allowing Respondent to present argument in this matter is a fundamental right. Therefore, to impose any sanction on Respondent for filing his proposed order late, it must be concluded that there has been actual prejudice to Petitioner caused by Respondent's actions. Given the fact that Petitioner has only alleged that Respondent had the "opportunity" to review Petitioner's proposal, while counsel for Respondent has represented unequivocally that he did not do so, it appears there was no actual prejudice. To substantiate this conclusion, however, both pleadings have been reviewed. Based upon that review, it is concluded that Petitioner has not been prejudiced by Respondent's late filing of its proposed recommended order.

Consequently, Petitioner's Motion to Strike Respondent's Proposed Recommended Order is denied and Respondent's Alternative Motion to Permit Filing One-Day Out of Time is granted.

Inconsistent with the agreement of the parties and the Order Canceling Hearing and the Scheduling Order entered in this case, Respondent filed on June 19, 2007, Respondent's Submission in Opposition to Allegations of Amended Administrative Complaint and Petitioner's Proffer, and, on June 19, 2007, Respondent's Statement of Mitigation and, on June 25, 2007, Respondent's Notice of Submission of Sentencing Materials Filed in Underlying Federal Court Case for Mitigation Consideration. Neither of the submittals nor the Statement of Mitigation was agreed to by the parties or requested by the undersigned. Petitioner filed motions to strike the two submittals.

In lieu of striking Respondent's late submittals, by Order entered July 9, 2007, Petitioner was given an opportunity to respond to the late, unagreed-upon pleadings on or before July 25, 2007. On July 13, 2007, Petitioner filed Petitioner's Response to Respondent's Submissions. The Response has been fully considered in entering this Recommended Order. Having given Petitioner an opportunity to respond to Respondent's unsolicited submittals, Petitioner's request to strike Respondent's Submission in Opposition to Allegations of Amended

Administrative Complaint and Petitioner's Proffer and Respondent's Notice of Submission of Sentencing Materials Filed in Underlying Federal Court Case for Mitigation Consideration is denied. The submittals have been fully considered in rendering this Recommended Order.

On July 16, 2007, Respondent filed Respondent's Motion to Strike Petitioner's Late-Filed Notice of Filing Amended Administrative Complaint. Petitioner filed a Response to this Motion. After due consideration, the Motion to Strike is denied.

Consistent with the agreement reached by the parties, both parties filed proposed orders for consideration in entering this Recommended Order. Those pleadings have been fully considered.

#### FINDINGS OF FACT

##### A. The Parties.

1. Petitioner, the Department of Health (hereinafter referred to as the "Department"), is the agency of the State of Florida charged with the responsibility for the investigation and prosecution of complaints involving physicians licensed to practice medicine in Florida. § 20.43 and Chs. 456 and 458, Fla. Stat. (2006).

2. Respondent, Edgar Zamora, M.D., is, and was at all times material to this matter, a physician licensed to practice



medicine in Florida pursuant to Chapter 458, Florida Statutes, having been issued license number ME 68598.

B. The Indictment and Conviction.

3. On or about January 27, 2004, Dr. Zamora was indicted in the United States District Court, Southern District of Florida, Case No. 06-20059CR-JORDAN, United States of America v. Helyd Artiles, et al., on one count of Conspiracy to commit offenses against the United States, in violation of Section 18 U.S.C. § 731 (Count 1), and one count of Health Care Fraud, in violation of Section 18 U.S.C. § 1367 (Count 7)(hereinafter referred to as the "Indictment").

4. The Indictment provides the following identification of Dr. Zamora:

5. Defendant **EDGAR ZAMORA** was a medical doctor licensed to practice medicine in the State of Florida. He was employed by Miami Health as the clinic's doctor from in or around March 2000 through in or around June 2000.

