

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES D. ZEBRANEK, JR., D.O.,        )  
  )  
    Petitioner,                        )  
  )  
vs.                                     )     Case No. 08-5804  
  )  
BOARD OF OSTEOPATHIC MEDICINE,    )  
  )  
    Respondent.                       )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on February 4, 2009, in Orlando, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: James D. ZeBranek, Jr., pro se  
Post Office Box 915622  
Longwood, Florida 32791

For Respondent: Deborah B. Loucks, Esquire  
Office of the Attorney General  
The Capitol, Plaza-01  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner voluntarily relinquished his license to practice osteopathic medicine.

PRELIMINARY STATEMENT

On September 22, 2003, Respondent, Board of Osteopathic Medicine (Board), issued a Final Order in Department of Health v. James D. ZeBranek, Jr., D.O., Case No. 2002-29377, accepting a voluntary relinquishment to practice osteopathic medicine, which was purportedly signed by Petitioner, James D. ZeBranek, Jr., D.O. (Dr. ZeBranek). Dr. ZeBranek first learned of the Final Order on September 10, 2006.

Dr. ZeBranek filed a Petition to Rescind Final Order and Lift Suspension of License. The Board contended that it did not have jurisdiction to consider the petition and entered an order denying the petition. Dr. ZeBranek appealed the order, and the Fifth District Court of Appeal held that the Board did have jurisdiction to hear the petition.

On November 19, 2008, the Board referred the petition to the Division of Administrative Hearings for assignment to an Administrative Law Judge to conduct a final hearing.

By Order dated January 30, 2009, official recognition was taken of Florida Administrative Code Chapter 64B15 and the opinion of the Fifth District Court of Appeal filed on August 1, 2008, in James D. ZeBranek, Jr. v. Board of Osteopathic Medicine, Case No. 5D07-525. By Order dated January 30, 2009, official recognition was taken of the Romanian Public Ministry Ordinance attached to Dr. ZeBranek's Motion for Judicial

Recognition of Romanian Public Ministry Ordinance of March 25, 2008. By Order dated February 2, 2009, official recognition was taken of the Final Orders issued by the Board in case numbers 6933, 198912229, 199013907, 200110904, 200214679, and 200229377. By Order dated February 3, 2009, official recognition was taken of the 1995 Romanian Law 36 and the 1961 Hague Apostille Convention.

The parties entered into a Joint Pre-hearing Stipulation and agreed to certain facts contained in Section E of the Joint Pre-hearing Stipulation. To the extent relevant, those facts have been incorporated in this Recommended Order.

At the final hearing, Dr. ZeBranek testified in his own behalf and called James R. LaVigne and Oana Meda Ungureanu as his witnesses. Petitioner's Exhibits 1, 3, 5, 8 through 11, and 13 were admitted in evidence.

At the final hearing, the Board called Richard A. Shoop and Christy Robinson as its witnesses. The Department presented no exhibits for admission in evidence.

Administrative Law Judge's Exhibit 1, which is the Voluntary Relinquishment of License at issue, was admitted in evidence.

The Transcript was filed on March 16, 2009. The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript. The parties timely submitted

their Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Prior to September 22, 2003, Dr. ZeBranek was a licensed osteopathic physician in Florida, having been issued license number OS 0005033.

2. The Florida Legislature enacted Chapter 459, Florida Statutes, and created the Board in order to ensure that every osteopathic physician practicing in Florida meets minimum requirements for safe and effective practice. All Florida-licensed osteopathic physicians are subject to regulation by the Board.

3. In January 2003, Dr. ZeBranek went to Romania and stayed there until March 2006. While Dr. ZeBranek was in Romania, the Department of Health (Department) filed an Administrative Complaint against him. The attorney representing the Department was Richard Shoop.

4. Sometime prior to June 11, 2003, Mr. Shoop was in contact with Dr. ZeBranek. Dr. ZeBranek requested that Mr. Shoop send him a voluntary relinquishment of license form for his consideration. Mr. Shoop sent Dr. ZeBranek a document which had been prepared by the Department staff. The document was entitled Voluntary Relinquishment of License (Relinquishment) and contained the style of the case and case

number. The Relinquishment provided that Dr. ZeBranek was relinquishing his license to practice osteopathic medicine in Florida and was agreeing to never again apply for a license to practice osteopathic medicine in Florida. The Relinquishment further indicated that acceptance by the Board of the Relinquishment would be considered to be discipline by the Board. Mr. Shoop sent the Relinquishment to a Florida address.

