

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)	
MEDICINE,)	
)	
Petitioner,)	
)	
vs.)	Case Nos. 09-5267PL
)	09-5269PL
LEONARD ABRAHAM RUBINSTEIN,)	09-5270PL
M.D.,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in these cases on August 24 through 26, 2010, in Sarasota, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Sharmin R. Hibbert, Esquire
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For Respondent: Ariel Sofro, Esquire
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STATEMENT OF THE ISSUES

The issues in these cases are whether Respondent violated sections 458.331(1)(t), 458.331(1)(m), and 458.331(1)(n), Florida Statutes (2004), and section 458.331(1)(t), Florida Statutes (2006), and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On February 11, 2008, Petitioner, Department of Health (Department), filed a three-count Administrative Complaint before the Board of Medicine (Board), alleging that Respondent, Leonard A. Rubinstein, M.D. (Dr. Rubinstein), violated sections 458.331(1)(t), 458.331(1)(m), and 458.331(1)(n), Florida Statutes (2004). The case was forwarded to DOAH on September 25, 2009. The case was assigned DOAH Case No. 09-5267PL.

On August 20, 2007, the Department filed a three-count Administrative Complaint before the Board, alleging that Dr. Rubinstein violated sections 458.331(1)(n), 458.331(1)(t), and 458.331(1)(m), Florida Statutes (2004). The case was forwarded to DOAH on September 25, 2009. The case was assigned DOAH Case No. 09-5269PL.

On April 17, 2007, the Department filed an Administrative Complaint before the Board, alleging that Dr. Rubinstein violated section 458.331(1)(t), Florida Statutes (2006). The

case was forwarded to DOAH on September 25, 2009. The case was assigned DOAH Case No. 09-5270PL.

The cases were consolidated by Order dated October 6, 2009. The final hearing was scheduled to commence on December 8, 2009. The final hearing was continued three times.

The parties filed a Joint Pre-hearing Stipulation on August 16, 2010, in which they stipulated to certain facts contained in Section E of the Joint Pre-hearing Stipulation. To the extent relevant, those stipulated facts have been incorporated in this Recommended Order.

At the final hearing, the Department called the following witnesses: J.D.; R.A.; B.L.; C.L.; Frank Steig, M.D.; and Michael Pacin, M.D. Petitioner's Exhibits 1 through 26 were admitted in evidence. The depositions of the following witnesses were admitted as part of Petitioner's exhibits: Mr. J.D.; Frank Steig, M.D.; Douglas Dedo, M.D.; Howard Fuchs, M.D.; Jack Wazen, M.D.; Amy Budoff, M.D.; Hugh Windom, M.D.; and Michael Pacin, M.D. At the final hearing, Respondent testified in his own behalf and called Amy Budoff, M.D., and Douglas Dedo, M.D., as witnesses. Respondent's Exhibits 1 through 11 were admitted in evidence.

As of September 23, 2010, the six-volume Transcript was filed. The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript. On

September 27, 2010, Dr. Rubinstein filed a Motion for Extension of Time, requesting that the time for filing proposed recommended orders be extended. The time for filing proposed recommended orders was extended to October 24, 2010. On September 28, 2010, Petitioner filed a Motion to Extend the Page Limit for Proposed Recommended Order. The motion was granted by Order dated September 28, 2010, extending the page limit to 100 pages. The parties timely filed their Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is the state department charged with regulating the practice of medicine in Florida pursuant to section 20.43, Florida Statutes (2010), and chapters 456 and 458, Florida Statutes (2010).

2. At all material times to the Administrative Complaints, Dr. Rubinstein was licensed as a medical doctor within the State of Florida, having been issued license number ME37720. He is an otorhinolaryngologist, meaning he is a specialist in ears, nose and throat, and facial plastic and reconstructive surgery. He also treats allergies.

3. On November 7, 2003, Dr. Rubinstein and the Department entered into a Consent Agreement, related to the following Administrative Complaints filed against Dr. Rubinstein: Case

No. 2001-07091, Case No. 1999-5773, and Case No. 2000-02195.

Based on the Consent Agreement, a Final Order, DOH-04-0020-S-MQ, was filed by the Board on January 7, 2004, imposing a fine of \$25,000; imposing 60 hours of community service; requiring Dr. Rubinstein to submit to a two-day evaluation at the Institute for Physician Education (IPE); requiring Dr. Rubinstein to comply with the recommendations resulting from the evaluation at IPE; and placing Dr. Rubinstein on probation for five years.

4. On August 6, 1993, the Department of Business and Professional Regulation (DPR) and Dr. Rubinstein entered into a Consent Agreement to resolve DPR Case Nos. 90-06221, 91-06043, 91-08800, 91-12051, 92-00308, 92-11650, 92-11763. The Consent Agreement provided a stipulated disposition of a \$10,000 fine and probation for five years. The Consent Agreement was adopted by a Final Order of the Board filed August 23, 2009.

5. On May 11, 1993, DPR and Dr. Rubinstein entered into a Consent Agreement relating to DPR Case No. 92-13503. The Consent Agreement provided a stipulated disposition of a \$5,000 fine, a reprimand, and requirement that Dr. Rubinstein review section 458.331, Florida Statutes, and Florida Administrative Code Chapter 21M. The Consent Agreement was adopted as a Final Order by the Board on June 8, 1993.

6. On August 24, 1992, the Board entered a Final Order in DPR Case Nos. 0081610, 8906844, 8903225, 109405, and 8907280 finding Dr. Rubinstein guilty of violations of subsections 458.331(1)(d), (k), (m), (n), (t), and (x), Florida Statutes; imposing a \$15,000 fine; reprimanding Dr. Rubinstein; prohibiting Dr. Rubinstein from initiating contact with patients or their families for the purpose of persuading them to agree to his treatment recommendations; and placing Dr. Rubinstein on probation for one year.

7. On June 8, 2005, a Determination and Order was entered by the State of New York, Department of Health, State Board for Professional Medical Conduct, BPMC No. 05-115, revoking Dr. Rubinstein's license to practice medicine in New York, based on the disciplinary actions by the Board in the Final Order in Case DOH-04-0020-S-MQ.