5. In Count 1 of Indictment, it is alleged that Dr. Zamora and the other named defendants committed Health Care Fraud Conspiracy against "Medicare and Private Insurance Companies, in connection with the delivery of and payment for health care benefits, items, and services" in order to "enrich themselves" in the following manner:

(a) submitting false and fraudulent claims to health care benefit programs; (b) paying

kickbacks and bribes to Medicare beneficiaries and PIP-insured individuals so that they would serve as fictitious patients, thereby furthering the billing fraud scheme; (c) concealing the submission of fraudulent claims to health care benefit programs, the receipt and transfer of fraud proceeds, and the payment of kickbacks; and (d) diverting fraud proceeds for the defendants' personal use and benefit.

Page 11 of the Indictment.

6. The Indictment alleges the following facts concerning the Medicare Program:

25. The Medicare Program ("Medicare") was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind and disabled. The benefits available under Medicare are prescribed by statute and by federal regulations under auspices of the United States Department of Health and Human Services, through its agency, the Centers for Medicare and Medicaid Services ("CMS"). Individuals who receive benefits are referred to as beneficiaries.

26. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

27. Part B of the Medicare Program was a medical insurance program that covered, among other things, certain physician services, medical testing, medications, and durable medical equipment. Durable medical equipment, or "DME," is equipment that is designed for repeated use and for a medical purpose, such as a knee or back brace, nebulizer, or oxygen concentrator.

28. The Medicare Part B Program was administered in the State of Florida by two entities, Palmetto Government Benefits

Administrators ("PGBA") and Blue Cross/Blue Shield of Florida ("BC/BS"), both of which were private health insurance carriers that contracted with HCFA to receive, adjudicate, and pay Medicare Part B claims. PGBA processed and paid claims for DME and related supplies, including the associated medications. BC/BS processed and paid claims for physician and medical clinic services and diagnostic tests.

Pages 5 and 6 of the Indictment.

7. In part, the Indictment describes the following Medicare billing procedures:

29. Qualified DME or pharmaceutical companies who supplied medical equipment or medications in connection with the Medicare program applied for and were given a "supplier number." The supplier number allowed DME suppliers and pharmaceutical companies to seek reimbursement for medical equipment and medications that they had supplied to Medicare beneficiaries.

30. Medical clinics or doctors who provided services in connection with the Medicare program applied for and were given a "provider number," which allowed them to seek reimbursement for medical services that they had provided to Medicare beneficiaries.

31. In order to receive payment from Medicare, a participating DME or pharmaceutical supplier was required to submit a health insurance claim form, known as a Form HCFA-1500 ("HCFA 1500"), and/or an Electronic Media Claim ("EMC"), which set forth, among other things, the beneficiary's name and unique Medicare identification number, the name and identification number of the doctor who ordered the item or medication, the item or medication that was supplied, the date of service, and the charge for the item or medication.

32. Likewise, in order for participating medical clinics and doctors to receive payment from Medicare, the providers were required to submit a HCFA 1500, and/or EMC, which set forth, among other things, the beneficiary's name and unique Medicare identification number, the date of service, a description of the medical procedures and services provided to the patient, the physician who performed or ordered the procedures or services, and the amount charged for each procedure and service.

33. Medicare, through BC/BS and PGBA, would generally pay 80% of the allowed cost for medical services, DME, and medications that were medically necessary and ordered by licensed doctors or other qualified health care providers.

34. Payments under the Medicare program were often made directly to the doctor or other provider or supplier of the medical goods or services rather than to the patient/beneficiary. For this to occur, the beneficiary was required to assign the right of payment to the provider or supplier. Thereafter, the provider or supplier assumed responsibility for submitting its bill directly to Medicare and obtaining payment.

35. From January 1997 through March 2000, Miami Health Billed Medicare electronically by EMC under its assigned Medicare provider number, 40779. In or around March 2000, Miami Health was suspended by the Medicare Program, after which Miami Health billed Medicare by EMC using the Medicare provider number assigned to the doctor that was working at the clinic at the time. From in or around March 2000 through in or around June 2000, Miami Health billed Medicare under the provider number assigned to **EDGAR ZAMORA**, 27247. . . . .

. . . . .

Pages 6 through 8 of the Indictment.

