

FILED

STATE OF FLORIDA
2010 NOV -4 AM 10:32 BOARD OF MEDICINE

Final Order No. DOH-10-2412 ^{FOF}-MQA
FILED DATE - 11.3.10
Department of Health

By: Angela Sanders
Deputy Agency Clerk

DEPARTMENT OF HEALTH,
DIVISION OF
ADMINISTRATIVE
Petitioner, HEARINGS

vs.

DOH CASE NO.: 2007-13996
DOAH CASE NO.: 09-3628PL
LICENSE NO.: ME0070981

ASHRAF ELSAKR, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on October 1, 2010, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Respondent's Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A and B) in the above-styled cause. Petitioner was represented by Diane Kiesling, Assistant General Counsel. Respondent was present and represented by Chobee Ebbets, Esquire.

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.

RULING ON EXCEPTIONS

The Board reviewed and considered the Respondent's Exceptions to the Recommended Order and the Petitioner's Response to the Respondent's Exceptions to the Recommended Order and ruled as follows:

1. The Board denied Respondent's Exception #1, to Paragraph 9 of the Recommended Order for the reasons stated in Petitioner's written and oral response to Respondent's Exceptions. There is competent substantial evidence in the record to support the Administrative Law Judge's finding in Paragraph 9 of the Recommended Order.
2. The Board denied Respondent's Exception #2, to Paragraphs 9, 12, 13, 14, 15, and 16, of the Recommended Order for the reasons stated in Petitioner's written and oral response to Respondent's Exceptions. There is competent substantial evidence in the record to support the Administrative Law Judge's findings in Paragraphs 9, 12, 13, 14, 15, and 16, of the Recommended Order.
3. The Board accepted Respondent's Exception #3, Paragraph 17 of the Recommended Order and the parties stipulated that the first sentence of Paragraph 17 should be amended to read, "M.D. said "yes" in response to Dr. Elsagr's question."
4. The Board denied in part and accepted in part Respondent's Exception #4. Specifically, the Board rejected the

exception in regards to Paragraphs 27, 28, 29, but approved it as it applies to paragraphs 30, and 31, of the Recommended Order.

5. The Board rejected Respondent's Exception #5 to the extent that the Respondent claims that the term "verbally confirm" as it appears in Rule 64B8-9.0072(2)(b), F.A.C., is ambiguous but approves the exception to the extent that the Board agree that the Respondent did verbally confirm the patients identity in compliance with Rule 64B8-9.0072(2)(b), F.A.C. Hence, the Board rejects the ALJ's conclusions of law as set forth in paragraphs 35 and 36 of the Recommended Order and finds that its conclusion that Respondent did not violate Section 458.331(1)(nn), Florida Statutes (violation of Chapter 456 or 458, or any rule adopted thereto) is more reasonable than that of the ALJ.

6. Respondent's Exception #6 was not heard because the exception addressed penalties. Since the Board found that the Respondent did not violate the provisions of law set forth in the Administrative complaint, it was not necessary to address the exception.

7. The Board rejected Petitioner's exception to the Conclusion of Law set forth in paragraph 30 of the recommended order and finds the ALJ's conclusion is more reasonable than that of the Petitioner.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference as amended in paragraph 3 of the ruling on the exceptions as set forth above.

2. There is competent substantial evidence to support amended 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.

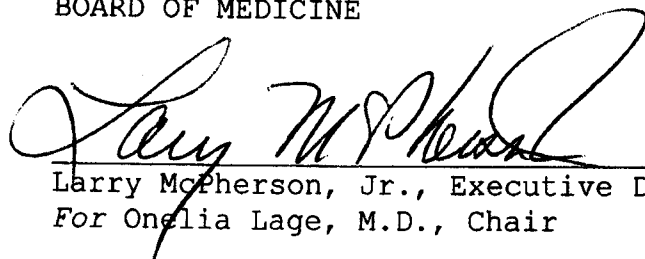
2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference as amended in paragraphs 4 and 5 of the ruling on the exceptions as set forth above.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

The charges set forth in the Administrative Complaint filed in this matter are hereby DISMISSED.

DONE AND ORDERED this 2 day of NOVEMBER,
2010.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
For Onelia Lage, M.D., 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 ASHRAF ELSAKR, M.D., 840 Dunlawton Avenue, Suite A, Port Orange, Florida 32127; and 808 Smokerise Boulevard, Port Orange, Florida 32127; to Choebee Ebbets, Esquire, by email at cebbets@ebbetlaw.com; to Lisa Shearer Nelson, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Veronica Donnelly, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 3rd day of November, 2010.


Deputy Agency Clerk