Facts Relating to DOAH Case No. 09-5267PL

8. At all times material to this Administrative Complaint, Dr. Rubinstein did not hold hospital staff privileges for any hospital in the Sarasota, Florida, area.

9. On January 11, 2005, J.D. presented to Dr. Rubinstein's office, seeking the following medical procedures: a breast lift or augmentation; possible liposuction on her hips; and a tummy tuck. J.D. completed a form during the office visit. Dr. Rubinstein recommended that J.D. have a breast augmentation;

liposuction of hips, outer and inner thighs, and knees; and an abdominoplasty (tummy tuck).

10. During the January 11, 2005, visit, Dr. Rubinstein told J.D. that he could help her with the dark circles under her eyes with some allergy testing. J.D. had not gone to Dr. Rubinstein for diagnosis, help, or treatment for any other conditions other than her request for cosmetic surgery.

11. On January 11, 2005, J.D. was provided with a cost estimate for the surgical procedures of \$29,550. These costs included a tummy tuck at \$8,900; liposuction of the abdomen at \$3,800; liposuction of the hips at \$2,800; liposuction of the waist at \$2,400; liposuction of the lateral thighs at \$3,400; liposuction of the medial thighs at \$1,800; liposuction of the knees at \$800; operating room for \$300 per hour for a total of \$2,700; anesthesia at \$300 per hour for a total of \$2,700; and lab work for \$250. The cost estimate did not include the breast augmentation. The surgical cost estimate stated: "It is estimated that your operating and recovery time will be 9 hours."

12. J.D. took the cost estimate and discussed them with her husband, who felt that the costs were too much. J.D. called Dr. Rubinstein's office and advised that the cost was too high, and she could not have the surgeries for that price.

13. Dr. Rubinstein revised his surgical cost estimate as follows: abdominoplasty \$8,900; breast augmentation \$4,200; implants \$1,400; liposuction of the abdomen \$0; liposuction of the hips \$2,800; liposuction of the waist \$0; liposuction of the lateral thighs \$3,400; liposuction of the medial thighs \$0; operating room at \$300 per hour for a total of \$2,700; anesthesia at \$300 per hour for a total of \$2,700; and pre-op lab work \$250. There was no mention of liposuction of the knees in the revised cost estimate. The revised cost estimate stated: "It is estimated that your operating and recovery time will be 9 hours." The revised cost estimate was signed by J.D. on January 14, 2005.

14. Both the original and revised cost estimates contained the following: "The Anesthesia and operating room charges are based on operating and recovery time. Consequently, if a surgical procedure turns out to be more or less lengthy than was expected, both fees will be correspondingly increased or decreased."

15. J.D. went to Dr. Rubinstein's office on January 14, 2005, for a pre-operative visit. A history was taken, and a physical examination was done. Frank Steig, M.D. (Dr. Steig), who is board certified in otolaryngology, head and neck surgery, and plastic and reconstructive surgery, testified as an expert on behalf of the Department. He was of the opinion that the

history and physical met the basic criteria. His opinion was based on a review of the medical records.

16. Some of the forms used by Dr. Rubinstein in recording the information concerning J.D. were forms that are more suitable for an otolaryngology physician's use. However, no evidence was presented that the information listed on the forms did not meet the basic criteria for medical records or that the use of a certain form fell below the standard of care.

17. Although J.D. was seeing Dr. Rubinstein for cosmetic surgery, she was asked to fill out a questionnaire concerning allergies. On or about January 14, 2005, Dr. Rubinstein gave Patient, J.D., a cost estimate for allergy testing totaling \$3,565.00.

18. On or about January 14, 2005, Dr. Rubinstein directed J.D. to go to Lab Corp for pre-operative testing, which included a CBC with Differential/Platelet, Complete Metabolic Panel, Urinalysis, Prothrombin Time, and Partial Thromboplastin Time.

19. On or about January 19, 2005, J.D. presented to Dr. Rubinstein for the decided cosmetic procedures. Based on Dr. Rubinstein's operative report, he performed the following procedures on J.D. on January 19, 2005: abdominoplasty; liposuction of lower lateral abdomen, hips, waist, lateral thighs, medial thighs, and knees; and augmentation of breasts.

20. Based on the surgical and anesthesia notes, the anesthesia began at 9:15 a.m. and ended at 11:55 p.m. There was some difficulty in finding a vein on J.D. that would be suitable to deliver the anesthesia. Eventually the anesthesia was administered through the jugular vein.

21. Surgery was begun at 11:45 a.m. and was completed at 11:20 p.m. The breast augmentation took three hours and 35 minutes. The liposuction took one hour and 55 minutes. The abdominoplasty took six hours and five minutes.

22. At the final hearing, Dr. Rubinstein testified that he would have predicted that the breast augmentation would have taken approximately two to two-and-a-half hours. He would have estimated that the liposuction would have taken one hour and 55 minutes. He would have estimated that the abdominoplasty would have taken three to four hours. Given these estimates, the planned surgery time at a maximum would have been eight hours and 25 minutes.

23. Dr. Rubinstein's testimony contradicts his estimate of the surgical time as reflected on the surgical cost estimates, which were done prior to the surgery. The first cost estimate did not include the breast augmentation; therefore, the planned surgery for liposuction and the abdominoplasty was eight hours as reflected on the cost estimate. In the revised cost estimate, he added the breast augmentation, which he estimated

to be between two and two-and-one-half hours. Thus, the planned time for the three surgical procedures would have been between ten and ten-and-one-half hours. No explanation was given by Dr. Rubinstein why there was no adjustment between the planned time for surgery as reflected in the cost estimates.

24. On or about January 19, 2005, J.D. was taken to the recovery room at 11:55 p.m. and released to return home at 1:00 a.m. on January 20, 2005. Based on the anesthesiologist's assessment, J.D. met the discharge criteria of Dr. Rubinstein's surgical facility, which was accredited as a Level III surgical facility.