8. With regard to Dr. Zamora, the Indictment alleges the "manner and means of the conspiracy" consisted of the following:

12. **GUILLERMO GARCIA, EDGAR ZAMORA, and JOSE GARRIDO** signed the altered, typed doctor notes and prescriptions, knowing that the notes and prescriptions had been changed and called for medically unnecessary tests, therapy, medications, and DME, and, in some cases, knowing that the altered notes reflected office visits that had not occurred.

Page 13 of the Indictment.

9. Finally, as to Count 1, Dr. Zamora is alleged to have committed the following "overt acts" with regard to "Car Accident Patient N.R.":

27. On or about June 19, 2000, **EDGAR ZAMORA** signed a typed final examination medical report concerning staged accident patient N.R., knowing that the typed note included false patient diagnoses and also a disability rating of 4% that had been fabricated by **HELDY ARTILES**.

Page 18 of the Indictment.

10. As to Count 7 of the Indictment, it was charged that Dr. Zamora and the other named defendants "in connection with the delivery of and payment for health care benefits, items, and services," committed Health Care Fraud against Medicare by:

(a) submitting or causing to submit false and fraudulent claims to Medicare and the Private Insurance Companies for the costs of medical tests, medical equipment, therapy,

and medications; (b) paying kickbacks to Medicare beneficiaries and PIP-insured patients so that they would serve as patients, thereby furthering the fraudulent billing scheme; (c) concealing the submission of false and fraudulent claims to Medicare and the Private Insurance Companies; and (d) diverting fraud proceeds for the defendants' personal use and benefit.

Page 25 of the Indictment.

11. In particular, Dr. Zamora was alleged to have committed Health Care Fraud against Medicare by using his Medicare health care provider number when he submitted claims related to Car Accident Patient N.R. for an "[o]ffice visit, x-rays, tests, and physical therapy . . . ." Page 26 of the Indictment.

12. On March 26, 2005, Dr. Zamora was found guilty by jury verdict of both counts against him of the Indictment.

13. On December 5, 2005, United States District Judge Adalberto Jordan adjudicated Dr. Zamora guilty of the criminal offense charged against him in the Indictment. Judge Jordan sentenced Dr. Zamora to 27 months' incarceration on both counts, to run concurrently; two years of supervised release; and restitution of \$221,726.96.

C. The Relationship of Dr. Zamora's Conviction to the Practice of Medicine.

14. In light of the jury conviction on both counts of the Indictment relating to him, it is concluded that Dr. Zamora engaged in the activities alleged in the Indictment. All of those activities related to the practice of medicine.

15. But for Dr. Zamora's license to practice medicine in Florida, Dr. Zamora would not have been able to commit the crimes for which he was convicted. It was his license to practice medicine that facilitated his ability to work at Miami Health, to obtain a Medicare provider number, and to fully participate in the Medicare program. All of the activities he engaged in, such as signing necessary Medicare documents and medical records backup, were carried out in his capacity as a licensed Florida physician.

16. The crimes for which Dr. Zamora were convicted were crimes "which directly relates to the practice of medicine."

D. Prior Disciplinary Action.

17. Dr. Zamora has not previously been disciplined by the Board of Medicine.

CONCLUSIONS OF LAW

A. Jurisdiction.

18. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of

the parties thereto pursuant to Sections 120.569, 120.57(1), and 456.073(5), Florida Statutes (2006).

B. The Charges of the Administrative Complaint.

19. Section 458.331(1), Florida Statutes (2005), authorizes the Board of Medicine (hereinafter referred to as the "Board"), to impose penalties ranging from the issuance of a letter of concern to revocation of a physician's license to practice medicine in Florida if a physician commits one or more acts specified therein.

20. In its Amended Administrative Complaint, the Department has alleged that Dr. Zamora has violated Section 458.331(1)(c), Florida Statutes (2005).