5. The Relinquishment contained a signature line and an acknowledgment form to be completed by a notary public. The acknowledgment form comports with the requirements of Section 117.05, Florida Statutes (2003). It was the practice of the Board that the execution of voluntary relinquishments be executed before a notary public.

6. Sometime after June 11, 2003, and prior to September 6, 2003, Mr. Shoop received the same form that he had sent to Dr. ZeBranek. The form had been purportedly signed by Dr. ZeBranek and notarized by a Romanian notary public, Olimpia Ungureanu. The notary acknowledgment contained the driver's license number and passport number of Dr. ZeBranek as the identifiers used by the notary public. The signature on the Relinquishment appears to be similar to some other signatures by Dr. ZeBranek.<sup>1</sup>

7. The Relinquishment which was received and which was purportedly notarized by Ms. Ungureanu was written in English.

There was no Romanian translation attached to the Relinquishment. No evidence was presented to establish whether Ms. Ungureanu was fluent in English. No Apostille was attached to the Relinquishment, certifying the authenticity of the document.

8. After the Relinquishment was received by Mr. Shoop, Mr. Shoop had no further communications with Dr. ZeBranek. The executed Relinquishment was presented to the Board at a meeting on September 6, 2003. At the time the Relinquishment was presented to the Board, Dr. ZeBranek's license was under suspension as a result of a Final Order entered in DOH Case No. 2002-14679. The Board accepted the Relinquishment and entered a Final Order to that effect. The Final Order was filed on September 19, 2003.

9. Dr. ZeBranek contends that he never signed the Relinquishment and never sent it to Mr. Shoop. Dr. ZeBranek feels that his former wife, with whom he is involved in an acrimonious divorce proceeding, is responsible for sending the fraudulent Relinquishment to the Board. Dr. ZeBranek's opinion is not without some basis. In the past, he has been involved a situation in which a forged deed, allegedly notarized by the same notary who purportedly notarized the Relinquishment, was used by his former wife to transfer the marital home in Florida to herself. A Romanian public prosecutor refused to prosecute

the notary for forgery, concluding that the notary whose name appeared on the deed did not notarize the deed.

10. The preponderance of the evidence establishes that Dr. ZeBranek did not sign the Relinquishment.

#### CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2008).

12. As the Petitioner, Dr. ZeBranek seeks to overturn the Final Order based on the Relinquishment which the Board received. He must establish by a preponderance of the evidence that the signature was not his. See Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

13. Subsection 90.902(3), Florida Statutes (2003), provides that foreign documents may be self-authenticating when the documents have been executed or attested to in accordance with the foreign laws where the document was executed or attested to and is accompanied by a final certification.

14. In the instant case, the Relinquishment was not notarized in accordance with Romanian law, which requires that the document be written in Romanian and translated into the foreign language by a certified translator unless the notary knows the foreign language in which the document is written.

1995 Romanian Law 36, Chapter 5, Section I, Article 47. The Relinquishment was not accompanied by a final certification.

15. Dr. ZeBranek has established by a preponderance of the evidence that he did not sign the Relinquishment relied upon by the Board in entering a Final Order accepting a voluntary relinquishment of his license to practice medicine.

Dr. ZeBranek testified that he did not execute the Relinquishment. He has been involved in a situation in the past in which the notarization of the notary who purportedly notarized the Relinquishment was forged. The Relinquishment did not have an Apostille attached, which would have authenticated the Relinquishment. The notarization did not comply with Romanian law.

16. At the conclusion of the final hearing, Dr. ZeBranek moved for attorney's fees. He did not state the basis for his motion, and no attorney was representing Dr. ZeBranek in this proceeding.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order finding that the Relinquishment was not executed by Dr. ZeBranek; vacating the Final Order entered on September 22, 2003; and denying the request for attorney's fees.



DONE AND ENTERED this 14th day of April, 2009, in  
Tallahassee, Leon County, Florida.

*Susan B. Harrell*

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SUSAN B. HARRELL  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of April, 2009.

ENDNOTE

<sup>1/</sup> Dr. ZeBranek submitted several exemplars of his signature in evidence as Petitioner's Composite Exhibit 13. Some of the exemplars were markedly different from each other. Dr. ZeBranek stated that his signature changed during 2002 to 2004. No explanation was given for the change in appearances of the signatures. The signature on the Relinquishment resembles some of the signatures in the exhibit and is quite different from some of the signatures in the exhibit.

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 this case.