25. J.D.'s husband, Mr. J.D., was called to Dr. Rubinstein's office to take J.D. home. He testified that after he arrived at the facility, he was told that there would be an additional fee of \$4,900; however, he stated that the discharge of J.D. was not conditioned on the payment of the additional fee. The evidence is conflicting concerning when Mr. J.D. actually paid the additional \$4,900 by credit card. Mr. J.D. testified that he paid by credit at the time of J.D.'s discharge on January 20, 2005. The computer credit card receipt, which was signed by Mr. J.D., shows that the payment by credit card was made at 1:01 p.m. on January 20, 2005. The evidence shows that the credit card payment was made in the afternoon of January 20, 2005.

26. Dr. Rubinstein's operative report did not include the amount of tissue that was removed during the abdominoplasty or the tightening of J.D.'s abdominal wall. Dr. Steig, the Department's expert, did not testify that the standard of care required that such information be included in the operative report. He said that generally such information is included. Douglas Dedo, M.D. (Dr. Dedo), expert witness for Dr. Rubinstein, opined that the standard of care did not require Dr. Rubinstein to document the amount of tissue removed during the abdominoplasty or to document the tightening of the abdominal wall. Dr. Dedo's testimony is credited.

27. Dr. Rubinstein belongs to the International Trade Exchange (ITEX), which is a corporation that serves as a network for businesses to do business with each other using an alternative currency system called trade dollars. In other words, businesses can barter with one another. Dr. Rubinstein suggested to J.D. that she might want to become a member of ITEX, and it could be a way of paying for procedures.

28. J.D. and her husband own a tour guide service. One of Dr. Rubinstein's employees, Judy Trapani (Ms. Trapani), was interested in bartering a trip to Italy for procedures performed by Dr. Rubinstein. Based on the testimony of Mr. J.D., it appears that conversations concerning bartering a trip to Italy for surgical procedures occurred between Ms. Trapani and

Mr. J.D. The evidence is not clear and convincing that Dr. Rubinstein was trying to barter the surgical procedures for a trip for Ms. Trapani.

Facts Relating to DOAH Case No. 09-5269PL

29. On March 22, 2005, B.L. first presented to Dr. Rubinstein, accompanied by her mother, C.L., for complaints of severe acne. C.L. filled out a general patient questionnaire and was also asked to fill out a form concerning allergies. It is not clear why a form relating to allergies would need to be completed prior to the initial examination when B.L. was being seen for severe acne.

30. On the general questionnaire, C.L. indicated that B.L. had had asthma or other respiratory problems, chronic bronchitis, and ear infections. The allergy questionnaire was to determine the cause of the patient's allergy symptoms. However, B.L. was not seeing Dr. Rubinstein for allergy symptoms, and C.L., understandably, thought that the allergy questionnaire related to past symptoms.

31. On the allergy questionnaire, C.L. indicated that B.L. had had trouble with her skin; hives; trouble with ears popping and itching, hearing loss; frequent sore throats with drainage; itching eyes; thick/colored discharge from her nose; sniffles, and sneezing. Other than trouble with her skin, B.L. did not have any of these symptoms when she presented to Dr. Rubinstein.

On examination, Dr. Rubinstein noted that B.L.'s turbinates were engorged and pale and that she had hypoplastic lymphoid tissue.

32. Dr. Rubinstein diagnosed B.L. with cystic acne. Cystic acne occurs when an obstruction of the hair follicle inflames the sebaceous gland and the inflammation rises to the surface. Allergies do not cause cystic acne. However, Dr. Rubinstein told C.L. and B.L. that food allergies could affect the inflammatory component of B.L.'s cystic acne.

33. On one of the questionnaires, C.L. had indicated that B.L. had problems with sugars and carbohydrates. From this information, Dr. Rubinstein deduced that B.L. must have a problem with yeast and put her on a yeast-free diet. It is not understood why B.L. was put on a diet eliminating yeast, since sugar and carbohydrates also occur in foods other than foods containing yeast. Dr. Rubinstein put B.L. on a yeast-free diet before any testing was done to determine whether she had an allergy to yeast.

34. Dr. Rubinstein also recommended blue-light therapy for the inflammation. He recommended allergy testing and the Obagi Nu-Derm System (Obagi) products. The Obagi program consists of topical products that are applied to the problem area. A prescription is required for the Obagi products. He prescribed an antibiotic, Minocycline. He also prescribed Nystatin for B.L.

35. During the initial office visit on or about March 22, 2005, Dr. Rubinstein administered 1000mg of Erythromycin to B.L. by mouth prior to performing a deep pore facial cleansing on her. B.L. was also given a facial mask. B.L. suffered severe stomach pains and diarrhea from the Erythromycin. C.L. called Dr. Rubinstein and told him about the stomach problems, and he told C.L. that was a normal reaction.

36. On or about March 28, 2005, B.L. and C.L. presented to Dr. Rubinstein for a follow-up appointment. Dr. Rubinstein documented in the medical records that B.L.'s complexion appeared improved. He continued B.L. on Nystatin and Minocycline. Dr. Rubinstein continued to recommend the allergy tests and the Obagi program. C.L. purchased the Obagi program products for \$1,200.

37. B.L. and her mother returned to Dr. Rubinstein's office on April 4, 2005, for a follow-up visit. Dr. Rubinstein continued the Minocycline and reviewed the progress in the Obagi program. C.L. authorized the allergy tests. The charge for the allergy tests was \$2,821.

38. One of the allergy tests which Dr. Rubinstein had performed was IgG testing. Such testing is not done by mainstream allergists, and it is below the standard of care to use such testing.

39. On the evening of April 11, 2005, B.L. ate a piece of cake at her grandmother's birthday party. On the morning of April 12, 2005, B.L. went to school at 7:30 a.m., and, by 8:20 a.m., she was experiencing hives, swollen joints, problems catching her breath, and problems moving her fingers, bending her knees, and bending her feet. B.L.'s joints were visibly swollen. C.L. took B.L. to see Dr. Rubinstein on April 12, 2005.

