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Final Order No. DOH-12-0079-^{FDF}-MQA
FILED DATE - 1-25-12
Department of Health

FILED
STATE OF FLORIDA
BOARD OF DENTISTRY
2012 JAN 26 A 11:20

By: Angel Sanders
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2007-02293
DOAH CASE NO.: 11-2030PL
LICENSE NO.: DN 15657

ALEXANDER GAUKHMAN, D.D.S.,

Respondent.

FINAL ORDER

THIS CAUSE came before the Board of Dentistry (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, at a duly-noticed public teleconference meeting on January 18, 2012, for consideration of the Administrative Law Judge's Recommended Order (attached hereto as Exhibit A), Respondent's Exceptions (attached hereto as Exhibit B), and Petitioner's Response to Exceptions (attached hereto as Exhibit C and cited as Pet. Resp.), in the above-styled cause. Petitioner was represented by George Black, Assistant General Counsel and Wayne Mitchell, Assistant General Counsel. Respondent was present and represented by counsel, Max R. Price, Esquire.

Upon review of the Recommended Order, the Exceptions, 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 MOTION TO STRIKE RESPONDENT'S EXCEPTIONS

The exceptions were filed timely in the wrong forum. The Petitioner received a copy timely, also. Based on these particular set of circumstances, the Respondent's oral representations, and the fact there was not any prejudice to Petitioner in filing a response or prejudice to the Board in preparing for the Board meeting, the motion is denied. See Hamilton County Bd. of County Comm'rs v. Dept. of Env'tl. Reg., 587 So. 2d 1378 (Fla. 1st DCA 1991), for an analysis of exceptions filed untimely.

RULING ON RESPONDENT'S EXCEPTIONS

1. Respondent's Exception Number 1: DENIED. The record reveals that Paragraph five (5) and ten (10) of the Recommended Order were based on competent substantial evidence and that the proceedings complied with the essential requirements of law. This included putting the Respondent on proper notice of the charges against him. The Board adopts and incorporates the Department's Response to the Exceptions. Pet. Resp. ¶ 7-15.

2. Respondent's Exception Number 2: DENIED. The record reveals that paragraph ten (10) of the Recommended Order was based on competent substantial evidence and that the proceedings complied with the essential requirements of law. The Board adopts and incorporates the Department's Response to the Exceptions. Pet. Resp. ¶ 8-16.

3. Respondent's Exception Number 3: DENIED. The record reveals that paragraph five (5) of the Recommended Order is based on competent substantial evidence. The Board does not find that a different interpretation of law for paragraph twenty (20) is warranted. The proceedings complied with the the essential requirements of law. The Board also adopts and

incorporates the Department's Response to the Exceptions. Pet. Resp. ¶ 22-27.

4. Respondent's Exception Number 4: DENIED. Paragraph seven (7) of the Recommended Order is based on competent substantial evidence. The Board shall not reweigh the evidence or the credibility of the witness. The Board adopts and incorporates the Department's Response to the Exceptions. Pet. Resp. ¶ 28-33.

5. Respondent's Exception Number 5: DENIED. Paragraphs eleven (11) and twelve (12) were based on competent substantial evidence. The proceedings complied with the essential requirements of law. The Board adopts and incorporates the Department's Response to the Exceptions. Pet. Resp. ¶ 34-39.

6. Respondent's Exception Number 6: DENIED. The administrative complaint was not legally insufficient by violating procedural due process. The legal conclusions of Paragraphs seventeen (17), eighteen (18) and nineteen (19) of the Recommended Order will not be substituted as there is not a more reasonable conclusion of law found by the Board, nor was one proffered. The Board adopts and incorporates the Department's Response to the Exceptions. Pet. Resp. ¶ 40-43.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved, adopted and incorporated herein by reference.
2. There is competent, substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 466, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved, adopted and incorporated herein by reference.

3. There is competent, substantial evidence to support the conclusions of law.

VIOLATION AND PENALTY

Upon a complete review of the record in this case, the Findings of Facts and Conclusions of Law, the Administrative Law Judge's Recommendation is ACCEPTED.

WHEREFORE, IT IS HEREBY ORDERED and ADJUDGED that:

1. Respondent is in Violation of Section 466.028(1)(m), Florida Statutes, as implemented by Rule 64B5-17.002, *Florida Administrative Code*.

2. Respondent shall pay an administrative fine in the amount of \$2,500.00 to the Board within (twelve) months from the date this Final Order is filed. Said fine shall be paid by money order or cashier's check. Please remit payment to: Department of Health, Division of MQA, Compliance Management Unit, Post Office Box 6320, Tallahassee, Florida 32314-6320.

3. Respondent shall complete a Level I (3-6 hours) with verified competency achieved in a Board-approved record keeping course at or through an accredited college of dentistry within twelve (12) month of the date this Final Order is filed.

4. Respondent shall take and pass the Florida Board of Dentistry Laws and Rules Examination within twelve (12) month from the date this Final Order is filed.

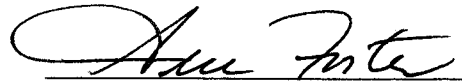
This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

MOTION TO ASSESS COSTS

The Board retains jurisdiction in this matter to address the Petitioner's Motion to Assess Costs and Respondent's Response to Petitioner's Motion to Assess Costs at the February 3, 2012 Board of Dentistry Meeting.

DONE AND ORDERED this 25th day of January, 2012.

BOARD OF DENTISTRY



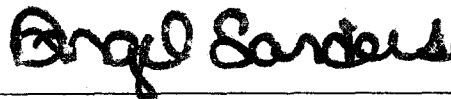
Sue Foster
Executive Director *on behalf of*
Robert L. Perdomo, D.M.D. VICE-CHAIR

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Alexander Gaukhman, D.D.S.**, 400 Hanchey Drive, Nokomis, Florida 34275; **Max R. Price, Esquire.**, Law Offices of Max R. Price, P.A., 6701 Sunset Drive, Suite 104, Miami, FL 33143; Honorable William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice mail to **George Black**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265 this 25th day of January, 2012.



Deputy Agency Clerk