C. The Burden and Standard of Proof.

21. The Department seeks to impose penalties against Dr. Zamora through the Amended Administrative Complaint that include suspension or revocation of his license and/or the imposition of an administrative fine. Therefore, the Department has the burden of proving the specific allegations of fact that support its charge that Dr. Zamora violated Section 458.331(1)(c), Florida Statutes (2005), by clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Pou v. Department of Insurance and Treasurer, 707



So. 2d 941 (Fla. 3d DCA 1998); and Section 120.57(1)(j), Florida Statutes (2006)("Findings of fact shall be based on a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute.").

22. What constitutes "clear and convincing" evidence was described by the court in Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, n. 5 (Fla. 1st DCA 1989), as follows:

. . . [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

See also In re Graziano, 696 So. 2d 744 (Fla. 1997); In re Davey, 645 So. 2d 398 (Fla. 1994); and Walker v. Florida Department of Business and Professional Regulation, 705 So. 2d 652 (Fla. 5th DCA 1998)(Sharp, J., dissenting).

D. Section 458.331(1)(c), Florida Statutes (2005).

23. Section 458.331(1)(c), Florida Statutes (2005), defines the following disciplinable offense:

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine.

24. In paragraphs 18 and 19 of the Amended Administrative Complaint, it is alleged that Dr. Zamora's felony convictions relate directly to his practice of medicine and his ability to practice medicine in the following ways:

A. Only a licensed, medical doctor may apply to be a Medicare provider;

B. Only a licensed, medical doctor may be issued a Medicare provider number;

C. Respondent is a licensed medical doctor in the State of Florida and was at all times pertinent to the facts of the aforementioned indictment;

D. Respondent applied for and received Medicare provider number 27247;

E. Respondent signed false documents and/or created false records for Medicare patients, including but not limited to: Patient N.R.;

F. Respondent caused to be submitted fraudulent claims to Medicare using his Medicare provider number;

G. Respondent submitted, or caused to be submitted, false documents and/or false records to Medicare for reimbursement for his Medicare patients, including but not limited to Medicare beneficiaries, including patient N.R.; and

H. Respondent took part in a scheme to defraud Medicare furthering the billing fraud scheme.

19. But for the fact that Respondent was a licensed doctor in the State of Florida, he would have been unable to commit the

crimes for which he was committed. Without his medical license, he would not have been able to secure a Medicare provider number, participate in the Medicare program, sign Medicare claims forms or sign fraudulent medical records to support those claim forms.

25. The evidence has proven clearly and convincingly that Dr. Zamora has been convicted of crimes that relate to his practice of medicine as alleged in the Amended Administrative Complaint and described in the findings of fact section of this Recommended Order. Dr. Zamora's convictions for Conspiracy to Defraud the United States and for Health Care Fraud both involved Dr. Zamora's manipulation of the Medicare system. His status as a physician allowed him to apply for and obtain his Medicare provider number, and it was his signature as a licensed physician on false medical records and Medicare claims, which he allowed to be submitted to Medicare for reimbursement, and which facilitated his commitment of the crimes for which he was convicted. These facts relate directly to Dr. Zamora's practice of medicine, and they formed the basis for the jury's finding Dr. Zamora guilty.

E. The Appropriate Penalty.

26. In determining the appropriate punitive action to recommend to the Board in this case, it is necessary to consult the Board's "disciplinary guidelines," which impose restrictions and limitations on the exercise of the Board's disciplinary

authority under Section 458.331, Florida Statutes. See Parrot Heads, Inc. v. Department of Business and Professional Regulation, 741 So. 2d 1231 (Fla. 5th DCA 1999).

27. The Board's guidelines are set out in Florida Administrative Code Rule 64B8-8.001, which provides the following "purpose" and instruction on the application of the penalty ranges provided in the Rule:

(1) Purpose. Pursuant to Section 456.079, F.S., the Board provides within this rule disciplinary guidelines which shall be imposed upon applicants or licensees whom it regulates under Chapter 458, F.S. The purpose of this rule is to notify applicants and licensees of the ranges of penalties which will routinely be imposed unless the Board finds it necessary to deviate from the guidelines for the stated reasons given within this rule. The ranges of penalties provided below are based upon a single count violation of each provision listed; multiple counts of the violated provisions or a combination of the violations may result in a higher penalty than that for a single, isolated violation. Each range includes the lowest and highest penalty and all penalties falling between. The purposes of the imposition of discipline are to punish the applicants or licensees for violations and to deter them from future violations; to offer opportunities for rehabilitation, when appropriate; and to deter other applicants or licensees from violations.