40. Dr. Rubinstein noted in his records on April 12, 2005, that B.L. had hives, but he did not mention that B.L.'s joints were swollen. He opined that the hives were caused by eating cake. B.L. had eaten cake at times before the ingestion of cake on April 11, 2005, and had not experienced the symptoms that she had on April 12, 2005. B.L. has eaten cake since the ingestion of the cake on April 11, 2005, and has not experienced the symptoms that she had on April 12, 2005.

41. Dr. Rubinstein had the results of the allergy tests to foods on April 12, 2005. None of the tests showed that B.L. was allergic to baker's yeast or gluten. One of the tests showed that B.L. might be allergic to candida albicans, which is a yeast that is usually found in babies with thrush and people whose immunity system is compromised. An allergy to candida albicans is not the same as an allergy to baker's yeast. However, Dr. Rubinstein continued the yeast-free diet.

42. During the office visit on April 12, 2005, Dr. Rubinstein administered a 6mg dose of Decadron to B.L. for an acute allergic reaction. Decadron is a steroid used to treat conditions such as arthritis, blood/hormone/immune system disorders, allergic reactions, certain skin and eye conditions, breathing problems, certain bowel disorders, and certain cancers. B.L. had an adverse reaction to the Decadron, resulting in vomiting, stomach pains, and diarrhea.

43. Dr. Rubinstein placed B.L. on another round of Minocycline. He suggested to C.L. that he might want to have B.L. switch to tetracycline because it may be more effective and cheaper than the Minocycline. C.L. told Dr. Rubinstein the price that she was paying for the Minocycline, and he told C.L. that if she could get the Minocycline for the price she stated that B.L. could stay on the Minocycline.

44. During the office visit on April 12, 2005, Dr. Rubinstein lanced and drained four extremely inflamed cysts located on B.L.'s forehead and cheek.

45. On April 12, 2005, Dr. Rubinstein suggested that B.L. go on a Rotation Elimination Diet to eliminate positive allergic foods. B.L. was to continue abstaining from eating yeast. The cost of the diet was \$100.

46. On April 12, 2005, after the office visit with Dr. Rubinstein, C.L. called Dr. Rubinstein and advised that B.L.

was still not improving. Dr. Rubinstein made a note of C.L.'s telephone call. He continued to opine that the rash was caused by the ingestion of cake. He noted that the allergic reaction may be caused by the medication, but he still did not discontinue the medication. Although, Dr. Rubinstein had just examined B.L. that day, he requested that B.L. be seen again for re-evaluation.

47. On or about April 14, 2005, C.L. went to see Dr. Rubinstein without B.L. to obtain the results of B.L.'s allergy tests. C.L. indicated that B.L.'s hives were worse. Dr. Rubinstein suggested that B.L. present to him again, after having seen B.L. two days prior, and that she may need antihistamines and medrol dose packs. He did not tell C.L. to discontinue the Minocycline.

48. C.L. no longer trusted Dr. Rubinstein. On April 15, 2005, B.L.'s symptoms had not improved, and C.L. took B.L. to see B.L.'s pediatrician. The pediatrician referred B.L., to Hugh H. Windom, M.D. (Dr. Windom), a board-certified allergist.

49. Dr. Windom saw B.L. on April 15, 2005, for hives, joint pain, and some swelling of her hands and lower arms. On examination, Dr. Windom found that B.L. had cystic acne, raised blanching, a red rash on her lower arm, mild nasal mucosal edema, and swelling in the joints on both hands and that B.L. was dermatographic. B.L. told Dr. Windom that she had been

prescribed Minocycline by Dr. Rubinstein and had been taking it since sometime in March 2005. B.L. advised Dr. Windom that she did not take the Minocycline on April 14, 2005, and that her symptoms had improved some. Dr. Windom suspected that the hives, joint pain, and swelling were allergic reactions to drugs. He discontinued B.L.'s use of Minocycline and Nystatin. Within 24 hours after her visit with Dr. Windom, B.L.'s symptoms were gone. Dr. Windom referred B.L. to a dermatologist for her acne.

50. Michael Pacin, M.D. (Dr. Pacin), is a board-certified allergist and testified as an expert for the Department. Dr. Pacin was of the opinion that there is no connection between allergies and acne. Acne is not an allergy symptom. He is also of the opinion that the prescription of a yeast-free diet when the physician does not know if the patient has an allergy to yeast is below the standard of care. Dr. Pacin's testimony is credited.

51. C.L. paid Dr. Rubinstein \$100 for the Rotation Diet, and \$2,821 for allergy testing.

Facts Relating to DOAH Case No. 09-5270PL

52. On July 17, 2006, R.A. presented to Dr. Rubinstein with complaints that he had a rash on his face and that it was itching. R.A. thought that he might have an allergy, which is why he sought out an allergy specialist. R.A. had not gone to

see Dr. Rubinstein for any nasal problems. R.A. felt that, when he mentioned that he thought he might have allergies, "it just locked in with [Dr. Rubinstein] that he had nasal problems."

53. R.A. filled out a questionnaire on the first visit concerning his current problem. He advised Dr. Rubinstein that he had prostate cancer in 1999, and his prostate had been removed. He also stated that he had had nasal problems and had gone to the Silverstein Institute^{1/} in October 2005. In December 2005, he had surgery at the Silverstein Institute. Part of the surgery had been for the removal of polyps. R.A. had been going to the Silverstein Institute for follow-up visits and felt that his nasal and sinus issues were clearing up. Dr. Rubinstein recommended that R.A. have a CT scan done.

54. Dr. Rubinstein asked R.A. to get his medical records from the Silverstein Institute. R.A. requested his medical records, including a CT scan of his sinuses, from the Silverstein Institute, and those records were provided to Dr. Rubinstein.

55. On July 18, 2006, a CT scan was performed on R.A. The physician who interpreted the CT scan had the following impression of the CT scan results:

Surgical alteration includes bilateral superior and middle turbinate removal. Opacification of the anterior ethmoidal air cells present bilaterally extends into the frontal sinuses where there is mild

mucoperiosteal thickening. The right sphenoid sinus is completely opacified. There is mention in the history of a possible nasal bone fracture however, fractures are not identified.

56. The CT Scan did not show a deviated septum to the extent that surgery would be needed. The physician who prepared the report on the CT stated: "Nasal septum is not significantly deviated." The medical records from the Silverstein Institute showed that in 2005 that R.A.'s septum was intact in midline.

57. The CT scan report stated: "Mucoperiosteal thickening exists in the left maxillary sinus in a relatively mild fashion with probable polyp formation of the anterior ethmoidal air cells." The CT scan did not conclusively state that polyps were present.

58. Dr. Steig, the Department's expert, reviewed the CT scan image and opined that the CT scan did not show nasal polyps, but instead showed polypoid changes which may or may not have been associated with the presence of polyps. Polypoid changes can be caused by mucosal irritation or suctioning. The polypoid changes in the CT scan were on the mucosa on the lateral wall. Dr. Steig's testimony is credited.

59. On or about July 19, 2006, Dr. Rubinstein called R.A. to discuss the CT scan results and told R.A. that the CT scan results were abnormal. Dr. Rubinstein diagnosed R.A. with chronic allergic rhinitis, chronic sinusitis, nasal septal

deviation with moderate obstruction, recurrence of nasal polyps, loud snoring, and dry mouth secondary to mouth breathing.

Dr. Rubinstein felt the redness on R.A.'s face was a form of rosacea. Dr. Rubinstein's treatment plan consisted of reviewing the CT results, providing R.A. with supplements, in vitro allergy testing, and providing allergy medication if needed.

60. On July 24, 2006, R.A. underwent in vitro allergy testing, using IgE blood testing for inhalants and IgG blood testing for food.

61. On or about July 27, 2006, R.A. presented to Dr. Rubinstein for a follow-up appointment, complaining of a number of symptoms bothering him since his previous appointment the week before. R.A. complained of symptoms on his skin, a stuffy nose, sore throat, body ache, and watery eyes.

62. On July 27, 2006, Dr. Rubinstein performed an endoscopy on R.A. Dr. Rubinstein told R.A. that the polyps that had been removed at the Silverstein Institute had grown back. He further told R.A. that his septum was crooked and that the physician at the Silverstein Institute had not done a good job and needed to be reported.

63. Dr. Rubinstein advised R.A. of the results of the allergy testing. The allergy test, which Dr. Rubinstein requested for food allergies, showed that R.A. was allergic to all foods tested except for sunflower seeds. The food allergies

were tested by Commonwealth Medical Labs in Warrenton, Virginia. The test used was called an IgG test. The laboratory report stated: "This test is For Investigational Use Only. Its performance characteristics have not been cleared or approved by the U.S. Food and Drug Administration."

64. Dr. Rubinstein told R.A. that the allergies could be treated with homeopathic vitamins, supplements, acupuncture, and a Rotation Elimination Diet.

65. Dr. Rubinstein sold R.A. a lot of homeopathic vitamins and supplements from Dr. Rubinstein's office. Dr. Rubinstein also recommended that R.A. get some treatments from an acupuncturist, who worked out of Dr. Rubinstein's office on a case-by-case basis. Some of the treatments included injection of some homeopathic medications. The acupuncturist was supposed to help with the rash on R.A.'s face and the allergies.

66. On July 27, 2006, Dr. Rubinstein ordered a sleep apnea test for R.A. The method of testing was a home test, which R.A. rented from Dr. Rubinstein. R.A. often woke during the night to urinate since he had his prostate removed. The results of the test showed that R.A. had significant snoring and mild obstructive sleep apnea. Dr. Rubinstein told R.A. that he suffered from sleep apnea that was very serious and that R.A. had almost died three to four times during the test.

Dr. Rubinstein told R.A. that he needed surgery immediately to treat the sleep apnea.

67. The sleep apnea test did not show severe sleep apnea. The sleep could and should have been treated using positive pressure ventilation via a mask. Dr. Rubinstein's testimony that he suggested the use of a mask and R.A. rejected the idea is not credited. It is clear from R.A.'s testimony that he was led to believe by Dr. Rubinstein that his sleep apnea was life-threatening and that he needed immediate surgery.

68. On or about July 29, 2006, R.A. returned to Dr. Rubinstein's office. Dr. Rubinstein discussed the Rotation Elimination Diet with R.A.

69. On or about August 1, 2006, R.A. presented to Dr. Rubinstein for a follow-up appointment with complaints of a stuffy nose and dry mouth. Dr. Rubinstein noted that a culture from R.A. was positive for staph aureus and prescribed the antibiotics, Septra and Gentamicin nasal spray.

70. On or about August 4, 2006, R.A. presented to Dr. Rubinstein with complaints of inability to breathe through his nose at night. Dr. Rubinstein reviewed the progress of the Rotation Elimination Diet with R.A.

71. On August 8, 2006, R.A. presented to Dr. Rubinstein complaining of bilateral congestion. Dr. Rubinstein prescribed Allegra-D, an antihistamine decongestant, and Nasonex, a

cortical steroid. Dr. Rubinstein presented R.A. with a surgical plan that included: endoscopic sphenoidoscopy and debridement; septoplasty; radiofrequency inferior turbinates; radiofrequency soft palate; radiofrequency base of tongue; and bilateral intranasal endoscopic ethmoidectomy revision. Dr. Steig, the Department's expert, is of the opinion that the recommended surgeries were unnecessary and that Dr. Rubinstein should have tried medical treatment before resorting to surgery.

Dr. Steig's opinion is credited.

72. On or about August 11, 2006, R.A. presented to Dr. Rubinstein for a pre-operative appointment to take a history and physical examination. Dr. Rubinstein discussed EKG results with R.A., stating that the results were borderline and that Dr. Rubinstein would ask another physician to review the results.

73. On August 14, 2006, R.A. called Dr. Rubinstein's office and left a message that he was cancelling the surgery. R.A. went to see Howard B. Fuchs, M.D. (Dr. Fuchs), on August 14, 2006, to get a second opinion. Dr. Fuchs is board-certified in pediatrics and allergies.