(2) Violations and Range of Penalties. In imposing discipline upon applicants and licensees, in proceedings pursuant to Section 120.57(1) and 120.57(2), F.S., the Board shall act in accordance with the following disciplinary guidelines and shall impose a penalty within the range

corresponding to the violations set forth below. The verbal identification of offenses are descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included.

28. Florida Administrative Code Rule 64B8-8.001(2) goes on to provide, in pertinent part, that the penalty guideline for a violation of Section 458.331(1)(c), Florida Statutes, where the crime involves healthcare fraud in dollar amounts in excess of \$5,000, is revocation of the license and an administrative fine of \$10,000.

29. Florida Administrative Code Rule 64B8-8.001(3) provides that, in applying the penalty guidelines, the following aggravating and mitigating circumstances are to be taken into account:

(3) Aggravating and Mitigating Circumstances. Based upon consideration of aggravating and mitigating factors present in an individual case, the Board may deviate from the penalties recommended above. The Board shall consider as aggravating or mitigating factors the following:

(a) Exposure of patient or public to injury or potential injury, physical or otherwise: none, slight, severe, or death;

(b) Legal status at the time of the offense: no restraints, or legal constraints;

(c) The number of counts or separate offenses established;

(d) The number of times the same offense or offenses have previously been committed by the licensee or applicant;

(e) The disciplinary history of the

applicant or licensee in any jurisdiction and the length of practice;

(f) Pecuniary benefit or self-gain inuring to the applicant or licensee;

(g) The involvement in any violation of Section 458.331, F.S., of the provision of controlled substances for trade, barter or sale, by a licensee. In such cases, the Board will deviate from the penalties recommended above and impose suspension or revocation of licensure.

(h) Where a licensee has been charged with violating the standard of care pursuant to Section 458.331(1)(t), F.S., but the licensee, who is also the records owner pursuant to Section 456.057(1), F.S., fails to keep and/or produce the medical records.

(i) Any other relevant mitigating factors.

30. Dr. Zamora has correctly argued that there are mitigating circumstances which should be considered: no patient suffered actual or potential injury from any medical treatment; Dr. Zamora has no prior disciplinary history; he was only involved in the conspiracy for a short period (although his involvement was ended by the Indictment); no controlled substances were involved; and no violation of the standard of care is involved. On the other hand, the pecuniary gain to Dr. Zamora was high and the harm to the public was great, given the fact that he was required to make restitution of \$221,726.96. That is, money that he was personally responsible for defrauding the public. Additionally, he engaged in a conspiracy in which others bilked the public out of any greater sums of money.

Finally, his action erodes the public's confidence and trust in Dr. Zamora, as well as the medical profession in general.

31. In Petitioner's Proposed Recommended Order, the Department has suggested that Dr. Zamora's license to practice medicine be revoked and he be assessed a fine of \$10,000.00. This recommendation is well within the guidelines and, but for the imposition of the \$10,000.00 fines, is appropriate in this case, given Dr. Zamora's betrayal of the public trust. A \$5,000.00 fine, given Dr. Zamora's restitution of the funds he defrauded from Medicare and his ultimate loss of livelihood as a physician, is recommended.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the a final order be entered by the Board of Medicine finding that Edgar Zamora, M.D., has violated Section 458.331(1)(c), Florida Statutes (2005), as described in this Recommended Order; requiring that he pay an administrative fine of \$5,000.00; and revoking his license to practice medicine in the State of Florida.

DONE AND ENTERED this 20th day of July, 2007, in  
Tallahassee, Leon County, Florida.



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LARRY J. SARTIN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of July, 2007.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in these cases.