74. On August 14, 2006, R.A. presented to Dr. Fuchs with chronic rhinitis, which is a chronic inflammation of the nasal tissues. He wanted to find out whether he had allergies. R.A. told Dr. Fuchs that he had been tested for allergies when he was

Dr. Rubinstein's patient. R.A. did not bring any of the allergy test results with him to the office visit. Dr. Fuchs told R.A. to stop taking antihistamines and scheduled R.A. for skin testing ten days later.

75. On August 24, 2006, Dr. Fuchs performed allergy skin tests, and the results were negative. R.A. did not have any allergies. Dr. Fuchs changed the Allegra-D to doses twice a day and continued R.A. on Nasonex. The Allegra-D was for congestion and to shrink the tissues in R.A.'s nose. Dr. Fuchs diagnosed R.A. with vasomotor rhinitis, which is non-allergic. Vasomotor rhinitis is triggered by things like smoke and chemical fumes.

76. Dr. Fuchs saw R.A. again on September 14, 2006. R.A. said that he was better, but the medication made him jittery. Dr. Fuchs changed the medication. The last time that Dr. Fuchs saw R.A. was on October 13, 2006, and R.A. said that he was doing well.

77. On August 16, 2006, Jack J. Wazen, M.D. (Dr. Wazen), who is board certified in otolaryngology, head and neck surgery, saw R.A. for the first time. Dr. Wazen is employed at the Silverstein Institute, but had not treated R.A. when R.A. had been a patient at Silverstein Institute before August 16, 2006. R.A. was seeking a second opinion concerning Dr. Rubinstein's plan for nasal surgery.

78. Dr. Wazen did a physical examination of R.A., including an endoscopic nasal examination, which revealed the septum to be in the midline with no obstructive deviation. There were no polyps, and the sites on which R.A. had had surgery looked well-healed. Dr. Wazen also reviewed a CT scan, which R.A. had provided. Based on his examination and evaluation, Dr. Wazen told R.A. that he did not have polyps and that there was no clinical benefit to be derived from surgery.

79. R.A. presented with complaints of nasal congestion, stuffy nose, and hives. Dr. Wazen diagnosed R.A. with allergic rhinitis.

80. Dr. Steig was of the opinion that surgery should not have been recommended for the sleep apnea or the chronic allergic rhinitis or chronic sinusitis without first trying other medical treatments such as a mask for the sleep apnea. He opined that the rhinitis and sinusitis could have been treated by the avoidance of a known cause of the rhinitis or sinusitis and continuation of nasal steroids and antihistamines. Dr. Steig's testimony is credited.

81. Dr. Steig was of the opinion that the recommended surgery was not justified by the medical records. There were no polyps present and the septum was not deviated to the extent that surgery was necessary. The sleep apnea was moderate and

did not warrant surgical intervention. Dr. Steig's testimony is credited.

CONCLUSIONS OF LAW

82. 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. (2010).

83. The Department has the burden to establish the allegations in the Administrative Complaints by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

84. The Department has alleged that Dr. Rubinstein violated sections 458.331(1) (m), 458.331(1) (n), and 458.331(1) (t), Florida Statutes (2004), in DOAH Case Nos. 09-5267P1 and 09-5269PL. Those statutes provide:

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

* * *

(m) Failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and

reports of consultations and hospitalizations.

(n) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances, or drugs.

* * *

(t) Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph. As used in this paragraph, "repeated malpractice" includes, but is not limited to, three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of \$50,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the physician. As used in this paragraph, "gross malpractice" or "the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances," shall not be construed so as to require more than one instance, event, or act. Nothing in this paragraph shall be construed to require that a physician be incompetent to practice medicine in order to be disciplined pursuant to this paragraph. A recommended order by an administrative law judge or a final order of the board finding a violation under this paragraph shall specify whether the licensee was found to have committed "gross malpractice," "repeated malpractice," or

"failure to practice medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances," or any combination thereof, and any publication by the board must so specify.

85. In DOAH Case No. 09-5270PL, the Department alleges that Dr. Rubinstein violated section 438.331(1)(t), Florida Statutes (2006), which provides:

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

* * *

(t) Notwithstanding s. 456.072(2) but as specified in s. 456.50(2):

1. Committing medical malpractice as defined in s. 456.50. The board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph. Medical malpractice shall not be construed to require more than one instance, event, or act.

2. Committing gross medical malpractice.

3. Committing repeated medical malpractice as defined in s. 456.50. A person found by the board to have committed repeated medical malpractice based on s. 456.50 may not be licensed or continue to be licensed by this state to provide health care services as a medical doctor in this state.

Nothing in this paragraph shall be construed to require that a physician be incompetent to practice medicine in order to be disciplined pursuant to this paragraph. A recommended order by an administrative law judge or a final order of the board finding a violation under this paragraph shall

specify whether the licensee was found to have committed "gross medical malpractice," "repeated medical malpractice," or "medical malpractice," or any combination thereof, and any publication by the board must so specify.

86. Section 456.50(1)(g), Florida Statutes (2006), defines "medical malpractice" as follows:

(g) "Medical malpractice" means the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. Only for the purpose of finding repeated medical malpractice pursuant to this section, any similar wrongful act, neglect, or default committed in another state or country which, if committed in this state, would have been considered medical malpractice as defined in this paragraph, shall be considered medical malpractice if the standard of care and burden of proof applied in the other state or country equaled or exceeded that used in this state.

Case No. 09-5267PL

87. The Department alleged in the Administrative Complaint that Dr. Rubinstein violated section 458.331(1)(t), Florida Statutes (2004), in the following ways:

a. Respondent spent an excessive amount of time in the operating room (eleven hours and thirty five minutes operating on Patient J.D.) performing multiple procedures in an office setting; and/or

b. Respondent failed to observe Patient J.D. for a sufficient amount of time after such a long period of sedation and operation. Respondent should have observed Patient J.D. for a prolonged period of time

to assure complete recovery and restitution of fluid balance.

88. The Department has established by clear and convincing evidence that Dr. Rubinstein violated section 458.331(1)(t) by performing multiple surgeries in an office setting for 11 hours and 35 minutes. Thus, the Department has established that Dr. Rubinstein failed to practice medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances.

89. Florida Administrative Code Rule 64B8-9.1009(2)(f) provides that: "[f]or elective cosmetic and plastic surgery procedures performed in a physician's office, the maximum planned duration of all surgical procedures combined must not exceed 8 hours." By his own testimony at final hearing, Dr. Rubinstein stated that the maximum time planned for the breast augmentation was two and one-half hours; the maximum planned time for the liposuction was one hour and 55 minutes; and that the maximum time planned for the abdominoplasty was four hours. Thus, his own testimony showed that the maximum planned surgery time exceeded eight hours.

90. The only pre-surgical estimate of the time for the procedures is contained in the surgical cost estimates presented to J.D. The first cost estimate did not include the breast augmentation and stated that the estimated time for surgery was

nine hours, which was eight hours for surgery and one hour for recovery. The revised cost estimate included an additional procedure, which Dr. Rubinstein now estimates would take between two and two-and-one-half hours. Therefore, the planned time for the three procedures would have been between ten and ten-and-one-half hours, which is about one hour less than the actual procedures took. Although the revised cost estimate stated that the planned time for the surgery was eight hours, no explanation was given for how an additional procedure could be done without increasing the time for surgery. Based on Dr. Rubinstein's pre-operative cost estimates, the maximum time planned for the three procedures would have exceeded the eight hours.

91. Rule 64B8-9.1009(2)(f) provides the benchmark for a reasonable amount of time for surgery to be performed in an office setting based on the maximum planned amount of time planned by the physician. If a physician has planned a maximum amount of eight hours or less, and the surgery may go beyond that time, it is not considered per se excessive. Because Dr. Rubinstein's maximum planned time for the procedures exceeded this benchmark, the planned time was excessive; therefore, it can only be concluded that the amount of time that the procedures took to be performed was excessive.

92. The Department failed to establish that Dr. Rubinstein failed to observe J.D. for a sufficient time after the surgery.

J.D. met the surgical facility's criteria for discharge, and, therefore, Dr. Rubinstein met the standard of care for observing a patient after surgery.

93. The Department alleged in the Administrative Complaint that Dr. Rubinstein violated section 458.331(1) (m) in the following ways:

- a. Respondent maintained incomplete medical records for Patient J.D. by not having a dictation of Patient J.D.'s pre-operative visit on or about January 14, 2005;
- b. Respondent used medical record forms that would be used by an otolaryngology (ear, nose, and throat) physician; and/or
- c. Respondent's surgical notes neither specified the amount of tissue removed during the abdominoplasty nor the tightening of Patient J.D.'s abdominal wall.

94. The Department failed to establish that Dr. Rubinstein maintained incomplete medical records regarding the pre-operative visit of January 14, 2005. The Department's own expert opined that, based on the medical records of Dr. Rubinstein, the history taken and the physical examination given on that date meet the basic criteria for a preoperative history and examination.

95. The Department failed to establish that using a form used by otolaryngology physicians fell below the standard of care. The forms used by Dr. Rubinstein contained adequate information concerning J.D.'s pre-operative visit.

96. The Department failed to establish that the standard of care required Dr. Rubinstein to include the amount of tissue removed during the abdominoplasty and to document the tightening of the abdominal wall.

97. The Department failed to establish by clear and convincing evidence that Dr. Rubinstein violated section 458.331(1)(m).

98. The Department alleged in the Administrative Complaint that Dr. Rubinstein violated section 458.331(1)(n) in the following ways:

a. Respondent required J.D. to pay an additional four thousand nine hundred dollars (\$4,900.00) prior to releasing her from the office after the surgical procedure; and/or

b. Respondent suggested that Patient J.D. barter a vacation trip for Respondent's employee, in exchange for additional surgical procedures.

99. The Department has failed to establish by clear and convincing evidence that Dr. Rubinstein violated section 458.331(1)(n). The Department has failed to establish that Dr. Rubinstein or his staff required J.D. or J.D.'s husband to pay an additional \$4,900 before Dr. Rubinstein would release J.D. from his office on January 20, 2005. J.D.'s husband testified that the release of J.D. from the facility at 1:00 a.m. on January 20, 2005, was not conditioned on the

payment of the additional \$4,900. The evidence further shows that the credit card payment was made on the afternoon of January 20, 2005, after J.D. had been discharged.

100. Dr. Rubinstein did suggest that J.D. might want to become a member of ITEX and that bartering could be a way to pay for surgical procedures. However, there is no evidence that Dr. Rubinstein used undue influence to exploit J.D. for his own financial gain or the that of a third party.

Case No. 09-5269PL

101. In the Administrative Complaint, the Department alleged that Dr. Rubinstein violated section 458.331(1)(n) in the following ways:

- a. By using his position as Patient B.L.'s treating physician to promote and sell Patient B.L. the Obagi Nu-Derm System;
- b. By ordering, and getting paid, without medical justification for allergy testing of Patient B.L.; and/or
- c. By ordering and getting paid, without medical justification for a Rotation Elimination Diet.

102. The Department has established by clear and convincing evidence that Dr. Rubinstein used his position as a physician in order to convince C.L. that allergy tests were needed, when the tests were not needed. B.L. was being seen for cystic acne not for an allergy. At the initial visit, Dr. Rubinstein wanted B.L. to fill out a questionnaire that was

geared for allergies not for acne. B.L. did not present at the initial visit with the symptoms indicated on the questionnaire, and those symptoms were not documented in Dr. Rubinstein's initial examination of B.L. It is clear that Dr. Rubinstein used the allergy side of his practice as a means of increasing the cash flow for his practice, particularly when the patient was not presenting for allergies and was not presenting with allergy symptoms. The rotation diet is another example of using his position to increase his cash flow when there was no medical justification for the diet. The Department has established by clear and convincing evidence that Dr. Rubinstein violated section 458.331(1)(n).

103. The Department did not establish that Dr. Rubinstein used his position to promote the purchase of the Obagi Nu-Derm System products.

104. In the Administrative Complaint, the Department alleged that Dr. Rubinstein violated section 458.331(1)(t) in the following ways:

- a. By improperly diagnosing Patient B.L.'s acne as an allergy;
- b. By holding himself out as an allergist and not practicing at the level of skill, care, and treatment recognized by a reasonably prudent allergist;
- c. By failing to properly assess and/or diagnose the cause of B.L.'s swelling, joint pain, and itching; and/or

d. By failing to recognize the symptoms of Patient B.L.'s allergic reaction to Minocycline and Nystatin.

105. The Department has established that Dr. Rubinstein held himself out as an allergist and that he did not practice at the level of skill, care, and treatment recognized by a reasonably prudent allergist under similar circumstances and conditions in that he failed to diagnose the allergic reaction to Minocycline and Nystatin and to treat the reactions by discontinuing the medications. He put B.L. on a yeast-free diet when there was no justification for the diet and continued the diet after tests revealed that B.L. did not have an allergy to baker's yeast. The Department has established by clear and convincing evidence that Dr. Rubinstein violated section 458.331(1)(t).

106. In the Administrative Complaint, the Department alleged that Dr. Rubinstein violated section 458.331(1)(m) by not justifying the 91 RAST tests for Patient B.L. in the medical records and by using medical forms that had no place to record medical history or physical examination.

107. The Department did establish by clear and convincing evidence that Dr. Rubinstein failed to justify in his medical records the need for ordering the allergy tests. B.L. was not presenting for the treatment of an allergy and did not have symptoms of an allergy other than her turbinates were engorged

and pale and she had hypoplastic lymphoid tissue. The Department has established by clear and convincing evidence that Dr. Rubinstein violated section 458.331(1)(m). The Department did not establish that the use of the medical forms that Dr. Rubinstein used were inappropriate. The information on the forms showed that a history was taken and that a physical examination was performed.

Case No. 09-5270PL

108. In the Administrative Complaint, the Department alleged that Dr. Rubinstein violated section 458.331(1)(t), Florida Statutes (2006), in the following ways:

- a. By basing his conclusion that Patient R.A. suffered from multiple food allergies on a test that was "for investigational use only. Its performance characteristics have not been cleared or approved by the U.S. Food and Drug Administration";
- b. By interpreting the CT scan and sleep apnea study in a manner which directly lead to surgery, when other types of interventions might be needed; and/or
- c. By planning to perform unnecessary and inappropriate surgical procedures on Patient R.A. without documentation to support such a decision.

109. The Department has established by clear and convincing evidence that Dr. Rubinstein violated section 458.331(1)(t) and committed medical malpractice by recommending surgery based on the CT scan and the sleep apnea study without

proceeding first with other types of treatment, such as positive pressure ventilation for the sleep apnea and continuing with other medical treatment for the nose and sinus problems.

110. The Department has established by clear and convincing evidence that Dr. Rubinstein violated section 458.331(1)(t) and committed medical malpractice by planning to perform inappropriate and unnecessary surgery. There were no polyps present. The sleep apnea was moderate and did not require surgical intervention. R.A.'s septum was not significantly deviated so as to require surgery.

111. The Department failed to establish that Dr. Rubinstein violated section 458.331(1)(t) by using an IgG test to base his conclusions that R.A. had food allergies. Dr. Steig, who was the expert retained by the Department to testify in DOAH Case No. 09-5270PL, did not have the expertise to opine on the efficacy or reliability of the IgG test.

Penalties

112. Florida Administrative Code Rule 64B8-8.001, in effect at the time of the events in DOAH Case Nos. 09-5267PL and 09-5269PL, provides that the disciplinary guidelines for a violation of section 458.331(1)(m), Florida Statutes (2004), range from a reprimand to two years' suspension followed by probation and an administrative fine from \$1,000 to \$10,000 for a first offense to probation to suspension followed by probation

and an administrative fine from \$5,000 to \$10,000 for a second offense.

113. Florida Administrative Code Rule 64B8-8.001, in effect at the time of the events in DOAH Case No. 09-5267PL and 09-5269PL, provides that the disciplinary guidelines for a violation of section 458.331(1)(n) range from payment of fees paid by or on behalf of the patient and from probation to two years' suspension and an administrative fine from \$5,000 to \$10,000 for a first offense to payment of fees by or on behalf of the patient and from suspension to revocation and an administrative fine of \$10,000 for a second offense.

114. Florida Administrative Code Rule 64B8-8.001, in effect at the time of the events in DOAH Case Nos. 09-5267PL, 09-5269PL, and 09-5270PL, provides that the disciplinary guidelines for a violation of section 458.331(1)(t), Florida Statutes (2004 and 2006), range from two years' probation to revocation and an administrative fine from \$1,000 to \$10,000 for a first offense to a reprimand and probation to revocation and an administrative fine of \$5,000 to \$10,000 for second offense.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered as follows:

DOAH Case No. 09-5267PL

- a. Finding that Dr. Rubinstein violated section 458.331(1)(t), Florida Statutes (2004);
- b. Finding that Dr. Rubinstein did not violate sections 458.331(1)(m) and 458.331(1)(n);
- c. Revoking Dr. Rubinstein's license; and
- d. Imposing a \$10,000 administrative fine;

DOAH Case No. 09-5269PL

- a. Finding that Dr. Rubinstein violated sections 458.331(1)(m), 458.331(1)(n), and 458.331(1)(t);
- b. Requiring Dr. Rubinstein to pay C.L. \$2,921 for the allergy testing and the Rotation Diet;
- c. Revoking Dr. Rubinstein's license; and
- e. Imposing an administrative fine of \$10,000.

DOAH Case No. 09-5270PL

- a. Finding that Dr. Rubinstein violated section 458.331(1)(t), Florida Statutes (2006);
- b. Revoking Dr. Rubinstein's license; and
- c. Imposing a \$10,000 administrative fine.

DONE AND ENTERED this 1st day of February, 2011, in
Tallahassee, Leon County, Florida.

Susan B. Harrell

SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of February, 2011.

ENDNOTE

^{1/} There were references in the testimony to the Silverstein Institute, which apparently is the same as the Florida Ear & Sinus Center. For the purposes of this Recommended Order, the facility will be referred to as the Silverstein Institute.

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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.